

U.S. Customs and Border Protection

PROPOSED REVOCATION OF RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A RUBBER BOOT

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

ACTION: Notice of proposed revocation of one ruling letter and proposed revocation of treatment relating to tariff classification of a rubber boot.

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) proposes to revoke PD B80930, dated January 28, 2007, relating to the tariff classification of latex rubber boots 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 August 22, 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, 10th Floor, 90 K St., N.E., Washington, D.C. 20229–1179. Submitted comments may be inspected at Customs and Border Protection, 10th 90 K St. N.E., Washington, D.C. 20229–1179 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 revoke one ruling letter pertaining to the tariff classification of rubber boots. Although in this notice, CBP is specifically referring to the revocation of PD B80930, dated January 28, 1997 (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 PD B80930, CBP determined that one style of latex rubber boots was classified in subheading 6401.92.60, HTSUS, as waterproof footwear having soles and uppers with an external surface area of over 90% polyvinyl chloride (PVC).

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke PD B80930 and revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the subject boots in subheading 6401.92.90, HTSUS, as other waterproof footwear, according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H244567, 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: June 12, 2014

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

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY UNITED STATES CUSTOMS
SERVICE PORT OF NEW ORLEANS

NEW ORL&AHS, LOUISIAHA

PD B80930

January 28, 1997

CLA-2-64-NO:CO:FNIS 009

CATEGORY Classification
TARIFF NO.: 6401.92.60

MARVIN MALTZ

ABEL UNLIMITED INC.

*1649 FORUM PLACE, SUITE 12
WEST PALM BEACH, FLORIDA 33401*

RE: The tariff classification of a rubber boot from China

DEAR MR MALTZ:

In your letter dated January 9, 1997, you requested a tariff classification ruling.

You submitted one sample which is a flimsy pull-on boot made of 100 percent rubber and is designated as Style #9260. The boot covers the ankle, but not the knee. The sole consists of a pebbly polyvinyl chloride and the boot has no lining.

We note that the submitted sample is not marked with the country of origin. Therefore if imported as is, the sample will not meet the country of origin marking requirements of 19.U.S.C.1304. Accordingly, the shoes would not be considered 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.”

The applicable subheading for the above shoe will be 6401.92.60, Harmonized Tariff Schedule of the United States (HTS), which provides for waterproof footwear with outer soles and uppers of rubber or plastic, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes, other footwear, which cover the ankle but not the knee, which are not ski-boots or snowboard boots, having soles and uppers of which over 90 percent of the external surface area is polyvinyl chloride. *The rate of duty will be 5.4 percent.*

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.

Sincerely,

ALLEN H. PATERSON
Port Director
New Orleans, LA

REPLY TO: Port Director of Customs, 423 Canal StrHt. Room 245,
N-Orleans, LA 70130.2

[ATTACHMENT B]

HQ H244567

CLA-2 OT:RR:CTF:TCM H244567 CkG

Category: Classification

Tariff No.: 6401.92.90

MARVIN MALTZ

ABEL UNLIMITED INC.

*1649 FORUM PLACE, SUITE 12**WEST PALM BEACH, FL 33401*

Re: Revocation of PD B80930; classification of a rubber boot from China

DEAR MR. MALTZ,

This is in reference to CBP ruling PD B80930, issued to you on January 28, 1997, regarding the classification under the Harmonized tariff Schedule of the United States (HTSUS) of a rubber boot from China, designated style #9260. We have reconsidered this ruling, and for the reasons set forth below, we find that the classification of style # 9260 in subheading 6401.92.60, HTSUS, was incorrect.

FACTS:

PD B80930 described the merchandise as follows:

...a flimsy pull-on boot made of 100% rubber and is designated as Style #9260. The boot covers the ankle, but not the knee. The sole consists of a pebbly polyvinyl chloride and the boot has no lining.

A sample of style # 9260 was submitted by Abel Unlimited Inc., and sent to the CBP Laboratory of Los Angeles for examination on July 16, 2010. The CBP Laboratory Report states that no polyvinyl chloride (PVC) was detected in the sample, and found that it is composed of vulcanized polyisoprene (a natural rubber latex).

ISSUE:

Whether the instant boots are classified in subheading 6401.92.60, HTSUS, as waterproof footwear having soles and uppers with an external surface area of over 90% polyvinyl chloride, or as other waterproof footwear of subheading 6401.92.90, HTSUS.

LAW AND ANALYSIS:

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

The HTSUS provisions at issue are as follows:

- 6401: Waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes:

...

Other footwear:

6401.92: Covering the ankle but not covering the knee:

...

Other:

6401.92.60: Having soles and uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is poly(vinyl chloride), whether or not supported or lined with poly(vinyl chloride) but not otherwise supported or lined.

6401.92.90: Other.

* * * * *

PD B80930 classified the instant boots in subheading 6401.92.60, HTSUS, as waterproof footwear having soles and uppers an external surface area of over 90% polyvinyl chloride (PVC). However, the ruling describes the boots as 100% rubber, with only the sole containing PVC. Footwear with an upper of 100% rubber cannot be classified in subheading 6401.92.60, HTSUS, even with a PVC sole, because both the sole and the upper must have an external surface area of over 90% PVC in order to be classified in subheading 6401.92.60. Furthermore, an examination of style # 9260 by the CBP Laboratory established that the boot is made entirely of rubber latex and contains no PVC at all. Style # 9260 therefore does not meet the terms of subheading 6401.92.60, HTSUS. It is correctly classified in subheading 6401.92.90, HTSUS, as other waterproof footwear.

HOLDING:

By application of GRIs 1 and 6, Style # 9260 is classified in subheading 6401.92.90, HTSUS, which provides for "Waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes: Other footwear: Other: Other..." The 2014 general, column one rate of duty is 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/>.

EFFECT ON OTHER RULINGS:

PD B80930, dated January 28, 1997, is hereby revoked.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

**GENERAL NOTICE
19 CFR PART 177**

**PROPOSED MODIFICATION OF ONE RULING LETTER
AND REOVCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFCIATION OF A KAYAK FROM CHINA**

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

ACTION: Notice of proposed modification of a ruling letter and revocation of treatment concerning the tariff classification of a kayak from China.

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 modify one ruling letter pertaining to the tariff classification of the “Lifetime Daylite Kayak,” model 90102, 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 August 22, 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 modify one ruling letter pertaining to the classification of a kayak referred to in the original ruling letter as the “Lifetime Daylite Kayak,” model 90102. Although in this notice CBP is specifically referring to New York Ruling Letter (“NY”) N246367, dated October 25, 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 intends to modify 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 HTSUS. 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 N246367, CBP classified the "Lifetime Daylite Kayak," a blow-molded kayak made of high density polyethylene plastic (HDPE) under subheading 8903.99.15, HTSUS, which provides for, "Yachts and other vessels for pleasure or sports; row boats and canoes: Other: Row boats and canoes which are not of a type designed to be principally used with motors or sails: ...Other."

It is now CBP's position that this classification was in error, and the kayak is properly classified under subheading 8903.99.05, HTSUS, which provides for, "Yachts and other vessels for pleasure or sports; row boats and canoes: Other: Row boats and canoes which are not of a type designed to be principally used with motors or sails: Canoes." CBP proposes to modify NY N246367 as it pertains to the classification of the kayak.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY N246367 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling ("HQ") H251131, (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: June 30, 2014

JACINTO JUAREZ
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N246367

October 25, 2013

CLA-2-95:OT:RR:NC:N4:424

CATEGORY: Classification

TARIFF NO.: 9506.29.0080; 8903.99.1500

MR. BRYON BROWN
LIFETIME PRODUCTS
FREEPORT CENTER, BLDG D-11
CLEARFIELD, UT 84404

RE: The tariff classification of a paddleboard and kayak from China

DEAR MR. BROWN:

In your letter dated September 16, 2013, you requested a tariff classification ruling.

Photographs and descriptive literature for the "Lifetime Teton Paddleboard," model 90467, and the "Lifetime Daylite Kayak," model 90102, were received with your inquiry. The dimensions of the paddleboard are 120"(L) x 36"(W) x 8"(H) and it weighs 60 lbs. It is a stand up blow-molded unit made from High Density Polyethylene plastic (HDPE). Some of the features include a textured deck for added traction, a removable fin, a leash attachment hook, 4 handles for easy carrying, and front bungee cords for storage. The paddleboard comes with the paddle and 6-liter storage bag.

The second item, the "Lifetime Daylite Kayak," is a blow-molded kayak that can be sat on. The kayak is also made from HDPE. Its dimensions are 96"(L) x 30"(W) x 9"(H) and it weighs 38 lbs. The kayak is used for recreational purposes.

The applicable subheading for the "Lifetime Teton Paddleboard" will be 9506.29.0080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports...Water skis, surf boards, sail boards and other water sport equipment; parts and accessories thereof: Other, Other." The rate of duty will be free.

The classification for the "Lifetime Daylite Kayak" will be 8903.99.1500, HTSUS, which provides for "Yachts and other vessels for pleasure or sports; row boats and canoes: . . . Other: . . . row boats and canoes which are not of a type designed to be principally used with motors or sails: . . . Other." The duty rate is 2.7%.

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 James Forkan at (646) 733-3025.

Sincerely,

GWENN KLEIN KIRSCHNER

Acting Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H251131

CLA-2OT:RR:CTF:TCM: ERB

CATEGORY: Classification

TARIFF NO.: 8903.99.05

MR. BYRON BROWN

LIFETIME PRODUCTS

*FREERPORT CENTER, BLDG D-11**CLEARFIELD, UT 84404*

RE: Modification of NY N246367; Tariff classification of a kayak from China

DEAR MR. BROWN:

U.S. Customs and Border Protection (CBP) issued Lifetime Products New York Ruling Letter (NY) N246367, dated October 25, 2013. NY N246367 pertains to the tariff classification under the Harmonized Tariff Schedule of the United States, (HTSUS) of a paddleboard and a kayak from China. We have since reviewed NY N246367 and find it to be in error with respect to the classification of the kayak, which is described in detail herein.

FACTS:

According to NY N246367, there were two items submitted to CBP for classification. Photographs and descriptive literature describe the products as follows: the "Lifetime Teton Paddleboard," model 90467 and the "Lifetime Daylite Kayak," model 90102¹. The kayak is a blow-molded kayak that can be seated upon by a user. It is made from high density polyethylene plastic (HDPE), its dimensions are 96" (L) x 20" (W) x 9" (H) and it weighs 38 pounds. The kayak is used for recreational purposes.

ISSUE:

What is the proper classification of the subject kayak under the 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:

- | | |
|------------|---|
| 8903. | Yachts and other vessels for pleasure or sports; row boats and canoes: |
| 8903.99 | Other: Row boats and canoes which are not of a type designed to be principally used with motors or sails: |
| 8903.99.05 | Canoes |
| 8903.99.15 | Other |

¹ As it is not at issue here, the paddleboard's dimensions and descriptions will not be included.

Because the instant classification dispute occurs beyond the four-digit heading level, GRI 6 is implicated. GRI 6 states:

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

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the HTSUS at the international level, may be utilized. The ENs, although not dispositive or legally binding, provides 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 EN to heading 8903, HTSUS, states, in pertinent part, the following:

This heading includes...kayaks,...

CBP has previously addressed the issue of the proper classification of kayaks. In HQ 088499, dated April 19, 1991, Customs ruled that kayaks are described by the term “canoe” because both vessels are characterized by lightness, maneuverability, versatility, ease of repair, silent operation and relatively inexpensive cost, as well as being best known for their application in leisure activities such as touring and camping, or racing and for formal drills and stunts. Given their similarities, it is proper that kayaks are classified under the subheading for “canoes.”²

There is no dispute that the products at issue here is a kayak. Therefore, the subject merchandise is properly classified under subheading 8903.99.05, HTSUS, which provides for, “Yachts and other vessels for pleasure or sport; row boats and canoes...Other: row boats and canoes which are not of a type designed to be principally used with motors or sails: Canoes.”

HOLDING:

By application of GRI 1 and GRI 6, the subject kayak is provided for in heading 8903, HTSUS. It is specifically provided for under subheading 8903.99.05, HTSUS, which provides for, “Yachts and other vessels for pleasure or sports; row boats and canoes: Other: Row boats and canoes which are not of a type designed to be principally used with motors or sails: Canoes.” The column one, general rate of duty is free.

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

² See HQ 088499, dated April 19, 1991, where Customs cited The Encyclopedia Americana’s (1989) definitions of kayak and canoe and canoeing to determine that kayaks are properly classified as a “canoe.” See also HQ 950019, dated November 5, 1991, (affirming HQ 088499 in classifying kayaks under subheading 8903.99.05, HTSUS).

EFFECT ON OTHER RULINGS:

NY N246367, dated October 25, 2013, is hereby MODIFIED.

MYLES B. HARMON

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE CLASSIFICATION OF A FRONT FRAME FOR A WIND
TURBINE GENERATOR SET**

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 classification of a front frame for a wind turbine generator 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 Customs and Border Protection (CBP) proposes to revoke one ruling letter relating to the classification of a front frame for a wind turbine generator set. 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 August 22, 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 Street, NE (10th Floor), Washington, DC 20229. Submitted comments may be inspected at the above-identified 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: 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 intends to revoke one ruling letter pertaining to the classification of a front frame for a wind turbine generator set. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) N090476, dated January 26, 2010, (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 N090476, CBP determined that the “front frame” (a cast iron further machined piece which supports the gear box, main shaft assembly, yaw motors, support columns, rotation counter, and rotor locking system) designed to be mounted within the nacelle, was classified in heading 8503, HTSUS, specifically under subheading 8503.00.95, HTSUS, which provides for “Parts suitable for use solely or principally with machines of heading 8501 or 8502: Other: Other: Other”.

It is now CBP’s position that the instant “front frame” is properly classified under heading 8412, HTSUS, specifically under subheading 8412.90.90, HTSUS, which provides for: “Other engines and motors, and parts thereof: Parts: Other”.

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke NY N090476, and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the instant front frame, according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H169057 (Attachment B), set forth as an attachment 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: June 30, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N090476

January 26, 2010

CLA-2-85:OT:RR:NC:N1:112

CATEGORY: Classification

TARIFF NO.: 8503.00.9560

MR. GREGORY JOHN BREAULT
IMPORT/EXPORT COMPLIANCE MANAGER
GAMESA WIND
400 GAMESA DRIVE
FAIRLESS HILLS, PA 19030

RE: The tariff classification of a wind turbine "Mainframe" from China

DEAR MR. BREAULT:

In your letter dated January 7, 2010, you requested a tariff classification ruling.

The item concerned is referred to as a "Mainframe" or a "Front Frame". This item is a cast iron further machined piece that acts as the base/floor of a wind turbine generator set. The "Mainframe" is mounted within the nacelle housing of a wind turbine. This base unit, attaches to the upper most portion of the tower via its "rotation center". Within the nacelle housing the main-frame (front frame) supports the gear box, main shaft assembly, yaw motors, support columns, rotation counter, and rotor locking system. It also attaches to a rear frame assembly that is used to support the generator and control cabinets.

The applicable subheading for the wind turbine "Mainframe" will be 8503.00.9560, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Parts suitable for use solely or principally with machines of heading 8501 or 8502: Other: Other: Other." The rate of duty will be 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 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 Steven Pollichino at (646) 733-3008.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H169057
CLA-2 OT:RR:CTF:TCM H169057 AMM
CATEGORY: Classification
TARIFF NO.: 8412.90.90

MR. GREGORY JOHN BREAULT
IMPORT/EXPORT COMPLIANCE MANAGER
GAMESA WIND
400 GAMESA DRIVE
FAIRHILLS, PA 19030

RE: Reconsideration of New York Ruling Letter N090476; Classification of a wind turbine "Front Frame" from China

DEAR MR. BREAULT,

This is in reference to New York Ruling Letter (NY) N090476, dated January 26, 2010, issued to you on behalf of Gamesa Wind, regarding the classification by U.S. Customs and Border Protection (CBP) of a wind turbine components identified as a "Front Frame" or "Mainframe," under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY N090476, and found it to be incorrect with respect to the classification of the Front Frame. For the reasons set forth below, we intend to modify that ruling.

FACTS:

In NY N090476, CBP described the instant merchandise in the following manner:

This item is a cast iron further machined piece that acts as the base/floor of a wind turbine generator set. The "Mainframe" is mounted within the nacelle housing of a wind turbine. This base unit, attaches to the upper most portion of the tower via its "rotation center". Within the nacelle housing the mainframe (front frame) supports the gear box, main shaft assembly, yaw motors, support columns, rotation counter, and rotor locking system. It also attaches to a rear frame assembly that is used to support the generator and control cabinets.

* * *

In NY N090476, CBP classified the instant merchandise under heading 8503, HTSUS, specifically under subheading 8503.00.95, HTSUS, which provides for: "Parts suitable for use solely or principally with the machines of heading 8501 or 8502: Other: Other".

ISSUE:

What is the proper classification of the instant Front Frame under the HTSUS?

LAW AND ANALYSIS:

The 2014 HTSUS provisions at issue are:

- | | |
|---------|--|
| 8412 | Other engines and motors, and parts thereof: |
| 8412.90 | Other: |

8412.90.90 Other

8503 Parts suitable for use solely or principally with the machines of heading 8501 or 8502:

Other:

8503.00.95 Other

Note 2 to Section XVI (which covers Chapters 84 and 85), HTSUS, states, in pertinent part:

Subject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

(a) Parts which are goods included in any of the headings of chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;

(b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate.

* * *

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 84.12 states, in pertinent part:

(D) WIND ENGINES (WINDMILLS)

This group includes all power units (wind engines or wind turbines), which directly convert into mechanical energy the action of the wind on the blades (often of variable pitch) of a propeller or rotor.

Usually mounted on a fairly tall metal pylon, the propellers or rotors have an arm perpendicular to their plane, forming a vane, or some similar device for orientating the apparatus according to the direction of the wind. The motive force is generally transmitted by reduction gearing through a vertical shaft to the power take-off shaft at ground level. Some wind motors ("depression motors") have hollow blades in which a pressure reduction is developed by rotation, and is transmitted to the ground by airtight conduits to drive a small reaction turbine.

* * *

Electric generator units composed of wind motors mounted integrally with an electric generator (including those for operation in aircraft slipstreams) are excluded (heading 85.02).

* * *

The EN to heading 85.02 states, in pertinent part:

(I) ELECTRIC GENERATING SETS

The expression “generating sets” applies to the combination of an electric generator and any prime mover other than an electric motor (e.g., hydraulic turbines, steam turbines, wind engines, reciprocating steam engines, internal combustion engines). Generating sets consisting of the generator and its prime mover which are mounted (or designed to be mounted) together as one unit or on a common base (see the General Explanatory Note to Section XVI), are classified here provided they are presented together (even if packed separately for convenience of transport).

* * *

PARTS

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), parts of the machines of this heading are classified in heading 85.03.

In NY N090476, CBP classified a “Front Frame.” It is a cast iron further machined piece that acts as the base/floor of a wind turbine generator set, and is mounted within the nacelle housing of a wind turbine. It supports the weight of the gear box, main shaft assembly, yaw motors, support columns, rotation counter, and rotor locking system. It also attaches to a rear frame assembly that supports the weight of the generator. CBP classified this item under heading 8503, HTSUS, which provides for “Parts suitable for use solely or principally with machines of heading 8501 or 8502”.

The courts have considered the nature of “parts” under the HTSUS and two distinct though not inconsistent tests have resulted. *See Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States*, 110 F.3d 774, 779. The first, articulated in *United States v. Willoughby Camera Stores*, 21 C.C.P.A. 322 (1933) requires a determination of whether the imported item is “an integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article.” *Bauerhin*, 110 F.3d at 778 (quoting *Willoughby Camera*, 21 C.C.P.A. 322, 324). The second, set forth in *United States v. Pompeo*, 43 C.C.P.A. 9 (1955), states that an imported item “dedicated solely for use” with another article is a part of that article provided that, “when applied to that use,” the article will not function without it. *Pompeo*, 43 C.C.P.A. 9, 14. Under either line of cases, an imported item is not a part if it is “a separate and distinct commercial entity.” *ABB, Inc. v. United States*, 28 Ct. Int'l Trade 1444, 1452–53 (2004); *Bauerhin*, 100 F. 3d at 1452–32. “A subpart of a particular part of an article is more specifically provided for as a part of the part than as a part of the whole.” *Mitsubishi Electronics America v. United States*, 19 CIT 378, 383 n.3 (Ct. Int'l. Trade 1995).

A complete wind turbine is classified under heading 8502, HTSUS, as an electric generating set. *See* NY N099779, dated April 20, 2010; NY J84838, dated May 30, 2003; NY I83359, dated July 11, 2002. A generating set is made from a combination of a prime mover (in this case, a wind engine) and a generator. *See* EN(I) to 85.02; EN(D) to 84.12.

In NY N058766, dated May 26, 2009, CBP considered the classification of wind turbine nacelle assemblies without generators, imported both with and without the blade assemblies. The nacelle assemblies consisted of a housing, metal frame, gear box, shafts, brake system, yaw system, and controllers. CBP stated that "The gears, shafts, brake, and yaw drive and motor, together with the blade assembly, operate as the engine of the completed wind turbine." In one scenario, a nacelle assembly was imported without its generator, blades, hub, and nose cone. CBP classified it under subheading 8412.90.90, HTSUS, which provides for "Other engines and motors, and parts thereof: Parts: Other". In a second scenario, a nacelle assembly was imported without its generator, but with the blades, hub, and nose cone. CBP found that this scenario represented a complete wind engine, and classified it under subheading 8412.80.90, HTSUS, which provides for "Other engines and motors, and parts thereof: Other engines and motors: Other".

CBP has also classified certain other individual components contained inside the nacelle housing as parts of a wind engine. *See* NY N112600, dated July 27, 2010 (a mechanical brake-hydraulic unit, which is a nacelle assembly component located behind the gear box as a part of a wind engine, was classified under subheading 8412.90.90, HTSUS); NY N138276, dated December 16, 2010 (a bedplate cast, used inside a nacelle assembly to support the yaw drive, brakes, rotor shaft, and gear box, as a part of a wind engine, was classified under subheading 8412.90.90, HTSUS).

Heading 8412, HTSUS, provides for "Other engines and motors, and parts thereof". As discussed above, a complete wind turbine is composed of two components: the wind engine and the electric generator. When the electric generator is missing, the remainder of the assembly is classified as a wind engine. *See* NY N058766. The function of the wind engine is to capture the kinetic energy of the wind, and convert that energy into rotational mechanical energy. *See* EN(D) to 84.12. As discussed above, the instant Front Frame is dedicated solely for use inside the nacelle of a wind turbine, to support the weight of certain other components. These individual components work together to transmit the rotational mechanical energy from the blades to the generator. If the Front Frame were removed, there would be no support or alignment for these parts. The wind engine would no longer be able to perform its intended function, which is to convert wind energy into electricity and to supply that mechanical energy to the electric generator. The Front Frame is a "part" of a wind engine within the meaning of the term given by the courts in *Bauerhin*. Therefore, the Front Frame is properly classified under heading 8412, HTSUS, as a part of a wind engine. *See* Note 2(b) to Section XVI, HTSUS.

In NY N090476, CBP classified the instant product under heading 8503, HTSUS, as a part of a complete wind turbine. However, a complete wind turbine is comprised of two parts, the wind engine and the generator. As

stated in *Mitsubishi*, “[a] subpart of a particular part of an article is more specifically provided for as a part of the part than as a part of the whole.” *Mitsubishi*, 19 CIT, at 383 n.3. The instant front frame is a subpart of the complete wind turbine, in that it is a part of the wind engine (which is itself a part of the wind turbine). As such, it is not provided for under heading 8503, HTSUS.

The instant front frame is properly classified under heading 8412, HTSUS, by operation of GRI 1 and Note 2(b) to Section XVI. Specifically, it is classified under subheading 8412.90.90, HTSUS, which provides for: “Other engines and motors, and parts thereof: Parts: Other”.

HOLDING:

By application of GRI 1 and Note 2(b) to Section XVI, HTSUS, the instant Front Frame is classified under heading 8412, HTSUS, specifically under subheading 8412.90.90, HTSUS, which provides for: “Other engines and motors, and parts thereof: Parts: Other”. The column one, general 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 N090476, dated January 26, 2010, is hereby REVOKED.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

NOTICE OF REVOCATION OF RULING LETTERS AND 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 revocation of ruling letters and 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 revoking two ruling letters concerning the tariff classification of wafer probe cards. Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in *Customs Bulletin and Decisions*, Vol. 48, No. 17, on April 30, 2014.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 22, 2014.

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, notice proposing to revoke Headquarters Ruling Letters (HQ) H011054, dated September 9, 2011, and HQ H011056, dated September 9, 2011, was published in the *Customs Bulletin and Decisions*, Vol. 48, No. 17, on April 30, 2014. 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 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 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 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 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 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 cards are properly classified in subheading 9030.82.00, HTSUS, which provides for "Oscilloscopes, spectrum ana-

lyzers 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 revoking 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 Ruling Letter HQ H192481, 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. Ruling Letter HQ H192481 will become effective 60 days after publication in the *Customs Bulletin and Decisions*.

Dated: June 25, 2014

JACINTO JUAREZ
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H192481

June 25, 2014

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; 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 are revoking HQ H011054.¹

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 Ruling Letters HQ H011054 and HQ H011056 was published on April 30, 2014, in Volume 48, Number 17, of the *Customs Bulletin and Decisions*. No comments were received in response to the Notice.

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.,

¹ CBP is also revoking HQ H011056, dated September 9, 2011, which classified a substantially similar wafer probe card in subheading 8536.90.40, HTSUS.

<http://www.jemam.com/probocard>. 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 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.

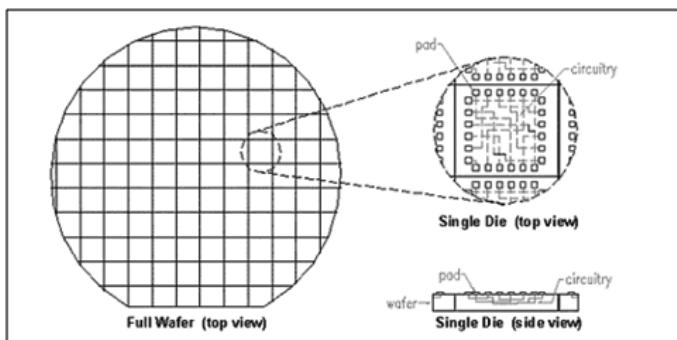


Figure 1–1: Integrated Circuit Wafer

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.

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.

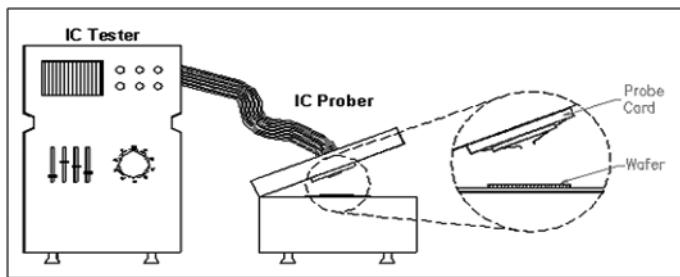


Figure 1-2: IC Tester and Prober (with probe card and wafer)

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.

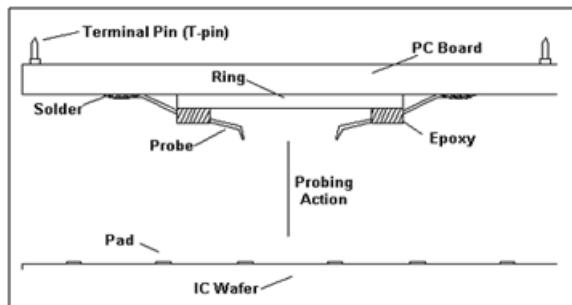


Figure 1-3: Probe Card and Wafer

* * * *

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,

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

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)); *Photronics, 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 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 "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 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>.

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

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,

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**GENERAL NOTICE
19 CFR PART 177**

**PROPOSED REVOCATION OF ONE RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE CLASSIFICATION OF THERMAL CONDUCTIVE
GREASES**

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

ACTION: Notice of proposed revocation of one ruling letter and proposed revocation of treatment relating to the classification of thermal conductive greases.

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 proposes to revoke one ruling letter concerning the classification of thermal conductive greases under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before August 22, 2014.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulation and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street, N.E.—10th Floor, Washington, DC 20229–1179. Comments submitted may be inspected at 90 K Street, N.E. 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: 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 proposes to revoke one ruling pertaining to the classification of thermal conductive greases. Although in this notice CBP is specifically referring to New York Ruling (“NY”) N144035, dated April 28, 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 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 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 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, 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 his agents for importations of merchandise subsequent to this notice.

In NY N144035, CBP classified five types of thermal conductive greases in subheading 3824.90.28, Harmonized Tariff Schedule of the United States (“HTSUS”), as “[p]repared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: [o]ther: [o]ther: [m]ixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances: [o]ther.” We now believe that it is properly classified in subheading 3910.00.00, HTSUS, as: “silicones in primary form.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N144035, and any other ruling not specifically identified, pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H192517 (see Attachment “B” to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes 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: July 1, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT A]

N144035

April 28, 2011

CLA-2-38:OT:RR:NC:2:239

CATEGORY: Classification

TARIFF NO.: 3824.90.2800; 3824.90.7000

MR. JOHN M. PETERSON
NEVILLE PETERSON LLP
17 STATE STREET, 19TH FLOOR
NEW YORK, NY 10004

RE: The tariff classification of thermal conductive grease/paste products from Japan

DEAR MR. PETERSON:

In your letter dated January 18, 2011, you requested a tariff classification ruling regarding five different formulations of thermal conductive grease/paste products on behalf of your client Shin-Etsu MicroSi, Inc.

The products, identified as X23-7783D, G751, X23-7756, X23-7762, and G765, are formulated mixtures used to aid electronic component dissipation in printed circuit boards and other board-level electronic components. The products will be imported in bulk form. Samples were submitted in retail size syringes for review with your inquiry and will not be returned.

The products, X23-7783D, G751 and X23-7762, are composed of aluminum, zinc oxide, and organic compounds. Each of the products contains over 5 percent by weight of an aromatic substance.

The product, G765, is composed of aluminum nitride, zinc oxide, and an organic compound containing over 5 percent by weight of an aromatic substance.

The product, X23-7756, is composed of aluminum, zinc oxide, and organic compounds containing less than 5 percent by weight of an aromatic substance.

The applicable subheading for X23-7783D, G751, X23-7762 and G765 will be 3824.90.2800, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances: Other. The rate of duty will be 6.5 percent ad valorem.

The applicable subheading for X23-7756 will be 3824.90.7000, HTSUS, which provides for Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Electroplating chemical and electroless plating solutions and other materials for printed circuit boards, plastics and metal finishings. The rate of duty will be free.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Richard Dunkel (646) 733-3032.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H192517
CLA-2 OT: RR: CTF: TCM H192517 TNA
CATEGORY: Classification
TARIFF NO.: 3910.00.00

JOHN M. PETERSON
NEVILLE PETERSON LLP
17 STATE STREET, 19TH FLOOR
NEW YORK, NY 10004

RE: Revocation of New York Ruling N144035; Classification of Thermal Conductive Greases

DEAR MR. PETERSON:

This is in response to your letter dated October 21, 2011, on behalf of Shin-Etsu MicroSi, Inc. for reconsideration of New York Ruling Letter ("NY") N144035 dated April 28, 2011, regarding the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of thermal conductive greases under subheading 3824.90.28, HTSUS. We have reviewed NY N144035 and, based on new information provided by the importer and supplemental laboratory reports received from U.S. Customs & Border Protection's ("CBP's") laboratory, determined that it is incorrect.

FACTS:

The subject merchandise consists of five types of thermal conductive greases.¹ These products, identified as X23-7783D, G751, X23-7756, X23-7762, and G765, are imported in the form of organopolysiloxane paste containing aluminum and zinc oxide, together with trade secret ingredients. They are used as thermally conductive pastes in the manufacture of electronic products, such as printed circuit boards and other board-level products for which thermal dissipation is an important feature. They aid in thermal dissipation via a heat sink. They are imported in bulk and either repackaged and sold in bulk, or repackaged into syringes.

In an initial round of laboratory reports, the laboratory found that X-237783D, G-765, G751, and X23-7762 were thermal conductive greases composed of more than five percent of a proprietary chemical that was an aromatic compound. The first round of laboratory reports concluded that X23-7756 was composed of less than one percent of a proprietary chemical that was an aromatic compound. As a result, the laboratory concluded that classification

in subheading 3824.90.70, HTSUS, was appropriate for this product.²

In NY N144035, on the basis of laboratory reports that focused on the amount of aromatics in the material, CBP classified these substances under subheading 3824.90.28, HTSUS, as "[p]repared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere

¹ We note that while you only requested reconsideration of four of the five greases at issue in NY N144035, all five are similar products. Furthermore, CBP has received supplemental laboratory reports on all five products. As a result, we reconsider the classification of all five.

² See Laboratory Report #NY201100317, dated March 31, 2011.

specified or included: [o]ther: [o]ther: [m]ixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances: [o]ther."

Shin-Etsu is requesting reconsideration of this classification based on evidence that the subject merchandise contains less than 5% by weight of aromatic compounds. In support of this contention, the company submitted a more detailed breakdown of the subject merchandise's ingredients and their percentages than had been submitted for NY N144035. As such, Shin-Etsu argues that these products should be classified under subheading 3824.90.70, HTSUS, as other materials for printed circuit boards, plastics and metal finishings.

A round of supplemental laboratory reports were issued based on the new information submitted by the importer found that all five of the subject products were silicone in primary form.³

ISSUE:

Whether the subject thermal conductive greases are classified under subheading 3824.90.28, HTSUS, as "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other," in subheading 3824.90.70, HTSUS, as "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Mixtures of dibromo neopentyl glycol; Polydibromophenylene oxide; Tetrabromobisphenol-A-carbonate oligomers; and Electroplating chemical and electroless plating solutions and other materials for printed circuit boards, plastics and metal finishings, or in subheading 3910.00.00, HTSUS, as "Silicones in primary forms"?

LAW AND ANALYSIS:

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

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

3824 Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:

3824.90 Other:

 Other:

³ Laboratory Report #201100318S, dated September 19, 2013, reported on X23-7783D. Laboratory Report #NY201100319S, dated September 19, 2012, reported on G-765. Laboratory Report #NY201100316S, dated September 19, 2013, reported on G751. Laboratory Report #NY201100312S, dated September 19, 2013, reported on X23-7762. Laboratory Report #NY201100317S, dated September 27, 2013, reported on X23-7756.

Mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances:

3824.90.28	Other
3824.90.70	Mixtures of dibromo neopentyl glycol; Poly-dibromophenylene oxide; Tetrabromobisphenol-A-carbonate oligomers; and Electroplating chemical and electroless plating solutions and other materials for printed circuit boards, plastics and metal finishings

3910.00.00 Silicones in primary forms

Note 3 to Chapter 39, HTSUS, states the following:

Headings 3901 to 3911 apply only to goods of a kind produced by chemical synthesis, falling in the following categories: ...

(d) Silicones (heading 3910)

Note 6 to Chapter 39, HTSUS, states the following:

In headings 3901 to 3914, the expression "primary forms" applies only to the following forms:

- (a) Liquids and pastes, including dispersions (emulsions and suspensions) and solutions;
- (b) Blocks of irregular shape, lumps, powders (including molding powders), granules, flakes and similar bulk forms.

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 heading 3824, HTSUS, states, in pertinent part, the following:

This heading covers:...

(B) CHEMICAL PRODUCTS AND CHEMICAL OR OTHER PREPARATIONS

With only three exceptions (see paragraphs (7), (19) and (32) below), this heading does not apply to separate chemically defined elements or compounds.

The chemical products classified here are therefore products whose composition is not chemically defined, whether they are obtained as by-products of the manufacture of other substances (this applies, for example, to naphthenic acids) or prepared directly.

The chemical or other preparations are either mixtures (of which emulsions and dispersions are special forms) or occasionally solutions. Aqueous solutions of the chemical products of Chapter 28 or 29 remain classified within those Chapters, but solutions of these products in solvents

other than water are, apart from a few exceptions, excluded therefrom and accordingly fall to be treated as preparations of this heading.

The preparations classified here may be either wholly or partly of chemical products (this is generally the case) or wholly of natural constituents (see, for example, paragraph (24) below).

The ENs to heading 3910, HTSUS, states, in pertinent part, the following:

The silicones of this heading are non-chemically defined products containing in the molecule more than one silicon-oxygen-silicon linkage, and containing organic groups connected to the silicon atoms by direct silicon-carbon bonds.

They have a high stability and may be either liquid, semi-liquid, or solid. The products include silicone oils, greases, resins and elastomers.

(1) Silicone oils and greases are used as lubricants remaining stable at high or low temperatures, as water-repellent impregnating products, as dielectric products, as foam inhibitors, as mould release agents, etc. Lubricating preparations consisting of mixtures containing silicone greases or oils fall in **heading 27.10** or 34.03 as the case may be (see corresponding Explanatory Notes).

In NY N144035, CBP based its classification of X23-7783D, G751, X23-7762 and G765 on the fact that they contained an aromatic compound that was greater than 5% by weight of each of the four thermal grease products. However, in this request for reconsideration, the importer states in their March 23, 2012, memorandum, that there was an error in adequately communicating to CBP that the component labeled "Trade Secret 1" was not one chemical compound but a mixture of several compounds. In this request for reconsideration, the importer has provided the complete breakdown of the individual chemical compounds in the "product Trade Secret 1" compound.

Heading 3910 provides for silicone in primary form. The heading applies to silicones of a kind produced by chemical synthesis. *See* heading 3910, HTSUS; Note 3 to Chapter 39, HTSUS. For purposes of this heading, the term "primary form" covers pastes, including dispersions (emulsions and suspensions). *See* Note 6 to Chapter 39, HTSUS. Furthermore, the products of heading 3910, HTSUS, include silicone greases that remain stable at a high temperature. The heading also specifically includes silicone greases used as dielectric products. *See* EN 39.10.

In the present case, CBP's laboratory's analysis based on the complete breakdown of the subject merchandise that was submitted with the request for reconsideration shows that these products consist of organopolysiloxane paste with aluminum and zinc oxide. Therefore, the instant products are silicone in primary form. Furthermore, these products are silicone greases that are used for their stability at high temperatures, so as to whisk away the heat produced by the electric merchandise with which they are used. This is consistent with the description of the products in the explanatory notes to heading 39.10.

Heading 3824, HTSUS, is a basket provision. As such, if the subject merchandise can be more specifically classified elsewhere in the tariff, it is precluded from classification in heading 3824, HTSUS, even if it meets the

terms of the heading. *See, e.g.*, HQ 963688, dated February 4, 2000; HQ 967972, dated March 2, 2006. Pursuant to the analysis above, the subject merchandise is described by heading 3910, HTSUS. As a result, it cannot be classified in heading 3824, HTSUS.

HOLDING:

By application of GRI 1, the subject X23-7762, X23-7783D, G765, G751, and X23-7756 are classified under heading 3910, HTSUS. They are specifically provided for in subheading 3910.00.00, HTSUS, which provides for "silicones in primary form." The column one rate of duty is 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 World Wide Web at www.usitc.gov/tata/hts/.

EFFECTS ON OTHER RULINGS:

NY N144035, dated April 28, 2011, is REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF ELECTRICAL MUSCLE STIMULATION MACHINES

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

ACTION: Notice of revocation of ruling letters and revocation of treatment relating to the tariff classification of electrical muscle stimulation machines.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking five ruling letters concerning the tariff classification of electrical muscle stimulation machines. 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 and Decisions*, Vol. 47, No. 28, on July 3, 2013. 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 September 22, 2014.

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 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, notice proposing to revoke Headquarters Ruling Letter (“HQ”) 966973, dated May 10, 2004; HQ 966716, dated May 10, 2004; New York Ruling Letter (“NY”) J89141, dated October 15, 2003; NY D88729, dated March 24, 1999; and NY A84349, dated July 2, 1996, was published on July 3, 2013, in Volume 47, Number 28, of the *Customs Bulletin and Decisions*. No comments were received in response to this notice.

As stated in the proposed notice, this action will cover any ruling 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 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 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 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 966973, CBP determined that the Product of Tomorrow Fast Abs Abdominal Training System was classified in heading 8543, Harmonized Tariff Schedule of the United States (HTSUS). Specifically, CBP classified the product in subheading 8543.89.96, HTSUS (2004), which provides for “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other: Other.” It is now CBP’s position that the Fast Abs Abdominal Training System is properly classified in subheading 8543.70.85, HTSUS.

In HQ 966716, CBP determined that the Complex Technologies, Inc. Slendertone FLEX Abdominal Training System was classified in heading 8543, HTSUS. Specifically, CBP classified the product in subheading 8543.89.96, HTSUS (2004), which provides for "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other: Other." It is now CBP's position that the Slendertone FLEX Abdominal Training System is properly classified in subheading 8543.70.85, HTSUS.

In NY J89141, CBP determined that the Care Rehab & Orthopaedic Products, Inc. Classic NMS was classified in heading 8543, HTSUS. Specifically, CBP classified the product in subheading 8543.89.96, HTSUS (2003), which provides for "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other: Other." It is now CBP's position that the Classic NMS is properly classified in subheading 8543.70.85, HTSUS.

In NY D88729, CBP determined that the "Esbeltronic" electrical muscle stimulation machine was classified in heading 8543, HTSUS. Specifically, CBP classified the product in subheading 8543.89.96, HTSUS (1999), which provides for "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other: Other." It is now CBP's position that the Esbeltronic is properly classified in subheading 8543.70.85, HTSUS.

In NY A84349, CBP determined that the Seagry International, Ltd. Electro-Muscular Slimmer was classified in heading 8543, HTSUS. Specifically, CBP classified the product in subheading 8543.89.90, HTSUS (1996), which provides for "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other: Other." It is now CBP's position that the Electro-Muscular Slimmer is properly classified in subheading 8543.70.85, HTSUS.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking HQ 966973, HQ 966716, NY J89141, NY D88729, NY A84349, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in Ruling Letter HQ H112635, 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.

Ruling Letter HQ H223701 will become effective 60 days after publication in the *Customs Bulletin and Decisions*.

Dated: June 30, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

[ATTACHMENT]

HQ H112635

June 30, 2014

CLA-2 OT:RR:CTF:TCM H112635 LWF

CATEGORY: Classification

TARIFF NO.: 8543.70.85

Ms. DEBORAH PILLING
SLENDERTONE DISTRIBUTION, INC.
50 HARRISON STREET, SUITE 114
HOBOKEN, NJ 07030

RE: Revocation of Headquarters Ruling Letter ("HQ") 966716, HQ 966973, New York Ruling Letter ("NY") J89141, NY D88729; and NY A84349; Classification of Electrical Muscle Stimulation Machines

DEAR Ms. PILLING:

This is in reference to the request for reconsideration of Headquarters Ruling Letter ("HQ") 966716, dated May 20, 2004, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of an electrical muscle stimulation machine identified as the "Slendertone Flex." In that ruling, Customs and Border Protection (CBP) classified the Slendertone Flex under subheading 8543.89.96, HTSUS (2004), which provides for "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof. Other machines and apparatus: Other: Other: Other: Other." We have reviewed HQ 966716 and find it to be incorrect. Accordingly, for the reasons set forth below, we are revoking HQ 966716 and four other rulings containing substantially similar merchandise.¹

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 Ruling Letter HQ 966973, dated May 10, 2004; HQ 966716, dated May 10, 2004; New York Ruling Letter ("NY") J89141, dated October 15, 2003; NY D88729, dated March 24, 1999; and NY A84349, dated July 2, 1996, was published on July 3, 2013, in Volume 47, Number 28, of the *Customs Bulletin and Decisions*. No comments were received in response to the Notice.

FACTS:

In HQ 966716, CBP described the Slendertone Flex as follows:

The Slendertone Flex is a battery-operated muscle stimulation apparatus which is designed to deliver electronic stimulation signals that are supposed to strengthen and tone the abdominal muscles without the wearer having to be physically active. It is composed of five basic parts: (1) the main "flex" electrical unit which generates electronic stimulation signals and houses the batteries; (2) the belt, which is made of 100% nylon

¹ CBP is also revoking HQ 966973, dated May 10, 2004, NY J89141, dated October 15, 2003, NY D88729, dated March 24, 1999, and NY A84349, dated July 2, 1996, classifying the "Fast Abs Abdominal Training System," the "Classic NMS" electrical muscle stimulation machine, the "Esbeletronic" electrical muscle stimulation machine, and the "Electro-Muscular Slimmer," respectively in subheading 8543.89.96, HTSUS, which provides for "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof. Other machines and apparatus: Other: Other: Other."

binding; (3) three adhesive pads which adhere to the belt and conduct the signals from the electrical unit to the abdominal muscles; (4) a nylon travel pouch; and (5) three AAA batteries. The Slendertone Flex is generally representative of a class of products designed for use by a healthy person where electrical muscle stimulation is applied through skin contact electrodes for the purposes of improving tone, strength, and firmness of a focused muscles group. This class of electrically powered muscle stimulators is said to stimulate the muscles and to produce beneficial therapeutic effects by assisting in the contraction and relaxation of the focused muscles and the elimination of body fat.

Additionally, U.S. Patent No. 6,760,629 (filed Jul. 10, 2001) describes the method by which the Slendertone Flex stimulates abdominal muscles via the application of pulsed electrical signals to nerve trunks located among the lower thoracic and the first and second lumbar nerves.

ISSUE:

Whether the Slendertone Flex is properly classified under subheading 8543.70.85, HTSUS, as an electrical apparatus for electrical nerve stimulation, or in subheading 8543.70.96, as an electrical apparatus for other than electrical nerve stimulation?

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and 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. GRI 6 requires that the classification of goods in the subheading of headings shall be determined according to the terms of those subheadings, any related subheading notes and, *mutatis mutandis*, to GRIs 1 through 5. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

GRI 3 provides, in relevant 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: 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 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 HTS 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).

The 2012 HTSUS subheadings under consideration are as follows:

8543 Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:

8543.70 Other machines and apparatus:

Other:

Other:

8543.70.85 For electrical nerve stimulation...

8543.70.96 Other...

* * * *

Inasmuch as the Slendertone Flex is an electrical apparatus fully described by heading 8543, HTSUS, this dispute concerns the proper tariff classification of the merchandise in the subheadings of the same heading. Consequently, GRI 6 applies.²

As an initial matter, we note that the Slendertone Flex is put up for retail sale as a set consisting of an electrical unit, nylon belt, adhesive pads, nylon travel pouch, and batteries. GRI 3(b) states that “[g]oods 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.” See EN (X) to GRI 3(b).³

The “essential character” of an article is “that which is indispensable to the structure, core or condition of the article, *i.e.*, what it is.” *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (Ct. Int'l Trade 2005). EN VIII to GRI 3(b) explains that “[t]he 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 the constituent material in relation to the

² GRI 6 states:

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.

³ EN (X) to GRI 3(b) provides, in relevant part:

For the purpose of this Rule, the term ‘goods put up in sets for retail sale’ shall be taken to mean goods which:

(a) consist of at least two different articles which are, *prima facie*, classifiable in different headings . . . ;

(b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and

(c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

use of the goods.” Recent court decisions on the essential character for GRI 3(b) purposes have looked primarily to the role of the constituent material in relation to the use of the goods. *See Estee Lauder, Inc. v. United States*, No. 07-00217, 2012 Ct. Int’l Trade LEXIS 23, *17-18; *Structural Industries*, 360 F. Supp. 2d 1330; *Conair Corp. v. United States*, 29 C.I.T. 888 (2005); *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d 1278 (Ct. Int’l Trade 2006), aff’d 491 F.3d 1334 (Fed. Cir. 2007).

The electrical unit, nylon belt, adhesive pads, nylon travel pouch, and batteries are classifiable in different headings, are “put up together” to enable a user to stimulate the abdominal muscles, and are offered for sale directly to consumers without repacking. The user of the Slendertone Flex attaches the belt around his waist area and electrical impulses are transmitted through the skin to nerve trunks located among the lower thoracic and the first and second lumbar nerves to stimulate the abdominal muscles to contract. At all times during operation of the Slendertone Flex, the battery-powered electrical unit supplies electricity to the adhesive pads and is indispensable to the function of stimulating the abdominal muscles. Consequently, we have determined that the electrical unit imparts the Slendertone Flex with its essential character.

The electrical unit is a battery-powered electrical apparatus that generates a low-voltage electric current which passes through the skin, via electrodes, to the nerves of the abdominal muscles, causing them to contract. *See U.S. Patent No. 6,760,629* (filed Jul. 10, 2001). The merchandise has an individual function (*i.e.*, its function can be performed distinctly from and independently of any other device) of stimulating the abdominal muscles and it is not described elsewhere in chapter 85 of the HTSUS. *See* EN 85.43. Accordingly, we affirm that the electrical unit meets the terms of heading 8543, HTSUS.

Specifically, because the electrical unit functions by electrically stimulating the motor nerves of the abdominal muscles, the electrical unit is most accurately provided for *eo nomine* by the terms of subheading 8543.70.85, HTSUS, which state “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: For electrical nerve stimulation.” *See* NY N173357, dated July 18, 2011; NY N044456, dated December 5, 2008; NY N016482, dated September 13, 2007; NY M87761, dated November 20, 2006.

HOLDING:

By application of GRI 3(b) and GRI 6, the Slendertone Flex is classified under heading 8543, HTSUS, specifically in subheading 8543.70.85, HTSUS, which provides for “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other achiness and apparatus: Other: Other: For electrical nerve stimulation.” The column one, general rate of duty is Free.

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

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

EFFECT ON OTHER RULINGS:

In accordance with the above analysis, HQ 966716, dated May 10, 2004; HQ 966973, dated May 10, 2004; NY J89141, dated October 15, 2003; NY D88729, dated March 24, 1999; and NY A84349, dated July 2, 1996, are hereby REVOKED.

This ruling will become effective 60 days after publication in the *Customs Bulletin and Decisions*.

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 DOLOMITE CERAMIC
NOVELTY DRINKING VESSELS**

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 dolomite ceramic novelty drinking vessels.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke a ruling letter concerning the tariff classification of dolomite ceramic novelty drinking vessels. Similarly, CBP intends 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 August 22, 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 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, this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the classification of dolomite ceramic novelty drinking vessels. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (“NY”) N131398, dated November 19, 2010 (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 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 NY N131398, CBP determined that two dolomite ceramic novelty drinking vessels, identified as the “Med Times Knights Head Gold” and the “Paris Balloon”, were classified in heading 6912, Harmonized Tariff Schedule of the United States (HTSUS). Specifically, CBP classified the articles in subheading 6912.00.20, HTSUS, which pro-

vides for “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Hotel or restaurant ware and other ware not household ware.” It is now CBP’s position that the “Med Times Knights Head Gold” drinking vessel is classified in subheading 6912.00.44, HTSUS, which provides for “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Other: Other: Drinking Vessels and other steins,” and that the “Paris Balloon” is classified in subheading 6912.00.48, HTSUS, which provides for “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Other: Other: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke NY N131398 and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in proposed HQ H217616, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 1, 2014

JACINTO JUAREZ
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N131398

November 19, 2010

CLA-2-69:OT:RR:NC:N4:428

CATEGORY: Classification

TARIFF NO.: 6912.00.2000

MR. EDMUND YAN

CLEARFREIGHT INC.

880 APOLLO STREET, SUITE 101

EL SEGUNDO, CA 90245

RE: The tariff classification of dolomite ceramic novelty drinking vessels from China.

DEAR MR. YAN:

In your letter dated October 27, 2010, on behalf of Progressive Specialty Glass Co., you requested a tariff classification ruling.

The submitted samples consist of two dolomite ceramic novelty drinking vessels. The first item is identified as the "Paris Balloon." The item is in the shape of a hot air balloon. The upper portion of the item is spherical in shape, representing the balloon, and measures 4 ½ inches in diameter. It has a removable lid that incorporates a hole for placement of a straw (not included). The balloon is colored blue with the word "Paris" in raised white letters, which is repeated four times around the balloon. The balloon sits on a square-shaped base, representing the basket, which measures approximately 3 inches square by 2 inches in height. The base is colored black, with a raised depiction of the Eiffel Tower surrounded by fireworks, with the word "Paris" in raised, white letters, and the words "LAS VEGAS" below it in raised, red letters. The depiction is repeated on all four sides of the base. The article measures approximately 8" in height overall.

The second item is identified as the "Med Times Knights Head Gold" and is in the shape of an armored knight's head, including the neck, chest and shoulders. The item is colored metallic gold and measures approximately 7 inches in height by 6 ½ inches across its widest width. It features a handle and a removable lid that incorporates a hole for placement of a straw (not included). Across the knight's chest are the words "Medieval Times" in raised letters.

Your samples are being returned as requested.

You indicate that the items are made of dolomite stone and propose classification in subheading 6815.91.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Articles of stone or of other mineral substances (including carbon fibers, articles of carbon fibers and articles of peat), not elsewhere specified or included: Other articles: Containing magnesite, dolomite or chromite."

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

Note (1) to Chapter 69, HTUS, states that "This chapter applies only to ceramic products which have been fired after shaping."

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be

utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. See, T.D. 89-80.

The General ENs to Chapter 69 state that the term "ceramic products" applies to products obtained:

(A) By firing inorganic, non-metallic materials which have been prepared and shaped previously at, in general, room temperature. Raw materials comprise, inter alia, clays, siliceous materials, materials with a high melting point, such as oxides, carbides, nitrides, graphite or other carbon, and in some cases binders such as refractory clays or phosphates.

(B) From rock (e.g., steatite), fired after shaping.

In response to a query by this office, you indicated that, according to the importer, the dolomite ceramic novelty drinking vessels were fired. Therefore, we are of the opinion that the articles meet the requirements of Note (1) to Chapter 69, HTSUS, and, therefore, are ceramic articles which are properly classified in Chapter 69. Hence, classification under subheading 6815.91.0000, HTSUS, is precluded.

Regarding the applicable subheading for the dolomite ceramic novelty drinking vessels, in Headquarters Ruling 082780 Customs held that if a plate was emblazoned with a logo or crest of the hotel or restaurant, it was found to be hotelware regardless of the fact that without the logo, crest or symbol the chinaware would be classified as household chinaware. In this case, both drinking vessels are emblazoned with the name of a hotel or restaurant and are therefore classifiable as hotel or restaurant ware.

The applicable subheading for the dolomite ceramic novelty drinking vessels, "Paris Balloon" and "Med Times Knights Head Gold", will be 6912.00.2000, HTSUS, which provides for "Ceramic tableware, kitchenware... other than of porcelain or china: Tableware and kitchenware: Other: Hotel or restaurant ware and other ware not household ware." The rate of duty will be 28 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/>.

Ceramic table/kitchenware may be subject to certain requirements under the regulations administered by the Food and Drug Administration (FDA). If you have any questions regarding these requirements, you may contact the FDA at: Food and Drug Administration, Division of Import Operations and Policy, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: 1-888-463-6332.

Certain ceramic table and kitchen articles may be subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the FDA. Information on the Bioterrorism Act can be obtained by calling the FDA at telephone number (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 Sharon Chung at (646) 733-3028.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H217616
CLA-2 OT:RR:CTF:TCM H217616 LWF
CATEGORY: Classification
TARIFF NO.: 6912.00.44; 6912.00.48

EDMUND YAN
CLEARFREIGHT, INC.
880 APOLLO STREET, SUITE 101
EL SEGUNDO, CA 90245

RE: Revocation of NY N131398, dated November 19, 2010; classification of dolomite ceramic novelty drinking vessels from China

This letter pertains to New York Ruling Letter ("NY") N131398, dated November 19, 2010, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of two dolomite ceramic novelty drinking vessels imported by your client, Progressive Specialty Glass Company, Inc. ("Progressive"). We have reviewed NY N131398 and find the ruling letter to be in error. In reaching our decision, we considered the arguments raised in Progressive's submission, dated December 21, 2011, requesting reconsideration of NY N131398. For the reasons set forth below, we hereby revoke NY N131398.

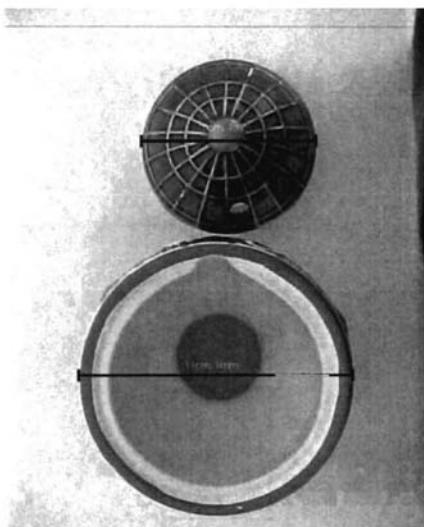
FACTS:

In NY N131398, CBP described the merchandise at issue (the "Drinking Vessels"), as follows:

[The Drinking Vessels] consist of two dolomite ceramic novelty drinking vessels. The first item is identified as the "Paris Balloon." The item is in the shape of a hot air balloon. The upper portion of the item is spherical in shape, representing the balloon, and measures 4½ inches in diameter. It has a removable lid that incorporates a hole for placement of a straw (not included). The balloon is colored blue with the word "Paris" in raised white letters, which is repeated four times around the balloon. The balloon sits on a square-shaped base, representing the basket, which measures approximately 3 inches square by 2 inches in height. The base is colored black, with a raised depiction of the Eiffel Tower surrounded by fireworks, with the word "Paris" in raised, white letters, and the words, "LAS VEGAS" below it in raised, red letters. The depiction is repeated on all four sides of the base. The article measures approximately 8 inches in height overall.

The second item is identified as the "Med Times Knights Head Gold" and is in the shape of an armored knight's head, including the neck, chest and shoulders. The item is colored metallic gold and measures approximately 7 inches in height by 6½ inches across its widest width. It features a handle and a removable lid that incorporates a hole for placement of a straw (not included). Across the knight's chest are the words "Medieval Times" in raised letters.

The Mug, identified as the "Paris Balloon," is pictured below:



The Mug, identified as the "Med Times Knights Head Gold," is pictured below:



ISSUE:

Are the Drinking Vessels classified as hotel or restaurant ware of subheading 6912.00.20, HTSUS, or as other tableware of subheadings 6912.00.44 or 6912.00.48, HTSUS?

LAW AND ANALYSIS:

The matter is protested as a decision on classification. 19 U.S.C. § 1514(a)(2). Protestant's AFR satisfies application criteria because Protestant alleges that CBP's classification of the Drinking Vessels involves questions of law or fact which have not been ruled upon by the Commissioner of CBP or his designee or by the Customs courts. 19 C.F.R. § 174.24(b). Specifically, Protestant claims that relevant information concerning the physical characteristics and principal use of the Drinking Vessels demonstrates that the merchandise is not suitable for use in hotel or restaurants and was not considered by CBP when reaching its decision in New York Rulings Letter ("NY") N131398, dated November 19, 2010. Thus, Protestant suggests that the merchandise is properly classified in subheading 6912.00.44, HTSUS, as Drinking Vessels and other steins.

Merchandise imported in the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context, which requires otherwise, by the Additional U.S. Rules of Interpretation. 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. 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 following HTSUS provisions will be referenced:

6912.00 Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china:

Tableware and kitchenware:

Other:

6912.00.20 Hotel or restaurant ware and other ware not household ware.

Other:

Other:

6912.00.44 Drinking Vessels and other steins.

6912.00.48 Other.

* * *

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.

* * *

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a

commentary on the scope of each heading, and are generally indicative of the proper interpretation of the Harmonized System at the international level. See T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

There is no dispute that the merchandise is classifiable in heading 6912, HTSUS. As this dispute concerns the proper tariff classification of merchandise in the subheadings of heading 6912, HTSUS, GRI 6 applies.¹

In NY N131398, CBP classified the instant Drinking Vessels in subheading 6912.00.20, HTSUS, as hotel or restaurant ware and other ware not household ware, based on CBP's prior ruling in Headquarters Ruling Letter ("HQ") 082780, dated December 18, 1989. Upon review, however, we find that in NY N131398, CBP overly simplified the analysis set forth in HQ 082780, by stating that:

[I]n Headquarters Ruling 082780 Customs held that if a plate was emblazoned with a logo or crest of the hotel or restaurant, it was found to be hotel ware[,] regardless of the fact that without the logo, crest or symbol[,] the chinaware would be classified as household chinaware. In this case, both drinking vessels are emblazoned with the name of a hotel or restaurant and are therefore classifiable as hotel or restaurant ware.

Contrary to CBP's statement in NY N131398, the presence (or absence) of a mark on tableware bearing the logo or crest of a hotel or restaurant is not the controlling factor when determining whether an article is properly described as hotel or restaurant ware of heading 6912, HTSUS. Rather, an article's general physical characteristics, including any logo or crest markings, is merely one area of inquiry in a multi-factored analysis that CBP uses to determine the proper classification of the tableware.

In HQ 082780, for example, CBP classified a number of patterns of china dinnerware that were produced chiefly for household use, but were also marketed and sold to hotels and restaurants for use in their finer dining sections. After reviewing all of the evidence presented, CBP found that hotel china is often modified from household china in both physical and design characteristics because hotel china is heavier in weight and is stackable and chip resistant. Additionally, hotel china generally does not possess a center design. CBP also found that hotel china is typically less expensive than household china and is offered for sale by independent sales representatives to wholesalers or hotel chains, an industry that also has its own trade publications and trade shows. By contrast, household china was found to be generally lighter in weight, more expensive, and did not possess some of the characteristics of hotel ware. Furthermore, because the dinnerware at issue in HQ 082780 was also marked with the crest or initials of the establishment, this spoke in favor of it belonging to the class chiefly used in hotels or restaurants. Specifically, CBP commented that when household china has been modified so as to make it more suitable for restaurant and hotel use **and** to also include a hotel or restaurant logo, it is appropriately classified as hotel or restaurant ware:

¹ GRI 6 states:

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.

[W]hen such modifications include the hotel or restaurant logo or name, it is obvious that such china is in a class chiefly for hotel purposes.

Thus, household china which has been special ordered and modified for hotel and restaurant use by incorporating the hotel/restaurant logo or name in the design, is no longer in the class of china for household use, but belongs to the class of china that is chiefly used for hotels and restaurants. (Emphasis added).

Consequently, in light of the multi-factor analysis described in HQ 082780, the mere presence or absence of a hotel or restaurant logo on an article of tableware is not controlling in determining the tariff classification of the merchandise.

Subheading 6912.00.20, HTSUS, is a “principal use” provision governed by Additional U.S. Rule of Interpretation 1(a), which the Federal Circuit has stated “calls for a determination as to the group of goods that are commercially fungible with the imported goods” so as to identify the “use which exceeds any other *single* use.” *Aromont USA, Inc. v. United States*, 671 F.3d 1310, 1312 (Fed. Cir. 2012) (quoting *Primal Lite, Inc. v. United States*, 182 F.3d 1362, 1365 (Fed. Cir. 1999); *Lenox Collections v. United States*, 20 Ct. Int'l Trade 194, 196 (1996)). As such, the fact that the Drinking Vessels may have multiple significant uses does not proscribe the classification of the merchandise according to the principal use of the class or kind to which it belongs. *Lenox Collections*, 20 Ct. Int'l Trade at 196.

In order to determine the class or kind of good to which an article belongs, the Courts have instructed that CBP must examine all pertinent factors. *Id.* (citing *United States v. Carborundum Co.*, 536 F.2d 373, 377 (Fed. Cir. 1976)). These factors, commonly referred to as the “*Carborundum Factors*” are used to determine which goods are “commercially fungible with the imported goods.” *Aromont*, 671 F.3d at 1312 (quoting *Primal Lite*, 182 F.3d at 1365) (internal quotation marks omitted). These factors may include:

[U]se in the same manner as merchandise which defines the class; the general physical characteristics of the merchandise; the economic practicability of so using the import; the expectation of the ultimate purchasers; the channels of trade in which the merchandise moves; the environment of the sale, such as accompanying accessories and the manner in which the merchandise is advertised and displayed; and the recognition in the trade of this use. *Id.* (citing *Carborundum*, 536 F.2d at 377).

CBP has codified this principle in subsequent rulings. See, e.g., HQ W967570, *supra*; HQ H122957, dated October 9, 2012 (applying the *Carborundum Factors* to determine the principal use of tires for lawn and garden tractors). Consequently, CBP must determine whether pertinent factors indicate that the Drinking Vessels are of the class or kind of goods used principally as hotel or restaurant ware of subheading 6912.00.20, HTSUS, or whether they are classified as other tableware of subheadings 6912.00.44 or 6912.00.48, HTSUS.

CBP notes that the Court of International Trade (CIT) has previously addressed the principal use and commercial fungibility of ceramic steins that are decorated in detail with a brewer’s name or brewery identification and imported to be sold by breweries to customers and collectors. See *G. Heilman*

Brewing Co. v. United States, 14 Ct. Int'l Trade 614 (1990). In *G. Heilman Brewing*, the Court applied the *Carborundum* Factors to determine whether the steins were of a class or kind of goods principally used as “Drinking Vessels and other steins,” under item 533.30 of the Tariff Schedule of the United States (TSUS) or as “art and ornamental articles,” under item A534.87, TSUS.² There, however, the Court emphasized that because the steins were not well suited for serving beer, they were most appropriately classified as ornamental articles. *Id.*

Contrary to the facts presented in *G. Heilman Brewing*, there is no evidence in the instant the record to indicate that the Drinking Vessels are unsuitable for serving beverages. *See supra*. p. 4. Nonetheless, the CIT’s analysis in *G. Heilman Brewing* is useful for highlighting the dispositive factors used to determine the principal use of drinking vessels. Here, it is important note that the Court focused its analysis on the decorative qualities of the steins, their durability during frequent use and washing, their suitability for serving beverages, the expectations of the ultimate purchaser, as well as the intent of breweries to use the steins as advertisements to their customers. *G. Heilman Brewing*, 14 Ct. Int'l Trade at 620–21. As such, our analysis of the instant Drinking Vessels will involve many of the same factual inquiries at issue in *G. Heilman Brewing*.

Application of the *Carborundum* Factors in the instant case demonstrates that the Drinking Vessels are commercially fungible with other tableware that is not of a kind primarily used in hotels or restaurants.

The General Physical Characteristics of the Merchandise

The first *Carborundum* Factor, “the general physical characteristics of the merchandise,” presents evidence that the Drinking Vessels are not commercially fungible with tableware of kind that is primarily used in hotels or restaurants. The terms “hotel and restaurant ware” are not defined in the Nomenclature or the ENs; however, CBP has issued several rulings in which it has described the common characteristics of such merchandise.

In HQ 082780, CBP stated that “hotel china is heavier in weight, is stackable, and chip resistant.” By contrast, CBP found that household china “is lighter in weight, is generally more expensive, and does not possess some of the characteristics of hotel ware.” Similarly, in HQ W967570, dated January 31, 2008, CBP considered whether porcelain tableware and kitchenware imported from France were principally for household use or hotel and restaurant use. There, CBP cited prior rulings and various reference books to determine what physical characteristics are indicative of household use versus restaurant and hotel use. In American china, such characteristics included composition, translucency, degree of absorption, and a very high mechanical shock resistance. Thickness was also a significant factor, as one cited source divided American hotel china, which it described as “vitrified ware of very high strength,” into three grades based on wall thickness: Grade (1), “Thick china,” which had 5/16 to 3/8 inch walls and is used in lunch counters and army messes; Grade (2), “Hotel China,” which contained 5/32 to 1/4 inch walls and were used in hotels and restaurants; and Grade (3),

² Item 533.30, TSUS, is the predecessor of subheading 6912.00.44, HTSUS.

“medium-weight China”, which had less than $\frac{1}{4}$ inch walls and was used in high-class eating places, home use, and also for numerous jars, trays, etc., in hospitals. See HQ W967570; HQ 959745, dated July 20, 1998; HQ 962208, dated April 19, 2000; Rexford Newcomb, Jr., Ceramic Whitewares, Pitman Publishing Corp., New York (1947) at pp. 222 and 227; Felix Singer & Sonja S. Singer, *Industrial Ceramics*, Chemical Publishing Co., Inc., New York (1963), at p. 1096. HQ W967570 also examined trade publications to determine the physical characteristics that are standard for restaurant and hotel ware, and quoted, “the single greatest thing a hotel demands and we produce are plain, white, round plates.” Consequently, it is CBP’s view that hotel and restaurant ware possess unique physical characteristics that render such articles heavier, stackable, and more resistant to chipping and breakage than other tableware.

In HQ 962208, dated April 19, 2000, CBP addressed the differences between chinaware marketed as household ware and that marketed as hotel ware, by comparing the descriptions of the china in the respective catalogs. The catalogs described the hotel ware as microwave and dishwasher proof, and addressed weight and stackability. The household ware was described as dishwasher proof, but was not advertised as microwave proof, and the weight and stackability was not addressed. Only the weight of one pattern was addressed. A 10 $\frac{1}{2}$ inch plate sold as hotel/restaurant ware weighed approximately 1 pound and 9.5 oz. The same pattern plate sold as household ware weighed approximately 1 pound and 3 oz. Similarly, in *G. Heilman Brewing*, the CIT concluded that that testimony showing the ornamental beer steins to be susceptible to physical damage and unsuitable for frequent use or washing was persuasive in determining the proper tariff classification of the merchandise. *G. Heilman Brewing*, 14 Ct. Int’l Trade at 620. As such, evidence that an article of tableware is not stackable or is susceptible to chipping or breakage during repeated commercial use will weigh against a conclusion that such articles are properly described as hotel or restaurant ware.

The instant Drinking Vessels are irregularly shaped to resemble either a hot air balloon or a helmet of armor. They cannot be stacked, and the design of the Drinking Vessels is such that the articles are less chip resistant than typical drinking mugs. Moreover, although the Drinking Vessels feature a name or logo emblazoned on the outside of the article, the designs of the Drinking Vessels are unique to establishments in which they are sold, indicating that the merchandise is not suitable for sale to other hotels or restaurants and is therefore not commercially fungible with other hotel or restaurant ware. See *Dependable Packaging Solutions, Inc. v. United States*, No. 10-00330, slip op. 13-23 at 13 (Ct. Int’l Trade Feb. 20, 2013) (citing testimony that flower vase designs that are not new or unique to a particular company are evidence of commercial fungibility). As such, the general physical characteristics of the Drinking Vessels indicate that they are not designed to be principally used as hotel or restaurant ware.

The Expectation of the Ultimate Purchasers

The second *Carborundum* Factor, “the expectation of the ultimate purchasers,” also favors the conclusion that the Drinking Vessels are not primarily used for hotel or restaurant service. First, the record contains evidence that

when the Drinking Vessels are sold in restaurants, the retail purchaser pays an added price for the pairing of a Mug with a beverage of his or her choosing and with the understanding that he or she may take the Mug home as a souvenir.³ Thus, the additional cost of a beverage sold in combination with a Mug indicates that consumers are willing to pay more for a beverage when they expect to keep the beverage container as a collectible souvenir or article for use at home. *See Lenox Collections*, 20 Ct. Int'l Trade at 197 (finding that a patron or purchaser's willingness to pay an elevated price for a decorative spice container set was indicative of the consumer's intent to primarily use the merchandise as a collectible set, as opposed to a utilitarian cooking container or accessory). Second, because the restaurant only presents the Drinking Vessels to those retail consumers who have ordered the higher-priced Mug and beverage combination, the expectations among ultimate purchasers are necessarily uniform that the Drinking Vessels are purchased as souvenirs to be taken home and away from the restaurant. *See G. Heilman Brewing*, 14 Ct. Int'l Trade at 620 (finding that purchasers' intent to collect certain beer steins was relevant in determining whether the merchandise was classified as tableware or ornamental articles). Accordingly, we find that this information supports the conclusion that the Drinking Vessels are not principally used as hotel or restaurant ware.

The Channels of Trade in which the Merchandise Moves

The third Factor, "the channels of trade in which the merchandise moves," supports a finding that the Drinking Vessels are not commercially fungible with hotel or restaurant ware. In HQ 082780, CBP found that hotel and restaurant ware is generally "offered for sale by independent sale representatives to wholesalers or hotel chains. By contrast, household ware is sold nationwide to department stores, gift stores, and directly to the consumer. *See HQ 082780.*

The record indicates that Progressive supplies the Drinking Vessels to hospitality and entertainment companies for subsequent sale to customers at hotels, restaurants, and related gift shops. Specifically, Progressive advertises the Drinking Vessels to the marketing departments of large resorts and restaurants, and the Drinking Vessels are not purchased by chefs or kitchen staffs in the normal course of food and food service supply orders. *See G. Heilman Brewing*, 14 Ct. Int'l Trade at 616, 621. Hotels and restaurants stock the Drinking Vessels on shelves in restaurants and gift shops, and the Drinking Vessels are sold directly to walk-in and dine-in customers. As such, we find that the channels in which this product is traded also indicate that the Drinking Vessels are not principally used as hotel or restaurant ware.

The Environment of Sale

Fourth, "the environment of sale" of the Drinking Vessels is also probative of whether the instant merchandise is commercially fungible with hotel and restaurant ware. Here, we note that in addition to sales of Mug and beverage

³ The CIT has ruled on several occasions that it is the "retail consumer" who is the "ultimate purchaser" when examining this *Carborudum* factor. *Dependable Packaging*, No. 10-00330, slip op. 13-23 at n. 13; *See also G. Heilman Brewing*, 14 Ct. Int'l Trade at 620.

combinations transacted inside restaurant dining areas, empty Drinking Vessels are also displayed and offered for sale in resort and restaurant gift shops. Additionally, there is no evidence in the record to indicate that the Drinking Vessels are sold in restaurant supply catalogues or stores.

Use in the Same Manner Which Defines the Class

Fifth, the actual use or, “use in the same manner which defines the class,” does not favor classification of the Drinking Vessels as tableware primarily used for hotel and restaurant purposes. Although the environment of sale of the merchandise includes the marketing of Drinking Vessels filled with a beverage in hotel and restaurant dining areas, the record indicates that commercial kitchens do not wash the Drinking Vessels for re-use and the serving of other customers. It is also undisputed that the irregular shape and embellished decoration of the Drinking Vessels render the articles unsuitable for stacking and susceptible to breakage, two qualities undesirable in hotel and restaurant ware that must withstand repeated use, washing, and frequent handling. Moreover, “where the physical characteristics factor so strongly favors one principal use, the actual use of an imported article will frequently not be controlling.” *Dependable Packaging Solutions, Inc.*, No. 10-00330, slip op. 13-23 at 14 (internal quotation marks omitted) (*citing Primal Lite*, 182 F.3d at 1364 (1999) (“[A] classification covering vehicles principally used for automobile racing would cover a race car, even if the particular imported car was actually used solely in an advertising display.”)). Accordingly, this factor does not favor classification of the Drinking Vessels as hotel or restaurant ware of subheading 6912.00.20, HTSUS.

Economic Practicality of the Specified Use

The Drinking Vessels are not suited for repeated use in commercial dining rooms because they are not easily stacked and are susceptible to chipping and breakage. As such, if the Drinking Vessels were of a kind principally used as hotel or restaurant ware, economic practicality would require that the merchandise be modified so that it is heavier in weight, more easily stored, and less prone to damage during frequent and repeated use. *See HQ 082780*. Consequently, the economic practicality

Recognition in the Trade of the Specified Use

Finally, the *Carborundum* Factor of “recognition in the trade of the specified use” is, in this instance, inconclusive. Evidence showing that the Drinking Vessels are not purchased by commercial kitchens and the fact that the Drinking Vessels are not reused by hotel or restaurant dining rooms support a finding that the trade does not recognize the use of the instant merchandise as hotel or restaurant ware. However, we also note that the record does not contain sufficient facts to conclusively determine the recognition in the trade of the use of the Drinking Vessels. Accordingly, this factor is not very probative.

When considered in total, the *Carborundum* Factors—in particular the physical characteristics of the merchandise and the ultimate expectations of the patrons who purchase such articles—indicate that the Drinking Vessels

are not principally used as hotel or restaurant ware. Consequently, the Drinking Vessels are not classifiable under subheading 6912.00.20, HTSUS.

Subheading 6912.00.44, HTSUS, provides for "Ceramic tableware, kitchenware, other household articles and toilet articles, other than or porcelain or china: Tableware and kitchenware: Other: Other: Other: Drinking Vessels and other steins." The term "mug" is not defined in the Nomenclature or the ENs. However, in *Ross Products, Inc. v. United States*, 40 Cust. Ct. 158 (1958), the United States Customs Court determined that a decorated earthenware, barrel-shaped drinking vessel, about 3" high and 2" in diameter, with a curved handle, on top of which was a figure of a bird through which one could blow to make a whistle sound, used by children for the purpose of drinking milk, and not used with a saucer was a "mug" within the common understanding of that term. The tariff term "mug" was defined as a straight-sided or barrel-shaped vessel measuring about the same across the top as across the bottom. It is usually heavier than a cup, with a heavier handle, has a flat bottom and is not used with a saucer. Furthermore, the court noted that the company itself referred to the article as a "mug." *Id.*

CBP considers articles meeting the court definition of "mug," which are taller than they are wide, to be drinking vessels classifiable under subheading 6912.00.44, HTSUS. See HQ 957696, dated July 18, 1995 (classifying a 3" high, cylindrically-shaped vessel with a handle as a mug); HQ 067098, dated April 14, 1981 (classifying a 3" high and 3" in diameter vessel as a drinking mug); see also, NY 886462, dated June 15, 1993, and NY 890028, dated September 20, 1993.

The item identified in the instant case as the "Med Times Knights Head Gold" is a barrel-shaped ceramic vessel that features a handle and flat bottom. It is not used with a saucer, and the height of the vessel is approximately equal to its width. Here, we note that although the vessel is presented in the shape of an armored knight's head, it possesses the general appearance and proportions of a mug. Insomuch as the "Med Times Knights Head Gold" vessel is described by the definition of the term "mug" in *Ross Products, Inc.*, we find that the article is classifiable under subheading 6912.00.44, HTSUS.

By contrast, the item identified as the "Paris Balloon" is a spherically-shaped vessel that sits atop a solid, square-shaped base. The "Paris Balloon" does not possess a handle, and the diameter of the vessel at its lip is substantially larger than the width of its base. Additionally, when the lid of the vessel is removed for drinking purposes, the vessel resembles the shape of a goblet. As such, the "Paris Balloon" does not meet the definition of the term "mug," but is instead provided for under subheading 6912.00.48, HTSUS.

HOLDING:

By application of GRI 1, the "Med Times Knights Head Gold" drinking vessel is classified in heading 6912, HTSUS. Specifically, by application of GRI 6, it is classifiable in subheading 6912.00.44, HTSUS, which provides for "Ceramic tableware, kitchenware, other household articles and toilet articles, other than or porcelain or china: Tableware and kitchenware: Other: Other: Other: Drinking Vessels and other steins." The column one, general rate of duty is 10% *ad valorem*.

By application of GRI 1, the "Paris Balloon" drinking vessel is classified in heading 6912, HTSUS. Specifically, by application of GRI 6, it is classifiable

in subheading 6912.00.48, which provides for "Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Other: Other: Other." The column one, general rate of duty is 9.8% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N131398, dated November 19, 2010, is hereby REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

REVOCATION OF THREE RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CHILD BICYCLE SEATS

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

ACTION: Notice of revocation of three ruling letters and revocation of treatment relating to the tariff classification of child bicycle seats designed for attachment to adult bicycles.

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 three ruling letters relating to the tariff classification of child bicycle seats designed for attachment to an adult bicycle 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. 5, on February 5, 2014. Two comments were received in opposition to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 22, 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 48, No. 5, on February 5, 2014, proposing to revoke NY N016953, dated September 21, 2007, NY N066722, dated July 16, 2009, and NY N166197, dated June 6, 2011, in which CBP determined that child bicycle seats designed for attachment to adult bicycles were classified as seats of heading 9401, HTSUS. Two comments were received in opposition 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.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N016953, NY N066722, and NY N166197, in order to reflect the proper classification of the child bicycle seats as accessories to bicycles under heading 8714, HTSUS, according to the analysis contained in HQ H180103, 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: June 26, 2014

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

Attachment

HQ H180103

June 26, 2014

CLA-2 OT:RR:CTF:TCM H180103 EGJ

CATEGORY: Classification

TARIFF NO.: 8714.99.80

PAUL VROMAN
DHL GLOBAL FORWARDING
2660 20TH STREET
PORT HURON, MI 48060

RE: Revocation of NY N166197, NY N066722 and NY N016953: Classification of Child Bicycle Seats

DEAR MR. VROMAN:

This is in reference to New York Ruling Letter (NY) N166197, dated June 6, 2011, issued to you concerning the tariff classification of a child bicycle seat designed for attachment to an adult bicycle 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 heading 9401, HTSUS, which provides for seats. We have reviewed NY N166197 and find it to be in error. For the reasons set forth below, we hereby revoke NY N166197 and two other rulings with substantially similar merchandise: NY N066722¹, dated July 16, 2009 and NY N016953², dated September 21, 2007.

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 N166197, NY N066722 and NY N016953 was published on February 5, 2014, in Volume 48, Number 5, of the *Customs Bulletin*. Two comments were received in opposition to the Notice, and are addressed in this decision.

FACTS:

In NY N166197, CBP described the subject merchandise as the Britax Jockey bike seat, which is a bicycle-mounted child seat. The seat is positioned behind the rider's saddle. The seat is composed of a molded plastic shell with a reversible cover, and has an attached safety harness. Two metal bars, attached to the seat, extend downwards to connect with the bicycle's frame via a steel bracket. This seat features an extra large spoke cover to prevent the child's legs from getting caught within the wheel spokes, an adjustable back rest to change the seat position from upright to reclined, and

¹ In NY N066722, the merchandise is described as follows: "Style number TCS2000 is a molded laminated plastic baby seat designed to attach to the rear of a bicycle. The seat will measure 20.3 inches long by 15.6 inches wide by 37.2 inches high and will be attached to the bicycle via a cast aluminum rack. The rack is included with the seat and is bolted to the rear of the bicycle. The chair features dual steel spring suspension, four point harness, adjustable foot rests, padded safety bar and rear reflector."

² In NY N016953, the merchandise is described as follows: "Item number 2000724 Co-Pilot Baby Seat is a child seat designed to be attached to the rear of a bicycle. The seat is composed of plastic which is covered with textile padding for comfort. A metal rack and hardware are included to be used in bolting the seat onto the rear of a bicycle."

a height adjustable headrest that can move up and down depending upon the child's height. A picture of the Jockey Bike seat is provided below:

**ISSUE:**

Is the child bike seat, designed for attachment to an adult bicycle, classified under heading 8714, HTSUS, as an accessory to a bicycle, or under heading 9401, HTSUS, as a seat?

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. 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 relevant HTSUS provisions are:

8712	Bicycles and other cycles (including delivery tricycles), not motorized ...
	* * *
8714	Parts and accessories of vehicles of headings 8711 to 8713 ...
	* * *
9401	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof ...
	* * *

Note 1(h) to Chapter 94 states that:

1. This chapter does not cover:
 - (h) Articles of heading 8714 ...

* * *

According to GRI 1, we must first examine section notes, chapter notes and the text of the headings. Note 1(h) to Chapter 94 states that articles of heading 8714, HTSUS, are excluded from classification in Chapter 94. Thus,

if the child bike seats are classifiable as parts or accessories of bicycles in heading 8714, HTSUS, they cannot be classified as seats in heading 9401, HTSUS.

Heading 8714, HTSUS, provides, *inter alia*, for parts and accessories of bicycles. In *The Pomeroy Collection Ltd. v. United States*, 783 F.Supp. 2d 1257, 1260–1261 (Fed. Cir. 2011), the U.S. Court of Appeals for the Federal Circuit (CAFC) explains the courts' two tests for "parts" of an article under the HTSUS. The CAFC states, in pertinent part, that:

The appellate court has adopted two tests for determining whether merchandise may be classified as a part of an article. The first is when the article of which the merchandise in question is claimed to be a part "could not function as such article" without the claimed part. *United States v. Willoughby Camera Stores, Inc.*, 21 C.C.P.A. 322, 324, Treas. Dec. 46851, T.D. 46851 (1933) (emphasis and citations omitted); see also *Bauerhin Techs. Ltd. P'ship v. United States*, 110 F.3d 774, 778 (Fed. Cir. 1997) (relying on this "oft-quoted passage" of Willoughby). Thus, for example, a lens that allows a camera to take colored photos is properly a part of such cameras -- without such lens, "cameras could not perform one of their proper functions - the taking of colored pictures," *Willoughby*, 21 C.C.P.A. at 326–27.

The second test by which a piece of merchandise may qualify as a part of another article is if, when imported, the claimed part is "dedicated solely for use" in such article and, "when applied to that use," the claimed part meets the *Willoughby* test. *United States v. Pompeo*, 43 C.C.P.A. 9, 14 (1955). The example here is a supercharger that may be installed in a car engine -- although both the car engine and the supercharger are complete in themselves, the supercharger is dedicated solely for supercharging the car engine, and, when applied to that use -- i.e., when the article being considered is not just a car engine, but a *supercharged* car engine -- the supercharged car engine cannot function without the super charger, and so the *Willoughby* test is met. See *id.* at 13–14. *Id.*

As stated above, the *Willoughby* test for parts of an article is whether the article could still function as such article without the part. 21 C.C.P.A. at 324. Thus, we must determine if the adult bicycle can still function as an adult bicycle without the child bike seat. We find that an adult can still ride the bicycle without the child bike seat. As such, the child bike seat fails the *Willoughby* test for parts. *Id.*

Next, the *Pompeo* test for parts states that the part must be dedicated solely for use with the article at importation. 43 C.C.P.A. at 14. Once the imported part is attached to the article, the part must then also satisfy the *Willoughby* test for parts. *Id.* At importation, the child bike seat is equipped with two metal bars which attach to the adult bicycle's frame. The child bike seat also includes spoke covers which prevent the child's legs from being struck by spinning spokes. As such, we find that the child bike seat is dedicated solely for use with an adult bicycle. However, the second prong of the *Pompeo* test is that, once installed, the adult bicycle must be unable to function as an adult bicycle without the child bike seat. *Pompeo*, 43 C.C.P.A.

at 14 citing *Willoughby*, 21 C.C.P.A. at 324. As stated above, an adult bicycle can still function as an adult bicycle without the child bike seat. As such, the child bike seat fails both of the courts' tests for parts of articles and cannot be classified as a part of an adult bicycle.

Next, we must determine if the child bike seat is classifiable as an accessory to an adult bicycle under heading 8714, HTSUS. In *Rollerblade, Inc. v. United States*, the U.S. Court of International Trade (CIT) sets forth the definition for an accessory to an article. 24 C.I.T. 812 (2000), *aff'd by Rollerblade, Inc. v. United States*, 282 F.3d 1349 (2002). The CIT cites with approval CBP Headquarters Ruling Letter (HQ) 958924, dated June 20, 1996, which states, in pertinent part, that:

We, however, have repeatedly noted that an accessory is, in addition to being an article related to a primary article, is [sic in original] used solely or principally with that article. We have also noted that an accessory is not necessary to enable the goods with which they are used to fulfill their intended function. They are of secondary importance, not essential of themselves. They, however, must contribute to the effectiveness of the principal article (e.g., facilitate the use or handling of the principal article, widen the range of its uses, or improve its operation). We have also noted that *Webster's Dictionary* defines an accessory as an object or device that is not essential in itself but adds to the beauty, convenience, or effectiveness of something else. *Id.* at 816 citing *Webster's New World Dictionary of the American Language* 4 (2d Concise Ed. 1978).

The CIT also agrees with CBP's assertion that an "[a]ccessory" is not defined as something that is merely intended to be used at the same time as something else; accessories must serve a purpose subordinate to, but also **in direct relationship** to the thing they 'accessorize.' *Id.* at 816–817 citing Def.'s Mot. Summ. J. at 5–6 (emphasis in original). As such, an accessory must have a direct relationship to the article it accessorizes. Moreover, the accessory must serve a purpose subordinate to the article's purpose. Finally, while an accessory is not essential to the article, it should add to the beauty, convenience or effectiveness of the article.

Examining the child bike seat, we find that it has a direct relationship to the adult bicycle because it attaches directly to the adult bicycle. Moreover, its function of providing a seat for a child is subordinate to the adult bicycle's function of enabling an adult to ride the bicycle. Finally, the child bike seat increases the effectiveness of the adult bicycle. Rather than providing transportation for one adult rider, the child bike seat enables the adult bicycle to transport both one adult and one child. Transporting two people is more effective than transporting one person. As such, we find that the child bike seat is classifiable as an accessory to a bicycle under heading 8714, HTSUS.

Since the child bike seat is classified in heading 8714, HTSUS, Note 1(h) to Chapter 94 excludes it from classification as a seat in heading 9401, HTSUS. For all of the aforementioned reasons, we find that the subject child bike seat is classified as an accessory to an adult bicycle under heading 8714, HTSUS.

As we now turn to the comments submitted in response to the proposed revocation, we first note that both commenters failed to address Note 1(h) to Chapter 94, which is the basis for our classification decision. We also note that both commenters made the same arguments, which hinged upon specificity and the ENs.

First, the commenters argued that the child seat should be classified in heading 9401, HTSUS, by application of Additional U.S. Rule of Interpretation 1(c) (AUSR 1(c)). AUSR 1(c) provides as follows:

1. In the absence of special language or context which otherwise requires –
 - (c) a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for “parts” or “parts and accessories” shall not prevail over a specific provision for such part or accessory...

Applying AUSR 1(c), the commenters argued that heading 9401, HTSUS, is a specific provision for seats. Therefore, heading 9401, HTSUS, should prevail over heading 8714, HTSUS, which provides for parts and accessories. However, we note that the introduction to AUSR 1(c) states that AUSR 1(c) only applies “in the absence of special language or context.” Note 1(h) to Chapter 94 is statutory language which precludes parts and accessories of bicycles from classification in Chapter 94. As such, we find that there is no need to apply AUSR 1(c). The language of the HTSUS dictates that parts and accessories of bicycles cannot be classified in heading 9401, HTSUS.

Next, the commenters asserted that the Explanatory Notes direct us to classify child bike seats in heading 9401, HTSUS. In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

EN(III)(C)(12) to Section XVII (which includes Chapters 86–89) provides, in pertinent part, that:

Parts and accessories, even if identifiable as for the articles of this Section, are excluded if they are covered more specifically by another heading elsewhere in the Nomenclature, e.g.:

- (12) Vehicle seats of heading 94.01...
* * *

EN 94.01(c) provides, in pertinent part, that:

The heading does not, however, include:

- (c) Articles of heading 87.14 (e.g., saddles) ...
* * *

Subheading EN 9401.80 provides that:

This heading also covers safety seats suitable for use for the carriage of infants and toddlers in motor vehicles or other means of transport. They are removable and are attached to the vehicle's seats by means of the seat belt and a tether strap.

* * *

One of the commenters cited to EN(III)(C)(12) to Section XVII (which includes Chapters 86–89), and stated that parts and accessories of heading 8714, HTSUS, are more specifically provided for as seats of heading 9401, HTSUS. As such, EN(III)(C)(12) to Section XVII excludes them from classification in Section XVII.

First, we note that the ENs are merely informative, and cannot prevail over the statutory language of the HTSUS. We agree that EN(III)(C)(12) indicates that certain types of vehicle seats should be excluded from classification in Section XVII. We also note that the ENs to subheading 9401.80 describe the types of vehicle seats which should be classified in that subheading. Namely, subheading EN 9401.80 refers to child safety seats for **motor** vehicles (emphasis added). Further, EN 9401.80 describes the seats as the type that are “attached to the vehicle’s seats by means of the seat belt and a tether strap.”

The instant child bike seats are not safety seats for motor vehicles. They do not attach to the bicycle by means of a seat belt and a tether strap. Rather, they attach to the bicycle’s frame using a metal rack. Finally, we note that EN 94.01(c) reiterates the language of Note 1(h) to Chapter 94 by stating that articles of heading 8714 are excluded from classification in heading 9401. For all of the aforementioned reasons, we disagree that the ENs direct us to classify the child bike seat in heading 9401, HTSUS.

Finally, one commenter argued that we should apply the same analysis applied in Headquarters Ruling Letter (HQ) H237640, dated July 17, 2013, to the instant child bike seat. In HQ H237640, we determined that protective bicycle rim tape could be classified in either heading 5906, HTSUS, as a rubberized textile fabric, or in heading 8714, HTSUS, as a bicycle accessory.

Applying GRI 1, we noted that no section or chapter notes excluded the classification of these goods from either of the two headings. As heading 8714, HTSUS, provides for accessories, we turned to AUSR 1(c) for direction on how to classify the subject merchandise. As the terms of heading 5906, HTSUS, describe the merchandise more specifically, the bicycle rim tape was properly classified under heading 5906, HTSUS, by application of AUSR 1(c).

Conversely, Chapter Note 1(h) to Chapter 94 specifically excludes goods of heading 8714, HTSUS, from being classified in heading 9401, HTSUS. As such, we cannot apply AUSR 1(c) to the instant merchandise. Although the tariff term “seat” is more specific than the term “accessories to bicycles,” GRI 1 dictates that we must first classify the goods by application of the relevant section and chapter notes. Thus, we are not persuaded by the commenter’s request to apply the analysis set forth in HQ H237640 to the instant merchandise.

HOLDING:

By application of GRI 1 (Note 1(h) to Chapter 94), the child bicycle seat designed for attachment to an adult bicycle is classified in heading 8714, HTSUS. It is specifically classified under subheading 8714.99.80, HTSUS, which provides for “Parts and accessories of vehicles of headings 8711 to 8713: Other: Other: Other...” The 2014 column one, general rate of duty is ten percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N166197, dated June 6, 2011, NY N066722, dated July 16, 2009 and NY N016953, dated September 21, 2007, are hereby revoked.

Sincerely,

IEVA K. O'ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED MODIFICATION OF TWO RULING LETTERS
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF
CERTAIN ASIAN DUMPLINGS**

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

ACTION: Notice of proposed modification of two ruling letters and proposed revocation of treatment relating to the tariff classification of turkey shomai, chicken wontons, shrimp har gow and shrimp pot stickers.

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 modify two ruling letters relating to the tariff classification of turkey shomai, chicken wontons, shrimp har gow and shrimp pot stickers 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 August 22, 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., Tenth 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 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, as amended (19 U.S.C. §1625 (c)(1)), this notice advises interested parties that CBP intends to modify two ruling letters pertaining to the tariff classification of turkey shomai, chicken wontons, shrimp har gow and shrimp pot stickers. Although in this notice, CBP is specifically referring to the modifications of Headquarters Ruling Letter (HQ) 086283, dated May 14, 1990 (Attachment A), and New York Ruling Letter (NY) M86459, dated October 11, 2006 (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 HQ 086283 and NY M86459, CBP determined that the turkey shomai were classified in heading 1602, HTSUS, which provides for “Other prepared or preserved meat, meat offal or blood,” and that the chicken wontons, shrimp har gow and shrimp pot stickers were clas-

sified in heading 1605, HTSUS, which provides for “Prepared or preserved fish.” It is now CBP’s position that the aforementioned Asian dumplings are all properly classified in heading 1902, HTSUS, which provides for: “Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni; couscous, whether or not prepared.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to modify HQ 086283 and NY M86459, and to revoke or to modify any other ruling not specifically identified, in order to reflect the proper classification of the Asian dumplings according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H199095, 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: July 1, 2014

JACINTO JUAREZ
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ 086283

May 14, 1990

CLA-2:CO:R:C:G 086283 SER

CATEGORY: Classification

TARIFF NO.: 1602.31.0020, 1605.20.0510,
1605.20.0590, 1901.90.9060, 1901.90.9095

MR. DENNIS KOVLER
TRAFFIC MANAGER
MITSUI FOODS, INC.
CONTINENTAL PLAZA
401 HACKENSACK AVENUE
P.O. Box 825
HACKENSACK, NJ 07602

RE: Modification of New York Ruling Letter 828470; Oriental foods, Dim Sum

DEAR MR. KOVLER:

This is in reference to New York Ruling Letter (NYRL) 828470, dated April 20, 1988, which classified food products under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Upon review of that ruling, it has been determined that the classifications in NYRL 828470 are incorrect and, therefore, that ruling is modified pursuant to 177.9(d), of the Customs Regulations (19 C.F.R. 177.9(d)).

FACTS:

The merchandise at issue consists of five products of oriental foods imported from Hong Kong. They are: turkey shomai, comprised of 27 percent turkey meat and 20 percent shrimp; chicken wonton, comprised of 27 percent shrimp and 13 percent chicken; hargrow, comprised of 37 percent shrimp; turkey wok sticker and turkey cocktail spring roll, both comprised of less than 20 percent, by weight, of meat. All consist of a dough jacket filled with a mixture of the meat, fish, and/or vegetables, that is shaped, steamed, frozen and packaged.

ISSUE:

What is the proper classification of the oriental food items under the HTSUSA?

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI's), taken in order. GRI 1 provides that classification shall be determined according to the terms of the Headings and any relative section or chapter notes.

In NYRL 828470 the spring rolls were classified in subheading 2106.90.6095, HTSUSA, which provides for food preparations not elsewhere specified or included . . . frozen. The shomai, wok sticker, wonton, and hargrow were classified in subheading 1902.20.0040, HTSUSA, which provides for stuffed pasta, whether or not cooked or otherwise prepared . . . frozen. The rate of duty for all of the products was 10 percent ad valorem.

Upon further review, it is Customs position that the products at issue are properly classified in different subheadings.

Although the products classified as pasta are similar in construction to stuffed pasta, these Oriental specialty items are best described as filled dumplings. In trade, such products are never referred to or marketed as pasta products. In addition, these products are not commercially interchangeable with pasta products. Like pasta, these dumplings have their own, distinct, commercial identity.

Chapter 16, HTSUS, more specifically covers the products at issue. The chapter notes state that "food preparations fall in this chapter provided that they contain more than 20 percent by weight of sausage, meat, meat offal, blood, fish or crustaceans, molluscs or other aquatic invertebrates, or any combination thereof. In cases where the preparation contains two or more of the products mentioned above, it is classified in the heading of Chapter 16 corresponding to the component or components which predominate by weight." The Notes to Chapter 19, HTSUS, further support classification in Chapter 16, HTSUS. They exclude "food preparations containing more than 20 percent by weight of sausage, meat, meat offal, . . . , fish or crustaceans, . . . , or any combination thereof (Chapter 16)." Following this analysis the shomai, wonton, and hargrow are classified in Chapter 16, HTSUS, in the Heading corresponding to the component that predominates by weight. The shomai, with 27 percent turkey meat and 20 percent shrimp, would be classified in subheading 1602.31.0020, HTSUSA. The wonton, with 27 percent shrimp and 13 percent chicken, and the hargrow, with 37 percent shrimp, would be classified in subheading 1605.20.0510, HTSUSA, when in airtight containers, or 1605.20.0590, HTSUSA, when otherwise put up.

Chapter 16, as mentioned, precludes products which contain less than 20 percent by weight of meat, fish, etc. The wok sticker and the spring rolls contain 20 percent or less of meat or shellfish, and therefore, is precluded from classification in this Chapter. These products consist of a cereal-based dough jacket, and it is Customs position that the dough wrapper distinguishes these products from other products. Therefore, the products are properly classified in subheading 1901.90.9060, HTSUSA, when put up for retail sale, or 1901.90.9095, HTSUSA, when otherwise put up.

This classification change is made pursuant to 19 C.F.R. 177.9(d)(1) which states "any ruling letter found not to be . . . in accordance with the current view of the Customs Service may be modified or revoked. Modification or revocation of a ruling letter shall be effected by Customs Headquarters by giving notice to the person to whom the ruling letter was addressed"

The effect of the modification of ruling letters is stated in 19 C.F.R. 177.9(d)(2), which provides, "the modification . . . of a ruling letter will not be applied retroactively with respect to the person to whom the ruling was issued, or to any person directly involved in the transaction to which that ruling related"

HOLDING:

The shomai is properly classified in subheading 1602.31.0020, HTSUSA, which provides for other prepared or preserved meat, meat offal or blood: of poultry of heading 0105: of turkeys: prepared meals. The rate of duty is 10 percent ad valorem. The wonton and hargrow are properly classified, when in airtight containers, in subheading 1605.20.0510, HTSUSA, which provides for prepared or preserved fish . . . : shrimps and prawns: products containing

fish meat; prepared meals: in airtight containers, dutiable at 10 percent ad valorem. If otherwise put up, the wonton and hargrow, are properly classified in subheading 1605.20.0590, HTSUSA. The rate of duty is 10 percent ad valorem.

The spring rolls and wok sticker are properly classified, if put up for retail sale, in subheading 1901.90.9060, HTSUSA, which provides for food preparations of flour, meal, . . . , not elsewhere specified or included: other: put up for retail sale. Or if otherwise put up, in subheading 1901.90.9095, HTSUSA. The rate of duty is 10 percent ad valorem.

This modification is prospective, and thus, there is no change for past entries. A copy of this ruling letter should be attached to any further entries of this merchandise.

NYRL 828470 is hereby modified.

Sincerely,

JOHN DURANT,
Director

Commercial Rulings Division

[ATTACHMENT B]

NY M86459

October 11, 2006

CLA-2-16:RR:NC:SP:231 M86459

CATEGORY: Classification

TARIFF NO.: 1605.20.0590

MR. DON M. OBERT
THE LAW OFFICE OF DON M. OBERT, P.C.
350 FIFTH AVENUE, SUITE 628
NEW YORK, N.Y. 10118

RE: The tariff classification of shrimp egg rolls and shrimp potstickers (Asian-style dumplings) from China.

DEAR MR. OBERT:

In your letter dated September 18, 2006, you requested a tariff classification ruling on behalf of Glacier Imports Inc. (Edmonton, Canada).

The ruling was requested on *Lucky Jade Food* brand "Shrimp Egg Rolls" and "Shrimp Potstickers." Each of these two separate products consists of a dough jacket (of whole meal flour, salt, water and vegetable shortening) stuffed with shrimp (about 40% of the item's total weight, in each instance) and various lesser percentages of cabbage, carrots, vermicelli, salt, sugar, vegetable shortening, sesame oil, mushrooms, and spring onions. Each individual "Shrimp Egg Roll" and "Shrimp Potsticker" will weigh approximately 15 grams. Prior to packaging, the egg rolls will be fried, while the potstickers will be steamed. Subsequently, ten (10) pieces of either the "Shrimp Egg Rolls" or the "Shrimp Potstickers" will be sealed in plastic bags (not "air-tight"), inserted into their respective cardboard retail boxes, and frozen prior to their exportation to the United States.

The applicable subheading for both of the above-described products will be 1605.20.0590, Harmonized Tariff Schedule of the United States (HTSUS), which provides for crustaceans, molluscs and other aquatic invertebrates, prepared or preserved: shrimps and prawns: ... prepared meals, other than in airtight containers, imported in accordance with Statistical Note 1 to chapter 16. The rate of duty will be 5%.

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 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 Nathan Rosenstein at 646-733-3030.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT C]

HQ H199095
CLA-2 OT:RR:CTF:TCM H199095 EGJ
CATEGORY: Classification
TARIFF NO.: 1902.20.00

RE: Modification of HQ 086283 and NY M86459: Classification of Turkey Shomai, Chicken Wontons, Shrimp Har gow and Shrimp Pot Stickers
Ms. ESTELLE BUTTS
EXECUTIVE ASSISTANT
MITSUI FOODS, INC.
35 MAPLE STREET
NORWOOD, NJ 07648

DEAR Ms. BUTTS:

This is in reference to Headquarters Ruling Letter (HQ) 086283, dated May 14, 1990, issued to Mitsui Foods, Inc., concerning the tariff classification of certain Asian foods under the Harmonized Tariff Schedule of the United States (HTSUS).¹ In that ruling, U.S. Customs and Border Protection (CBP) classified turkey shomai in heading 1602, HTSUS, which provides for prepared or preserved meat. CBP also classified chicken wontons and shrimp har gow in heading 1605, HTSUS, which provides for prepared or preserved crustaceans.

We have reviewed HQ 086283 and find it to be in error with regard to the tariff classification of the turkey shomai, chicken wontons and shrimp har gow. For the reasons set forth below, we hereby modify HQ 086283 and one other ruling with substantially similar merchandise: New York Ruling Letter (NY) M86459, dated October 11, 2006, which was issued to Glacier Imports, Inc. In that ruling, CBP classified shrimp pot stickers in heading 1605, HTSUS.

FACTS:

In HQ 086283, the subject merchandise is described as follows:

The merchandise at issue consists of five products of oriental foods imported from Hong Kong. They are: turkey shomai, comprised of 27 percent turkey meat and 20 percent shrimp; chicken wonton, comprised of 27 percent shrimp and 13 percent chicken; hargrow, comprised of 37 percent shrimp ... All consist of a dough jacket filled with a mixture of the meat, fish, and/or vegetables, that is shaped, steamed, frozen and packaged.

In NY M86459, the subject merchandise is described as follows:

The ruling was requested on ... "Shrimp Potstickers." Each of these two separate products consists of a dough jacket (of whole meal flour, salt, water and vegetable shortening) stuffed with shrimp (about 40% of the item's total weight, in each instance) and various lesser percentages of cabbage, carrots, vermicelli, salt, sugar, vegetable shortening, sesame oil, mushrooms, and spring onions. Each individual ... "Shrimp Potsticker" will weigh approximately 15 grams. Prior to packaging, ... the potstickers will be steamed. Subsequently, ten (10) pieces of ... the "Shrimp

¹ HQ 086283 modified New York Ruling Letter 828470, dated April 20, 1988.

"Potstickers" will be sealed in plastic bags (not "air-tight"), inserted into their respective cardboard retail boxes, and frozen prior to their exportation to the United States.

ISSUE:

Are the subject Asian dumplings classified in headings 1602 or 1605, HTSUS, as prepared or preserved meat or crustaceans respectively? Or are they classified in heading 1902, HTSUS, which provides for stuffed pasta?

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 are as follows:

1602	Other prepared or preserved meat, meat offal or blood: * * *
1605	Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved: * * *
1902	Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni; couscous, whether or not prepared: * * *

Note 2 to Chapter 16 provides as follows:

2. Food preparations fall in this chapter provided that they contain more than 20 percent by weight of sausage, meat, meat offal, blood, fish or crustaceans, molluses or other aquatic invertebrates, or any combination thereof. In cases where the preparation contains two or more of the products mentioned above, it is classified in the heading of chapter 16 corresponding to the component or components which predominate by weight. *These provisions do not apply to the stuffed products of heading 1902 or to the preparations of heading 2103 or 2104* (emphasis added).

Note 1(a) to Chapter 19 provides as follows:

1. This chapter does not cover:

- (a) Except in the case of stuffed products of heading 1902, food preparations containing more than 20 percent by weight of sausage, meat, meat offal, blood, fish or crustaceans, molluscs or other aquatic invertebrates, or any combination thereof (chapter 16);

* * *

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 commen-

tary on the scope of each heading of the Harmonized System at the international level and are generally indicative of the proper interpretation of these headings. *See Treas. Dec. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).*

EN 19.05 states that:

The pasta of this heading are unfermented products made from semolinas or flours of wheat, maize, rice, potatoes, etc.

These semolinas or flours (or intermixtures thereof) are first mixed with water and kneaded into a dough which may also incorporate other ingredients (e.g., very finely chopped vegetables, vegetable juice or purées, eggs, milk, gluten, diastases, vitamins, colouring matter, flavouring).

The doughs are then formed (e.g., by extrusion and cutting, by rolling and cutting, by pressing, by moulding or by agglomeration in rotating drums) into specific predetermined shapes (such as tubes, strips, filaments, cockleshells, beads, granules, stars, elbow-bends, letters). In this process a small quantity of oil is sometimes added. These forms often give rise to the names of the finished products (e.g., macaroni, tagliatelle, spaghetti, noodles).

The products are usually dried before marketing to facilitate transport, storage and conservation; in this dried form, they are brittle. The heading also covers undried (i.e., moist or fresh) and frozen products, for example, fresh gnocchi and frozen ravioli.

The pasta of this heading may be cooked, stuffed with meat, fish, cheese or other substances in any proportion or otherwise prepared (e.g., as prepared dishes containing other ingredients such as vegetables, sauce, meat). Cooking serves to soften the pasta without changing its basic original form.

Stuffed pasta may be fully closed (for example, ravioli), open at the ends (for example, cannelloni) or layered, such as lasagne.

* * *

Note 2 to Chapter 16 and Note 1(a) to Chapter 19 state that products which contain more than twenty percent by weight of meat are classified in Chapter 16. However, the Notes state that stuffed pasta is always classified in heading 1902, HTSUS, regardless of the meat's weight. As such, we must first determine whether the turkey shomai, chicken wontons, shrimp har gow and shrimp pot stickers are stuffed pasta.

In HQ H180095, dated September 3, 2013, we proffered several definitions of the term "pasta."² We cited to *Webster's College Dictionary*, which defines "pasta" as "a flour paste or dough made of semolina and dried, as for spaghetti and macaroni, or used fresh, as for ravioli." *See Webster's College*

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.

Dictionary 1053 (4th Ed. 2007). We also cited *The American Heritage Dictionary*, which defines “pasta” as “1. Unleavened dough, made of wheat flour, water, and sometimes eggs, that is molded into any of a variety of shapes and boiled.” These definitions are consistent with EN 19.05, which defines pasta as being comprised of semolina or flour which is mixed with water and then kneaded into dough. EN 19.05 further states that pasta may be cooked and stuffed with meat, fish or other substances. Heading 1905, HTSUS, also covers frozen stuffed pasta, such as frozen ravioli.

According to the aforementioned definitions, stuffed pasta consists of a semolina or flour dough jacket stuffed with meat, fish or other substances. The subject turkey shomai, chicken wontons, shrimp har gow and shrimp pot stickers all consist of a flour dough jacket stuffed with turkey, chicken and/or shrimp. Like frozen ravioli, the subject merchandise is molded into specific shapes, cooked and frozen. As such, the subject merchandise is classifiable as stuffed pasta of heading 1902, HTSUS. Note 2 to Chapter 16 excludes these products from classification in Chapter 16.

HOLDING:

By application of GRI 1, the turkey shomai, chicken wontons, shrimp har gow and shrimp pot stickers are classified in heading 1902, HTSUS, which provides for stuffed pasta. They are specifically provided for in subheading 1902.20.00, which provides, in pertinent part, for: “Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni...: Stuffed pasta, whether or not cooked or otherwise prepared.” The 2014 column one, general rate of duty is 6.4 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:

HQ 086283, dated May 14, 1990, is hereby modified with regard to the tariff classification of the turkey shomai, chicken wonton and shrimp har gow.

NY M86459, dated October 11, 2006, is hereby modified with regard to the tariff classification of the shrimp pot stickers.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED MODIFICATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF CERTAIN AQUATIC
TRAINING SHOES**

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

ACTION: Notice of proposed modification of a ruling letter and proposed revocation of treatment relating to tariff classification of the “Model Mako” aquatic training shoes.

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 modify one ruling letter relating to the tariff classification of the “Model Mako” aquatic training shoes 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 August 22, 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 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 modify a ruling letter pertaining to the tariff classification of the “Model Mako” aquatic training shoes. Although in this notice, CBP is specifically referring to the modification of Headquarters Ruling Letter (HQ) H012677, dated February 15, 2008 (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 HQ H012677, CBP determined that the subject aquatic training shoes were classified in subheading 6404.11.90, HTSUS, as “sports footwear”. It is now CBP’s position that the aquatic training shoes are classified under subheading 6404.11.90, HTSUS as “tennis shoes, basketball shoes, gym shoes, training shoes and the like.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to modify HQ H012677 and to revoke or to modify any other ruling not specifically identified, in order to reflect the proper classification of the aquatic training shoes according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H032829, 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:

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ H012677

February 15, 2008

CLA-2 OT: RR: CTF: TCM H012677 ADK

CATEGORY: Classification

TARIFF NO.: 6404.11.90

JUDITH HAGGIN
J.L. HAGGIN & ASSOCIATES Co.
1100 S.W. SIXTH AVE.
SUITE 212
PORLAND, OR 97204

RE: Request for reconsideration of New York Ruling Letter L85922, dated August 2, 2005; Classification of the Aquatic Training Shoe

DEAR Ms. HAGGIN:

This letter is in response to your request of May 15, 2007, for reconsideration of New York Ruling Letter (NY) L85922. In that ruling, Customs and Border Protection (CBP) determined that the subject Aquatic Training Shoes are classifiable under subheading 6404.11.90, Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY L85922 and found it to be correct.

FACTS:

The subject articles, identified as "Model Mako, Style AQx1001," (Aquatic Training Shoe/ATS) are athletic-type shoes designed for water fitness and sold by the importer, AQx, Inc. They are marketed for use in vigorous activities such as running in water or aqua aerobics. The shoes have a predominately textile material upper that does not cover the ankle, with a rubber/plastics material external surface area structural reinforcements at the toes and along the sides and eyelet stays at the back. The shoes also feature a functional lace closure complete with an adjustable plastic cinch stop to tighten and hold the shoe on the foot.

There are three, semi-rigid rubber/plastic wing-like protrusions, or "gills," on both sides of the upper's external surface and the shoe has a cemented-on, unit molded rubber/plastic material bottom/sole that overlaps the upper. These "gills" provide resistance when exercising in water and may also make walking on land for extended periods of time impractical. The shoes are valued at over \$12 per pair.

In your submission, you argue that CBP's determination in NY L85922 was incorrect and that the Aquatic Training Shoe is properly classified under heading 9506, HTSUS, as equipment for general physical exercise.

ISSUE:

Are the Aquatic Training Shoes (ATS), Model Mako, Style AQ1004, classifiable as sports equipment of heading 9506, HTSUS, or are they classifiable in heading 6404, HTSUS, as footwear?

LAW AND ANALYSIS:

Classification under the HTSUSA 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 are as follows:

6404 Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials:

Footwear with outer soles of rubber or plastics:

6404.11 Sports footwear; tennis shoes, basketball shoes, gym shoes, training shoes and the like:

* * *

Other:

* * *

6404.11.90 Valued over \$12/pair

* * *

9506 Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this Chapter; swimming pools and wading pools; parts and accessories thereof:

* * *

Other:

9506.91.00 Articles and equipment for general physical exercise, gymnastics or athletics; parts and accessories thereof....

* * *

9506.91.0030 Other

* * *

In addition to the terms of the headings, classification of goods under the HTSUS is governed by any applicable section or Chapter notes. Note 1 to Chapter 95 provides, in pertinent part:

1. This Chapter does not cover:

* * *

(g) Sports footwear (other than skating boots with ice or roller skates attached) of Chapter 64, or sports headgear of Chapter 65.

* * *

Note 1 to Chapter 64 provides, in pertinent part:

* * *

This Chapter does not cover:

* * *

(f) Toy footwear or skating boots with ice or roller skates attached; shin-guards or similar protective sportswear (Chapter 95).

* * *

The subheading Note to Chapter 64 provides:

1. For the purposes of subheadings 6402.12, 6402.19, 6403.12, 6403.19 and 6404.11, the expression “*sports footwear*” applies only to:
 - (a) Footwear which is designed for a sporting activity and has, or has a provision for the attachment of spikes, sprigs, cleats, stops, clips, bars or the like;
 - (b) Skating boots, ski-boots and cross-country ski footwear, snowboard boots, wrestling boots, boxing boots and cycling shoes.

* * *

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 nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989). The EN to heading 9506 (EN 95.06), HTSUS, provides, in pertinent part:

This heading covers:

* * *

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

* * *

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

* * *

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

* * *

The heading **excludes**:

* * *

(g) Sports footwear (**other than** ice or roller skating boots with skates attached) of **Chapter 64** and sports headgear of **Chapter 65**.

(Emphasis in original)

* * *

At issue is whether the ATS are identifiable as “sports footwear” or as “articles and equipment for general physical exercise.” The legal notes to Chapters 64 and 95 are mutually exclusive, i.e., footwear of Chapter 64 is excluded from classification in Chapter 95, while articles of general physical exercise of Chapter 95 are excluded from classification in Chapter 64¹.

¹ Toy footwear and skating boots with blades or wheels are not excluded from classification in Chapter 95.

Classification of the subject article in one of the suggested headings *prima facie* excludes it from the other.

In your request for reconsideration, you argue that the product at issue is clearly designed, marketed, sold and used as an article for physical exercise. Specifically, you state that “the design itself does not provide for the Sports Aquatic Training ‘shoe’ to be worn as footwear.” The “primary function of this article is to provide a means of attaching plastic gills located on the outside of the shoe to the foot, rather than to cover the foot.” According to EN 95.06, however, the determining factor in classification is whether the subject shoes are “requisites for other sports and outdoor games.” Although the manner in which a product is marketed, sold and used is relevant, it is a secondary consideration.

The language of the HTSUS evidences intent that not all articles for use in sports are classified under heading 9506, HTSUS. The ENs to heading 9506 state that the heading covers three categories of merchandise: (A) Articles and equipment for general physical exercise, gymnastics or athletics; (B) Requisites for other sports and outdoor games; and (C) Swimming and paddling pools. Category (B) includes: “water-skis, surf-boards, sailboards, and **other water-sport equipment**,” and “protective equipment for sports or games.” See EN 95.06(B)(2) and (13), emphasis added. However, certain sports-related articles for use in sports are specifically excluded from Chapter 95, HTSUSA. For example, Note 1 to Chapter 95, HTSUSA, excludes sports footwear of Chapter 64. See HQ 967957, dated December 9, 2005. Although sports footwear may be used for water-sports, the ENs make clear that it is not a “requisite for other sports and outdoor games” within the meaning of heading 9506, HTSUS.

CBP has previously considered the classification of water-sports accessories and apparel. In HQ 088542, dated May 1, 1992, an importer filed a protest after certain wetsuits, footgear, headgear and gloves were excluded from heading 9506, HTSUS, and classified instead in *eo nomine* headings. In determining that the imports were excluded from heading 9506, HTSUS, we noted:

Customs has classified within heading 9506, HTSUSA, certain articles which protect or pad persons from the shock of blows, such as fencing masks or equestrian body protectors. This does not extend to textile garments worn while engaged in a sport, such as fencing suits or racing silks, or other more ordinary sports clothing which may also be required for participation or competition in sports activities.... A distinction exists among the headings of the nomenclature between clothing (including protective clothing) and protective equipment.

* * *

...wetsuits are specialized articles of sports clothing. The presence of protective features does not preclude classification as a garment.... **Protestant's arguments that limitations on use and restraint of movement are also unpersuasive.** Like other types of protective clothing, we do not consider it unusual that wetsuits are not the most comfortable garments or may be limited to specific sporting activities.

* * *

By an analysis parallel to that described above, footwear...made from neoprene/textile laminate and designed for use in a water-sport activity [is] not classifiable as “water-sports equipment”, but [is] classifiable as sports footwear....

See also HQ 963430, dated July 10, 2001 (Excluded “Typhoon Booties,” designed for road or mountain bicycling from heading 9506, HTSUS. Although the boots protected against cold or water, they were not functionally similar to the examples of protective equipment classifiable under heading 9506, which are designed to ward off kicks, blows, stabs of a foil, etc.); and NY L89514, dated January 18, 2006 (Finding Foot Waders were classifiable in heading 6405, HTSUS, and excluded from heading 9506, HTSUS, because they did not contain any padding for protection against injury from blows, collisions, or flying objects. Consequently, they were not considered sports equipment).

Applying the above-administrative precedent, and EN 95.06, we find that the subject Aquatic Training Shoes are not “requisites for sports or outdoor games. While the shoes are “protective” in the sense that they act as a barrier to certain elements, they are not similar to the protective exemplars referenced in the ENs to heading 9506, HTSUS. They do not feature any padding for protection against injury from blows or collisions. Furthermore, they are not a requirement for water-sports. As stated by the importer, the “primary function of this article is to provide a means of attaching plastic gills located on the outside of the shoe to the foot.” These plastic gills increase the beneficial effects of activities such as aqua aerobics or water running but are not necessary to engage in such activities.

Although the “gills” make walking on land impractical, this fact alone does not necessitate classification in heading 9506, HTSUS. As noted in HQ 088542 “arguments [concerning] limitations on use and restraint of movement are...unpersuasive. Like other types of protective clothing, we do not consider it unusual that [the footwear]...may be limited to specific sporting activities.”

We next consider whether the Aquatic Training Shoes meet the definition of “sports footwear” as set forth in the subheading note to chapter 64. That note requires that sports footwear must be “designed for a specific sporting activity” and must have, or provide for, “the attachment of spikes, sprigs, cleats, stops, clips, bars or the like.” Gills are not specifically named in this list of exemplars. Classification under the second provision of this note is therefore dependent upon the canon of construction known as *eiusdem generis*, which means literally, “of the same class or kind.” “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.” *Nissho-Iwai American Corp. v. United States* (Nissho), 10 CIT 154, 156 (1986). “As applicable to classification cases, *eiusdem 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.

We will first consider whether the subject Aquatic Training Shoes are “designed for a specific sporting activity.” According to your submission, the subject imports are designed to be worn specifically for “deep water running,

aqua jogging, water plyometrics and aqua therapy.” The subject imports therefore satisfy the first requirement of the subheading note. In addition, the import satisfies the second requirement of the note. All of the named exemplars are attachments that are designed to assist with certain aspects of a sporting activity. Cleats, for instance, assist in gripping the surface, preventing sliding and assisting in rapid changes of direction. Spikes maximize traction when running, throwing or jumping. Similarly, according to your submission, the gills are specifically designed to “allow the training shoe to add resistance to deep water running....The resistance created by the gills allows an athlete to activate more muscle groups, burn more calories, increase metabolic cost, and ultimately provide an intense cardiovascular workout.” These gills share the same essential characteristic as the exemplars enumerated in the subheading note to chapter 64, i.e., they are designed to assist with certain aspects of a sporting activity. By application of *ejusdem generis*, the subject Aquatic Training Shoes, with attached gills, are identifiable as “sports footwear” of heading 6404, HTSUS.

This conclusion is supported by the manner in which the subject imports are marketed and sold. They are advertised as being “an innovation in footwear and resistance training,”² and as being specifically designed to allow swimmers to “benefit from the increased metabolic work that can be accomplished by wearing the ATS in many ways”³.

HOLDING:

The subject ATS are classifiable under subheading 6404.11.90, HTSUS, which provides for: “Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: Footwear with outer soles of rubber or plastics: Sports footwear; tennis shoes, basketball shoes, gym shoes, training shoes and the like: Other: Valued over \$12/pair.” The 2008 general, column one rate of duty is 20 percent *ad valorem*.

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 L85922, dated August 2, 2005, is hereby affirmed.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

² See <http://www.aquatic-exercise-equipment.com>

³ See <http://www.kastawayswimwear.com>

[ATTACHMENT B]

HQ H032829
CLA-2 OT: RR: CTF: TCM H032829 EGJ
CATEGORY: Classification
TARIFF NO.: 6404.11.90

JUDITH HAGGIN
J.L. HAGGIN & ASSOCIATES CO.
1100 S.W. SIXTH AVE.
SUITE 212
PORTLAND, OR 97204

RE: Modification of HQ H012677, dated February 15, 2008; Classification of Aquatic Training Shoes

DEAR MS. HAGGIN:

This is in regard to Headquarters Ruling Letter (HQ) H012677, dated February 15, 2008, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of aquatic training shoes. In HQ H012677, U.S. Customs and Border Protection (CBP) affirmed New York Ruling Letter (NY) L85922, dated August 2, 2005, which classified the aquatic training shoes under subheading 6404.11.90, HTSUS. We have reviewed the analysis set forth in HQ H012677 and have determined that the analysis is incorrect. While we agree that the aquatic shoes are classifiable under subheading 6404.11.90, HTSUS, the correct provision under subheading 6404.11, HTSUS, is "tennis shoes, basketball shoes, gym shoes, training shoes and the like," and not "sports footwear."

FACTS:

The subject articles, identified as "Model Mako, Style AQx1001," are athletic-type shoes designed for water fitness. They are sold by the importer, AQx, Inc. (AQx). AQx markets the shoes for use in vigorous activities such as running in water or aqua aerobics. The following is an image of the shoes:



The shoes have a predominately textile material upper surface that does not cover the ankle. They also have a rubber/plastics external surface area, structural reinforcements at the toe and along the sides and eyelet stays at the back. The shoes also feature a functional lace closure complete with an adjustable plastic cinch stop to tighten and hold the shoe on the foot.

The shoes have a cemented-on, unit molded, rubber/plastic material bottom/sole that overlaps the upper surface. There are three, semi-rigid rubber/plastic wing-like protrusions, or "gills," on both sides of the shoe's upper external surface. These "gills" provide resistance when exercising in water. The bottoms of the shoes contain small drain holes for water to drain out of the shoes after the wearer exits the water. The shoes are valued at over \$12 per pair.

ISSUE:

Are the aquatic training shoes classifiable as "sports footwear" or as "tennis shoes, basketball shoes, gym shoes, training shoes and the like" under subheading 6404.11, 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. 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:

6404 Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials:

Footwear with outer soles of rubber or plastics:

6404.11 Sports footwear; tennis shoes, basketball shoes, gym shoes, training shoes and the like:

Other:

6404.11.90 Valued over \$12/pair

* * *

Subheading Note 1 to Chapter 64 provides that:

2. For the purposes of subheadings 6402.12, 6402.19, 6403.12, 6403.19 and 6404.11, the expression "*sports footwear*" applies only to:

- (c) Footwear which is designed for a sporting activity and has, or has a provision for the attachment of spikes, sprigs, cleats, stops, clips, bars or the like;
- (d) Skating boots, ski-boots and cross-country ski footwear, snowboard boots, wrestling boots, boxing boots and cycling shoes.

Additional U.S. Note 2 to Chapter 64 provides that:

3. For the purposes of this chapter, the term "*tennis shoes, basketball shoes, gym shoes, training shoes and the like*" covers athletic footwear other than sports footwear (as defined in subheading note 1 above), whether or not principally used for such athletic games or purposes.

* * *

Applying GRI 6, the issue is whether the shoes are identifiable as "sports footwear" or as "tennis shoes, basketball shoes, gym shoes, training shoes and the like" under subheading 6404.11, HTSUS. Subheading Note 1 to Chapter

64 states that “sports footwear’ applies only to...,” which conveys an intent to reasonably limit footwear classified as “sports footwear.” CBP has consistently held that the definition of “sports footwear” in Subheading Note 1 to Chapter 64 should be interpreted narrowly. *See HQ 956942*, dated November 7, 1994; *HQ 963462*, dated November 24, 2000 and *NY H87213*, dated February 22, 2002.

The terms “spikes, sprigs, cleats, stops, clips [and] bars” are not defined in the HTSUS or its legislative history. 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.

The Complete Footwear Dictionary, 172 (2nd ed. 2000), defines a spike as “a short, sharp metal piece protruding from the bottom of the shoe sole, used for traction on track shoes. Also used on some shoes or boots for mountain climbing or walking on slippery surfaces.” It defines cleats as “a knob or spike on the sole for increased traction; arranged in groups or patterns.” *Id.* at 34. *The Complete Footwear Dictionary* also defines a clip as “the tightness of shoe fit on the last around the topline.” *Id.* at 34. A shoe’s last is the plastic, wood or metal form over which the shoe is made to conform to the prescribed shape and size of the shoe. *Id.* at 98. A bar is defined as “a piece of material of any of various shapes or thicknesses, used for shoe modifications or as an orthotic to alter foot tread or gait.” *Id.* at 9. *The Complete Footwear Dictionary* shows diagrams of different shoe bars attached to shoe soles.

A sprig and a stop are not defined in *The Complete Footwear Dictionary*. The Merriam-Webster Online Dictionary (2014) defines a sprig as “a small headless nail.” *Id. available at* www.merriam-webster.com. It also defines a stop as “a device for arresting or limiting motion.” *Id.*

CBP’s interpretation of the terms “spikes, sprigs, cleats, stops, bars or the like” in regards to “sports footwear” has generally included projections attached to, or molded into the soles of sports footwear to provide traction during sporting activities such as golf, field sports (baseball, soccer, American football, rugby etc.) or track & field events. In addition, CBP has also included crampons and similar attachments for rock/ice-climbing boots in the definition of these terms.

CBP has determined that outdoor recreational footwear suitable for everyday walking is not “sports footwear.” *See HQ 956942* (CBP found that a steel shank wrapped in canvas in the sole of a horseback riding shoe did not satisfy the definition of sports footwear). According to *HQ 963462* and *NY H87213* respectively, golf shoes with plastic nubs instead of cleats and football shoes with short flat cleats instead of long sharp cleats do not meet the definition of sports footwear.

The subject aquatic shoes have gills on the sides and drain holes on the bottoms. Neither of these elements provides traction during sporting activities. The gills and drain holes are not similar to spikes, sprigs, cleats, stops bars or the like. As such, the aquatic training shoes cannot be classified as sports footwear under subheading 6404.11, HTSUS.

The aquatic training shoes are specifically designed for athletic training in the water. The gills provide resistance for runners training in the water, as well as adding resistance for participants in water aerobics. As such, the shoes are training shoes and are classifiable as "tennis shoes, basketball shoes, gym shoes, training shoes and the like" under subheading 6404.11, HTSUS.

HOLDING:

By application of GRIs 1 and 6, the subject aquatic training shoes are classifiable under subheading 6404.11.90, HTSUS, which provides for, in pertinent part: "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: footwear with outer soles of rubber or plastics: ... tennis shoes, basketball shoes, gym shoes, training shoes and the like: other: valued over \$12/pair." The 2014 column one, general rate of duty is 20 percent *ad valorem*.

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:

HQ H012677, dated February 15, 2008, is hereby modified.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

**ACCREDITATION AND APPROVAL OF INTERTEK USA,
INC., AS A COMMERCIAL GAUGER AND LABORATORY**

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

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of March 26, 2013.

EFFECTIVE DATE: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on March 26, 2013. The next triennial inspection date will be scheduled for March 2016.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 1211 Belgrave Dr., St. Louis, MO 63137, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc. is approved for the following gauging procedures for petroleum and certain petroleum products per the American Petroleum Institute (API) Measurement Standards:

API chapters	Title
3	Tank gauging
7	Temperature determination
8	Sampling
12	Calculations
17	Maritime measurement

Intertek USA, Inc. is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Labo-

ratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL no.	ASTM	Title
27-03	ASTM D 4006	Standard test method for water in crude oil by distillation.
27-04	ASTM D 95	Standard test method for water in petroleum products and bituminous materials by distillation
27-05	ASTM D 4928	Standard test method for water in crude oils by Coulometric Karl Fischer Titration
27-06	ASTM D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method
27-08	ASTM D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure
27-11	ASTM D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Velocity)
27-13	ASTM D 4294	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry
27-46	ASTM D-5002	Standard test method for density and relative density of crude oils by digital density analyzer.
27-48	ASTM D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter
27-50	ASTM D-93	Standard test methods for flash point by Pensky-Martens Closed Cup Tester
27-53	ASTM D 2709	Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge
27-54	ASTM D-1796	Standard test method for water and sediment in fuel oils by the centrifuge method (Laboratory procedure)
27-58	ASTM D 5191	Standard Test Method For Vapor Pressure of Petroleum Products (Mini Method)

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.
http://www.cbp.gov/sites/default/files/documents/gaulist_3.pdf

Dated: June 17, 2014.

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services
Directorate.

ACCREDITATION AND APPROVAL OF INTERTEK USA, INC., AS A COMMERCIAL GAUGER AND LABORATORY

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

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of June 11, 2013.

EFFECTIVE DATE: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on June 11, 2013. The next triennial inspection date will be scheduled for June 2016.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 105 Merchant Lane, Pittsburgh, PA 15205, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc. is approved for the following gauging procedures for petroleum and certain petroleum products per the American Petroleum Institute (API) Measurement Standards:

API chapters	Title
3	Tank gauging.

API chapters	Title
7	Temperature determination.
8	Sampling.
12	Calculations.
17	Maritime measurement.

Intertek USA, Inc. is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL no.	ASTM	Title
27-04	ASTM D 95	Standard test method for water in petroleum products and bituminous materials by distillation.
27-06	ASTM D 473 ..	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-08	ASTM D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27-11	ASTM D 445 ..	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (the Calculation of Dynamic Velocity).
27-13	ASTM D 4294 .	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry.
27-48	ASTM D 4052 .	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27-54	ASTM D-1796	Standard test method for water and sediment in fuel oils by the centrifuge method (Laboratory procedure).
27-58	ASTM D 5191 .	Standard Test Method For Vapor Pressure of Petroleum Products (Mini Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.
http://www.cbp.gov/sites/default/files/documents/gaulist_3.pdf.

Dated: June 17, 2014.

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services
Directorate.

ACCREDITATION AND APPROVAL OF INTERTEK USA, INC., AS A COMMERCIAL GAUGER AND LABORATORY

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

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of May 22, 2013.

EFFECTIVE DATE: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on May 22, 2013. The next triennial inspection date will be scheduled for May 2016.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 109 Sutherland Drive, Chickasaw, AL 36611, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc. is approved for the following gauging procedures for petroleum and certain petroleum products per the American Petroleum Institute (API) Measurement Standards:

API chapters	Title
3	Tank gauging

API chapters	Title
7	Temperature determination
8	Sampling
12	Calculations
17	Maritime measurement

Intertek USA, Inc. is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL no.	ASTM	Title
27-03	ASTM D 4006 .	Standard test method for water in crude oil by distillation.
27-04	ASTM D 95	Standard test method for water in petroleum products and bituminous materials by distillation.
27-06	ASTM D 473 ..	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-08	ASTM D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27-11	ASTM D 445 ..	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (the Calculation of Dynamic Velocity).
27-13	ASTM D 4294 .	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry.
27-46	ASTM D 5002 .	Standard test method for density and relative density of crude oils by digital density analyzer.
27-48	ASTM D 4052 .	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27-50	ASTM D 93	Standard test methods for flash point by Pensky-Martens Closed Cup Tester.
27-53	ASTM D 2709 .	Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.
27-54	ASTM D 1796 .	Standard test method for water and sediment in fuel oils by the centrifuge method (Laboratory procedure).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test

or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.
http://www.cbp.gov/sites/default/files/documents/gaulist_3.pdf.

Dated: June 17, 2014.

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services
Directorate.



NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING CATHETER TRAYS

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (CBP) has issued a final determination concerning the country of origin of certain Foley catheter trays to be offered to the U.S. Government under an undesignated government procurement contract. The final determination found that based upon the facts presented, the country of origin of the subject trays is China and U.S.A.

DATES: The final determination was issued on June 30, 2014. A copy of the final determination is attached. Any party-at-interest as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of July 9, 2014.

FOR FURTHER INFORMATION CONTACT: Fernando Peña, Esq., Valuation and Special Programs Branch, Office of International Trade; telephone (202) 325-1511.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on June 30, 2014, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain Foley catheter trays to be offered to the U.S. Government under an undesignated government procurement contract. The final determination, Headquarters Ruling Letter H230416, was issued at the request of Medline Industries, Inc., under procedures set forth

at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18).

In the final determination, CBP concluded that, based upon the facts presented, the processing in Mexico of several medical instruments and accessories to create the subject “Foley catheter trays” does not constitute a substantial transformation into a product of Mexico for purposes of U.S. government procurement.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, Customs Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: June 30, 2014.

SANDRA L. BELL,
Executive Director,
Regulations and Rulings, Office of
International Trade.

Attachment

HQ H230416

June 30, 2014

OT:RR:CTF:VS H230416 FP

CATEGORY: Marking

MR. MICHAEL T. SHOR
ARNOLD & PORTER, LLP
555 12TH STREET, NW
WASHINGTON, DC 20004

RE: U.S. Government Procurement; Final Determination; Country of origin of catheter system trays; substantial transformation; 19 CFR Part 177

DEAR MR. SHOR:

This is in response to your letter on behalf of Medline Industries, Inc. (hereinafter "Medline"), in which you seek a final determination pursuant to subpart B of Part 177, Customs Regulations, 19 CFR 177.21 *et seq.* Under these regulations, which implement Title III of the Trade Agreements Act of 1979, as amended, (19 U.S.C. § 2411 *et seq.*), U.S. Customs and Border Protection ("CBP") issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated foreign country or instrumentality for the purpose of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of six models of Foley catheter trays, which Medline is considering selling to the U.S. Government in an unspecified procurement tender. We note that Medline is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination.

FACTS:

According to your submission and information provided, Medline developed its Foley catheter trays (hereinafter "trays") to aid in the prevention of catheter-associated urinary tract infections. Medline designed sterilized, single-use trays containing a catheter and all of the equipment necessary to insert the catheter, organized and sequenced in a way to minimize the possibility of infection. You state that each tray is intended to be used only as an entirety, for single use, after which the individual components, other than the inserted catheter that remains in the patient, are discarded.

You state that Medline manufactures six different models of the tray, which differ principally in the materials used for the catheter. The main model sold is the silicone-elastomer coated latex Foley catheter tray. Medline also produces two latex-free models, including a 100% silicone model, and a silicone catheter with silver ions bound in the catheter's coating. Each of these three types comes in two sizes, 16Fr and 18Fr, using the industry standard French units (FR), where 1 Fr is equivalent to 0.33 mm of diameter. You state that the six tray models are otherwise similar.

With your correspondence, you provided a representative sample of the latex Foley model, together with a detailed description and a list of medical instruments and accessories (materials and components) placed into the tray. These include patient drapes, hand sanitizer, sterile gloves, a syringe pre-filled with sterile water to inflate the catheter balloon, lubricating jelly,

iodine swabsticks, a syringe to draw a urine sample, securement devices, and a specimen jar. In the sample, these instruments are arranged in a plastic tray, which contains indentations to hold items or group of items.

The medical instruments and accessories are sourced from China and the U.S., and imported into Mexico, where they are placed into trays, packaged, and boxed at Medline's facility in Nuevo Laredo, Mexico. Specifically for the latex Foley catheter tray, the specimen container, catheter Foley silver, gloves, and drainage bag are manufactured in China. The remaining materials are of U.S. origin.

The catheter is sourced in varying countries depending on the model. The silicone and latex catheters (as in the submitted sample of the latex Foley catheter tray) are manufactured in China. Silvertouch catheters are manufactured in India or Canada. For all models, the catheter and drainage bag are packaged together in Mexico, together with all of the medical instruments and materials needed to insert and secure the catheter, including materials to create a sterile field. The accessories of the other models and their origin were not provided.

You claim that all of the instruments and materials in the tray are intended to be used in conjunction with the insertion of the catheter, in a specific sequence, and only for one use, and thus function together as a single medical device. After their initial use, all of the included instruments and materials, as well as the instructions and plastic tray, are discarded and have no alternative use.

According to Medline the tray components are delivered to a clean room and put together by a designated line of approximately 15 specially trained technicians. The catheter is attached to the drain bag in a way that creates a closed urological system that minimizes contamination when the catheter is used on the patient. By connecting the catheter to the drain bag in Medline's sterile environment, instead of having a nurse connect the two in a hospital room environment, the risk of bacterial contamination and patient infection is minimized.

You claim that attaching the drain bag is a fundamental characteristic of a Foley catheter system, and that the design of the tray transforms the components into an assembly which promotes proper insertion of the Foley catheter, thereby minimizing patient risk. After packaging, Medline performs a quality inspection prior to wrapping, sealing and packaging operations in Mexico, before sending the finished trays for medical sterilization in the United States.

ISSUE:

Whether Medline's Foley catheter system management trays are considered to be products of Mexico for purposes of U.S. Government procurement.

LAW AND ANALYSIS:

Under subpart B of part 177, 19 CFR 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended ("TAA"; 19 U.S.C. 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

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

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

See also, 19 CFR 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. *See* 19 CFR 177.21. In this regard, CBP recognizes that the Federal Procurement Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR 25.403(c)(1).

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 573 F. Supp. 1149 (CIT 1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). CBP considers the totality of the circumstances and makes such decisions on a case-by-case basis. The country of origin of the article's components, extent of the processing that occurs within a given country, and whether such processing renders a product with a new name, character, or use are primary considerations in such cases. Additionally, facts such as resources expended on product design and development, extent and nature of post-assembly inspection procedures, and worker skill required during the actual manufacturing process will be considered when analyzing whether a substantial transformation has occurred; however, no one such factor is determinative.

In Headquarters Ruling Letter (HRL) 555268 dated March 6, 1991, Customs considered the eligibility for preferential tariff treatment under the Generalized System of Preferences to "Code 6000 Infection Control Systems." Similar to the articles under consideration, the Code 6000 catheterization tray contained the following items packaged together: Latex catheter, "Mono-Flo" drainage bag, lubricating jelly, latex gloves, fenestrated drape, underpad prefold, urine specimen vial, forceps, applicator rayon balls, prefilled 10 cubic centimeter syringe, a tamper band, and a package of povidone iodine solution. The tray contained sections and indentations for individual items. The paper cover of the tray, which was designed to be peeled off, listed the contents and the directions for use. Customs determined that the catheter of Malaysian origin imparted the essential character to the set and, therefore, the Code 6000 combination package was classified in subheading 9018.39.00, HTSUS. As in this case, with respect to the Code 6000 combination package, certain items in the set were imported into Mexico from the U.S. or other sources and merely packaged together with items of Mexican origin. Customs held that merely packaging the items originating outside of Mexico with items of Mexican origin clearly did not result in a substantial transformation of the non-Mexican items into "products of" that country. Therefore, because the entire imported entity (the set) was not the "product of" Mexico, as required by the GSP statute, neither the set nor any part thereof would be

entitled to duty-free treatment under the GSP. As to the U.S. items in the set, it was determined that they were eligible for duty-free treatment under subheading 9801.00.10, HTSUS.

Accordingly, it is our conclusion that the operations carried out by Medline in Mexico on the imported components do not result in a substantial transformation of the items into a product of Mexico. Therefore, the origin of each item in the set will be where it was originally manufactured. Considering the sample of the latex Foley catheter tray, the specimen container, catheter foley silver, gloves, and drain bags will remain of Chinese origin. Therefore, the finished latex Foley catheter trays will be considered a product of China and U.S.A. for purposes of U.S. Government procurement. The other five tray models will follow a similar result, but as indicated only the origin of the particular catheter was provided (India or Canada for the Silvertouch model) and the origin of the accessories was not submitted.

HOLDING:

On the basis of the information provided, we find that the operations in Mexico do not constitute a substantial transformation of the components in Medline's latex Foley catheter system management trays. Therefore, the country of origin of Medline's Foley catheter system management trays is China and the U.S. where the items were originally manufactured for purposes of U.S. Government procurement. The other five tray models will follow a similar result, and their country of origin will be where the items of those models were originally manufactured (India, Canada, or the U.S. as the case may be), but specific origin details were not provided for our consideration.

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

Sincerely,

SANDRA L. BELL,
Executive Director,
Regulations and Rulings,
Office of International Trade.

[Published in the Federal Register, July 9, 2014 (79 FR 38943)]

**ACCREDITATION AND APPROVAL OF INTERTEK USA,
INC., AS A COMMERCIAL GAUGER AND LABORATORY**

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

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of August 29, 2013.

EFFECTIVE DATE: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on August 29, 2013. The next triennial inspection date will be scheduled for August 2016.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 481-A East Shore Parkway, New Haven, CT 06512, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc. is approved for the following gauging procedures for petroleum and certain petroleum products per the American Petroleum Institute (API) Measurement Standards:

API chapters	Title
3	Tank gauging
7	Temperature determination
8	Sampling
12	Calculations
17	Maritime measurement

Intertek USA, Inc. is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum

products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-04	ASTM D 95	Standard test method for water in petroleum products and bituminous materials by distillation.
27-06	ASTM D 473 ..	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-08	ASTM D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27-13	ASTM D 4294 .	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry.
27-14	ASTM D 2622 .	Standard Test Method for Sulfur in Petroleum Products (X-Ray Spectrographic Methods).
27-48	ASTM D 4052 .	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27-50	ASTM D 93	Standard test methods for flash point by Pensky-Martens Closed Cup Tester.
27-54	ASTM D 1796 .	Standard test method for water and sediment in fuel oils by the centrifuge method (Laboratory procedure).
27-57	ASTM D 7039 .	Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X-Ray Fluorescence Spectrometry.
27-58	ASTM D 5191 .	Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method).
N/A	ASTM D 1319 .	Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption.
N/A	ASTM D 4815 .	Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C1 to C4 Alcohols in Gasoline by Gas Chromatography.
N/A	ASTM D 5453 .	Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Spark Ignition Engine Fuel, Diesel Engine Fuel, and Engine Oil by Ultraviolet Fluorescence.
N/A	ASTM D 7042 .	Standard Test Method for Dynamic Viscosity and Density of Liquids by Stabinger Viscometer (and the Calculation of Kinematic Viscosity).
N/A	ASTM D 5599 .	Standard Test Method for Determination of Oxygenates in Gasoline by Gas Chromatography and Oxygen Selective Flame Ionization Detection.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*.

Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.
http://www.cbp.gov/sites/default/files/documents/gaulist_3.pdf.

Dated: June 30, 2014.

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services
Directorate.



AGENCY INFORMATION COLLECTION ACTIVITIES:

Application to Pay Off or Discharge an Alien Crewman

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

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application to Pay Off or Discharge an Alien Crewman. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before August 6, 2014 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and

Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oira_submission@omb.eop.gov or faxed to (202) 395-5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, at 202-325-0265.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (79 FR 22521) on April 22, 2014, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/ or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/ startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Application to Pay Off or Discharge Alien Crewman.

OMB Number: 1651-0106.

Form Number: I-408.

Abstract: CBP Form I-408, Application to Pay Off or Discharge Alien Crewman, is used as an application by the owner, agent, consignee, charterer, master, or commanding officer of any vessel or aircraft arriving in the United States to obtain permission from the Secretary of the Department of Homeland Security to pay off or discharge alien crewmen. This form is submitted to the CBP officer having jurisdiction over the area in which the vessel or aircraft is located at the time of application. CBP Form I-408

is authorized by Section 256 of the Immigration and Nationality Act (8 U.S.C. 1286) and provided for by 8 CFR 252.1(h). This form is accessible at: <http://www.cbp.gov/sites/default/files/documents/CBP%20Form%20I-408.pdf>.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 85,000.

Estimated Time per Respondent: 25 minutes.

Estimated Total Annual Burden Hours: 35,360.

Dated: June 30, 2014.

TRACEY DENNING,
Agency Clearance Officer,
U.S. Customs and Border Protection.

[Published in the Federal Register, July 7, 2014 (79 FR 38327)]

AGENCY INFORMATION COLLECTION ACTIVITIES:
Entry Summary

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

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Entry Summary. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before August 6, 2014 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and

Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oira_submission@omb.eop.gov or faxed to (202) 395-5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, at 202-325-0265.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (79 FR 22519) on April 22, 2014, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost to respondents or record keepers from the collection of information (total capital/ startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Entry Summary.

OMB Number: 1651-0022.

Form Number: 7501, 7501A.

Abstract: CBP Form 7501, Entry Summary, is used to identify merchandise entering the commerce of the United States, and to document the amount of duty and/or tax paid. CBP Form 7501 is submitted by the importer, or the importer's agent, for each import transaction. The data on this form is used by CBP as a record of the import transaction; to collect the proper duty, taxes, certifications and enforcement information; and to provide data to the U.S. Census Bureau for statistical purposes. CBP Form

7501 must be filed within 10 working days from the time of entry of merchandise into the United States.

CBP Form 7501A, Document/Payment Transmittal, is used to reconcile a supplemental payment after an initial Automated Clearing-house payment with the associated entry so the respondent's account is properly credited.

Collection of the data on these forms is authorized by 19 U.S.C. 1484 and provided for by 19 CFR 142.11 and CFR 141.61. CBP Form 7501 and accompanying instructions can be found at <http://www.cbp.gov/newsroom/publications/forms>.

Current Actions: This submission is being made to extend the expiration date of this information collection with no change to the burden hours or to the information collected on Form 7501 or 7501A.

Type of Review: Extension (without change).

Affected Public: Businesses.

CBP Form 7501—Formal Entries

Estimated Number of Respondents: 2,450.

Estimated Number of Responses per Respondent: 9,903.

Estimated Total Annual Responses: 24,262,350.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 8,079,363.

CBP Form 7501—Formal Entries With Softwood Lumber Act

Estimated Number of Respondents: 210.

Estimated Number of Responses per Respondent: 1,905.

Estimated Total Annual Responses: 400,050.

Estimated Time per Response: 40 minutes.

Estimated Total Annual Burden Hours: 266,433.

CBP Form 7501—Informal Entries

Estimated Number of Respondents: 1,572.

Estimated Number of Responses per Respondent: 2,582.

Estimated Total Annual Responses: 4,058,904.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 1,014,726.

CBP Form 7501A—Document/Payment Transmittal

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: 60.

Estimated Total Annual Responses: 1,200.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 300.

Dated: June 30, 2014.

TRACEY DENNING,
Agency Clearance Officer;
U.S. Customs and Border Protection.

[Published in the Federal Register, July 7, 2014 (79 FR 38326)]