

U.S. Customs and Border Protection



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

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

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

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of August 29, 2013. This notice modifies a notice previously published on July 9, 2014 in the **Federal Register** (79 FR 38942) by including one additional laboratory method in the list of accredited methods, specifically ASTM D 3606.

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

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

SUPPLEMENTARY INFORMATION:

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

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

This notice modifies a notice previously published on July 9, 2014 in the **Federal Register** (79 FR 38942) by including one additional laboratory method in the list of accredited methods, specifically ASTM D 3606. Intertek USA, Inc. is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-04	ASTM D 95	Standard test method for water in petroleum products and bituminous materials by distillation.
27-06	ASTM D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-08	ASTM D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27-13	ASTM D 4294	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry.
27-14	ASTM D 2622	Standard Test Method for Sulfur in Petroleum Products (X-Ray Spectrographic Methods).
27-48	ASTM D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27-50	ASTM D 93	Standard test methods for flash point by Pensky-Martens Closed Cup Tester.
27-54	ASTM D 1796	Standard test method for water and sediment in fuel oils by the centrifuge method (Laboratory procedure).
27-57	ASTM D 7039	Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X-Ray Fluorescence Spectrometry.

CBPL No.	ASTM	Title
27–58	ASTM D 5191	Standard Test Method For Vapor Pressure of Petroleum Products (Mini Method).
N/A	ASTM D 1319	Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption.
N/A	ASTM D 4815	Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C1 to C4 Alcohols in Gasoline by Gas Chromatography.
N/A	ASTM D 5453	Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Spark Ignition Engine Fuel, Diesel Engine Fuel, and Engine Oil by Ultraviolet Fluorescence.
N/A	ASTM D 7042	Standard Test Method for Dynamic Viscosity and Density of Liquids by Stabinger Viscometer (and the Calculation of Kinematic Viscosity).
N/A	ASTM D 5599	Standard Test Method for Determination of Oxygenates in Gasoline by Gas Chromatography and Oxygen Selective Flame Ionization Detection.
N/A	ASTM D 3606	Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography.

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

Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://www.cbp.gov/sites/default/files/documents/gaulist_3.pdf.

Dated: August 28, 2014.

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

ACCREDITATION OF INTERTEK USA, INC., AS A COMMERCIAL LABORATORY

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

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

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc., has been accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of April 29, 2014.

EFFECTIVE DATE: The accreditation of Intertek USA, Inc., as commercial laboratory became effective on April 29, 2014. The next triennial inspection date will be scheduled for April 2017.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION:

Notice is hereby given pursuant to 19 CFR 151.12, that Intertek USA, Inc., 15602 Jacintoport Blvd., Houston, TX 77015, has been accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12.

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

CBPL No.	ASTM	Title
27-11	D 445	Standard test method of kinematic viscosity of transparent and opaque liquids.
27-48	D 4052	Standard test method for density and relative density of liquids by digital density meter.

Anyone wishing to employ this entity to conduct laboratory analyses should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border

Protection to conduct the specific test requested. Alternatively, inquiries regarding the specific test that this entity is accredited to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>

Dated: September 2, 2014.

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

[Published in the Federal Register, September 8, 2014 (79 FR 53206)]



GENERAL NOTICE

19 CFR PART

REVOCATION OF A RULING LETTER RELATING TO THE TARIFF CLASSIFICATION OF BOTOX® COSMETIC

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking one ruling letter pertaining to the tariff classification of Botox® Cosmetic, under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on April 30, 2013, in Volume 48, Number 17, of the *Customs Bulletin*. No comments were received in response to the proposed notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 24, 2014.

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

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (Title VI), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended and related laws. Two new concepts which emerge from the law are “informed compliance” and “shared responsibility.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), 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 48, Number 17, on April 30, 2014, proposing to revoke New York Ruling Letter (NY) NY 209720, dated April 9, 2012, and proposing to revoke any treatment accorded to substantially identical transaction. No comments were received in response to the proposed action.

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 his agents for importations of merchandise subsequent to this notice.

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY 209720 and is revoking any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter H227295. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: August 6, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

HQ227295

August 6, 2014

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

CATEGORY: Classification

TARIFF NO.: 3002.90.51

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

RE: Revocation of N 209720 dated April 9, 2012; BOTOX® Cosmetic

DEAR Ms. CROSBY:

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

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is revoking a ruling concerning the classification of BOTOX® Cosmetic, 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 revocation was published on April 30, 2014 in Volume 48, Number 17, of the *Customs Bulletin*. No comments were received in opposition to the proposed notice.

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

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

Currently, BOTOX® is classified in 3002.90.51, HTSUS, which provides for "Human blood; ...; vaccines, toxins, cultures, micro-organisms (excluding yeasts) and similar products: Other; Other: Other."¹ BOTOX® Cosmetic is classified in 3304.99.50, HTSUS, which provides for Beauty or make-up

¹ See NY H89591

preparations and preparations for the care of the skin (other than medications), including sunscreen or sun tan preparations.²

FACTS:

Each vial of BOTOX® contains either 100 Units of Clostridium botulinum type A neurotoxin complex, 0.5mg of Albumin Human, and 0.9 mg of sodium chloride; or 200 Units of Clostridium botulinum type A neurotoxin complex, 1 mg of Albumin Human, and 1.8 mg of sodium chloride in a sterile, vacuum-dried form without a preservative. Each vial of BOTOX® Cosmetic contains either 50 Units of Clostridium botulinum type A neurotoxin complex, 0.25 mg of Albumin Human, and 0.45 mg of sodium chloride; or 100 units of Clostridium botulinum type A neurotoxin, 0.5 mg of Albumin Human, and 0.9 mg of sodium chloride in a sterile, vacuum-dried form without a preservative.

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

ISSUE:

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

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

- | | |
|------|--|
| 3002 | Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera, other blood fractions and immunological products, whether or not modified or obtained by means of biotechnological processes; vaccines, toxins , cultures of micro-organisms (excluding yeasts) and similar products: [Emphasis added] |
|------|--|

² See NY 209720

3304 Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations:

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

This chapter does not cover:

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

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

The EN to heading 30.02 states, in pertinent part:

This heading covers:

(D) Vaccines, **toxins**, cultures of micro-organisms (excluding yeasts) and similar products. [Emphasis added]

These products include:

(2) **Toxins** (poisons), toxoids, crypto-toxins and anti-toxins. [Emphasis added]

The EN to heading 33.04 states, in pertinent part:

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

This part covers:

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

prophylactic effect against acne; toilet vinegars which are mixtures of vinegars or acetic acid and perfumed alcohol.

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

BOTOX® Cosmetic, as well as its identical sister-product BOTOX®, contain botulinum type A neurotoxin complex, albumin human, and sodium chloride. In layman's terms, that is a mixture comprised of a toxin with small amounts of a protein and salt.³ At the outset, we must determine if the subject mixture is also a "preparation" as it is understood by the HTSUS.

The term "preparation" is not defined in the HTSUS, but "To assist...in ascertaining the common meaning of a tariff term, the court may rely upon its own understanding of the terms used, and it may consult lexicographic and scientific authorities, dictionaries, and other reliable information sources." *Brookside Veneers, Ltd. v. United States*, 847 F.2d 786, 789, 6 Fed. Cir. 121, 125 (Fed. Cir) cert. denied, 488 U.S. 943 (1988). CBP has previously done exactly that with the term "preparation" and have determined that the relevant definition of "preparation," found in the Oxford English Dictionary, 2281 (compact ed. 1987), is "6. A substance specially prepared or made up for its appropriate use or application, e.g., as food or medicine, or in the arts or sciences." Further, Webster's Third New International Dictionary, 1790 (unabridged 1986), states: "5. Something that is prepared: something made, equipped, or compounded for a specific purpose." In the Random House Unabridged Dictionary 2d ed. (1993) "preparation" is, in pertinent part: "5. Something prepared, manufactured or compounded: a special preparation for sunbathers." Taking these definitions and usages together, it is clear that each specifically indicate that a "preparation" is something prepared for a designated purpose or items put up together for a specific use. Thus, under the common meaning of the term, the subject merchandise is something created for a specific purpose and is a "preparation" as it is understood by the HTSUS.⁴

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

The exemplars in (A)(3) to heading 33.04, HTSUS, are all products used to enhance, clean, change, or improve the outer appearance, texture or appeal of the user's skin. "Beauty" and "make-up" or cosmetics are not defined in the HTSUS. However, Merriam-Webster defines these concepts as: (1) of, relating to, or making for beauty especially of the complexion; (2) done or made for the

³ Albumin human is an abundant water soluble protein found in human plasma that assists with transporting drugs into a patient by mixing with the diluent prior to administration. It is not an active ingredient. See <http://medical-dictionary.thefreedictionary.com/albumin+human>

⁴ See also HQ 965977, dated December 19, 2002 (classifying bulk cosmetic preparations; lipstick)

sake of appearance: as (a) correcting defects especially of the face.⁵ Without getting into whether wrinkles are beautiful in the eye of the beholder, BOTOX® Cosmetic is not a “beauty product” because it does not necessarily “beautify” the user by enhancing or reacting with the user’s skin. Neither is it “make-up” as it is understood by the exemplars of EN (A)(3), as the powders, creams, lotions or jellies listed are applied topically to enhance, augment, improve or change the user’s skin so as to create a different outward appearance. BOTOX® Cosmetic is not applied topically to the skin at all. It is not created for or marketed for the care of the skin. It does not have a direct effect on the skin itself. The product is injected intramuscularly, or into the muscles, where the toxic effects are experienced upon absorption. In the case of BOTOX® Cosmetic, those effects include the softening of the muscles which may give the appearance that wrinkles in the skin are lessened. As such, the subject merchandise is not a beauty or make-up preparation or preparation for the care of the skin, as is described by EN (A)(3) and heading 33.04, HTSUS.

Furthermore, CBP has already distinguished between similar products that are instructive in the instant case. In NY R04609, dated September 5, 2006, CBP determined that Juvéderm™ Dermal Filler, a sterile gel implant put up in pre-filled syringe containing a viscoelastic, transparent hyaluronic acid gel, designed and meant to be injected into the skin, is a skin care preparation indicated for use in the correction of facial wrinkles, acne scars and other soft issue contour deformities, and it is classified under heading 3304, HTSUS. It is also specifically provided for in EN (A)(3) as an “injectable intracutaneous gel for wrinkle elimination and lip enhancement (including those containing hyaluronic acid).” Contrast that item with the subject merchandise in NY N111260, dated July 6, 2010, where CBP classified Xeomin® a highly purified botulinum neurotoxin type A, intended for intramuscular injection for the treatment of cervical dystonia and blepharospasms in adults, under heading 3002, HTSUS. The subject merchandise in NY N111260 contains the same type of toxin as BOTOX® Cosmetic.

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

HOLDING:

Under the authority of GRI 1 via Note 1 to Chapter 30, HTSUS, and EN 30.02 and EN 33.04 the subject BOTOX® Cosmetic is a toxin and properly classifiable under subheading 3002.90.51, HTSUS. The duty rate is free.

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

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

EFFECT ON OTHER RULINGS:

NY 209720, dated April 9, 2012, is REVOKED.

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

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**REVOCATION AND MODIFICATION OF RULING LETTERS
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF CERTAIN LIGHT EMITTING
DIODE LIGHT BULBS**

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

ACTION: Notice of proposed revocation of ruling letters and treatment relating to tariff classification of certain light emitting diode (LED) light bulbs.

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 seven ruling letters and modifying one ruling letter, each relating to the tariff classification of certain light-emitting diode lamps 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. 26, on July 2, 2014. One comment was received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 24, 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 intends to revoke one ruling letter pertaining to the tariff classification of certain light emitting diode light bulbs. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) N233864, dated October 18, 2012, NY N231480, dated September 14, 2012, NY N221295, dated June 27, 2012, NY N210776, dated April 3, 2012, NY N163395, dated May 12, 2011, NY N162407, dated May 6, 2011, and NY N144675, dated February 11, 2011, and the modification of NY N119322, dated August 30, 2010, 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 N233864, CBP determined that the LR6C LED Lamp was classified in heading 9405, HTSUS, specifically 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 electric lamps and lighting fittings: Of base metal: Other”.

In NY N231480, CBP determined that the LED Night Light Bulb, was classified in heading 9405, HTSUS, specifically 9405.40.80, 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 electric lamps and lighting fittings: Other”.

In NY N221295, CBP determined that the two LED Light Bulbs, Model Nos. MT-69005S and MT-69002S, were classified in heading 9405, HTSUS, specifically 9405.40.80, HTSUS.

In NY N210776, CBP determined that the LED Replacement Bulb, Model No. MR16/3M4WW/FL/LED, was classified in heading 9405, HTSUS, specifically 9405.40.60, HTSUS.

In NY N163395, CBP determined that the Glass Replacement LED light bulb, Item No. H193099, was classified in heading 9405, HTSUS, specifically 9405.40.80, HTSUS.

In NY N162407, CBP determined that the LED Light Bulbs, Model Nos. LB08D830L0A and LB08D827L0A, were classified in heading 9405, HTSUS, specifically 9405.40.80, HTSUS.

In NY N144675, CBP determined that the PAR 38 LED Light Bulb was classified in heading 9405, HTSUS, specifically 9405.40.80, HTSUS.

In NY N119322, CBP determined that the four LED lamps, namely the LED A lamp, the LED MR16 lamp, the LED Par30 lamp, and LED T8 lamp, were classified in heading 9405, HTSUS. Specifically, the LED A lamp, the LED MR16 lamp, and the LED Par30 lamp were classified under subheading 9405.40.60, HTSUS, while the LED T8 Lamp was classified under subheading 9405.40.80, HTSUS.

It is now CBP’s position that the above identified LED lamps are properly classified in heading 8543, HTSUS, specifically under subheading 8543.70.70, HTSUS, which provides for “Electrical machines and apparatus, having individual functions, not specified or included

elsewhere in this chapter; parts thereof: Other machines and apparatus: Electric luminescent lamps”.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N233864, NY N231480, NY N221295, NY N210776, NY N163395, NY N162407, and NY N144675, and modifying NY N119322, in order to reflect the proper classification of the subject LED Lamps according to the analysis contained in Headquarters Ruling Letter (HQ) H237734 (Attachment). 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: August 6, 2014

GREG CONNOR

for

MYLES B. HARMON

Director

Commercial and Trade Facilitation Division

Attachments

HQ H237734

August 6, 2014

CLA-2 OT:RR:CTF:TCM H237734 AMM

CATEGORY: Classification

TARIFF NO.: 8543.70.70

Ms. LESLIE VAUGHN

TECHNICAL CONSUMER PRODUCTS, INC.

325 CAMPUS DRIVE

AURORA, OH 44202-6662

RE: Revocation of New York Ruling Letter N233864; Tariff Classification of a Light Emitting Diode Light Bulbs; NY N231480; NY N221295; NY N210776; NY N163395; NY N162407; NY N144675; NY N119322

DEAR Ms. VAUGHN,

This is in reference to New York Ruling Letter (NY) N233864, dated October 18, 2012, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of five light-emitting diode (LED) light bulbs. In that ruling, Customs and Border Protection (CBP) classified the LED light bulbs under heading 9405, HTSUS, which provides in pertinent part for "Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; ...". We have reviewed NY N233864 and found it to be incorrect. For the reasons set forth below, we are revoking that ruling.

Furthermore, for the reasons set forth below, we are also revoking the following rulings which classify substantially similar products under heading 9405, HTSUS: NY N231480, dated September 14, 2012; NY N221295, dated June 27, 2012; NY N210776, dated April 3, 2012; NY N163395, dated May 12, 2011; NY N162407, dated May 6, 2011; and NY N144675, dated February 11, 2011. Additionally, for the reasons set forth below, we are modifying the following ruling which classifies substantially similar products under heading 9405, HTSUS: NY N119322, dated August 30, 2010 (specifically, the "LED A Lamp", "LED MR16 Lamp", "LED Par30 Lamp", and "LED T8 Lamp".)

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 of the NY N233864 and revocation of treatment relating to the tariff classification of the instant LED Light Bulbs was published on July 2, 2014, in the *Customs Bulletin*, Volume 48, Number 26. In that notice, CBP proposed that the instant products were classified in heading 8543, HTSUS. One comment was received in support of this proposal. During the comment period, CBP identified seven (7) additional rulings which classified substantially similar merchandise in heading 9405, HTSUS.

FACTS:

In NY N233864, CBP described the merchandise as follows:

Item number LED11E26BR4041K features a dimmable flood light and it is rated at 11 Watts at 120 Volts. The bulb is designed as a replacement for traditional commercial and residential fluorescent, incandescent, or halogen lamps. It is suitable for BR40, BR30 and R20 flood and spot light

applications such as, recessed downlights, track light fixtures, and display fixtures. The bulb has an E26 base for standard Edison-style base socket. The LEDs and the driver are contained in a cast aluminum housing with a polycarbonate lens that performs as a diffuser.

Item number LED17E26P3830KFLA features a dimmable flood light and it is rated 17 Watts at 120 Volts. The bulb is designed as a replacement lamp for traditional commercial and residential fluorescent, incandescent, or halogen lamps. It has an E26 base for standard Edison-style base sockets. The LEDs and driver are housed in a white enamel cast aluminum heatsink housing with a clear prismatic polycarbonate plastic lens that performs as a light diffuser.

Item number LED8E26A21950K is a dimmable LED A-lamp (bulb). It is comparable to a 60 Watt incandescent lamp and it is recommended for general lighting, table lamps, chandeliers, ceiling fans and wall sconces. The light bulb has a standard Edison-style base socket and it is available in 8 or 12 Watts and 120 Volts. The LEDs and the driver are contained in a white enamel cast aluminum heatsink housing with either a clear prismatic polycarbonate plastic lens or glass lens that performs as light diffuser. The bulb is designed as a replacement lamp for traditional commercial and residential fluorescent, incandescent, or halogen lamps.

Item number LED7GU10MR1630KNFL is a narrow spot flood LED light bulb. The bulb is designed as a replacement lamp for traditional commercial and residential fluorescent, incandescent, or halogen lamps. It is recommended for track lighting, recessed downlights, and display lights. The bulb has a GU base for a single plug-in socket. The LEDs and the driver are contained in an aluminum housing with a polycarbonate or glass diffusing lens. It is available in 7 Watts and 120 Volts.

Item number LDT3WH30K represents the dimmable decorative LED light bulb series that are available in torpedo, flame tip and globe styling diffusers. It is a 3 Watt light bulb that has an E12 or E26 base for standard Edison-style sockets. The bulb is a replacement lamp for traditional commercial and residential incandescent, halogen or fluorescent lamps. It is typically used for chandeliers, ceiling fans and decorative indoor and outdoor fixtures. The LEDs and the driver are contained in an aluminum base polycarbonate housing/globe.

* * *

In NY N233864, CBP classified these five products under heading 9405, HTSUS, which provides in pertinent part for “Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; ...”.

In your submission dated January 14, 2013, you note that Item No. LED8E26A21950K is an invalid number, and the correct Item No. is LED8E26A1950K.

The instant products are pictured below:



ISSUE:

What is the correct classification under the HTSUS of the LED Light Bulbs identified by Item Nos. LED11E26BR4041K, LED17E26P3830KFLA, LED8E26A1950K, LED7GU10MR1630KNFL, and LDT3WH30K?

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 2014 HTSUS provisions under consideration are as follows:

- 8543 Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
- 8543.70 Other machines and apparatus:
- 8543.70.70 Electric luminescent lamps
-
- 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 electric lamps and lighting fittings:
- Of base metal:
- 9405.40.60 Other

Note 1 to Chapter 94, HTSUS, states, in part: “This chapter does not cover: ... (f) Lamps or lighting fittings of chapter 85 ...”.

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

EN 84.79 states, in pertinent part:

For this purpose the following are to be regarded as having “individual functions”:

- (B) Mechanical devices which cannot perform their function unless they are mounted on another machine or appliance, or are incorporated in a more complex entity, provided that this function:
 - (i) is distinct from that which is performed by the machine or appliance whereon they are to be mounted, or by the entity wherein they are to be incorporated, and
 - (ii) does not play an integral and inseparable part in the operation of such machine, appliance or entity.

* * *

EN 85.43 states, in pertinent part:

This heading covers all electrical appliances and apparatus, not falling in any other heading of this Chapter, nor covered more specifically by a heading of any other Chapter of the Nomenclature, nor excluded by the operation of a Legal Note to Section XVI or to this Chapter.

* * *

The electrical appliances and apparatus of this heading must have individual functions. The introductory provisions of Explanatory Note to heading 84.79 concerning machines and mechanical appliances having individual functions apply, *mutatis mutandis*, to the appliances and apparatus of this heading.

* * *

The heading includes, *inter alia*:

* * *

- (16) Electro-luminescent devices, generally in strips, plates or panels, and based on electro-luminescent substances (e.g., zinc sulphide) placed between two layers of conductive material.

* * *

The General ENs to Chapter 94, state, in pertinent part:

This Chapter covers, subject to the exclusions listed in the Explanatory Notes to this Chapter:

* * *

(3) Lamps and lighting fittings and parts thereof, not elsewhere specified or included, of any material (excluding those of materials described in Note 1 to Chapter 71)

* * *

CBP has previously determined that a “lamp” is a device which provides an isolated source of heat or light. *See* HQ H024878, dated March 31, 2010 (LED module for ornaments); HQ H024876, dated March 31, 2010 (LED modules for promotional buttons and displays); HQ H095035, dated March 31, 2010 (LED light set for bike handlebars); HQ H024874, dated March 31, 2010 (various LED modules); HQ H042586, dated January 29, 2009 (fiber optic lamp); and HQ 966952, dated August 18, 2004 (litecube). *See also The Random House College Dictionary* (1973) at 752; *Webster’s New Collegiate Dictionary* (1979) at 639). As entered, the subject LR6C LED Lamp comprises the light source of a lighting fixture. The LR6C LED Lamp is designed with an Edison type screw in base to replace a standard R40 size light bulb. When installed into a lighting fixture, and connected to a power source, it emits light. As such, we conclude that the LR6C LED Lamp meets the definition of “lamp” as enunciated in earlier CBP Rulings, in that it is a device which provides an isolated source of light.

If the instant light bulbs are lamps or lighting fittings of Chapter 85, then they are excluded from heading 9405, HTSUS by Note 1 to Chapter 94, HTSUS. Therefore, our analysis begins with heading 8543, HTSUS.

Heading 8543, HTSUS, provides in relevant part for: “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter.” The instant product is an “electrical apparatus.” *See Whirlpool Corp. v. United States*, 505 F. Supp. 2d 1358, 1362 (Ct. Int’l. Trade 2007) (defining the term “apparatus” as “a group of devices, or a collection or set of materials, instruments or appliances to be used for a particular purpose or a given end.”). The definition of “individual functions” is contained in the EN to Heading 84.79. *See* EN 85.43. EN(B) to heading 84.79 provides that “Mechanical devices which cannot perform their function unless they are mounted on another machine or appliance, or are incorporated in a more complex entity, provided that this function: (i) is distinct from that which is performed by the machine or appliance whereon they are to be mounted, or by the entity wherein they are to be incorporated, and (ii) does not play an integral and inseparable part in the operation of such machine, appliance or entity.” Four of the instant LED light bulbs are designed to fit into any lighting fixture which uses an Edison type screw base, while the fifth is designed to fit into any lighting fixture which accepts a standard GU10 two pin connector. These light bulbs cannot perform their function of light generation unless they are connected to a power source. A lighting fixture supplies power to the instant products. As such, the instant light bulbs must be mounted on another machine or appliance, or incorporated into a more complex entity. The function of a lighting fixture is to hold the instant light bulbs, supply power to them, and to direct their light. These functions are separate from the function of the light bulb, whose function is to generate light. Because the lighting fixture performs these functions whether or not a light bulb has been inserted, the bulb itself does not play an integral and

inseparable part of the operation of the lighting fixture. Therefore, the instant light bulbs have an “individual function” as defined in EN(B) to 84.79 and within the meaning of heading 8543, HTSUS.

Heading 8543, HTSUS, covers “[e]lectro-luminescent devices, generally in strips, plates or panels, and based on electro-luminescent substances (e.g., zinc sulphide) placed between two layers of conductive material.” See EN(16) to Heading 85.43. “Luminescence” is defined as:

Light emission that cannot be attributed merely to the temperature of the emitting body. Various types of luminescence are often distinguished according to the source of the energy which excites the emission.

* * *

There are also types of luminescence that are initiated by the flow of some form of energy into the body from the outside. According to the source of the exciting energy, the luminescences are designated as ... electroluminescence if the energy comes from the application of an electric field.

* * *

See *McGraw Hill Concise Encyclopedia of Science and Technology*, 6th Edition (2009) at 1361.

CBP also notes that an LED is considered an electroluminescent substance. See *Van Nostrand's Encyclopedia of Chemistry*, 5th Edition (2005) at 947, which defines the operation of LEDs:

Recombination or injection electroluminescence was first observed in 1923 by Lossew, who found that when point electrodes were placed on certain silicon carbide crystals and current passed through them, light was often emitted. Explanation of this emission has been possible only with the development of semiconductor theory. If minority charge carriers are injected into a semiconductor, i.e., electrons are injected into p-type material or “positive holes” into n-type material, they recombine spontaneously with the majority carriers existing in the material. If some of these recombinations result in the emission of radiation, electroluminescence results.

* * *

The subject light bulbs are “electroluminescent devices” as described above because passing electric current through it will generate light that cannot be attributed merely to its temperature. Furthermore, they are based on an “electroluminescent substance,” namely their internal light-emitting diodes. Accordingly, the instant light bulbs are properly classified under heading 8543, HTSUS. They are therefore, pursuant to Note 1(f) to Chapter 94, HTSUS, excluded from classification in heading 9405, HTSUS. With regard to classification at the subheading level, the instant products are properly classified under subheading 8543.70.70, HTSUS, which provides for “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Electric luminescent lamps”.¹

¹ We note that this conclusion is consistent with a recent decision taken at the Harmonized System Committee (HSC) of the World Customs Organization (WCO). At the 52nd Session of the HSC, the Committee considered the classification of two LED lamps, one of which was described as an LED bulb in the standard shape of an ‘incandescent bulb,’ composed of

In accordance with the above analysis, CBP is also revoking NY N231480, NY N221295, NY N210776, NY N163395, NY N162407, and NY N144675, which classified substantially similar merchandise under heading 9405, HTSUS. In addition, CBP is modifying NY N119322, which classified the “LED A Lamp”, “LED MR16 Lamp”, “LED Par30 Lamp”, and “LED T8 Lamp” under heading 9405, HTSUS.

One commenter submitted a comment in support of CBP’s classification of this merchandise in heading 8543, HTSUS, but asked that, for completeness sake, we consider whether heading 8541, HTSUS, would be appropriate. The issue of whether LED light bulbs are classifiable under heading 8541, HTSUS, was recently addressed in HQ H024869, dated February 12, 2014.

HOLDING:

By application of GRIs 1 and 6, the LED Light Bulbs identified by Item Nos. LED11E26BR4041K, LED17E26P3830KFLA, LED8E26A1950K, LED7GU10MR1630KNFL, and LDT3WH30K are classified under heading 8543, HTSUS, specifically in subheading 8543.70.70, HTSUS, which provides for “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Electric luminescent lamps”. The column one, general rate of duty is 2% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N233864, dated October 18, 2012, NY N231480, dated September 14, 2012, NY N221295, dated June 27, 2012, NY N210776, dated April 3, 2012, NY N163395, dated May 12, 2011, NY N162407, dated May 6, 2011, and NY N144675, dated February 11, 2011, are hereby REVOKED. NY N119322, dated August 30, 2010, is hereby MODIFIED. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Sincerely,

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

several light emitting diodes inside of a plastic envelope, circuitry to rectify AC power and to convert voltage to a level useable by the LEDs, a heat sink and an Edison screw base. After an exchange of views, the HSC voted to reaffirm its previous decision to classify this product under heading 85.43.

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

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is revoking PD B80930, dated January 28, 2007, relating to the tariff classification of latex rubber boots under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed action was published in the *Customs Bulletin* Vol. 48, No. 29, on July 23, 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 November 24, 2014.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993 Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility.**” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke one ruling letter pertaining to the tariff classification of latex rubber boots was published on July 23, 2014, in Volume 48, Number 29 of the *Customs Bulletin*.

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 PD B80930, CBP determined that one style of latex rubber boots was classified in subheading 6401.92.60, HTSUS, as waterproof footwear having soles and uppers with an external surface area of over 90% polyvinyl chloride (PVC).

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking PD B80930 in order to reflect the proper classification of the subject boots in subheading 6401.92.90, HTSUS, as other waterproof footwear, according to the analysis contained in Headquarters Ruling Letter (HQ) H244567 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: August 28, 2014

JACINTO JUAREZ
For

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

HQ H244567

August 28, 2014
CLA-2 OT:RR:CTF:TCM H244567 CkG
Category: Classification
Tariff No.: 6401.92.90

MARVIN MALTZ
ABEL UNLIMITED INC.
1649 FORUM PLACE, SUITE 12
WEST PALM BEACH, FL 33401

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

DEAR MR. MALTZ,

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

FACTS:

PD B80930 described the merchandise as follows:

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

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

ISSUE:

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

LAW AND ANALYSIS:

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

The HTSUS provisions at issue are as follows:

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

...

Other footwear:

6104.92: Covering the ankle but not covering the knee:

...

Other:

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

6401.92.90: Other.

* * * * *

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

HOLDING:

By application of GRIs 1 and 6, Style # 9260 is classified in subheading 6401.92.90, HTSUS, which provides for “Waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes: Other footwear: Other: Other...” The 2014 general, column one rate of duty is 37.5% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

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

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

**MODIFICATION OF A RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF CERTAIN KAYAKS**

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

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to the tariff classification of kayaks.

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 New York Ruling Letter (NY) N246367, dated October 25, 2013, relating to the tariff classification of certain kayaks under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed action was published on July 23, 2014, in Vol. 48, No. 29, of the *Customs Bulletin*. 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 November 24, 2014.

FOR FURTHER INFORMATION CONTACT: Emily Beline, Tariff Classification and Marking Branch: (202) 325–7799.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and 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 NY N246367, dated October 25, 2013, pertaining to the tariff classification of kayaks, was published on July 23, 2014, in Vol. 48, No. 29, of the *Customs Bulletin*. No comments were received.

As stated in the proposed notice, this modification will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should 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 N246367, CBP determined, that the "Lifetime Daylite Kayak" a blow-molded kayak made of high density polyethylene plastic was classified in subheading 8903.99.15, HTSUS, which provides for, "Yachts and other vessels for pleasure or sports; row boats and canoes: Other: Row boats and canoes which are not of a type designed to be principally used with motors or sails: ... Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY N246367 in order to reflect the proper classification of the kayaks in subheading 8903.99.05, HTSUS, which provides for, "Yachts and other vessels for pleasure or sports; row boats and canoes: Other: . . . : Row boats and

canoes...: Canoes” according to the analysis contained in Headquarters Ruling Letter (HQ) H251131 which is attached to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: August 28, 2014

JACINTO JUAREZ

For

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H251131

August 28, 2014

CLA-20T:RR:CTF:TCM: H251131ERB

CATEGORY: Classification

TARIFF NO.: 8903.99.05

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

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

DEAR MR. BROWN:

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

Pursuant to §625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(i)), as amended by §623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice proposing to modify NY N246367 was published on July 23, 2014, in Volume 48, Number 29, of the *Customs Bulletin*. No comments were received in response to this notice.

FACTS:

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

ISSUE:

What is the proper classification of the subject kayak under the HTSUS.

LAW AND ANALYSIS:

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

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

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

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

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

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

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

The EN to heading 8903, HTSUS, states, in pertinent part, the following:

This heading includes...kayaks,...

CBP has previously addressed the issue of the proper classification of kayaks. In HQ 088499, dated April 19, 1991, Customs ruled that kayaks are described by the term “canoe” because both vessels are characterized by lightness, maneuverability, versatility, ease of repair, silent operation and relatively inexpensive cost, as well as being best known for their application in leisure activities such as touring and camping, or racing and for formal drills and stunts. Given their similarities, it is proper that kayaks are classified under the subheading for “canoes.” *See* HQ 088499, *supra*, where CBP cited *The Encyclopedia Americana* (1989), definition of kayak and canoe to determine that kayaks are properly classified as a “canoe.” *See also* HQ H950019, dated November 5, 1991, (affirming HQ H088499, classifying a kayak under subheading 8903.99.05, HTSUS).

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

HOLDING:

By application of GRI 1 and GRI 6, the subject kayak is provided for in heading 8903, HTSUS. It is specifically provided for under subheading 8903.99.05, HTSUS, which provides for, “Yachts and other vessels for plea-

sure or sports; row boats and canoes: Other: Row boats and canoes which are not of a type designed to be principally used with motors or sails: Canoes.” The column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

New York Ruling Letter N246367, dated October 25, 2013, is hereby MODIFIED.

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

Sincerely,

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division