

U.S. Customs and Border Protection



MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF THE “MI JAM™ DRUMMER” MODEL 36909

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

ACTION: Notice of modification of ruling letters and revocation of treatment relating to the tariff classification of the “mi Jam™ Drummer,” model 36909.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is modifying three ruling letters relating to the tariff classification of the “mi Jam™ Drummer,” model 36909, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 48, No. 22, on June 4, 2014. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 29, 2014.

FOR FURTHER INFORMATION CONTACT: Aaron Marx, Tariff Classification and Marking Branch: (202) 325–0195.

SUPPLEMENTARY INFORMATION:

Background

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

“informed compliance” and “shared responsibility.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP is modifying three ruling letters pertaining to the tariff classification of the “mi Jam™ Drummer,” model 36909. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) R04026, dated June 7, 2006, NY M83685, dated June 12, 2006, and NY M85350, dated July 27, 2006, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the rulings identified above. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during this notice period.

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

In NY R04026, NY M83685, and NY M85350, CBP determined that the “mi Jam™ Drummer,” model 36909, at issue was classified under heading 8522, HTSUS, specifically under subheading 8522.90.75, HTSUS, which provides for “Parts and accessories suitable for use

solely or principally with the apparatus of headings 8519 to 8521: Other: Other”. It is now CBP’s position that the subject merchandise is properly classified under heading 9503, HTSUS, specifically under 9503.00.00, HTSUS, which provides in for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof” by application of GRI 1.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY R04026, NY M83685, and NY M85350 and revoking or modifying any other ruling not specifically identified, in order to reflect the proper classification of the subject “mi Jam™ Drummer,” model 36909, according to the analysis contained in Headquarters Ruling Letters (HQ) H034739. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 9, 2014

GREG CONNOR

for

MYLES B. HARMON

Director

Commercial and Trade Facilitation Division

Attachment

HQ H034739

July 9, 2014

CLA-2 OT:RR:CTF:TCM H034739 AMM**CATEGORY:** Classification**TARIFF NO.:** 9503.00.00

MR. JEFF TOOLEY
ALBA WHEELS UP INTERNATIONAL, INC.
1122 LA CIENEGA BLVD., SUITE 678
INGLEWOOD, CA 90324
MS. SARAH CAREY
CUSTOMS COMPLIANCE SPECIALIST
BEST BUY CORPORATE CAMPUS
7601 PENN AVENUE
SOUTH RICHFIELD, MN 55423

RE: Modification of New York Ruling Letters R04026, M83685, and M85350; Classification of the Model 36909 “mi Jam™ drummer.”

DEAR MR. TOOLEY AND MS. CAREY,

This is in reference to New York Ruling Letters (NY) R04026, dated June 7, 2006, NY M83685, dated June 12, 2006, and NY M85350, dated July 27, 2006, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of the Model 36909 “mi Jam™ drummer.” In those rulings, Customs and Border Protection (CBP) classified the article under heading 8522, HTSUS, which provides for “Parts and accessories suitable for use solely or principally with the apparatus of headings 8519 to 8521”. We have reviewed these three rulings and found them to be incorrect. For the reasons set forth below, we are modifying these rulings.

Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of the above-identified rulings and revocation of treatment relating to the tariff classification of the instant Model 36909 “mi Jam™ drummer” was published on June 4, 2014, in the *Customs Bulletin*, Volume 48, Number 22. In that notice, CBP proposed that the instant product was classified in heading 9503, HTSUS. No comments were received on this proposal.

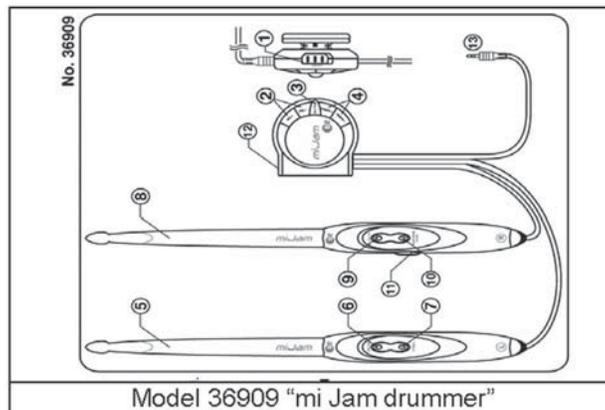
FACTS:

In each of the three rulings at issue, NY M85350, NY M83685, and NY R04026, CBP considered the classification of the Model 36909 “mi Jam™ drummer.” CBP described the merchandise as follows:

The mi Jam™ drummer (Model 36909) consists of two plastic drumstick shaped items that produce up to six different drum sounds when played. The drumsticks are connected via a cord to a small controller, which is used to modify the drum pattern, tempo, and volume of the sounds produced when using the drumsticks. The controller includes an audio out jack for connection with earphones or any other amplifying device, as well as an additional cord with a male connector end for connection with an iPod or any other music-reproducing device. This item draws energy from two AAA batteries, which are not included at the time of importation or at the time of retail sale.

See NY R04026.

A picture of the article, taken from the instruction manual available on the manufacturer's website,¹ is included below:



ISSUE:

What is the proper classification under the HTSUS for the Model 36909 “mi Jam™ drummer?”

LAW AND ANALYSIS:

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

The 2014 HTSUS heading under consideration are:

8519	Sound recording or reproducing apparatus:
	Other apparatus:
8519.81	Using magnetic, optical or semiconductor media:
	Sound reproducing only:
8519.81.30	Other:

8522	Parts and accessories suitable for use solely or principally with the apparatus of headings 8519 to 8521:
8522.90	Other:
	Other:
8522.90.75	Other

¹ See <http://www.b2stuf.com/main/image/manual/036909-V11_DrummerIM.pdf>.

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:
8543.70.96	Other

9503.00.00	Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof

Additional U.S. Rule of Interpretation 1, HTSUS, states, in pertinent part:

In the absence of special language or context which otherwise requires—

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

* * *

Note 1 to Section XVI (which covers Chapter 85), HTSUS, states, in pertinent part: "This section does not cover: ... (p) Articles of Chapter 95; ...".

Note 1 to Chapter 92, HTSUS, states, in pertinent part: "This chapter does not cover: ... (c) Toy instruments or apparatus (heading 9503); ...".

The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The General EN to Chapter 92 states, in pertinent part:

[T]his Chapter also excludes:

* * *

- (b) Musical instruments which can be clearly recognised as toys because of the character of the material used, their rougher finish, the lack of musical qualities or by any other characteristics (Chapter 95). Examples include certain mouth organs, violins, accordions, trumpets, drums, musical boxes.

* * *

The EN to Heading 95.03 states, in pertinent part:

This heading covers:

* * *

(D) Other toys.

This group covers toys intended essentially for the amusement of persons (children or adults)[.]

* * *

This group includes: All toys not included in (A) to (C). Many of the toys are mechanically or electrically operated.

These include:

* * *

(xii) Toy musical instruments (pianos, trumpets, drums, gramophones, mouth organs, accordions, xylophones, musical boxes, etc.).

* * *

In the three rulings at issue, CBP classified the “mi JamTM drummer” under heading 8522, HTSUS, which provides for “Parts and accessories suitable for use solely or principally with the apparatus of headings 8519 to 8521”.

Note 1(p) to Section XVI, HTSUS, excludes articles of Chapter 95, HTSUS, from classification in Chapter 85, HTSUS. Also, Note 2(c) to Chapter 92, HTSUS, excludes goods of heading 9503, HTSUS, from classification in Chapter 92, HTSUS. Therefore, it is appropriate to first consider whether the “mi JamTM drummer” is properly classified under heading 9503, HTSUS.

In *Minnetonka Brands v. United States*, 110 F. Supp. 2d 1020 (Ct. Int'l. Trade 2000), the Court of International Trade (CIT) held that “an object is a toy only if it is designed and used for amusement, diversion or play, rather than practicality.” *Id.* at 1026. The court found its interpretation to be consistent with the holding in a prior and often cited case, *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28 (1977), which addressed the definition and treatment of the term “toy.” In *Ideal Toy*, the Customs Court held that “when amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose is incidental to the amusement.” *Id.* at 33.

CBP has repeatedly adhered to this standard as set forth in *Ideal Toy*. See Headquarters Ruling Letter (HQ) HQ 965734, dated September 5, 2002; HQ 088494, dated April 19, 1991; and HQ 088694, dated July 10, 1991.

The *Minnetonka* court concluded that heading 9503, HTSUS, is a “principal use” provision within the meaning of Additional U.S. Rule of Interpretation 1(a), HTSUS. *Id.* at 1026. Therefore, classification under the heading is controlled by the principal use of goods of that class or kind to which the imported goods belong in the United States at or immediately prior to the date of the importation. In determining whether the principal use of a product is for amusement, and thereby classified as a toy, CBP considers a variety of factors including general physical characteristics, the expectation of the ultimate purchaser, channels of trade, and the environment of sale (accompanying accessories, manner of advertisement and display). See HQ

966721, dated April 14, 2004. *See also Minnetonka*, 110 F. Supp. 2d at 1027, citing *United States v. Carborundum Co.*, 63 C.C.P.A. 98, 536 F.2d 373 (1976).

It has two functional modes, called “standalone” and “interactive.”² In standalone mode, the user can simulate drum sounds, such as a snare drum, tom toms, bass drum, hi-hat, and cymbal, by swinging the drumsticks and pressing the assorted buttons on the handles. The user has the option of playing along with pre-programmed background beats. In interactive mode, the user plugs the article into an MP3 device, such as an iPod®. The music contained on the MP3 device replaces the pre-programmed background beats, and the user is then able to play along with their favorite music. In either standalone or interactive mode, the user can attach the article to a personal computer and record the sounds they have made.

According to the manufacturer’s website, the article is available in the United States at stores such as Toys “R” Us, Target, Best Buy, KB Toys, Linens ‘N Things, and Fingerhut.³ These stores sell toys, gifts, and other items. The article’s instruction manual says it is for “ages 8 and up.”⁴

The “mi Jam™ drummer” consists of two plastic drumsticks attached by wire to a controller. The controller is designed to attach to an external speaker, earphones, MP3 device, and personal computer. The article is not designed to be used in the same manner as traditional drumsticks, which create sound when striking another surface. Instead, electronic sounds are created in response to the motion of the drumsticks. The article is not a unit that develops one’s musical skills, it is an electronic toy designed to provide amusement by allowing one to create their own music.

In NY M86122, dated August 29, 2006, CBP considered the “Blue Man Group Percussion Tubes.” This item was an electronic plastic interactive drum toy that consisted of 8 motion sensor percussion tubes, 5 different percussion instruments, 10 pre-programmed songs, drum sticks, and a built in speaker. The user could also connect the article to an MP3 player and play along with their favorite music. CBP classified this article a toy musical instrument under heading 9503, HTSUS.

In NY L85012, dated June 20, 2005, CBP considered the “Wireless Air Stix.” This item was a battery-powered toy musical hand-held light stick, with a built-in speaker, and buttons which simulate drum sounds when pressed. CBP classified this article as a toy musical instrument under heading 9503, HTSUS.

In HQ W967583, dated March 9, 2007, CBP reconsidered the classification of the DD-9 drum set. The DD-9 drum set was an electronic percussion drum with four touch sensitive drum pads and one built-in speaker. This item was marketed to children, and had the capability to produce special effect sounds for a monkey, horse, cat, dog, and others. The importer proposed that the DD-9 drum set was properly classified under heading 9503, HTSUS, as a toy musical instrument. However, CBP instead classified the article under heading 9207, HTSUS, as a musical instrument. CBP found that the DD-9 drum set had top sound quality, that the article was not flimsy, and contained some sophisticated electronic components. *See HQ W967583.*

² *See* <http://www.b2stuf.com/main/product_detail_drumsticks.htm>.

³ *See* <<http://www.b2stuf.com/main/wheretobuy.htm?id=wheretobuy>>.

⁴ *See* <http://www.b2stuf.com/main/image/manual/036909-V11_DrummerIM.pdf>.

The “mi Jam™ drummer” is more like the products considered in NY M86122 and NY L85012, and is unlike the DD-9 product considered in HQ W967583. It is a somewhat flimsy plastic article, which can be used to simulate the sounds that a real drum kit would make. According to an independent review of b2’s product line,⁵ the “mi Jam™ drummer” is “awkward to hold” and “it is not completely flawless because it does not follow the direct commands of a real drum set. Also, the timing is off.” It is marketed to children ages 8 to 18, and sold in stores that traditionally sell toys and gifts. In terms of the *Ideal Toy* test, the utility purpose of the “mi Jam™ drummer” is incidental to its amusement value. Its principal use, within the meaning of Additional U.S. Rule of Interpretation 1(a), HTSUS, and *Minnetonka*, is use as a toy musical instrument. The article is properly classified under heading 9503, HTSUS, specifically under 9503.00.00, HTSUS, which provides in pertinent part for: “[O]ther toys; ...”. See also General EN(b) to Heading 92.07; EN(D)(xii) to Heading 95.03.

Furthermore, because the article is properly classified under heading 9503, HTSUS, Note 1(p) to Section XVI, HTSUS, operates to preclude classification under headings 8519, 8522, and 8543, HTSUS.

HOLDING:

By application of GRI 1, the Model 36909 “mi Jam™ drummer” is classified under heading 9503, HTSUS, specifically under 9503.00.00, HTSUS, which provides in for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof.” The column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY R04026, dated June 7, 2006, NY M83685, dated June 12, 2006, and NY M85350, dated July 27, 2006, are hereby MODIFIED in accordance with the above analysis. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Sincerely,

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

⁵ See “More Reviews: B2’s MiJam Product Line,” Unsigned Music Magazine, Issue 23, 2006, available at <[http://www.b2stuf.com/main/image/Unsigned Music Magazine 2006 Issue 23.pdf](http://www.b2stuf.com/main/image/Unsigned%20Music%20Magazine%202006%20Issue%2023.pdf)>.

GENERAL NOTICE
19 CFR PART 177

**PROPOSED REVOCATION OF A RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO
CLASSIFICATION OF DENTAL LAMPS**

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 dental lamps.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (“CBP”) is proposing to revoke a ruling concerning the classification of dental lamps, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is proposing 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 29, 2014.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade--Regulation and Rulings, Attn: Mr. Joseph Clark, 90 K Street, NE-10th Floor, Washington DC, 20229. Comments submitted may be inspected at 90 K Street, N.E.-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: Allyson Mattanah, Tariff Classification and Marking Branch (202) 325–0029.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (CBP 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 (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 a ruling pertaining to the classification of dental lamps. Although in this notice CBP is specifically referring to Headquarter’s Ruling Letter HQ 965968 (Attachment “A”), dated December 16, 2002, 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 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 (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 his agents for importations of merchandise subsequent to this notice.

In HQ 965968, CBP classified the merchandise in subheading 9405.40.60, HTSUS, the provision for “Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and

parts thereof not elsewhere specified or included: Other electrical lamps and lighting fittings: Other.” The referenced ruling is incorrect because the merchandise is a dental instrument under *Trumpf Medical Systems, Inc. v. United States*, 753 F. Supp. 2d 1297 (Ct. Int’l Trade 2010), classified in subheading 9018.49.80, the provision for “Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: Other: Other.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke HQ 965968, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H178917. (Attachment “B”). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: July 10, 2014

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT A]

HQ 965968

December 16, 2002

CLA-2 RR: CR: GC 965968 DBS**CATEGORY: Classification****TARIFF NO.: 9405.40.60**

MR. JACK D. MLAWSKI
GALVIN & MLAWSKI
470 PARK AVENUE SOUTH
SUITE 200 – SOUTH TOWER
NEW YORK, NY 10016-6819

RE: Reconsideration of NY I81051 and prospective ruling request; dental lamps

DEAR MR. MLAWSKI:

This is in response to your letter dated October 4, 2002, requesting reconsideration of NY I81051, issued on behalf of your client, Takara Belmont USA, on May 13, 2002, which classified a dental lamp in subheading 9405.40.60, Harmonized Tariff Schedule of the United States (HTSUS), as other lamps and lighting fittings. We have reviewed NY I81051, the supplemental information and arguments provided in your letters of October 30 and December 2, 2002, and the discussion from the teleconference conducted with you on December 6, 2002. We have found the ruling to be correct. In the letter of October 4, you also request the classification under the HTSUS of other dental lamps. Our ruling on those products is contained herein.

FACTS:

In NY I81051, the subject merchandise, the “X-Calibur-HLU” dental light was described as a dental halogen lamp that is designed for mounting onto a dentist chair. The lamp features a two-piece adjustable aluminum arm that measures approximately 43 inches long. One end of the arm is inserted into the aluminum housing of the transformer with a heavy gauge unfinished light cord and fitted bottom socket for accommodating the steel pole through its adapter. The other end of the arm is affixed to an adjustable aluminum bar, measuring approximately six inches in length with a U-shaped holder for the bulb’s housing. This housing measures approximately 10 1/2 inches wide. It has a plastic slotted body with lateral handles, a quartz halogen bulb with a cylinder-like metal protector, a concave glass reflector, plastic frontal lens and plastic on/off switch. The lamp is imported without the pole which attaches it to a dental delivery system.

The three lamps for which you request a binding ruling are “Clesta Dental Lights,” Models 501 (AL-501T), 2530 and 2535. Like the X-Calibur-HLU, the model 501 (AL-501T) is imported without a pole and it is designed to be attached, via the pole, to the delivery system. Clesta models 2530 and 2535 are imported with poles, which are designed to attach directly to the dental chair. While similar in most other respects to the X-Calibur-HLU, all three Clesta lights incorporate a touchless activation switch allowing the dentist to turn the light on and off without physically touching the lamp.

ISSUE:

Whether dental lamps imported separately are classifiable in heading 9402, HTSUS, as parts of dental chairs, or in heading 9405, HTSUS, as lamps and lighting fittings.

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 may then be applied.

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

The HTSUS provisions under consideration are as follows:

9402	Medical, surgical, dental or veterinary furniture (for example, operating tables, examination tables, hospital beds with mechanical fittings, dentists' chairs); barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements; parts of the foregoing articles:
9402.10.00	Dentists', barbers' or similar chairs and parts thereof.
*	* * *
9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:
9405.40	Other electrical lamps and lighting fittings:
9405.40.60	Other.

I. Reconsideration of NY I81051

U.S. Additional Rule of Interpretation 1(c), HTSUS ("U.S. Rule 1(c)"), provides, in part, that a provision for "parts" does not prevail over a more specific provision for such a part, absent "special language ... which otherwise requires." Heading 9405, HTSUS, is a specific provision, providing *eo nomine* for lamps and lighting fittings including searchlights and spotlights. The EN's to the heading describe spotlights, in pertinent part, as lights that "throw a concentrated beam of light . . . onto a given point or surface, by means of a reflector and lenses or with a reflector only..." The instant dental lamp throws a concentrated beam of light by means of a reflector. Thus, the instant lamp is specifically provided for in heading 9405, HTSUS.

A provision for an article "not elsewhere specified or included" is a specific provision for the named article. In fact, a provision is even more specific

where certain types of that article are enumerated in the heading, as it is here (i.e., "...including searchlights and spotlights"). Therefore, your reliance on U.S. Rule 1(c) for the proposition that classification in heading 9405, HTSUS, is precluded by virtue of the language "not elsewhere specified or included" is misplaced. As heading 9405, HTSUS, is a specific provision for the instant lamp, the X-Calibur-HUL is not classifiable as a part of a dental chair under heading 9402, HTSUS.

Further, the EN regarding parts of heading 9402, HTSUS, states, in part, the following:

Parts of the foregoing articles are classified in this heading **provided** they are recognisable as such parts.

These parts include :

...

(2) Certain clearly identifiable parts of dentists' chairs (e.g., head-rests, back pieces, foot-rests, arm-rests, elbow-rests, etc.).

Dental lamps are not at all similar to the exemplars in the EN of "clearly identifiable" parts of dentist's chairs. The language "clearly identifiable" limits parts of a dentist's chair to those parts that contribute to the chair as a piece of furniture on which one reclines. Thus, a lamp, whether or not solely designed to be attached to a dental chair, is not within the scope of the parts provision for dental chairs of heading 9402, HTSUS.

An article is to be classified according to its condition as imported. *See XTC Products, Inc. v. United States*, 771 F.Supp. 401, 405 (1991). EN 94.02 (12) states, in pertinent part, that dental furniture includes, "Dentists' chairs ...with mechanisms (usually telescopic) for raising as well as tilting and sometimes turning on a centre column, whether or not fitted with equipment such as lighting fittings." Thus, whereas a dental chair equipped with a lighting fitting at importation would be provided for in heading 9402, HTSUS, *see* NY F84250, dated March 23, 2000 (classifying a chair, delivery system and dental light imported together in heading 9402, HTSUS), the ENs suggest a different result where a lamp is imported separately. The instant dental lamp is specifically provided for in heading 9405, HTSUS.

Heading 9018, HTSUS, which provides, in part, for instruments and appliances used in dental sciences, also provides for dentist's chairs, but here they must incorporate dental equipment. EN 90.18(II) describes that the following, among other things, falls in the heading:

(ii) **Complete dental equipment on its base** (stationary or mobile unit). The main usual features are a frame carrying a compressor, a transformer, a control panel and other electrical apparatus; the following are also often mounted on the unit: swivel arm drill, spittoon and mouth rinser, electric heater, hot air insufflator, spray, cautery instrument tray, diffused lighting, shadowless lamp, fan, diathermic apparatus, X-ray apparatus, etc.

(iv) **Dentist's chairs incorporating dental equipment** or any other dental appliances classifiable in this heading.

The EN states that heading 9018, HTSUS, does not include dental chairs not incorporating dental appliances of this heading, as they fall into heading 9402 whether or not fitted with equipment such as lighting fittings. Further, the EN provides, in part:

...the heading **excludes** certain items of dental equipment mentioned in paragraph (ii) above, when they are presented separately....

Thus, the scope of heading 9018, HTSUS, does not include lamps, mentioned in paragraph (ii) of EN 90.18 (II), imported separately from the chair or stationary or mobile base. For this reason, and because the specific provision for the good prevails, according to U.S. Additional Rule of Interpretation 1(c), we need not address whether the good would constitute a part. The instant lamp is not classifiable in heading 9018 or heading 9402, HTSUS. Accordingly, we find NY I81051 to be correct.

II. *Prospective Ruling for Clesta Dental Light Models 501 (AL-501T), 2530 and 2535*

The three Clesta models at issue are substantially similar to the X-Calibur-HUL but for the touchless activation switch. As such, the law and analysis of the section above is hereby incorporated by reference. Accordingly, the Clesta dental lamps are classifiable in heading 9405, HTSUS.

HOLDING:

The X-Calibur-HUL dental lamp, and the Clesta dental lamp models 501 (AL-501T), 2530 and 2535 are classifiable in subheading 9405.40.60, HTSUS, which provides for "Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included: other electrical lamps and lighting fittings: other."

Sincerely,

MYLES B. HARMON,
Acting Director

Commercial Rulings Division

[ATTACHMENT B]

HQ H178917
CLA-2 OT:RR:CTF:TCM H178917 ARM
CATEGORY: Classification
TARIFF NO.: 9018.49.80

MR. JACK D. MLAWSKI
GALVIN & MLAWSKI
470 PARK AVENUE SOUTH
SUITE 200 – SOUTH TOWER
NEW YORK, NY 10016-6819

RE: Revocation of HQ 965968; classification of dental lamps

DEAR MR. MLAWSKI:

This is in reference to Headquarters Ruling Letter (HQ) 965968, issued to you on behalf of your client, Takara Belmont USA, on December 16, 2002, by Customs and Border Protection (CBP), affirming our decision in New York Ruling Letter (NY) I81051, dated May 13, 2002. In both rulings, CBP classified the “X-Calibur-HLU” dental light and the “Clesta Dental Lights,” Models 501 (AL-501T), 2530 and 2535, in subheading 9405.40.60, Harmonized Tariff Schedule of the United States (HTSUS), as other lamps and lighting fittings. In light of the recent Court of International Trade (CIT) decision in *Trumpf Medical Systems, Inc. v. United States*, 753 F. Supp. 2d 1297 (Ct. Int’l Trade 2010), we are revoking this decision.

FACTS:

In HQ 965968, the subject merchandise, was 4 models of dental lamps: the “X-Calibur-HLU” dental light and the “Clesta Dental Lights,” Models 501 (AL-501T), 2530 and 2535.

The “X-Calibur-HLU” dental light was described as a dental halogen lamp that is designed for mounting onto a dentist chair. The lamp features a two-piece adjustable aluminum arm that measures approximately 43 inches long. One end of the arm is inserted into the aluminum housing of the transformer with a heavy gauge unfinished light cord and fitted bottom socket for accommodating the steel pole through its adapter. The other end of the arm is affixed to an adjustable aluminum bar, measuring approximately six inches in length with a U-shaped holder for the bulb’s housing. This housing measures approximately 10 1/2 inches wide. It has a plastic slotted body with lateral handles, a quartz halogen bulb with a cylinder-like metal protector, a concave glass reflector, plastic frontal lens and plastic on/off switch. The lamp is imported without the pole which attaches it to a dental delivery system.

The three models of “Clesta Dental Lights,” were described as being similar in most respects to the X-Calibur-HLU except that all three Clesta lights incorporate a touchless activation switch allowing the dentist to turn the light on and off without physically touching the lamp. Furthermore, the model 501 (AL-501T) is imported without a pole and it is designed to be attached, via the pole, to the delivery system. Clesta models 2530 and 2535 are imported with poles, which are designed to attach directly to the dental chair.

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 may then be applied.

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

The HTSUS provisions under consideration are as follows:

	*	*	*	
9405				Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:
9405.40				Other electrical lamps and lighting fittings:
9405.40.60				Other.
9018				Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof:
9018.49				Other:
9018.49.80				Other.

The Chapter 90 legal notes state, in pertinent part, the following:

1. This chapter does not cover:

(h) Searchlights or spotlights of a kind used for cycles or motor vehicles (heading 8512); portable electric lamps of heading 8513; cinematographic sound recording, reproducing or re-recording apparatus (heading 8519 or 8520); sound-heads (heading 8522); still image video cameras, other video camera recorders and digital cameras (heading 8525); radar apparatus, radio navigational aid apparatus and radio remote control apparatus (heading 8526); numerical control apparatus (heading 8537); sealed beam lamp units of heading 8539; optical fiber cables of heading 8544;

(ij) Searchlights or spotlights of heading 9405;

EN 90.18 states, in pertinent part, the following:

INSTRUMENTS AND APPLIANCES FOR HUMAN MEDICINE OR SURGERY

This group includes:

(r) Lamps which are specially designed for diagnostic, probing, irradiation, etc. purposes. Torches, such as those in the shape of a pen are excluded (heading 8513) as are other lamps which are not clearly identifiable as being for medical or surgical use (heading 94.05).

EN 94.05 states, in pertinent part, the following:

(I) LAMPS AND LIGHTING FITTINGS, NOT ELSEWHERE SPECIFIED OR INCLUDED

Lamps and lighting fittings of this group can be constituted of any material (excluding those materials described in Note 1 to Chapter 71) and use any source of light (candles, oil, petrol, paraffin (or kerosene), gas, acetylene, electricity, etc.). Electrical lamps and lighting fittings of this heading may be equipped with lamp-holders, switches, flex and plugs, transformers, etc., or, as in the case of fluorescent strip fixtures, a starter or a ballast.

This heading covers in particular:

(3) Specialised lamps, e.g.: darkroom lamps; machine lamps (presented separately); photographic studio lamps; inspection lamps (other than those of heading 85.12); non-flashing beacons for aerodromes; shop window lamps; electric garlands (including those fitted with fancy lamps for carnival or entertainment purposes or for decorating Christmas trees).
EN 94.05 states, in pertinent part, the following:

This heading also excludes :

(1) Medical diagnostic, probing, irradiation, etc., lamps (heading 90.18).

The issue in HQ 965968 was whether the dental lamps were classified in heading 9402, as dental furniture, or in heading 9405, as lamps. That ruling relied on the EN to heading 94.02 which states:

Parts of the foregoing articles are classified in this heading **provided** they are recognisable as such parts.

These parts include :

...

(2) Certain clearly identifiable parts of dentists' chairs (e.g., head-rests, back pieces, foot-rests, arm-rests, elbow-rests, etc.).

(12) "Dentists' chairs ...with mechanisms (usually telescopic) for raising as well as tilting and sometimes turning on a centre column, whether or not fitted with equipment such as lighting fittings."

Also, the ENs to heading 9018 state, in pertinent part, the following:

The following also fall in this heading:

(ii) **Complete dental equipment on its base** (stationary or mobile unit). The main usual features are a frame carrying a compressor, a transformer, a control panel and other electrical apparatus; the following

are also often mounted on the unit: swivel arm drill, spittoon and mouth rinser, electric heater, hot air insufflator, spray, cautery instrument tray, diffused lighting, shadowless lamp, fan, diathermic apparatus, X-ray apparatus, etc.

(vi) **Dentist's chairs incorporating dental equipment** or any other dental appliances classifiable in this heading.

The EN states that heading 9018, HTSUS, does not include dental chairs not incorporating dental appliances of this heading, as they fall into heading 9402 whether or not fitted with equipment such as lighting fittings. Further, the EN provides, in part:

...the heading **excludes** certain items of dental equipment mentioned in paragraph (ii) above, when they are presented separately....

Since dental chairs with light fittings were included in heading 9402, and complete dental consoles including dental chairs with light fittings were included in heading 9018, HTSUS, but lamps themselves were not explicitly described as furniture or dental equipment, we concluded that they were classifiable in their specific heading, as lamps of heading 9405 in accordance with GRI 1 and Additional U.S. Rule of Interpretation 1(c)¹, because the specific provision for the good prevails.

Since that time, the Court of International Trade has decided *Trumpf Medical Systems, Inc. v. United States*, 753 F. Supp. 2d 1297 (2010). In that case, overhead lights specified for the surgical theater were held to be instruments for the surgical sciences classified in heading 9018, HTSUS. The court noted the six characteristics of the surgical lights at issue: – High Illumination/Brightness, Color Rendition of Tissue, Light Field Diameter, Shadow Reduction, Limited Heat/Irradiance and Depth of Illumination. *Id.* at 1299. Given these special characteristics of the surgical light, the court found that the merchandise met the terms of heading 9018, HTSUS. Specifically, the court found that the lights met the broad dictionary definition of an “instrument or appliance”. The court dismissed evidence of alternative use and found that the surgical lights were used in the vast majority of cases only in professional practice in accordance with EN 90.18. Lastly, the court defined “diagnostic” broadly, finding that by illuminating the field of interest on a patient, physicians used the lights to identify signs and symptoms of disease. This function met the definition of “diagnostic” even though the lights did not technically irradiate or probe (ENs 90.18(r) and 94.05(1)). *Id.*

Generally, dental lamps contain some of the same characteristics as those in the *Trumpf* case. They have High Illumination/Brightness, Light Field Diameter, Shadow Reduction, and Limited Heat/Irradiance. While the arguments and evidence presented in the HQ 965968 file do not mention these specific characteristics, there is evidence that the lamps are only used in the dental setting attached to dental chairs and meet the broad definition of

¹ Additional U.S. Rule of Interpretation 1 (c) states the following: “In the absence of special language or context which otherwise requires-- . . . 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;”

apparatus used to aid the dentist in diagnosing disease. Hence, the merchandise is classified in heading 9018, HTSUS.

HOLDING:

At GRI 1, the “X-Calibur-HLU” dental light and the “Clesta Dental Lights,” Models 501 (AL-501T), 2530 and 2535 are classified in heading 9018, HTSUS. Specifically, at GRI 6, the merchandise is classified in subheading 9018.49.80, the provision for “Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: Other: Other.” The column 1 general rate of duty is “free”.

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

EFFECT ON OTHER RULINGS:

Headquarters Ruling Letter (HQ) 965968, dated December 16, 2002, is hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**MODIFICATION OF TWELVE RULING LETTERS AND
REVOCATION OF THREE RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF SELF-ADHESIVE PLASTIC
JEWELS AND BODY STICKERS WITH MULTIPLE PLASTIC
GEMSTONES**

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

ACTION: Notice of modification of twelve ruling letters, revocation of three ruling letters and revocation of treatment relating to the tariff classification of self-adhesive plastic jewels and body stickers with multiple plastic gemstones.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying twelve ruling letters, revoking three ruling letters and revoking treatment relating to the tariff classification of plastic self-adhesive jewels and body stickers with multiple plastic gemstones 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. 18, on May 7, 2014. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 29, 2014.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Volume 48, No. 18, on May 7, 2014, proposing to modify New York Ruling Letter (NY) J89816, dated October 30, 2003, NY N009042, dated April 25, 2007, NY J83785 dated April 29, 2003, NY J83786, dated April 29, 2003, NY I88940, dated December 24, 2002, NY I88948, dated December 3, 2002, NY I87400, dated October 22, 2002, NY I83303, dated June 19, 2002, and NY I81111, dated April 29, 2002, and NY N028361, dated May 30, 2008, and NY K89866, dated October 14, 2004, and to revoke NY K82242, dated January 13, 2004, NY J80203, dated January 24, 2003, and NY I87676, dated November 14, 2002, in which CBP determined that the self-adhesive plastic jewels and body stickers with multiple plastic gemstones were classified as imitation jewelry of plastics in subheading 7117.90, HTSUS. No comments were received in response to the notice.

After publication of the notice, CBP identified one more ruling which has been added to the list of rulings to be modified. In NY I83835, dated July 3, 2002, CBP determined that self-adhesive plastic nail gems were classified as imitation jewelry of plastics in subheading 7117.90, HTSUS. 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 modifying or revoking the fifteen aforementioned rulings in order to reflect the proper classification of the self-adhesive plastic jewels and body stickers with multiple plastic gemstones as imitation gemstones of plastics in subheading 3926.90.40, HTSUS, according to the analysis contained in HQ H235892, 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: July 8, 2014

IEVA K. O'ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H235892

July 8, 2014

CLA-2 RR:CTF:TCM H235892 EGJ**CATEGORY: CLASSIFICATION****TARIFF NO.: 3926.90.40**

JENNI GOMEZ
WORLD EXCHANGE, INC.
8840 BELLANCA AVE.
LOS ANGELES, CA 90045

Re: Modification of NY J89816, NY N009042, NY J83785, NY J83786, NY I88940, NY I88948, NY I87400, NY I83835, NY I83303, NY I81111, NY N028361, NY K89866, and Revocation of NY K82242, NY J80203, and NY I87676: Classification of a Self-adhesive Plastic Body Jewel and Body Stickers with Multiple Plastic Jewels

DEAR Ms. GOMEZ:

This is in reference to New York Ruling Letter (NY) J89816, dated October 30, 2003, issued to you concerning the tariff classification of the Goddess Gear Extravaganza kit under the Harmonized Tariff Schedule of the United States (HTSUS). The kit included plastic nail jewels and two body stickers that U.S. Customs and Border Protection (CBP) classified under heading 7117, HTSUS, as imitation jewelry. We have reviewed NY J89816 and find it to be in error with regard to the classification of the plastic nail jewels and the body stickers.

For the reasons set forth below, we hereby modify NY J89816 and the following rulings which classify a plastic gemstone with adhesive backing under heading 7117, HTSUS: NY N009042, dated April 25, 2007, NY J83785 dated April 29, 2003, NY J83786, dated April 29, 2003, NY I88940, dated December 24, 2002, NY I88948, dated December 3, 2002, NY I87400, dated October 22, 2002, NY I83835, dated July 3, 2002, NY I83303, dated June 19, 2002, and NY I81111, dated April 29, 2002. We also revoke NY K82242, dated January 13, 2004, which classifies substantially similar adhesive body jewels under heading 7117, HTSUS.

For the reasons set forth below, we hereby modify NY J89816 and the following rulings which classify a flat plastic sticker with multiple plastic gemstones under heading 7117, HTSUS: NY N028361, dated May 30, 2008, and NY K89866, dated October 14, 2004. We also revoke the following rulings which classify a flat plastic sticker with multiple plastic gemstones under heading 7117, HTSUS: NY J80203, dated January 24, 2003, and NY I87676, dated November 14, 2002.

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 or to modify the fifteen aforementioned rulings was published on May 7, 2014, in Volume 48, Number 18, of the *Customs Bulletin*. No comments were received in response to the notice.

FACTS:

The subject merchandise is the Goddess Gear Extravaganza kit by Lisa Frank. The kit includes many small beauty items, such as plastic nail jewels, plastic rings, assorted beads, nail polish, glitter tattoos, nail decals, two plastic body stickers, bracelets, hair clips and toe separators. The plastic nail

jewels are imitation gemstones with adhesive backing. The adhesive backing is designed to attach to the consumer's fingernails or toenails.

Your ruling request describes the two body stickers as "body jewelry." The purchase order enclosed with your ruling request states that one of the body stickers is shaped like a butterfly. Based upon a picture of the kit, the butterfly sticker consists of plastic imitation gemstones glued to a flat plastic sticker. The sticker is a bluish purple, and the plastic gemstones are either green, pink, blue or orange. Neither the purchase order nor the ruling request provides the shape of the second body sticker. Also, we cannot locate the second body sticker in the kit picture. However, you describe it the same way that you describe the butterfly body sticker – as "body jewelry." As such, we conclude that the second body sticker also includes imitation plastic gemstones glued to a plastic sticker. You do not provide a breakdown of the value of the plastic gemstones versus the value of the stickers.

ISSUE:

1. What is the tariff classification of the plastic nail jewels?
2. What is the tariff classification of the body stickers?

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 HTSUS provisions at issue are as follows:

3919	Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls:			
3919.90	Other:			
3919.90.50	Other ...	*	*	*
3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:			
3926.90	Other:			
3926.90.40	Imitation gemstones ...	*	*	*
7103	Precious stones (other than diamonds) and semi-precious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semi-precious stones, temporarily strung for convenience of transport:	*	*	*
7113	Articles of jewelry and parts thereof, of precious metal or of metal clad with precious metal ...	*	*	*
7117	Imitation jewelry:			

7117.90	Other:	
	Other:	Valued not over 20 cents per dozen pieces or parts:
7117.90.55		Other ...
	*	* *

Note 9 to Chapter 71 states as follows:

9. For the purposes of heading 7113, the expression “articles of jewelry” means:

- (a) Any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia); and
- (b) Articles of personal use of a kind normally carried in the pocket, in the handbag or on the person (for example, cigar or cigarette cases, snuff boxes, cachou or pill boxes, powder boxes, chain purses or prayer beads).

These articles may be combined or set, for example, with natural or cultured pearls, precious or semiprecious stones, synthetic or reconstructed precious or semiprecious stones, tortoise shell, mother-of-pearl, ivory, natural or reconstituted amber, jet or coral.

* * *

Note 11 to Chapter 71 states as follows:

11. For the purposes of heading 7117, the expression “imitation jewelry” means articles of jewelry within the meaning of paragraph (a) of note 9 above (but not including buttons or other articles of heading 9606, or dress combs, hair slides or the like, or hairpins, of heading 9615), not incorporating natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed) nor (except as plating or as minor constituents) precious metal or metal clad with precious metal.

* * *

Applying GRI 1, Note 11 to Chapter 71 explains that imitation jewelry means “articles of jewelry,” defined in Note 9(a) to Chapter 71, that do not consist of cultured pearls, precious/semiprecious stones or precious metal. As imitation jewelry of heading 7117, HTSUS, only imitates the articles of jewelry which are described in Note 9(a), we will not apply the description of jewelry set forth in Note 9(b) to the instant merchandise.

Note 9(a) states that, for the purposes of heading 7113, HTSUS, “articles of jewelry” are small articles of adornment. Note 9(a) also provides a list of examples, which include rings, earrings, bracelets and other articles of jewelry. In NY J89816, CBP classified the plastic nail jewels and the body stickers under heading 7117, HTSUS, as imitation jewelry. However, while paragraph (a) of Note 9 defines articles of jewelry as “small articles of

personal adornment,” we cannot read paragraph (a) without the context of the first clause of Note 9. Note 9 begins with “for the purposes of heading 7113, the expression ‘articles of jewelry’ means ...” As such, imitation jewelry must imitate articles of jewelry which are described in paragraph (a) and are classified under heading 7113, HTSUS.

Heading 7113, HTSUS, provides for “articles of jewelry and parts thereof, of precious metal or of metal clad with precious metal.” Thus, imitation jewelry must imitate small articles of personal adornment of precious metal, or of metal clad with precious metal. Per Note 9, imitation jewelry may be combined or set with imitations of pearls, precious or semiprecious stones, tortoise shell, mother-of-pearl, ivory, amber, jet or coral.

The subject merchandise consists of plastic nail jewels and body stickers. The plastic nail jewels do not imitate articles of jewelry clad with any type of metal. Rather, they imitate precious stones which are classified in heading 7103, HTSUS. As the plastic nail jewels do not imitate jewelry of heading 7113, HTSUS, they cannot be classified as imitation jewelry under heading 7117, HTSUS.

Similarly, the body stickers do not imitate jewelry clad with metal. They consist of flat plastic stickers with plastic gemstones glued to them. As such, they cannot be classified as imitation jewelry of heading 7117, HTSUS.

The plastic nail jewels are imitation gemstones. At importation, they adhere to a paper backing. The plastic nail jewels are classified under heading 3926, HTSUS, which provides for other articles of plastics. They are specifically provided for in subheading 3926.90.40, which provides for imitation gemstones of plastics.

Now we must turn to the classification of the body stickers. The body stickers each consist of a self-adhesive flat plastic shape covered with imitation gemstones. The sticker component is classified under heading 3919, HTSUS, as a self-adhesive flat shape, and the imitation gemstones are classified under heading 3926, HTSUS. As such, the body stickers are composite goods.

GRI 3(b) governs the classification of composite goods and provides that:

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

- (a) 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.

In order to identify a composite good’s essential character, the U.S. Court of International Trade (CIT) has applied the factors listed in EN VIII to GRI 3(b) which are “the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.” *The Home Depot v. United States*, 427 F. Supp. 2d 1278, 1293 (Ct. Int’l Trade 2006). With regard to the component which imparts the essential character, the CIT has stated it is “that which is indispensable to the structure, core or condition of the article, i.e. what it is.” *Id. citing A.N. Deringer, Inc. v. United States*, 66 Cust. Ct. 378, 383 (1971).

Thus, the body stickers must be classified under the same heading as the component which imparts the essential character. Applying the aforementioned factors, the bulk of and weight of the plastic gemstones is greater than the bulk and weight of the flat stickers. Looking at quantity, the number of plastic gemstones outnumbers the number of plastic stickers because each flat sticker includes multiple plastic gemstones. We cannot compare the value of the components as the ruling request does not provide the value of each component.

Finally, we look to the role of each component. The flat stickers provide the adhesive to attach the body stickers to the consumer's body. However, the flat stickers are almost completely covered in plastic gemstones. The plastic gemstones provide the visual interest to the body stickers. As such, the plastic gemstones impart the essential character to the body stickers. The body stickers are therefore classified under subheading 3926.90.40, which provides for imitation gemstones of plastics.

HOLDING:

By application of GRI 1, the plastic nail jewels are classified under subheading 3926.90.40, HTSUS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: other: imitation gemstones" The 2014 column one, general rate of duty is 2.8 percent *ad valorem*.

By application of GRI 3(b), the body stickers are classified under subheading 3926.90.40, HTSUS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: other: imitation gemstones" The 2014 column one, general rate of duty is 2.8 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY J89816, dated October 30, 2003, NY N009042, dated April 25, 2007, NY J83785 dated April 29, 2003, NY J83786, dated April 29, 2003, NY I88940, dated December 24, 2002, NY I88948, dated December 3, 2002, NY I87400, dated October 22, 2002, NY I83835, dated July 3, 2002, NY I83303, dated June 19, 2002, and NY I81111, dated April 29, 2002, and NY N028361, dated May 30, 2008, and NY K89866, dated October 14, 2004 are hereby modified.

NY K82242, dated January 13, 2004, NY J80203, dated January 24, 2003, and NY I87676, dated November 14, 2002 are hereby revoked.

Sincerely,

IEVA K. O'ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

GENERAL NOTICE
19 CFR PART 177

**REVOCAION OF TWO RULING LETTERS AND
REVOCAION OF TREATMENT RELATING TO
CLASSIFICATION OF BITREX, 25% IN PROPYLENE
GLYCOL**

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

ACTION: Notice of revocation of two ruling letters and revocation of treatment relating to the classification of “Bitrex, 25% in Propylene Glycol.”

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 (“CPB”) is revoking two rulings concerning the tariff classification of Bitrex, 25% in Propylene Glycol, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB is revoking any treatment previously accorded by CPB to substantially identical transactions. Notice of the proposed revocation was published on February 27, 2013, in Volume 47, Number 10, of the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after September 29, 2014.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, Tariff Classification and Marking Branch (202) 325–0029.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (CBP 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 (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), , a notice was published in the CUSTOMS BULLETIN, Volume 47, No. 10, on February 27, 2013, proposing to revoke Headquarters Ruling Letter (HQ) 968018, dated January 9, 2006, which affirmed the holding in New York (NY) ruling letter L85332, dated June 24, 2005, and any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this issue 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 issue 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 Title VI, CBP is revoking any treatment it previously accorded to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

In HQ 968018 and in NY L85332, CBP ruled that the merchandise consists of a chemical mixture other classified in subheading 3824.90.91, HTSUS. The referenced rulings are incorrect because the mixture consists of a solution containing more than 5% of an aromatic substance, and is classified accordingly in subheading 3824.90.28, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ 968018 and NY L85332, and any other ruling not specifically identified, to reflect

the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter H072379, which is 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.

Dated: July 7, 2014

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H072379

July 7, 2014

CLA-2 OT:RR:CTF:TCM H072379 ARM

CATEGORY: Classification

TARIFF NO.: 3824.90.28

MR. MITCHELL J. TRACY
MARKET ACTIVES, LLC
8300 SW 71ST AVENUE
PORTLAND, OR 97223

Re: Revocation of HQ 968018 and NY L85332; classification of “Bitrex, 25% in Propylene Glycol”

DEAR MR. TRACY:

This is in reference to Headquarters ruling letter (HQ) 968018, dated January 9, 2006, which affirmed the holding in New York (NY) ruling letter L85332, dated June 24, 2005, issued to you, concerning the classification, of a product identified as “Bitrex, 25% in Propylene Glycol.” NY L85332 and HQ 968018 held that Bitrex, 25% in Propylene Glycol is classified, under the Harmonized Tariff Schedule of the United States (HTSUS), in subheading 3824.90.91, HTSUS, the provision 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: Other: Other.” We have reviewed these rulings and find them to be in error. This ruling revokes HQ 968018 and NY L85332.

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), a notice was published in the CUSTOMS BULLETIN, Volume 47, No. 10, on February 27, 2013, proposing to revoke NY L85332 and HQ 968018, and any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

FACTS:

In NY L85332, U.S. Customs and Border Protection (“CBP”) classified a solution composed of 25% Bitrex (C.A.S. number 3734–33–6) and 75% propylene glycol (C.A.S. number 57–55–6) in subheading 3824.90.91, 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: Other.” In HQ 968018, CBP affirmed its previous decision that the product is a mixture of heading 3824, HTSUS, and not a separate chemically defined amide function compound of heading 2924, HTSUS.

“Bitrex” is the brand name for denatonium benzoate, the bitterest compound known. See www.bitrex.com. Bitrex is an aromatic, cyclic amide indicated for use as a denaturant and bittering agent.

ISSUE:

What is the classification of Bitrex, 25% in Propylene Glycol?

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration 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:
	Mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances:
3824.90.28	Other:
	* * * * *
	Other:
	Other:
3824.90.92	Other.

Additional U.S. note 2(a) to section VI, which covers heading 3824, HTSUS, states the following:

2. For the purposes of the tariff schedule:

(a) The term “aromatic” as applied to any chemical compound refers to such compound containing one or more fused or unfused benzene rings;

In HQ 968018, we discussed the correct classification of the instant solution, under GRI 1, in heading 3824, HTSUS, as a chemical preparation, rather than in your preferred heading, 2924, HTSUS, as an amide-function compound of carbonic acid. As such, we will not address the classification at the heading level herein. Rather, the issue here is the correct eight-digit level national tariff rate applicable to the Bitrix solution. The Bitrix solution contains 25% denatonium benzoate in 75% propylene glycol. Therefore, the solution contains more than 5% of an aromatic substance and is classified as such in subheading 3824.90.28, HTSUS, under GRI 6.

HOLDING:

By application of GRI 1 and 6, “Bitrex, 25% in Propylene Glycol” is classified in heading 3824, HTSUS. It is provided for in subheading 3824.90.28, 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: Mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances: Other.” The applicable column one, general duty rate under the

2009 HTSUS is 6.5% *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 the world wide web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

HQ 968018, dated January 9, 2006, and NY L85332, dated June 24, 2005, are revoked.

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

Sincerely,

MYLES B. HARMON,

Director

Commercial Trade and Facilitation Division

**REVOCAION OF TWO RULING LETTERS AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF PLASTIC ADHESIVE GEMS**

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

ACTION: Notice of revocation of two ruling letters and revocation of treatment relating to the tariff classification of plastic adhesive gems.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking two ruling letters relating to the tariff classification of plastic adhesive gems 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. 18, on May 7, 2014. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 29, 2014.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under customs and related laws. In addition, both the trade community and CBP share responsibility in carrying out import requirements. For example, under section 484 of

the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Volume 48, No. 18, May 7, 2014, proposing to revoke NY I87310, dated October 22, 2002, and NY I87401, dated October 22, 2002, in which CBP determined that the plastic adhesive gems were classified in subheading 7117.90.75, HTSUS, as imitation jewelry of plastics. No comments were received in response to the notice.

As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the 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 I87310 and NY I87401, in order to reflect the proper classification of the plastic adhesive gems as imitation gemstones of plastics in subheading 3926.90.40, HTSUS, according to the analysis contained in HQ H236058, 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: July 8, 2014

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

Attachment

HQ H236058

July 8, 2014

CLA-2 RR:CTF:TCM H236058 EGJ
CATEGORY: CLASSIFICATION
TARIFF NO.: 7117.19.90; 7117.90.75

CARI GREGO
DOLLAR TREE STORES, INC.
500 VOLVO PARKWAY
CHESAPEAKE, VA 23320

Re: Revocation of NY I87310 and NY I87401: Play Sets with Jewelry and Plastic Adhesive Gems

DEAR MS. GREGO:

This is in reference to New York Ruling Letters (NY) I87310, dated October 22, 2002, and NY I87401, dated October 22, 2002, both issued to you concerning the tariff classification of “Jewelry Fashion Play Sets” under the Harmonized Tariff Schedule of the United States (HTSUS). U.S. Customs and Border Protection (CBP) classified both of the play sets according to the sets’ plastic adhesive body gems under subheading 7117.90, HTSUS, which provides for imitation jewelry. We have reviewed NY I87310 and NY I87401 and find them to be in error. For the reasons set forth below, we hereby revoke NY I87310 and NY I87401.

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 I87310 and NY I87401 was published on May 7, 2014, in Volume 48, Number 18, of the *Customs Bulletin*. No comments were received in response to the notice.

FACTS:

In NY I87310, the subject merchandise is a “Jewelry Fashion Play Set” (the bracelet set). The bracelet set consists of six metal bangle bracelets and plastic adhesive body gems. These items are packaged together for retail sale.

In NY I87401, the subject merchandise is also a “Jewelry Fashion Play Set” (the necklace set). The necklace set consists of one metal necklace with faux plastic mounted gems, two metal earrings with faux plastic mounted gems and plastic adhesive body gems. These items are packaged together for retail sale.

ISSUE:

1. What is the tariff classification of the bracelet set of NY I87310?
2. What is the tariff classification of the necklace set of NY I87401?

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

GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs 1 through 5.

The HTSUS provisions at issue are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:			
3926.90	Other:			
3926.90.40	Imitation gemstones ...	*	*	*
7103	Precious stones (other than diamonds) and semi-precious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semi-precious stones, temporarily strung for convenience of transport:	*	*	*
7113	Articles of jewelry and parts thereof, of precious metal or of metal clad with precious metal ...	*	*	*
7117	Imitation jewelry:			
	Of base metal, whether or not plated with precious metal:			
7117.19	Other:			
7117.19.90	Other ...	*	*	*
7117.90	Other:			
	Other:			
	Valued not over 20 cents per dozen pieces or parts:			
7117.90.55	Other ...	*	*	*
	Valued over 20 cents per dozen pieces or parts:			
7117.90.75	Other ...	*	*	*

Note 9 to Chapter 71 states as follows:

9. For the purposes of heading 7113, the expression “articles of jewelry” means:

- (a) Any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia); and
- (b) Articles of personal use of a kind normally carried in the pocket, in the handbag or on the person (for example, cigar or cigarette cases, snuff boxes, cachou or pill boxes, powder boxes, chain purses or prayer beads).

These articles may be combined or set, for example, with natural or cultured pearls, precious or semiprecious stones, synthetic or reconstructed precious or semiprecious stones, tortoise shell, mother-of-pearl, ivory, natural or reconstituted amber, jet or coral.

* * *

Note 11 to Chapter 71 states as follows:

11. For the purposes of heading 7117, the expression “imitation jewelry” means articles of jewelry within the meaning of paragraph (a) of note 9 above (but not including buttons or other articles of heading 9606, or dress combs, hair slides or the like, or hairpins, of heading 9615), not incorporating natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed) nor (except as plating or as minor constituents) precious metal or metal clad with precious metal.

* * *

In both rulings, CBP determined that the plastic adhesive gems were classified under heading 7117, HTSUS, as imitation jewelry. The rulings do not discuss the classification of the other items in the play sets. Therefore, we will first review the tariff classification of the plastic adhesive gems.

Applying GRI 1, Note 11 to Chapter 71 explains that imitation jewelry means “articles of jewelry,” defined in Note 9(a) to Chapter 71, that do not consist of cultured pearls, precious/semiprecious stones or precious metal. As imitation jewelry of heading 7117, HTSUS, only imitates the articles of jewelry which are described in Note 9(a), we will not apply the description of jewelry set forth in Note 9(b) to the instant merchandise.

Note 9(a) states that, for the purposes of heading 7113, HTSUS, “articles of jewelry” are small articles of adornment. Note 9(a) also provides a list of examples, which include rings, earrings, bracelets and other articles of jewelry. While paragraph (a) of Note 9 defines articles of jewelry as “small articles of personal adornment,” we cannot read paragraph (a) without the context of the first clause of Note 9. Note 9 begins with “for the purposes of heading 7113, the expression ‘articles of jewelry’ means ...” As such, imitation jewelry must imitate articles of jewelry which are described in paragraph (a) and are classified under heading 7113, HTSUS.

Heading 7113, HTSUS, provides for “articles of jewelry and parts thereof, of precious metal or of metal clad with precious metal.” Thus, imitation jewelry must imitate small articles of personal adornment of precious metal, or of metal clad with precious metal. Per Note 9, imitation jewelry may be combined or set with imitations of pearls, precious or semiprecious stones, tortoise shell, mother-of-pearl, ivory, amber, jet or coral.

The plastic adhesive gems do not imitate articles of jewelry clad with any type of metal. Rather, they imitate precious stones which are classified in heading 7103, HTSUS. As the plastic adhesive gems do not imitate jewelry of heading 7113, HTSUS, they cannot be classified as imitation jewelry under heading 7117, HTSUS.

The plastic adhesive gems are imitation gemstones. At importation, they adhere to a paper backing. The plastic adhesive gems are classified under heading 3926, HTSUS, which provides for other articles of plastics. They are specifically provided for in subheading 3926.90.40, which provides for imitation gemstones of plastics.

Now we turn to the other items in the play sets. In the bracelet set, the only other items are six metal bangle bracelets. Note 9(a) to Chapter 71 specifically names bracelets as an example of jewelry classifiable under heading 7113, HTSUS. As the metal bracelets do not contain precious metal, stones or pearls, they are classified as imitation jewelry under heading 7117, HTSUS. They are specifically provided for in subheading 7117.19, HTSUS, which provides for imitation jewelry of base metal.

In the necklace set, the other items are a metal necklace with faux plastic mounted gems and two metal earrings with faux plastic mounted gems. Note 9(a) to Chapter 71 specifically names necklaces and earrings as examples of jewelry classifiable under heading 7113, HTSUS. As the necklace and earrings do not contain any precious metal, stones or pearls, they are classified as imitation jewelry under heading 7117, HTSUS.

There are two subheadings which each cover a portion of the necklace and earrings. First, the base metal portion of these items is classified under subheading 7117.19, which provides for imitation jewelry of base metal. Next, the plastic gem portion of these items is classified under 7117.90, HTSUS, which provides for imitation jewelry of other materials.

GRI 6 provides for the classification of goods within subheadings. GRI 6 states that the tariff classification shall be made according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs 1 through 5. As the necklace and earrings consist of two or more components which are classified under different subheadings, the necklace and earrings are composite goods.

GRI 3(b) governs the classification of composite goods and provides that:

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

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

Thus, a composite good is classified according to the component which imparts the good's essential character. In order to identify a composite good's essential character, the U.S. Court of International Trade (CIT) has applied the factors listed in EN VIII to GRI 3(b) which are "the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods." *The Home Depot v. United States*, 427 F. Supp. 2d 1278, 1293 (Ct. Int'l Trade 2006). With regard to the component which imparts the essential character, the CIT has stated it is "that which is indispensable to the structure, core or condition of the article, i.e. what it is." *Id. citing A.N. Deringer, Inc. v. United States*, 66 Cust. Ct. 378, 383 (1971).

Applying the aforementioned factors, we will first examine the necklace. The base metal comprises the bulk and weight of the necklace. Looking at quantity, the number of plastic gemstones outnumbers the number of necklace chains, as one necklace chain includes more than one plastic gem. We do not have any information on the value of each component.

Also, we must look to the role of each component. The base metal provides the setting for the plastic gems. However, the plastic gems are much brighter and more colorful than the base metal. They provide the visual interest to the necklace. As jewelry is defined as an article of adornment, we find that the plastic gems contribute more to the role of the necklace than the base metal. For all of these reasons, we find that the plastic gems impart the essential character to the necklace. The necklace is therefore classified under subheading 7117.90, HTSUS, as imitation jewelry of other materials. According to the ruling request, a dozen of the necklaces would be valued over 20 cents per dozen. As such, the necklace is specifically classified under subheading 7117.90.75, which provides for imitation jewelry of plastics valued over 20 cents per dozen pieces.

We find that the earrings are so similar in construction to the necklace that the plastic gems also impart their essential character. Therefore, the earrings are also classified under subheading 7117.90, HTSUS, as imitation jewelry of other materials.

As we have classified each item in the play sets, we must now determine the tariff classification of each play set. The metal bangle bracelets are packaged together with plastic adhesive gems for retail sale. GRI 3(b) governs the classification of goods put up in sets for retail sale and provides that:

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:

- (c) 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 HTSUS. While not legally binding or dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings at the international level. See T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The EN(X) to GRI 3(b) provides, in pertinent part, that:

- (X) For the purposes 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. Therefore, for example, six fondue forks cannot be regarded as a set within the meaning of this Rule;
 - (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).

The metal bangle bracelets are classified under heading 7117, HTSUS, and the plastic gems are classified under heading 3926, HTSUS. They are put up together for the purpose of providing the consumer with fun fashion acces-

sories. They are packaged in a manner suitable for sale directly to users without repacking. For all of these reasons, the bracelet set is a GRI 3(b) retail set. As such, the bracelet set is classified according to the item which imparts the essential character to the set.

As stated above, the factors to consider when determining essential character are the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods. Applying these factors to the bracelet set, we find that the bracelets comprise more of the set's bulk and weight than the plastic gems. Additionally, the bracelets likely have a greater value than the plastic gems. As to the role of the set, the bracelets likely contribute more to the role of accessorizing. The plastic adhesive gems are likely disposable and worn only once. However, the consumer can reuse the bracelets over and over again. For all of these reasons, we find that the metal bracelets impart the essential character to the bracelet set. Thus, the bracelet set is classified under subheading 7117.19, HTSUS, which provides for imitation jewelry of base metal.

Next, we examine the necklace set. Like the bracelet set, the necklace, earrings and adhesive plastic gems are classified under different headings or subheadings. They are also put up together for providing the consumer with accessories. Finally, they are packaged together for retail sale so that they are suitable for sale directly to consumers without repackaging. As such, we will also classify the necklace set according to GRI 3(b).

Applying the essential character factors to the necklace set, we find that the necklace comprises more of the set's bulk and weight than the earrings or the plastic gems. Additionally, the necklace likely has a greater value than the earrings or the plastic gems. As to the role of the set, the necklace and earrings likely contribute more to the role of accessorizing. The plastic adhesive gems are likely disposable and worn only once. However, the consumer can reuse the necklace and earrings over and over again. For all of these reasons, we find that the necklace imparts the essential character to the necklace set. Thus, the necklace set is classified under subheading 7117.90.75, HTSUS, which provides for imitation jewelry of plastics valued over 20 cents per dozen pieces.

HOLDING:

By application of GRI 3(b), the bracelet set of NY I87310 is classified under subheading 7117.19.90, HTSUS, which provides for "Imitation jewelry: of base metal: other: other: other ..." The 2014 column one, general rate of duty is 11 percent *ad valorem*.

By application of GRI 3(b) and GRI 6, the necklace set of NY I87401 is classified under subheading 7117.90.75, HTSUS, which provides for "Imitation jewelry: other: other: valued over 20 cents per dozen pieces or parts: other: of plastics ..." The 2014 column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY I87310, dated October 22, 2002, and NY I87401, dated October 22, 2002, are hereby revoked.

Sincerely,

IEVA K. O'ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**MODIFICATION OF RULING LETTER AND
MODIFICATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF TEXTILE SHOE COVERS**

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

ACTION: Notice of modification of one ruling letter and revocation of treatment relating to the tariff classification of textile shoe covers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is modifying New York Ruling Letter (NY) N238529, dated March 21, 2013, with respect to the tariff classification of one style of textile shoe covers under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin* Vol. 48, No. 17, on April 30, 2014. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 29, 2014.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify one ruling letter pertaining to the tariff classification of textile shoe covers was published on April 30, 2014, in Volume 48, Number 17 of the *Customs Bulletin*. No comments were received in response to this notice.

As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY N238529, CBP classified two styles of textile shoe covers (styles "A" and "B"), and determined that style "A" was classified in heading 6402, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "other footwear with outer soles and uppers of plastics."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY N238529 with respect to style "A", in order to reflect the proper classification of the textile shoe covers in heading 6307, HTSUS, according to the analysis contained in Headquarters Ruling Letter (HQ) H243639, which is attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: July 7, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H243639

July 7, 2014

CLA-2 OT:RR:CTF:TCM H243639 CkG

CATEGORY: Classification

TARIFF NO: 6307.90.98

Ms. SANDRA TOVAR
CST, INC. 500 LANIER AVENUE, W.
SUITE 901
FAYETTEVILLE, GA 30214

RE: Revocation of New York Ruling Letter N238529; textile shoe covers

DEAR Ms. TOVAR:

This is in response to your letter dated April 30, 2013, on behalf of your client, Wells Lamont Industry, LLC, requesting the reconsideration of New York Ruling Letter N238529, issued to you on March 21, 2013. In NY N238529, CBP classified two styles of textile shoe covers. Style "A" was classified in heading 6402, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "other footwear with outer soles and uppers of plastics." Style "B" was classified in heading 6307, HTSUS, which provides for "other made up articles". Only style "A" is at issue in this reconsideration request. A sample of style "A" was provided and will be returned. We have considered your arguments and our decision follows.

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 N238529 was published on April 30, 2014, in Volume 48, Number 17, of the *Customs Bulletin*. No comments were received in response to this Notice.

FACTS:

As described in NY N238529, Style "A" is a slip-on shoe cover to be used "in a semi-clean environment for aircraft assembly." The shoe cover does not have an applied outer sole and is made of a textile materials base with 1mm poly-vinyl chloride (PVC) "micro dots" adhered to its bottom to reduce slip-page. These micro dots are closely interspersed (approximately .5mm apart) and extend upward to substantially cover the entire upper. These PVC micro dots are considered the constituent material having the greatest external surface area. The top of the shoe cover is elasticized to secure the shoe cover to the foot. It does not have a foxing or foxing-like band. The shoe cover is constructed of 100% cotton knit fabric.

ISSUE:

Whether the Style "A" shoe cover is classified in heading 6307, HTSUS, as an "other" made up article, or in heading 6402, HTSUS, as other footwear with outer soles and uppers of plastics.

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6.

(A) The Chapter includes:

...

(10) Disposable footwear, with applied soles, generally designed to be used only once.

...

(C) The term “outer sole” as used in headings *64.01* to *64.05* means that part of the footwear (other than an attached heel) which, when in use, is in contact with the ground. The constituent material of the outer sole for purposes of classification shall be taken to be the material having the greatest surface area in contact with the ground. In determining the constituent material of the outer sole, no account should be taken of attached accessories or reinforcements which partly cover the sole (see Note 4 (b) to this Chapter). These accessories or reinforcements include spikes, bars, nails, protectors or similar attachments (including a thin layer of textile flocking (e.g., for creating a design) or a detachable textile material, applied to but not embedded in the sole).

In the case of footwear made in a single piece (e.g., clogs) without applied soles, no separate outer sole is required; such footwear is classified with reference to the constituent material of its lower surface.

(D) For the purposes of the classification of footwear in this Chapter, the constituent material of the uppers must also be taken into account. The upper is the part of the shoe or boot above the sole. However, in certain footwear with plastic moulded soles or in shoes of the American Indian moccasin type, a single piece of material is used to form the sole and either the whole or part of the upper, thus making it difficult to identify the demarcation between the outer sole and the upper. In such cases, the upper shall be considered to be that portion of the shoe which covers the sides and top of the foot. The size of the uppers varies vary much between different types of footwear, from those covering the foot and the whole leg, including the thigh (for example, fishermen’s boots), to those which consist simply of straps or thongs (for example, sandals).

* * * *

Pursuant to Note 1(a) to Chapter 64, which governs the classification of disposable shoe coverings in Chapter 64, a disposable shoe covering made of flimsy material and lacking an applied sole is precluded from classification as footwear of Chapter 64. Conversely, as noted in the General Explanatory Note to Chapter 64, flimsy disposable shoe covers are classified in Chapter 64, as “footwear”, if they do have an applied sole.

The instant shoe cover is constructed of knit cotton fabric. Although the fabric appears durable, in the context of footwear, it provides no cushioning and little protection against the elements or the ground. Thus, we consider the material of style “A” to be “flimsy” for the purposes of Note 1(a) to Chapter 64. Moreover, the shoe cover lacks an applied sole, and thus cannot be properly classified as footwear pursuant to Note 1(a) and Note 1(b).

A sole is defined in the General Explanatory Note to Chapter 64 as the part of the footwear in contact with the ground. The Merriam-Webster Dictionary Online and the Oxford English Dictionary Online, respectively, further define “sole” as follows:

a : the undersurface of a foot

b : the part of an item of footwear on which the sole rests and upon which the wearer treads

<http://www.merriam-webster.com/dictionary/sole>.

a. The bottom of a boot, shoe, etc.; that part of it upon which the wearer treads (freq. exclusive of the heel); one or other of the pieces of leather or other material of which this is composed (cf. *insole* n. and *outsole* n.). Also, a separate properly-shaped piece of felt or other material placed in the bottom of a boot, shoe, etc.

<http://www.oed.com/view/Entry/184121?rskey=VW5Gs4&result=1#eid>.

In determining whether a shoe covering has an applied sole pursuant to Note 1 to Chapter 64, we look to whether a line of demarcation between the sole and the upper can be identified. A ‘line of demarcation’ exists if one can indicate on the item the line along which the sole ends and the upper begins. Footwear made of a single material, with no additional, applied layer or covering on the bottom (e.g., an infant’s bootie, or the other styles of shoe covers classified according to their component material, in heading 3926 (articles of plastic) or 6307 (articles of textile)) does not have a line of demarcation distinguishing the sole from the remainder of the item.

In the instant case, the shoe cover is made of a single material, there is no additional layer or covering, and there is no line of demarcation separating the sole from the upper. Hence, the shoe cover lacks an applied sole and is excluded from Chapter 64, HTSUS. As noted in HQ 967851, dated November 18, 2005, mere patches, pads, dots, strips, etc., attached to a sock’s underfoot area, do not, in and of themselves, constitute an applied sole. As the shoe cover is a made up article of textile and it is not more specifically described elsewhere in the tariff, it is classified in heading 6307, HTSUS.

Pursuant to the above analysis, CBP has consistently classified shoe covers made of a single material—i.e., lacking an applied sole—in heading 6307, HTSUS, or heading 3926, HTSUS, according to their constituent material. See e.g., NY *N171076*, dated June 21, 2011; NY *N053260*, dated March 16, 2009; NY *N012508*, dated July 6, 2007; NY *F86712*, dated May 11, 2000; NY *F88501*, dated June 23, 2000; NY *E82610*, dated June 16, 1999; and NY *A89868*, dated December 6, 1996.

HOLDING:

By application of GRI 1, the textile shoe cover style “A” is classified in heading 6307, HTSUS, specifically subheading 6307.90.98, HTSUS, which provides for “Other made up articles, including dress patterns: Other: Other: Other.” The 2013, column one, general rate of duty is 7% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N238529, dated March 21, 2013, is hereby modified.

Sincerely,

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division

**REVOCATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF A FLASHING JEWEL STICKER**

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the tariff classification of a flashing jewel sticker.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking a ruling letter relating to the tariff classification of a flashing jewel sticker 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. 18, on May 7, 2014. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 29, 2014.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Volume 48, No. 18, on May 7, 2014, proposing to revoke NY G86870, dated February 20, 2001, in which CBP determined that the subject flashing jewel sticker was classified as imitation jewelry of plastics in subheading 7117.90.75, HTSUS. No comments were received in response to the notice.

As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the 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 G86870, in order to reflect the proper classification of the flashing jewel sticker as an imitation gemstone of plastics under subheading 3926.90.40, HTSUS, according to the analysis contained in HQ H236025, 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: July 8, 2014

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

Attachment

HQ H236025

July 8, 2014

CLA-2 RR:CTF:TCM H236025 EGJ**CATEGORY: CLASSIFICATION****TARIFF NO.: 3926.90.40**

ZPC EVERGLOW ENTERPRISE INC.
971 MERIDIAN AVE.
ALHAMBRA, CA 91803

Re: Revocation of NY G86870: Flashing Jewel Sticker

DEAR SIR OR MADAM:

This is in reference to New York Ruling Letter (NY) G86870, dated February 20, 2001, issued to you concerning the tariff classification of a flashing jewel sticker under the Harmonized Tariff Schedule of the United States (HTSUS). U.S. Customs and Border Protection (CBP) classified the jewel sticker under heading 7117, HTSUS, as imitation jewelry. We have reviewed NY G86870 and find it to be in error. For the reasons set forth below, we hereby revoke NY G86870.

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 G86870 was published on May 7, 2014, in Volume 48, Number 18, of the *Customs Bulletin*. No comments were received in response to the notice.

FACTS:

In NY G86870, the subject merchandise is described as a star-shaped green plastic jewel. The jewel measures approximately one inch across its widest point. Inside of the plastic star is a battery and an integrated circuit chip. When pressed, the star will flash. When pressed again, the flashing will stop. The star has a sticker attached to the back of it, and can be worn anywhere on the body.

ISSUE:

Is the jewel sticker classified under heading 3926, as other articles of plastics, under heading 7117, HTSUS, as imitation jewelry, or under heading 8513, HTSUS, as a portable electric lamp?

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 HTSUS provisions at issue are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:

3926.90.40	Imitation gemstones ...	*	*	*
3926.90.99	Other ...	*	*	*
7103	Precious stones (other than diamonds) and semi-precious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semi-precious stones, temporarily strung for convenience of transport:	*	*	*
7113	Articles of jewelry and parts thereof, of precious metal or of metal clad with precious metal ...	*	*	*
7117	Imitation jewelry:			
7117.90	Other ...	*	*	*
8513:	Portable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof:			
8513.10:	Lamps ...	*	*	*

Note 9 to Chapter 71 states as follows:

9. For the purposes of heading 7113, the expression “articles of jewelry” means:

- (a) Any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia); and
- (b) Articles of personal use of a kind normally carried in the pocket, in the handbag or on the person (for example, cigar or cigarette cases, snuff boxes, cachou or pill boxes, powder boxes, chain purses or prayer beads).

These articles may be combined or set, for example, with natural or cultured pearls, precious or semiprecious stones, synthetic or reconstructed precious or semiprecious stones, tortoise shell, mother-of-pearl, ivory, natural or reconstituted amber, jet or coral.

* * *

Note 11 to Chapter 71 states as follows:

11. For the purposes of heading 7117, the expression “imitation jewelry” means articles of jewelry within the meaning of paragraph (a) of note 9 above (but not including buttons or other articles of heading 9606, or dress combs, hair slides or the like, or hairpins, of heading 9615), not incorporating natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed) nor (except as plating or as minor constituents) precious metal or metal clad with precious metal.

* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System at the international level and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 85.13(7) provides as follows:

The lamps of this heading include:

- (7) **Fancy torches** in the shape of pistols, lipsticks, etc. Composite articles composed of a lamp or torch and a pen, screwdriver, key ring, etc., remain classified here **only** if the principal function of the whole is the provision of light..

* * *

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. In NY G86870, CBP classified the jewel sticker as imitation jewelry under heading 7117, HTSUS. Note 11 to Chapter 71 explains that imitation jewelry means “articles of jewelry,” defined in Note 9(a) to Chapter 71, that do not consist of cultured pearls, precious/semiprecious stones or precious metal. As imitation jewelry of heading 7117, HTSUS, only imitates the articles of jewelry which are described in Note 9(a), we will not apply the description of jewelry set forth in Note 9(b) to the instant merchandise.

Note 9(a) states that, for the purposes of heading 7113, HTSUS, “articles of jewelry” are small articles of adornment. Note 9(a) also provides a list of examples, which include rings, earrings, bracelets and other articles of jewelry. While paragraph (a) of Note 9 defines articles of jewelry as “small articles of personal adornment,” we cannot read paragraph (a) without the context of the first clause of Note 9. Note 9 begins with “for the purposes of heading 7113, the expression ‘articles of jewelry’ means ...” As such, imitation jewelry must imitate articles of jewelry which are described in paragraph (a) and are classified under heading 7113, HTSUS.

Heading 7113, HTSUS, provides for “articles of jewelry and parts thereof, of precious metal or of metal clad with precious metal.” Thus, imitation jewelry must imitate small articles of personal adornment of precious metal, or of metal clad with precious metal. Per Note 9, imitation jewelry may be combined or set with imitations of pearls, precious or semiprecious stones, tortoise shell, mother-of-pearl, ivory, amber, jet or coral.

The subject merchandise is a jewel sticker. It does not imitate any article of jewelry clad with metal. Rather, it imitates a star-shaped precious stone. Precious stones are classified under heading 7103, HTSUS. As the jewel sticker does not imitate jewelry of heading 7113, HTSUS, it cannot be classified as jewelry under heading 7117, HTSUS.

Next, we turn to heading 8513, HTSUS, which provides for portable, battery-powered electric lamps. The jewel sticker is powered by a small battery, which generates the flashing light. EN 85.13(7) states that certain fancy lamps are not generally classified as portable electric lamps. Lamps in the shape of pistols, lipsticks and other items which are part of a pen, screwdriver, key ring, etc. are only classified as lamps if the principal function of the lamp is to provide light.

The subject merchandise is a star-shaped lamp with a sticker that attaches to the consumer's body. The light flashes and does not provide much illumination. Providing light is subsidiary to the jewel sticker's function of providing visual appeal. As such, we find that the jewel sticker is not classifiable as a portable electric lamp of heading 8513, HTSUS. This decision is consistent with other CBP rulings which have classified similar battery-powered, portable fancy lamps outside of heading 8513, HTSUS. *See, e.g.* NY N175658, dated August 2, 2011 (light-up bracelets and rings classified in 7117, HTSUS), NY M83641, dated May 26, 2006 (light-up necklaces and bracelets classified in 7117, HTSUS), and NY H87609, dated February 12, 2002 (light-up rings classified in 7117, HTSUS).

For all of these reasons, we find that the jewel sticker is classified under heading 3926, HTSUS. The jewel sticker is specifically provided for under subheading 3926.90.40, HTSUS, as an imitation gemstone of plastics.

HOLDING:

By application of GRI 1, the jewel sticker is classified under subheading 3926.90.40, HTSUS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: other: imitation gemstones" The 2014 column one, general rate of duty is 2.8 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY G86870, dated February 20, 2001 is hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**REVOCATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE EXPORTATION OF
IMPORTED DUTY-PAID YACHTS SAILED FROM THE
UNITED STATES TO THE BAHAMAS FOR TRANSPORT
BACK TO THE UNITED STATES ON FOREIGN CARGO
VESSELS**

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the exportation of imported duty-paid yachts sailed from the United States to the Bahamas for transport back to the United States on foreign cargo 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 Customs and Border Protection (CBP) is revoking Headquarters Ruling Letter H175416, dated January 6, 2012, relating to the exportation of imported duty-paid yachts sailed from the United States to the Bahamas for transport back to the United States on foreign cargo vessels. This notice also advises interested parties that CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin* on June 4, 2014. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective September 29, 2014.

FOR FURTHER INFORMATION CONTACT: Gail Kan, Entry Process and Duty Refunds Branch: (202) 325–0346.

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)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625 (c)(2)), a notice was published in the *Customs Bulletin* on June 4, 2014, proposing to revoke Headquarters Ruling Letter H175416, dated January 6, 2012, relating to the exportation of imported duty-paid yachts sailed from the United States to the Bahamas for transport back to the United States on foreign cargo vessels. The notice also proposed to revoke any treatment previously accorded by CBP to substantially identical transactions. No comments were received in response to the notice.

Accordingly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking Headquarters Ruling Letter H175416, dated January 6, 2012, and any treatment previously accorded by CBP to substantially identical transactions in order to reflect the proper determination that imported duty-paid yachts, sailed on their own bottoms from the United States to the Bahamas for the sole purpose of being transported back to the United States on cargo vessels, are not exported. *See attached.*

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

Dated: July 8, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H213415

July 8, 2014

ENT 1

OT:RR:CTF:ER H213415 GGK

LEONARD L. ROSENBERG
SANDLER, TRAVIS & ROSENBERG
1000 NW 57th COURT
SUITE 600
MIAMI, FL 33126-2022

RE: Ferretti Group of America, LLC: Request for Reconsideration of Headquarters Ruling Letter H175416 (January 6, 2012)

DEAR MR. ROSENBERG:

This is in response to your March 26 and April 10, 2012 letters on behalf of your client, Ferretti Group of America, LLC (“Ferretti”). We will treat your March 26, 2012 letter as a request for this office to reconsider our decision in Headquarters Ruling Letter HQ H175416, dated January 6, 2012. In HQ H175416, we advised the Port of Providence that a previously imported duty-paid yacht, which is sailed from Miami, Florida to the Bahamas and subsequently transported back to the United States as cargo on a foreign-flagged vessel, is exported for purposes of 19 C.F.R. § 101.1 and must be reimported upon unloading in Newport, Rhode Island. Upon review, we have determined that the transaction described above does not constitute an exportation for such an imported duty-paid yacht. Therefore, for the reasons set forth below, we are revoking Headquarters Ruling Letter HQ H175416, dated January 6, 2012, and any treatment previously accorded by U.S. Customs and Border Protection (“CBP”) to substantially identical transactions.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published in the *Customs Bulletin* on June 4, 2014. No comments were received in response to the notice.

FACTS:

Ferretti imports Italian-made yachts into the United States. The yachts are imported as cargo, and do not arrive under their own power. Upon importation into the United States, a consumption entry is filed and duty is paid. The yachts are not imported pursuant to 19 C.F.R. § 4.94a and will not be documented until they are sold to retail buyers in the United States. Depending on sales and inventory needs, Ferretti moves the yachts between South Florida and Newport, Rhode Island. The yachts are not sailed from Florida to Newport because doing so would make them “used” and decrease their value. Instead, Ferretti sails the yachts from Florida to the Bahamas, on their own bottom, and obtains temporary cruising permits from Bahamian customs. The yachts are then placed on foreign-flagged vessels for transport to Newport, Rhode Island as cargo. To illustrate, a yacht may be shown at the Miami Boat Show. If the yacht does not sell in Miami, it is presented for sale in Rhode Island. In order to move the yacht from Miami to Rhode Island, the

yacht is sailed to Freeport, Bahamas and laden as cargo onto a foreign-flagged cargo vessel. The vessel then carries the yacht to Rhode Island and unloads the yacht upon arrival at the port.

At issue in this reconsideration are three imported, duty-paid yachts. According to Ferretti, the yachts were initially entered for consumption at Port of Everglades under the following entry numbers: xxx-xxx7996-2, dated September 25, 2009; xxx-xxx9233-8, dated October 21, 2009; and xxx-xxx4271-1, dated January 30, 2010. At the time of entry, the yachts were classified under subheading 8903.92.0065, Harmonized Tariff Schedule of the United States (“HTSUS”), and duties paid accordingly. Based on affidavits submitted by Ferretti, the yachts sailed from Miami, Florida, on their own bottoms, and arrived at Freeport, Bahamas in May 2010. The affidavits state that upon arriving in the Bahamas, the Bahamian customs authority issued temporary cruising permits for the three yachts. Thereafter, the yachts were moored until laden onto a foreign-flagged vessel owned and operated by the carrier company, Dockwise Yacht Transport, LLC (“DYT”), for carriage to Newport, Rhode Island. Ferretti and DYT entered into the carriage contracts for transporting the yachts on April 16, 2010. Finally, Ferretti clarified that it does not clear the yachts upon their departure from U.S. waters; the yachts have no registry or documentation and no export information is filed with the Department of Commerce. Upon their arrival at Newport, Rhode Island, the Port of Providence required Ferretti to enter the three yachts as merchandise, on June 1, 2010, under entry numbers xxx-xxx3805-6, xxx-xxx3807-2 and xxx-xxx3806-4. Moreover, the Port of Providence directed Ferretti to enter the yachts under HTSUS subheading 8903.92.00, as yachts or pleasure vessels brought into the United States for sale. Ferretti complied and filed the three entries at issue in this reconsideration. CBP liquidated entry xxx-xxx3805-6 on March 11, 2011, and entries xxx-xxx3807-2 and xxx-xxx3806-4 on June 3, 2011.

After filing the entries, Ferretti, through counsel, submitted a binding ruling request, pursuant to 19 C.F.R. § 177.1, with this office on July 12, 2011. Subsequently, Ferretti filed Protest 0502-11-100075 (“importer protest”) with the Port of Providence on September 7, 2011, to contest all three entries and requested further review. In its attached memorandum in support of further review, Ferretti notes that it had filed a binding ruling request with Headquarters that was applicable to the entries under protest. A copy of the July 12, 2011, ruling request was attached to the Protest’s application for further review. Finally, on December 16, 2011, the surety for Ferretti’s entries filed Protest 0502-11-100086 (“surety protest”), which also challenged CBP’s duty assessment. The demand for payment against the surety’s bond was mailed on June 21, 2011. We note that the facts and arguments contained in the two protests and Ferretti’s July 12, 2011 binding ruling request are identical.

On January 6, 2012, we issued Headquarters Ruling Letter H175416, in response to Ferretti’s July 12, 2011 ruling request. Ferretti filed a request to reconsider the ruling on February 17, 2012. We denied the initial request for reconsideration on procedural grounds on March 15, 2012. Thereafter, on March 26, 2012, Ferretti submitted the letter currently before us, which we consider to be a request for reconsideration. To date, Ferretti’s protests remain suspended pending this reconsideration.

ISSUE:

1. Whether imported, duty-paid yachts sailing from Miami, Florida to the Bahamas are exported pursuant to 19 C.F.R. § 101.1 and, therefore, subject to reimportation upon unloading at Newport, Rhode Island.
2. Whether the movement of yachts violates U.S. coastwise laws.

LAW AND ANALYSIS:

1. Whether imported, duty-paid yachts sailing from Miami, Florida to the Bahamas are exported pursuant to 19 C.F.R. § 101.1 and, therefore, subject to reimportation upon unloading at Newport, Rhode Island.

Ferretti's primary argument for reconsideration asserts that the previously imported, duty-paid yachts were not exported when they sailed to the Bahamas from Florida. Therefore, Ferretti believes that the yachts do not require reimportation upon their arrival in Rhode Island. Generally, imported duty-paid merchandise is subject to duty liability and entry only if the goods are first exported and then subsequently reimported into the Customs territory of the United States. See 19 C.F.R. § 141.2 (stating that "[d]utiable merchandise imported and afterwards exported...is liable to duty on every subsequent importation..."). To explain, only those goods that are imported into the customs territory of the United States are subject to duty. See HQ 114291 (May 7, 1998) (finding that in accordance with General Note 1 of the Harmonized Tariff Schedule of the United States, only those goods that are imported into the customs territory of the United States are subject to duty); see also General Note 1, HTSUS (stating that "[a]ll goods provided for in the HTSUS and imported into the customs territory of the United States from outside thereof...are subject to duty or exempt therefrom as prescribed in general notes 3 through 29, inclusive"). Moreover, CBP "entry requirements pertain only to merchandise which has been imported." HQ 114291 (May 7, 1998); see also 19 C.F.R. § 141.4(a) (stating "[a]ll merchandise imported into the United States is required to be entered, unless specifically excepted"). If imported duty-paid goods are removed from the customs territory of the United States but not exported, however, then upon their return, no importation is required. See HQ 114291 (May 7, 1998) (finding that "[i]f an article leaves the United States but is not deemed to be exported, then there is no importation upon its return to the United States); HQ 225339 (January 10, 1995) (holding that U.S. origin and imported duty-paid oil spill equipment used outside of U.S. customs territory are not imported upon their return if no exportation occurred); see also *Page & Jones v. United States*, 26 C.C.P.A. 124, 129 (1938) (citing *Fairbanks Morse & Co. v. United States*, 69 Treas. Dec. 319, and *Van Camp Sea Food Co. (Inc.) v. United States*, 56 Treas. Dec. 415) (noting that American engines returned from foreign jurisdictions were not imported because the goods were never exported). Consequently, absent an exportation event, duties are not applicable and entry is not required for imported duty-paid merchandise returned to the United States.

Imported duty-paid yachts, in particular, require an exportation before duties are owed upon reimportation. CBP has consistently stated the following in its rulings:

Duty on [a] vessel is collectable when it is first imported. The determination of whether or not a yacht is dutiable when it has previously been subject to Customs entry and payment of duty is dependent on whether it has been exported from the United States after its first importation. If it has been exported, it is again dutiable as an importation under items 8903.91.00 or 8903.92.00, HTSUS.

HQ 111731 (February 19, 1992). *Accord* HQ 114301 (March 25, 1998); HQ 110970 (July 17, 1990); HQ 103386 (September 27, 1978); HQ 103359 (April 11, 1978). Based on all of the above, we will consider whether the sailing of the yachts at issue to the Bahamas for carriage back to the United States constitutes an exportation. If an exportation occurred, then the yachts must be reimported upon unloading in Newport, Rhode Island.

Exportation is defined in 19 C.F.R. § 101.1 as "...a severance of goods from the mass of things belonging to this country with the intention of uniting them to the mass of things belonging to some foreign country." *See also Swan and Finch Co. v. United States*, 190 U.S. 143, 145 (1903) (explaining that "[a]s the legal notion of emigrating is a going abroad with an intention of not returning, so that of exportation is a severance of goods from the mass of things belonging to this country with an intention of uniting them to the mass of things belonging to some foreign country or other") (internal citations omitted). Based on this definition, an exportation is established by a two-pronged analysis: 1) that the goods were severed from the mass of things belonging to this country, and 2) that there was an intent to unite the goods to the mass of things belonging to some foreign country. The first prong is construed to mean that "the goods in question have been physically carried out of the country of exportation." *National Sugar Refining Co. v. United States*, 488 F. Supp. 907, 908 (Cust. Ct. 1980) (citing to *United States v. National Sugar Refining Co.*, 39 C.C.P.A. 96, 101 (1951)), *aff'd*, 666 F.2d 566 (C.C.P.A. 1981). In the case before us, the yachts physically sailed from the United States and arrived in the Bahamas, where Bahamian customs authorities issued temporary cruising permits for the yachts. Therefore, the evidence demonstrates that the yachts physically left the United States and the severance requirement for exportation is satisfied.

Less clear, however, is whether Ferretti intended to unite the yachts to the mass of things belonging to the Bahamas. Absent such intent, the yachts would not be exported even if severed from the mass of things belonging to the United States. Generally, the controlling factor in this analysis is the intention of the parties at the time of shipment. *Nassau Distributing Co., Inc. v. United States*, 29 Cust. Ct. 151, 153 (1952) (internal citations omitted). Thus, "so long as an immediate bona fide purpose to seek a foreign market coincides with a bona fide act of shipment later changes in either the intent or destination have no effect upon the original character of the act as an exportation." *Id.* at 154 (quoting *United States v. National Sugar Refining Co.*, 39 C.C.P.A. 96, 100 (1951)). Alternatively, a situation may arise where the intent to unite the goods with the mass of things belonging to a foreign country does not exist at the time of shipment but nevertheless results in an exportation due to subsequent events. Specifically, merchandise which, after

its initial shipment, is intended to be or in fact is diverted into the commerce of an intermediate country, becomes an export of that intermediate country. *Bethlehem Steel Corp. v. United States*, 551 F. Supp. 1148, 1149 (Ct. Int'l Trade 1982) (citations omitted) (finding that imported, duty-paid merchandise moving between two U.S. ports by means of transshipment through Canada was exported because the merchandise was offered for sale in Canada). The contingency of diversion sufficient to negate the original intent at the time of shipment, however, must have a realistic basis in fact and not be mere conjecture. *Id.* (internal quotations omitted) (citing *Hugo Stinnis Steel & Metals Co. v. United States*, 80 Cust. Ct. 175, 192 (1978), *aff'd*, 599 F.2d 1037 (1979)). To summarize, in order to unite goods to the mass of things belonging to another country for purposes of exportation, there must be an intended bona fide purpose to seek a foreign market or an actual diversion of the merchandise into the commerce of an intermediate country.

In Ferretti's case, the question presented is not whether the requisite intent existed at the time of shipment or developed after. Rather, the question is whether the intended act qualifies as a bona fide purpose to seek a foreign market and/or an actual diversion of the merchandise into the commerce of an intermediate country, sufficient to unite the goods with the mass of things belonging to some foreign country. To illustrate what acts are sufficient to unite merchandise with the mass of things belonging to a foreign country for purposes of exportation, and what acts are insufficient, it is useful to compare case scenarios involving exportation of merchandise to foreign warehouses. In *D. & B. Import Corp. v. United States*, 5 Cust. Ct. 108, 109 (1940), Cuban rum was sold and shipped to a buyer in Bermuda. The rum was stored in a bonded warehouse and never withdrawn for consumption in Bermuda. *Id.* Subsequently, the rum was sold and shipped to a buyer in the United States. *Id.* The Customs Court determined that the rum became an export of Bermuda because "merchandise in a bonded warehouse in a foreign country must be considered as having entered the commerce of that country when it could have been withdrawn at any time for consumption there." *Id.* at 118. Similarly, in HQ 214285 (July 22, 1982), a company shipped unsold watches manufactured in the United States to a bonded warehouse in Canada for storage pending actual sale to different markets in the western hemisphere, including the United States. CBP determined that the transaction qualified as an exportation because the company's immediate bona fide purpose for sending the watches to storage in Canada was not to return them to the United States, but rather to seek foreign markets for the eventual sale of the goods. *Id.* Finally, in HQ 223701 (May 28, 1992), CBP determined that imported duty-paid tablets shipped to Canada for packaging qualified as an exportation even when the packaged tablets returned to the United States. In finding that an exportation occurred, CBP noted that the merchandise was shipped abroad for use in a legitimate commercial purpose independent of securing a benefit accruing to the imported merchandise, *i.e.* drawback. HQ 223701. *See also* 19 C.F.R. § 101.1 (stating under the definition of *Exportation*: "The shipment of merchandise abroad with the intention of returning it to the United States with a design to circumvent provisions of restriction or

limitation in the tariff laws or to secure a benefit accruing to imported merchandise is not an exportation”).

The case scenarios above identify a unifying theme for acts that qualify as a bona fide purpose to seek a foreign market and/or an actual diversion of the merchandise into the commerce of an intermediate country. Specifically, if the intended or actual act introduces the merchandise into the foreign country for consumption, sale or use, then there is a sufficient uniting of the goods with the mass of things belonging to the foreign country to qualify as an exportation. *Cf.* HQ 224402 (May 27, 1993) (noting that the terms “export” and “exportation” embodies the idea of introducing merchandise into a foreign country for sale, consumption or use). This is true even if the uniting is temporary and the goods are ultimately returned to the United States. Moreover, the term “use,” in the context of exportation, typically involves using the merchandise by means of manufacture, manipulation, or repair. *See* HQ 225549 (December 7, 1994) (holding that shipping merchandise to a foreign country with an intention of using that merchandise, as by manufacture, manipulation, or repair, is strong evidence of an intent to unite the merchandise to the mass of things belonging to the foreign country). In comparison, acts that do not involve introducing the merchandise into the foreign country for consumption, sale or use have not qualified as a bona fide purpose to seek a foreign market and/or an actual diversion of the merchandise into the commerce of an intermediate country. *Compare* HQ 111731 (February 19, 1992) (stating that “[m]erely removing a yacht from U.S. territorial waters on a temporary foreign pleasure cruise with the intent to return it to the United States thereafter would not constitute an exportation”), *and* HQ 225339 (January 10, 1995) (noting that oil spill equipment owned and operated by a non-profit organization to recover spilled oil in U.S. territorial waters is not exported because no evidence existed that the equipment entered the commerce of any foreign countries or sought a foreign market), *with* *HH U.S. v. Coastwise Steamship & Barge Co.*, 9 Ct. Cust. 216, 217–18 (1919) (finding that a marine steam engine manufactured in the United States and salvaged from a wrecked American vessel was exported because a firm in Canada purchased the engine to make repairs before returning it to the United States), *and* HQ 229644 (December 17, 2002) (holding that needles and sutures shipped to a foreign country and returned to the United States qualified as an exportation because while abroad, the needles and sutures were assembled and processed into one unit).

With regard to the yachts at issue in this case, there is no indication that the yachts underwent any manufacturing process, manipulation or repair in the Bahamas. Neither did Ferretti sell or attempt to sell the yachts to buyers in the Bahamas or to foreign buyers from the Bahamas. Rather, upon arriving in Freeport, the yachts were moored under the authority of Bahamian temporary cruising permits until laden onto the transport vessel for return to the United States. Moreover, it is notable that Ferretti contracted to transport the yachts back to the United States in April 2010, which is before they sailed for the Bahamas in May 2010. This fact supports Ferretti’s assertion that it always intended to return the yachts to the United States. Based on the above, the only act at issue is Ferretti’s engagement of transportation services to carry the yachts from the Bahamas back to the United

States. Such transportation of goods, we find, does not introduce the merchandise into the foreign country for consumption, sale or use. Without an intended or actual introduction of the yachts into the Bahamas for consumption, sale or use, the yachts are not united to the mass of things belonging to the Bahamas. Therefore, the yachts are not exported when they sailed to the Bahamas for carriage back to the United States and upon their return, are not reimported or subject to entry as merchandise. Please note that in order to support the determination that an exportation did not occur, Ferretti must demonstrate to the satisfaction of the Port of Providence that the yachts returning to the customs territory of the United States at Newport, Rhode Island are the same imported, duty-paid yachts that departed Florida for the Bahamas. See HQ 225339 (January 10, 1995) (holding that in order to confirm that an exportation did not take place, documentation will be required to verify exactly which equipment and supplies left the customs territory of the United States and that this is the same equipment and supplies returned to the United States).

2. Whether the movement of yachts violates U.S. coastwise laws.

In addition to the exportation issue, we would like to clarify that the factual scenario presented in this case does not violate U.S. coastwise laws. Generally, the coastwise laws prohibit the transportation of merchandise, between points in the United States embraced within the coastwise laws, in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States. Such a vessel, after it has obtained a coastwise endorsement from the U.S. Coast Guard, is said to be “coastwise qualified.” The coastwise laws generally apply to points in the territorial sea, which is defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline.

The coastwise law applicable to the transportation of merchandise is the Jones Act, 46 U.S.C. § 55102, (recodified pursuant to P.L. 109–304, October 6, 2006), which provides:

- (a) Definition. In this section, the term “merchandise” includes--
- (1) merchandise owned by the United States Government, a State, or a subdivision of a State; and
 - (2) valueless material.
- (b) Requirements. Except as otherwise provided in this chapter or chapter 121 of this title [46 U.S.C. §§ 55101 *et seq.* or 12101*et seq.*], a vessel may not provide any part of the transportation of merchandise by water, or by land and water, between points in the United States to which the coastwise laws apply, either directly or via a foreign port, unless the vessel--
- (1) is wholly owned by citizens of the United States for purposes of engaging in the coastwise trade; and
 - (2) has been issued a certificate of documentation with a coastwise endorsement under chapter 121 [46 U.S.C. §§ 12101 *et seq.*] or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement...

CBP regulations at 19 C.F.R. § 4.80 promulgated pursuant to the aforementioned statute, provide, in pertinent part:

19 C.F.R. § 4.80 Vessels entitled to engage in coastwise trade.

(a) No vessel shall transport, either directly or by way of a foreign port, any passenger or merchandise between points in the United States embraced within the coastwise laws, including points within a harbor, or merchandise for any part of the transportation between such points, unless it is:

(1) Owned by a citizen and is so documented under the laws of the United States as to permit it to engage in the coastwise trade;

(2) Owned by a citizen, is exempt from documentation, and is entitled to or, except for its tonnage, would be entitled to be documented with a coastwise endorsement.

(3) Owned by a partnership or association in which at least a 75 percent interest is owned by such a citizen, is exempt from documentation and is entitled to or, except for its tonnage, or citizenship of its owner, or both, would be entitled to be documented for the coastwise trade. The term "citizen" for vessel documentation purposes, whether for an individual, partnership, or corporation owner, is defined in 46 C.F.R. 67.3...

As we stated in CSD 85-9, dated November 21, 1984, a vessel transported on another vessel is merchandise for purposes of 46 U.S.C. 883, the predecessor statute to 46 U.S.C. § 55102. Therefore, the subject yachts are "merchandise" as contemplated by 46 U.S.C. § 55102 for that portion of their journey from the Bahamas to Newport, Rhode Island. However, the yachts sailed under their own power from Miami to the Bahamas. Accordingly, they do not qualify as "merchandise" for the purposes 46 U.S.C. § 55102 for that portion of their journey between Florida and the Bahamas.

In HQ 110280 (Aug. 24, 1989), CBP addressed the applicability of coastwise law pertaining to the transportation of merchandise, then 46 U.S.C. App. 883, since recodified as 46 U.S.C. § 55102, to the transportation of yachts from Florida to the West Coast of the United States. In that matter, the yachts were to be loaded as on-deck cargo on a non-coastwise-qualified vessel in Florida and transported to Vancouver, Canada. At Vancouver, the yacht owners were to take delivery and the yachts would proceed under their own power to their respective home ports in California and Washington. We held that the proposed transportation did not violate the coastwise merchandise statute. CBP reasoned that because the transported vessel was not considered to have been "transported" between coastwise points, it was transported only from a coastwise point to a non-coastwise point and proceeded under its own power for the remainder of the movement.

Similarly, in the present matter, the yachts proceeded under their own power from a coastwise point (Miami, Florida) to a non-coastwise point (the Bahamas). There, they were laden onto a non-coastwise-qualified vessel for transportation from a non-coastwise point (the Bahamas) to a coastwise point (Newport, Rhode Island). Accordingly, the transportation of the subject yachts as described in this case, did not violate 46 U.S.C. § 55102.

HOLDING:

After reviewing the reconsideration request, we find that imported duty-paid yachts sailed from the United States to the Bahamas, for the sole purpose of being transported back to the United States on a commercial

vessel, are not exported pursuant to 19 C.F.R. § 101.1. Headquarters Ruling Letter H175416, dated January 6, 2012, is hereby revoked.

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

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**REVOCAION OF THREE RULING LETTERS AND
MODIFICATION OF FOUR RULING LETTERS AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF BODY STICKERS WITH
GLITTER AND/OR PLASTIC GEMSTONES**

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

ACTION: Notice of revocation of three ruling letters, modification of four ruling letters, and revocation of treatment relating to the tariff classification of body stickers with glitter and/or plastic gemstones.

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, modifying four ruling letters and revoking treatment relating to the tariff classification of body stickers with glitter and/or plastic gemstones 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. 18, on May 7, 2014. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 29, 2014.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Volume 48, No. 18, on May 7, 2014, proposing to revoke New York Ruling Letter (NY) NY G87437, dated February 27, 2001, NY H87608, dated February 12, 2002, and NY J80204, dated January 24, 2003, and to modify NY I88477, dated December 5, 2002, NY I87967, dated November 15, 2002, NY I87116, dated October 9, 2002, and NY I80558, dated April 23, 2002, in which CBP determined that the subject body stickers were classified as imitation jewelry of plastics in subheading 7117.90.75, HTSUS. No comments were received in response to the notice.

As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the 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 or modifying the seven aforementioned rulings in order to reflect the proper classification of the body stickers with glitter and/or plastic gemstones as imitation gemstones of plastics in subheading 3926.90.40, HTSUS, according to the analysis contained in HQ H236057, 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: July 8, 2014

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H236057

July 8, 2014

CLA-2 RR:CTF:TCM H236057 EGJ
CATEGORY: CLASSIFICATION
TARIFF NO.: 3926.90.40; 3926.90.99

VICKI DeLUCA
GHY USA, Inc.
572 SOUTH 5TH STREET
PEMBINA, ND 58271

Re: Revocation of NY G87437, NY H87608, NY J80204, and Modification of NY I88477, NY I87967, NY I87116 and NY I80558: Body Stickers with Glitter and/or Plastic Gemstones

DEAR Ms. DeLUCA:

This is in reference to New York Ruling Letter (NY) G87437, dated February 27, 2001, issued to you concerning the tariff classification of "Trend Gems" body art stickers under the Harmonized Tariff Schedule of the United States (HTSUS). U.S. Customs and Border Protection (CBP) classified the body stickers under heading 7117, HTSUS, as imitation jewelry. We have reviewed NY G87437 and find it to be in error.

For the reasons set forth below, we hereby revoke NY G87437 and the following rulings which classify body stickers with glitter and/or plastic gems under heading 7117, HTSUS: NY H87608, dated February 12, 2002, and NY J80204, dated January 24, 2003. We also modify the following rulings which classify body stickers with glitter and/or plastic gems under heading 7117, HTSUS: NY I88477, dated December 5, 2002, NY I87967, dated November 15, 2002, NY I87116, dated October 9, 2002, and NY I80558, dated April 23, 2002.

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 or to modify the seven aforementioned rulings was published on May 7, 2014, in Volume 48, Number 18, of the *Customs Bulletin*. No comments were received in response to the notice.

FACTS:

In NY G87437, the subject merchandise is "Trend Gems" glitter body art. The body art is described as "temporary tattoo like articles made of a clear plastic acrylic material tape, glitter and or acrylic beads and are meant to be worn to adorn the body. The four samples are a flower, a shamrock, a star, and the word 'Love.'" Any samples or pictures which CBP may have maintained of the body stickers were destroyed in the September 11, 2001 attacks on the World Trade Center in New York. However, we have searched the internet and found pictures of Trend Gems glitter body art which resemble the merchandise described in the ruling. These pictures are provided below:

Based upon the ruling's description and these pictures, the acrylic beads are plastic gemstones. Some of the body stickers only consist of plastic gemstones, some body stickers only consist of glitter and some of the body stickers consist of a combination of glitter and plastic gemstones.

ISSUE:

What is the tariff classification of body stickers which consist of glitter and/or plastic gemstones?

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 HTSUS provisions at issue are as follows:

3919	Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls:			
3919.90	Other:			
3919.90.50	Other ...	*	*	*
3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:			
3926.90	Other:			
3926.90.40	Imitation gemstones ...	*	*	*
3926.90.99	Other ...	*	*	*
7103	Precious stones (other than diamonds) and semi-precious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semi-precious stones, temporarily strung for convenience of transport:	*	*	*
7106	Silver (including silver plated with gold or platinum), unwrought or in semi manufactured forms, or in powder form ...	*	*	*
7113	Articles of jewelry and parts thereof, of precious metal or of metal clad with precious metal ...	*	*	*
7117	Imitation jewelry:			
7117.90	Other:			
	Other:			
	Valued not over 20 cents per dozen pieces or parts:			

means ...” As such, imitation jewelry must imitate articles of jewelry which are described in paragraph (a) and are classified under heading 7113, HTSUS.

Heading 7113, HTSUS, provides for “articles of jewelry and parts thereof, of precious metal or of metal clad with precious metal.” Thus, imitation jewelry must imitate small articles of personal adornment of precious metal, or of metal clad with precious metal. Per Note 9, imitation jewelry may be combined or set with imitations of pearls, precious or semiprecious stones, tortoise shell, mother-of-pearl, ivory, amber, jet or coral.

The subject merchandise consists of body stickers. The body stickers do not imitate articles of jewelry clad with any type of metal. Rather, they imitate tattoos. These imitation tattoos are embellished with plastic gemstones and glitter. The plastic gemstones imitate precious stones which are classified in heading 7103, HTSUS. The glitter imitates silver powder which is classified under heading 7106, HTSUS. As the body stickers do not imitate jewelry of heading 7113, HTSUS, they cannot be classified as imitation jewelry under heading 7117, HTSUS.

The body stickers each consist of a clear, self-adhesive flat plastic shape covered with plastic gemstones, glitter or both. The sticker component is classified under subheading 3919.90.50, HTSUS, as a self-adhesive flat shape. The imitation gemstones are classified under subheading 3926.90.40, HTSUS, as imitation gemstones of plastics. The glitter is classified under subheading 3926.90.99, HTSUS, as other articles of plastics. See Headquarters Ruling Letter (HQ) 965632, dated July 5, 2002, and NY K85638, dated May 21, 2004 (glitter is classified under subheading 3926.90.99). As the body stickers consist of two or more components which are classified under different headings, the body stickers are composite goods.

GRI 3(b) governs the classification of composite goods and provides that:

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:

- (d) 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.

Thus, a composite good is classified according to the component which imparts the good’s essential character. In order to identify a composite good’s essential character, the U.S. Court of International Trade (CIT) has applied the factors listed in EN VIII to GRI 3(b) which are “the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.” *The Home Depot v. United States*, 427 F. Supp. 2d 1278, 1293 (Ct. Int’l Trade 2006). With regard to the component which imparts the essential character, the CIT has stated it is “that which is indispensable to the structure, core or condition of the article, i.e. what it is.” *Id. citing A.N. Deringer, Inc. v. United States*, 66 Cust. Ct. 378, 383 (1971).

Applying the aforementioned factors, we will first examine those body stickers which only consist of plastic gemstones and a sticker. The bulk and weight of the plastic gemstones is likely greater than the bulk and weight of

the sticker. Looking at quantity, the number of plastic gemstones outnumbers the number of plastic stickers because each flat sticker includes multiple plastic gemstones. We do not have any information on the value of each component.

Also, we must look to the role of each component. The sticker provides the adhesive to attach the imitation tattoo to the consumer's body. The sticker consists of a clear plastic acrylic material. Conversely, the plastic gemstones are shiny and colorful. The plastic gemstones provide the visual interest to the imitation tattoos. For all of these reasons, the plastic gemstones impart the essential character to these goods. The body stickers which only consist of plastic gemstones and a sticker are therefore classified under subheading 3926.90.40, HTSUS, as imitation gemstones of plastics.

Next, we turn to the imitation tattoos which only consist of glitter and a sticker. Similar to the above analysis, we find that the quantity of glitter is greater than the quantity of the sticker. One sticker is covered with lots of glitter. The glitter also provides more visual interest than the clear acrylic sticker. The sticker likely weighs more than the glitter. We do not have information regarding the value of the glitter and the sticker. For all of these reasons, we find that the glitter imparts the essential character to these imitation tattoos. The body stickers which only consist of glitter and a sticker are therefore classified under subheading 3926.90.99, HTSUS, which provides for other articles of plastics.

Finally, we look to the body stickers which combine plastic gemstones, glitter and a clear flat sticker. In these imitation tattoos, the quantity of glitter is greater than the quantity of plastic gemstones. The glitter also sparkles brighter than the plastic gemstones. The plastic gemstones are larger and likely comprise more of the bulk and weight of the sticker. The role of both the glitter and the plastic gemstones is to make the imitation tattoo bright, shiny and attractive. However, we find that the glitter covers more of the surface area of these stickers and therefore provides more visual interest than the plastic gemstones. As such, we find that the glitter imparts the essential character to the imitation tattoos which are a combination of glitter, plastic gemstones and a sticker. These body stickers are classified under subheading 3926.90.99, HTSUS, which provides for other articles of plastics.

HOLDING:

By application of GRI 3(b), the body stickers which only consist of plastic gemstones and a clear sticker are classified under subheading 3926.90.40, HTSUS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: other: imitation gemstones" The 2014 column one, general rate of duty is 2.8 percent *ad valorem*.

By application of GRI 3(b), the body stickers which only consist of glitter and a clear sticker are classified under subheading 3926.90.99, HTSUS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: other: other" The 2014 column one, general rate of duty is 5.3 percent *ad valorem*.

By application of GRI 3(b), the body stickers which consist of glitter, plastic gemstones and a clear sticker are classified under subheading 3926.90.99, HTSUS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: other: other" The 2014 column one, general rate of duty is 5.3 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY G87437, dated February 27, 2001, NY H87608, dated February 12, 2002, and NY J80204, dated January 24, 2003, are hereby revoked.

NY I88477, dated December 5, 2002, NY I87967, dated November 15, 2002, and NY I87116, dated October 9, 2002, NY I80558, dated April 23, 2002, are hereby modified.

Sincerely,

IEVA K. O'ROURKE

for

MYLES B HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF FOUR RULING LETTERS
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF PLASTIC TOOTHBRUSH
SETS**

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

ACTION: Notice of proposed revocation of four ruling letters and proposed revocation of treatment relating to the tariff classification of plastic toothbrush sets.

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 four rulings concerning the tariff classification of plastic toothbrush sets 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 29, 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 St., NE, 10th Floor, Washington, DC 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, at (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 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 four ruling letters pertaining to the tariff classification of plastic toothbrush sets. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) NY N047570, dated December 30, 2008 (Attachment A); NY N034382, dated August 1, 2008 (Attachment B); NY N021284, dated January 2, 2008 (Attachment C); and NY M84609, dated June 27, 2006 (Attachment D), 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 five identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the 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 047570, N034382, and N021284, CBP determined that merchandise consisting of two toothbrushes, a cup holder, and a plastic toy was classified as a set under heading 9603, HTSUS. Similarly, in

NY M84609, CBP determined that a plastic toothbrush holder with a mirror attached, two toothbrushes, and a rinse cup were classified as a set under heading 9603, HTSUS. In each of the four rulings, CBP classified the merchandise in subheading 9603.21.00, HTSUS, which provides for “Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorized, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees): Toothbrushes, shaving brushes, hair brushes, nail brushes, eyelash brushes and other toilet brushes for use on the person, including such brushes constituting parts of appliances: Toothbrushes, including dental-plate brushes.”

It is now CBP’s position that the merchandise described in NY N047570, N034382, and N021284, each consisting of a plastic toothbrush holder, plastic rinse cup, toothbrushes, and plastic toy, is classified separately, by operation of GRI 1, under the tariff provision applicable to the individual articles. The plastic toothbrush holder is classified in heading 3924, HTSUS, specifically in subheading 3924.90.56, HTSUS, which provides for, “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Other: Other.” The plastic rinse cup is classified in heading 3924, HTSUS, specifically in subheading 3924.10.40, HTSUS, which provides for, “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Tableware and kitchenware: Other.” The plastic toy is classified in heading 9503, HTSUS, which provides for, “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof.” The toothbrushes are classified in heading 9603, HTSUS, specifically in subheading 9603.21.00, HTSUS, which provides for, “Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorized, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees): Toothbrushes, shaving brushes, hair brushes, nail brushes, eyelash brushes and other toilet brushes for use on the person, including such brushes constituting parts of appliances: Toothbrushes, including dental-plate brushes.”

It is now CBP’s position that the merchandise described in NY M84609, consisting of a plastic toothbrush holder, plastic rinse cup, and toothbrushes, is classified in heading 3924, HTSUS, by operation of GRI 3(b). Specifically, the merchandise is classified in subheading

3924.90.56, HTSUS, which provides for, “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Other: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N047570, N034382, N021284, M84609, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H123519, set forth as Attachment E to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 10, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N047570

December 30, 2008

CLA-2-96:OT:RR:NC:SP:233

CATEGORY: Classification

TARIFF NO.: 9603.21.0000

Ms. CHRISTINA YUN
M.Z. BERGER & COMPANY
29-76 NORTHERN BOULEVARD
LONG ISLAND CITY, NY 11101

RE: The tariff classification of toothbrush sets from China.

DEAR Ms. YUN:

In your letter dated December 17, 2008, you requested a tariff classification ruling. The sample which you submitted is being retained by this office.

The Splendid Smile Set is a series of children's tooth care sets with seven variations each based on a cartoon character:

- Item number CCR10125 "Cars"
- Item number CSG20026 "Spiderman"
- Item number C40157 "Sponge Bob"
- Item number CDE10193 "Dora"
- Item number CPC10133 "Princess"
- Item number CFR10062 "Tinkerbell"
- Item number CPC10144 "Princess"

A sample has been submitted for CPC10144 Princess Set. Each smile set consists of 2 toothbrushes, a cup holder and a plastic toy. Each Splendid Smile set is packaged together for retail sale with the toothbrush imparting the essential character. A set of stickers is included with each set featuring the likenesses of the relevant cartoon character.

The applicable subheading for the toothbrush sets will be 9603.21.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Toothbrushes, including dental-plate brushes". The rate of duty will be free.

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

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

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

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

N034382

August 1, 2008

CLA-2-96:OT:RR:NC:SP:233

CATEGORY: Classification

TARIFF NO.: 9603.21.0000

Ms. CHRISTINE YUN
M.Z. BERGER & COMPANY
29-76 NORTHERN BLVD.
LIC, NY 11101

RE: The tariff classification of toothbrush sets from China.

DEAR Ms. YUN:

In your letter dated July 24, 2008, you requested a tariff classification ruling.

You have submitted literature depicting 8 toothbrush sets:

- Cars Mcqueen Great Smile Set
- Cars-Mater Great Smile Set
- Spongebob Great Smile Set
- Dora Great Smile Set
- Hulk Great Smile Set
- Spiderman Great Smile Set
- Princess Great Smile Set
- Tinkerbell Great Smile Set

Each smile set consists of 2 toothbrushes, a cup holder and a plastic toy. Each smile set is packaged together for retail sale with the toothbrush imparting the essential character.

The applicable subheading for the toothbrush sets will be 9603.21.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Toothbrushes, including dental-plate brushes". The rate of duty will be free.

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

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

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

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT C]

N021284

January 2, 2008

CLA-2-96:OT:RR:NC:SP:233

CATEGORY: Classification

TARIFF NO.: 9603.21.0000

Ms. CHRISTINA YUN
M.Z. BERGER & COMPANY
29-76 NORTHERN BLVD.
LIC, NY 11101

RE: The tariff classification of a toothbrush set from China.

DEAR Ms. YUN:

In your letter dated December 21, 2007, you requested a tariff classification ruling.

You have submitted a sample of the Great Smile Set. It consists of 2 toothbrushes, a cup holder and a plastic toy. The Great Smile Set is packaged together for retail sale with the toothbrush imparting the essential character. Your sample will be returned as requested.

The applicable subheading for the toothbrush set will be 9603.21.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Toothbrushes, including dental-plate brushes". The rate of duty will be free.

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

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

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

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT D]

NY M84609

June 27, 2006

CLA-2-96:RR:NC:SP:233 M84609

CATEGORY: Classification

TARIFF NO.: 9603.21.0000

MS. JACQUELINE JEFFERSON
JAV INTERNATIONAL INC.
500 OCEAN AVENUE
EAST ROCKAWAY, NY 11518-1235

RE: The tariff classification of "Barbie Fairytopia Great Smile Set" from China.

DEAR MS. JEFFERSON:

In your letter dated June 16, 2006, on behalf of M.Z.B. Accessories LLC, you requested a tariff classification ruling.

The submitted sample is identified as "Barbie Fairytopia Great Smile Set," Item # Style's CBE10109. The item is comprised of a toothbrush holder with a mirror attached, 2 toothbrushes and a rinse cup, all made of plastic. The toothbrush holder is decorated with flowers and a butterfly and the rinse cup features a depiction of three "Barbie" fairies. The "Barbie Fairytopia Great Smile Set" is packaged for retail sale and is intended for children ages 3 and up.

The Explanatory Notes to the Harmonized Tariff System provide guidance in the interpretation of the Harmonized Commodity Description and Coding System at the international level. Explanatory Note X to GRI 3(b) provides that the term "goods put up in sets for retail sale" means goods that: (a) consist of at least two 2 different articles which are, *prima facie*, classifiable in different headings; (b) consist of 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. Goods classifiable under GRI 3(b) are classified as if they consisted of the material or component which gives them their essential character, which may be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the article. The Barbie Fairytopia Great Smile Set is a set for tariff classification purposes, with the essential character imparted by the toothbrushes.

The applicable subheading for the Barbie Fairytopia Great Smile Set will be 9603.21.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Toothbrushes, including dental-plate brushes." The rate of duty will be Free.

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

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

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

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT E]

HQ H123519

CLA-2 OT:RR:CTF:TCM H123519 LWF

CATEGORY: Classification

TARIFF NO.: 3924.90.56

Ms. CHRISTINA YUN
DIRECTOR OF OPERATIONS/LOGISTICS
M.Z. BERGER & COMPANY
29-76 NORTHERN BLVD., 4th FLOOR
LONG ISLAND CITY, NY 11101

RE: Revocation of New York Ruling Letter N047570, dated December 30, 2008; Revocation of New York Ruling Letter N034382, dated August 1, 2008; Revocation of New York Ruling Letter N021284, dated January 2, 2008; Revocation of New York Ruling Letter M84609, dated June 27, 2006; Classification of retail packages containing oral hygiene articles and, alternatively, oral hygiene articles packaged with a plastic toy

DEAR Ms. YUN:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered three New York Ruling Letters (NY) issued to M.Z. Berger & Company ("MZB"). In NY N047570, dated December 30, 2008, CBP determined that various "Splendid Smile Sets," each consisting of a plastic toothbrush holder, toothbrushes, plastic rinse cup, and a plastic toy, were classified as a set in subheading 9603.21.00, Harmonized Tariff Schedule of the United States (HTSUS), which provides for, "Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorized, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees): Toothbrushes, shaving brushes, hair brushes, nail brushes, eyelash brushes and other toilet brushes for use on the person, including such brushes constituting parts of appliances: Toothbrushes, including dental-plate brushes." Similarly, in NY N034382 and NY N021284, issued to MZB on August 1, 2008 and January 2, 2008, respectively, CBP classified substantially similar merchandise as sets under subheading 9603.21.00, HTSUS. CBP has determined that NY N047570, N034382, and N021284 are incorrect. Accordingly, for the reasons set forth below, CBP intends to revoke these rulings.¹

CBP also intends to revoke NY M84609, issued to JAV International, Inc. on June 27, 2006. In NY M84609, CBP determined that merchandise consisting of a plastic toothbrush holder with a mirror attached, two toothbrushes, and a rinse cup was classified as a set under subheading 9603.21.00, HTSUS. CBP has determined that NY M84609 is incorrect and, for the reasons set forth below, intends to revoke the ruling.

FACTS:

In NY N047570, N034382, and N021284, CBP described the merchandise at issue as various models of the "Splendid Smile Set" and "Great Smile Set"

¹ In reaching this decision, CBP has considered information and photographs of the merchandise submitted by you on behalf of MZB, via electronic communication dated August 7, 2012.

for children, each package consisting of “two toothbrushes, a cup holder, and a plastic toy.” However, based on information and photographs submitted by MZB, via electronic communication dated August 7, 2012, the merchandise previously classified in NY N047570, N034382, and N021284 is appropriately described as consisting of a cartoon-themed plastic toothbrush holder, two plastic toothbrushes, a plastic rinse cup, and a plastic toy. The shape and appearance of the individual articles in each model resemble animated characters from cartoon films and television entertainment, and an example of the subject merchandise appears in Fig. 1 below. The merchandise is packaged for retail sale and is intended for use by children ages three and older.



Figure 1, “Piston Cup Smile Set”

In contrast to the merchandise at issue in NY N047570, N034382, and N021284, which included the consideration of a plastic toy, the “Barbie Fairytopia Great Smile Set” classified in NY M84609 did not include a toy. In M84609, CBP described the “Barbie Fairytopia Great Smile Set,” as follows:

The submitted sample is identified as “Barbie Fairytopia Great Smile Set, Item # Styles CBE10109. The item is comprised of a toothbrush holder with a mirror attached, 2 toothbrushes and a rinse cup, all made of plastic. The toothbrush holder is decorated with flowers and a butterfly and the rinse cup features a depiction of three “Barbie” fairies. The “Barbie Fairytopia Great Smile Set” is packaged for retail sale and is intended for children ages 3 and up.

* * * * *

ISSUE:

Whether the merchandise is classified as a set for tariff purposes, or separately under their own individual headings, in heading 3924, HTSUS, as hygienic articles of plastic, heading 9503, HTSUS, as toys, or heading 9603, HTSUS, as brushes.

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:

3924	Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics:
3924.10	Tableware and kitchenware:
3924.10.40	Other
3924.90	Other:
3924.90.56	Other
	* * * * *
9503.00.00	Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof
	* * * * *
9603	Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorized, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees):
	Toothbrushes, shaving brushes, hair brushes, nail brushes, eyelash brushes and other toilet brushes for use on the person, including such brushes constituting parts of appliances:
9603.21.00	Toothbrushes, including dental-plate brushes
	* * * * *

The merchandise classified in NY N047570, N034382, N021284, and M84609 consists of individual articles that are, *prima facie*, classifiable in different headings and packaged together for retail sale. There is no dispute that heading 3924, HTSUS, describes the plastic toothbrush holder and plastic rinse cup. *See* Headquarters Ruling Letter (HQ) H040737, dated July 23, 2009. Similarly, there is no dispute that heading 9603, HTSUS, describes the toothbrushes, and in the case of rulings NY N047570, N034382, and N021284, heading 9503, HTSUS, describes the plastic toys included in the retail packages.² Consequently, because the individual articles are, *prima*

² Unlike the plastic "McQueen Car" at issue in HQ H040737, the plastic toys classified in NY N047570, N034382, and N021284 do not feature circular depressions on the top of the toys in which a rinse cup may be secured for storage. Consequently, the instant plastic toys cannot be considered function cup holders and therefore, are not described by the terms of heading 3924, HTSUS.

facie, classifiable in separate headings, consideration is given to classification pursuant to GRI 3.

GRI 3(b) provides, in pertinent part, as follows:

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

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

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. While not legally binding or dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-90, 54 Fed. Reg. 35127 (August 23, 1989).

GRI 3(b) states that when imported merchandise is, *prima facie*, classifiable under two or more headings, “[g]oods 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 term “set” in GRI 3(b) carries specific meaning and is defined in detail by EN (X) to GRI 3(b), which states:

- (X) For the purposes 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).

* * * * *

As detailed above, in the case of the toothbrush holders, toothbrushes, rinse cups, and toys considered in NY N047570, N034382, N021284, there is no dispute that the individual component articles satisfy two of the three criteria for “retail sets” found in GRI 3(b) EN (X). Consistent with GRI 3(b) EN (X)(a) and (c), the articles are, *prima facie*, classifiable in different headings, and likewise, are put up in a manner suitable for sale directly to users without repacking. However, due to the presence of a plastic toy, CBP finds that the merchandise presented in NY N047570, N034382, and N021284 is not put up to meet a particular need or specific activity for the purposes of GRI 3(b) and therefore, cannot be classified as a retail set.

The courts have provided guidance on what constitutes a “products or articles put up together to meet a particular need or carry out a specific activity” for purposes of classification pursuant to GRI 3(b). *See Estee Lauder, Inc. v. United States*, 815 F. Supp. 2d 1287, 1294 (Ct. Int’l Trade 2012). In

Estee Lauder, the Court of International Trade (CIT) considered the classification of several cosmetic items put up together for retail sale, and concluded that because each item was specifically related to makeup and possessed an identifiable, individual function that was intended for use together or in conjunction with one another for the single activity of putting on makeup, the cosmetic items met the particular need of makeup application and were therefore properly classified pursuant to GRI 3(b). *Id.* at 1295–96. Noting that each of the exemplars provided in the ENs consist of individual components that are used together or in conjunction with another for a single purpose or activity, the CIT agreed that “for goods put up together to meet the ‘particular need’ or ‘specific activity’ requirement and thereby be deemed a set, they must be so related as to be clearly intended for use together or in conjunction with one another **for a single purpose or activity.**” *Id.* (citing with approval CBP’s *Informed Compliance Publication*, “Classification of Sets”, 12 (2004)).³

Here, CBP finds that the articles at issue in NY N047570, N034382, and N021284 are not intended for use in a single purpose or activity. Specifically, the toothbrush holders, rinse cups, and toothbrushes are put up for the specific activity of oral hygiene, whereas the toys are to be used for the separate and distinct activity of amusement and entertainment. Consequently, CBP concludes that the articles are not so related as to be clearly intended for use with one another for a single purpose or activity and do not satisfy the “particular need” or “specific activity” description provided by GRI 3(b) EN X(b). *Estee Lauder*, 815 F. Supp. 2d at 1295. Accordingly, the articles at issue in NY N047570, N034382, and N021284 are not GRI 3 “retail sets” and must be classified separately, under the tariff provisions applicable to each of the individual articles.

In contrast to the merchandise at issue in NY N047570, N034382, and N021284, the “Barbie Fairytopia Great Smile Set” in NY M84609 does not contain a plastic toy, and instead, consists only of “a toothbrush holder with a mirror attached, two toothbrushes and a rinse cup, all made of plastic.” As such, unlike the merchandise at issue in NY N047570, N034382, and N021284, the articles of the “Barbie Fairytopia Great Smile Set” are not to be used for the separate and distinct activity of amusement and entertainment. Instead, the merchandise at issue in NY M84609 includes separate articles packaged for retail sale that are, *prima facie*, classified in different headings, and which are also put up together for the single “particular need” or “specific activity” of children’s oral hygiene. Consequently, CBP finds that the “Barbie Fairytopia Great Smile Set” meets the definition of a GRI 3(b) retail set.

³ Equally important, however, the CIT in *Estee Lauder* warned against conflating the GRI 3(b) requirements for composite goods (i.e., whether the items are “mutually complementary” or “adapted to one another”), with the requirements for the GRI 3(b) retail sets analysis (do the goods “meet a particular need” or “carry out a specific activity?”). *Id.* at 23 (citing ENs (IX) and (X) to GRI 3(b)), stating:

Requiring set goods to be mutually complementary or adapted to one another effectively joins the Explanatory Notes requirements for composite goods to the Explanatory Notes describing retail sets. This conflation of requirements is unsupported in the statute or the Explanatory Notes. *Id.*

Under GRI 3(b), sets must be classified according to the material or component which gives them their essential character. 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). 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 *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). Consequently, CBP finds that an essential character analysis will vary from product to product.

In determining the essential character of the “Barbie Fairytopia Great Smile Set,” CBP notes that the merchandise consists of a toothbrush holder, two plastic toothbrushes, and a plastic rinse cup. The toothbrush holder, toothbrushes, and plastic rinse cup are each used for the purpose of oral hygiene; however, CBP concludes that the toothbrush holder predominates the set by its role in relation to the use of the goods, as well as by bulk, weight, value, and visual appearance. Importantly, CBP observes that the toothbrush holder provides the overall structure of the set by serving as a surface on which a consumer can store the toothbrushes and rinse cup. Unlike toothbrushes that are replaced periodically after normal use, the toothbrush holder is not meant to be discarded. Furthermore, the toothbrush holder is the largest article included with the “Barbie Fairytopia Great Smile Set.” Moreover, the toothbrush holders feature a large, molded plastic likeness of a cartoon character. The characters on the holders are rendered in detail and serve as the primary decoration for the set. By contrast, the toothbrushes and rinse cups associated with the sets are merely accented with simple text or graphics consistent with the motif of the set. Consequently, in comparing the holder, toothbrushes, and rinse cup of the various sets, we conclude that the toothbrush holder imparts the “Barbie Fairytopia Great Smile Set” of NY M84609 with its essential character, pursuant to GRI 3(b). As the plastic toothbrush holders are individually classified in heading 3924, HTSUS, classification of the “Barbie Fairytopia Great Smile Set” in heading 3924, HTSUS, as hygienic articles of plastic, is appropriate.

Our analysis of the instant facts is consistent with NY M83454, dated May 18, 2006, in which CBP considered the essential character of similar cartoon-themed toothbrush holder sets that contained a toothbrush and rinse cup. In that ruling, CBP concluded that although the product’s cartoon decorations or accessories may be amusing to the user, the merchandise’s principal function was that of a toothbrush holder for oral hygiene. Likewise, CBP did not find that the toothbrush imparted the merchandise with its essential character, but instead concluded that the toothbrush holders and cups, together, imparted the essential character to the set and classified the merchandise in heading 3924, HTSUS, which provides for “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics.”

HOLDING:

By application of GRI 1, the articles at issue in NY N047570, N034382, and N021284, each consisting of a plastic toothbrush holder, plastic rinse cup, toothbrushes, and plastic toy, are classified separately, under the tariff provision applicable to the individual articles. The plastic toothbrush holder is

classified in heading 3924, HTSUS, specifically in subheading 3924.90.56, HTSUS, which provides for, “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Other: Other.” The 2014 column one, general rate of duty for subheading 3924.90.56, HTSUS, is 3.4% *ad valorem*. The plastic rinse cup is classified in heading 3924, HTSUS, specifically in subheading 3924.10.40, HTSUS, which provides for, “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Tableware and kitchenware: Other.” The 2014 column one, general rate of duty for subheading 3924.10.40, HTSUS, is 3.4% *ad valorem*. The plastic toy is classified in heading 9503, HTSUS, which provides for, “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof.” The 2014 column one, general rate of duty for subheading 9503.00.00, HTSUS, is *free*. The toothbrushes are classified in heading 9603, HTSUS, specifically in subheading 9603.21.00, HTSUS, which provides for, “Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorized, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees): Toothbrushes, shaving brushes, hair brushes, nail brushes, eyelash brushes and other toilet brushes for use on the person, including such brushes constituting parts of appliances: Toothbrushes, including dental-plate brushes.” The 2014 column one, general rate of duty for subheading 9603.21.00, HTSUS, is *free*.

By application of GRI 3(b), the “Barbie Fairytopia Great Smile Set” at issue in NY M86454, consisting of a plastic toothbrush holder, plastic rinse cup, and toothbrushes, is classified in heading 3924, HTSUS; specifically, it is classified in subheading 3924.90.56, HTSUS, which provides for, “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Other: Other.” The 2014 column one, general rate of duty for subheading 3924.90.56, HTSUS, is 3.4% *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 <http://www.usitc.gov>.

EFFECT ON OTHER RULINGS:

In accordance with the above analysis, NY N047570, dated December 30, 2008, NY N034382, dated August 1, 2008, NY N021284, dated January 2, 2008, and NY M84609, dated June 27, 2006, are hereby **REVOKED**.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**NOTICE OF ISSUANCE OF FINAL DETERMINATION
CONCERNING CERTAIN CARBON DIOXIDE SAMPLING
LINE PRODUCTS**

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 carbon dioxide sampling line products known as “FilterLine” and “CapnoLine.” Based upon the facts presented, CBP has concluded that Israel is the country of origin for purposes of U.S. Government procurement.

DATES: The final determination was issued on July 8, 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 August 13, 2014.

FOR FURTHER INFORMATION CONTACT: Grace A. Kim, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202) 325–7941.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on July 8, 2014 pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain carbon dioxide sampling line products known as “FilterLine” and “CapnoLine,” which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H248851, was issued 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 assembly operations performed in China, using Israeli components, do not substantially transform the sampling line components. Therefore, the country of origin is Israel for purposes of U.S. Government procurement.

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

determination in the **Federal Register**.

Dated: July 8, 2014.

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

Attachment

HQ H248851

July 8, 2014

OT:RR:CTF:VS H248851 GaK

CATEGORY: Origin

MICHELLE L. BUTLER
HYMAN, PHELPS & McNAMARA, P.C.
700 13TH STREET NW., SUITE 1200
WASHINGTON, DC 20005.

RE: U.S. Government Procurement; Country of Origin of FilterLine Set and CapnoLine; Substantial Transformation

DEAR Ms. BUTLER:

This is in response to your letter, dated November 6, 2013, requesting a final determination on behalf of Oridion Medical 1987 Ltd. (“Oridion”), pursuant to subpart B of part 177 of the U.S. Customs and Border Protection (“CBP”) Regulations (19 CFR part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (“TAA”), as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government. Your letter was forwarded to this office by the National Commodity Specialist Division on December 12, 2013. By letters dated February 19, May 15, and May 28, 2014, additional explanation was provided for our consideration in connection with the request for a final determination.

This final determination concerns the country of origin of Oridion’s carbon dioxide sampling lines, specifically the FilterLine Set Adult/Pediatric (“FilterLine”) and the Smart CapnoLine H Plus O2 (“CapnoLine”). We note that as a foreign manufacturer of the products at issue, Oridion is a party-at-interest within the meaning of 19 CFR § 177.22(d)(1) and is entitled to request this final determination. Photographs were submitted with your request.

FACTS

The products at issue are referred to as carbon dioxide (“CO2”) sampling lines: medical devices designed to carry a patient’s breath to a monitor. Each sampling line includes tubing, a means of connecting to the patient, referred to as the patient interface, and a means of connection to a monitor.

These sampling lines are classified into two product families: (1) The Filterline set sampling lines for intubated patients, designed to connect to ventilator tubing carrying oxygenated air from a ventilator to a patient through an airway adaptor, and (2) the Capnoline sets for non-intubated patients, which provide a nasal or oral/ nasal “interface” for the patient.

FILTERLINE

The components of the FilterLine include:

- (1) CO2 tube (manufactured in Israel and cut to length in China),
- (2) Universal Airway Adapter (manufactured in China), and

(3) Quick Seal Connector (itself assembled in China using an Israeli origin Quick Seal Filter Housing, Chinese origin Hollofiber and an end connector called the Quick Seal LD Orange Golden).

The Hollofiber is a fiber membrane filter that prevents liquids, particles, or bacteria from reaching the monitor which can contaminate the breath sample. The Hollofiber is placed inside the Quick Seal Filter Housing, which is connected to the Quick Seal LD Orange Golden. The Universal Airway Adapter is connected to the CO₂ tube and the Quick Seal Connector is adhered to the other end of the CO₂ tube.

The CO₂ tube delivers the patient's breath to the monitor, which you claim is the essential function of the finished product. The tube is of a patented design. In order to prevent blockage from mucus and blood, the tube must be able to handle moisture in a very precise manner. In addition, the tube's diameter cannot be too narrow, which would increase the likelihood of blockage, or too wide, which would create a delay in measurements. The FilterLine is assembled in China. It is then sent to Israel for quality control, final inspections, and packaging.

CAPNOLINE

THE COMPONENTS OF THE CAPNOLINE INCLUDE

- (1) CO₂ tube (manufactured in Israel and cut to length in China),
- (2) Cannula, which is connected to the patient (manufactured in Israel),
- (3) Quick Seal Connector (itself assembled in China using an Israeli origin Quick Seal Filter Housing, Chinese origin Hollofiber and an end connector called the Quick Seal LD Yellow Golden),
- (4) O₂ tube (manufactured in Israel and cut to length in Israel),
- (5) Miscellaneous tubing (manufactured in Israel),
- (6) Nafion dryer, used to reduce the humidity of the breath (manufactured in the U.S.),
- (9) connector/slides to hold the O₂ and CO₂ tubing in place (manufactured in China).

In China, the cannula is connected to the Nafion dryer on the right side and to the tubing on the left side. The other end of the Nafion dryer is attached to the CO₂ tube. The CO₂ tube and the miscellaneous tubing from the Cannula are held together with a connector/slide and connected to the O₂ tube. Then, the Quick Seal Connector, is attached to the end of the CO₂ tube.

As with the FilterLine, the CO₂ tube and in this case the O₂ tube deliver the patient's breath to the monitor, which you claim is the essential function of the finished product. The finished CapnoLine is sent to Israel for quality control and packaging.

LAW AND ANALYSIS:

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

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 or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 CFR § 177.22(a).

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. No one factor is decisive, the key 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 (Ct. Int'l Trade 1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. *See* C.S.D. 80–111, C.S.D. 85–25, C.S.D. 89–110, C.S.D. 89–118, C.S.D. 90–51, and C.S.D. 90–97. Additionally factors such as the resources expended on product design and development, extent and nature of post-assembly inspection and testing procedures, and the degree of skill required during the actual manufacturing process may be relevant when determining whether a substantial transformation has occurred.

In HQ 560613, dated October 28, 1997, CBP held that U.S.-origin components were not substantially transformed in Ireland when made into a pregnancy test kit. The test kit was made from the following U.S. components: top and bottom housing, paper, antibody, wick, laminate, and nitrocellulose. In addition, a splash guard from Ireland and rayon from Germany was used. The critical components of the pregnancy test kit were found to be the three U.S.-origin antibodies. CBP recognized that the U.S.-origin components imparted the essential character of the pregnancy test kit and that the simple assembly of placing the antibodies onto the rayon membrane, and subsequent assembly of the strips into a plastic housing did not result in a substantial transformation.

FILTERLINE

You believe that the country of origin of the FilterLine is Israel because it is the country in which the CO₂ tube was manufactured. We agree that the CO₂ tube performs the essential function of the finished product, which is the delivery of breath for monitoring the CO₂ level in a patient's breath. The assembly process in China consists of cutting to length and attaching the CO₂ tube with four other components from Israel and China. Under the described assembly process, the CO₂ tube is attached to other components that facilitate its function and it does not lose its individual identity. Consistent with HQ 560613, we find that the Israel-origin CO₂ tube is not substantially transformed by the cutting to length and assembly operations per-

formed in China to produce the FilterLine. We conclude, based upon these specific facts, that the country of origin of the FilterLine for purposes of U.S. Government procurement is Israel.

CAPNOLINE

You believe that the country of origin of the CapnoLine is Israel because it is the country in which the CO₂ tube and O₂ tube were manufactured. As with the FilterLine, the CO₂ tube and O₂ tubes in the CapnoLine perform the essential function, which is the delivery of breath for monitoring the CO₂ level in a patient's breath while delivering O₂ to the patient. The assembly process in China consists of cutting to length and connecting the CO₂ tube to several different components from Israel, U.S. and China by inserting components and adhering them with a solvent. The CO₂ tube is not physically altered, aside from being cut to length. Based on the information before us, and consistent with HQ 560613, we find that the Israel-origin CO₂ tube and the O₂ tube impart the essential character of the CapnoLine and is not substantially transformed by the assembly operations performed in China. We note that the Cannula and Quick Seal Filter Housing are also of Israeli origin. Therefore, based upon these specific facts, the country of origin of the CapnoLine for purposes of U.S. Government procurement is Israel.

HOLDING

The FilterLine and the CapnoLine are not substantially transformed when they are assembled in China with Israeli and U.S. components. As a result, the country of origin of Oridion's sampling lines, specifically the FilterLine and the CapnoLine, for purposes of U.S. Government procurement is Israel.

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

Sincerely,

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

[Published in the Federal Register, July 14, 2014 (79 FR 40772)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:
NAFTA Regulations and Certificate of Origin**

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: NAFTA Regulations and Certificate of Origin. 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 11, 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 oir_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 28532) on May 16, 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 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: NAFTA Regulations and Certificate of Origin.

OMB Number: 1651-0098.

Form Number: CBP Forms 434, 446, and 447.

Abstract: On December 17, 1992, the U.S., Mexico and Canada entered into an agreement, "The North American Free Trade Agreement" (NAFTA). The provisions of NAFTA were adopted by the U.S. with the enactment of the North American Free Trade Agreement Implementation Act of 1993 (PL. 103-182).

CBP Form 434, *North American Free Trade Certificate of Origin*, is used to certify that a good being exported either from the United States into Canada or Mexico or from Canada or Mexico into the United States qualifies as an originating good for purposes of preferential tariff treatment under NAFTA. This form is completed by exporters and/or producers and furnished to CBP upon request. CBP Form 434 is provided for by 19 CFR 181.11 and is accessible at: <http://www.cbp.gov/sites/default/files/documents/CBP%20Form%20434.pdf>.

CBP Form 446, *NAFTA Verification of Origin Questionnaire*, is a questionnaire that CBP personnel use to gather sufficient information from exporters and/or producers to determine whether goods imported into the United States qualify as originating goods for the purposes of preferential tariff treatment under NAFTA. CBP Form 446 is provided for by 19 CFR 181.72 and is accessible at: <http://www.cbp.gov/sites/default/files/documents/CBP%20Form%20446.pdf>.

CBP Form 447, *North American Free Trade Agreement Motor Vehicle Averaging Election*, is used to gather information required by 19 CFR 181 Appendix, Section 11, (2) "Information Required When Producer Chooses to Average for Motor Vehicles". This form is provided to

CBP when a manufacturer chooses to average motor vehicles for the purpose of obtaining NAFTA preference. CBP Form 447 is accessible at: <http://www.cbp.gov/sites/default/files/documents/CBP%20Form%20447.pdf>.

Current Actions: This submission is being made to extend the expiration date for CBP Forms 434, 446, and 447.

Type of Review: Extension (without change).

Affected Public: Businesses.

Form 434, NAFTA Certificate of Origin:

Estimated Number of Respondents: 40,000.

Estimated Number of Responses per Respondent: 3.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 30,000.

Form 446, NAFTA Questionnaire:

Estimated Number of Respondents: 400.

Estimated Number of Responses per Respondent: 1.

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 300.

Form 447, NAFTA Motor Vehicle Averaging Election:

Estimated Number of Respondents: 11.

Estimated Number of Responses per Respondent: 1.28.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 14.

Dated: July 7, 2014.

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

[Published in the Federal Register, July 11, 2014 (79 FR 40128)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Record of Vessel Foreign Repair or Equipment Purchase

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: Record of Vessel Foreign Repair or Equipment Purchase (CBP Form 226). 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 11, 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 oir_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 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: Record of Vessel Foreign Repair or Equipment Purchase.

OMB Number: 1651-0027.

Form Number: CBP Form 226.

Abstract: 19 U.S.C. 1466(a) provides for a 50 percent *ad valorem* duty assessed on a vessel master or owner for any repairs, purchases, or expenses incurred in a foreign country by a commercial vessel registered in the United States. CBP Form 226, Record of Vessel Foreign Repair or Equipment Purchase, is used by the master or owner of a vessel to declare and file entry on equipment, repairs, parts, or materials purchased for the vessel in a foreign country. This information enables CBP to assess duties on these foreign repairs, parts, or materials. CBP Form 226 is provided for by 19 CFR 4.7 and 4.14 and is accessible at: <http://www.cbp.gov/sites/default/files/documents/CBP%20Form%20226.pdf>.

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours or to the information collected on Form 226.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 11.

Estimated Number of Total Annual Responses: 1,100.

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 825.

Dated: July 7, 2014.

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

[Published in the Federal Register, July 11, 2014 (79 FR 40127)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Automated Clearinghouse

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: Automated Clearinghouse. 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 11, 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 oir_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 26445) on May 8, 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 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: Automated Clearinghouse.

OMB Number: 1651-0078.

Form Number: CBP Form 400.

Abstract: The Automated Clearinghouse (ACH) allows participants in the Automated Broker Interface (ABI) to transmit daily statements, deferred tax, and bill payments electronically through a financial institution directly to a CBP account. ACH debit allows the payer to exercise more control over the payment process. In order to participate in ACH debit, companies must complete CBP Form 400, *ACH Application*. Participants also use this form to notify CBP of changes to bank information or contact information. The ACH procedure is authorized by 19 U.S.C. 1202, and provided for by 19 CFR 24.25. CBP Form 400 is accessible at <http://www.cbp.gov/sites/default/files/documents/CBP%20Form%20400.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: 1,443.

Estimated Number of Annual Responses per Respondent: 2.

Estimated Number of Total Annual Responses: 2,886.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 240.

Dated: July 7, 2014.

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