

U.S. Customs and Border Protection

CBP Dec. 14-04

TUNA-TARIFF RATE QUOTA; THE TARIFF-RATE QUOTA FOR CALENDAR YEAR 2014 TUNA CLASSIFIABLE UNDER SUBHEADING 1604.14.22, HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (HTSUS)

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

ACTION: Announcement of the quota quantity of tuna in airtight containers for Calendar Year 2014.

SUMMARY: Each year, the tariff-rate quota for tuna described in subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS), is based on the apparent United States consumption of tuna in airtight containers during the preceding Calendar Year. This document sets forth the tariff-rate quota for Calendar Year 2014.

DATES: *Effective Dates:* The 2014 tariff-rate quota is applicable to tuna fish entered, or withdrawn from warehouse, for consumption during the period January 1, through December 31, 2014.

FOR FURTHER INFORMATION CONTACT: Headquarters Quota Branch, Textile/ Apparel Policy and Programs Division, Trade Policy and Programs, Office of International Trade, U.S. Customs and Border Protection, Washington, DC 20229-1155, (202) 863-6560.

Background

It has been determined that 15,833,343 kilograms of tuna in airtight containers may be entered, or withdrawn from warehouse, for consumption during the Calendar Year 2014, at the rate of 6.0 percent *ad valorem* under subheading 1604.14.22, HTSUS. Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent *ad valorem* under subheading 1604.14.30 HTSUS.

Dated: April 7, 2014.

RICHARD F. DiNUCCI,
Acting Assistant Commissioner
Office of International Trade.

[Published in the Federal Register, April 11, 2014 (79 FR 20210)]



GENERAL NOTICE

19 CFR PART 177

Revocation of One Ruling Letter and Revocation of Treatment Relating to the Classification of a Plastic Placemat and Coaster Set

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

ACTION: Notice of revocation of one ruling letter and revocation of treatment relating to the classification of a plastic placemat and coaster set.

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 CBP is revoking one ruling letter concerning the classification of a plastic placemat under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N020816 was published in the Customs Bulletin, Vol. 47, No. 52, on January 2, 2014. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 30, 2014.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

SUPPLEMENTARY INFORMATION:**Background**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “informed compliance” and “shared responsibility.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade 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 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 section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking one ruling letter pertaining to the classification of a plastic placemat and coaster set. Although in this notice CBP is specifically referring to New York Ruling (“NY”) N020816, dated December 20, 2007, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice covers any rulings on this merchandise that may exist but have not been specifically identified. Any party who received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical

transactions should have advised CBP during the notice period. An importer's failure to have advised 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 his agents for importations of merchandise subsequent to this notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N020816 in order to reflect the proper classification of a plastic placemat and coaster set in subheading 3924.90.10, HTSUS, according to the analysis contained in Headquarters Ruling Letter (HQ) H236273, which is attached to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: February 6, 2014

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H236273

February 6, 2014

CLA-2 OT:RR:CTF:TCM H236273 TNA**CATEGORY:** Classification**TARIFF NO.:** 3924.90.10

MS. FRANCINE RAMSEY
HAMPTON DIRECT, INC.
P. O. Box 1199
WILLISTON, VT 05495

Re: Revocation of NY N020816; Classification of a plastic placemat and coaster set

DEAR Ms. RAMSEY:

This letter is in reference to New York Ruling Letter (“NY”) N020816, issued to you on December 20, 2007, concerning the tariff classification of plastic placemats and coasters. In NY N020816, U.S. Customs and Border Protection (“CBP”) classified the merchandise under subheading 3924.10.40, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Tableware and kitchenware: Other.” We have reviewed NY N020816 and found it to be in error. For the reasons set forth below, we hereby revoke NY N020816.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N020816 was published in the Customs Bulletin, Vol. 47, No. 52, on January 2, 2014. No comments were received in response to this notice.

FACTS:

NY N020816 classified a “Sunflower Placemat and Coaster Set,” SKU# 64180. The placemat and the coasters are all made of polyvinyl chloride (PVC). They also contain matching colors and designs. They are decorated with a brown wicker basket holding brightly colored orange, yellow and white sunflowers and green leaves. The placemats measure 17 inches long by 11–1/8 inches wide and the coasters measure 3–7/8 inches square. The coasters and the placemats are all fashioned with rounded corners and are designed help to protect tables from scratches, food spills or stains.

ISSUE:

Whether the subject placemat and coasters are classifiable in subheading 3924.10, HTSUS, as tableware or kitchenware, or in subheading 3924.90, HTSUS, as other household articles of plastics?

LAW AND ANALYSIS:

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

3924	Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics:
3924.10	Tableware and kitchenware:
3924.10.40	Other
3924.90	Other:
3924.90.10	Curtains and drapes, including panels and valances; napkins, table covers, mats, scarves, runners, doilies, centerpieces, antimacassars and furniture slipcovers; and like furnishings

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 EN’s provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

The EN to heading 3924, HTSUS, provides, in relevant part:

This heading covers the following articles of plastics:

- (A) Tableware such as tea or coffee services, plates, soup tureens, salad bowls, dishes and trays of all kinds, coffee-pots, teapots, sugar bowls, beer mugs, cups, sauce-boats, fruit bowls, cruets, salt cellars, mustard pots, egg-cups, teapot stands, table mats, knife rests, serviette rings, knives, forks and spoons. . . .
- (C) Other household articles such as ash trays, hot water bottles, match-box holders, dustbins, buckets, watering cans, food storage containers, curtains, drapes, table covers and fitted furniture dust-covers (slipovers).

We begin by noting that there is no dispute at the heading level that subject placemats are described by the terms of heading 3924, HTSUS. This finding is supported by the EN 39.24, which states specifically that “table mats” are covered by this heading. Thus, the dispute, at the six-digit level, is whether the subject placemats are “tableware and kitchenware,” or “other,” the latter of which specifically includes table mats.

In construing the scope of heading 3924, HTSUS, CBP has held that the principle of *ejusdem generis* applies. See, e.g., HQ H176516, dated September 20, 2012 and HQ H020141, dated July 30 2008. The Court of International Trade has stated that the canon of construction *ejusdem generis*, which means “of the same class or kind,” teaches that “where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” See *Nissho-Iwai American Corp. v. United States*, 10 CIT 154, 156 (1986). The court further stated that “as applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Id.* at 157. See also *Totes, Inc. v. United States*, 18 CIT 919, 865 F. Supp. 867, 871 (1994), *aff’d.* 69 F. 3d 495 (Fed. Cir. 1995).

Applying these principles to heading 3924, HTSUS, CBP has found that the essential characteristics or purposes of household articles of this heading are that they are made of plastic, are used in the household, and are reusable. See HQ H176516 and HQ W968181, dated October 3, 2006. Furthermore, CBP has held that many of the exemplars of “tableware” in EN 39.24, and classifiable under subheading 3924.10, HTSUS, are items from which the consumer can directly consume beverages or food. See, e.g., HQ H100800, dated December 23, 2011.

In addition, although the terms “tableware” and “kitchenware” are not defined in either the nomenclature or the ENs, CBP has defined these terms in prior rulings by consulting dictionaries and other lexicographic sources. In HQ H005207, for example, CBP defined “tableware” as “those items traditionally used in serving food or associated with table settings.” See HQ H005207, *citing* Webster’s Collegiate Dictionary, 1195, 10th ed., (2001) (defining tableware as: “utensils {as of china, glass or silver} for table use).”¹ Furthermore, HQ H005207 defined “kitchenware” as “utensils and appliances for use in a kitchen.” See HQ H005207, *citing* Webster’s Collegiate Dictionary at 643. Thus, HQ H005207 concluded that tableware and kitchenware are articles immediately associated with food preparation, food storage and food consumption. Furthermore, HQ H005207 found that unlike household articles, tableware and kitchenware could be used in a variety of table and kitchen related functions. For example, they could be used for food preparation and beverage items or act as table settings; they could also be used for storing or displaying foods, or for serving food and beverages. As a result, HQ H005207 classified a toothpick holder as tableware and kitchenware because toothpicks are primarily used in connection with the consumption of foods, with the serving of hors d’oeuvres, mixed drinks and for removing food particles from between the teeth.

By contrast, the subject placemats are not used in the preparation of food or beverages; nor are they as necessary to place settings as utensils, plates, glasses, etc. The subject placemats also cannot be used for storing or displaying foods, or for serving food and beverages. They are also not items from which a consumer would directly consume food or beverages. As a result, they do not meet the cited definitions of tableware and kitchenware, and they do not comport with the exemplars listed therein. As such, they cannot be classified as tableware or kitchenware of heading 3924, HTSUS, or subheading 3924.10, HTSUS.

However, the subject placemats, like the household articles of HQ H176516 and HQ W968181, meet the exemplars of household articles in that they are made of plastic, are used in the household, and are reusable. Furthermore, CBP has found that “heading 3924 provides for, among other things, very broad categories of plastic household articles and plastic toilet articles.” See HQ H046780, dated March 10, 2009. Thus, CBP has classified such disparate items as a hand shower, a shower head, a tunnel tent, and plastic inflatable

¹ Although we acknowledge that HQ H005207 applied to different heading than those at issue here, we find its conclusions instructive because headings 3924, 6911 and 6912, HTSUS, share nearly identical heading text and provide for the same articles, albeit of different materials.

tepees as “other household articles” of heading 3924, HTSUS. *See, e.g.*, HQ H046780, HQ 961348, dated April 14, 1998; HQ 961349, dated April 14, 1998. As a result, we find that the subject place mats are described by these terms as well and are therefore classified as “other household articles” of heading 3924, HTSUS.

In particular, subheading 3924.90.10, HTSUS, provides for table cover covers, mats, “and like articles.” The subject place mats, which are designed to cover the table, meet these terms. As a result, the subject placemats are classified in subheading 3924.90.10, HTSUS, as “... other household articles and hygienic or toilet articles, of plastics: Other: Curtains and drapes, including panels and valances; napkins, table covers, mats, scarves, runners, doilies, centerpieces, antimacassars and furniture slipcovers; and like furnishings.” This conclusion is consistent with prior CBP rulings. *See e.g.*, HQ H064878, dated August 13, 2009; HQ H064878, dated August 13, 2009; NY R04714, dated September 18, 2006; NY L89674, dated January 12, 2006; and NY K85476, dated May 26, 2004.

HOLDING:

In accordance with GRI 1 and GRI 6, the subject placemats are classified in heading 3924, HTSUS. They are specifically provided for in subheading 3924.90.10, HTSUS, as: “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Other: Curtains and drapes, including panels and valances; napkins, table covers, mats, scarves, runners, doilies, centerpieces, antimacassars and furniture slipcovers; and like furnishings.” The general, column one duty rate is 3.3%.

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

EFFECT ON OTHER RULINGS:

NY N020816, dated December 20, 2007, is REVOKED.

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

Sincerely,

IEVA K. O’ROURKE

for

MYLES B. HARMON

Director

Commercial and Trade Facilitation Division

**MODIFICATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF CERTAIN MOLDED
PLASTIC WATCH BOXES**

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

ACTION: Notice of modification of one ruling letter and revocation of treatment relating to tariff classification of certain molded plastic watch boxes.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter relating to the tariff classification of certain watch boxes under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also revokes any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 47, No. 28, on July 3, 2013. Two comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 30, 2014.

FOR FURTHER INFORMATION CONTACT: Gregory Connor, Tariff Classification and Marking Branch: (202) 325–0025.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide

the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade 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 section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. Vol. 47, No. 28, on July 3, 2013, proposing to modify New York Ruling Letter (NY) N058483, dated May 22, 2009, in which CBP determined that the subject merchandise was classified under heading 4202, HTSUS, and specifically under subheading 4202.99.90, HTSUS, which provides for, in pertinent part: "...jewelry boxes... and similar containers, of leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper: Other: Other: Other...."

As stated in the proposed notice, this action will cover any rulings on the subject 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 above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved with substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY N058483 to reflect the proper tariff classification of this merchandise under subheading 3923.10.00, HTSUS, which provides for, in pertinent part: "Articles for the conveyance or packing of goods, of plastics...: Boxes, cases, crates and similar articles....", pursuant to the analysis

set forth in HQ H078796, which is attached to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by it to substantially identical transactions.

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

Dated: April 2, 2014

CLAUDIA GARVER
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H078796

April 2, 2014

CLA-2 OT:RR:CTF:TCM H078796 GC
CATEGORY: Classification and Marking
TARIFF NO.: 3923.10.00

CYNTHIA ULRICH
CUSTOMS COMPLIANCE – ASST. MANAGER
FOSSIL RETRODOME
10615 SANDEN DRIVE
DALLAS, TEXAS 75238

RE: Modification of NY N058483, dated May 22, 2009; Tariff classification of watch boxes of molded plastic

DEAR Ms. ULRICH:

This letter is in reply to your August 14, 2009 correspondence in which you request reconsideration of New York Ruling Letter (NY) N058483, dated May 22, 2009. We apologize for the delay in responding.

Notice of the proposed action was published in the *Customs Bulletin*, Vol. 47, No. 28, on July 3, 2013. Two comments were received in response to the notice.

FACTS:

NY N058483 addresses the classification of three different styles of watch boxes imported by Fossil. Your reconsideration request covers those identified as “PKAXWATCH” and “PKMARC2006”, which are described in the rulings as follows:

...PKAXWATCH is a watch box constructed of clear molded plastic. It has a hinged lid and is specially shaped and fitted to contain one watch. It is designed to provide storage, protection, and organization to a watch. It is suitable for long-term use. It is of the kind normally given to the purchaser of a watch at the time of purchase. The box has a center compartment with a removable metal cuff insert. It measures approximately 3” (W) x 4” (L) x 3” (D).

...PKMARC2006 is a circular watch box constructed of molded plastic. It is fitted to contain one watch. It is designed to provide storage, protection, and organization to a watch. It is of the kind normally given to the purchaser of a watch at the time of purchase and suitable for long-term use. The watch box is packed within a paperboard retail box. It measures approximately 4.75” in diameter and 2.5” (H).

In NY N058483, CBP classified the two aforementioned watch boxes under subheading 4202.99.90, HTSUS, which provides for, in pertinent part: “...jewelry boxes... and similar containers, of leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper: Other: Other: Other....”

ISSUE:

Whether the subject watch boxes are classified as articles for the conveyance or packing of goods, of plastics, under heading 3923, HTSUS, or as jewelry boxes or similar containers of leather, sheeting of plastics, textile materials, vulcanized fiber or paperboard, under heading 4202, HTSUS?

LAW AND ANALYSIS:

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

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

- 3923 Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics:
* * *
- 4202 Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, camera cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper:

Note 2(m) to Chapter 39 excludes, in pertinent part, "...trunks, suitcases, handbags or other containers of heading 4202", thus necessitating an analysis of whether the instant watch boxes fall under the scope of heading 4202, HTSUS, before considering classification under heading 3923, HTSUS, as a possibility.

We note that the second provision of heading 4202, HTSUS, provides for jewelry boxes and similar containers that must be "of" or 'wholly or mainly covered with' a specified material". In this instance, that material must be either leather, sheeting of plastics, textile materials, vulcanized fiber, paperboard, or paper. *See* Headquarters Ruling Letter (HQ) 963618, dated August 2, 2002 (citing HQ 087760, dated October 31, 1991). The watch boxes at issue herein are made of molded plastic. The molded plastic of which the subject boxes are constructed is not to be confused with a covering of plastic sheeting, which would not possess the structural properties necessary to construct an entire watch box. Accordingly, the subject watch boxes are not provided for under heading 4202, HTSUS.

One commenter argues that the instant boxes should be classified under the first provision of heading 4202, HTSUS, which imposes no limitation on the constituent material of the products falling under its scope. The commenter does not consider "watches" to be sufficiently similar to "jewelry" for the restrictions on the constituent material of jewelry boxes and similar containers classified under the second provision of heading 4202, HTSUS, to apply. However, the question of whether watches constitute "jewelry" is not germane to the instant matter. We are persuaded by the fact that the instant watch boxes themselves are indistinguishable from molded plastic boxes used in the conveyance of articles of jewelry, which, if composed of molded plastic, fall outside the scope of the second provision of heading 4202, HTSUS. Notwithstanding any possible similarity between the subject watch boxes

and the items listed in the first provision of heading 4202, HTSUS, to hold otherwise would be to ignore the fact that the second provision of heading 4202, HTSUS, limits the possible constituent materials of the merchandise under its scope.

Another commenter argues that NY J85286, dated July 1, 2002, should be revoked by the instant modification. In NY J85286, CBP classified a molded plastic tool box under heading 4202, HTSUS. The tool box was described in the ruling as “a specially shaped and fitted toolbox constructed of blow molded plastic. Measuring approximately 6”W x 4”H x 1 ½”D, the box opens to reveal special fittings to hold drill bits”. Such products fall under the scope of the first provision of heading 4202, HTSUS, which bears no restriction of constituent material like the second provision of the heading discussed above. The inclusion the toolbox featuring special fittings to hold drill bits under the scope of heading 4202, HTSUS, is supported by the fact that the Explanatory Note to the heading specifically mentions that only toolboxes “not specially shaped or internally fitted to contain particular tools with or without their accessories” are excluded from the heading.¹ See, e.g., NY N120036, dated September 17, 2010, NY J85286, dated July 1, 2003, and NY H86574, dated January 7, 2002; see also Headquarters Ruling Letter 960430, dated December 24, 1997 (where CBP discussed the scope of the first provision of heading 4202, HTSUS, as it related to molded plastic fly fishing boxes).

In light of the fact that watches are shipped and sold in the instant boxes, the subject merchandise is provided for under heading 3923, HTSUS, as plastic articles for the conveyance or packing of goods. This conclusion is consistent with numerous rulings issued by CBP on similar merchandise. See, e.g., NY N068441, dated August 10, 2009, NY N030622, dated June 18, 2008, NY I81195, dated May 22, 2002, and NY 802585, dated October 26, 1994.

HOLDING:

By application of GRI 1 the “PKAXWATCH” and “PKMARC2006” watch box styles addressed in NY N058483, dated May 22, 2009, are classified under heading 3923, HTSUS.² By application of GIRs 1 and 6, they are specifically provided for under subheading 3923.10.00, HTSUS, which provides for, in pertinent part: “Articles for the conveyance or packing of goods, of plastics...: Boxes, cases, crates and similar articles....” The general column one rate of duty, for merchandise classified under this subheading is 3 percent *ad valorem*.

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

¹ The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. CBP believes the ENs should always be consulted. See T.D. 89-90, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

² The classification of the other style addressed in NY N058483, identified as PKD-SLCOMBO09, remains unchanged because it was constructed of paperboard with an outer surface of paper.

EFFECT ON OTHER RULINGS:

NY N058483 is hereby MODIFIED.

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

Sincerely,

CLAUDIA GARVER

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**REVOCAION OF TWO RULING LETTERS AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF CERAMIC TRAVEL COFFEE
CUPS**

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

ACTION: Notice of revocation of two ruling letters and treatment relating to the tariff classification of certain ceramic travel coffee cups.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking two ruling letters relating to the tariff classification of ceramic travel coffee cups under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 47, No. 37, on September 4, 2013. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 30, 2014.

FOR FURTHER INFORMATION CONTACT: Beth Jenior, Tariff Classification and Marking Branch: (202) 325–0347.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide

the public with improved information concerning the trade community's responsibilities and rights under customs and related laws. In addition, both the trade community 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 section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Volume 47, No. 37, on September 4, 2013, proposing to revoke New York Ruling Letter (NY) N153980, dated April 7, 2011, and NY N172535, dated July 19, 2011, in which CBP determined that the travel cups were classified as mugs under subheading 6912.00.48, HTSUS. No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on the subject 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 above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N153980 and NY N172535, in order to reflect the proper classification of the travel cups as tumblers of subheading 6912.00.41, HTSUS, according to the analysis contained in Headquarters Ruling Letter (HQ) H195957, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 13, 2014

IEVA K. O'ROURKE
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H195957

March 13, 2014

CLA-2 OT:RR:CTF:TCM H195957 EGJ**CATEGORY:** Classification**TARIFF NO.:** 6912.00.41**RE:** Revocation of NY N153980 and NY N172535; Classification of Ceramic Travel Coffee Cups

BRIAN G. PEARCE
BARTHCO INTERNATIONAL
DIVISION OF OHL
2200 BROENING HWY, SUITE 200
BALTIMORE, MD 21224

DEAR MR. PEARCE:

This is in reference to New York Ruling Letter (NY) N153980, dated April 7, 2011, issued to you for your client, CVS Pharmacy, concerning the tariff classification of a ceramic travel coffee cup under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (CBP) classified the subject article in subheading 6912.00.48, HTSUS, which provides for other tableware and kitchenware. We have reviewed NY N153980 and find it to be in error. For the reasons set forth below, we hereby revoke NY N153980 and one other ruling with substantially similar merchandise: NY N172535, dated July 19, 2011, which was issued to Life is Good Wholesale, Inc.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed revocation was published on September 4, 2013, in the Customs Bulletin, Volume 47, No. 37. CBP received no comments in response to this notice.

FACTS:

The ceramic travel coffee cup was described in NY N153980 as designed to contain up to 14 ounces of liquid. It also features a double-walled construction in order to insulate the beverage. The cup measures approximately 6 inches high by 3.75 inches in diameter at its lip, tapering to a base 2.25 inches in diameter.¹ This cup resembles a traditional paper coffee cup in design, and does not have a handle. It is also fitted with a removable, reusable silicone lid.

ISSUE:

Is the subject merchandise classified in subheading 6912.00.48, HTSUS, which provides for, in pertinent part, “Ceramic tableware, kitchenware ... other than of porcelain or china: tableware and kitchenware: other: other: other: other...”, or in subheading 6912.00.41, HTSUS, which provides for, in pertinent part, “Ceramic tableware, kitchenware ... other than of porcelain or china: tableware and kitchenware: other: other: other: ... tumblers...”

¹ Similarly, the ceramic cup at issue in NY 172535 measures 5.5 inches high by 3.5 inches in diameter at its lip, tapering to a base of 2.25 inches in diameter. The ceramic cup is capable of containing 9 ounces of liquid. It is identical to the merchandise in NY 153980 in all other material aspects.

LAW AND ANALYSIS:

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

GRI 6 provides as follows:

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

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

6912	Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china:			
6912.00	Tableware and kitchenware:			
	Other...			
	Other ...			
6912.00.41		Steins with permanently attached pewter lids, candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, bonbon dishes, egg cups, spoons and spoon rests, oil and vinegar sets, tumblers and salt and pepper shaker sets ...	*	*
			*	*
6912.00.48		Other . . .	*	*
			*	*

Additional U.S. Note 7 to Chapter 69 provides as follows:

For the purposes of headings 6911, 6912 and 6913, those provisions which classify merchandise according to the value of each “article,” an article is a single tariff entity which may consist of more than one piece. For example, a vegetable dish and its cover, or a beverage pot and its lid, imported in the same shipment, constitute an article.

* * *

As only the subheadings are in dispute, we turn first to GRI 6. Subheading 6912.00.41, HTSUS, provides, *inter alia*, for tumblers. The *Oxford English Dictionary* defines a “tumbler” as “a tapering cylindrical or barrel-shaped,

glass cup without a handle or foot, having a heavy flat bottom.”² *Id.* (Oxford University Press 2012) available at www.oed.com. Based upon this definition, the ceramic travel coffee cup is a tumbler because the cup has a tapering cylindrical shape. Therefore, the ceramic travel coffee cup is properly classified under subheading 6912.00.41, HTSUS, which provides for ceramic tumblers.

Additional U.S. Note (7) to Chapter 69 states that, for the purpose of heading 6912, HTSUS, “an article is a single tariff entity which may consist of more than one piece. For example, a vegetable dish and its cover, or a beverage pot and its lid, imported in the same shipment, constitute an article.” Thus, the silicone lid forms part of the article classified under subheading 6912.00.41, HTSUS, and is not classified separately.

This classification analysis is in accord with Headquarters Ruling Letter (HQ) H111922, classifying similar merchandise of porcelain in subheading 6911.10.41, HTSUS, as porcelain tumblers. The analysis remains the same for ceramic tumblers as set forth above.

HOLDING:

By application of GRI 6, the subject ceramic travel coffee cups are classified in subheading 6912.00.41, HTSUS, which provides for, in pertinent part: “Ceramic tableware, kitchenware ... other than of porcelain or china: tableware and kitchenware: other: other: other: ... tumblers...” The 2014 column one, general rate of duty is 3.9 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N153980, dated April 7, 2011, and NY N172535, dated July 19, 2011, are 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,

IEVA K. O’ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

² When, as in this case, a tariff term is not defined by the HTSUS or its legislative history, “the term’s correct meaning is its common meaning.” *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, a court may consult “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials.” *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (CCPA 1982); *Simod*, 872 F.2d at 1576.

REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF ASSEMBLED MULTI-DIE PRODUCTS

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the tariff classification of assembled multi-die products.

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 Customs and Border Protection (CBP) is revoking Headquarters Ruling Letter (HQ) H013678, dated June 1, 2009, with regard to the tariff classification of electronic circuits under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin* Vol. 48, No. 4, on January 29, 2014. No comments were received in response to this Notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 30, 2014.

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Tariff Classification and Marking Branch: (202) 325–0024

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993 Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws.

In addition, both the trade 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 section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke HQ H013678 was published on January 29, 2014, in Volume 48, Number 4 of the *Customs Bulletin*. No comments were received in response to this notice.

As stated in the proposed notice, this action will cover any rulings on the subject 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 above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

In HQ H013678, CBP determined that certain electronic circuits, referred to as assembled multi-die products, were classified in heading 8543, HTSUS, which provides for "other electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ H013678 and revoking or modify any other ruling not specifically identified, in order to reflect the proper classification of the subject electronic devices in heading 9031, HTSUS, according to the analysis contained in Headquarters Ruling Letter (HQ) H240792, which is attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: March 28, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H240792

March 28, 2014

CLA-2 OT:RR:CTF:TCM H240792 CKG

CATEGORY: Classification

TARIFF NO.: 9031.80.80

PORT DIRECTOR

U.S. CUSTOMS AND BORDER PROTECTION

PORT OF ANCHORAGE

605 W. 4TH AVE.

SUITE 230

ANCHORAGE, AK 99501

Attn: Carol Takaki, Import Specialist

Re: Revocation of HQ H013678; assembled multi-die products

DEAR PORT DIRECTOR:

This is in reference to Headquarters Ruling Letter (HQ) H013678, issued to the Port Director in Anchorage, Alaska, on June 1, 2009, with regard to Protest # 3195-07-100098, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of electronic circuits. The articles were classified in heading 8543 of the Harmonized Tariff Schedule of the United States (HTSUS), as “other” electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter. Since the issuance of that ruling, Customs and Border Protection (CBP) has reviewed the classification of these items and has determined that the classification of these circuits in heading 8543, HTSUS, was incorrect. We have also taken into consideration counsel’s submissions filed on behalf of the original protestant, Kionix, Inc., in a related Application for Further Review for Protest No. 3195-10-100291, on the same merchandise.

HQ H013678 is a decision on a specific protest. A protest is designed to handle entries of merchandise which have entered the U.S. and been liquidated by CBP. A final determination of a protest, pursuant to Part 174, Customs Regulations (19 CFR 174), cannot be modified or revoked as it is applicable only to the merchandise which was the subject of the entry protested. Furthermore, CBP lost jurisdiction over the protested entries in HQ H013678 when notice of disposition of the protest was received by the protestant. See, *San Francisco Newspaper Printing Co. v. U.S.*, 9 CIT 517, 620 F.Supp. 738 (1935).

However, CBP can modify or revoke a protest review decision to change the legal principles set forth in the decision. Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), 60 days after the date of issuance, CBP may propose a modification or revocation of a prior interpretive ruling or decision by publication and solicitation of comments in the CUSTOMS BULLETIN. This revocation will not affect the entries which were the subject of Protest 3195-07-100098, but will be applicable to any entries of similar merchandise made 60 days after publication of the final notice of revocation in the CUSTOMS BULLETIN.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke HQ H013678

was published on January 29, 2014, in Volume 48, Number 4 of the *Customs Bulletin*. No comments were received in response to this notice.

FACTS:

At issue in HQ H013678 was the classification of electrical circuits imported by Kionix, Inc. Each Kionix circuit contains a silicon sensor chip that responds to acceleration (an accelerometer) or rotation (a gyroscope), in addition to a separate silicon integrated circuit chip (an ASIC). The sensor chip is a summation of many different capacitors each consisting of many different movable silicon beams. The silicon beams move in response to simple changes in motion, causing a change in capacitance which the ASIC chip then interprets and translates into usable electrical signals from the outside world. The sensor chip is separately produced via thin film technology.

Kionix ships the unpackaged fabricated sensor and circuit chips to Asia, where they are assembled on a single leadframe or single laminate, encapsulated with plastic, and shipped back for testing. The Kionix sensor and ASIC die are mounted on a single leadframe substrate or a single laminate substrate. When imported back into the U.S., the two chips are contained in an overmolded plastic package and connected by miniature wires.

ISSUE:

Whether the assembled electronic circuits are classified under heading 8542, HTSUS, as “electronic integrated circuits and microassemblies,” heading 8543, HTSUS, as “electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter,” or heading 9031, as “measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter.”

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

8542	Electronic integrated circuits and microassemblies; parts thereof:
8542.39.00	Other...
	* * *
8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
	Other machines and apparatus:
8543.89	Other:
	Other:
	Other:

8543.89.96		Other...
	* * *	
9031	Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter:	
9031.80	Other instruments, appliances and machines:	
9031.80.80	Other...	
	* * *	

Note 1(m) to Section XVI provides:

1. This section does not cover:

(m) Articles of chapter 90;

Note 8(b) to Chapter 85, for purposes of heading 8542, HTSUS, defines integrated circuits (HICs) as follows:

(b) "Electronic integrated circuits" are:

- (i) Monolithic integrated circuits in which the circuit elements (diodes, transistors, resistors, capacitors, inductances, etc.) are created in the mass (essentially) and on the surface of a semiconductor or compound semiconductor material (for example, doped silicon, gallium arsenide, silicon germanium, iridium phosphide) and are inseparably associated;
- (ii) Hybrid integrated circuits in which passive elements (resistors, capacitors, inductances, etc.), obtained by thin- or thick-film technology, and active elements (diodes, transistors, monolithic integrated circuits, etc.), obtained by semiconductor technology, are combined to all intents and purposes indivisibly, by interconnections of interconnecting cables, on a single insulating substrate (glass, ceramic, etc.). These circuits may also include discrete components;
- (iii) Multichip integrated circuits consisting of two or more interconnected monolithic integrated circuits combined to all intents and purposes indivisibly, whether or not on one or more insulating substrates, with or without leadframes, but with no other active or passive circuit elements.

Note 8 further provides that "[f]or the classification of articles defined in this note, headings 8541 and 8542 shall take precedence over any other heading in the tariff schedule which might cover them by reference to, in particular, their function."

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The 2012 Explanatory Notes to heading 8542, HTSUS, provide as follows: The articles of this heading are defined in Note 8 (b) to the Chapter.

Electronic integrated circuits are devices having a high passive and active element or component density, which are regarded as single units (see

Explanatory Note to heading 85.34, first paragraph concerning elements or components to be regarded as “passive” or “active”). However, electronic circuits containing only passive elements are **excluded** from this heading.

Unlike electronic integrated circuits, discrete components may have a single active electrical function (semiconductor devices defined by Note 8 (a) to Chapter 85) or a single passive electrical function (resistors, capacitors, inductances, etc.). Discrete components are indivisible and are the basic electronic construction components in a system.

However, components consisting of several electric circuit elements and having multiple electrical functions, such as integrated circuits, are not considered as discrete components.

Electronic integrated circuits include memories (e.g., DRAMS, SRAMs, PROMS, EPROMS, EEPROMS (or E²PROMS)), microcontrollers, control circuits, logic circuits, gate arrays, interface circuits, etc.

Electronic integrated circuits include:

(I) **Monolithic integrated circuits.**

These are microcircuits in which the circuit elements (diodes, transistors, resistors, capacitors, inductances, etc.) are created in the mass (essentially) and on the surface of a semiconductor material (doped silicon, for example) and are therefore inseparably associated. Monolithic integrated circuits may be digital, linear (analogue) or digital-analogue.

(II) **Hybrid integrated circuits.**

These are microcircuits built up on an insulating substrate on which a thin or thick film circuit has been formed. This process allows certain passive elements (resistors, capacitors, inductances, etc.) to be produced at the same time. However, to become a hybrid integrated circuit of this heading, semiconductors must be incorporated and mounted on the surface, either in the form of chips, whether or not encased, or as encased semiconductors (e.g., in specially designed miniature casings). Hybrid integrated circuits **may also** contain separately produced passive elements which are incorporated into the basic film circuit in the same way as the semiconductors. Usually these passive elements are components such as capacitors, resistors or inductors in the form of chips.

Substrates made up of several layers, generally ceramic, heat-bonded together to form a compact assembly, are to be taken to form a single substrate within the meaning of Note 8 (b) (ii) to this Chapter.

The components forming a hybrid integrated circuit must be combined **to all intents and purposes indivisibly**, i.e., though some of the elements could theoretically be removed and replaced, this would be a long and delicate task which would be uneconomic under normal manufacturing conditions.

(III) **Multichip integrated circuits.**

These consist of two or more interconnected monolithic integrated circuits combined to all intents and purposes indivisibly, whether or not on one or more insulating substrates, with or without leadframes, but with no other active or passive circuit elements.

Multichip integrated circuits generally come in the following configurations:

- Two or more monolithic integrated circuits mounted side by side;
- Two or more monolithic integrated circuits stacked one upon the other;
- Combinations of the configurations above consisting of three or more monolithic integrated circuits.

These monolithic integrated circuits are combined and interconnected into a single body and may be packaged through encapsulation or otherwise. They are combined to all intents and purposes indivisibly, i.e., though some of the elements could theoretically be removed and replaced, this would be a long and delicate task which would be uneconomic under normal manufacturing conditions.

Insulating substrates of the multichip integrated circuits may incorporate electrically conductive regions. These regions may be composed of specific materials or formed in specific shapes to provide passive functions by means other than discrete circuit elements. Where conductive regions are present in the substrate, they are typically relied upon as a means by which the monolithic integrated circuits are interconnected.

* * * *

In Headquarters Ruling Letter (HQ) H013678, dated June 1, 2009, CBP determined that the Kionix devices at issue were classified in heading 8543, HTSUS, as other electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85. Kionix argues that this conclusion is incorrect, and that the Kionix multi-die products are classified in heading 8542, HTSUS, as hybrid integrated circuits, or alternatively, as multichip integrated circuits.

CBP has consistently interpreted Note 8 to Chapter 85 (previously Note 5) to require that hybrid integrated circuits contain passive nondiscrete components, built up on the substrate. In HQ H013678, CBP concluded that the instant Kionix devices were not classifiable as hybrid integrated circuits of heading 8542, HTSUS, because no circuit was built up on the substrate. The Kionix electronic circuit contains no nondiscrete components, passive or active. The sensor chip (a passive element) is a discrete component and is not built up on the surface of the same substrate to which the ASIC chip is mounted.

Kionix argues that legal note 8 and EN 85.42(II) require only that hybrid integrated circuits contain elements obtained by film technology, whether discrete or built up on the substrate. Stated conversely, counsel does not believe that elements must be produced through film technology directly on the substrate of the hybrid integrated circuit, in the mass, before the semiconductors and discrete passive components are added to the substrate.

These arguments have already been extensively addressed in prior CBP rulings, in which CBP concluded that hybrid integrated circuits must contain non-discrete passive elements produced by film technology directly on (in the mass of) the insulating substrate on which active elements produced via semiconductor technology are incorporated. *See, e.g.*, HQ 951926, dated September 18, 1992; HQ 962750, dated January 10, 2000; HQ 961050, dated May 1, 2000; HQ 964606, dated May 2, 2002; HQ H013678, dated June 1, 2009; NY I82633, dated June 26, 2002; NY N086783, dated January 6, 2010; and NY N216102, dated February 17, 2012. As the instant products have only discrete passive components which are not produced directly on the insulating substrate to which the semiconductor chip is added, they are not hybrid integrated circuits of heading 8542, HTSUS.

Kionix further contends that HQ H013678 is inconsistent with another CBP ruling on substantially similar merchandise, HQ 963150, in which CBP classified certain acceleration sensors in heading 8542, HTSUS, as hybrid integrated circuits. Counsel claims that the instant Kionix electronic circuits are identical in function to the sensors at issue in HQ 963150, and thus the Kionix devices should also be classified in the same heading. HQ 963150, however, does not specify whether the passive elements of the integrated circuit at issue were created in the mass of the same substrate upon which the semiconductor devices and other discrete components were added, but the ruling does note that its conclusion is consistent with the interpretation of Note 8 and EN 85.42 articulated in HQ 961050 (i.e., that hybrid integrated circuits must contain non-discrete passive elements formed by film technology in the mass of the same insulating substrate upon which active elements formed by semiconductor technology are incorporated). Furthermore, we note that classification in heading 8542, HTSUS, is not based on the function of the product, but rather the method of manufacture. If a circuit is manufactured in a way that meets the requirements of the legal text and the ENs for heading 8542, HTSUS, the function of the device is considered in classification at the subheading level under heading 8542, HTSUS.

In the alternative, Kionix contends that the instant products are multichip integrated circuits of heading 8542, HTSUS, because the ASCIS and the sensor chip are both monolithic integrated circuits pursuant to EN 85.42. Note 8(b) to Chapter 85 defines monolithic integrated circuits as “integrated circuits in which the circuit elements (diodes, transistors, resistors, capacitors, inductances, etc.) are created in the mass (essentially) and on the surface of a semiconductor or compound semiconductor material (for example, doped silicon, gallium arsenide, silicon germanium, iridium phosphide) and are inseparably associated.” In support of this argument, Kionix notes that the sensor chip is created in the mass of a silicon wafer via film technology identical to that used in conventional monolithic circuit manufacturing, and that the components are inseparably associated. However, a monolithic circuit must have both passive and active components. The Kionix devices contain one monolithic integrated circuit—the ASIC chip—and one passive component—the sensor chip. Thus, the instant devices are not multichip integrated circuits, because they contain only one monolithic integrated circuit. Kionix argues that the sensor chip should be considered a monolithic circuit in and of itself, because the capacitors in the sensor chip change capacitance upon movement or acceleration and thus are not fully passive elements. However, the fact that the capacitance of a

capacitor can change does not transform it from a passive to an active element. Capacitors are considered passive elements, but they do not have to produce a fixed output. In any case, even if we considered the capacitors in the sensor chip to be an active element, the sensor chip still would not have both the passive and active components necessary to constitute a monolithic integrated circuit in its own right. Because the sensor chip is not a monolithic integrated circuit, the combination of the ASIC and the sensor would have only one monolithic circuit and thus cannot be considered a multichip integrated circuit.

Finally, the merchandise at issue was examined by the CBP Laboratory in San Francisco, and was determined not to constitute an integrated circuit because the sensor chip was separately produced.

Counsel argues, in the alternative, that if CBP does not consider the Kionix electronic circuits to be classified in heading 8542, HTSUS, as integrated circuits, that they should be classified in heading 9027, HTSUS, instruments and apparatus for physical or chemical analysis, or heading 9031, HTSUS, as measuring or checking instruments. Heading 9027, HTSUS, however, is limited to devices which, in addition to simply measuring a substance or force, interpret or analyze the measured data. *See e.g.*, HQ 955445 dated January 19, 1994, which classified a particle spectrometer under heading 9031, HTSUS. Classification under heading 9027, HTSUS, was determined to be incorrect because the instrument measured the size, distribution and shape of the particles without performing any actual analysis of the particles. *See also*, HQ 967082, dated June 04, 2004, which classified two distinct types of gas detectors in heading 9027, HTSUS, and 8531, HTSUS. All models of the gas detectors contained a sensor which measured the parts per million (ppm) of a gas in a general area, and electronics that determined when that gas level went beyond a designated range. However, some models also contained additional electronics that analyzed and displayed the gas level data. These were classified in heading 9027, HTSUS, while the gas detectors with only alarm and no display/analysis capabilities were classified in heading 8531, HTSUS.

The Kionix accelerometers, like the devices discussed above, do not identify or provide a measurement of a particular property. They simply detect changes in motion via displacement of the silicon beams in the sensor chip, which causes a change in capacitance, and interpret or translate the resulting signal via the ASIC chip. In this manner, the Kionix accelerometers are similar to the MEMS accelerometers at issue in NY F82413, dated March 3, 2000, which were classified by CBP in heading 9031, HTSUS. Like the instant merchandise, the MEMS accelerometers at issue in NY F82413 measured lateral acceleration via the displacement of movable silicon elements, causing a change in electrical capacitance. The Kionix accelerometers are similarly classified in heading 9031, HTSUS, as measuring or checking instruments.

Because the Kionix accelerometers are classified in Chapter 90, they are excluded from classification in heading 8543, HTSUS, pursuant to Note 1(m) to Section XVI.

HOLDING:

The Kionix accelerometers are classified in heading 9031, HTSUS, specifically subheading 9031.80.80, HTSUS, which provides for “Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof: Other instruments, appliances and machines: Other.” The 2013 general, column one rate of duty is 1.7% ad valorem.

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

EFFECT ON OTHER RULINGS:

HQ H013678, dated June 1, 2009, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Sincerely,

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division

**REVOCAION OF RULING LETTER AND REVOCAION OF
TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF A MINK FEEDING VEHICLE**

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the tariff classification of the “Minkomatic” mink feeding vehicle.

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 Customs and Border Protection (CBP) is revoking New York Ruling Letter (NY) 849985, dated March 5, 1990, with regard to the tariff classification of the “Minkomatic” mink feeding vehicle under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin* Vol. 48, No. 4, on January 29, 2014. No comments were received in response to this Notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 30, 2014.

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Tariff Classification and Marking Branch: (202) 325–0024

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993 Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws.

In addition, both the trade 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 section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY 849985 was published on January 29, 2014, in Volume 48, Number 4 of the *Customs Bulletin*. No comments were received in response to this notice.

As stated in the proposed notice, this action will cover any rulings on the subject 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 above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

In NY 849985, CBP determined that three models of the “Minkomatic” mink feeding vehicle were classified in heading 8704, which provides for “Motor vehicles for the transport of goods.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY 849985, and revoking or modifying any other ruling not specifically identified, in order to reflect the proper classification of the Minkomatic in heading 8436, HTSUS, according to the analysis contained in Headquarters Ruling Letter (HQ) H183882, which is attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: March 31, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H183882

March 31, 2014

CLA-2 RR:CTF:TCM H183882 CKG

CATEGORY: Classification

TARIFF NO: 8436.80.00

RE: Revocation of NY 849985; classification of minkomatic

Ms. DONA M. SCHUETTE
NORCAR INC.
1336 RUSSET COURT
GREEN BAY, WI 54213

DEAR Ms. SCHUETTE,

This is in reference to New York Ruling Letter (NY) 849985, which U.S. Customs and Border Protection (CBP) issued to Norcar, Inc. on March 5, 1990, classifying three models of the Minkomatic vehicle in heading 8704, HTSUS, as a motor vehicle for the transport of goods. For the reasons set forth below, we have determined that the classification of the Minkomatic in heading 8704, HTSUS was incorrect.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY 849985 was published on January 29, 2014, in Volume 48, Number 4 of the *Customs Bulletin*. No comments were received in response to this notice.

FACTS:

NY 849985 described the vehicles at issue as follows:

The Minkomatic is a motor vehicle used to transport premixed feed from the feed kitchen to the animals in their pens. The vehicle serves no other function than to carry food; the machine does not mix, prepare or aerate food.

The Minkomatic 810 DLA 4-WD is an articulated vehicle with six wheels that is designed for use on large scale fur farms. This model is powered by a 4 cylinder, 4-stroke, water cooled diesel engine and a variable hydrostatic transmission. Other features include hydrostatic chassis steering, an adjustable driver's seat, adjustable foot pedals, feed pump, and easy to read gauges. The model 810 has a stainless steel feed tank that is located behind the driver and is situated on the rear portion of the articulated chassis. The tank holds 2,450 pounds of feed (or 3,150 pounds of feed). This vehicle (larger tank model) measures 11 feet 4 inches long, 5 feet wide, 35 inches wide, and weighs 2,150 pounds.

The Minkomatic 450 DLA is a vehicle with four wheels designed for use on fur farms. This model is powered by a Kubota 16 HP, 3-cylinder diesel engine and a stepless fully hydrostatic transmission. The engine is mounted in a heavy rubber cushion and is completely vibration free. Other features include an adjustable driver's seat, adjustable foot pedals, a start safety clutch, feed pump, and easy to read gauges. The model 450 has a food tank located in front of the driver. The tank holds 850 pounds of feed (or 1,050 pounds of feed). This vehicle (larger tank model) measures 7 feet 8 inches wide, 34 inches wide, and weighs 1,075 pounds.

The Minkomatic 409 DLA is a vehicle with four wheels designed for use on large mink and fox farms. This model is powered by a 14 HP diesel engine and an automatic transmission. The model 409 has a food tank located in front of the driver. The tank holds 360 liters. The vehicle measures approximately 76 inches long, 29.25 inches wide and weighs 946 pounds.

ISSUE:

Whether the Minkomatic is classified in heading 8704, HTSUS, as a motor vehicle for the transport of goods, or heading 8436, HTSUS, as other agricultural machinery.

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

- | | | |
|-------|---|-----------|
| 8436: | Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders; parts thereof: | * * * * * |
| 8704: | Motor vehicles for the transport of goods: | * * * * * |
| 8709: | Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; ...; parts of the foregoing vehicles....: | * * * * * |

Legal Note 1(l) to Section XVI provides as follows:

This section does not cover:

(l) Articles of section XVII

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

EN 87.04 provides, in pertinent part, as follows:

This heading covers in particular:

Ordinary lorries (trucks) and vans (flat, tarpaulin-covered, closed, etc.); delivery trucks and vans of all kinds, removal vans; lorries (trucks) with automatic discharging devices (tipping lorries (trucks), etc.); tankers (whether or not fitted with pumps); refrigerated or insulated lorries

(trucks); multi-floored lorries (trucks) for the transport of acid in carboys, cylinders of butane, etc.; dropframe heavy-duty lorries (trucks) with loading ramps for the transport of tanks, lifting or excavating machinery, electrical transformers, etc.; lorries (trucks) specially constructed for the transport of fresh concrete, **other than** concrete-mixer lorries (trucks) of **heading 87.05**; refuse collectors whether or not fitted with loading, compressing, damping, etc., devices.

The EN for heading 8709 states:

This heading covers a group of self-propelled vehicles of the types used in factories, warehouses, dock areas or airports for the short distance transport of various loads (goods or containers) or, on railway station platforms, to haul small trailers.

Such vehicles are of many types and sizes. They may be driven either by an electric motor with current supplied by accumulators or by an internal combustion piston engine or other engine.

The main features common to the vehicles of this heading which generally distinguish them from the vehicles of heading, 87.01, 87.03 or 87.04 or may be summarised as follows:

- (1) Their construction and, as a rule, their special design features, make them unsuitable for the transport of passengers or for the transport of goods by road or other public ways.
- (2) Their top speed when laden is generally not more than 30 to 35 km/h.
- (3) Their turning radius is approximately equal to the length of the vehicle itself.

* * * * *

NY 849985 classified the three Minkomatic models in heading 8704, HTSUS, as a motor vehicle for the transport of goods. Classification in heading 8709, HTSUS, as a works truck, has also been suggested. However, the Minkomatic is not classified in either headings 8704 or 8709, HTSUS, because it is not principally used for the transport of goods. Headings 8704 and 8709, HTSUS, are provisions governed by "use." *Group Italglass v. United States*, 17 CIT 226 (1993). Additional U.S. Rule of Interpretation 1(b). As such, it is the principal use of the class or kind of vehicles to which the Micro Truk belongs that governs classification here. In this context, principal use is that use which exceeds any other single use of the merchandise. In *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), *cert. denied*, 429 U.S. 979 (1976), the court set forth factors considered pertinent in determining whether imported merchandise falls within a particular class or kind. These include the general physical characteristics of the merchandise, the expectation of the ultimate purchasers, the channels, class or kind of trade in which the merchandise moves, the environment of sale (i.e., accompanying accessories and the manner in which the merchandise is advertised and displayed), the use, if any, in the same manner as merchandise which defines the class, the economic practicality of so using the import and the recognition in the trade of this use.

Vehicles of headings 8709 and 8704, HTSUS, are principally used only for transport. The principal use of a good in this context is that use which exceeds any other single use of the merchandise. The Minkomatic, however, has two equally important functions: transport and mink feeding. The Minkomatic is a composite machine incorporating both a vehicle and animal feeder. Its physical characteristics are therefore of a dual-use device, designed both to transport and deliver mink feed to the the minks. The remaining Carborundum factors in fact indicate a greater emphasis on the use of the Minkomatic as an agricultural machine; it is advertised and sold to farms for the purpose of mink feeding, and categorized as a farm product by the importer. See <http://www.norcar.com/en/farm-products/feeding>. The transport function of the Minkomatic thus does not exceed its use as an animal feeder; to the contrary, the Carborundum factors, while not conclusive in this case, suggest the opposite conclusion. Headings 8704 and 8709, HTSUS, only cover the transport function of the Minkomatic; as such, the Minkomatic is beyond the scope of 8709 or 8704 because it has no single principal use.

Furthermore, heading 8709, HTSUS, only covers vehicles of a kind used in the environments specified in the heading text. The Minkomatic is not used in the type of environments listed in the text of heading 8709, HTSUS—i.e., dock areas, factories, warehouses and airports. These environments are likely to feature smooth, paved surfaces. The Minkomatic is designed only for off-road, farm use, which also precludes it from classification in heading 8704, HTSUS, as a motor vehicle for the transport of goods. Heading 8704, HTSUS, primarily describes vehicles for on-road use. The Minkomatic lacks the features that would even legally allow it to be used on roads and other public ways, such as rear hazard lights, mirrors, road tires, turn signals, seat belts, doors, or enclosed cab.

Because the Minkomatic is not classified in heading 8704 or heading 8709, HTSUS, it is not an article of Section XVII, and classification in Section XVI is not precluded by Note 1(l) to Section XVI.

The Minkomatic can equally be described as a vehicle for the transport of goods and as an animal feeder. Both of these functions are captured, at GRI 1, by heading 8436, HTSUS. Heading 8436, HTSUS, provides for “Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders; parts thereof.” EN 84.36 notes that “The heading covers machinery, not falling in headings 84.32 to 84.35, which is of the type used on farms (including agricultural schools, co-operatives or testing stations), in forestry, market gardens, or poultry-keeping or bee-keeping farms or the like.”

The Merriam Webster Dictionary Online defines “Agriculture” as “the science, art, or practice of cultivating the soil, producing crops, and raising livestock and in varying degrees the preparation and marketing of the resulting products: farming.” Wikipedia defines livestock as “one or more domesticated animals raised in an agricultural setting to produce commodities such as food, fiber and labor...On a broader view, livestock refers to any breed or population of animal kept by humans for a useful, commercial purpose.” See <http://en.wikipedia.org/wiki/Livestock>. *The Merriam-Webster Dictionary Online* similarly defines livestock as “: animals kept or raised for

use or pleasure; *especially*: farm animals kept for use and profit.” See <http://www.merriam-webster.com/dictionary/livestock>. The *Oxford English Dictionary* Online concurs, defining “livestock” as: “Domestic animals kept on a farm for use or profit; *esp.* cattle, sheep, and pigs.” <http://www.oed.com/view/Entry/109349?redirectedFrom=livestock#eid>.

The vehicles in question are used on mink farms, which raise minks for their fur, i.e., for a commercial purpose. As a machine used on a farm, for the purpose of raising livestock, which is not described by headings 8432 to 8435, HTSUS, the Minkomatic falls under heading 8436, HTSUS. Furthermore, heading 8436, HTSUS, also encompasses the transport function of the Minkomatic; vehicles used in agricultural applications are still classified in the various headings covering agricultural machinery, such as headings 8432 and 8436, HTSUS.

This conclusion is consistent with prior CBP rulings. CBP has classified automatic feeding devices in 8436, HTSUS. See HQ 954551, dated August 26, 1993, NY L85882, dated July 14, 2005, NY G82691, dated October 2, 2000. These feeders were stationary and not integrated into a truck; however, trucks performing other agricultural tasks such as spreading, spraying, composting, etc. are also classified as agricultural or forestry machinery. See *e.g.*, HQ 087703, dated January 18 1991; NY F87871, dated June 7, 2000; and NY N030782, dated June 23, 2008. Any agricultural or forestry vehicle can be said to transport its cargo, be it fertilizer, seeds, logs, etc. between locations. The transport function in such machinery is generally treated as subsidiary to the agricultural function.

The Minkomatic is thus described at GRI 1 by heading 8436, HTSUS.

HOLDING:

By application of GRI 1, the Minkomatic 810, 450 and 409 are classified in heading 8436, HTSUS, specifically subheading 8436.80.00, HTSUS, which provides for “Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders; parts thereof: Other machinery.” The 2013 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 online at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY 849985, dated March 5, 1990, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

MODIFICATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE COUNTRY OF ORIGIN OF KNIT-TO-SHAPE BRASSIERES

AGENCY: United States Customs and Border Protection; Department of Homeland Security.

ACTION: Modification of a classification ruling letter and revocation of treatment relating to the country of origin of knit-to-shape brassieres.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter relating to the country of origin of knit-to-shape brassieres. CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published in the *Customs Bulletin* Vol. 44, No. 24, on June 9, 2010. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 30, 2014.

FOR FURTHER INFORMATION CONTACT: Beth Jenior, Tariff Classification and Marking Branch: (202) 325-0347.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade 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 section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Volume 44, No. 24, on June 9, 2010, proposing to modify New York Ruling Letter (NY) L89596, dated February 8, 2006, in which CBP determined, in relevant part, that the country of origin of the knit-to-shape brassieres was China. No comments were received in response to the notice.

As stated in the proposed modification notice, this modification will cover any rulings on the subject 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 above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY L89596, in order to reflect the country of origin of the knit-to-shape brassieres as Hong Kong, according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H039056, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 31, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H039056

March 31, 2014

CLA-2 OT:RR:CTF:TCM H039056 KSH

CATEGORY: Classification

TARIFF NO.: 6212.10.9020

ELEANOR KELLY-KOBAYASHI, Esq.

RODE & QUALEY

55 WEST 39TH STREET

NEW YORK, NY 10018

RE: Modification of NY L89596; country of origin of knit-to-shape brassieres.

DEAR Ms. KELLY-KOBAYASHI:

This letter is to inform you that the U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) L89596, issued to you on February 8, 2006, on behalf of your client AC Carpi Apparel Manufacturing Ltd., concerning, in relevant part, the country of origin of knit-to-shape brassieres. In NY L89596, CBP determined that the country of origin of the knit-to-shape brassieres was China. We have reviewed that ruling and found it to be in error as it pertains to the country of origin of the knit-to-shape brassieres. Therefore, this ruling modifies NY L89596.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed modification was published on June 9, 2010, in the *Customs Bulletin*, Volume 44, No. 24. CBP received no comments in response to this notice.

FACTS:

The merchandise at issue is described in L89596 as follows:

You have submitted samples of two styles of sports bras, both made of 88% nylon and 12% spandex knitted fabric, with scooped front necklines, elasticized arm and neck openings and elasticized bottom bands measuring approximately one inch. Style #500-6088 features an adjustable hook and eye closure at the rear of the garment and style #500-6008 features a racer back.

The manufacturing operations for the brassieres are as follows:

Style #500-6088

Hong Kong

- Tubular knit fabric is made with a self-start bottom and lines of demarcation
- Garment is dyed

China

- Tubular knit fabric is cut along the lines of demarcation, forming neck openings and one inch wide shoulder straps
- Straps are sewn closed
- Hook and eye closure tab is sewn to back of garment
- Elasticized trim is sewn to top edge of garment and along edges of shoulder straps

Style #500–6008

Hong Kong

- Tubular knit fabric is made with a self-start bottom and lines of demarcation
- Garment is dyed

China

- Tubular knit fabric is cut along the lines of demarcation, forming the neck openings and one-inch wide shoulder straps
- Shoulder straps are sewn closed
- Elasticized trim is sewn to top edge of garment and shoulder straps

ISSUE:

What is the country of origin of the knit-to-shape brassieres?

LAW AND ANALYSIS:

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

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

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

As noted in L89596, the knit-to-shape brassieres are classified in subheading 6212.10.9020, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted: other: other...of man-made fabrics.”

The relevant tariff change rules set forth in 19 C.F.R. §102.21(e) are as follows:

<i>HTSUS</i>	<i>Tariff shift and/or other requirements</i>
6210–6212	<p>(1) If the good consists of two or more component parts, a change to an assembled good of heading 6210 through 6212 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.</p> <p>(2) If the good does not consist of two or more component parts, a change to heading 6210 through 6212 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, 6001 through 6006, and 6217, and subheading 6307.90, and from an assembled women’s or girls’ garment, made up of fabrics of heading 5602, 5603, 5903, 5906, or 5907, of heading 9619 or a girls’, boys’, men’s, or women’s garment, other than knitted or crocheted garments and other than a women’s or girls’ singlet or other undershirt, brief, panty, negligee, bathrobe, dressing gown, or a similar article from any other heading, provided that the change is the result of a fabric-making process.</p>

Paragraph (b)(6) defines “wholly assembled” as:

The term “wholly assembled” when used with reference to a good means that all components, of which there must be at least two, preexisted in essentially the same condition as found in the finished good and were combined to form the finished good in a single country, territory, or insular possession. Minor attachments and minor embellishments (for example, appliquéés, beads, spangles, embroidery, buttons) not appreciably affecting the identity of the good, and minor subassemblies (for example, collars, cuffs, plackets, pockets) will not affect the status of a good as “wholly assembled” in a single country, territory, or insular possession.

The brassieres, having only one component and several minor attachments, are not “wholly assembled,” nor does their production involve a “fabric-making process.” Therefore, we are unable to invoke a country of origin determination under 102.21(c)(2).

Section 102.21(c)(3) states,

Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) or (2) of this section:

- (i) If the good was knit to shape, the country of origin of the good is the single country, territory, or insular possession in which the good was knit; or
- (ii) Except for goods of heading 5609, 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6209.20.5040, 6307.10, 6307.90, and 9404.90, if the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled.

Section 102.21(b)(3) defines knit to shape as:

The term “knit to shape” applies to any good of which 50 percent or more of the exterior surface area is formed by major parts that have been knitted or crocheted directly to the shape used in the good, with no consideration being given to patch pockets, appliqués, or the like. Minor cutting, trimming, or sewing of those major parts will not affect the determination of whether a good is “knit to shape.”

The term “major parts” means “integral components of a good but does not include collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim, accessories, or similar parts.” *See* Section 102.21(b)(4), CBP Regulations.

In this case, the subject tubular knit fabric components have a self-start bottom edge and clear and continuous lines of demarcation that outlines the brassieres. Thus the subject tubular fabric components are considered “knit to shape.” The assembly of the hook and eye closure and elasticized trim will not affect the determination of whether the brassieres are knit to shape as they each have only one integral component (i.e., the knit to shape tubular knit portions.) In this regard, the brassieres are considered to be “knit to shape” under 19 C.F.R. 102.21(c)(3). *See* HQ 968186, dated July 7, 2006.

In this case, the brassieres were knit-to-shape in Hong Kong. By application of section 102.21(c)(3)(i), the country of origin is Hong Kong, the single territory where the brassieres were knit-to-shape.

HOLDING:

Pursuant to section 19 C.F.R. §102.21(c)(3)(i), the country of origin of the brassieres is Hong Kong.

EFFECT ON OTHER RULINGS:

NY L89596, dated February 8, 2006, is hereby modified.

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

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

**REVOCAION OF A RULING LETTER AND REVOCAION
OF TREATMENT RELATING TO THE COUNTRY OF
ORIGIN MARKING OF AN UNASSEMBLED CHILD
BICYCLE SEAT**

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the country of origin marking of an unassembled child bicycle seat.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking a ruling concerning the country of origin marking of an unassembled child bicycle seat. Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 47, No. 28, on July 3, 2013. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 30, 2014.

FOR FURTHER INFORMATION CONTACT: Beth Jenior, Tariff Classification and Marking Branch: (202) 325–0347.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (“Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility.**” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

Accordingly, the law imposes a greater obligation on U.S. Customs and Border Protection (CBP) to provide the public with improved 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 section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Volume 47, No. 28, on July 3, 2013, proposing to revoke New York Ruling Letter (NY) N015337, dated August 23, 2007, which pertained to the country of origin marking of a child bicycle seat. No comments were received in response to the notice.

As stated in the proposed notice, this revocation will cover any rulings on the subject 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 above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N015337, in order to reflect the country of origin marking analysis contained in the proposed Headquarters Ruling Letter (HQ) H234565, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 31, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H234565

March 31, 2014

**CLA-2 OT:RR:CTF:TCM H234565 EGJ
CATEGORY: Marking**

STEVE NOWIK
CUSTOMS COMPLIANCE SPECIALIST
PANALPINA INC.
800 DEVON AVE.
ELK GROVE VILLAGE, IL 60007

RE: Revocation of NY N015337: Country of Origin Marking of an Unassembled Child Bicycle Seat

DEAR MR. NOWIK:

This is in reference to New York Ruling Letter (NY) N015337, dated August 23, 2007, issued to you concerning the country of origin marking of an unassembled child bicycle seat comprised of foreign and domestic components. You requested the ruling on behalf of the importer, Bell Sports. In that ruling, U.S. Customs and Border Protection (CBP) found that the unassembled child seat should be marked "Made in the United States with additional components from China and Taiwan." We have reviewed NY N015337 and find it to be in error. For the reasons set forth below, we hereby revoke NY N015337.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed revocation was published on July 3, 2013, in the *Customs Bulletin*, Volume 47, No. 28. CBP received no comments in response to this notice.

FACTS:

In NY N015337, CBP identified the subject merchandise as The Cocoon Child Carrier (Item No. 109422), a child seat designed to be attached to the rear rack of an adult's bicycle. The seat is comprised of a plastic bucket with textile seat pads. A chest harness and a Velcro seat belt are provided to strap the child safely into the seat.

The child seat's carrier knobs, textile seat pads, seat belts, rack hardware and instruction manual will be imported from China. Its reflector with mounting hardware will be imported from Taiwan. The child seat's molded plastic bucket seat, foot rest, grab bar, plastic rack attachment, labeling and retail box are manufactured in the United States. After importation, the foreign parts will be packaged together for retail sale with the domestically manufactured parts. The child seat will be sold unassembled. The consumer must complete assembly of the seat at home.

ISSUE:

1. How should each individual component imported from China be marked with its country of origin? What additional entry documentation is required for these components?
2. How should the unassembled child seat be marked for country of origin purposes at retail sale?

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 container) will permit in such a manner as to indicate to an 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 markings on the imported goods the country of which the good is the product. “The evident purpose is to mark the goods so 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. Friedlaender & Co.*, 27 C.C.P.A. 297, 302 (1940).

The ultimate purchaser is “generally the last person in the United States who will receive the article in the form in which it was imported.” 19 C.F.R. § 134.1(d). If an article will be sold “at retail in its imported form, the purchaser at retail is the ‘ultimate purchaser.’” 19 C.F.R. § 134.1(d)(3). In this case, the Chinese and Taiwanese components will be packaged together with domestic components prior to retail sale. However, these components will be in the same condition as at importation. Therefore, the retail purchaser is the ultimate purchaser of the imported parts.

The foreign components must be marked at importation. In general, the regulations state that “marking requirements are best met by marking worked into the article at the time of manufacture.” 19 C.F.R. § 134.41(a). However, the regulations also provide that “any method of marking at any location insuring that country of origin will conspicuously appear on the article shall be acceptable.” 19 C.F.R. § 134.44(a). The regulations provide examples of marking imported articles with paper sticker labels or tags. 19 C.F.R. § 134.44(b)-(c). Therefore, each foreign component must be conspicuously marked in accordance with CBP regulations. *See* 19 C.F.R. Part 134.

As the ultimate purchaser is the retail purchaser, the foreign components must bear a conspicuous country of origin marking at retail sale. The regulations set forth the following procedures for imported articles which will be repacked or manipulated:

- (a) *Certification requirements.* If an article subject to these requirements is intended to be repacked in retail containers (e.g., blister packs) after its release from Customs custody, or if the port director having custody of the article, has reason to believe such article will be repacked after its release, the importer shall certify to the port director that: (1) If the importer does the repacking, he shall not obscure or conceal the country of origin marking appearing on the article, or else the new container shall be marked to indicate the country of origin of the article in accordance with the requirements of this part; or (2) if the article is intended to be sold or transferred to a subsequent purchaser or repacker, the importer shall notify such purchaser or transferee, in writing, at the time of sale or transfer, that any repacking of the article must conform to these requirements ... 19 C.F.R. 134.26(a).

Since the importer knows that the foreign components will be repacked after importation, the importer must submit the aforementioned certification to the port at the same time that the entry summary is filed. 19 C.F.R. § 134.26(c). The form is set forth at 19 C.F.R. § 134.26(a).

At retail sale, the country of origin marking of the foreign components must either be visible through the retail container or else the outside of the retail container must state the country of origin of each component. *See, e.g.* Headquarters Ruling Letter (HQ) 559912 dated March 25, 1997 (an unassembled microscope comprised of foreign components had to indicate the country of origin of each component at retail sale) and HQ H025404, dated April 28, 2008 (an automotive repair kit comprised of foreign components had to be marked to indicate the country of origin of each component at retail sale).

Additionally, you mentioned that some of the child seat's components are manufactured in the United States. If the retail container is marked with "United States", or a U.S. company name, address or similar phrase, the country of origin of the foreign components must be provided in close proximity to this phrase to avoid confusion. 19 C.F.R. § 134.22(c). We note that marking the good as a product of the U.S. is a matter under the jurisdiction of the Federal Trade Commission. Therefore, should you wish to mark the articles with the phrase "Made in the USA," we recommend that you contact that agency at the following address: Federal Trade Commission Division of Enforcement 600 Pennsylvania Avenue, NW Washington, DC 20580.

In NY N015337, although not requested, CBP also ruled on the tariff classification of the subject merchandise. We find the tariff classification determination in that ruling to be incorrect. For the correct analysis of the classification of child bike seats, please *see* NY L86862, dated August 9, 2005.

HOLDING:

Based upon the information provided, it is our opinion that the components of foreign origin must be individually marked at importation. When the importer files the entry summary, the importer must also file a certificate for the country of origin marking of articles to be repacked pursuant to 19 C.F.R. § 134.26. The marking of each foreign component must be visible through the retail container, or else the retail container must be marked to indicate the country of origin of each foreign component. *Id.*

EFFECT ON OTHER RULINGS:

NY N015337, dated August 23, 2007, is hereby revoked in its entirety.

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

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

GENERAL NOTICE**19 CFR PART 177****REVOCAION OF ONE RULING LETTER AND
REVOCAION OF TREATMENT RELATING TO THE
CLASSIFICATION OF A BRICK TYPE PLATE USED IN
BALLISTIC JACKETS**

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

ACTION: Notice of revocation of one ruling letter and revocation of treatment relating to the classification of a brick type plate used in ballistic jackets from Italy.

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 CBP is revoking one ruling letter concerning the classification of a brick type plate used in ballistic jackets from Italy under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N016133 was published in the Customs Bulletin, Vol. 47, No. 52, on January 2, 2014. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 30, 2014.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

SUPPLEMENTARY INFORMATION:**Background**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “informed compliance” and “shared responsibility.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community

needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade 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 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 section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking one ruling pertaining to the classification of a brick type plate used in ballistic jackets from Italy. Although in this notice CBP is specifically referring to New York Ruling (“NY”) N016133, dated December 20, 2007, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer's failure to have advised 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 his agents for importations of merchandise subsequent to this notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N016133 in order to reflect the proper classification of a brick-type plate used ballistic jackets in subheading 6914.90.80, HTSUS, according to the analysis contained in Headquarters Ruling Letter (HQ) H218236, which is attached to this document. Additionally, pursuant to 19

U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 31, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H218236

March 31, 2014

CLA-2 OT:RR:CTF:TCM H218236 TNA**CATEGORY:** Classification**TARIFF NO.:** 6914.90.80

MR. ANDREW GERARD
ARIES GLOBAL LOGISTICS, INC.
AIRPORT INDUSTRIAL PARK
145 HOOK CREEK BLVD., BLDG. A-3A
VALLEY STREAM, NY 11581

RE: Revocation of NY N016133; Classification of a Brick Type Plate Used in Ballistic Jackets from Italy

DEAR MR. GERARD:

This letter is in reference to New York Ruling (“NY”) N016133, issued to you on December 20, 2007, on behalf of First Choice Armor & Equipment, Inc., concerning the tariff classification a brick type plate used in ballistic jackets from Italy. There, U.S. Customs and Border Protection (“CBP”) classified the subject plate under subheading 6903.20.00, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Other refractory ceramic goods... Containing by weight more than 50 percent of alumina (Al_2O_3) or of a mixture or compound of alumina and of silica (SiO_2).” We have reviewed NY N016133 and found it to be incorrect. For the reasons set forth below, we hereby revoke NY N016133.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N016133 was published in the Customs Bulletin, Vol. 47, No. 52, on January 2, 2014. No comments were received in response to this notice.

FACTS:

The subject merchandise consists of a brick-type ceramic plate. It is 98% alumina and 2% other components. It is designed for incorporation into ballistic jackets that are worn for protection against firearms and other weapons. As such, it is designed to be worn on the person during use by military, police, and similar personnel.

Before issuing NY N016133, CBP’s National Commodity Specialist division (“NCSD”) sent a sample of the subject merchandise to a CBP laboratory for analysis. The resulting laboratory report, Laboratory Report # NY 20071421, dated December 18, 2007, concluded that the subject merchandise was composed essentially of aluminum oxide. The laboratory also noted that the subject merchandise conformed to the definition of a “refractory article” found in Additional U.S. Note 1 to chapter 69, HTSUS.¹ Finally, the laboratory noted that the average hardness of the merchandise is approximately 8.1 on the Mohs Scale.

¹ We note that both the laboratory report and NY N016133 were issued in 2007. In the 2007 tariff, the cited definition of “refractory article” was found in Additional U.S. Note 2 to Chapter 69, which has since been renumbered to Additional U.S. Note 1. Furthermore, the Additional U.S. Note 1 that appeared in the 2007 tariff schedule contained a definition of the term “ceramic article.” Laboratory Report # NY 20071421 found that the subject merchandise met that definition as well.

ISSUE:

Whether the subject brick type plate is classified as a refractory article of heading 6903, HTSUS, or as a ceramic ware of heading 6209, HTSUS?

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

- 6903 Other refractory ceramic goods (for example, retorts, crucibles, muffles, nozzles, plugs, supports, cupels, tubes, pipes, sheaths and rods), other than those of siliceous fossil meals or of similar siliceous earths:
- 6909 Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods:
- 6914 Other ceramic articles:

Additional U.S. Note 1 to chapter 69, HTSUS, states, in pertinent part, the following:

For the purposes of headings 6902 and 6903, the term “refractory” is applied to articles which have a pyrometric cone equivalent of at least 1500EC when heated at 60EC per hour (pyrometric cone 18). Refractory articles have special properties of strength and resistance to thermal shock and may also have, depending upon the particular uses for which designed, other special properties such as resistance to abrasion and corrosion.

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

The General ENs to Sub-Chapter I of Chapter 69, HTSUS, provides, in pertinent part, the following²:

This sub-Chapter covers, whether or not they contain clay...

(B) In headings 69.02 and 69.03 refractory goods, i.e., fired articles having the special property of resisting high temperatures as met in metallurgy, the glass industry, etc. (e.g., of the order of 1,500 °C and higher). According to the particular uses for which they are intended, refractory articles may also be used to withstand rapid changes of temperature, be either good thermal insulators or conductors, have a low coefficient of thermal ex-

² Subchapter I of Chapter 69, HTSUS, encompasses heading 6901 through 6903, HTSUS. Subchapter II of Chapter 69, HTSUS, encompasses heading 6904 through 6912, HTSUS.

pansion, be porous or dense, resist the corrosive effects of products with which they come into contact, have a good mechanical strength and resistance to wear, etc.

However, to fall in heading 69.02 or 69.03 as refractory goods, articles must not only be capable of resisting high temperatures, they must also be designed for high temperature work. Heading 69.03 would therefore include crucibles of sintered alumina, but textile machine thread guides of the same material would fall in heading 69.09 since they are designed for clearly non-refractory uses.

The main types of refractory goods are:

(1) High alumina refractories based either upon bauxite, mullite or corundum (sometimes mixed with clays) or on kyanite, sillimanite or andalusite (aluminium silicates) mixed with clays, or on sintered alumina....

Refractory materials are used mainly to line blast furnaces, coke ovens, petroleum cracking plants, glass, ceramic and other industrial furnaces, and in the manufacture of pots, crucibles and other plant for the chemical, glass, cement and aluminium and other metallurgical industries.

But headings 69.02 and 69.03 do not cover articles which, though sometimes described as refractory or semi-refractory, are incapable of withstanding industrial temperatures of the type described above. Such articles fall in the appropriate heading of sub-Chapter II.

The EN to heading 6903, HTSUS, states, in pertinent part, the following:

This heading covers all refractory goods not specified or included in the preceding headings.

These articles include:

(1) Articles which, unlike the refractory products of heading 69.02, are in many cases not permanent fixtures, such as retorts, reaction vessels, crucibles, cupels and similar articles for industrial or laboratory use, muffles, nozzles, plugs, burner jets and similar parts of furnaces; saggars, stands and other kiln furniture to support or separate pottery during firing; sheaths and rods; stands for crucibles; ingot moulds; etc.

The EN to heading 6909, HTSUS, states, in pertinent part, the following:

This heading covers a range of very varied articles usually made from vitrified ceramics (stoneware, porcelain or china, steatite ceramics, etc.), glazed or unglazed. It does not, however, cover refractory goods of a kind designed for resisting high temperatures as described in the General Explanatory Note to sub-Chapter I. But articles of a type not designed for high temperature work remain in this heading even if made of refractory materials (e.g., thread guides, grinding apparatus, etc., of sintered alumina).

The heading covers in particular:

(1) Laboratory wares (e.g., for research or industrial use) such as crucibles and crucible lids, evaporating dishes, combustion boats, cupels; mortars and pestles; spoons for acids, spatulas; supports for filters and catalysts; filter plates, tubes, candles, cones, funnels, etc.; water-baths; beakers, graduated vessels (other than graduated

kitchen measures); laboratory dishes, mercury troughs; small tubes (e.g., combustion tubes, including analysis tubes for estimation of carbon, sulphur, etc.).

- (2) Ceramic wares for other technical uses, such as pumps, valves; retorts, vats, chemical baths and other static containers with single or double walls (e.g., for electroplating, acid storage); taps for acids; coils, fractionating or distillation coils and columns, Raschig rings for petroleum fractionating apparatus; grinding apparatus and balls, etc., for grinding mills; thread guides for textile machinery and dies for extruding man-made textiles; plates, sticks, tips and the like, for tools.

The EN to heading 6914, HTSUS, states, in pertinent part, the following:

This heading covers all ceramic articles not covered by other headings of this Chapter or in other Chapters of the Nomenclature.

In NY N016133, CBP classified the subject merchandise in heading 6903, HTSUS, which provides for “Other refractory ceramic goods (for example, retorts, crucibles, muffles, nozzles, plugs, supports, cupels, tubes, pipes, sheaths and rods), other than those of siliceous fossil meals or of similar siliceous earths.” Refractory goods of this heading are fired articles that can resist high temperatures of the order of 1,500 °C and higher. *See* Additional U.S. Note 1 to Chapter 69; *see also* General EN to Chapter 69, HTSUS. Furthermore, in order to be classified as a refractory good of heading 6903, HTSUS, merchandise must not only be capable of resisting high temperatures, they must also be of a type designed for high temperature work. *See* General EN to Chapter 69, HTSUS.

Reading these definitions together, CBP has long held that classification as a refractory article of heading 6903, HTSUS, requires more than simply meeting the definition in Additional U.S. Note 1 to Chapter 69, HTSUS, and simply being capable of resisting temperatures of 1500 degrees Celsius and higher. Thus, we have reasoned that merchandise of a type not regularly subjected to temperatures of 1,500 degrees Celsius and higher is not designed for high temperature use, even if the merchandise is capable of withstanding that amount of heat. For example, in HQ 082956, dated December 8, 1989, CBP classified ceramic needle guides for use with a computer printer outside heading 6903, HTSUS, because, while they were “capable of withstanding temperatures of 1500 degrees centigrade, they will not be subjected to those temperatures in a computer printer.” *See* HQ 082956. Nor are needle guides the type of merchandise regularly subjected to 1500 degrees Celsius. This principle has been followed in subsequent CBP rulings. *See* HQ 089409, dated June 7, 1991; NY G83258, dated November 2, 2000.

Similarly, in the present case, the subject ballistic plates are used in jackets that are worn on the person. While it is not in dispute that the subject plates are capable of withstanding temperatures of 1500 degrees centigrade or higher, they are not the type of article that will be subject to anywhere near these temperatures in everyday use. To the contrary, they will be used in training and in combat, activities conducted in and generating far lower temperatures than 1500 degrees Celsius. As a result, the subject plates do not meet the terms of heading 6903, HTSUS, and we examine alternate headings.

Heading 6909, HTSUS, provides for “Ceramic wares for laboratory, chemical or other technical uses....” Here, the focus is on what constitutes a “technical use.” In *Apex Universal v. United States*, 22 C.I.T. 465, the court classified ceramic paving markers. *Apex Universal v. United States*, 22 C.I.T. 465, 466–467. In considering classification in heading 6909, HTSUS, the court defined “technical” as “designed or used to facilitate any special mechanical or scientific process.” *Id.* at 471. This definition is in accordance with the ENs, which list items whose unifying characteristics are both a ceramic composition and “utility as an instrument or container to facilitate a ‘technical’ process, whether it be a chemical experiment in a laboratory or storage and conveyance of an agricultural product.” *See* EN 69.09; *Apex Universal*, 22 C.I.T. at 471.

In the present case, the subject ceramic plate is designed for incorporation into ballistic vests so that it can stop bullets. This is a function that is separate from any special technical or scientific process. Thus, this ceramic plate cannot be said to be designed or used to facilitate any special mechanical or scientific process. As such, it cannot be classified in heading 6909, HTSUS, as a ceramic ware for laboratory, chemical or other technical use.

Heading 6914, HTSUS, provides for “Other ceramic articles.” The heading covers all ceramic articles not covered by other headings of Chapter 69 or other chapters of the nomenclature. *See* EN 69.14. CBP has classified a wide range of articles in this heading, from a ceramic setter which was used to maintain the shape of fine china dinnerware through the firing process, to plastic box with a ceramic magnet attached to the bottom. *See, e.g.*, HQ 960294, dated August 12, 1997 (classifying the ceramic setter in heading 6914, HTSUS); HQ 089760, dated February 24, 1992 (classifying the plastic box with a ceramic magnet attached to the bottom in heading 6914, HTSUS); HQ 960922, dated August 3, 1998 (classifying ceramic adapters and receptacles used in the transmission of signals through optical fibers in heading 6914, HTSUS).

In the present case, the subject merchandise is made of ceramic and has been precluded from classification in various other headings of the nomenclature pursuant to the analysis above. It also comports with the broad range of merchandise that CBP has classified in heading 6914, HTSUS. As such, it is described by the terms of heading 6914, HTSUS, and will be classified there.

HOLDING:

Under the authority of GRI 1, the subject brick type plate is classified in heading 6914, HTSUS. It is specifically provided for in subheading 6914.90.80, HTSUS, which provides for “Other ceramic articles: Other: Other.” The applicable duty rate is 5.6%.

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

EFFECT ON OTHER RULINGS:

NY N016133, dated December 20, 2007, is REVOKED.

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

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF RULING LETTERS AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF WAFER PROBE CARDS**

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

ACTION: Notice of proposed revocation of ruling letters and proposed revocation of treatment relating to the tariff classification of wafer probe cards.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is proposing to revoke two ruling letters concerning the tariff classification of wafer probe cards. Similarly, CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before May 30, 2014.

ADDRESSES: Written comments are to be addressed to the U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street, N.E., 10th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Laurance W. Frierson, Tariff Classification and Marking Branch: (202) 325–0371.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (“Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary

compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade 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 section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke two ruling letters pertaining to the classification of wafer probe cards. Although in this notice, CBP is specifically referring to the revocation of Headquarters Ruling Letter (HQ) H011054, dated September 9, 2011 (Attachment A), and HQ H011056, dated September 9, 2011 (Attachment B), this notice 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 those identified. 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 notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, 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 notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In HQ H011054, CBP determined that two models of wafer probe cards, used to test the electrical properties of integrated circuits etched on a semiconductor wafer, were classified in heading 8536, Harmonized Tariff Schedule of the United States (HTSUS). Specifically, CBP classified the wafer probe cards in subheading 8536.90.40, HTSUS, which provides for "Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in elec-

trical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders and other connectors, junction boxes), for a voltage not exceeding 1,000 V; connectors for optical fibers, optical fiber bundles or cables: Other apparatus: Terminals, electrical splices and electrical couplings; wafer probers.” It is now CBP’s position that the wafer probe cards are properly classified in subheading 9030.82.00, HTSUS, which provides for “Oscilloscopes, spectrum analyzers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 9028; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionizing radiations; parts and accessories thereof: Other instruments and apparatus: For measuring or checking semiconductor wagers or devices.”

In HQ H011056, CBP determined that a wafer probe card used to test the electrical properties of integrated circuits etched on a semiconductor wafer, was classified in heading 8536, Harmonized Tariff Schedule of the United States (HTSUS). Specifically, CBP classified the wafer probe card in subheading 8536.90.40, HTSUS, which provides for “Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders and other connectors, junction boxes), for a voltage not exceeding 1,000 V; connectors for optical fibers, optical fiber bundles or cables: Other apparatus: Terminals, electrical splices and electrical couplings; wafer probers.” It is now CBP’s position that the wafer probe card is properly classified in subheading 9030.82.00, HTSUS, which provides for “Oscilloscopes, spectrum analyzers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 9028; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionizing radiations; parts and accessories thereof: Other instruments and apparatus: For measuring or checking semiconductor wagers or devices.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke HQ H011054, HQ H011056, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter HQ H192481, set forth as Attachment C to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: April 2, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ H011054**September 9, 2010****CLA-2 OT:RR:CTF:TCM H011054 RM****CATEGORY: Classification****TARIFF NO.: 8536.90.40**

MS. BARI WOLFSON
MANAGER, U.S. TRADE COMPLIANCE
KULICKE & SOFFA
2101 BLAIR MILL RD.
WILLOW GROVE, PA 19090

RE: Revocation of New York Ruling Letter K89734, Classification of Wafer Probe Cards

DEAR MS. WOLFSON:

This is in reference to New York Ruling Letter (“NY”) K89734, dated September 20, 2004, issued to you on behalf of K&S Interconnect, Inc. (“K&S”). In that ruling, U.S. Customs and Border Protection (“CBP”) determined that a certain wafer probe cards were classified under heading 8536, Harmonized Tariff Schedule of the United States (“HTSUS”), specifically in subheading 8536.90.80, which provides in relevant part for “Electrical apparatus ... for making connections to or in electrical circuits ... for a voltage not exceeding 1,000 V: Other apparatus: Other.” For the reasons set forth below, CBP is revoking K89734.

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, 2186 (1993), notice of the proposed revocation was published on July 7, 2010, in the *Customs Bulletin*, Volume 44, No. 28. No comments were received in response to this notice.

FACTS:

At issue are the K&S Cantilever (part No. 145), DuraPlus (part No. 121), and Vertical (part No. 124) probe cards; hardware devices used to test the electrical properties of the integrated circuits (“ICs”) etched on a semiconductor wafer. They consist of a printed circuit board, probe needles, and a ring to which the probe needles are attached.

The probe cards provide an interface between automatic test equipment (“ATE”), which sends electrical signals to the ICs and analyzes their response, and the wafer. When in use, the cards’ probes make contact with the bonding pads of the wafer to measure the electric characteristics of the ICs.

ISSUE:

Are the probe cards classified in subheading 8536.90.40, HTSUS, as wafer probers, or in subheading 8536.90.80, HTSUS, as other apparatus for making connections to or in electrical circuits?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (“GRIs”). GRI 1 provides that the classification of

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

The 2010 HTSUS provisions under consideration are as follows:

- 8536 Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders and other connectors, junction boxes) for a voltage not exceeding 1,000 V; connectors for optical fibers, optical fiber bundles or cables:
- 8536.90 Other apparatus:
- 8536.90.40** Terminals, electrical splices and electrical couplings; wafer probers ...
- 8536.90.80** Other ...

At issue is the classification of the probe cards at the eight-digit national tariff rate subheading level. GRI 6 provides, in pertinent part:

For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable.

The tariff does not define the term “wafer probers.” When, as in this instance, a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). (“To ascertain the common meaning of a term, a court may consult ‘dictionaries, scientific authorities, and other reliable information sources’ and ‘lexicographic and other materials’ (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271 (Fed. Cir. 1982))).

The *Oxford English Dictionary* defines the term “wafer” in relevant part as “4: a very thin slice of semiconductor crystal used in solid-state circuitry,” and the term “probe” (verb) as “1: to physically explore or examine. 2: to enquire into closely.”¹ Similarly, the *SEMATECH Dictionary of Semiconductor Terms* defines the term “wafer” as “in semiconductor technology, a thin slice with parallel faces cut from a semiconductor crystal.”² The term “prober” is defined as “a piece of hardware that allows a collection of probes to be brought into contact with the die on a wafer for the purpose of testing an integrated circuit.”³

Based on the foregoing, and in keeping with the text of heading 8536, HTSUS, we conclude that “wafer probers” are devices which enable an electric connection between a machine that tests semiconductor wafers, and a

¹ <http://www.oed.com>

² <http://www.sematech.org/publications/dictionary.htm>

³ *Id.*

wafer, by way of probing (i.e., physically exploring or examining) the wafer. As explained above, the instant probe cards function as electrical interconnects between the ATE and the ICs on a wafer. The electrical connection is established when the cards' probe needles make contact with the wafer's ICs.

We conclude, therefore, that the cards are classified under heading 8536, HTSUS, specifically in subheading 8536.90.40, as wafer probers.⁴

HOLDING:

By application of GRIs 1 and 6, the probe cards are classified under heading 8536, HTSUS, specifically in subheading 8536.90.40, which provides for "Electrical apparatus ... for making connections to or in electrical circuits ... for a voltage not exceeding 1,000 V: Other apparatus: ... wafer probers." The 2010 column one, general rate of duty is: Free.

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

EFFECT ON OTHER RULINGS:

NY K89734, dated October 12, 2004, is hereby revoked. In accordance with 19 U.S.C. § 1625(c), this action will become effective 60 days after publication in the *Customs Bulletin*.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

⁴ Subheading 8536.90.40, HTSUS, was included in the HTSUS after the U.S. entered into the Information Technology Agreement ("ITA"), which went into effect on July 1, 1997, pursuant to Presidential Proclamation No. 7011 (62 FR 35909 (July 2, 1997)). The amendments set forth in said Proclamation are based on the framework established in the Declaration on Trade in Information Technology Products, which, together with its Annex, constitute the ITA. The Annex is comprised of two attachments. Attachment A, Section 1 lists the Harmonized System ("HS") headings and subheadings covered by the ITA. Attachment A, Section 2, lists certain semiconductor manufacturing and testing equipment and parts thereof to be covered by the ITA. Attachment B is a positive list of specific products to be covered by the ITA wherever they are classified in the HS.

[ATTACHMENT B]

HQ H011056

September 9, 2010

CLA-2 OT:RR:CTF:TCM H011056 RM

CATEGORY: Classification

TARIFF NO.: 8536.90.40

Ms. JOYCE FORD
INFINEON TECHNOLOGIES
6000 TECHNOLOGY BLVD.
SANDSTON, VA 23150

RE: Revocation of New York Ruling Letter K82192, Classification of a Wafer Probe Card

DEAR Ms. FORD:

This is in reference to New York Ruling Letter (“NY”) K82192, dated January 22, 2004, issued to you on behalf of Infineon Technologies. In that ruling, U.S. Customs and Border Protection (“CBP”) determined that a certain wafer probe card was classified under heading 8536, Harmonized Tariff Schedule of the United States (“HTSUS”), specifically in subheading 8536.90.80, which provides in relevant part for “Electrical apparatus ... for making connections to or in electrical circuits ... for a voltage not exceeding 1,000 V: Other apparatus: Other.” For the reasons set forth below, CBP is revoking NY K82192.

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, 2186 (1993), notice of the proposed revocation was published on July 7, 2010, in the *Customs Bulletin*, Volume 44, No. 28. No comments were received in response to this notice.

FACTS:

The merchandise at issue is a probe card; a hardware device used to test the electrical properties of the integrated circuits (“ICs”) etched on a semiconductor wafer. It consists of a printed circuit board, probe needles, and a ring to which the probe needles are attached. The probe card provides an interface between automatic test equipment (“ATE”), which sends electrical signals to the ICs and analyzes their response, and the wafer. When in use, the card’s probes make contact with the bonding pads of the wafers to measure the electric characteristics of the ICs.

ISSUE:

Is the probe card classified in subheading 8536.90.40, HTSUS, as a wafer prober, or in subheading 8536.90.80, HTSUS, as other apparatus for making connections to or in electrical circuits?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (“GRIs”). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the

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

The 2010 HTSUS provisions under consideration are as follows:

- 8536 Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders and other connectors, junction boxes) for a voltage not exceeding 1,000 V; connectors for optical fibers, optical fiber bundles or cables:
- 8536.90 Other apparatus:
- 8536.90.40** Terminals, electrical splices and electrical couplings; wafer probers ...
- 8536.90.80** Other ...

At issue is the classification of the probe card at the eight-digit national tariff rate subheading level. GRI 6 provides, in pertinent part:

For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable.

The tariff does not define the term “wafer probers.” When, as in this instance, a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). (“To ascertain the common meaning of a term, a court may consult ‘dictionaries, scientific authorities, and other reliable information sources’ and ‘lexicographic and other materials” (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271 (Fed. Cir. 1982))).

The *Oxford English Dictionary* defines the term “wafer” in relevant part as “4: a very thin slice of semiconductor crystal used in solid-state circuitry,” and the term “probe” (verb) as “1: to physically explore or examine. 2: to enquire into closely.”¹ Similarly, the *SEMATECH Dictionary of Semiconductor Terms* defines the term “wafer” as “in semiconductor technology, a thin slice with parallel faces cut from a semiconductor crystal.”² The term “prober” is defined as “a piece of hardware that allows a collection of probes to be brought into contact with the die on a wafer for the purpose of testing an integrated circuit.”³

Based on the foregoing, and in keeping with the text of heading 8536, HTSUS, we conclude that “wafer probers” are devices which enable an electric connection between a machine that tests semiconductor wafers, and a wafer, by way of probing (i.e., physically exploring or examining) the wafer. As explained above, the instant probe card functions as an electrical inter-

¹ <http://www.oed.com>

² <http://www.sematech.org/publications/dictionary.htm>

³ *Id.*

connect between the ATE and the ICs on a wafer. The electrical connection is established when the card's probe needles make contact with the wafer's ICs. We conclude, therefore, that the card is classified under heading 8536, HTSUS, specifically in subheading 8536.90.40, as a wafer prober.⁴

HOLDING:

By application of GRIs 1 and 6, the probe card is classified under heading 8536, HTSUS, specifically in subheading 8536.90.40, which provides for "Electrical apparatus ... for making connections to or in electrical circuits ... for a voltage not exceeding 1,000 V: Other apparatus: ... wafer probers." The 2010 column one, general rate of duty is: Free.

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

EFFECT ON OTHER RULINGS:

NY K82192, dated January 22, 2004, is hereby revoked. In accordance with 19 U.S.C. § 1625(c), this action will become effective 60 days after publication in the *Customs Bulletin*.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

⁴ Subheading 8536.90.40, HTSUS, was included in the HTSUS after the U.S. entered into the Information Technology Agreement ("ITA"), which went into effect on July 1, 1997, pursuant to Presidential Proclamation No. 7011 (62 FR 35909 (July 2, 1997)). The amendments set forth in said Proclamation are based on the framework established in the Declaration on Trade in Information Technology Products, which, together with its Annex, constitute the ITA. The Annex is comprised of two attachments. Attachment A, Section 1 lists the Harmonized System ("HS") headings and subheadings covered by the ITA. Attachment A, Section 2, lists certain semiconductor manufacturing and testing equipment and parts thereof to be covered by the ITA. Attachment B is a positive list of specific products to be covered by the ITA wherever they are classified in the HS.

[ATTACHMENT C]

HQ H192481

CLA-2 OT:RR:CTF:TCM H192481 LWF**CATEGORY:** Classification**TARIFF NO.:** 9030.82.00

MS. BARI WOLFSON
 MANAGER, U.S. TRADE COMPLIANCE
 KULICKE & SOFFA INDUSTRIES, INC.
 2101 BLAIR MILL RD.
 WILLOW GROVE, PA 19090

RE: Revocation of Headquarters Ruling Letters (HQ) H011054 and HQ H011056, concerning the tariff classification of wafer probe cards

DEAR MS. WOLFSON:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered Headquarters Ruling Letter (HQ) H011054, dated September 9, 2011, concerning the tariff classification of two models of “wafer probe cards” used for the testing of integrated circuits (“ICs”). In HQ H011054, CBP classified the wafer probe cards in subheading 8536.90.40, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders and other connectors, junction boxes), for a voltage not exceeding 1,000 V; connectors for optical fibers, optical fiber bundles or cables: Other apparatus: Terminals, electrical splices and electrical couplings; wafer probers.” We have reviewed HQ H011054 and find the ruling to be incorrect. Accordingly, for the reasons set forth below, we intend to revoke that ruling.¹

FACTS:

The articles at issue in HQ H011054 are described as two models of wafer probe cards—machines used to automate the simultaneous testing of the electrical properties of multiple integrated circuits on semiconductor wafers prior to the singulation and packaging of individual IC dies.

The manufacture and testing of ICs involves a series of complex operations, and for the purposes of providing a general description of this process, CBP has previously quoted a summary of “Probe Card Basics,” found on the website of JEM America Corp, Inc. (“JEM America”). See NY K86983, dated July 21, 2004; *Probe Card Basics*, JEM America Corp., Inc., <http://www.jemam.com/probecard>. Here, CBP once again considers JEM America’s “Probe Card Basics” to provide an accurate account of the IC manufacture and testing process and cites to the following passages from the JEM America website:

1.1 THE INTEGRATED CIRCUIT

Semiconductor Integrated Circuits (ICs) are essential in today’s high-tech society. They can be found at the heart of a variety of products, from the

¹ CBP intends to also revoke HQ H011056, dated September 9, 2011, classifying a substantially similar wafer probe card in subheading 8536.90.40, HTSUS.

simplest calculators to the fastest computers. As a result, the production of ICs has become a billion dollar industry, involving some of the world's most advanced technology. [Wafer] probe cards are important in the final phase of this production process, playing a vital role in the testing and measuring of integrated circuits.

Integrated circuits are built from round, thin sheets of semiconducting material. Standard sheets, or wafers, are commonly made of silicon. These wafers can range from 5 cm (~2 in) to 20 cm (~8 in) in diameter and are roughly 0.10 cm (~0.04 inch) thick. On a single wafer, anywhere from 50 to 200 identical integrated circuits, or die, can be made. The process of taking a simple silicon wafer and creating from it circuitry which can use and store electricity is a complex process. In a sense, the circuitry is “embedded” in the silicon, just below its surface. Within this microscopic maze of circuitry, electrical signals flow from one point to the next, much in the same way that water flows in a riverbed. To interact with the world outside of the IC, these signals are passed back and forth through small metal pads attached to the wafer's surface (see Figure 1–1). The ability to make electrical contact with these metal pads is critical. Without some method of making this contact, the integrated circuit cannot be used.

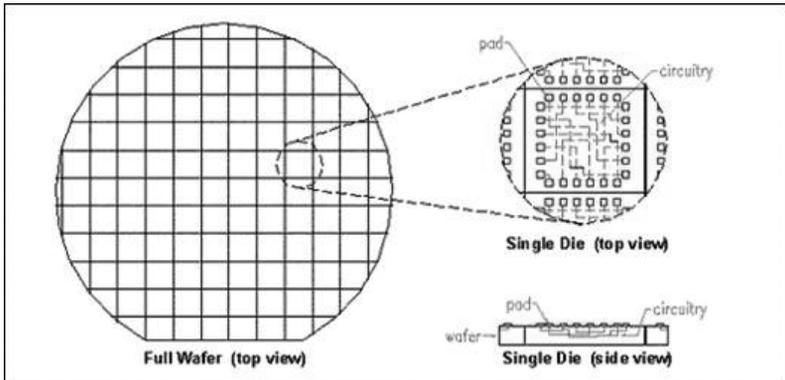


Figure 1-1: Integrated Circuit Wafer

1.2 TESTING THE IC

In the testing of integrated circuits, [wafer] probe cards play this vital role of contacting the metal pads on a wafer's surface. ICs are tested by large machines, called testers, which send a series of electrical signals to each IC. During testing, the probe card and IC are held in place by another machine, called a prober. The prober might be described as the “arm” of a tester, doing the mechanical work of moving and aligning the probe card and IC. The probe card then functions primarily as the “hand” of a tester, allowing it to “touch” the metal pads on a wafer's surface (see Figure 1–2). This establishes an electrical connection between tester and IC, allowing signals to flow freely between them. An ICs response to these test signals

then indicates whether it has been made correctly. Good ICs can then be separated from bad ones. Probe cards are at the center of this testing process.

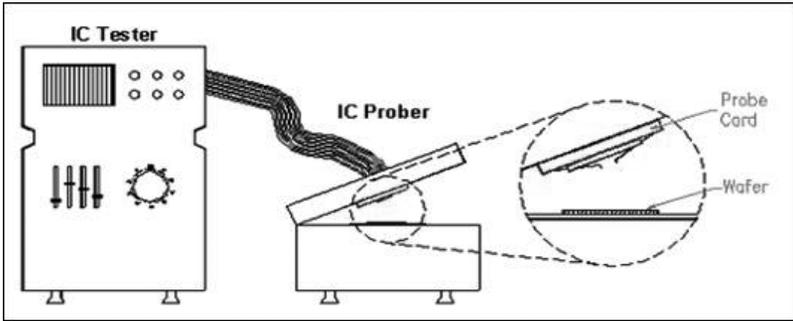


Figure 1-2: IC Tester and Prober (with probe card and wafer)

With the help of the prober, the probe card is lowered onto the IC wafer until the probe tips come into contact with the wafer’s metal pads. Test signals can then be passed between tester and IC.

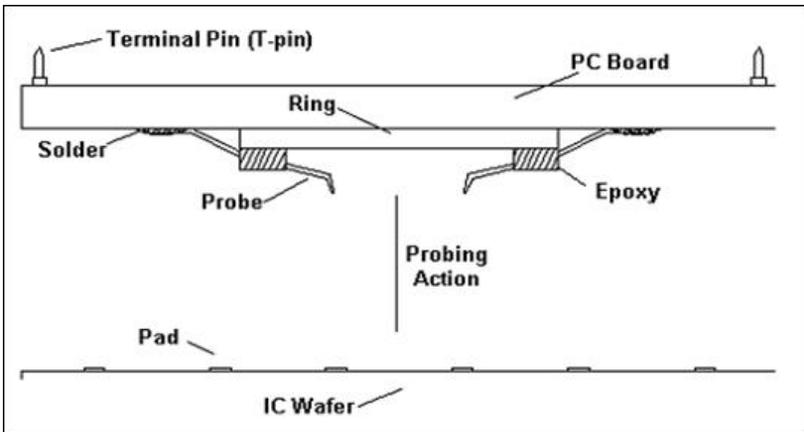


Figure 1-3: Probe Card and Wafer

* * * * *

The wafer probe cards at issue in HQ H011054 resemble the “Probe Card” identified above in Figure 1-3 of JEM America’s “Probe Card Basics” and consist of a printed circuit board (“PCB”), numerous wafer probes (sometimes referred to as “probe needles”), and a structural support ring to which the wafer probes and PCB are attached. By transmitting and modifying electrical signals sent from automatic test equipment (“ATE”) to the semiconductor wafer, the probe cards provide an interface between the wafer and the ATE. During testing operations, electrical signals are sent from the ATE to the

wafer probe card, where integrated circuits, resistors, capacitors, and other active components on the PCB manipulate the ATE signal and control the power and voltage characteristics of the signal before it is sent to the wafer via connections made by the wafer probes (probe needles). The wafer probes (probe needles), located along the underside of the probe card, make contact with the metal bonding pads of the wafer and facilitate the transmission of electrical signals between the probe card and the wafer. Returned electrical signals are sent from the wafer probe card to the ATE, where they are analyzed to measure the functional and operational integrity of the ICs located on the wafer.

ISSUE:

Whether the wafer probe cards are classified in heading 8536, HTSUS, as electrical apparatus for making connections to or in electrical circuits, or in heading 9030, HTSUS, as other instruments or apparatus for measuring or checking electrical quantities?

LAW AND ANALYSIS:

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order.

The following HTSUS provisions will be referenced:

- | | |
|------------|---|
| 8536 | Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders and other connectors, junction boxes), for a voltage not exceeding 1,000 V; connectors for optical fibers, optical fiber bundles or cables. |
| 8536.90 | Other apparatus: |
| 8536.90.40 | Terminals, electrical splices and electrical couplings; wafer probers. |
| 8536.90.80 | Other. |
| * * * * | |
| 9030 | Oscilloscopes, spectrum analyzers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 9028; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionizing radiations; parts and accessories thereof. |
| | Other instruments and apparatus: |
| 9030.82.00 | For measuring or checking semiconductor wafers or devices. |

9030.90	Parts and accessories:
	Other:
	Printed circuit assemblies:
9030.90.66	Of instruments and apparatus of subheading 9030.40 or 9030.82.

* * * * *

Note 1(m) to Section XVI provides, in pertinent part, as follows:

1. This section does not cover:

(m) Articles of chapter 90;

* * * * *

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

EN 85.36 states, in pertinent part, as follows:

(III) APPARATUS FOR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS

This apparatus is used to connect together the various parts of an electrical circuit. It includes:

...

(B) **Other connectors, terminals, terminal strips, etc.** These include small squares of insulating material fitted with electrical connectors (dominoes), terminal which are metal parts intended for the reception of conductors, and small metal parts designed to be fitted on the end of electrical wiring to facilitate electrical connection (spade terminal, crocodile clips, etc.)

* * * * *

Heading 8536, HTSUS, provides for "Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders and other connectors, junction boxes), for a voltage not exceeding 1,000 V; connectors for optical fibers, optical fiber bundles or cables." However, as Note 1(m) to Section XVI precludes classification of articles of Chapter 90 in this section, we must first examine whether the instant merchandise is classifiable in heading 9030, HTSUS.

Heading 9030, HTSUS, provides, in relevant part, for "instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 9028," although terms "apparatus" and "checking" are not defined

in the HTSUS or the ENs. When a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001) (“To ascertain the common meaning of a term, a court may consult ‘dictionaries, scientific authorities, and other reliable information sources’ and ‘lexicographic and other materials.’” (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271 (Fed. Cir. 1982))).

The *Oxford English Dictionary* defines the term “apparatus,” in relevant part, as “equipment, material, mechanism, machinery; or the mechanical requisites employed in scientific experiments or investigations.”² Likewise, the term has been frequently construed by the courts to mean a “group of devices or a collection or set of materials, instruments or appliances to be used for a particular purpose or a given end.” *ITT Thompson Industries, Inc. v. United States*, 3 C.I.T. 36, 44 (1982).

With regards to the term “checking,” the courts have provided guidance on the common meaning of the word as used under older tariff schedules, namely the Tariff Schedule of the United States (TSUS). In *Corning Glass Works v. United States*, 586 F.2d 822 (CCPA 1978), the United States Court of Customs and Patent Appeals (CCPA) defined “check” as “to inspect and ascertain the condition of[,] especially in order to determine that the condition is satisfactory.” *Corning Glass Works*, 586 F.2d at 822 (citing *Webster’s Third New International Dictionary*, 381 (1971)); *Photonetics, Inc. v. United States*, 659 F. Supp. 2d 1317, 1323 (Ct. Int’l Trade 2009). Furthermore, the CCPA in *Corning Glass Works* concluded that “‘checking instruments’ clearly and unambiguously encompasses machines... that carry out steps in a process for inspecting ampules to determine whether they conform to an imperfection-free standard.” *Corning Glass Works*, 586 F.2d at 822.

While prior TSUS cases may be instructive in interpreting identical language in the HTSUS, they are not dispositive. H.R. Conf. Rep. No. 100–576, at 549–50 (1988), reprinted in 1988 U.S.C.C.A.N. 1547, 1582–83. As explained in the House Conference Report accompanying the Omnibus Trade and Competitiveness Act of 1988, which enacted the HTSUS:

[i]n light of the significant number and nature of changes in nomenclature from the TSUS to the HTSUS, decisions by the Customs Service and the courts interpreting the nomenclature under the TSUS are not to be deemed dispositive in interpreting the HTSUS. Nevertheless, on a case-by-case basis prior decisions should be considered 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.

Consistent with the CCPA’s definition of the term “checking instruments” in *Corning Glass Works*, CBP has previously classified machines that carry out steps in a process for inspecting and ascertaining the condition of electrical quantities as measuring or checking instruments and apparatus of Ch. 90. In NY K86983, dated July 21, 2004, CBP classified two models of wafer probers, used in the testing of ICs to automatically position etched wafers underneath a wafer probe card, in subheading 9030.82.00, HTSUS, as other

² Oxford English Dictionary, <http://www.oed.com> (last visited June 21, 2012).

instruments or appliances for measuring or checking electrical quantities, for measuring or checking semiconductor wafers or devices. There, CBP noted that the Tokyo Electron P-8 and P-12XL Fully Automatic Wafer Probers were incapable of performing independent measuring or checking functions, but that the machines were designed to be combined with an ATE and wafer probe card to form an IC testing system. Because the wafer probers were used to precisely position the ICs of an etched wafer underneath the probe needles of a wafer probe card, thereby establishing electrical connections between the ATE, wafer probe card, and test wafer ICs, CBP determined that the wafer prober machines were properly classified as measuring or checking instruments. *See also* NY A89407, dated November 25, 1996, *subsequently modified by* HQ 961332, dated April 7, 1998 (classifying wafer probers for IC testing in subheading 9030.82.00, HTSUS). Similarly, CBP has classified various models of ATE used to test and check ICs in subheading 9030.82, HTSUS. *See, e.g.*, NY R04578, dated September 7, 2006; HQ 965528, dated August 14, 2002; and NY E81071, dated May 21, 1999.

Having examined the common, or commercial, meanings of the terms “apparatus” and “checking” as used in heading 9030, HTSUS, we find that the instant wafer probe cards are accurately described as apparatus that carry out steps in a process for determining the condition of the electrical properties of ICs etched onto semiconductor wafers. First, with regards to the term “apparatus,” the wafer probe cards are described as assemblies consisting of a PCB, numerous wafer probes (probe needles), and a reinforced structural support onto which the PCB and wafer probes (probe needles) are mounted. Second, the wafer probe cards perform “checking” operations, because they contain PCBs that manipulate and control the power and voltage characteristics of electrical signals before such signals are sent to the wafer via connections made by the wafer probes (probe needles). The presence of a PCB allows the wafer probe cards to interpret coded instructions sent by the automatic test equipment (ATE), determine the timing and order of signals to be sent to the test subject ICs, and manage data flow between the wafer probe card and the ATE. Inasmuch as the manipulation and control of electrical signals is a necessary step to test the functional and operational integrity of the ICs on semiconductor wafers, CBP concludes that the probe cards are accurately described as checking instruments, as defined by the CIT in *Corning Glass Works*, 586 F.2d at 822. Consequently, we find that the probe cards are classified in heading 9030, HTSUS, which provides for “Oscilloscopes, spectrum analyzers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 9028; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionizing radiations; parts and accessories thereof.”

As the probe cards are described fully in heading 9030, HTSUS, as apparatuses for measuring or checking electrical quantities, their classification under heading 8536, HTSUS, is precluded by application of Note 1(m) to Section XVI.

HOLDING:

By application of GRI 1, the probe cards are classified under heading 9030, HTSUS, specifically in subheading 9030.82.00, which provides for “Oscillo-

scopes, spectrum analyzers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 9028; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionizing radiations; parts and accessories thereof: Other instruments and apparatus: For measuring or checking semiconductor wafers or devices.” The 2014 column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

In accordance with the above analysis, HQ H011054, dated September 9, 2011, and HQ H011056, dated September 9, 2011, are hereby REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

GENERAL NOTICE

19 CFR PART 177

Proposed Revocation of a Ruling Letter and Modification of Treatment Relating to the Tariff Classification of Botox® Cosmetic

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

ACTION: Notice of proposed revocation of a ruling letter and modification of treatment concerning the tariff classification of Botox® Cosmetic.

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 CBP intends to revoke one ruling letter pertaining to the tariff classification of Botox® Cosmetic, under the Harmonized Tariff Schedule of the United States (“HTSUS”). CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATES: Comments must be received on or before May 30, 2014.

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

FOR FURTHER INFORMATION CONTACT: Emily Beline, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, (202) 325–7799.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057), (“Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended and related laws. Two new concepts which emerge from the law are “informed compliance” and “shared responsibility.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade 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 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 section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the classification of Botox® Cosmetic. Although in this notice CBP is specifically referring to New York Ruling Letter (“NY”) NY 209720, dated April 9, 2012, (Attachment A) this notice 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 ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer’s or CBP’s previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should advise CBP during this notice 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 notice of this proposed action.

In NY 209720 CBP classified Botox® Cosmetic under subheading 3304.99.50, HTSUS, which provides for Beauty or make-up preparations and preparations for the care of the skin (other than medications), including sunscreen or sun tan preparations. It is now CBP's position that Botox® Cosmetic is properly classified under subheading 3002.90.51, HTSUS, which provides for "Human blood;...; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products: Other: Other: Other: Other.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke NY209720 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter H227295 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: March 31, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N209720

April 9, 2012

CLA-2-33:OT:RR:NC:N2:240

CATEGORY: Classification

TARIFF NO.: 3304.99.5000

MS. ILIANA FULLER
ALLERGAN
2525 DUPONT DRIVE
IRVINE, CA 92612

RE: The tariff classification of BOTOX® Cosmetic from Ireland

DEAR MS. FULLER:

In your letter dated March 15, 2012, you requested a tariff classification ruling.

BOTOX® Cosmetic (onabotulinumtoxinA) for injection, is a sterile, vacuum-dried purified botulinum toxin type A, produced from fermentation of Hall strain Clostridium botulinum type A grown in a medium containing casein hydrolysate, glucose, and yeast extract, intended for intramuscular use. It is purified from the culture solution by dialysis and a series of acid precipitations. The principle use in the United States of BOTOX® Cosmetic is a preparation, which is injected into muscles and used to improve the look of moderate to severe frown lines between the eyebrows. BOTOX® Cosmetic is supplied in a single use vial containing 100 units.

The applicable subheading for the BOTOX® Cosmetic will be 3304.99.5000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Other: Other: Other. The rate of duty will be free.

Perfumery, cosmetic, and toiletry products are subject to the requirements of the Food, Drug and Cosmetic Act, and the Fair Packaging and Labeling Act (FPLA), which are administered by the U.S. Food and Drug Administration. Questions regarding FDA requirements may be addressed to the U.S. Food and Drug Administration, Office of Cosmetics and Colors, 5100 Paint Branch Parkway, College Park, MD 20740-3835, telephone number 888-463-6332, or by visiting their website at: www.fda.gov.

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 Stephanie Joseph (646) 733-3268.

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ227295
CLA-2 OT:RR: CTF:TCM: ERB
CATEGORY: Classification
TARIFF NO.: 3002.90.51

Ms. LISA CROSBY
SIDLEY AUSTIN, LLP
1501 K STREET, NW
WASHINGTON DC 20005

RE: Revocation of N209720 dated April 9, 2012; BOTOX® Cosmetic

DEAR Ms. CROSBY:

This letter is in response to Allergan Inc.'s ("Allergan") request for reconsideration, dated July 2, 2012, made on Allergan's behalf by you as Allergan's counsel referencing New York Ruling Letter ("NY") N209720 dated April 9, 2012, concerning the tariff classification of BOTOX® Cosmetic (onabotulinumtoxinA). We have reviewed NY 209720 and found it to be incorrect. Accordingly, for the reasons set forth below, we are revoking that ruling.

BOTOX® (onabotulinumtoxinA) Purified Neurotoxin Complex, is approved by the Food and Drug Administration ("FDA") and marketed for the treatment of cervical dystonia (a neurological disorder that causes neck spasms), strabismus (eyes do not face the same direction), blepharospasm associated with dystonia (a disorder which causes involuntary eye spasms), overactive bladder due to incontinence, and to prevent headaches in adults with chronic migraines, among other ailments.

BOTOX® Cosmetic (onabotulinumtoxinA) is an identical compound approved by the FDA to be injected into facial muscles to temporarily improve the look of moderate to severe frown lines between the eyebrows. Both products are prescription drugs, diluted for administration by a doctor, via injection, which is described in the FDA-approved prescribing and packaging information that accompanies the products. The contents of the vials and the dosage amounts are the same for both products. The only difference between the two products is the FDA labeling requirements.

Currently, BOTOX® is classified in 3002.90.51, Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for "Human blood;...; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products: Other: Other: Other¹. BOTOX® Cosmetic is classified in 3304.99.50, Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations².

FACTS:

Each vial of BOTOX® contains either 100 Units of Clostridium botulinum type A neurotoxin complex, 0.5 mg of Albumin Human, and 0.9 mg of sodium chloride; or 200 Units of Clostridium botulinum type A neurotoxin complex, 1 mg of Albumin Human, and 1.8 mg of sodium chloride in a sterile, vacuum-dried form without a preservative. Each vial of BOTOX® Cosmetic contains either 50 Units of Clostridium botulinum type A neurotoxin complex, 0.25 mg

¹ See NYH89591

² See NY209720

of Albumin Human, and 0.45 mg of sodium chloride; or 100 Units of Clostridium botulinum type A neurotoxin complex, 0.5 mg of Albumin Human, and 0.9 mg of sodium chloride in a sterile, vacuum-dried form without a preservative.

Both products are intramuscular injections of a form of botulinum toxin type A, (onabotulinumtoxinA), designed to harness the deleterious effects of the toxin to reduce muscle activity upon absorption by the muscles. This reduction in muscle activity will reduce the appearance of lines and wrinkles when injected between the eyebrows but it will also, for example, reduce or dull migraine headache symptoms when injected around the head and neck, or calm neck and shoulder twitches caused by certain neurological disorders, when injected into the shoulders.

ISSUE:

Whether BOTOX® Cosmetic, an identical chemical compound to BOTOX®, but marketed under different names for different uses should be classified under heading 3002, HTSUS, as a toxin or under heading 3304, as a beauty or make-up preparation or preparation for the care of the skin?

LAW AND ANALYSIS:

Classification of goods 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 may then be applied. 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 the GRIs 1 through 5.

The HTSUS provisions under consideration are as follows:

3002	Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera, other blood fractions and immunological products, whether or not modified or obtained by means of biotechnological processes; vaccines, toxins ³ , cultures of micro-organisms (excluding yeasts) and similar products:
3304	Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sun-screen or sun tan preparations; manicure or pedicure preparations:

Proper classification requires analysis as to whether any Section or Chapter Notes exclude the product from heading 3002. Note 1 to Chapter 30, HTSUS, states, in pertinent part:

This chapter does not cover:

- (e) Preparations of headings 3303 to 3307, even if they have therapeutic or prophylactic properties; ...”.

³ Emphasis added

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The EN to heading 30.02 states, in pertinent part:

This heading covers:

(D) Vaccines, **toxins**⁴, cultures of micro-organisms (excluding yeasts) and similar products.

These products include:

(2) Toxins (poisons), toxoids, crypto-toxins and anti-toxins.

The EN to heading 33.04 states, in pertinent part:

(A) Beauty or make-up preparations and preparations for the care of the skin, including sunscreen or sun tan preparations

This part covers:

(3) Other beauty or make-up preparations and preparation for the care of the skin (other than medicaments), such as: face powders (whether or not compressed), baby powders (including talcum powder, not mixed, not perfumed, put up for retail sale), other powders and grease paints; beauty creams, cold creams, make-up creams, cleaning creams, skin foods (including those containing bees' royal jelly) and skin tonics or body lotions; petroleum jelly, put up in packages of a kind sold by retail for the care of the skin; barrier creams to give protection against skin irritants; **injectable intracutaneous gels for wrinkle elimination and lip enhancement (including those containing hyaluronic acid)**⁵; anti-acne preparations (other than soaps of heading 34.01) which are designed primarily to cleanse the skin and which do not contain sufficiently high levels of active ingredients to be regarded as having a primary therapeutic or prophylactic effect against acne; toilet vinegars which are mixtures of vinegars or acetic acid and perfumed alcohol

Thus, we begin our analysis determining whether BOTOX® Cosmetic is *prima facie* classified under heading 3304, HTSUS.

BOTOX® Cosmetic, as well as its identical sister-product, BOTOX®, contain botulinum type A neurotoxin complex, albumin human, and sodium chloride. In layman's terms, that is a mixture comprised of a toxin with small amounts of a protein and salt⁶. At the outset, we must determine if the subject mixture is also a "preparation" as it is understood by the HTSUS.

⁴ Emphasis added.

⁵ Emphasis added.

⁶ Albumin human is an abundant water soluble protein found in human plasma that assists with transporting drugs into a patient by mixing with the diluent prior to administration. It is not an active ingredient. See <http://medical-dictionary.thefreedictionary.com/Albumin+human> and <http://www.uniprot.org/uniprot/P02768>

The term “preparation” is not defined in the HTSUS, but “To assist...in ascertaining the common meaning of a tariff term, the court may rely upon its own understanding of the terms used, and it may consult lexicographic and scientific authorities, dictionaries, and other reliable information sources.” *Brookside Veneers, Ltd. v. United States*, 847 F.2d 786, 789, 6 Fed. Cir. (T) 121, 125 (Fed. Cir) cert. denied, 488 U.S. 943 (1988). CBP has previously done exactly that with the term “preparation” and have determined that the relevant definition of “preparation,” found in the Oxford English Dictionary, 2281 (compact ed. 1987), is “6. A substance specially prepared, or made up for its appropriate use or application, e.g. as food or medicine, or in the arts or sciences.” Further, Webster’s Third New International Dictionary, 1790 (unabridged 1986), states: “5. Something that is prepared: something made, equipped, or compounded for a specific purpose.” In the Random House Unabridged Dictionary 2d ed. (1993) “preparation” is, in pertinent part: “5. Something prepared, manufactured or compounded: a special preparation for sunbathers⁷.” Taking these definitions and usages together, it is clear that each specifically indicate that a “preparation” is something prepared for a designated purpose or items put up together for a specific use. Thus, under the common meaning of the term, the subject merchandise is something created for a specific purpose and is a “preparation” as it is understood by the HTSUS.

That said, the terms of heading 3304, HTSUS, provide for beauty and make up preparations, and preparations for the care of the skin. Goods of this heading must be substances made for the specific purpose of beautifying or caring for the user’s skin, understood to be the natural outer layer of tissue on the human body. So our analysis next turns to whether the subject merchandise is a beauty preparation or a make-up preparation or a preparation for the care of the skin.

The exemplars in EN (A)(3) to heading 3304, HTSUS, are all products used to enhance, clean, change, or improve the outer appearance, texture or appeal of the user’s skin. “Beauty” and “make-up” or cosmetics are not defined in the HTSUS. However, Merriam-Webster defines these concepts as: (1) of, relating to, or making for beauty especially of the complexion; (2) done or made for the sake of appearance: as (a) correcting defects especially of the face⁸. Without getting into whether wrinkles are beautiful in the eye of the beholder, BOTOX® Cosmetic is not a “beauty product” because it does not necessarily “beautify” the user by enhancing or reacting with the user’s skin.⁹ Neither is it “make-up” as it is understood by the exemplars of EN (A)(3), as the powders, creams, lotions, or jellies listed are applied topically to enhance, augment, improve or change the user’s skin so as to create a different outward appearance. BOTOX® Cosmetic is not applied topically to the skin at all. It is not created for or marketed for the care of the skin. It does not have a direct effect on the skin itself. The product is injected intramuscu-

⁷ See HQ 965977, dated December 19, 2002 (classifying bulk cosmetic preparations; lipstick)

⁸ See <http://www.merriam-webster.com/dictionary/cosmetics>, See also HQ 967518, dated July 5, 2006, (classifying Nutriol Eyelash Conditioner), where CBP noted that cosmetics or makeup is defined in Encyclopedia Britannica as “substances to enhance the beauty of the human body, apart from simple cleaning.”

⁹ *Id.*

larly, or into the muscles, where the toxic effects are experienced upon absorption. In the case of BOTOX® Cosmetic, those effects include the softening of the muscles which may give the appearance that wrinkles in the skin are lessened. As such, the subject merchandise is not a beauty or make-up preparation or preparation for the care of the skin, as is described by EN (A)(3) and heading 3304, HTSUS.

Furthermore, CBP has already distinguished between similar products that are instructive in the instant case. In NY R04609 CBP determined that Juvéderm™ Dermal Filler, a sterile gel implant put up in a pre-filled syringe containing a viscoelastic, transparent hyaluronic acid gel, designed and meant to be injected into the skin, is a skin care preparation indicated for use in the correction of facial wrinkles, acne scars and other soft issue contour deformities, and it is classified under heading 3304, HTSUS.¹⁰ It is also specifically provided for in EN (A)(3) as an “injectable intracutaneous gel for wrinkle elimination and lip enhancement (including those containing hyaluronic acid).” Contrast that item with the subject merchandise in N111260, where CBP classified Xeomin® a highly purified botulinum neurotoxin type A, intended for intramuscular injections for the treatment of cervical dystonia and blepharospasms in adults, under heading 3002, HTSUS.¹¹ The subject merchandise in N111260 contains the same type of toxin as BOTOX® Cosmetic.

Thus, BOTOX® Cosmetic is not *prima facie* “beauty or make up preparation, or a preparation for the care of the skin.” Pursuant to GRI 1, it is not classifiable in heading 3304, HTSUS, and thus is not excluded from heading 3002, HTSUS by Note 1 to that chapter. BOTOX® Cosmetic is an intramuscular injection of a toxin and is properly classified in heading 3002, HTSUS.

HOLDING:

Under the authority of GRI 1 via Note 1 to Chapter 30, HTSUS and EN 30.02 and EN 33.04 the subject BOTOX® Cosmetic is a toxin and properly classifiable under subheading 3002.90.51.50, HTSUS. The duty rate is free.

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

EFFECT ON OTHER RULINGS:

NY 209720, dated April 9, 2012 is REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

¹⁰ See NYR04609, dated September 5, 2006, (classifying Juvderm™ Dermal Filler under subheading 3304.99.50, HTSUS).

¹¹ See N111260, dated July 6, 2010 (classifying Xeomin® under subheading 3002.90.15, HTSUS).

**PROPOSED REVOCATION OF FIVE RULING LETTERS
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF
WOODEN SHELVING UNITS WITH BASKETS**

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

ACTION: Notice of proposed revocation of five ruling letters and revocation of treatment relating to the tariff classification of wooden shelving units with baskets.

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) proposes to revoke five ruling letters relating to the tariff classification of wooden shelving units with baskets under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before May 30, 2014.

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

FOR FURTHER INFORMATION CONTACT: Beth Green Junior, Tariff Classification and Marking Branch: (202) 325–0347.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are

“informed compliance” and **“shared responsibility.”** These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade 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 section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), this Notice advises interested parties that CBP intends to revoke five ruling letters pertaining to the tariff classification of wooden shelving units with baskets. Although in this Notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) N218739, dated June 20, 2012 (Attachment A), NY N117616, dated August 23, 2010 (Attachment B), NY N087304, dated December 21, 2009 (Attachment C), NY N084602, dated December 8, 2009 (Attachment D), and NY N063740, dated June 12, 2009 (Attachment E), this Notice 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., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this Notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. §1625(c)(2)), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice 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 notice of this proposed action.

In NY N218739, NY N117616, NY N087304, NY N084602, and NY N063740, CBP determined that the subject wooden shelving units with baskets were classified in subheading 9403.50, HTSUS, which

provides for “Other furniture and parts thereof: wooden furniture of a kind used in the bedroom ...” It is now CBP’s position that the wooden shelving units with baskets are properly classified in sub-heading 9403.60, HTSUS, which provides for “Other furniture and parts thereof: other wooden furniture...”

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke NY N218739, NY N117616, NY N087304, NY N084602, and NY N063740, and to revoke or to modify any other ruling not specifically identified, in order to reflect the proper classification of wooden shelving units with baskets, according to the analysis contained in proposed HQ H240196, set forth as Attachment F to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially similar transactions.

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

Dated: April 2, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N218739

June 20, 2012

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

CATEGORY: Classification

TARIFF NO.: 9403.50.9080

RUBY CHAN
CUSTOMS COMPLIANCE ANALYST
WILLIAMS – SONOMA INC.
151 UNION STREET
SAN FRANCISCO, CA 94111

RE: The tariff classification of a floor standing, shelving unit from China.

DEAR MS. CHAN:

In your letter dated May 21, 2012, you requested a tariff classification ruling.

The Benchwright Ladder (sku# 8633315) is a floor standing, all wood shelving unit used for storage. The shelving unit is floor standing and resembles a stepladder with four shelves of different sizes. Each shelf is a “step” with the smallest “step” at the top and the largest at the bottom. Each shelf is a flat piece of wood with no lip or raised outer edge. On each of the four shelves there is a storage basket made of mild steel with a cotton/polyester liner. The size of each basket matches the size of each shelf, and is not permanently affixed to the wood. The shelving unit measures 17.75 inches long by 18 inches wide by 58 inches high. It is stated that the Benchwright Ladder is designed to be used for storage only, and not as a functional ladder.



The subject shelving unit is composed of different components (wood shelving unit and wire baskets with textile liners) and is considered a composite good. The Explanatory Notes (ENs) to the Harmonized Tariff Schedule of the United States (HTSUS), at General Rules of Interpretation {GRI} 3 (b) (VIII), state that the factor which determines essential character will vary between different kinds of goods. It may for example, be determined by the nature of the materials or components, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods. When the essential character of a composite good can be determined, the whole product is classified as if it consisted only of the material or component that imparts the essential character to the composite good. In this case, the wood imparts

the essential character to the good, in that the bulk, weight and cost of the shelving unit, is attributed to the wooden ladder with its wooden shelves.

With the shelving unit classified only in one heading, 9403, the issue becomes the proper ten-digit subheading for the item. Accordingly, GRI 6 is implicated. GRI 6 provides that the classification of goods at the subheading level shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules [GRIs 1 - 5], on the understanding that only subheadings at the same level are comparable. The shelving unit is prima facie classifiable in subheadings 9403.50 (Wooden furniture of a kind used in the bedroom) and 9403.60 (Other wood furniture). It is our opinion, using GRI 6 in conjunction with GRI 3 (a) that the shelving unit is more specifically provided for in the subheading for wooden bedroom furniture, than the less descriptive subheading of other wooden furniture. See *Len-Ron Manufacturing Co. v. United States*, No. 02-1495, United States Court of Appeals, dated July 3, 2003. As such, the shelving unit is classified in subheading 9403.50, HTSUS.

The applicable subheading for the Benchwright ladder, shelving unit, will be 9403.50.9080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other furniture and parts thereof: Wooden furniture of a kind used in the bedroom: Other: Other; Other." The rate of duty will be free.

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

The merchandise in question may be subject to Antidumping Duties (AD) or Countervailing Duties (CVD). Specifically, the storage ladder may be subject to AD for wooden bedroom furniture from China under the Department of Commerce case number A-570-890. Written decisions regarding the scope of AD/CVD orders are issued by the Import Administration in the Department of Commerce, and are separate from tariff classification and origin rulings issued by Customs and Border Protection. You can contact them at <http://www.trade.gov/ia/> (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 <http://www.usitc.gov> (click on "Antidumping and countervailing duty investigations"), and you can search AD/CVD deposit and liquidation messages using the AD/CVD Search tool at <http://adcdvd.cbp.gov/>.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Neil H. Levy at (646) 733-3036.

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

[ATTACHMENT B]

N117616

August 23, 2010

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

CATEGORY: Classification

TARIFF NO.: 9403.50.9080

KEITH McLAUGHLIN
INVENTORY MANAGER
AMERICA'S GARDENING RESOURCE, INC.
128 INTERVALE ROAD
BURLINGTON, VT 05401

RE: The tariff classification of three and six drawer chests from China.

DEAR MR. McLAUGHLIN:

In your letter dated August 3, 2010, you requested a tariff classification ruling.

The first chest, identified as SKU # 39-050, is a floor standing unit with 3 drawers. The frame of the unit is made of untreated Chinese fir (*Cunninghamia lanceolata*) and the drawers are made of willow. Photographs indicate that the frame does not have any side or back panels. The drawers resemble baskets, and are supported on two 1 inch wide runners, each positioned 2-5/8 inches on center from the outside of the frame. The overall chest measures: 17½ inches wide by 12¼ inches deep by 29½ inches high. This item is unpainted and is imported in a fully assembled condition.

The second chest, identified by SKU # 39-051, is a floor standing unit with 6 drawers. The frame of the unit is made of untreated Chinese fir (*Cunninghamia lanceolata*) and the drawers are made of willow. Photographs indicate that the frame does not have any side or back panels. The drawers resemble baskets, and are supported on two 1 inch wide runners, each positioned 2¾ inches on center from the outside of the frame. The overall chest measures: 31½ inches wide by 13½ inches deep by 29½ inches high. The drawers are arranged in two columns of three drawers each, situated alongside one another. This unit is unpainted and is imported in a fully assembled condition.

In your submission you indicate that the chests are intended for use in a bathroom, kitchen, den or mudroom, and that the chests are perfect for storing miscellaneous items or small vegetables and fruits. Though you do not state it in your description for the merchandise, three and six drawer chests are commonly used in the bedroom too.

Dictionary and encyclopedia definitions describe "bedroom furniture" as furniture intended for use in the bedroom. Further elaboration indicates that bedroom furniture, sometimes called a bedroom set or bedroom suite consists of a group of furniture in a bedroom or sleeping quarters; these groupings include, but are not limited to, beds; wardrobes; dressers (also known as a chest of drawers usually placed in a bedroom); chests; nightstands; armoires; vanities; trunks; and mirrors. Door Chests and Armoires can also have shelves for television receivers and other entertainment electronics.

It therefore follows that key to defining "bedroom furniture" for tariff purposes is not only the intent of the item, but also, the primary use of the item at time of import to be used in the bedroom. See New York Ruling, N069325 dated August 6, 2009 and N080635 dated November 5, 2009, both

of which concluded that the primary use of the furniture pieces were for the bedroom, even though those pieces could be placed in settings other than in the bedroom.

Further consistent with New York Rulings: N087304 dated December 21, 2009; N084602 dated December 8, 2009; and N063740 dated June 12, 2009, chests and dressers with drawers, primarily for the use in the bedroom, have been classified within Subheading 9405.50, HTSUS – wooden furniture of a kind used in a bedroom. Review of the subject merchandise, indicates that both pieces of furniture are similar in design and construction to chests and dressers used in the bedroom.

The applicable subheading for the three drawer and six drawer chests, will be 9403.50.9080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other furniture and parts thereof: Wooden furniture of a kind used in the bedroom: Other: Other; Other.” The rate of duty will be free.

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

The merchandise in question may be subject to antidumping duties or countervailing duties. Written decisions regarding the scope of AD/CVD orders are issued by the Import Administration in the Department of Commerce and are separate from tariff classification and origin rulings issued by Customs and Border Protection. You can contact them at <http://www.trade.gov/ia/> (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 <http://www.usitc.gov> (click on “Antidumping and countervailing duty investigations”), and you can search AD/CVD deposit and liquidation messages using the AD/CVD Search tool at <http://www.cbp.gov> (click on “Import” and “AD/CVD”).

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Neil H. Levy at (646) 733–3036.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT C]

N087304

December 21, 2009

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

CATEGORY: Classification

TARIFF NO.: 9403.50.9080

TIM DAVIS, SALES ASSOCIATE
ALLIANCE SALES AND MARKETING
2250 BUSH DRIVE
MCKINNEY, TX 75070

RE: The tariff classification of five furniture pieces from China.

DEAR MR. DAVIS:

In your letter dated December 9, 2009, you requested a tariff classification ruling.

Item number A229-001A is a three drawer furniture piece. The frame of the three drawer unit is made of wood, and does not have sides or back panels. Each drawer is hand woven from water hyacinth, and fits into the wooden frame. The top of the drawer unit is solid wood. This item measures 16.5 inches in length, 15.75 inches in width, and 27.5 inches in height.

Item number A229-002 is a four drawer furniture piece. The frame of the four drawer unit is made of wood, and does not have sides or back panels. Each drawer is constructed from woven water hyacinth, and fits into the wooden frame. The top of the drawer unit is solid wood. This item measures 18 inches in length, 9 inches in width, and 25.5 inches in height.

Item number A229-004 is a six drawer furniture piece. The frame of the six drawer unit is made of wood, and does not have sides or back panels. Each drawer is hand woven from seagrass and fits into the wooden frame. The top of the drawer unit is solid wood. This item measures 24.8 inches in length, 12.6 inches in width, and 29.5 inches in height.

Item number A229-005 is a four shelf furniture piece. The frame of the four shelf unit is made of wood, and the shelving is constructed from woven seagrass. This item measures 13 inches in length, 13 inches in width, and 32 inches in height.

A photo of item number A229-006 appears to be a bench or table. The frame of the unit is made of wood, while the top surface is made from hand woven seagrass. This item measures 18 inches in length, 12 inches in width, and 12.5 inches in height.

In response to your inquiry concerning the classification of these items, we must consider the definition and meaning of bedroom furniture. The term "bedroom furniture" is not defined in the text of the HTSUS, nor the Explanatory Notes to the HTSUS. When terms are not defined, they are construed in accordance with their common and commercial meaning – *Nippon Kogasku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982).

Dictionary and encyclopedia meanings define "bedroom furniture" as furniture intended for use in the bedroom. Further elaboration indicates that bedroom furniture, sometimes called a *bedroom set* or bedroom suite consists of a group of *furniture* in a bedroom or sleeping quarters; these groupings

include, but are not limited to, *beds*; wardrobes; dressers (also known as a chest of drawers usually placed in a bedroom); chests; nightstands; armoires; vanities; trunks; and mirrors. Door Chests and Armoires can also have shelves for television receivers and other entertainment electronics.

It therefore follows that key to defining “bedroom furniture” for tariff purposes is not only the intent of the item, but also, the primary use (emphasis added) of the item at time of import to be used in the bedroom. See New York Ruling, N069325 dated August 6, 2009 and N080635 dated November 5, 2009, both of which concluded that the primary use of the furniture pieces were for the bedroom, even though those pieces could be placed in settings other than in the bedroom.

Items, A229-001A and A229-004, are drawer units that appear to be identical to the three and six drawer units of New York Ruling, N084602 dated December 8, 2009. Item A229-002 is a four drawer unit similar to item A229-004, the six drawer unit, except in a different configuration and sizing of the drawers. All of these drawer units are akin to dressers and chests with drawers – see New York Rulings, N063740 dated June 12, 2009 and N084602 dated December 8, 2009. These items meet the definition for wooden furniture of a kind used in the bedroom.

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

GRI 3(b), provides that composite goods (goods made up of different components which are attached to each other to form a practically inseparable whole or separable components provided these components are adapted to one another and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts) are to be classified according to the component that gives the good its essential character.

The Explanatory Notes (ENs) to the HTSUS, specifically “EN VIII to GRI 3(b) of the HTSUS, explains that the factors which determine essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods.”

By application of GRI 3(b), the three furniture pieces with drawers are composite goods consisting of wood frames and basket drawers. The essential character of each, of the drawer units, is imparted by the wood frames, as the frames provide the structure for the furniture pieces.

For items, A229-005 and A229-006, we cannot make a determination of classification at this time without samples and marketing literature as to the primary use or uses of these pieces.

The applicable subheading for the three drawer units, will be 9403.50.9080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other furniture and parts thereof: Wooden furniture of a kind used in the bedroom: 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/>.

The merchandise in question may be subject to antidumping duties or countervailing duties. Written decisions regarding the scope of AD/CVD orders are issued by the Import Administration in the Department of Commerce and are separate from tariff classification and origin rulings issued by Customs and Border Protection. You can contact them at <http://www.trade.gov/ia/> (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 <http://www.usitc.gov> (click on “Antidumping and countervailing duty investigations”), and you can search AD/CVD deposit and liquidation messages using the AD/CVD Search tool at <http://www.cbp.gov> (click on “Import” and “AD/CVD”).

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Neil H. Levy at (646) 733-3036.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT D]

N084602

December 8, 2009

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

CATEGORY: Classification

TARIFF NO.: 9403.50.9080

DAVID ARMBRUSTER
IMPORT COORDINATOR
GARDEN RIDGE
19411 ATRIUM PLACE
HOUSTON, TEXAS 77449

RE: The tariff classification of floor standing furniture pieces with drawers from China.

DEAR MR. ARMBRUSTER:

In your letter dated November 17, 2009, you requested a tariff classification ruling.

Photo of item 124019370 indicates a floor standing furniture piece having three basket drawers made from woven [Water Hyacinth]. The frame and top of the drawer unit is made of wood and MDF, and is constructed specifically to accept the baskets. The overall dimension of the drawer unit is 17 inches in length, 16 inches in width, and 28 inches in height, while the individual baskets measure approximately 15 inches in length, 14 inches in width, and 8 inches in height.

Photo of item 124019371 indicates a floor standing furniture piece having six basket drawers made from woven [Water Seagrass]. The frame and top of the drawer unit is made of wood and MDF, and is constructed specifically to accept the baskets. The overall dimension of the drawer unit is 25 inches in length, 13 inches in width, and 30 inches in height. One basket drawer measures approximately 22 inches in length, 10 inches in width, and 10 inches in height; two basket drawers measure approximately 11 inches in length, 10 inches in width, and 10 inches in height; and three basket drawers measure approximately 7 inches in length, 10 inches in width, and 10 inches in height.

Photo of item 124019376 indicates a floor standing furniture piece having two basket drawers made from woven [Corn Husk]. The frame and top of the drawer unit is made of wood and MDF, and is constructed specifically to accept the baskets. The overall dimension of the drawer unit is 16 inches in length, 10 inches in width, and 22 inches in height, while the individual baskets measure approximately 13 inches in length, 8 inches in width, and 8 inches in height.

Photo of item 124019377 indicates a floor standing furniture piece having four basket drawers made from woven [Corn Husk]. The frame and top of the drawer unit is made of wood and MDF, and is constructed specifically to accept the baskets. The overall dimension of the drawer unit is 16 inches in length, 10 inches in width, and 40 inches in height, while the individual baskets measure approximately 13 inches in length, 8 inches in width, and 8 inches in height.

You indicate that the four furniture pieces with drawers, pertaining to this ruling, are similar to the storage units in New York Ruling, N064537 dated June 22, 2009, whereas the storage units were held to be classified as "other

articles of wood.” We disagree, New York Ruling issued to Garden Ridge, N063740 dated June 12, 2009, for two and four door dresser units, concluded that the classification of such goods was “wooden furniture of a kind used in the bedroom.” Items 124019370 and 124019371 are similar to the dresser units of N063740, and items 124019376 and 124019377 appear to be identical to the two and four drawer dresser units of N063740, except with different item numbers.

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

GRI 3(b), provides that composite goods (goods made up of different components which are attached to each other to form a practically inseparable whole or separable components provided these components are adapted to one another and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts) are to be classified according to the component that gives the good its essential character.

The Explanatory Notes (ENs) to the HTSUS, specifically “EN VIII to GRI 3(b) of the HTSUS, explains that the factors which determine essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods.”

By application of GRI 3(b), the four furniture pieces with drawers are composite goods consisting of wood frames and basket drawers. The essential character of each, of the drawer units, is imparted by the wood frames, as the frames provide the structure for the furniture pieces.

The applicable subheading for the four furniture pieces with drawers, will be 9403.50.9080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other furniture and parts thereof: Wooden furniture of a kind used in the bedroom: Other; Other; Other.” The rate of duty will be free.

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

The merchandise in question may be subject to antidumping duties or countervailing duties. Written decisions regarding the scope of AD/CVD orders are issued by the Import Administration in the Department of Commerce and are separate from tariff classification and origin rulings issued by Customs and Border Protection. You can contact them at <http://www.trade.gov/ia/> (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 <http://www.usitc.gov> (click on “Antidumping and countervailing duty investigations”), and you can search AD/CVD deposit and liquidation messages using the AD/CVD Search tool at <http://www.cbp.gov> (click on “Import” and “AD/CVD”).

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Neil H. Levy at (646) 733-3036.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT E]

N063740

June 12, 2009

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

CATEGORY: Classification

TARIFF NO.: 9403.50.9080

DAVID PAUL ARMBRUSTER
IMPORT COORDINATOR
GARDEN RIDGE
19411 ATRIUM PLACE
HOUSTON, TX 77084

RE: The tariff classification of a two and four drawer dresser from China.

DEAR MR. ARMBRUSTER:

In your letter dated June 4, 2009, you requested a tariff classification ruling.

Item JM92125 is a two drawer corn husk basket dresser. The dresser frame consists of a wood bottom and top, with one wood support shelf. The frame does not have side or back panels. Each corn husk basket is specifically sized to fit into the dresser frame. Listed dimensions indicate 16 inches in length, 10 inches in width, and 21.5 inches tall.

Item JM92128DH is a four drawer corn husk dresser. The dresser frame consists of a wood bottom and top, with three wood support shelves. The frame does not have side or back panels. Each corn husk basket is specifically sized to fit into the dresser frame. Listed dimensions indicate 16 inches in length, 10 inches in width, and 39.8 inches tall.

It has been suggested by you that classification of the dressers should be 9403.89.6010, furniture of other materials, in that the corn husk baskets are the most significant feature of the dressers, thereby providing the essential character of the items.

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

GRI 3(b), provides that composite goods (goods made up of different components which are attached to each other to form a practically inseparable whole or separable components provided these components are adapted to one another and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts) are to be classified according to the component that gives the good its essential character.

The Explanatory Notes (ENs) to the HTSUS, specifically "EN VIII to GRI 3(b) of the HTSUS, explains that the factors which determine essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods."

By application of GRI 3(b), both the two and four dressers are composite goods consisting each of a wood frame (shelf or shelves) with corn husk baskets. The essential character of the dressers is imparted by the wood frame and its wood support shelf or shelves, which provides the structural integrity on which the baskets rest upon.

The applicable subheading for the two and four drawer dresser, will be 9403.50.9080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other furniture and parts thereof: Wooden furniture of a kind used in the bedroom: Other; Other; Other.” The rate of duty will be free.

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

The merchandise in question may be subject to antidumping duties or countervailing duties. Written decisions regarding the scope of AD/CVD orders are issued by the Import Administration in the Department of Commerce and are separate from tariff classification and origin rulings issued by Customs and Border Protection. You can contact them at <http://www.trade.gov/ia/> (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 <http://www.usitc.gov> (click on “Antidumping and countervailing duty investigations”), and you can search AD/CVD deposit and liquidation messages using the AD/CVD Search tool at <http://www.cbp.gov> (click on “Import” and “AD/CVD”).

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Neil H. Levy at (646) 733-3036.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT F]

HQ H240196
CLA-2 OT:RR:CTF:TCM H240196 EGJ
CATEGORY: Classification
TARIFF NO.: 9403.60.80

RUBY CHAN
CUSTOMS COMPLIANCE ANALYST
WILLIAMS-SONOMA, INC.
151 UNION STREET
SAN FRANCISCO, CA 94111

RE: Revocation of NY N218739, NY N117616, NY N087304, NY N084602 and NY N063740: Classification of Wooden Shelving Units with Storage Baskets

DEAR Ms. CHAN:

This is in reference to New York Ruling Letter (NY) N218739, dated June 20, 2012, issued to you concerning the tariff classification of the Benchwright Ladder (SKU 8633315). In NY N218739, U.S. Customs and Border Protection (CBP) classified the subject merchandise in subheading 9403.50, HTSUS, which provides for “Other furniture and parts thereof: wooden furniture of a kind used in the bedroom ...” We have reviewed NY N218739 and find it to be in error. For the reasons set forth below, we hereby revoke NY N218739 and four other rulings on similar wooden shelving units with storage baskets: NY N117616, dated August 23, 2010¹, NY N087304, dated December 21, 2009², NY N084602, dated December 8, 2009³, and NY N063740, dated June 12, 2009⁴.

¹ The subject merchandise consists of two sizes of storage units. Each unit consists of a floor standing wooden frame with compartments for either three or six woven baskets. The wooden frame is comprised of untreated and unpainted lumber and is sold by a gardening supply store. The wooden frame has no side or back panels. The ruling request states that the storage units are for use in a mudroom, bathroom, kitchen or den and are perfect for miscellaneous items or small vegetables and fruits.

² The ruling describes five different storage units, but there was only sufficient information to issue a tariff classification decision on three of them. The three subject storage units each consist of a wooden frame with compartments for woven baskets. Each storage unit measures between 25.5 and 29.5 inches tall. The ruling request states that these are all accent tables designed for use in a living room or entryway. Some of the baskets are specifically designed to store DVDs, CDs or other media.

³ The four subject storage units each consist of a wooden frame with compartments for woven baskets. Each storage unit measures between 22 and 40 inches tall. The ruling request states that these units are intended for storage of household items in living rooms, laundry rooms or as general storage. The subject merchandise will be sold at Garden Ridge stores, which is a retail chain of home décor stores. On the Garden Ridge website, these storage units are pictured for sale with baskets, tubs and bins in the housewares/home organization department. See www.gardenridge.com.

⁴ The two subject storage units each consist of a wooden frame with compartments for woven baskets. One storage unit measures 21.5 inches tall and holds two storage baskets. The second unit measures 39.8 inches tall and holds four storage baskets. The subject merchandise will be sold at Garden Ridge stores, which is a retail chain of home décor stores. On the Garden Ridge website, these storage units are pictured for sale with baskets, tubs and bins in the housewares/home organization department. See www.gardenridge.com.

FACTS:

The Benchwright Ladder is a floor standing, wooden shelving unit used for storage. It resembles a stepladder and has four shelves of different sizes. Each shelf resembles a rung on the ladder, with the smallest shelf at the top and the largest at the bottom. Unlike ladder rungs, however, each shelf covers the entire gap between the ladder's four legs. Each shelf is a flat piece of wood with no lip or raised outer edge. The shelving unit measures 17.75 inches long by 18 inches wide by 58 inches high.

On each of the four shelves there is a steel wire storage basket with a cotton/polyester liner. The size of each basket matches the size of each shelf, and is not permanently affixed to the wood. According to your submission, each component contributes the following percentage to the total cost of the unit: the wooden shelving is 70%, the steel wire baskets are 15% and the basket liners are 15%. All of the components are packaged together for retail sale. A picture of the subject merchandise is provided below.



According to your ruling request, the subject merchandise will be sold through the Pottery Barn retail stores, the catalog and the website. According to the Pottery Barn website, the Benchwright Ladder is part of the Benchwright collection.⁵ Other items in the Benchwright collection include a single sink console, a double sink console, two medicine cabinets and a floor-standing mirror. All of the items have the same rustic wood appearance as the Benchwright Ladder. Pictures of the Benchwright Ladder show it filled with items such as towels, soaps and sponges. All of the pictures show the subject merchandise located in or near a bathroom.

⁵ See <http://www.potterybarn.com/products/benchwright-bath-basket-floor-storage-ladder/>.

ISSUE:

What is the tariff classification of the Benchwright Ladder?

LAW AND ANALYSIS:

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

GRI 3(b) provides as follows:

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

...

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

* * *

The HTSUS headings and subheadings under consideration are the following:

4421	Other articles of wood:
4421.90	Other: * * *
6307	Other made up articles, including dress patterns:
6307.90	Other:
7323	Table, kitchen or other household articles and parts thereof, of iron or steel ...: Other:
7323.99	Other: * * *
9403	Other furniture and parts thereof:
9403.30	Wooden furniture of a kind used in offices:
9403.40	Wooden furniture of a kind used in the kitchen:
9403.50	Wooden furniture of a kind used in the bedroom:
9403.60	Other wooden furniture: * * *

Note 1(o) to Chapter 44 provides as follows:

1. This chapter does not cover:

...

- (o) Articles of chapter 94 (for example, furniture, lamps and lighting fittings, prefabricated buildings)...

* * *

Note 2 to Chapter 94 provides as follows:

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;
- (b) Seats and beds.

* * *

Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that:

1. In the absence of special language or context which otherwise requires:

- (a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

* * *

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

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

RULE 3 (b)

- (VI) This second method relates only to:

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

It applies only if Rule 3 (a) fails.

- (VII) In all these cases the goods are to be classified as if they consisted of the material or component **which gives them their essential character** , insofar as this criterion is applicable.
- (VIII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.
- (IX) For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, **provided** these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

Examples of the latter category of goods are:

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

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

* * *

EN 94.03 provides, in pertinent part, as follows:

This heading covers furniture and parts thereof, **not covered** by the previous headings. It includes furniture for general use (e.g., cupboards, show-cases, tables, telephone stands, writing-desks, escritaires, 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 **does not include** :

- ...
- (b) Ladders and steps, trestles, carpenters' benches and the like not having the character of furniture; these are classified according to their constituent material (**headings 44.21, 73.26** , etc.) ...

* * *

The Benchwright Ladder is comprised of three components: the wooden ladder, the steel baskets and the textile basket liners. Each of these components is comprised of a different material. The steel baskets are classified in heading 7323, HTSUS, as household articles of steel. *See* NY N199238, dated January 13, 2012, NY N093425, dated February 18, 2010, and NY N021024, dated December 20, 2007 (all classifying metal baskets in heading 7323,

HTSUS). The textile basket liners are classified in heading 6307, HTSUS, as other made up articles. NY J86047, dated July 21, 2003, NY E80041, dated June 18, 1999, and NY D81472, dated August 26, 1998 (all classifying textile basket liners in heading 6307, HTSUS).

CBP has issued rulings which classify wooden ladders in heading 4421, HTSUS, as other articles of wood. *See, e.g.* NY N195648, dated January 4, 2012, and NY N056136, dated April 24, 2009. However, Note 1(o) to Chapter 44 excludes furniture of Chapter 94. If the wooden ladder is classifiable as furniture of heading 9403, HTSUS, it cannot be classified as other articles of wood in heading 4421, HTSUS.

Headings 9401 to 9403, HTSUS, provide for furniture. Note 2 to Chapter 94 describes the merchandise covered by the term “furniture.” Note 2 states that “the articles ... 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.” Further, Note 2 states that “cupboards, bookcases, other shelved furniture...seats and beds” are classifiable as furniture even if they are “designed to be hung, to be fixed to the wall or to stand one on the other.”

In addition to Note 2 to Chapter 94, the U.S. Court of Customs Appeals (predecessor to the U.S. Court of Appeals for the Federal Circuit) defined furniture in *Morimura Bros. v. United States*, 2 Ct. Cust. Appls. 181, 182, T.D. 31941 (1911) (*Morimura Bros.*), wherein the court stated:

The term ‘furniture’ as ordinarily used may mean that with which anything is furnished, supplied, or equipped. House furniture has a restricted signification, however, which does not cover everything with which a house may be furnished, supplied, or equipped. House furniture, in these modern times, has come to denote those articles of household utility which were formerly made of wood and which are designed for the personal use, convenience and comfort of the dweller. *Id. cited with approval by Furniture Import Corp. v. United States*, 56 Cust. Ct. 125, 131–132 (1966); *see also The Pomeroy Collection, Ltd. v. United States*, 893 F.Supp. 2d 1269, 1284–1285 (Ct. Int’l Trade 2013).

EN 94.03(b) states that ladders which do not have the character of furniture are not classifiable as furniture. However, the instant wooden ladder matches the description set forth in Note 2 to Chapter 94 because it is designed for placing on the floor or the ground. Moreover, it is similar to cupboards, bookcases and other shelved furniture because it includes four shelves rather than ladder rungs. Also, the wooden ladder satisfies the definition of furniture set forth in *Morimura Bros.* because it is an article of household utility, designed for the personal use, convenience and comfort of the dweller. 2 Ct. Cust. Appls. at 182. Namely, the wooden ladder is a shelved storage unit for towels, toiletries and other bathroom articles. For these reasons, the wooden ladder is an article of furniture classifiable in heading 9403, HTSUS. As such, Note 1(o) precludes the wooden ladder from classification in Chapter 44.

The three components of the Benchwright Ladder are the ladder, the metal baskets and the textile liners. These are packaged and sold together as a storage unit at retail sale. Each component is comprised of a different constituent material and is classified under a different heading. No single

heading describes the complete unit. As such, we look to GRI 3 for the classification of the Benchwright Ladder.

EN(IX) to GRI 3(b) states that “composite goods” means goods made up of different components that are adapted one to the other and are mutually complementary. Together, they form a whole which would not normally be offered for sale in separate parts. EN(IX)(2) to GRI 3(b) provides a spice rack as an example of a composite good. The spice rack consists of a frame and spice jars of suitable shape and size. Similarly, the Benchwright Ladder consists of a frame which holds metal baskets of suitable shape and size. The components of the Benchwright Ladder are adapted to each other and are mutually complementary. Each component contributes to the Benchwright Ladder’s storage function. As such, the Benchwright Ladder is a composite good which must be classified using GRI 3(b).

GRI 3(b) states that mixtures, composite goods and retail sets shall be classified as if they consisted of the component which gives them their essential character. In order to identify a composite good’s essential character, the U.S. Court of International Trade (CIT) has applied the factors listed in the ENs to GRI 3(b), which are “the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.” *The Home Depot v. United States*, 427 F. Supp. 2d 1278, 1293 (Ct. Int’l Trade 2006). With regard to the role of the component which imparts the essential character, the court has stated it is “that which is indispensable to the structure, core or condition [of the retail set].” *Id. citing A.N. Deringer, Inc. v. United States*, 66 Cust. Ct. 378, 383 (1971).

Applying the aforementioned factors, the wooden ladder has the greatest bulk and weight of the three components. The wooden ladder also has the greatest value as it comprises 70% of the Benchwright Ladder’s total value. However, the merchandise consists of four metal baskets and four textile liners but only one wooden ladder. Looking to the role of the Benchwright Ladder, it is marketed for both storage and organization. All three of the components contribute to these two functions. The wooden ladder provides the shelving, and the baskets and liners form storage containers. Taking all of the factors into account, the wooden ladder imparts the essential character to the Benchwright Ladder because it has the greatest bulk, weight and value while also contributing to the overall function.

According to GRI 6, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings. The wooden ladder is classified in heading 9403, HTSUS, as furniture. Under heading 9403, HTSUS, there are four separate subheadings for wooden furniture. Subheadings 9403.30, HTSUS, 9403.40, HTSUS, and 9403.50, HTSUS, each provide for wooden furniture of a kind used in offices, kitchens and bedrooms, respectively. Subheading 9403.60, HTSUS, is a residual provision for other wooden furniture. If the ladder is not classifiable in subheadings 9403.30 through 9403.50, HTSUS, it will be classified in subheading 9403.60, HTSUS.

In *The Pomeroy Collection, Ltd. v. United States*, 559 F.Supp. 2d 1374, 1394 n. 23 (Ct. Int’l trade 2008), the CIT described different types of HTSUS provisions as follows:

A “use” provision is “a provision describing articles by the manner in which they are used as opposed to by name,” while an *eo nomine* provision

is one “in which an item is identified by name.” *Len-Ron Mfg. Co. v. United States*, 334 F.3d 1304, 1308 (Fed. Cir. 2003). And there are two types of “use” provisions -- “actual use” and “principal (formerly known as “chief”) use.” An “actual use” provision is satisfied only if “such use is intended at the time of importation, the goods are so used and proof thereof is furnished within 3 years after the date the goods are entered.” See Additional U.S Rule of Interpretation (“ARI”) 1(b) (quoted in *Clarendon Mktg., Inc. v. United States*, 144 F.3d 1464, 1467 (Fed. Cir. 1998)). In contrast, a “principal use” provision functions essentially “as a controlling legal label, in the sense, that even if a particular import is proven to be actually used inconsistently with its principal use, the import is nevertheless classified according to its principal use.” *Clarendon Mktg.*, 144 F.3d at 1467.

In *Primal Lite, Inc. v. United States*, 22 C.I.T. 697, 700 (1998), the CIT described one method to identify principal use provisions as follows:

The use of the term “of a kind” is nothing more than a statement of the traditional standard for classifying importation[s] by their use, namely, that it need not necessarily be the actual use of the importation but is the use of the kind of merchandise to which the importation belongs.

Subheadings 9403.30, HTSUS, 9403.40, HTSUS, and 9403.50, HTSUS, each use the term “of a kind.” As such, these subheadings are principal use provisions. Under Additional U.S. Rule of Interpretation 1(a) (AUSR 1(a)), tariff classification under a principal use provision must be determined in accordance with the use in the United States of that class or kind to which the imported goods belong.

Thus, in order to be classified as wooden furniture of a kind used in offices, kitchens or bedrooms, the wooden ladder must belong to the same kind or class of goods as such furniture. In *United States v. Carborundum Co.*, 536 F.2d 373, 377 (CCPA 1976), the U.S. Court of Customs and Patent Appeals stated that in order to determine whether an article is included in a particular class or kind of merchandise, the court must consider a variety of factors, including: (1) the general physical characteristics of the merchandise; (2) the channels, class or kind of trade in which the merchandise moves (where the merchandise is sold); (3) the expectation of the ultimate purchasers; (4) the environment of the sale (i.e., accompanying accessories and marketing); (5) usage, if any, in the same manner as merchandise which defines the class; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. *Id.* While these factors were developed under the Tariff Schedule of the United States (predecessor to the HTSUS), the courts have also applied them under the HTSUS. See, e.g. *Minnetonka*, 110 F. Supp. 2d 1020, 1027; see also *Aromont USA, Inc. v. United States*, 671 F.3d 1310 (Fed. Cir. 2012), *Essex Manufacturing, Inc. v. United States*, 30 C.I.T. 1 (2006).

In NY N218739, we classified the Benchwright Ladder as wooden furniture of a kind used in the bedroom under subheading 9403.50, HTSUS. To support this classification, we must apply the *Carborundum* factors and determine that the Benchwright Ladder is of the same class or kind of goods as bedroom furniture. First, we will examine the physical characteristics of the merchandise. We note that the wooden ladder is a shelving unit designed to look

like a rustic ladder. It is designed to accommodate wire baskets of suitable shapes and sizes. Unlike bedroom dresser drawers, the baskets are completely open across the top. As such, the contents of the baskets are in plain view. Standard bedroom furniture typically features closed drawers to hide contents from view. Additionally, the Benchwright Ladder is too tall for use as a bedside table.

Next, with regard to channels of trade, we note that the Pottery Barn's website only pictures the Benchwright ladder in or near a bathroom. The Benchwright line of merchandise also includes medicine cabinets, sink consoles, a floor-length mirror, side tables and a storage tower. The advertising on the Pottery Barn's website depicts the wooden ladder full of towels, soaps and toiletries, though we note that the storage compartments are not limited in what they can hold of a certain size and weight.

With regard to the sales environment, the Pottery Barn store sells furniture which is suitable for many different rooms in the home. The Benchwright line of furniture is pictured in advertising in the bathroom and the living room as general storage furniture. For instance, the Benchwright Tower, a companion piece to the subject ladder, is also a tall shelving unit pictured with baskets on its wooden shelves. In the Pottery Barn website advertisement, the Benchwright Tower is situated next to a home entertainment system in a living room, while the instant ladder is pictured in a bathroom. Hence, the Benchwright Ladder, one amongst several pieces of furniture in the Benchwright line, is suitable for use for general storage and home organization in many rooms of the home.

Regarding economic practicality, the bedroom dressers on the Pottery Barn website cost approximately \$700 or higher. Bookcases and other modular storage furniture are listed at prices ranging between \$100 and \$400. The Benchwright Ladder is marketed for retail sale at \$299. As such, the Benchwright Ladder is similar in cost to general storage furniture, as opposed to bedroom storage furniture. Taking all of these factors into account, the evidence simply does not show the Benchwright Ladder to be of the same class or kind of goods used in bedrooms, which is a necessary condition for classification in subheading 9403.50, HTSUS.

As the Benchwright Ladder is sold for general home storage, it is not principally used in kitchens, offices or bedrooms. As such, the ladder is classified in residual subheading 9403.60, HTSUS, which provides for "other" wooden furniture. As the wooden ladder imparts the essential character to the entire storage unit, the subject merchandise is classified in subheading 9403.60, HTSUS. This decision is consistent with other CBP rulings which classify wooden storage units with baskets in subheading 9403.60, HTSUS. *See, e.g.* NY N064537, dated June 22, 2009, NY R02873, dated November 30, 2005, and NY H89412, dated March 21, 2002.

The merchandise in question may be subject to antidumping duties or countervailing duties. We note that the International Trade Administration is not necessarily bound by a country of origin or classification determination issued by CBP, with regard to the scope of antidumping orders or countervailing duties. Written decisions regarding the scope of AD/CVD orders are issued by the Import Administration in the Department of Commerce and are separate from tariff classification and origin rulings issued by Customs and Border Protection. You can contact them at <http://www.trade.gov/ia/> (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 <http://www.usitc.gov> (click on “Antidumping and countervailing duty investigations”), and you can search AD/CVD deposit and liquidation messages using ACE, the system of record for AD/CVD messages, or the AD/CVD Search tool at <http://adcvd.cbp.gov/index.asp?ac=home>.

HOLDING:

By operation of GRI 1 (Note 1(o) to Chapter 44 and Note 2 to Chapter 94), GRI 3(b), GRI 6 and AUSR 1(a), the Benchwright Ladder is classified in subheading 9403.60.80, HTSUS, which provides for “Other furniture and parts thereof: Other wooden furniture: Other ...” The 2014 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 N218739, dated June 20, 2012, NY N117616, dated August 23, 2010, NY N087304, dated December 21, 2009, NY N084602, dated December 8, 2009, and NY N063740, dated June 12, 2009 are hereby revoked.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF THREE RULING LETTERS
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF PHENYLKETONURIA
NUTRITIONAL SUPPLEMENTS**

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

ACTION: Notice of proposed revocation of three ruling letters and proposed revocation of treatment relating to the tariff classification of Phenylketonuria nutritional supplements.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) is proposing to revoke three rulings concerning the tariff classification of Phenylketonuria nutritional supplements under the Harmonized Tariff Schedule of the United States (“HTSUS”). Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before May 30, 2014.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street, N.E., 10th Floor, Washington, D.C. 22209, and may be inspected during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Robert Shervette, Office of International Trade, Tariff Classification and Marking Branch, at (202) 325–0274.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), become effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community

needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade 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 section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke three ruling letters pertaining to the tariff classification of certain nutritional supplements. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letters ("NY") NY N006049, dated February 6, 2007, set forth as "Attachment A", NY N006048, dated February 6, 2007, set forth as "Attachment B", and NY N005717, dated January 26, 2007, set forth as "Attachment C", this notice 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 this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. § 1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in a substantially identical transaction should advise CBP during this notice 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 of this notice.

In NY N005717, NY N006048, and NY N006049, CBP classified phenylalanine-free nutritional supplement articles under subheading 3004.90.9190, HTSUSA, as "[m]edicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including

those in the form of transdermal administration systems) or in forms or packings for retail sale: [o]ther: [o]ther: [o]ther: [o]ther.” Upon our review of these two rulings, we have determined that the merchandise described in the rulings are properly classified under subheading 2106.90.9998, HTSUSA, as “[f]ood preparations not elsewhere specified or included: [o]ther: [o]ther.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N005717, NY N006048, and NY N006049 and to revoke or modify any other ruling not specifically identified to reflect the proper classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter (“HQ”) H240613, set forth as “Attachment D” to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: April 2, 2014

IEVA K. O’ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N006049

February 6, 2007

CLA-2-30:RR:E:NC:2 :238

CATEGORY: Classification

TARIFF NO.: 3004.90.9190

MR. MARK DEFRIES
SOLACE NUTRITION
46 KILVERT STREET
WARWICK, RI 02866

RE: The tariff classification of **Avonil® AA Tablets and Avonil® AA Powder** from Denmark

DEAR MR. DEFRIES:

In your letter dated January 29, 2007, you requested a tariff classification ruling.

The subject products, Avonil® AA Tablets and Avonil® AA Powder, are phenylalanine-free nutritional supplements consisting of various amino acids, vitamins and minerals. Both products are specifically intended for the dietary management of phenylketonuria (PKU)¹. The tablets are for use by persons with phenylketonuria from 4 years of age, including maternal PKU patients. The powder is for use by children over 4 months of age, and by adults, including maternal PKU patients.

Pursuant to HQ 083000, dated September 19, 1990, the applicable sub-heading for Avonil® AA Tablets and Avonil® AA Powder will be 3004.90.9190, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Medicaments ... consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses ... or in forms or packings for retail sale: Other: Other: Other: Other.” The rate of duty will be free.

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

This merchandise may be subject to the Federal Food, Drug, and Cosmetic Act and/or The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which are administered by the U.S. Food and Drug Administration (FDA). Information on the Federal Food, Drug, and Cosmetic Act, as well as The Bioterrorism Act, can be obtained by calling the FDA at 1-888-463-6332, or by visiting their website at www.fda.gov.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is

¹ “Phenylketonuria (PKU) is an inborn error of metabolism in which the normal conversion of (the amino acid) phenylalanine to (the amino acid) tyrosine in the body does not occur and there is a buildup of phenylalanine concentration in the blood. This metabolic disorder causes mental retardation. If this genetic disorder is discovered soon after birth, it is possible to place the infant on a diet very low in phenylalanine-containing proteins and thus minimize the phenylalanine buildup in the body, averting the serious mental retardation that ordinarily is seen in the untreated PKU patient.” *Remington: The Science and Practice of Pharmacy, 21st Edition* (p. 589).

imported. If you have any questions regarding the ruling, contact National Import Specialist Harvey Kuperstein at 646-733-3033.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

N006048

February 6, 2007

CLA-2-30:RR:E:NC: 2:238

CATEGORY : Classification

TARIFF NO.: 3004.90.9190

MR. MARK DEFRIES
SOLACE NUTRITION
46 KILVERT STREET
WARWICK, RI 02866

RE: The tariff classification of **NeoPhe® LNAA Tablets®** from Denmark

DEAR MR. DEFRIES:

In your letter dated January 29, 2007, you requested a tariff classification ruling.

The subject product, NeoPhe® LNAA Tablets®, is described as a “medical food,” for use, under medical supervision, for the dietary management of Phenylketonuria (PKU)¹. The tablets contain large neutral amino acids (LNAs) as the active ingredient. Wording on the printed label found on the container in which the tablets are supplied states that the tablets are “[N]ot for the general population of consumers.”

Pursuant to HQ 083000, dated September 19, 1990, the applicable sub-heading for NeoPhe® LNAA Tablets® will be 3004.90.9190, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Medicaments ... consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses ... or in forms or packings for retail sale: Other: Other: Other: Other.” The rate of duty will be free.

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

This merchandise may be subject to the Federal Food, Drug, and Cosmetic Act and/or The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which are administered by the U.S. Food and Drug Administration (FDA). Information on the Federal Food, Drug, and Cosmetic Act, as well as The Bioterrorism Act, can be obtained by calling the FDA at 1-888-463-6332, or by visiting their website at www.fda.gov.

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

¹ “Phenylketonuria (PKU) is an inborn error of metabolism in which the normal conversion of (the amino acid) phenylalanine to (the amino acid) tyrosine in the body does not occur and there is a buildup of phenylalanine concentration in the blood. This metabolic disorder causes mental retardation. If this genetic disorder is discovered soon after birth, it is possible to place the infant on a diet very low in phenylalanine-containing proteins and thus minimize the phenylalanine buildup in the body, averting the serious mental retardation that ordinarily is seen in the untreated PKU patient.” *Remington: The Science and Practice of Pharmacy, 21st Edition* (p. 589).

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 Harvey Kuperstein at 646-733-3033.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT C]

N005717

January 26, 2007

CLA-2-30:RR:E:NC: 2:238

CATEGORY: Classification

TARIFF NO.: 3004.90.9190

MR. MARK DEFRIES
SOLACE NUTRITION
46 KILVERT STREET
WARWICK, RI 02866

RE: The tariff classification of **PreKUnil® LNAA Tablets®** from Denmark

DEAR MR. DEFRIES:

In your letter dated January 18, 2007, you requested a tariff classification ruling.

The subject product, PreKUnil® LNAA Tablets®, is described as a “medical food,” for use under medical supervision, for the dietary management of Phenylketonuria (PKU)¹. The tablets contain large neutral amino acids (LNAAs) as the active ingredient. Wording on the printed label found on the container in which the tablets are supplied states that the tablets are “[N]ot for the general population of consumers.”

Pursuant to HQ 083000, dated September 19, 1990, the applicable sub-heading for PreKUnil® LNAA Tablets® will be 3004.90.9190, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Medicaments ... consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses ... or in forms or packings for retail sale: Other: Other: Other: Other.” The rate of duty will be free.

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

This merchandise may be subject to the Federal Food, Drug, and Cosmetic Act and/or The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which are administered by the U.S. Food and Drug Administration (FDA). Information on the Federal Food, Drug, and Cosmetic Act, as well as The Bioterrorism Act, can be obtained by calling the FDA at 1-888-463-6332, or by visiting their website at www.fda.gov.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Harvey Kuperstein at 646-733-3033.

¹ “Phenylketonuria (PKU) is an inborn error of metabolism in which the normal conversion of (the amino acid) phenylalanine to (the amino acid) tyrosine in the body does not occur and there is a buildup of phenylalanine concentration in the blood. This metabolic disorder causes mental retardation. If this genetic disorder is discovered soon after birth, it is possible to place the infant on a diet very low in phenylalanine-containing proteins and thus minimize the phenylalanine buildup in the body, averting the serious mental retardation that ordinarily is seen in the untreated PKU patient.” *Remington: The Science and Practice of Pharmacy, 21st Edition* (p. 589).

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT D]

HQ H240613

CLA-2 OT:RR:CTF:TCM H240613 RES

CATEGORY: Classification

TARIFF NO.: 2106.90.9998

MR. MARK DEFRIES
 SOLACE NUTRITION
 46 KILVERT STREET
 WARWICK, RI 02866

RE: Revocation of New York Ruling Letters N006048, dated February 6, 2007, N006049, dated February 6, 2007, and N005717, dated January 26, 2007; classification of medical foods used for dietary management of Phenylketonuria.

DEAR MR. DEFRIES:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York (“NY”) Ruling letters N006048 and N006049, both dated February 6, 2007, and N005717, dated January 26, 2007, regarding the classification of medical foods used for dietary management of Phenylketonuria¹ (“PKU”), under the Harmonized Tariff Schedule of the United States (“HTSUS”). The merchandise in NY N006048, NY N006049, and NY N005717 were classified as medicaments, under heading 3004, HTSUS. We have determined that NY N006048, NY N006049, and NY N005717 were in error. Accordingly, we are revoking NY N006048, NY N006049, and NY N005717, to reflect the proper classification of the medical foods used for dietary management of PKU.

FACTS:

The following facts were set forth in NY N006048:

The subject product, NeoPhe® LNAA Tablets®, is described as a “medical food,” for use, under medical supervision, for the dietary management of phenylketonuria (PKU). The tablets contain large neutral amino acids (LNAAs) as the active ingredient. Wording on the printed label found on the container in which the tablets are supplied states that the tablets are “[N]ot for the general population of consumers.”

Pursuant to HQ 083000, dated September 19, 1990, the applicable sub-heading for NeoPhe® LNAA Tablets® will be 3004.90.9190, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Medicaments ... consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses ... or in forms or packings for retail sale: Other: Other: Other: Other.” The rate of duty will be free.

The following facts were set forth in NY N006049:

¹ “Phenylketonuria (commonly known as PKU) is an inherited disorder that increases the levels of a substance called phenylalanine in the blood. Phenylalanine is a building block of proteins (an amino acid) that is obtained through the diet. It is found in all proteins and in some artificial sweeteners. If PKU is not treated, phenylalanine can build up to harmful levels in the body, causing intellectual disability and other serious health problems.” See <http://ghr.nlm.nih.gov/condition/phenylketonuria> (last visited July 20, 2012).

The subject products, Avonil® AA Tablets and Avonil® AA Powder, are phenylalanine-free nutritional supplements consisting of various amino acids, vitamins and minerals. Both products are specifically intended for the dietary management of phenylketonuria (PKU). The tablets are used by persons with phenylketonuria from 4 years of age, including maternal PKU patients. The powder is for use by children over 4 months of age, and by adults, including maternal PKU patients.

Pursuant to HQ 083000, dated September 19, 1990, the applicable sub-heading for Avonil® AA Tablets and Avonil® AA Powder will be 3004.90.9190, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Medicaments ... consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses ... or in forms or packings for retail sale: Other: Other: Other: Other.” The rate of duty will be free.

The following facts were set forth in NY N005717:

The subject product, PreKUnil® LNAA Tablets®, is described as a “medical food,” for use under medical supervision, for the dietary management of Phenylketonuria (PKU). The tablets contain large neutral amino acids (LNAAs) as the active ingredient. Wording on the printed label found on the container in which the tablets are supplied states that the tablets are “[N]ot for the general population of consumers.”

Pursuant to HQ 083000, dated September 19, 1990, the applicable sub-heading for PreKUnil® LNAA Tablets® will be 3004.90.9190, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Medicaments ... consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses ... or in forms or packings for retail sale: Other: Other: Other: Other.” The rate duty will be free.

ISSUE:

Whether the subject merchandise are classified under heading 2106, HTSUS as food preparations or under 3004 as medicaments?

LAW AND ANALYSIS:

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

The following HTSUS provisions are under consideration:

- | | |
|------|---|
| 2106 | Food preparations not elsewhere specified or included: |
| 3004 | Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale: |

Legal Note 1(f) to Chapter 21, HTSUS, excludes from classification under Chapter 21 “[y]east put up as a medicament or other products of heading 3003 or 3004.”

Legal Note 1(a) to Chapter 30, HTSUS, excludes from classification under Chapter 30 the following:

Foods or beverages (such as dietetic, diabetic or fortified foods, food supplements, tonic beverages and mineral waters), other than nutritional preparations for intravenous administration (Section IV)

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

The ENs to 21.06 provide in pertinent part:

Provided that they are not covered by any other heading of the Nomenclature , this heading covers:

(A) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.), for human consumption.

(B) Preparations consisting wholly or partly of foodstuffs, used in making of beverages or food preparations for human consumption. The heading includes preparations consisting of mixtures of chemicals (organic acids, calcium salts, etc.) with foodstuffs (flour, sugar, milk, powder, etc.), for incorporation in food preparations either as ingredients or to improve some of their characteristics (appearance, keeping qualities, etc.) (see the General Explanatory Note to Chapter 38).

* * * * *

The heading includes, *inter alia* :

(14) * * *

The heading **excludes** products where a infusion constitutes a therapeutic or prophylactic dose of an active ingredient specific to a particular ailment (**heading 30.03 or 30.04**).

* * *

(16) Preparations, often referred to as *food supplements*, based on extracts from plants, fruit concentrates, honey, fructose, etc. and containing added vitamins and sometimes minute quantities of iron compounds. These preparations are often put up in packagings with indications that they maintain general health or well-being. Similar preparations, however, intended for the prevention or treatment of diseases or ailments are **excluded (heading 30.03 or 30.04)** .

* * * * *

(Emphases in original).

The ENs to 30.04 provide in pertinent part:

* * * * *

The provisions of the heading text do not apply to foodstuffs or beverages such as dietetic, diabetic or fortified foods, tonic beverages or mineral waters (natural or artificial), which fall to be classified under **their own appropriate headings**. This is essentially the case as regards food preparations containing only nutritional substances. The major nutritional substances in food are proteins, carbohydrates and fats. Vitamins and mineral salts also play a part in nutrition.

Similarly foodstuffs and beverages containing medicinal substances are **excluded** from the heading if those substances are added solely to ensure a better dietetic balance, to increase the energy-giving or nutritional value of the product or to improve its flavour, always provided that the product retains its character of a foodstuff or a beverage.

Moreover, products consisting of a mixture of plants or parts of plants or consisting of plants or parts of plants mixed with other substances, used for making herbal infusions or herbal “teas” (e.g., those having laxative, purgative, diuretic or carminative properties), and claimed to offer relief from ailments or contribute to general health and well-being, are also **excluded** from this heading (**heading 21.06**).

Further, this heading **excludes** food supplements containing vitamins or mineral salts which are put up for the purpose of maintaining health or well-being but have no indication as to use for the prevention or treatment of any disease or ailment. These products which are usually in liquid form but may also be put up in powder or tablet form, are generally classified in **heading 21.06** or **Chapter 22**.

On the other hand, the heading covers preparations in which the foodstuff or the beverage merely serves as a support, vehicle or sweetening agent for the medicinal substances (e.g., in order to facilitate ingestion).

* * * * *

(Emphases in original).

The tariff term “food” is not specifically defined in the HTSUS. “When a tariff term is not defined in either the HTSUS or its legislative history, the term’s correct meaning is presumed to be its common meaning in the absence of evidence to the contrary.” *Timber Prods. Co. v. United States*, 515 F.3d 1213, 1219 (Fed. Cir. 2008). In discerning this common meaning, dictionaries, encyclopedias, scientific authorities, and other reliable information sources may be consulted to construe the meaning of a statute’s words. *See Len-Ron Mfg. Co. v. United States*, 334 F.3d 1304, 1309 (Fed. Cir. 2003).

The Merriam-Webster online dictionary defines “food” as:

1 a : material consisting essentially of protein, carbohydrate, and fat used in the body of an organism to sustain growth, repair, and vital processes and to furnish energy; *also* : such food together with supplementary substances (as minerals, vitamins, and condiments) **b** : inorganic substances absorbed by plants in gaseous form or in water solution
2: nutriment in solid form

See <http://www.merriam-webster.com/dictionary/food> (last visited July 12, 2012). In Webster's New World College Dictionary, "food" is defined as "any substance taken into and assimilated by a plant or animal to keep it alive and enable it to grow and repair tissue; nourishment; nutriment . . . anything that nourishes or stimulates . . ." See Webster's New World College Dictionary 550 (fourth ed. 2007). Other online sources define "food" similarly as "any nourishing substance that is eaten, drunk, or otherwise taken into the body to sustain life, provide energy, promote growth, etc"² or as "[m]aterial, usually of plant or animal origin, that contains essential nutrients, such as carbohydrates, fats, proteins, vitamins, or minerals, and is ingested and assimilated by an organism to produce energy, stimulate growth, and maintain life."³

Thus, based on the common definition of food and EN(A) 21.06, "food", for tariff purposes is defined as any nourishing substance containing essential nutrients that is ingested and assimilated by a person to produce energy, stimulate growth, and maintain life. There is nothing that limits the definition of food to conventional food articles. For tariff purposes, food can encompass natural, processed, and highly formulated substances used for nourishment, which includes medical foods and substances that are part of an elemental diet such as nutritional supplements designed specifically for persons with PKU. As such, unless specified elsewhere, the merchandise at issue is described by the term "food preparation" of heading 2106, HTSUS.

The classification of the articles in NY N006048, NY N006049, and NY N005717, as medicaments was predicated upon the classification of similar merchandise in HQ 083000, dated September 19, 1990, which classified nutritional supplements used by persons with PKU as medicaments under heading 3004, HTSUS. However, CBP in HQ 966779, dated January 16, 2004, determined that the effect of the 2002 amendment to Chapter note 1(a) to Chapter 30 was to revoke by operation of law HQ 083000, and the analysis contained within it, and exclude any and all nutritional products from chapter 30 unless they are administered intravenously. Consequently, HQ 083000 was, at the time NY N006048, NY N006049, and NY N005717 were issued, no longer a valid precedent for the classification of nutritional supplements for PKU products under heading 3004, HTSUS. Rather, HQ 966779 classified nutritional foods/supplements designed for use by persons with PKU as food preparations under heading 2106, HTSUS. The analysis set forth in HQ 966779 is incorporated here by reference.

Therefore, upon reconsideration that the classification of the merchandise in NY N006048, NY N006049, and NY N005717 was based upon a revoked HQ ruling, CBP has determined that the classifications in NY N006048, NY N006049, and NY N005717 of the nutritional foods for PKU under heading 3004, HTSUS, are incorrect. Nutritional foods/supplements for persons with PKU are excluded from classification in Chapter 30 and are therefore classified under heading 2106, as "food preparations not elsewhere specified or included."

HOLDING:

Pursuant to GRI 1, Legal Note 1(a) to Chapter 30, and HQ 966779, the NeoPhe® LNAA Tablets®, Avonil® AA Tablets, Avonil® AA Powder, and

² See <http://dictionary.reference.com/browse/food> (last visited July 12, 2012).

³ See <http://medical-dictionary.thefreedictionary.com/food> (last visited July 12, 2012).

PreKUnil® LNAA Tablets® are classified under subheading 2106.90.9998, HTSUS, as “[f]ood preparations not elsewhere specified or included: [o]ther: [o]ther: [o]ther: [o]ther: [o]ther; [o]ther; [o]ther; [o]ther; [o]ther.” The column one, rate of duty, is 6.4 percent *ad valorem*

EFFECTS ON OTHER RULINGS:

NY N006048 and NY N006049, both dated February 6, 2007, and NY N005717, dated January 26, 2007, are revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF TWO RULING LETTERS
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF
WOODEN DESKS AND BOOKCASES**

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

ACTION: Notice of proposed revocation of two ruling letters and proposed revocation of treatment relating to the tariff classification of wooden writing desks and bookcases.

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) proposes to revoke two ruling letters relating to the tariff classification of wooden writing desks and wooden bookcases under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before May 30, 2014.

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

FOR FURTHER INFORMATION CONTACT: Beth Jenior, Tariff Classification and Marking Branch: (202) 325–0347.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are

“informed compliance” and **“shared responsibility.”** These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade 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 section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), this notice advises interested parties that CBP intends to revoke two ruling letters pertaining to the tariff classification of wooden writing desks and wooden bookcases. Although in this Notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) N121616, dated September 16, 2010 (Attachment A), and NY N236395, dated December 21, 2012 (Attachment B), this notice 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., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this Notice should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(2)), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice 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 notice of this proposed action.

In NY N121616 and NY N236395, CBP determined that the subject wooden writing desks and bookcases were classified in subheading 9403.50.90, HTSUS, which provides for, in pertinent part: “Other furniture ...: Wooden furniture of a kind used in the bedroom: Other: Other ...”. It is now CBP’s position that the writing desks and the

bookcases are classified under subheading 9403.60.80, HTSUS, which provides, in pertinent part, for “Other furniture ...: Other wooden furniture: Other ...”

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke NY N121616 and NY N236395, and to revoke or to modify any other ruling not specifically identified, in order to reflect the proper classification of the wooden desks and bookcases according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H132495, set forth as Attachment C to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: April 2, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N121616

September 16, 2010

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

CATEGORY: Classification

TARIFF NO.: 9403.50.9080

BRIAN KAVANAUGH
TRADE ADVISOR
DERINGER LOGISTIC CONSULTING GROUP
1 LINCOLN BOULEVARD, SUITE 225
ROUSES POINT, NY 12979

RE: The tariff classification of desk and bookcases from China.

DEAR MR. KAVANAUGH:

In your letter dated August 11, 2010 on behalf of Vermont Precision Woodworks, you requested a tariff classification ruling.

Photographs indicate that the “Shaker Cottage Writing Desk” is a wooden desk with a single drawer. Online information states that the drawer can be used to organize your office supplies or the flip-down front can be used for your keyboard. This desk measures 40 inches wide by 23 inches deep and 30 inches high.

Photographs indicate that the “Shaker Cottage Bookcase” is a wooden bookcase with two shelves. Online information indicates that the small bookcase keeps the kids’ books or your home office clean and clutter free. This bookcase measures 36 inches wide by 14 inches deep by 30 inches high.

Photographs indicate that the “Shaker Cottage Tall Bookcase” is a wooden book case with four shelves. Online information indicates that the small bookcase keeps the kids’ books or your home office clean and clutter free. This bookcase measures 24 inches wide by 14 inches deep by 48 inches high.

In response to your inquiry concerning the classification of these items, we must consider the definition and meaning of bedroom furniture. The term “bedroom furniture” is not defined in the text of the HTSUS, nor the Explanatory Notes to the HTSUS. When terms are not defined, they are construed in accordance with their common and commercial meaning – *Nippon Kogasku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982).

Dictionary and encyclopedia meanings define “bedroom furniture” as furniture intended for use in the bedroom. Further elaboration indicates that bedroom furniture, sometimes called a *bedroom set* or bedroom suite consists of a group of *furniture* in a bedroom or sleeping quarters; these groupings include, but are not limited to, *beds* ; wardrobes; dressers (also known as a chest of drawers usually placed in a bedroom); chests; nightstands; armoires; vanities; trunks; and mirrors. Door Chests and Armoires can also have shelves for television receivers and other entertainment electronics.

It therefore follows that key to defining “bedroom furniture” for tariff purposes is not only the intended use of the item, but also, the primary use (emphasis added) of the item at time of import to be used in the bedroom. See New York Ruling, N069325 dated August 6, 2009 and N080635 dated No-

vember 5, 2009, both of which concluded that the primary use of the furniture pieces were for the bedroom, even though those pieces could be placed in settings other than in the bedroom.

In the Glossary of Interior Designs & Furniture Terms (published by Furniture Quest) the term Student Desk: normally applies to a small pedestal type of desk or small writing table constructed for use by children or teenagers in their bedroom – construction of these desks are commonly made of wood or metal. Review of the Shaker Cottage Writing Desk indicates (although not specifically stated for use by child, teenage or adult) similarities to the writing table as define by the glossary above. The subject merchandise is a small desk or writing table, composed of wood, and of a kind typically found to be used in a bedroom environment. Accordingly, we find the subject merchandise to be classifiable in subheading 9403.50 – the provision for wooden furniture of a kind used in a bedroom.

Review of both the Shaker Cottage Bookcase and the Shaker Cottage Tall Bookcase indicates two relatively short furniture pieces (30 and 48 inches high, respectively), composed of wood, that are commonly used in bedrooms for the organization of books, as well as other household effects. Accordingly, we find the subject merchandise to be classifiable in subheading 9403.50 – the provision for wooden furniture of a kind used in a bedroom.

The applicable subheading for the wooden writing desk and bookcases, will be 9403.50.9080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other furniture and parts thereof: Wooden furniture of a kind used in the bedroom: Other: Other; Other.” The rate of duty will be free.

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

The merchandise in question may be subject to antidumping duties or countervailing duties. Written decisions regarding the scope of AD/CVD orders are issued by the Import Administration in the Department of Commerce and are separate from tariff classification and origin rulings issued by Customs and Border Protection. You can contact them at <http://www.trade.gov/ia/> (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 <http://www.usitc.gov> (click on “Antidumping and countervailing duty investigations”), and you can search AD/CVD deposit and liquidation messages using the AD/CVD Search tool at <http://www.cbp.gov> (click on “Import” and “AD/CVD”).

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Neil H. Levy at (646) 733-3036.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

N236395

December 21, 2012

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

CATEGORY: Classification

TARIFF NO.: 9403.50.9080

MARK JARED MAUZEY
TRADE AND PRODUCT COMPLIANCE SPECIALIST
PIER 1 IMPORTS
100 PIER 1 PLACE
FORT WORTH, TX 76107

RE: The tariff classification of one wooden desk from Indonesia and two wooden desks from China.

DEAR MR. MAUZEY:

In your letter dated December 10, 2012, you requested a tariff classification ruling. Photos were received.

Item 1 is identified as the VIN P1-0109-12, Plantation Desk. The desk is manufactured in Indonesia. The desk is composed of wood, and measures 42-inches long by 20-inches wide by 30-inches high. This desk features a keyboard tray, one drawer and a cabinet for storage.



Item 2 is identified as the VIN H111333C, Sawhorse Desk. The desk is manufactured in China. The desk is composed of wood, and measures 48-inches long by 24-inches wide by 30-inches high. This desk features two bottom shelves, which are located at opposite ends between the openings for the chair.



Item 3 is identified as the VIN 177.18848, Secretary Desk. The desk is manufactured in China. The desk is composed of wood, and measures 42-inches long by 13-inches wide by 30-inches high. This desk features two top drawers and a cabinet for storage.



The term “office furniture” and “bedroom furniture” are not defined in the text of the Harmonized Tariff Schedule of the United States (HTSUS), nor the Explanatory Notes to the HTSUS. When terms are not defined, they are construed in accordance with their common and commercial meaning – *Nippon Kogasku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources – see *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982).

Dictionary and encyclopedia definitions describe “office furniture” as furniture intended for use in an office. The Online Oxford English Dictionary defines “office” as a room, set of rooms, or building used as a place of business for non-manual work; a room or department for clerical or administrative work. It is implied that an office is a place of business, in which, a person has an occupation, work, or trade. Therefore, furniture that is not designed for business purposes, or furniture that is designed for personal use at home (including home offices) but is not constructed in a manner suitable for business purposes, is generally not considered office furniture for tariff purposes.

Dictionary and encyclopedia definitions describe “bedroom furniture” as furniture intended for use in the bedroom. It covers both groupings and individual pieces, such as beds, nightstands; dressers (also known as a chest of drawers usually placed in a bedroom); chests; wardrobes; trunks; armoires; vanity tables; desks; computer stands; filing cabinets; bookcases; and writing desk, and more. Furniture, for example, desks, computer stands, filing cabinets, and bookcases that are designed and constructed for conducting business of an occupation, work or trade will generally not be considered bedroom furniture.

You suggest two possible choices for the classification of the merchandise concerned, either subheading 9403.30, HTSUS, wooden furniture of a kind used in offices or subheading 9403.60, HTSUS, other wooden furniture. From the definition of “office furniture” as described above and the depicted photos of the merchandise concerned, these desks do not fall within subheading 9403.30, HTSUS, as they are mainly for personal household use without being constructed for a business purpose. It is common to find these types of desks in a bedroom setting or another location within the house. Conse-

quently, the alternative classifications are subheading 9403.50, HTSUS, wooden furniture of a kind used in the bedroom and 9403.60, HTSUS, other wooden furniture.

With the desks classified only in one heading, 9403, the issue becomes the proper ten-digit subheading for the item. Accordingly, GRI 6 is implicated. GRI 6 provides that the classification of goods at the subheading level shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules [GRIs 1 - 5], on the understanding that only subheadings at the same level are comparable.

The desks are *prima facie* classifiable in subheadings 9403.50 (wooden furniture of a kind used in the bedroom) and 9403.60 (other wood furniture). It is our opinion, using GRI 6 in conjunction with GRI 3 (a) that the desks are more specifically provided for in the subheading for wooden bedroom furniture, than the less descriptive subheading of other wooden furniture. See *Len-Ron Manufacturing Co. v. United States*, No. 02-1495, United States Court of Appeals, dated July 3, 2003. See *New York Rulings: N121616* dated September 16, 2010 and *N218739* dated June 30, 2012. As such, the desks are classified in subheading 9403.50, HTSUS.

The applicable subheading for the desks that can be used in a bedroom setting will be 9403.50.9080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other furniture and parts thereof: Wooden furniture of a kind used in the bedroom: Other: Other; Other.” The rate of duty will be free.

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

The two wooden desks from China may be subject to Antidumping Duties (AD). Specifically, the desks may be subject to AD for wooden bedroom furniture from China under the Department of Commerce case number A-570-890. Written decisions regarding the scope of AD orders and Countervailing Duties (CVD) are issued by the Import Administration in the Department of Commerce, and are separate from tariff classification and origin rulings issued by Customs and Border Protection. You can contact them at <http://www.trade.gov/ia/> (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 <http://www.usitc.gov> (click on “Antidumping and countervailing duty investigations”), and you can search AD/CVD deposit and liquidation messages using the AD/CVD Search tool at <http://addcvd.cbp.gov/>. This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Neil H. Levy at (646) 733-3036.

Sincerely,

THOMAS J. RUSSO

Director,

National Commodity Specialist Division

[[ATTACHMENT C]]

HQ H132495
CLA-2 OT:RR:CTF:TCM H132495 EGJ
CATEGORY: Classification
TARIFF NO.: 9403.60.80

DARLENE DiBERNARDO
 SENIOR TRADE ADVISOR
 DERINGER LOGISTICS CONSULTING GROUP
 173 WEST SERVICE ROAD
 CHAMPLAIN, NY 12919

RE: Revocation of NY N121616 and NY N236395; Classification of Wooden Desks and Wooden Bookcases

DEAR Ms. DiBERNARDO:

In a letter to U.S. Customs and Border Protection (CBP) dated August 11, 2010, you requested a ruling on behalf of Vermont Precision Woodworks (Vermont). Specifically, you requested a tariff classification ruling under the Harmonized Tariff Schedule of the United States (HTSUS) for three articles of wooden furniture. Those three articles of furniture are: the Shaker Cottage Writing Desk, the Shaker Cottage Short Bookcase and the Shaker Cottage Tall Bookcase.

In New York Ruling Letter (NY) N121616, dated September 16, 2010, CBP classified all the furniture under subheading 9403.50, HTSUS, which provides for wooden furniture of a kind used in the bedroom. We have reviewed NY N121616 and find the ruling to be in error. For the reasons set forth below, we hereby revoke NY N121616 and one other ruling with substantially similar desk furniture: NY N236395, dated December 21, 2012.¹

FACTS:

In NY N121616, CBP described the writing desk as a wooden desk with a single drawer. The writing desk measures 40 inches wide by 23 inches deep and 30 inches high. The ruling described the short bookcase as a wooden bookcase with two shelves. The short bookcase measures 36 inches wide by 14 inches deep by 30 inches high. Finally, the ruling described the tall bookcase as a wooden bookcase with four shelves. The tall bookcase measures 24 inches wide by 14 inches deep by 48 inches high. In the reconsideration request, you submitted a catalog picture of the three articles of furniture arranged together. That picture is provided below:

¹ NY N236395 describes the subject merchandise as follows: Item 1 is identified as the VIN P1-0109-12, Plantation Desk. The desk is manufactured in Indonesia. The desk is composed of wood, and measures 42-inches long by 20-inches wide by 30-inches high. This desk features a keyboard tray, one drawer and a cabinet for storage. Item 2 is identified as the VIN H111333C, Sawhorse Desk. The desk is manufactured in China. The desk is composed of wood, and measures 48-inches long by 24-inches wide by 30-inches high. This desk features two bottom shelves, which are located at opposite ends between the openings for the chair. Item 3 is identified as the VIN 177.18848, Secretary Desk. The desk is manufactured in China. The desk is composed of wood, and measures 42-inches long by 13-inches wide by 30-inches high. This desk features two top drawers and a cabinet for storage.



The desk and bookcases are part of the Alaterre Collection distributed by Bolton Furniture. They are sold by retailers such as Kohls, Brookstone and Amazon. The desk is sold in the retailers' home furniture departments. The desk is described on the Kohls website, available at www.kohls.com, as follows:

Make over your home office with this writing desk by Alaterre. Its large desktop makes it the ideal place for studying or working. Plus, it has a simply chic style that will enhance your furniture collection.

- Flip-down drawer holds your keyboard.
- Sturdy wood construction ensures long-lasting use.

Similarly, the two bookcases are also sold in the home furniture departments of these retailers. The Brookstone website, available at www.brookstone.com, describes the tall bookcase as follows:

The Shaker Cottage Tall Bookcase Alaterre Collection is a stunning addition to any room in the home. The timeless design and superior craftsmanship ensure many years of style and storage.

Have you been searching for a bookcase that is perfect for the living room, the office, or even the bedroom? Take a look at the Shaker Cottage Tall Bookcase Alaterre Collection by Bolton. Great for books, knick knacks and more! Dynamic and durable, this bookcase is sure to please.

ISSUE:

1. Is the desk classified in subheading 9403.30, HTSUS, as wooden furniture of a kind used in offices, in subheading 9403.50, HTSUS, as wooden furniture of a kind used in the bedroom, or in subheading 9403.60, HTSUS, as other wooden furniture?
2. Are the bookcases classified in subheading 9403.30, HTSUS, as wooden furniture of a kind used in offices, in subheading 9403.50, HTSUS, as wooden furniture of a kind used in the bedroom, or in subheading 9403.60, HTSUS, as other wooden furniture?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely 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 the GRIs 1 through 5.

The HTSUS provisions at issue are as follows:

9403	Other furniture and parts thereof:
9403.30	Wooden furniture of a kind used in offices ...
	* * *
9403.50	Wooden furniture of a kind used in the bedroom ...
	* * *
9403.60	Other wooden furniture ...
	* * *

Additional U.S. Rule of Interpretation 1(a), HTSUS, provides, in relevant part, that:

In the absence of special language or context which otherwise requires:

... a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

* * *

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

EN 94.03 states, in pertinent part, that:

[T]his heading covers all seats (including those for vehicles, provided that they comply with the conditions prescribed in Note 2 to this Chapter), for example:

This heading covers furniture and parts thereof, **not covered** by the previous headings. It includes furniture for general use (e.g., cupboards, show-cases, tables, telephone stands, writing-desks, escritoirs, 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 furniture for:

- (1) **Private dwellings, hotels, etc.** , such as : cabinets, linen chests, bread chests, log chests; chests of drawers, tallboys; pedestals, plant stands; dressing-tables; pedestal tables; wardrobes, linen presses; hall stands, umbrella stands; side-boards, dressers, cupboards; food-safes; bedside tables; beds (including wardrobe beds, camp-beds, folding beds, cots, etc.); needlework tables; stools and foot-stools (whether or not rocking) designed to rest the feet, fire screens; draught-screens; pedestal ashtrays; music cabinets, music stands or desks; play-pens; serving trolleys (whether or not fitted with a hot plate).
- (2) **Offices** , such as: clothes lockers, filing cabinets, filing trolleys, card index files, etc.
- (3) **Schools** , such as: school-desks, lecturers' desks, easels (for blackboards, etc.).
- (4) **Churches** , such as: altars, confessional boxes, pulpits, communion benches, lecterns, etc.
- (5) **Shops, stores, workshops, etc.** , such as : counters; dress racks; shelving units; compartment or drawer cupboards; cupboards for tools, etc.; special furniture (with cases or drawers) for printing-works.
- (6) **Laboratories or technical offices** , such as: microscope tables; laboratory benches (whether or not with glass cases, gas nozzles and tap fittings, etc.); fume-cupboards; unequipped drawing tables.

* * *

There is no dispute that the desk is classified under heading 9403, HTSUS, as furniture. According to GRI 6, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings. Under heading 9403, HTSUS, there are four separate subheadings for wooden furniture. Subheadings 9403.30, HTSUS, 9403.40, HTSUS, and 9403.50, HTSUS, each provide for wooden furniture of a kind used in offices, kitchens and bedrooms, respectively. Subheading 9403.60, HTSUS, is a residual provision for other wooden furniture. If the desk is not classifiable in subheadings 9403.30 through 9403.50, HTSUS, it will be classified in subheading 9403.60, HTUS.

In *The Pomeroy Collection, Ltd. v. United States*, 559 F.Supp. 2d 1374, 1394 n. 23 (Ct. Int'l Trade 2008), the Court of International Trade (CIT) described different types of HTSUS provisions as follows:

A "use" provision is "a provision describing articles by the manner in which they are used as opposed to by name," while an *eo nomine* provision is one "in which an item is identified by name." *Len-Ron Mfg. Co. v. United States*, 334 F.3d 1304, 1308 (Fed. Cir. 2003). And there are two types of "use" provisions -- "actual use" and "principal (formerly known as "chief") use." An "actual use" provision is satisfied only if "such use is intended at the time of importation, the goods are so used and proof thereof is furnished within 3 years after the date the, goods are entered."

See Additional U.S. Rule of Interpretation (“ARI”) 1(b) (quoted in *Clarendon Mktg., Inc. v. United States*, 144 F.3d 1464, 1467 (Fed. Cir. 1998)). In contrast, a “principal use” provision functions essentially “as a controlling legal label, in the sense, that even if a particular import is proven to be actually used inconsistently with its principal use, the import is nevertheless classified according to its principal use.” *Clarendon Mktg.*, 144 F.3d at 1467.

In *Primal Lite, Inc. v. United States*, 22 C.I.T. 697, 700 (1998), the CIT described one method to identify principal use provisions as follows:

The use of the term “of a kind” is nothing more than a statement of the traditional standard for classifying importation[s] by their use, namely, that it need not necessarily be the actual use of the importation but is the use of the kind of merchandise to which the importation belongs.

Subheadings 9403.30, HTSUS, 9403.40, HTSUS, and 9403.50, HTSUS, each use the term “of a kind.” As such, these subheadings are principal use provisions. Under Additional U.S. Rule of Interpretation 1(a) (AUSR 1(a)), tariff classification under a principal use provision must be determined in accordance with the use in the United States of that class or kind to which the imported goods belong.

Thus, in order to be classified as wooden furniture of a kind used in offices, kitchens or bedrooms, the desk must belong to the same kind or class of goods as such furniture. In *United States v. Carborundum Co.*, 536 F.2d 373, 377 (CCPA 1976) (*Carborundum*), the U.S. Court of Customs and Patent Appeals stated that in order to determine whether an article is included in a particular class or kind of merchandise, the court must consider a variety of factors, including: (1) the general physical characteristics of the merchandise; (2) the channels, class or kind of trade in which the merchandise moves (where the merchandise is sold); (3) the expectation of the ultimate purchasers; (4) the environment of the sale (i.e., accompanying accessories and marketing); (5) usage, if any, in the same manner as merchandise which defines the class; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. *Id.* While these factors were developed under the Tariff Schedule of the United States (predecessor to the HTSUS), the courts have also applied them under the HTSUS. See, e.g. *Aromont USA, Inc. v. United States*, 671 F.3d 1310 (Fed. Cir. 2012), *Essex Manufacturing, Inc. v. United States*, 30 C.I.T. 1 (2006).

In NY N121616, we determined that the wooden desk and bookcases were of the same class or kind of goods principally used as bedroom furniture. Applying the *Carborundum* factors, however, we note that the physical characteristics of the writing desk are: it is relatively small, its working surface measures 40 inches long by twenty-three inches wide, and it has only one small drawer across the top. With regard to the environment of the sale, we note that three different retailers sell the subject writing desk. An internet search reveals that other writing desks share the same physical characteristics as the instant merchandise.² Namely, other writing desks are also

² Pottery Barn (www.potterybarn.com), Target (www.target.com) and Raymour & Flanigan (www.raymourflanigan.com) all feature writing desks in their home furniture departments.

relatively small and consist of simple construction. Other retailers feature pictures of their writing desks in different home settings. Some are pictured next to bookshelves in the corner of a living area or a den. As such, the ultimate purchaser would expect to use the desk as a workstation in his/her home.

Finally, we note that EN 94.03 lists writing desks as an example of general use furniture, which comports with merchandise that defines the class of “other” wooden furniture. As the writing desks are small, they can easily fit into a space in any room of the home. Also, as to the channels of trade, they are not sold solely by office goods retailers; they are sold by department stores and general online retailers. These writing desks are distinguishable from desks for specific uses, such as desks sold as part of children’s bedroom suites. *See, e.g.* NY N080635, dated November 5, 2009, and NY N023523, dated February 28, 2008 (desks sold as parts of children’s bedroom suites were classified as bedroom furniture in subheading 9403.50, HTSUS). For all of these reasons, we do not find that the Shaker Cottage Writing Desk is of the same class or kind of goods as bedroom furniture or office furniture. Therefore, it is classified under subheading 9403.60, HTSUS, as other wooden furniture.

Like the wooden desk, we must apply the *Carborundum* factors to determine the principal use of the two bookcases. Looking at their physical characteristics, the two bookcases are shelving units. They are sold in both the home office and the general furniture sections of three different retailers. An ultimate purchaser would likely use the bookshelves to both store books and to display personal items. With regard to marketing, the catalog picture shows items such as baskets, framed photographs and coral displayed on the bookshelves. The Brookstone website states that the bookshelves are suitable for use in any room in the house. The bookshelves are likely used as general purpose shelving units in rooms such as the home office, the living room and the den.

For all of these reasons, the bookcases are not of the same class or kind of goods as bedroom furniture. Moreover, these bookcases are not principally used in offices or kitchens. Prior to NY N121616, CBP consistently classified bookcases as other wooden furniture under subheading 9403.60, HTSUS. *See* NY L81587, dated December 30, 2004, NY R02946, dated December 28, 2005 and NY N015359, dated August 16, 2007. As such, the bookcases are classifiable in residual subheading 9403.60, HTSUS, as “other” furniture.

The merchandise in question may be subject to antidumping duties or countervailing duties. *See* Notice of Final Determination of Sales at Less Than Fair Value in the Investigation of Wooden Bedroom Furniture from the People’s Republic of China, 69 Fed. Reg. 221, 67313 - 67320 (November 17, 2004). We note that the International Trade Administration is not necessarily bound by a country of origin or classification determination issued by CBP, with regard to the scope of antidumping orders or countervailing duties. Written decisions regarding the scope of AD/CVD orders are issued by the Import Administration in the Department of Commerce and are separate from tariff classification and origin rulings issued by Customs and Border Protection. You can contact them at <http://www.trade.gov/ia/> (click on “Con-

tact Us”). For your information, you can view a list of current AD/CVD cases at the United States International Trade Commission website at <http://www.usitc.gov> (click on “Antidumping and countervailing duty”), and you can search AD/CVD deposit and liquidation messages using ACE, the system of record for AD/CVD messages, or the AD/CVD Search tool available at <http://adcvd.cbp.dhs.gov/adcvdweb/>.

HOLDING:

By application of GRI 6 and AUSR 1(a), the Shaker Cottage Writing Desk, Shaker Cottage Short Bookcase and the Shaker Cottage Tall Bookcase are classifiable under subheading 9403.60.80, HTSUS, which provides, in pertinent part, for “Other furniture and parts thereof: Other wooden furniture: Other ...” The 2014 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 N121616, dated September 16, 2010, and NY N236395, dated December 21, 2012 are hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

GENERAL NOTICE**19 CFR PART 177****Notice of Revocation of Ruling Letter and Revocation of Treatment Relating to the Tariff Classification of Amalfi Lanterns From India**

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

ACTION: Notice of revocation of ruling letter and treatment concerning the tariff classification of Amalfi Lanterns from India.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking a ruling letter relating to the tariff classification of decorative glass and metal articles from India under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on December 18, 2013, in the Customs Bulletin, Vol. 47, No. 50. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 30, 2014.

FOR FURTHER INFORMATION CONTACT: Dwayne S. Rawlings, Tariff Classification and Marking Branch, (202) 325–0092.

SUPPLEMENTARY INFORMATION:**Background**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide

the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade 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 section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the Customs Bulletin, Vol. 47, No. 50, on December 18, 2013, proposing to revoke New York Ruling Letter (NY) N084615, dated December 11, 2009, pertaining to the tariff classification of decorative glass and metal articles from India. No comments were received in response to the notice. As stated in the proposed notice, this action will cover any rulings on the subject 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 rulings identified above. 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 have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this action.

In NY N084615, CBP determined the GSP eligibility of Amalfi Lanterns from India and classified them in heading 7013, HTSUS, specifically subheading 7013.99.90, HTSUS, as "Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): Other glassware: Other: Other: Valued over \$3 each: Other: Valued over \$5 each." It is now CBP's position that the articles are classified in heading 9405, HTSUS, specifically under subheading 9405.50.40, HTSUS, as "Lamps and lighting fittings including searchlights and

spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included: Non-electrical lamps and lighting fittings: Other: Other.” Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N084615 and any other ruling not specifically identified, in order to reflect the proper analysis contained in Headquarters Ruling (HQ) H097728 (Attachment). Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 28, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

HQ H097728

March 28, 2014

CLA-2 OT:RR:CTF:TCM H097728 DSR

CATEGORY: Classification

TARIFF NO.: 9405.50.40

MARK K. NEVILLE, JR., ESQ.
INTERNATIONAL TRADE COUNSELLORS
80 MIDLAND STREET
BRIDGEPORT, CT 06605

RE: Revocation of NY N084615, dated December 11, 2009; classification of Amalfi Lanterns from India

DEAR MR. NEVILLE:

This is in response to your letter, dated March 11, 2010, requesting reconsideration of New York Ruling Letter (NY) N084615, dated December 11, 2009. NY N084615 pertains to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of decorative glass articles referred to as “Amalfi Lanterns.”

We have reviewed the tariff classification of the articles and have determined that the cited ruling is in error. 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 Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), a notice was published in the *Customs Bulletin*, Vol. 47, No. 50, on December 18, 2013, proposing to revoke NY N084615 and proposing to revoke any treatment accorded to substantially identical transactions. No comments were received in response to the notice. Therefore, NY N084615 is revoked for the reasons set forth in this ruling.

FACTS:

According to the information submitted, each of the articles has the form of a glass box with a metal frame. Each has a handle that would allow the articles to be hung from a projection. The articles may also be placed upon flat surfaces. The sizes of the articles are as follows: 6.5 inches high, 10.75 inches high, 15.25 inches high, 19.75 inches high and 24.5 inches high. In addition, the submitted information indicates that the unit value of each of these products is over five dollars. The requestor, Restoration Hardware, Inc. (“Restoration”), asserts that the articles are designed, intended, and marketed for use as lanterns that hold appropriately sized candles.

In NY N084615, CBP classified the articles in subheading 7013.99.90, HTSUS, and described the articles as “general purpose decorative glass articles capable of holding a wide variety of items” and that “do not have clear design features for stabilizing burning candles.” In addition, we noted that, according to the information submitted with the ruling request, the articles failed testing requirements for use as candle accessories according to ASTM standards F2417 and F2601. Restoration asserts that the articles are instead classifiable under subheading 9405.50.40, HTSUS, as non-electrical lamps, not elsewhere or specified or included, or, in the alternative, under subheading 7326.90.85, HTSUS, as other articles of iron or steel.

ISSUE:

Whether the Amalfi Lanterns are classified in subheading 7013.99.90, HTSUS, which provides for other glassware valued over five dollars each; in subheading 9405.50, HTSUS, as non-electrical lamps, not elsewhere specified or included; in subheading 7326.90, HTSUS, as other articles of iron or steel; or subheading 8306.29, HTSUS, as statuettes and other ornaments of base metal?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. In addition, in interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

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

7013 Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018)

* * *

Other glassware:

* * *

7013.99 Other:

* * *

Other:

* * *

Other:

Valued over \$3 each:

* * *

Other:

* * *

7013.99.90

Valued over \$5 each.

7326 Other articles of iron or steel:

* * *

7326.90 Other:

* * *

Other:

* * *

Other:

* * *

7326.90.85	Other: * * * *
8306	Bells, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base metal; mirrors of base metal and base metal parts thereof: * * *
	Statuettes and other ornaments, and parts thereof: * * *
8306.29.00	Other. * * * *
9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included: * * * *
9405.50	Non-electrical lamps and lighting fittings: * * *
	Other: * * *
9405.50.40	Other. * * * *

Restoration makes two assertions regarding the procedural aspects of the issuance of NY N084615. First, Restoration asserts that CBP has created an established and uniform practice (“EUP”) with regard to the classification of the subject articles under subheading 9405.50, HTSUS, and, by implication, that CBP has failed to comply with the requirements of 19 U.S.C. §1315(d), which concerns the effective date of administrative rulings resulting in higher rates. Alternatively, Restoration argues that CBP has “previously accorded substantially similar articles with a ‘treatment’ amounting to an EUP,” and the issuance of NY N084615 was not done in accordance with the notice and comment provisions of 19 U.S.C. § 1625(c).

a. Section 1315(d)

19 U.S.C. § 1315(d) sets forth the publication requirement for administrative rulings that result in higher duty rates. It states the following:

No administrative ruling resulting in the imposition of a higher rate of duty or charge than the Secretary of the Treasury shall find to have been applicable to imported merchandise under an established and uniform practice shall be effective with respect to articles entered for consumption or withdrawn from warehouse for consumption prior to the expiration of thirty days after the date of publication in the Federal Register of notice of such ruling.¹

¹ The functions of the Secretary of the Treasury relating to the former U.S. Customs Service have been transferred to the Secretary of Homeland Security. See 6 U.S.C. §§ 203(1), 551(d), 552(d) and 557, and the Department of Homeland Security Reorganization plan of November 25, 2002, as modified, set out as a note under 6 U.S.C. § 542.

The plain language of the statute bars the imposition and collection of duty increases where an EUP exists that charges a lower tariff rate on the particular merchandise, unless the higher rate has been fixed by an administrative ruling, notice of which has been published in the Federal Register. The corresponding regulatory provision, 19 C.F.R. 177.10, provides the following:

(c) Changes of practice. Before the publication of a ruling which has the effect of changing an established and uniform practice and which results in the assessment of a higher rate of duty within the meaning of 19 U.S.C. 1315 (d), notice that the practice (or prior ruling on which that practice was based) is under review will be published in the Federal Register and interested parties will be given an opportunity to make written submissions with respect to the correctness of the contemplated change

(e) Effective dates. Except as otherwise provided in § 177.12(e) or in the ruling itself, all rulings published under the provisions of this part will be applied immediately. If the ruling involves merchandise, it will be applicable to all unliquidated entries, except that a change of practice resulting in the assessment of a higher rate of duty or increased duties shall be effective only as to merchandise entered for consumption or withdrawn from warehouse for consumption on or after the 90th day after publication of the change in the Federal Register.

The Court of International Trade has spoken to the issue of which types of importing scenarios serve to create an EUP, stating that such a determination can be made on a case-by-case basis according to certain guiding principles, with consideration of the following factors:

...the number of entries resulting in the alleged uniform classifications, the number of ports at which the merchandise was entered, the period of time over which the alleged uniform classifications took place, and whether there had been any uncertainty regarding the classification over its history. In essence, the question is whether a uniform and established practice existed that would lead an importer, in the absence of notice that change in classification will occur, reasonably to expect adherence to the established classification practice when making an importation.

Heraeus-Amersil, Inc. v. United States, 617 F. Supp. 89, 93, 9 C.I.T. 412, 415–16 (1985), *aff'd* 795 F.2d 1575 (Fed. Cir. 1986). Here, Restoration alleges that an EUP existed because “substantially similar items have been imported by [Restoration] and other home furnishings companies for years,” specifically citing to a single ruling letter, , dated May 18, 2007, in which CBP classified one entry of “Napa style” brass lanterns in subheading 9405.50, HTSUS, as non-electric lamps and lighting fittings. One ruling concerning one entry at one port does not an EUP make. See *Emil Dienert v. United States*, 9 Cust. Ct. 411, Abs. 47,544 (1942) (the court found that 5 to 8 years of classifying merchandise as a particular article constituted an established and uniform practice); compare *Siemens America, Inc. v. United States*, 692 F.2d 1382 (Fed. Cir. 1982), *aff'g* 2 C.I.T. 136 (1981) (100 entries of merchandise classified under a particular item number over possibly 2 years at a single port was not enough to create *de facto* an established and uniform practice). Additionally, there is some question as to whether the item con-

sidered in HQ W563490 is substantially similar to the subject Amalfi lanterns. HQ W563490 involved an analysis of the “value-content” requirements of the country of origin rules of the GSP, and the articles’ resultant eligibility for preferential treatment. It did not address the classification of the goods or the characteristics that would make them suitable for use as lanterns. There was no discussion regarding the typical features of a non-electric lamp or lighting fitting, nor was there discussion of the roles of the articles’ component materials. While both styles of lanterns visually appear to be able to hold candles and be placed on flat surfaces, that is insufficient information with which to find them to be “substantially similar.” Considering the above, we determine that the evidence is insufficient to demonstrate that an EUP classifying identical or similar merchandise in subheading 9405.50, HTSUS, was in effect at the time of entry or liquidation of the subject merchandise.

b. Section 1625(c)(2)

19 U.S.C. § 1625(c) sets forth the notice and comment requirements for the modification of treatment previously accorded to substantially similar transactions. It states the following:

A proposed interpretive ruling or decision which would –

- (1) modify (other than to correct a clerical error) or revoke a prior interpretive ruling or decision which has been in effect for at least 60 days; or
- (2) have the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions;

shall be published in the Customs Bulletin. The Secretary shall give interested parties an opportunity to submit, during not less than the 30-day period after the date of such publication, comments on the correctness of the proposed ruling or decision. After consideration of any comments received, the Secretary shall publish a final ruling or decision in the Customs Bulletin within 30 days after the closing of the comment period. The final ruling or decision shall become effective 60 days after the date of its publication.

Title 19 of the Code of Federal Regulations (CFR) sets forth the evidentiary standards for determining whether treatment was previously accorded to substantially similar transactions. 19 CFR 177.12(c)(1) provides, in pertinent part, as follows:

(i) There must be evidence to establish that:

(A) There was an actual determination by a Customs officer regarding the facts and issues involved in the claimed treatment; (B) The Customs officer making the actual determination was responsible for the subject matter on which the determination was made; and (C) Over a 2-year period immediately preceding the claim of treatment, Customs consistently applied that determination on a national basis as reflected in liquidations of entries or reconciliations or other Customs actions with respect to all or substantially all of that person’s Customs transactions involving materially identical facts and issues;

... (iv) The evidentiary burden as regards the existence of the previous treatment is on the person claiming that treatment. The evidence of previous treatment by Customs must include a list of all materially

identical transactions by entry number (or other Customs assigned number), the quantity and value of merchandise covered by each transaction (where applicable), the ports of entry, the dates of final action by Customs, and, if known, the name and location of the Customs officer who made the determination on which the claimed treatment is based. In addition, in cases in which an entry is liquidated without any Customs review (for example, the entry is liquidated automatically as entered), the person claiming a previous treatment must be prepared to submit to Customs written or other appropriate evidence of the earlier actual determination of a Customs officer that the person relied on in preparing the entry and that is consistent with the liquidation of the entry.

In support of its argument, Restoration has provided photos from catalog photographs of the Napa style lanterns of HQ W563490 and the instant Amalfi lanterns, with the blanket assessment that the Napa style lanterns are “quite obviously identical [to the Amalfi lanterns] in overall style and intended use.” Restoration’s letter, *supra*, at 2. However, as discussed *supra*, HQ W563490 did not address the classification of the goods or the characteristics that would make them suitable for use as lanterns. Even if one were to favor Restoration’s contention that the Napa style lanterns of HQ W563490 are “quite obviously identical [to the Amalfi lanterns] in overall style and intended use,” Restoration has *failed* to show that, over a 2-year period immediately preceding its claim of treatment, CBP consistently applied that determination on a national basis as reflected in liquidations of entries or reconciliations or other CBP actions with respect to all or substantially all of Restoration’s CBP transactions involving materially identical facts and issues. Therefore, we find that the notice and comment requirements of 19 U.S.C. § 1625(c) were inapplicable with regard to the issuance of NY N084615.

Proceeding to the classification of the subject articles, Note 1(e) to Chapter 70, HTSUS, states that Chapter 70 does not cover “Lamps or lighting fittings, illuminated signs, illuminated name-plates or the like, having a permanently fixed light source, or parts thereof of heading 9405.” EN 70.13(f) echoes that exclusion with regard to heading 7013. Also, Note 1(k) to Section XV (which includes heading 7326, HTSUS) excludes articles of Chapter 94 from coverage in that Section. EN 73.26 notes that heading 7326, HTSUS, does not cover articles included in Chapters 82 or 83, HTS, or articles more specifically covered elsewhere in the Nomenclature. Finally, EN 83.06 states the following:

[Statuettes, and other ornaments, of base metal] comprises a wide range of ornaments of base metal (whether or not incorporating subsidiary non-metallic parts) of a kind designed essentially for decoration, e.g., in homes, offices, assembly rooms, places of religious worship, gardens.

It should be noted that the group does not include articles of more specific headings of the Nomenclature, even if those articles are suited by their nature or finish as ornaments.

The group covers articles which have no utility value but are wholly ornamental, and articles whose only usefulness is to contain or support other decorative articles or to add to their decorative effect (emphasis added) ...

Therefore, if the articles at issue are classifiable in heading 9405, HTSUS, as “lamp[s] or lighting fitting[s],” then, by virtue of Note 1(e) to Chapter 70, HTSUS, and EN 70.13, the articles are excluded from heading 7013, HTSUS. They would be excluded from heading 7326, HTSUS, by application of Note 1(k) to Section XV. Finally, if the articles possess utility value, they are excluded from heading 8306, HTSUS, by the EN to that heading.

Heading 9405, HTSUS, provides, in relevant part, for “Lamps,” which are not defined in the HTSUS. In Headquarters Ruling letter (HQ) HQ 965248 July 26, 2002, CBP utilized the dictionary definitions of lamps. *See also* HQ H042586, dated January 26, 2009. In HQ 965248, we noted:

“Lamp” is defined in The Random House College Dictionary, Random House, Inc. (1973), at 752, as “a device providing an isolated source of artificial light”. Webster’s New Collegiate Dictionary, G. & C. Merriam Company (1979), at 639, defines “lamp” as “any of various devices for producing light or heat.”

Restoration states that the subject articles are not decorative glass articles but are instead of a utilitarian nature, and are classified under subheading 9405, HTSUS, as lamps. Restoration asserts that (with the exception of the smallest sized articles) the articles possess circular stamped depressions in their metal bases that provide stability for candles that are placed inside of the articles. The smallest sized articles do not possess such depressions and are designed only for use with very stable tea light candles. The articles also possess four glass panels to protect a candle’s flame, with one panel opening for candle placement, lighting, and extinguishing. The articles’ warning labels indicate that they are used as lanterns with candles. The articles also possess vented tops for heat dissipation and handles for placing the candles on hooks or stanchions. Finally, Restoration states that the marketing literature for the articles shows that they are used in outdoor settings (decks, porches).

We do not dispute Restoration’s contention that the glass panels can help to protect a candle’s flame from gusts of wind or breezes, and that one panel can open to accommodate candle placement, lighting, and extinguishing. Nor do we dispute that the vented tops may aid in heat dissipation.

Restoration also claims that the existence of handles is an essential criterion for classification of articles as lanterns, citing NY 073809, HQ W968278 (flashlights v. lanterns). Restoration’s reliance on HQ W968278 and NY 073809 is misguided. At issue in those rulings was the applicability of heading 8513, HTSUS, and its requirement of portability. While we note that the ENs to heading 9405, HTSUS, describe “portable lamps,” which includes “hand lanterns,” they also have two references to lamps for exterior lighting and refer to “porch and gate lamps,” with no reference to the portability of such lamps. As explained below, the instant analysis of the applicability of heading 9405, HTSUS, is not driven by the portability of the subject articles but by ability of the articles to provide lighting.

CBP has consistently noted that a non-electric lamp or lighting fitting should include design features to contain or stabilize a burning source of light while providing unobstructed light to the surrounding area. *See* NY N094121, dated March 4, 2010; NY N134835, dated December 28, 2010; NY N113545, dated July 19, 2010; NY N064544, dated July 7, 2009. Here, the articles contain flat surfaces with faint, circular depressions that are designed to support a candle. Although there may be some doubt as to whether

the depressions are deep enough to effectively stabilize a candle while the articles are being carried by hand and moving about, there is no doubt that while stationary at least, the articles can act as “lamps” by “providing an isolated source of artificial light” or “producing light or heat.” While ASTM standards F2417 and F2601 *may* be helpful in determining the extent to which the articles may effectively be used when carried by hand, the fact remains that the articles possess characteristics that allow them to act as lamps. We therefore find that the subject articles are classifiable under heading 9405, HTSUS, as lamps, and are therefore excluded from all other headings under consideration.

Finally, in your letter you inquired about the applicability of the Generalized System of Preferences (GSP) to this merchandise. Articles classifiable under subheadings 9405.50.40, HTSUS, which are products of India, may be entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. The GSP is subject to modification and periodic suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse. To obtain current information on GSP, you may visit www.cbp.gov and search for the term “GSP.”

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.

HOLDING:

By application of GRI 1, the subject “Amalfi Lanterns” are classified in heading 9405, HTSUS, and specifically in subheading 9405.50.40, HTSUS, as “Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included: Non-electrical lamps and lighting fittings: Other: Other.” The column one general rate of duty is 6% *ad valorem*. However, the articles may be entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided at www.usitc.gov/tata/hts.

EFFECT ON OTHER RULINGS:

NY N084615, dated December 11, 2009, is hereby revoked.

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

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**MODIFICATION OF A RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
ELIGIBILITY OF A MEN'S SHIRT AND TIE SET FOR
PREFERENTIAL TREATMENT UNDER THE CARIBBEAN
BASIN TRADE PARTNERSHIP ACT**

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

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to the eligibility of a men's shirt and tie set for preferential treatment under the Caribbean Basin Trade Partnership Act (CBTPA).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying a ruling letter relating to the eligibility of a men's shirt and tie set for preferential treatment under the CBTPA. Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin* Vol. 44, No. 14, on March 31, 2010. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 30, 2014.

FOR FURTHER INFORMATION CONTACT: Beth Jenior, Tariff Classification and Marking Branch: (202) 325–0347.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade commu-

nity's responsibilities and rights under the customs and related laws. In addition, both the trade 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 section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Volume 44, No. 14, on March 31, 2010, proposing to modify New York Ruling Letter (NY) L84803, dated June 2, 2005, in which CBP determined that a shirt and tie set was ineligible for preferential treatment under the CBTPA because the foreign fabric tie, as part of the set, is an accessory ineligible for CBTPA preference. No comments were received in response to the notice.

As stated in the proposed notice, this modification will cover any rulings on the subject 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 above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY L84803, in order to reflect that the subject merchandise is not eligible for preferential treatment under the CBTPA in the absence of evidence concerning the fabric weight with which to calculate the average yarn number, according to the analysis contained in Headquarters Ruling Letter (HQ) H058923, which is attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 30, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H058923

March 30, 2014

CLA-2 OT:RR:CTF:TCM H058923 KSH

CATEGORY: Classification

TARIFF NO.: 6205.20.20

MR. GARY EPSTEIN
BY DESIGN APPAREL, INC.
1370 BROADWAY
NEW YORK, NY 10018

RE Modification of NY L84803; Eligibility of shirt and tie sets under the CBTPA

DEAR MR. EPSTEIN:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) L84803, issued to you on June 2, 2005, concerning, in relevant part, the eligibility of a men's woven shirt and tie set for preferential treatment under the Caribbean Basin Trade Partnership Act (CBTPA). The merchandise was determined to be a set ineligible for preferential treatment under the CBTPA because the foreign fabric tie, as part of the set, is an accessory ineligible for CBTPA preference. We have reviewed that ruling and found it to be in error with respect to the analysis of the eligibility of the shirt and tie set for preferential treatment. Therefore, this ruling modifies NY L84803.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed modification was published on March 31, 2010, in the *Customs Bulletin*, Volume 44, No. 14. CBP received no comments in response to the notice.

FACTS:

The merchandise at issue was described as follows in NY L84803:

The submitted sample is a men's shirt and tie set. The shirt is constructed from 55% cotton, 45% polyester, solid color, dyed, woven fabric. The shirt features a left over right full front opening with seven button closures; a point collar; long sleeves with buttoned cuffs; a pocket on the left chest; and a curved, hemmed bottom. The shirt is labeled with collar and sleeve sizes (i.e., 16, 34/35) and is packaged in a retail polybag with a coordinating color, 100% polyester, woven fabric tie.

You state that the yarns used in the shirt fabric are spun in China and that the fabric will be woven and dyed in China. The shirt fabric is sent to the Dominican Republic where it is cut and sewn into finished garments. You also state that the coordinating tie is made in Korea from fabric that is woven in Korea from yarns that are spun in Korea.

ISSUE:

Do the men's shirt and tie sets qualify for duty-free treatment under the CBTPA?

LAW AND ANALYSIS:

The CBTPA provides certain specified trade benefits for countries of the Caribbean region. The Act extends North American Free Trade Agreement (NAFTA) duty treatment standards to non-textile articles that previously were ineligible for preferential treatment under the Caribbean Basin Economic Recovery Act (CBERA) and provides for duty- and quota-free treatment for certain textile and apparel articles which meet the requirements set forth in Section 211 of the CBTPA (amended 213(b) of the CBERA, codified at 19 U.S.C. 2703(b)). Beneficiary countries are designated by the President of the United States after having met eligibility requirements set forth in the CBTPA. Eligibility for benefits under the CBTPA is contingent on designation as a beneficiary country by the President of the United States and a determination by the United States Trade Representative (USTR), published in the *Federal Register*, that a beneficiary country has taken the measures required by the Act to implement and follow, or is making substantial progress toward implementing and following, certain customs procedures, drawn from Chapter 5 of the NAFTA, that allow the United States to verify the origin of products. Once both these designations have occurred, a beneficiary country is entitled to preferential treatment provided for by the CBTPA. The Dominican Republic was designated a beneficiary country by Presidential Proclamation 7351, published in the *Federal Register* on October 4, 2000 (65 *Fed. Reg.* 59329). It was determined to have met the second criteria concerning customs procedures by the USTR and thus eligible for benefits under the CBTPA effective October 10, 2000 (see 65 *Fed. Reg.* 60236).

The provisions implementing the textile provisions of the CBTPA in the Harmonized Tariff Schedule of the United States (HTSUS) are contained, for the most part, in subchapter XX, Chapter 98, HTSUS (two provisions may be found in subheading 9802.00.80, HTSUS). The regulations pertinent to the textile provisions of the CBTPA may be found at §§ 10.221 through 10.228 of the CBP Regulations (19 CFR 10.221 through 10.228).

The applicable Chapter 98 provisions provide as follows:

- | | |
|------------|---|
| 9820 | Articles imported from a designated beneficiary Caribbean Basin Trade Partnership country enumerated in general note 17(a) to the tariff schedule: |
| 9820.11.03 | Apparel articles of chapter 61 or 62 sewn or otherwise assembled in one or more such countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States, from yarns wholly formed in the United States (including fabrics not formed from yarns, if such fabrics are classifiable in heading 5602 or 5603 and are wholly formed and cut in the United States), the foregoing which (1) are embroidered or were subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing or other similar processes, (2) but for such embroidery or processing are of a type otherwise described in heading 9802.00.80 of the tariff schedule, and (3) meet the requirements of U.S. note 2(a) to this subchapter |

- 9820.11.24 Apparel articles both cut (or knit-to-shape) and sewn or otherwise assembled in one or more such countries from fabrics or yarn not formed in the United States or in one or more such countries, provided that such apparel articles of such fabrics or yarn would be considered an originating good under the terms of general note 12(t) to the tariff schedule without regard to the source of the fabric or yarn if such apparel article had been imported from the territory of Canada or the territory of Mexico directly into the customs territory of the United States.

The fabric is formed in China and it is assumed that the yarns are not formed in the U.S. or a CBTPA beneficiary country. Thus, in order to determine whether the apparel articles are eligible for preferential treatment under the CBTPA, we must determine whether the apparel articles would be considered originating goods under General Note 12(t), HTSUS. See sub-heading 9820.11.24, HTSUS.

General Note 12(t), HTSUS, sets out the tariff shift rules for determining whether non-originating materials used in the production of a good have been transformed into originating goods under NAFTA.

To determine the applicable tariff shift rule, we must determine the proper classification of the shirt and tie sets. The shirts are classifiable under heading 6205, HTSUS, as “men’s or boys’ shirts” and the ties are classifiable under heading 6215, HTSUS, as “ties, bow ties and cravats.”

GRI 3 provides for goods that are, *prima facie*, classifiable in two or more headings. GRI 3(b) provides that goods put up in sets for retail sale shall be classified as if they consisted of the material or component which gives them their essential character. The shirt and tie are considered a set for purposes of classification, with the essential character being imparted by the shirt based on its greater weight, bulk and role in relation to the set. GN 12 Chapter 62, rule 3 states in part:

For purposes of determining the origin of a good of this chapter, the rule applicable to that good shall only apply to the component that determines the tariff classification of the good and such component must satisfy the tariff change requirements set out in the rule for that good....

As the shirt provides the essential character to the shirt and tie sets, only the shirt must undergo the tariff shift requirements.

General Note 12(t)(30) states:

A change to subheadings 6205.20 through 6205.30 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54, or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, *provided* that the good is both cut and sewn or otherwise assembled in the territory of one or more of the NAFTA parties.

Insofar as the shirts are constructed from fabric of heading 5210, HTSUS, which provides for “Woven fabrics of cotton, containing less than 85 percent by weight of cotton, mixed mainly or solely with man-made fibers, weighing not more than 200 g/m²”, the shirt does not meet the tariff shift set forth in GN 12(t)(29).

Subheading rule (c) to GN 12(t)(30) states:

Men's or boys' shirts of cotton (subheading 6205.20) or of man-made fibers (subheading 6205.30) shall be considered to originate if they are both cut and assembled in the territory of one or more of the parties and if the fabric of the outer shell, exclusive of collars or cuffs, is wholly of one or more of the following:

...(c) Fabrics of subheadings 5210.21 or 5210.31, not of square construction, containing more than 70 warp ends and filling picks per square centimeter, of average yarn number exceeding 70 metric.

No information was submitted regarding the fabric weight by which to determine the average yarn number. In the absence of such information, the men's shirt and tie sets are not eligible for duty-free treatment under subheading 9820.11.24, HTSUS. The determination in NY L84803 that the shirt and tie sets are classified in subheading 6205.20.2016, HTSUSA (annotated), which provides for "Men's or boys' shirts, of cotton: other: dress: other: men's" remains unchanged.

HOLDING:

The men's shirt and tie sets are not eligible for preferential treatment under the CBTPA in the absence of evidence concerning the fabric weight with which to calculate the average yarn number.

EFFECT ON OTHER RULINGS:

NY L84803, dated June 2, 2005, is hereby modified.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF CINNAMON SWEET
ROLLS**

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

ACTION: Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the tariff classification of cinnamon sweet rolls.

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) proposes to revoke a ruling letter and revoke treatment relating to the tariff classification of cinnamon sweet rolls under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before May 30, 2014.

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

FOR FURTHER INFORMATION CONTACT: Beth Jenior, Tariff Classification and Marking Branch, at (202) 325–0347.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are

“informed compliance” and **“shared responsibility.”** These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade 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 section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), this Notice advises interested parties that CBP intends to revoke a ruling letter and revoke treatment pertaining to the tariff classification of cinnamon sweet rolls. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) N150096, dated March 9, 2011 (Attachment A), this notice 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., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this Notice should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(2)), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice 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 notice of this proposed action.

In NY N150096, CBP determined that the subject cinnamon sweet rolls were classified in subheading 1901.90.90, HTSUS, which provides, in pertinent part, for: “[F]ood preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight of cocoa ...not elsewhere specified or included: Other: Other: Other: Other: Other: Other...” It is now

CBP's position that, if imported within the quantitative limits set forth in Additional U.S. Note 8 to Chapter 17, the cinnamon sweet rolls are classified under subheading 1901.90.56, HTSUS, which provides, in pertinent part, for "[F]ood preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight of cocoa ...not elsewhere specified or included: Other: Other: Other: Other: Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17: Described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions." If the quantitative limits set forth in Additional U.S. Note 8 to Chapter 17 have already been met, it is CBP's position that the cinnamon sweet rolls are classified under subheading 1901.90.58, HTSUS, which provides, in pertinent part, for: "[F]ood preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight of cocoa ...not elsewhere specified or included: Other: Other: Other: Other: Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke NY N150096, and to revoke or to modify any other ruling not specifically identified in order to reflect the proper classification of the cinnamon sweet rolls according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H158455, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: April 2, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N150096

March 9, 2011

CLA-2-19:OT:RR:NC:2:228

CATEGORY: Classification

TARIFF NO.: 1901.90.9095

Ms. ADRIENNE CLIFT
READY BAKE FOODS
2095 MEADOWVALE BLVD
MISSISSAUGA, ONTARIO L5N 5N1, CANADA

RE: The tariff classification of frozen, unbaked pastries from Canada

DEAR Ms. CLIFT:

In your letter dated February 24, 2011, you requested a tariff classification ruling.

Ingredients breakdowns and images of the products were submitted with your letter. Cinnamon Sweet Roll (sku number 10240) is an unbaked roll-shaped pastry with a cinnamon filling. The pastry is composed of flour, water, yeast, sugar, sweet dough concentrate, shortening, cinnamon filling, margarine, flavor and cinnamon, and weights 2.5 oz (71 g), net weight. The total sugar content is less than 10 percent, by dry weight. The frozen products will be imported in a cardboard box holding 16.9 lb, net weight, and sold to retail stores who need to proof and bake the products before selling to the public.

In your letter, you suggested the product should be classified in either subheading 1901.20, or 1901.90.5600, Harmonized Tariff Schedule of the United States (HTSUS), the provisions for mixes and doughs for the preparation of bakers' wares of heading 1905, or other food preparations of flour described in additional U.S. note 8 to chapter 17, respectively. Based on the product's ingredient composition, form, and use, it will be classified elsewhere.

The applicable subheading for the Cinnamon Sweet Roll (sku number 10240) will be 1901.90.9095, HTSUS, which provides for food preparations of flour, groats, meal, starch or malt extract, not containing cocoa...other...other...other...other. The rate of duty will be 6.4 percent ad valorem.

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

Your inquiry does not provide enough information for us to give a classification ruling on Cinnamon Roll Dough (sku number 10247) and Cinnamon Sweet Roll (sku number 10252). Your request for a classification ruling should provide a complete ingredients breakdown for the cinnamon flakes and the filling EZEE cinnamon mix. When this information is available, you may wish to consider resubmission of your request. If you decide to resubmit your request, please include all of the material that we have returned to you.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stanley Hopard at (646) 733-3029.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H158455
CLA-2 OT:RR:CTF:TCM H158455 EGJ
CATEGORY: Classification
TARIFF NO.: 1901.90.56; 1901.90.58

ADRIENNE CLIFT
READY BAKE FOODS
2095 MEADOWVALE BLVD.
MISSISSAUGA, ONTARIO L5N 5N1, CANADA

RE: Revocation of NY N150096: Classification of Cinnamon Sweet Rolls

DEAR MS. CLIFT:

In a letter dated February 24, 2011, you requested a ruling on the tariff classification of a frozen, unbaked cinnamon sweet roll under the Harmonized Tariff Schedule of the United States (HTSUS). In New York Ruling Letter (NY) N150096, dated March 9, 2011, U.S. Customs and Border Protection (CBP) responded to your request and classified the subject merchandise under subheading 1901.90.90, HTSUS, which provides for other food preparations of flour.

In a letter dated March 18, 2011, you provided additional information regarding the cinnamon roll and asked CBP to revoke NY N150096. We have reviewed NY N150096 and the additional information that you provided, and we have found the ruling to be in error. For the reasons set forth below, we hereby revoke NY N150096.

FACTS:

In NY N150096, CBP described the cinnamon roll (sku number 10240) as “an unbaked roll-shaped pastry with a cinnamon filling. The pastry is composed of flour, water, yeast, sugar, sweet dough concentrate, shortening, cinnamon filling, margarine, flavor and cinnamon, and weighs 2.5 oz. (71 g.), net weight. The total sugar content is less than 10 percent, by dry weight. The frozen products will be imported in a cardboard box holding 16.9 lbs., net weight, and sold to retail stores who need to proof and bake the products before selling to the public.”

In the original ruling request, you stated that the cinnamon roll contains less than ten percent of sugar by dry weight. In your request for reconsideration, you included the dry weight of ingredients in the cinnamon mix included in the roll. This information was not included in the original request. Based on the additional information, the dry weight of sugar in the cinnamon mix plus the dry weight of sugar in the roll is greater than ten percent of the total dry weight of the cinnamon roll.

ISSUE:

Is the cinnamon roll classified in subheading 1901.90.56, HTSUS, as a food preparation of flour containing over 10 percent by dry weight of sugar, or in subheading 1901.90.90, HTSUS, as other types of food preparations of flour?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff

schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely 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 the GRIs 1 through 5.

The HTSUS provisions at issue are as follows:

- 1901 Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included:
- 1901.90 Other:
 - Other:
 - Other:
 - Other:
 - Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17
- 1901.90.56 Described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions ...
 - * * *
- 1901.90.58 Other ...
 - * * *
 - Other:
- 1901.90.90 Other ...
 - * * *

Additional U.S. Note 3 to Chapter 17 provides, in pertinent part, as follows:

For the purposes of this schedule, the term “articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17” means articles containing over 10 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients ...

Additional U.S. Note 8 to Chapter 17 provides as follows:

The aggregate quantity of articles containing over 10 percent by dry weight of sugars described in additional U.S. note 3 to chapter 17, entered under subheadings 1701.91.54, 1704.90.74, 1806.20.75, 1806.20.95, 1806.90.55, 1901.90.56, 2101.12.54, 2101.20.54, 2106.90.78 and 2106.90.95 during the 12-month period from October 1 in any year to the following September 30, inclusive, shall not exceed 64,709 metric tons (articles the product of Mexico shall not be permitted or included under this quantitative limitation and no such articles shall be classifiable therein).

Additional U.S. Note 1 to Chapter 19 provides, in pertinent part, as follows:

For the purposes of this chapter, the term “mixes and doughs described in additional U.S. note 1 to chapter 19” means articles containing over 10 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients ...

* * *

Applying GRI 1, it is undisputed that frozen, unbaked pastries are classified in heading 1901, HTSUS, as food preparations of flour. Indeed, in *Schulstad USA, Inc. v. United States*, 26 C.I.T. 1347, 1355 (2002), the Court of International Trade found that frozen, unbaked Danish pastries “cannot be classified with baked articles if not in fact baked before freezing ... this means that plaintiff’s entered frozen mass of fully prepared pastry ingredients does land in the food ‘basket’ provision of HTSUS heading 1901.” As such, the frozen, unbaked cinnamon roll is classified in heading 1901, HTSUS. Applying Additional U.S. Note 1 to Chapter 19, it is also undisputed that the white sugar in the cinnamon rolls is derived from sugar cane or sugar beets.

In NY N150096, CBP classified the cinnamon roll in subheading 1901.90.90, HTSUS, because CBP calculated that the sugar content was less than ten percent of the cinnamon roll’s dry weight. However, based upon additional information in the reconsideration request, CBP calculates that the sugar constitutes more than ten percent of the cinnamon roll’s dry weight. As such, the cinnamon rolls are classified in subheading 1901.90.56, HTSUS, which provides for food preparations of flour containing over ten percent by dry weight of sugar when the sugar is derived from sugar cane or sugar beets.

Additional U.S. Note 8 to Chapter 17 sets forth a quota which limits importations of goods classified under subheading 1901.90.56, HTSUS. If the cinnamon rolls are imported in quantities that fall under the limit set forth in additional U.S. Note 8 to Chapter 17, they shall remain classified in subheading 1901.90.56, HTSUS. However, if the quantitative limits of additional U.S. Note 8 to Chapter 17, HTSUS, have been reached, the subject cinnamon rolls will be classified in subheading 1901.90.58, HTSUS. We note that merchandise that is a product of Mexico is not subject to this quota; thus, if it were determined that the subject cinnamon rolls were products of Mexico, they would not be subject to this quota.

HOLDING:

If imported in quantities that fall within the limits described in additional U.S. Note 8 to Chapter 17, the cinnamon rolls will be classified in subheading 1901.90.56, HTSUS, which provides, in pertinent part, for “[F]ood preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight of cocoa ...not elsewhere specified or included: Other: Other: Other: Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17: Described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions.” The 2014 column one, general rate of duty is 10% *ad valorem*.

If the quantitative limits of Additional U.S. Note 8 to Chapter 17, HTSUS, have been reached, the cinnamon rolls will be classified in subheading 1901.90.58, HTSUS, which provides, in pertinent part, for: “[F]ood prepara-

tions of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight of cocoa ...not elsewhere specified or included: Other: Other: Other: Other: Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17: Other.” The 2014 column one, general rate of duty is 23.7 cents per kilogram plus 8.5% *ad valorem*. Furthermore, if classified in subheading 1901.90.58, HTSUS, the cinnamon rolls will also be subject to the additional duty rates specified in subheadings 9904.17.49 - 9904.17.65, HTSUS, as applicable.

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 N150096, dated March 9, 2011, is hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**MODIFICATION AND REVOCATION OF RULING LETTERS
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF POLYURETHANE COATED
GLOVES**

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

ACTION: Notice of modification and revocation of ruling letters and revocation of treatment relating to the tariff classification of polyurethane coated gloves.

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 Customs and Border Protection (CBP) is revoking New York Ruling Letter (NY) N013115, dated July 19, 2007, and modifying New York Ruling Letter N042821, dated November 21, 2008, with regard to the tariff classification of polyurethane coated gloves under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin* Vol. 46, No. 35, on August 22, 2012. Two comments were received in opposition to this notice. The final ruling was erroneously published in the *Customs Bulletin*, Vol. 48, No. 4, on January 29, 2014, along with an incorrect notice. Because notice was not properly given in the prior publication, the final ruling is being republished here along with the correct final notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 30, 2014.

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Tariff Classification and Marking Branch: (202) 325–0024

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993 Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057)(hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are

“informed compliance” and **“shared responsibility.”** These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade 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 section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke one ruling letter and modify a second ruling pertaining to the tariff classification of polyurethane coated gloves was published on August 22, 2012, in Volume 46, Number 35 of the *Customs Bulletin*. Two comments were received in response to this notice.

As stated in the proposed notice, this action will cover any rulings on the subject 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 above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

In NY N013115 and NY N042821, CBP determined that three styles of polyurethane coated gloves were classified in heading 3926, HTSUS, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N013115 and modifying NY N042821, in order to reflect the proper classification of the polyurethane coated gloves in heading 6116, HTSUS, according to

the analysis contained in Headquarters Ruling Letter (HQ) H220278, which is attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: April 1, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H220278

April 1, 2014

CLA-2 RR:CTF:TCM H220278 CKG

CATEGORY: Classification

TARIFF NO: 6116.10.55

RE: Revocation of NY *N013115* and modification of NY N042821; classification of polyurethane coated gloves

Ms. JUNG PATTON

SHOWA Co. (U.S.A.), INC. 575 ANDOVER PARK WEST

SUITE 105

SEATTLE, WA 98188

DEAR Ms. PATTON:

This is in reference to New York Ruling Letter (NY) *N013115*, issued to you on July 19, 2007, as well as NY N042821, issued to Performance Fabrics on November 21, 2008. NY *N013115* and NY N042821 classified three styles of polyurethane coated gloves in heading 3926, HTSUS, as articles of plastic. For the reasons set forth below, we have determined that the classification of these gloves in heading 3926, HTSUS, was incorrect.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY *N013115* and modify NY N042821 was published on August 22, 2012, in Volume 46, Number 35, of the *Customs Bulletin*. Two comments were received in opposition to this Notice, and are addressed in this decision.

FACTS:

NY *N013115* described the styles 540 and 541 as follows:

Style #540 (HPPE Palm Fit Glove) and #541 (HPPE Palm Plus Glove), are 100% High Performance Polyethylene Fiber (HPPE) string knit gloves featuring a polyurethane palm coating on the outer surface of the palms, from fingertips to wrist, which also overlaps the backside fingertips. A polyurethane coating has also been applied to the underside fabric of the palms. The gloves are used for assembly operations where cut resistance and dexterity is desired.

NY N042821 correctly classified two styles of gloves, 9010 and 9004, in heading 6116, HTSUS, and incorrectly classified one style, 9003, in heading 3926, HTSUS. The subject styles are described as follows:

Style 9010 is a string-knit work glove with a polyurethane coating, which covers the entire palm as well as a portion of the palmside cuff, and overlaps the backside fingertips and sides of the wearer's hands and fingers. You have indicated that the weight of the coating is less than 50% of the weight of the glove. The glove features an inner lining on the palmside, which you state is constructed of a resin coated 100% polyester crepe woven fabric. The glove also features a ribbed knit wrist with an overlock stitch finish at the bottom cuff and the "HEXAMOR" trademark located on the center backside of the glove. You state that the fiber content of the gloves is 100% Taeki5 (an ultra-high molecular weight polyethylene man-made fabric).

Style 9004 is a string-knit work glove with a rubber (nitrile) dip coating, which covers the entire palm as well as a portion of the palmside cuff, and overlaps the backside fingertips and sides of the wearer's hands and fingers. You have indicated that the weight of the coating is less than 50% of the weight of the glove. The glove features an inner lining on the palmside, which you state is constructed of a resin dot coated 100% polyester crepe woven fabric. The glove also features a ribbed knit wrist with an overlock stitch finish at the bottom cuff and the "HEXAMOR" trademark located on the center backside of the glove. You state that the fiber content of the gloves is 100% nylon.

Style 9003 is a string-knit work glove with a complete palmside, from fingertips to wrist made of a textile fabric that has been completely coated on both sides with a polyurethane plastic. Polyurethane plastic also covers a portion of the palmside cuff, and overlaps the backside fingertips and sides of the wearer's hands and fingers. You have indicated that the weight of the coating is less than 50% of the weight of the glove. The glove features an inner lining on the palmside, which you state is constructed of a resin coated 100% polyester crepe woven fabric. The glove also features a ribbed knit wrist with an overlock stitch finish at the bottom cuff, the "HEXAMOR" trademark located on the center backside of the glove and a label sewn onto the backside cuff bottom that states "Armor Inside!" You state that the fiber content of the gloves is 100% Taeki5 (an ultra-high molecular weight polyethylene man-made fabric).

ISSUE:

Whether the subject gloves are classified in heading 3926, HTSUS, as other articles of plastic, or heading 6116, HTSUS, as gloves.

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

- | | |
|-------------|--|
| 3926: | Other articles of plastics and articles of other materials of headings 3901 to 3914: |
| 3926.20: | Articles of apparel and clothing accessories (including gloves, mittens and mitts): |
| | Gloves, mittens and mitts: |
| 3926.20.10: | Seamless . . . |
| | * * * * * |
| 6116: | Gloves, mittens and mitts, knitted or crocheted: |
| 6116.10: | Impregnated, coated or covered with plastics or rubber: |
| | Other: |
| | Without fourchettes: |

Other:

6116.10.55:

Containing 50 percent or more by weight of cotton, man-made fibers or other textile fibers, or any combination thereof . . .

* * * * *

Legal Note 1 to Section XI provides, in pertinent part:

1. This section does not cover:

(h) Woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with plastics, or articles thereof, of chapter 39;

Note 2 to Chapter 39 provides as follows:

2. This chapter does not cover:

(p) Goods of section XI (textiles and textile articles);

Note 2 to Chapter 59 provides, in pertinent part:

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** (emphasis added):

...

(3) Products in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of color (chapter 39);

...

(5) Plates, sheets or strip of cellular plastics combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (Chapter 39).

* * * * *

NY N013115 and NY N042821 classified three styles of polyurethane coated gloves in heading 3926, HTSUS, as articles of plastic. For the reasons set forth below, we believe that these gloves (style nos. 540, 541, and 9003) were incorrectly classified in heading 3926, HTSUS, and that they are correctly classified in heading 6116, HTSUS.

Note 2(p) to Chapter 39, HTSUS, states that the Chapter does not cover goods of Section XI (textiles and textile articles). Note 1(h) to Section XI, however, excludes, *inter alia*, articles of knitted or crocheted fabrics coated, covered, impregnated or laminated with plastics, of Chapter 39. Although these notes would appear to conflict, Note 2 to Chapter 59, HTSUS, clarifies the scope of Chapter 39 with regard to textiles coated with plastics and sets out definitive criteria for the determination of which fabrics that have been

impregnated, coated, covered, or laminated with plastics are classifiable in Chapter 39, HTSUS, at GRI 1, and thus excluded from Section XI.

Note 2(a)(3) to Chapter 59 directs the classification of textile articles in which the textile fabric is either “completely” embedded or “entirely coated or covered on both sides” by plastics to Chapter 39. The instant gloves are covered only on the inside and outside of the palmside, not including the wrist cuff, and on a portion of the backside fingers (inside and outside). The remainder of the gloves, including the entire back side, are composed of non-coated textile fabric. Thus, the gloves are only partially covered or coated with plastic and are not described by Note 2(a)(3) to Chapter 59 or heading 3926, HTSUS.

You state that the textile material of the instant gloves is present only for reinforcing purposes, and that the gloves should therefore be classified in Chapter 39 pursuant to Note 2(a)(5) to Chapter 39. The instant gloves are not subject to Note 2(a)(5) because they are not combined with cellular plastic. They are governed instead by Note 2(a)(3) to Chapter 59, HTSUS. *See e.g.*, HQ *H021883*, dated January 5, 2009. In any case, however, the textile component of the instant gloves is present for more than mere reinforcement. The plastic coating may be said to reinforce the textile because it makes the textile substrate less permeable and more resistant to cuts or abrasions. However, it is meaningless to say that the textile fabric is reinforcing the plastic coating. The substrate of the gloves is entirely constructed of textile. The textile gives the gloves their form and shape, thickness, strength, etc. The textile material also provides stretch and give to the gloves, allowing them to be put on, used and removed without difficulty. In addition, the textile material, being more permeable than plastic, permits the gloves to be worn more comfortably, because it traps less perspiration than the plastic material. *See e.g.*, HQ *955193*, dated April 19, 1994; HQ *953768*, dated July 23, 1993; HQ *086358*, dated June 19, 1991.

Heading 6116, HTSUS, provides for gloves. Although heading 6116, HTSUS, is in Section XI, it is only the heading text which controls, not the Chapter or Section titles. Thus, heading 6116, HTSUS, is not limited to textile gloves only. Indeed, the heading text does not limit the classification of gloves of that heading by the material of their construction, only the method of construction (i.e., the glove must be knitted or crocheted). Thus, heading 6116, HTSUS, includes gloves of textiles and plastics, or textiles coated with plastics. The instant glove is made entirely of a knit textile material which is subsequently coated with plastic. At GRI 1, heading 6116, HTSUS therefore captures the merchandise in its entirety.

Even if the gloves were not excluded from Chapter 39 on the basis of Note 2(p) to that Chapter, the EN to heading 3926, HTSUS, indicates that the heading includes only plastic articles not described more specifically elsewhere in the tariff schedule. Heading 6116, HTSUS, provides for “gloves”, a considerably more specific description of the merchandise than “other article of plastic.” As the subject gloves are more specifically provided for in heading 6116, HTSUS, they are precluded from classification in heading 3926, HTSUS.

We further note that although subheading 3926.20, HTSUS, also provides for gloves of plastic, the instant articles must first meet the terms of the heading before we can consider the application of the accompanying subhead-

ings. As the subject merchandise is not properly classifiable at the four digit level in heading 3926, HTSUS, it is improper to invoke subheading 3926.20, as only the four digit headings are comparable. Furthermore, subheading 6116.10, HTSUS, also provides for gloves impregnated or coated with plastics. It is therefore clear that gloves impregnated with plastics are not automatically or even primarily classified in heading 3926, HTSUS. The relevant chapter, section and explanatory notes clarify when it is appropriate to classify such merchandise in heading 3926, HTSUS—e.g., when they are coated entirely on both sides by plastic, or when the textile material is merely present for reinforcement.

Finally, CBP has classified textile gloves similarly coated, covered, and dipped in plastic material in heading 6116, HTSUS, in multiple rulings. See *HQ 955193*, dated April 19, 1994; *HQ 086331*, dated April 20, 1990; *HQ 086358*, dated June 19, 1991; *HQ 088539*, dated June 6, 1991; *HQ 088794*, dated July 1, 1991; *HQ 953768*, dated July 23, 1993; *HQ 955193*, dated April 19, 1994; *HQ 963632*, dated September 24, 2002; *HQ H021883*, dated January 5, 2009; *NY N229716*, dated September 4, 2012; *NY N229595*, dated August 14, 2012; *NY D81376*, dated September 25, 1998; and *NY D81931*, dated August 28, 1998; *NY 808945*, dated May 3, 1995; and *NY 870145*, dated January 22, 1992.

In contrast, the following rulings have classified gloves composed entirely or primarily of plastic in heading 3926, HTSUS: *NY N188017*, dated November 7, 2011; *NY L85718*, dated July 15, 2005; *NY K89356*, dated September 21, 2004; *NY J89922*, dated October 23, 2003; *NY H88929*, dated March 20, 2002; *NY 808945*, dated May 3, 1995; *NY 883923*, dated April 13, 1993; *NY 870145*, dated January 22, 1992; and *PD C80478*, dated November 4, 1997.

Moreover, in all of the rulings cited above, CBP based the classification of gloves composed of only textile fabrics with plastic coating solely on GRI 1, noting that some prior rulings had erroneously utilized GRI 3(b) to classify similar merchandise without first considering GRI 1. In *HQ 086358*, CBP further noted that classification based on GRI 3(b) was appropriate when classifying gloves composed of what the HTSUS would consider to be two or more separate and distinct materials, but that textile gloves which are merely coated with plastic are considered to be made of one material, in which case classification will be according to GRI 1. *HQ 088539* is an example of the former scenario. In *HQ 088539*, CBP determined that the classification of gloves of textile coated or impregnated with plastics is determined at GRI 1 by Note 2 to Chapter 59, but GRI 3(b) would apply when considering the leather pieces of the golf glove at issue. Thus, the classification of the instant gloves, which are knit gloves coated, covered or dipped in plastic, is governed, at GRI 1, by the legal notes to Chapters 39, 59 and Section XI. See e.g., *HQ 088539*, supra (“Accordingly, as between the plastics and the textile fabric, GRI 1 would require classification under Heading 6116”). See also *HQ 086358*, and *HQ 953768*, supra.

Both commenters cite to *HQ 967658*, dated October 13, 2005, as support for classification in heading 3926, HTSUS, based on a GRI 3(b) analysis. First, we note that *HQ 967658* classified a similar plastic-coated textile glove in heading 6116, HTSUS. *HQ 967658* thus supports classification of the instant gloves in heading 6116, HTSUS. We further note that *HQ 967658* applied

GRI 3(b) to determine classification at the 8-digit subheading level between subheading 6116.10.75, HTSUS (gloves containing 50% or more by weight of cotton), and subheading 6116.93.94, HTSUS (gloves of synthetic fibers). GRI 3(b) was not used in HQ 967658 to determine classification at the 4-digit level.

One comment noted that textile gloves dipped in polyurethane were not coated, impregnated or covered pursuant to Note 2 to Chapter 59 and Note 1 to Section XI. We do not concur. Regardless of how the plastic material is applied, the glove is covered or coated with plastic pursuant to the above legal notes, and pursuant to the description of the glove provided by the importer. The commenter cites HQ 085863, dated January 19, 1990, in support of this argument. We note that the gloves discussed in *HQ 085863* were excluded from heading 5903, HTSUS, by application of Note 2(a)(5) to Chapter 59, HTSUS, because they had a cellular plastic shell and a textile backing for reinforcing purposes. As discussed above, the instant gloves are constructed entirely of textile which is covered with plastic.

Another comment notes that other CBP rulings have classified only gloves coated on one side in heading 6116, HTSUS. As noted above, CBP has classified gloves submerged or dipped in plastic in a similar manner as the gloves at issue in heading 6116, HTSUS. That the instant gloves have plastic on both sides, however, is irrelevant, because they are made of textile material which is neither completely embedded nor entirely coated or covered on both sides with plastic, and the textile material is present for more than mere reinforcement. Stating that merely coating the fabric on both sides is sufficient to render the fabric “completely embedded” or “entirely coated or covered” pursuant to Note 2(a)(3) to Chapter 59 when the coating does not cover the entire fabric is contrary to the plain language of Note 2(a)(3).

We further note that the samples provided for CBP’s examination by the commenter and images of the gloves classified in NY N013115 show that the plastic coating on the inside of the glove is less extensive and consistent than on the outside; the coating is significantly less thick, and the knit textile fabric is clearly visible. Nevertheless, even if, as argued in the comment, both sides of the palmside of the glove were determined to be equally evenly coated, we would not consider the textile fabric of the glove to be “completely embedded” or “entirely coated or covered on both sides” by plastics, as there remains uncoated textile portions of the glove. Style 9003 in NY N042821 was described as having a palmside, from fingertips to wrist, completely coated with plastic. In accordance with the foregoing, we do not consider that to be “completely embedded” or “entirely coated or covered” for purposes of Note 2(a)(3) to Chapter 59.

The glove styles 540 and 541 (NY *N013115*) and 9003 (NY N042821) were incorrectly classified as articles of plastic of heading 3926, HTSUS. They are correctly classified in heading 6116, HTSUS, as gloves. NY *N013115* is thus hereby revoked, and NY N042821 is modified with respect to the classification of style 9003.

HOLDING:

Styles 540, 541 and 9003 are classified in heading 6116, HTSUS, specifically subheading 6116.10.55, HTSUS, which provides for “Gloves, mittens and mitts, knitted or crocheted: Impregnated, coated or covered with plastics or rubber: Other: Without fourchettes: Other: Containing 50 percent or more

by weight of cotton, man-made fibers or other textile fibers, or any combination thereof.” The 2013 general, column one rate of duty is 13.2%.

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/>.

EFFECT ON OTHER RULINGS:

NY *N013115* is hereby revoked, and NY *N042821* is hereby modified with respect to the classification of style 9003. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

GENERAL NOTICE
19 CFR PART 177

**PROPOSED REVOCATION OF A RULING LETTER AND
MODIFICATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF AMEVIVE® (ALEFACEPT)**

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

ACTION: Notice of proposed revocation of a ruling letter and modification of treatment concerning the tariff classification of Amevive® (alefacept).

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 CBP intends to revoke one ruling letter pertaining to the tariff classification of Amevive®(alefacept), under the Harmonized Tariff Schedule of the United States (“HTSUS”). CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATES: Comments must be received on or before May 30, 2014.

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

FOR FURTHER INFORMATION CONTACT: Emily Beline, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, (202) 325–7799.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter “Title VI”), became effective.

Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “informed compliance” and “shared responsibility.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade 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 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 section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the classification of Amevive® (alefacept). Although in this notice CBP is specifically referring to New York Ruling Letter (“NY”) J80522, dated February 21, 2003, (Attachment A) this notice 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 ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer’s or CBP’s previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should advise CBP during this notice 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 notice of this proposed action.

In NY J80522 CBP classified Amevive® (alefacept), imported in bulk form, under subheading 3003.90.00, HTSUS, which provides for “Medicaments...consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale: Other,” and in single-dose vials under subheading 3004.90.91, HTSUS, which provides for “Medicaments...consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale: Other: Other: Other.” It is now CBP’s position that Amevive® (alefacept) is properly classified under subheading 3002.10.01.90, HTSUS, which provides for “Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes: Other.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke NY J80522 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter H207575 (Attachment B). 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, we will give consideration to any written comments timely received.

Dated: April 3, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY J80522

February 21, 2003

CLA-2-29:RR:NC:2:238 J80522

CATEGORY: Classification

TARIFF NO.: 3003.90.0000; 3004.90.9145

HERBERT J. LYNCH, ESQ.
SULLIVAN & LYNCH, P.C.
156 STATE STREET
BOSTON, MA 02109-2508

RE: The tariff classification of Amevive® (alefacept), Alefacept (CAS-222535-22-0), imported in bulk form and single-dose vials, from Germany

DEAR MR. LYNCH:

In your letter dated January 31, 2003, on behalf of your client, Biogen, Inc., you requested a tariff classification ruling.

The subject product, Amevive® (alefacept), is a formulated drug product containing Alefacept (CAS-222535-22-0), an antipsoriatic drug, as the active ingredient. You state that your client will import Amevive® (alefacept) in bulk form and put up in single-dose vials.

Alefacept is a fusion protein (human) consisting of the portion of the LFA-3¹ molecule that binds to CD-2 antigen², linked to the Fc portion of human immunoglobulin G1. It is produced by recombinant DNA techniques, and is represented by the following empirical chemical formula: C₃₂₆₄H₅₀₀₂N₈₄₀O₉₈₈S₂₀. Alefacept belongs to the class of drugs known as immunomodulators, and is indicated for the treatment of adult patients with moderate to severe chronic plaque psoriasis. An article found on the FDA's website, dated January 30, 2003, indicates that your client's biologics license application for Alefacept has been approved (by the FDA), which, in effect, allows Biogen to bring the formulated drug product, i.e., Amevive® (alefacept), to market.

It is your belief that Amevive® (alefacept) constitutes a modified immunological product which (imported in bulk or dosage form) is properly classifiable under subheading 3002.10.0190, HTS. However, although we agree that Amevive® (alefacept) does, in fact, constitute a modified immunological product obtained by biotechnological processes, it is our determination, nonetheless, that it is precluded from classification as such - for tariff purposes - by Note 2 to Chapter 30, HTS, and the Explanatory Notes to heading 3002, HTS.

Note 2 to Chapter 30, HTS, states that "For the purposes of heading 3002, the expression 'modified immunological products' applies only to monoclonal antibodies (MABs), antibody fragments, antibody conjugates and antibody fragment conjugates." Monoclonal antibodies (MABs) are defined in the Explanatory Notes to heading 3002, HTS (see E.N. 30.02(C)(2)(a)), as "[s]pecific immunoglobulins from selected and cloned hybridoma cells cultured in a

¹ **Leukocyte function-associated antigen 3** - a cell-surface glycoprotein ("marker") expressed on a wide variety of cells. It is referred to as an "antigen," since it can be identified by specific monoclonal antibodies.

² **CD-2 antigen** - a specific cell-surface marker, found on T lymphocytes, whose major function is to interact with LFA-3. Like LFA-3, it is referred to as an "antigen," since it can be identified by specific monoclonal antibodies.

culture medium or ascites.” Antibody fragments are defined in the Explanatory Notes to heading 3002, HTS (see E.N. 30.02(C)(2)(b)), as “[p]arts of an antibody protein obtained by means of specific enzymatic splitting.” Finally, the Explanatory Notes to heading 3002, HTS (see E.N. 30.02(C)(2)(c)), indicate that antibody conjugates and antibody fragment conjugates consist of enzymes (e.g., alkaline phosphatase, peroxidase or betagalactosidase) or dyes (fluorescein) covalently bound to an antibody or antibody fragment (“the protein structure”), and “[a]re used for straightforward detection reactions.” Accordingly - based upon its actual composition, and by application of the definitions cited above - it is our determination that Alefacept does not meet the *tariff definition* of a modified immunological product.

The applicable subheading for Amevive® (alefacept), imported in bulk form, will be 3003.90.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for “Medicaments ... consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale: Other.” The rate of duty will be free.

The applicable subheading for Amevive® (alefacept), imported put up in single-dose vials, will be 3004.90.9145, HTS, which provides for “Medicaments ... consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale: Other: Other: Other: Dermatological agents and local anesthetics.” The rate of duty will be free.

This merchandise may be subject to the requirements of the Federal Food, Drug, and Cosmetic Act, which is administered by the U.S. Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number 301-443-1544. 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 Harvey Kuperstein at 646-733-3033.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H207575

CLA-2 OT:RR:CTF:TCM H207575 ERB

CATEGORY: Classification

TARIFF NO.: 3002.10.02

MR. HERBERT J. LYNCH, ESP.
SULLIVAN & LYNCH, P.C
56 ROLAND STREET, SUITE 303
BOSTON, MA 02129-1223

RE: Revocation of New York Ruling Letter J80522; classification of Amevive® (alefacept), Alefacept (CAS-222535-22-0), imported in bulk form and single-dose vials, from Germany

DEAR MR. LYNCH,

This is in regard to New York Ruling Letter (“NY”) J80522, dated February 21, 2003, regarding the classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of Amevive® (alefacept). In NY J80522, Customs and Border Protection (“CBP”) classified the product in its bulk form under heading 3003, HTSUS, and in its single-dose vial form under heading 3004, HTSUS, as medicaments. We have reconsidered this ruling and have determined that these modified immunological products, in both forms, are provided for in heading 3002, HTSUS.

FACTS:

NY J80522 described Amevive® as follows:

Amevive® (alefacept) is a formulated drug product containing Alefacept (CAS-222535-22-0), an antipsoriatic drug, as the active ingredient. It is a fusion protein (human) consisting of the portion of the LFA-3 molecule¹ that binds to CD-2 antigen², linked to the Fc portion of human immunoglobulin G1. It is produced by recombinant DNA techniques, and is represented by the following empirical chemical formula: C₃₂₆₄H₅₀₀₂N₈₄₀O₉₈₈S₂₀. Alefacept belongs to the class of drugs known as immunomodulators, and is indicated for the treatment of adult patients with moderate to severe chronic plaque psoriasis.

NY J80522 classified Amevive® (alefacept), imported in bulk form under subheading 3003.90.000, HTSUS, which provides for “Medicaments...consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale: Other.” NY J80522 also classified Amevive® (alefacept) imported as single-dose vials under subheading 3004.90.9145, HTSUS, which provides for “Medicaments...consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale: Other: Dermatological agents and local anesthetics.”

¹ Leukocyte function-associated antigen 3 – a cell-surface glycoprotein expressed on a wide variety of cells. It is referred to as an “antigen,” since it can be identified by specific monoclonal antibodies.

² CD-2 antigen – a specific cell-surface marker, found on T lymphocytes, whose major function is to interact with LFA-3. Like LFA-3, it is referred to as an “antigen,” since it can be identified by specific monoclonal antibodies.

ISSUE:

Are the subject modified immunological products, imported in bulk or single-dosage vial form, both properly classified under heading 3002, HTSUS, as “modified immunological products,” or separately under heading 3003, HTSUS, as “medicaments... not put up in measured dose or in forms or packings for retail sale: Other” or heading 3004, HTSUS, as “medicaments ... put up in measured dose or in forms or packings for retail sale: Other: Other: Dermatological agents and local anesthetics”?

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 GRI may then be applied.

The 2014 HTSUS provisions at issue are as follows:

3002	Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not modified or obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products:
3002.10.02	Antisera, other blood fractions and immunological products, whether or not obtained by means of biotechnological processes ³ :

3003	Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured dose or in forms or packings for retail sale:
3003.90.00	Other

3004	Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale:
3004.90	Other:
3004.90.91	Other:

Note 2 to Chapter 30, HTSUS (2002), stated: “For the purposes of heading 3002, the expression ‘modified immunological products’ applies only to monoclonal antibodies (MABs), antibody fragments, antibody conjugates and antibody fragment conjugates.”

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at

³ In 2002 the subheading at issue was 3002.10.0190. Due to various changes in the tariff not pertinent in this analysis, the subheading at issue is now and will be referred to as the current version, subheading, 3002.10.02, HTSUS.

the international level. While neither legally binding nor dispositive, the EN 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 (August 23, 1989).

In 2002, the EN to Heading 30.02 stated, in pertinent part:

This heading covers:

* * *

- (C) Antisera and other blood fractions and modified immunological products.

These products include:

* * *

- (2) **Modified immunological products, whether or not obtained by means of biotechnological processes**⁴.

Products whose antigen-antibody reaction corresponds to natural antisera and which are used for diagnostic or therapeutic purposes and for immunological tests are to be regarded as falling within this product group. They can be defined as follows:

- (a) **Monoclonal antibodies (MABs)** - specific immunoglobulins from selected and cloned hybridoma cells cultured in a culture medium or ascites.
- (b) **Antibody fragments** – parts of an antibody protein obtained by means of specific enzymatic splitting.
- (c) **Antibody and antibody fragment conjugates** - enzymes (e.g. alkaline phosphatase, peroxidase or betagalactosidase) or dyes (fluorescin) covalently bound to the protein structure are used for straightforward detection reactions.

* * *

The products of this heading remain classified here whether or not in measured doses or put up for retail sale and whether in bulk or in small packings.

Ruling NY J805229 classified Amevive® under heading 3003 and 3004, HTSUS, depending on whether it was imported in bulk form or in single-dose vials, respectively. However, the terms of these two headings specifically exclude goods which can be classified under heading 3002, HTSUS. Therefore, if the subject merchandise can be properly classified under heading 3002, HTSUS, imported either in bulk or single-dose vials; it is precluded from classification under heading 3003, HTSUS or 3004, HTSUS.

Amevive® is an antibody fragment conjugate, an antibody combined with a protein, a class of monoclonal antibodies (MABs)⁵ which is a type of immunomodulator. Antibody fragment conjugates and MABs are included within

⁴ Emphasis in original.

⁵ *See also here* <https://www.inkling.com/read/applied-pharmacology-bardal-waechter-martin-1st/chapter-17/introduction-to-monoclonal> describing how MABs are

the definition of “modified immunological products”. See Note 2 to Chapter 30, HTSUS. They are produced by the body’s immune system for the function of recognizing, binding, and subsequently destroying infectious agents that display foreign antigens, in the instant case, severe chronic plaque psoriasis. The subject merchandise is imported in two forms, bulk and measured doses for retail sale, but the products remain classified in heading 3002, HTSUS, regardless. See 2002 EN 30.02 (C)(2)(a).

Clarifications have been made to the ENs of Heading 30.02 in 2007 and 2012, as well as to Note 2 to Chapter 30 in 2012.

EN 30.02(C)(2)(a) now reads, in pertinent part:

This heading covers:

* * *

- (C) Antisera, other blood fractions and immunological products, whether or not modified or obtained by means of biotechnological processes.

These products include:

- (2) Immunological products, whether or not modified or obtained by means of biotechnological processes.

Products used for diagnostic or therapeutic purposes and for immunological tests are to be regarded as falling within this product group. They can be defined as follows:

- (a) **Monoclonal antibodies (MAB)** – specific immunoglobulins from selected and cloned hybridoma cells cultured in a culture medium or ascites.
- (b) **Antibody fragments** – active parts of an antibody protein obtained by means of e.g., specific enzymatic splitting. This group includes inter alia single-chain (scFv) antibodies.
- (c) **Antibody conjugates and antibody fragment conjugates** – conjugates which contain at least one antibody or an antibody fragment...

* * *

Note 2 to Chapter 30 now reads:

For the purposes of heading 3002, the expression “immunological products” applies to peptides and proteins (other than goods of heading 2937) which are directly involved in the regulation of immunological processes, such as monoclonal antibodies (MAB), antibody fragments, antibody conjugates and antibody fragment conjugates, interleukens, interferons (IFN), chemokines and certain tumor necrosis factors (TNF), growth factors (GF), hematopoietins and colony stimulating factors (CSF).

In 2002, as today, the term ‘modified immunological products’ with regard specifically to immunological products, includes MABs and antibody fragment conjugates (an antibody combined with a protein), are included in heading 3002, HTSUS. The instant merchandise is just such a fusion protein

immunological products because they are produced by the body’s immune system for the function of recognizing, binding, and subsequently destroying infectious agents that display foreign antigens.

as is noted in NY J80522.⁶ Additionally, the clause, “The products of this heading remain classified here whether or not in measured doses or put up for retail sale and whether in bulk or small packings,” was present in the 2002 version of the ENs, as it remains today.

Therefore, the subject merchandise is properly classified under heading 3002, HTSUS, and is excluded from classification under heading 3003 and 3004, HTSUS⁷. The product is specifically provided for under subheading 3002.10.02, HTSUS, which provides for: “Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products: Antisera, other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes”.

HOLDING:

By application of GRI 1, the drug product Amevive® is classified in subheading 3002.10.02, HTSUS, which provides for “... modified immunological products, whether or not obtained by means of biotechnological processes... : Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes”. The rate of duty is free. Duty rates are provided for your convenience and are subject to change.

EFFECT ON OTHER RULINGS:

New York Ruling Letter J80522, dated February 21, 2003, is hereby REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

⁶ Additionally, the statement contained in NYJ80522, “Alefacept does not meet the tariff definition of a modified immunological product” was incorrect even when ruled upon in 2003, before any changes to the Chapter Notes or ENs, pursuant to Scientific Subcommittee 27th session document no. NS0248E1a to amend EN 30.02(C)(2)(b) to include, “This group includes inter alia single-chain (scFv) antibodies” of which Alefacept is one.

⁷ See also, HQ H128157, dated August 2, 2011 (classifying Campath®, a monoclonal antibody medicament under heading 3002, HTSUS), and HQ H110419, dated August 2, 2011 (classifying Antegren®, a monoclonal antibody medicament under heading 3002, HTSUS), and HQ H110420, dated August 2, 2011 (classifying Avastin® and Herceptin®, monoclonal antibody medicaments under heading 3002, HTSUS), and lastly, HQ H110421, dated August 2, 2011 (classifying Raptiva®, Rituxan®, and Xolair®, monoclonal antibody medicaments, under heading 3002, HTSUS).

**REVOCATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF CERTAIN USB FLASH DRIVES**

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to tariff classification of certain USB flash drives.

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 Customs and Border Protection (CBP) is revoking a ruling letter relating to the tariff classification of certain USB flash drives under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 47, No. 50, on December 18, 2013. One comment was received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 30, 2014.

FOR FURTHER INFORMATION CONTACT: Aaron Marx, Tariff Classification and Marking Branch: (202) 325–0195.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993 Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “informed compliance” and “shared responsibility.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade 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 section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP is revoking one ruling letter pertaining to the tariff classification of certain USB flash drives. Although in this notice, CBP is specifically referring to the revocation of NY N011540, dated June 18, 2007, this notice 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 rulings identified above. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice 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 notice of this action.

In NY N011540, CBP determined that four USB flash drives were classified in heading 8471, HTSUS, by operation of General Rule of Interpretation (GRI) 1. Specifically, CBP classified the products in subheading 8471.70.90, HTSUS, which provides for "Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included: Storage units: Other storage units: Other".

It is now CBP's position that these USB flash drives are properly classified under heading 8523, HTSUS, specifically under subheading 8523.51.00, HTSUS, which provides for "Discs, tapes, solid-state non-volatile storage devices, "smart cards" and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but ex-

cluding products of Chapter 37: Semiconductor media: Solid-state non-volatile storage devices”, by operation of GRI 3(a).

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N011540 and any other ruling not specifically identified, to reflect the proper classification of USB flash drives according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H168206, set forth as an Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. In accordance with 19 U.S.C. §1625(c), the attached rulings will become effective 60 days after publication in the *Customs Bulletin*.

Dated: March 12, 2014

IEVA K. O’ROURKE

for

MYLES B. HARMON

Director

Commercial and Trade Facilitation Division

Attachment

HQ H168206

March 12, 2014

CLA-2 OT:RR:CTF:TCM H168206 AMM**CATEGORY:** Classification**TARIFF NO.:** 8523.51.00

MS. AMY JOHANNESEN

CERNY ASSOCIATES, P.C., ATTORNEYS AT LAW

24 SMITH STREET BUILDING 2, SUITE 102

PAWLING, NY 12564

RE: Revocation of New York Ruling Letters N011540, NY R04440, NY R04024, NY M80734, NY L89889, NY L88309; Classification of USB Flash Drives

DEAR MS. JOHANNESEN,

This is in reference to New York Ruling Letter (NY) N011540, dated June 18, 2007, issued to Kingston Technology Company, Incorporated (Kingston) regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of four USB flash drives, identified as the DataTraveler “R” for ReadyBoost, DataTraveler II with software security, DataTraveler Secure Privacy Edition, and the DataTraveler Mini USB. In that ruling, Customs and Border Protection (CBP) classified the articles under heading 8471, HTSUS, which provides for “Automatic data processing machines and units thereof”. We have reviewed this ruling and found it to be incorrect. For the reasons set forth below, we intend to revoke this ruling.

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, 2186 (1993), notice of the proposed revocation relating to the tariff classification of certain USB flash drives was published on December 18, 2013, in the Customs Bulletin, Volume 47, Number 50. Comments from one interested party were received on this proposal. The commenter agreed with the proposed classification of the instant USB flash drives. A discussion of the comments and CBP’s reasoning are found in the “Law and Analysis” section below.

FACTS:

In NY N011540, CBP described the four products at issue in the following manner:

The merchandise under consideration includes four external flash memory devices: DataTraveler “R” for ReadyBoost (DTR/1GB), DataTraveler II with software security (KUSBDTII/512MB), DataTraveler Secure Privacy Edition (DTSP/512MB), and the DataTraveler Mini USB (DTMini/512MB). The KUSBDTII and DTSP are encrypted with 256-bit AES Hardware Based Encryption and password protection.

* * *

The USB Flash drives are storage devices that employ Single-Level Cell Not AND (NAND) Flash and a controller in a capsulated portable case. The built-in Flash memory controller manages the interface with the host computer, and reads and writes to the Flash chips on the Flash storage device. The USB Flash drives meet Note 5 (C) to Chapter 84, Harmonized

Tariff Schedule of the United States (HTSUS). These storage devices connect to a computer’s central processing unit (CPU) directly through the USB port. They are able to accept or deliver data in a form which can be used by the computer system.

Pictures of the products at issue are included below:

	
<p>Data Traveler "R" for ReadyBoost (DTR/1GB)</p>	<p>Data Traveler II with software security (KUSBDTII/512MB)</p>
	
<p>Data Traveler Secure Privacy Edition (DTSP/512MB)</p>	<p>Data Traveler Mini USB (DTMini/512MB) has red cover</p>

In a correspondence dated January 31, 2012, Kingston confirmed that all four products at issue contained a printed circuit board within the housing.

ISSUE:

Whether the four USB flash drives at issue in NY N011540 are classifiable under heading 8523, HTSUS, as solid state non-volatile storage devices, and if so, whether this is the more specific provision over heading 8471, HTSUS, the provision for units of ADP machines.

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 GRI may then be applied.

The 2013 HTSUS provisions at issue are:

- 8471 Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included:
- 8471.70 Storage units:
 - Other storage units:
 - 8471.70.90 Other

8523 Discs, tapes, solid-state non-volatile storage devices, “smart cards” and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter 37:

Semiconductor media:

8523.51.00 Solid-state non-volatile storage devices

GRI 3 states, in pertinent part:

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

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description.

* * *

Note 5(C) to Chapter 84, HTSUS, states, in pertinent part:

(C) Subject to paragraphs (D) and (E) below, a unit is to be regarded as being part of an automatic data processing system if it meets all of the following conditions:

- (i) It is of a kind solely or principally used in an automatic data processing system;
- (ii) It is connectable to the central processing unit either directly or through one or more other units; and
- (iii) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

Separately presented units of an automatic data processing machine are to be classified in heading 8471. However, keyboards, X-Y co-ordinate input devices and disk storage units which satisfy the conditions of paragraphs (C) (ii) and (C) (iii) above, are in all cases to be classified as units of heading 8471.

* * *

Note 4 to Chapter 85, HTSUS, states, in pertinent part:

For the purposes of heading 8523:

- (a) “Solid-state non-volatile storage devices” (for example, “flash memory cards” or “flash electronic storage cards”) are storage devices with a connecting socket, comprising in the same housing one or more flash memories (for example, “FLASH E²PROM”) in the form of integrated circuits mounted on a printed circuit board. They may include a controller in the form of an integrated circuit and discrete passive components, such as capacitors and resistors;

* * *

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 (August 23, 1989).

The EN to heading 85.23 states, in pertinent part:

In particular, this heading covers:

* * *

(C) Semiconductor Media

Products of this group contain one or more electronic integrated circuits.

Thus, this group includes:

- (1) **Solid-state, non-volatile data storage devices for recording data from an external source** (See Note 4 (a) to this chapter). These devices (also known as “flash memory cards” or “flash electronic storage cards”) are used for recording data from an external source, or providing data to, devices such as navigation and global positioning systems, data collection terminals, portable scanners, medical monitoring appliances, audio recording apparatus, personal communicators, mobile phones, digital cameras and automatic data processing machines. Generally, the data are stored onto, and read from, the device once it has been connected to that particular appliance, but can also be uploaded onto or downloaded from an automatic data processing machine.

The media use only power supplied from the appliances to which they are connected, and require no battery.

These non-volatile data storage devices are comprised of, in the same housing, one or more flash memories (“FLASH E²PROM/EEPROM”) in the form of integrated circuits mounted on a printed circuit board, and incorporate a connecting socket to a host appliance. They may include capacitors, resistors and a microcontroller in the form of an integrated circuit. Example of solid state non-volatile storage devices are USB flash drives.

* * *

In NY N011540, dated June 18, 2007, CBP classified four external flash memory devices, known as USB flash drives, under heading 8471, HTSUS, which provides, in pertinent part, for “Automatic data processing machines and units thereof”. CBP did not consider whether these devices were properly classified under heading 8523, HTSUS, which provides, in pertinent part, for “[S]olid state non-volatile storage devices”.

To be classified under heading 8471, HSTUS, as a “unit thereof” of an automatic data processing machine, the products at issue must satisfy Note 5(C) to Chapter 84, HTSUS. According to NY N011540, the products are storage devices which connect to a computer's central processing unit directly through a USB port. They are able to accept or deliver data in a form which can be used by the computer system. Therefore, the criteria of Note 5(C)(ii) and (iii) to Chapter 84, HTSUS, are satisfied.

The products at issue employ Single-Level Cell Not AND (NAND) Flash memory, which is based on semiconductor microchip technology rather than magnetic disks. The products at issue are not “disk storage units” as described in Note 5(C) to Chapter 84, HTSUS. Therefore, the products must be “of a kind solely or principally used in an automatic data processing system” in accordance with Note 5(C)(i) to Chapter 84, HTSUS. See *BenQ Am. Corp. v. United States*, 646 F.3d 1371, 1379–81 (Fed. Cir. 2011).

For articles governed by principal use, Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that, in the absence of special language or context which otherwise requires, such use “is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.” In other words, the article’s principal use at the time of importation determines whether it is classifiable within a particular class or kind of merchandise. See *BenQ*, 646 F.3d, at 1379–1380.

While Additional U.S. Rule of Interpretation 1(a), HTSUS, provides general criteria for discerning the principal use of an article, it does not provide specific criteria for individual tariff provisions. However, the courts have provided factors which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. See *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), cert. denied, 429 U.S. 979. CBP has applied this principle in subsequent rulings. See, e.g., HQ 082780, dated December 18, 1989. This principle has been carried over to the HTSUS, as courts have determined that principal use under the HTSUS is defined as the use which “exceeds all other uses.” See *Lenox Collections v. United States*, 20 C.I.T. 194, 196 (Ct. Int’l. Trade, 1996).

The products at issue are flash memory storage devices designed to interface with laptops, personal computers, and other electronic devices. These products provide increased reliability from their lack of moving parts, decreased power consumption and noise, and increased speed compared to traditional compact disk or floppy disk drives. Kingston’s product literature indicates that the products “incorporate NAND Flash and a controller in a capsulated case. USB Flash drives work with the vast majority of computers and devices that incorporate the Universal Serial Bus interface, including most PCs, PDAs, and MP3 players.”¹ Kingston markets their USB Flash Drive products directly to individual consumers, enterprises, and governments.² The products are designed to be inserted directly into a USB port, which is in turn connected to an automatic data processing unit. Based on the *Carborundum* factors and the information above, we find that the principal use of the products at issue is in an ADP machine, and that Note 5(C)(i) to Chapter 84, HTSUS, is satisfied.

¹ See <http://www.kingston.com/products/pdf_files/FlashMemGuide.pdf>, at page 9.

² See <http://www.kingston.com/flash/dt_chart.asp>.

Because the products at issue satisfy Note 5(C) to Chapter 84, HTSUS, they are properly classified under Heading 8471, HTSUS. Specifically, the products are classified under subheading 8471.70.90, HTSUS, which provides for: “Automatic data processing machines and units thereof; ...: Storage units: Other storage units: Other”.

Effective February 3, 2007, Chapter 85 of the HTSUS was revised by Presidential Proclamation 8097, pursuant to Section 1206(a) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. §3005(a)). See 72 Fed. Reg. 453. The proclamation states, in pertinent part:

In order to modify the HTS to conform it to the Convention or any amendment thereto recommended for adoption, to promote the uniform application of the Convention, to establish additional subordinate tariff categories, and to make technical and conforming changes to existing provisions, the HTS is modified as set forth in Annex I of Publication 3898 of the United States International Trade Commission, entitled, “*Modifications to the Harmonized Tariff Schedule of the United States Under Section 1206 of the Omnibus Trade and Competitiveness Act of 1988*,” which is incorporated by reference into this proclamation.

See 72 Fed. Reg. 453, 456. The modifications to the HTSUS set forth in Annex I of Publication 3898³ of the United States International Trade Commission (ITC) were included in the 2007 version of the HTSUS.

Prior to this date, heading 8523, HTSUS (2006), provided for “Prepared unrecorded media for sound recording or similar recording of other phenomena, other than products of chapter 37”. After the revision, heading 8523, HTSUS (2007), provided, in pertinent part, for “solid-state non-volatile storage devices”. In addition, certain chapter notes were renumbered, and new ones were added. For instance, Note 4 to Chapter 85, HTSUS (2007), was added, providing specific definitions for the phrases “solid state non-volatile storage devices” and “smart cards”. Therefore, CBP must consider whether the products at issue in NY N011540, dated June 18, 2007, are properly classified under the revised version of heading 8523, HTSUS.

To be classified as a “solid state non-volatile storage device” under heading 8523, HTSUS, the products must satisfy Note 4(a) to Chapter 85, HTSUS. This Note lists four criteria, namely: that it is a storage device; with a connecting socket; that it has flash memory in the same housing as the connecting socket; and that the flash memory be in the form of an integrated circuit mounted on a printed circuit board. There is no dispute that the instant merchandise is a storage device. NY N011540 states that “[t]hese storage devices connect to a computer’s central processing unit (CPU) directly through the USB port.”

The term “flash memory” is defined as “[A] type of EEPROM that can only be erased in blocks; it cannot be erased one byte at a time. In this regard, it resembles a disk drive that is divided into sectors. Flash memory is usually used for storing large amounts of data, like a disk; ...”. See *Dictionary of Computer and Internet Terms*, 10th Ed. (2009), at pp. 193–194. The term “EEPROM”, which stands for Electrically Erasable Programmable Read-Only Memory, is defined as a type of memory chip whose contents can both be

³ The full text is available at <http://www.usitc.gov/publications/tariff_affairs/pub3898.pdf>.

recorded and erased by electrical signals, but do not go blank when power is removed.” See *Id.* at p. 162. A “chip”, or “integrated circuit”, is defined as “an electronic device consisting of many miniature transistors and other circuit elements on a single silicon chip.” See *Id.* at pp. 90, 254.

According to NY N011540, the products at issue are storage devices which contain a flash memory and a controller in a capsulated portable case. Furthermore, the products incorporate an adapter which connects to a computer through the USB port. Kingston also admitted to CBP that the products at issue contain a printed circuit board, in correspondence dated January 31, 2012.

Hence, the products at issue in NY N011540 are storage devices with a connecting socket, comprising in the same housing one or more flash memories in the form of integrated circuits mounted on a printed circuit board. See Note 4(a) to Chapter 85, HTSUS. Therefore, they are properly classified under heading 8523, HTSUS, as “solid state non-volatile storage devices”.

According to GRI 1, the products at issue are properly classified under headings 8471 and 8523, HTSUS. Therefore, we must resort to GRI 3 to determine which heading is the correct one. According to GRI 3(a), “[t]he heading which provides the most specific description shall be preferred to headings providing a more general description.” The description provided by heading 8523, HTSUS, “[S]olid state non-volatile storage devices”, is more specific than the description provided by heading 8471, HTSUS, “[U]nits thereof”, because heading 8523, HTSUS, is “the provision with requirements that are more difficult to satisfy and, that describe the article with the greatest degree of accuracy and certainty.” *Pomeroy Collection, Ltd. v. United States*, 559 F. Supp. 2d 1374, 1393 (Ct. Int’l. Trade 2008). Therefore, by operation of GRI 3(a), the products at issue in NY N011540 are correctly classified under heading 8523, HTSUS.

With regard to classification at the subheading level, CBP must consider whether the instant merchandise is “semiconductor media.” The term “media” has been previously defined by CBP as “a material that stores or transmits data.” See Headquarters Ruling Letter (HQ) H097659, dated August 31, 2010; HQ 962507, dated May 22, 2002 (citing *The Computer Glossary*, 6th Ed. (1993) p. 346). The products at issue in NY N011540 constitute “semiconductor media” as defined above, because they are data storage devices comprised of a flash memory, a type of integrated circuit incorporating semiconductor technology. As such, the products at issue are specifically classified under subheading 8523.51.00, HTSUS, which provides for “[S]olid state non-volatile storage devices...: Semiconductor media: solid state non-volatile storage devices”.

CBP notes that one interested party submitted comments generally agreeing that the instant products are properly classified under heading 8523, HTSUS, by operation of GRI 3(a). The commenter also suggested that CBP should classify all “flash memory” devices under heading 8523, HTSUS, regardless of their form factor or input/output format. However, this heading specifically covers “solid-state non-volatile storage devices”, and the scope of this term is clearly defined in Note 4(a) to Chapter 85, HTSUS.

CBP notes that several rulings classified merchandise similar to the products at issue under heading 8471, HTSUS. See NY R04440, dated July 27, 2006; NY R04024, dated June 5, 2006; NY M80734, dated March 31, 2006;

NY L89889, dated January 20, 2006; and NY L88309, dated October 28, 2005. These rulings were published before the new text of heading 8523, HTSUS, took effect on February 3, 2007. Therefore, these rulings were revoked by operation of law on that date, in accordance with Presidential Proclamation 8097.

HOLDING:

By application of GRI 3(a), the DataTraveler “R” for ReadyBoost (DTR/1GB), DataTraveler II with software security (KUSBDTII/512MB), DataTraveler Secure Privacy Edition (DTSP/512MB), and the DataTraveler Mini USB (DTMini/512MB) are classified under heading 8523, HTSUS, specifically under 8523.51.00, HTSUS, which provides in for “Discs, tapes, solid-state non-volatile storage devices, “smart cards” and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter 37: Semiconductor media: solid state non-volatile storage devices”. The column one, general rate of duty is free.

Duty rates are provided for convenience only 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.

EFFECT ON OTHER RULINGS:

NY N011540, dated June 18, 2007, 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.

Furthermore, CBP notes that NY R04440, dated July 27, 2006, NY R04024, dated June 5, 2006, NY M80734, dated March 31, 2006, NY L89889, dated January 20, 2006, and NY L88309, dated October 28, 2005, were REVOKED by operation of law on February 3, 2007, in accordance with Presidential Proclamation 8097.

Sincerely,

IEVA K. O’ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED MODIFICATION OF RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF TEXTILE SHOE
COVERS**

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

ACTION: Notice of proposed modification of one ruling letter and revocation of treatment relating to the tariff classification of textile shoe covers.

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 Customs and Border Protection (CBP) is proposing to modify New York Ruling Letter (NY) N238529, dated March 21, 2013, with respect to the tariff classification of one style of textile shoe covers under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATES: Comments must be received on or before May 30, 2014.

ADDRESSES: Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St. N.E., 10th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at Customs and Border Protection, 90 K St. N.E., Washington, D.C. 20229 during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Tariff Classification and Marking Branch: (202) 325–0024

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993 Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are

“informed compliance” and **“shared responsibility.”** These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade 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 section 625 (c)(1), Tariff Act of 1930, as amended (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 textile shoe covers. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter N238691, dated March 21, 2013, (Attachment A), this notice 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 ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(2)), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice 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 notice of this proposed action.

In NY N238529, CBP classified two styles of textile shoe covers (styles “A” and “B”), and determined that style “A” was classified in heading 6402, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “other footwear with outer soles and uppers of plastics.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to modify NY N238529 with respect to style “A”, and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the textile shoe covers in heading 6307, HTSUS, according to the analysis contained in Headquarters Ruling Letter (HQ) H243639, which is set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: April 2, 2014

IEVA K. O’ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N238529

March 21, 2013

CLA-2-63:OT:RR:NC:N4:447

CATEGORY: Classification

TARIFF NO.: 6307.90.9889, 6402.99.4960

Ms. SANDRA TOVAR

CST, INC.

500 LANIER AVENUE, W. SUITE 901

FAYETTEVILLE, GA 30214

RE: The tariff classification of footwear from China

DEAR Ms. TOVAR:

In your letter dated February 13, 2013 you requested a tariff classification ruling.

The submitted sample identified as style "B," is described by you as a slip-on shoe cover to be used "in a semi-clean environment for aircraft assembly." The shoe cover does not have an applied outer sole, is made of 100% cotton knit fabric and has an elasticized top line that secures it to the foot. Please note that Note 1(b) to Chapter 64, Harmonized Tariff Schedule of the United States (HTSUS), precludes this item from being classified in Chapter 64.

The applicable subheading for the shoe cover, Style "B" will be 6307.90.9889, HTSUS, which provides for other made up articles . . . Other. The rate of duty will be 7 percent ad valorem.

The submitted sample identified as style "A," is described by you as a slip-on shoe cover to be used "in a semi-clean environment for aircraft assembly." The shoe cover does not have an applied outer sole and is made of a textile materials base with 1mm poly-vinyl chloride (PVC) "micro dots" adhered to its bottom to reduce slippage. These micro dots are closely interspersed (approximately .5mm apart) and extend upward to substantially cover the entire upper. These PVC micro dots are considered the constituent material having the greatest external surface area.

Section XII to Chapter 64, HTSUS, General Explanatory Note (C) states; "In the case of footwear made in a single piece (e.g., clogs) without applied soles, no separate outer sole is required; such footwear is classified with reference to the constituent material of its lower surface." Furthermore, General Note (D) states; where "a single piece of material is used to form the sole and either the whole or part of the upper, thus making it difficult to identify the demarcation between the outer sole and the upper...the upper shall be considered to be that portion of the shoe which covers the sides and top of the foot." Consequently, the shoe cover is determined to have an outer sole and upper of rubber or plastics.

The top line of the shoe cover is elasticized to secure the shoe cover to the foot. It does not have a foxing or foxing-like band and is not designed to be a protection against water, oil, grease or chemicals or cold or inclement weather. You suggest that the shoe cover be classified under subheading 6307.90.9889, HTSUS, which provides for in pertinent part; other made up textile articles. We disagree with this suggested classification based upon General Rules of Interpretation (GRI) 1, HTSUS, which states in pertinent

part; “For legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes.

The applicable subheading for the rubber or plastics shoe cover, style “A” will be 6402.99.4960, HTSUS, which provides for footwear with outer soles and uppers of rubber or plastics: other footwear: other: other: not having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements) is rubber or plastics: footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners: other: other: for women. The rate of duty will be 37.5% 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 <http://www.usitc.gov/tata/hts/>.

The submitted samples are not marked with the country of origin. Therefore, if imported as is, they will not meet the country of origin marking requirements of 19 U.S.C. 1304. Accordingly, the footwear would be considered not legally marked under the provisions of 19 C.F.R. 134.11 which states, “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 container) will permit, in such manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.”

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stacey Kalkines at (646) 733-3042.

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H243639
CLA-2 OT:RR:CTF:TCM H243639 CkG
CATEGORY: Classification
TARIFF NO: 6307.90.98

Ms. SANDRA TOVAR
CST, INC.
500 LANIER AVENUE, W.
SUITE 901
FAYETTEVILLE, GA 30214

RE: Reconsideration of New York Ruling Letter N238529; textile shoe covers

DEAR MS. TOVAR:

This is in response to your letter dated April 30, 2013, on behalf of your client, Wells Lamont Industry, LLC, requesting the reconsideration of New York Ruling Letter N238529, issued to you on March 21, 2013. In NY N238529, CBP classified two styles of textile shoe covers. Style “A” was classified in heading 6402, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “other footwear with outer soles and uppers of plastics.” Style “B” was classified in heading 6307, HTSUS, which provides for “other made up articles”. Only style “A” is at issue in this reconsideration request. A sample of style “A” was provided and will be returned. We have considered your arguments and our decision follows.

FACTS:

As described in NY N238529, Style “A” is a slip-on shoe cover to be used “in a semi-clean environment for aircraft assembly.” The shoe cover does not have an applied outer sole and is made of a textile materials base with 1mm poly-vinyl chloride (PVC) “micro dots” adhered to its bottom to reduce slippage. These micro dots are closely interspersed (approximately .5mm apart) and extend upward to substantially cover the entire upper. These PVC micro dots are considered the constituent material having the greatest external surface area. The top of the shoe cover is elasticized to secure the shoe cover to the foot. It does not have a foxing or foxing-like band. The shoe cover is constructed of 100% cotton knit fabric.

ISSUE:

Whether the Style “A” shoe cover is classified in heading 6307, HTSUS, as an “other” made up article, or in heading 6402, HTSUS, as other footwear with outer soles and uppers of plastics.

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI’s). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6.

The HTSUS headings at issue are as follows:

6307: Other made up articles, including dress patterns:

6307.90:	Other:				
	Other:				
6307.90.98:	Other...				
		*	*	*	*
6402:	Other footwear with outer soles and uppers of rubber or plastics:				
	Other footwear:				
6402.99:	Other:				
	Footwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except footwear of subheading 6402.99.33 and except footwear having a foxing or a foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper:				
6402.99.49:	Other . . .				
		*	*	*	*

Note 1 to Chapter 64, HTSUS, provides, in pertinent part, as follows:

1. This chapter does not cover...

(a) Disposable foot or shoe coverings of flimsy material (for example, paper, sheeting of plastics) without applied soles. These products are classified according to their constituent material;

* * * *

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The General Explanatory Note to Chapter 64 provides, in pertinent part, as follows:

GENERAL

With certain **exceptions** (see particularly those mentioned at the end of this General Note) this Chapter covers, under headings *64.01* to *64.05*, various types of footwear (including overshoes) irrespective of their shape and size, the particular use for which they are designed, their method of manufacture or the materials of which they are made.

For the purposes of this Chapter, the term “footwear” **does not**, however, **include** disposable foot or shoe coverings of flimsy material (paper, sheeting of plastics, etc.) without applied soles. These products are classified according to their constituent material.

(A) The Chapter includes:

...

(10) Disposable footwear, with applied soles, generally designed to be used only once.

(C) The term “outer sole” as used in headings *64.01* to *64.05* means that part of the footwear (other than an attached heel) which, when in use, is in contact with the ground. The constituent material of the outer sole for purposes of classification shall be taken to be the material having the greatest surface area in contact with the ground. In determining the constituent material of the outer sole, no account should be taken of attached accessories or reinforcements which partly cover the sole (see Note 4 (b) to this Chapter). These accessories or reinforcements include spikes, bars, nails, protectors or similar attachments (including a thin layer of textile flocking (e.g., for creating a design) or a detachable textile material, applied to but not embedded in the sole).

In the case of footwear made in a single piece (e.g., clogs) without applied soles, no separate outer sole is required; such footwear is classified with reference to the constituent material of its lower surface.

(D) For the purposes of the classification of footwear in this Chapter, the constituent material of the uppers must also be taken into account. The upper is the part of the shoe or boot above the sole. However, in certain footwear with plastic moulded soles or in shoes of the American Indian moccasin type, a single piece of material is used to form the sole and either the whole or part of the upper, thus making it difficult to identify the demarcation between the outer sole and the upper. In such cases, the upper shall be considered to be that portion of the shoe which covers the sides and top of the foot. The size of the uppers varies much between different types of footwear, from those covering the foot and the whole leg, including the thigh (for example, fishermen’s boots), to those which consist simply of straps or thongs (for example, sandals).

* * * *

Pursuant to Note 1(a) to Chapter 64, which governs the classification of disposable shoe coverings in Chapter 64, a disposable shoe covering made of flimsy material and lacking an applied sole is precluded from classification as footwear of Chapter 64. Conversely, as noted in the General Explanatory Note to Chapter 64, flimsy disposable shoe covers are classified in Chapter 64, as “footwear”, if they do have an applied sole.

The instant shoe cover is constructed of knit cotton fabric. Although the fabric appears durable, in the context of footwear, it provides no cushioning and little protection against the elements or the ground. Thus, we consider the material of style “A” to be “flimsy” for the purposes of Note 1(a) to Chapter 64. However, the shoe cover lacks an applied sole, and thus cannot be properly classified as footwear pursuant to Note 1(a) and Note 1(b).

A sole is defined in the General Explanatory Note to Chapter 64 as the part of the footwear in contact with the ground. The Merriam-Webster Dictionary Online and the Oxford English Dictionary Online, respectively, further define “sole” as follows:

a : the undersurface of a foot

b : the part of an item of footwear on which the sole rests and upon which the wearer treads

<http://www.merriam-webster.com/dictionary/sole>.

a. The bottom of a boot, shoe, etc.; that part of it upon which the wearer treads (freq. exclusive of the heel); one or other of the pieces of leather or other material of which this is composed (cf. *insole n.* and *outsole n.*). Also, a separate properly-shaped piece of felt or other material placed in the bottom of a boot, shoe, etc.

<http://www.oed.com/view/Entry/184121?rskey=VW5Gs4&result=1#eid>.

In determining whether a shoe covering has an applied sole pursuant to Note 1 to Chapter 64, we look to whether a line of demarcation between the sole and the upper can be identified. A ‘line of demarcation’ exists if one can indicate on the item the line along which the sole ends and the upper begins. Footwear made of a single material, with no additional, applied layer or covering on the bottom (e.g., an infant’s bootie, or the other styles of shoe covers classified according to their component material, in heading 3926 (articles of plastic) or 6307 (articles of textile)) does not have a line of demarcation distinguishing the sole from the remainder of the item.

In the instant case, the shoe cover is made of a single material, there is no additional layer or covering, and there is no line of demarcation separating the sole from the upper. Hence, the shoe cover lacks an applied sole and is excluded from Chapter 64, HTSUS. As noted in HQ 967851, dated November 18, 2005, mere patches, pads, dots, strips, etc., attached to a sock’s underfoot area, do not, in and of themselves, constitute an applied sole. As the shoe cover is a made up article of textile and it is not more specifically described elsewhere in the tariff, it is classified in heading 6307, HTSUS.

Pursuant to the above analysis, CBP has consistently classified shoe covers made of a single material—i.e., lacking an applied sole—in heading 6307, HTSUS, or heading 3926, HTSUS, according to their constituent material. See e.g., NY N171076, dated June 21, 2011; NY N053260, dated March 16, 2009; NY N012508, dated July 6, 2007; NY F86712, dated May 11, 2000; NY F88501, dated June 23, 2000; NY E82610, dated June 16, 1999; and NY A89868, dated December 6, 1996.

HOLDING:

By application of GRI 1, the textile shoe cover style “A” is classified in heading 6307, HTSUS, specifically subheading 6307.90.98, HTSUS, which provides for “Other made up articles, including dress patterns: Other: Other.” The 2013, column one, general rate of duty is 7% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N238529, dated March 21, 2013, is hereby modified.

Sincerely,

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division

RECEIPT OF APPLICATION FOR “LEVER-RULE” PROTECTION

AGENCY: Customs & Border Protection, Department of Homeland Security.

ACTION: Notice of receipt of application for “Lever-rule” protection.

SUMMARY: Pursuant to 19 C.F.R. 133.2(f), this notice advises interested parties that Customs & Border Protection (CBP) has received an application from Intel Corporation seeking “Lever-rule” protection for three federally registered and recorded trademarks.

FOR FURTHER INFORMATION CONTACT: G. Gharib, Intellectual Property Rights Branch, Regulations & Rulings, Office of International Trade, (202) 325-0126.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 C.F.R. § 133.2(f), this notice advises interested parties that CBP has received an application from Intel Corporation seeking “Lever-rule” protection. Protection is sought against the importation of certain products not authorized for sale in the United States bearing the “INTEL & DESIGN” trademark (U.S. Trademark Registration No. 3690667; CBP Recordation No. TMK 10-00527), the “INTEL” trademark (U.S. Trademark Registration No. 2446693; CBP Recordation No. TMK 13-00761), and the “I” stylized trademark (U.S. Trademark Registration No. 0902104; CBP Recordation No. TMK 07-00755), which also bear the designations “Intel Confidential,” “ES,” or a product code commencing with the letter “Q.” In the event that CBP determines the aforementioned products under consideration are physically and materially different from the Intel Corporation’s products authorized for sale in the United States, CBP will publish a notice in the *Customs Bulletin*, pursuant to 19 C.F.R. 133.2(f), indicating that the above-referenced trademarks are entitled to Lever-rule protection with respect to those physically and materially different products bearing the aforementioned registered and recorded trademarks.

Dated: April 4, 2014

CHARLES R. STEUART,
Chief
Intellectual Property Rights Branch
Regulations & Rulings
Office of International Trade