

U.S. Customs and Border Protection



GENERAL NOTICE

19 CFR PART 177

REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF THERMAL CONDUCTIVE GREASES

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking a ruling letter concerning the classification of thermal conductive greases 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. 29, on July 23, 2014. CBP received one comment in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 16, 2015.

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

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended,

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), notice proposing to revoke New York Ruling Letter (NY) N144035, dated April 28, 2011, was published on July 23, 2014, in Vol. 48, No. 29, of the Customs Bulletin. CBP received one comment in response to this notice.

Although in this notice CBP is specifically referring to NY N144035, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice covers any rulings on this merchandise that may exist but have not been specifically identified. Any party who 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 notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise

issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N144035 in order to reflect the proper classification of the merchandise pursuant to the analysis in Headquarters Ruling Letter (“HQ”) H192517, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: November 24, 2014

MYLES B. HARMON,
Director
Commercial and Trade
Facilitation Division

HQ H192517

November 24, 2014

CLA-2 OT: RR: CTF: TCM H192517 TNA

CATEGORY: Classification

TARIFF NO.: 3910.00.00

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

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

DEAR MR. PETERSON:

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

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 N 144035 was published in the Customs Bulletin, Vol. 48, No. 29, on July 23, 2014. One comment was received in support of the revocation.

FACTS:

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

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

In an initial round of laboratory reports, the laboratory found that X-237783D, G-765, G751, and X23-7762 were thermal conductive greases composed of more than five percent of a proprietary chemical that was an aromatic compound. The first round of laboratory reports concluded that X23-7756 was composed of less than one percent of a proprietary chemical that was an aromatic compound. As a result, the laboratory concluded that classification in subheading 3824.90.70, HTSUS, was appropriate for this product.²

In NY N144035, on the basis of laboratory reports that focused on the amount of aromatics in the material, CBP classified these substances under subheading 3824.90.28, HTSUS, as “[p]repared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: [o]ther: (o]ther: [m]ixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances: [o]ther.”

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

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

ISSUE:

Whether the subject thermal conductive greases are classified under subheading 3824.90.28, HTSUS, as “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other,” in subheading 3824.90.70, HTSUS, as “Prepared binders for foundry

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

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

molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Mixtures of dibromo neopentyl glycol; Polydibromophenylene oxide; Tetrabromobisphenol-A-carbonate oligomers; and Electroplating chemical and electroless plating solutions and other materials for printed circuit boards, plastics and metal finishings, or in subheading 391 0.00.00, HTSUS, as “Silicones in primary forms”?

LAW AND ANALYSIS:

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

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

3824	Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:
3824.90	Other:
	Other:
	Mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances:
3824.90.28	Other
	Other:
3824.903.70	Mixtures of dibromo neopentyl glycol; Polydibromophenylene oxide; Tetrabromobisphenol-A-carbonate oligomers; and Electroplating chemical and electroless plating solutions and other materials for printed circuit boards, plastics and metal finishings
3910.00.00	Silicones in primary forms

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

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

(d) Silicones (heading 3910)

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

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

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

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

The ENs to heading 3824, HTSUS, states, in pertinent part, the following:

This heading covers: ...

(B) CHEMICAL PRODUCTS AND CHEMICAL OR OTHER PREPARATIONS

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

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

The chemical or other preparations are either mixtures (of which emulsions and dispersions are special forms) or occasionally solutions. Aqueous solutions of the chemical products of Chapter 28 or 29 remain classified within those Chapters, but solutions of these products in solvents other than water are, apart from a few exceptions, excluded therefrom and accordingly fall to be treated as preparations of this heading.

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

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

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

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

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

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

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

In the present case, CBP’s laboratory’s analysis based on the complete breakdown of the subject merchandise that was submitted with the request for reconsideration shows that these products consist of organopolysiloxane paste with aluminum and zinc oxide. Therefore, the instant products are silicone in primary form. Furthermore, these

products are silicone greases that are used for their stability at high temperatures, so as to whisk away the heat produced by the electric merchandise with which they are used. This is consistent with the description of the products in the explanatory notes to heading 3910, HTSUS. Classification in heading 3910, HTSUS, is also consistent with prior CBP rulings. *See, e.g.*, NY G86540, dated April 2, 2001; NY 880713, dated December 16, 1992.

Heading 3824, HTSUS, is a basket provision. As such, if the subject merchandise can be more specifically classified elsewhere in the tariff, it is precluded from classification in heading 3824, HTSUS, even if it meets the terms of the heading. *See, e.g.*, HQ 963688, dated February 4, 2000; HQ 967972, dated March 2, 2006. Pursuant to the analysis above, the subject merchandise is described by heading 3910, HTSUS. As a result, it cannot be classified in heading 3824, HTSUS.

HOLDING:

By application of GRI 1, the subject X23-7762, X23-7783D, G765, G751, and X23-7756 are classified under heading 3910, HTSUS. They are specifically provided for in subheading 3910.00.00, HTSUS, which provides for “silicones in primary form.” The column one rate of duty is 3%.

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

EFFECTS ON OTHER RULINGS:

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

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*

GENERAL NOTICE

19 CFR PART 177

PROPOSED REVOCATION OF TWO RULING LETTERS, PROPOSED MODIFICATION OF ONE RULING LETTER, AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF LANDFILL COMPACTORS

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

ACTION: Notice of proposed revocation of two ruling letters, proposed modification of one ruling letter, and proposed revocation of treatment relating to the classification of landfill compactors.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke two ruling letters and modify one ruling letter concerning the classification of landfill compactors 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 January 16, 2015.

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

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

SUPPLEMENTARY INFORMATION:

Background

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke two rulings and modify one ruling pertaining to the classification of landfill compactors. Although in this notice CBP is specifically referring to New York Ruling (“NY”) J89586, dated October 28, 2003 (Attachment A); NY N064482, dated July 8, 2009 (Attachment B); NY A89554, dated December 11, 1996 (Attachment C), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

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

transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NY J89586, NY N064482, and NY A89554, CBP classified land-fill trash compactors in subheading 8479.89.98, HTSUS, which provides for "Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and mechanical appliances: Other: Other." We now believe that these items are classified in subheading 8479.10.00, HTSUS, which provides for "Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Machinery for public works, building or the like."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY J89586, and revoke NY N064482 and NY A89554, and any other ruling not specifically identified, pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H255319 (see Attachment "D" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: November 20, 2014

MYLES B. HARMON,
Director
Commercial and Trade
Facilitation Division

ATTACHMENT A

NY J89586

October 28, 2003

CLA-2-84:RR:NC:1 :103 J89586

CATEGORY: Classification

TARIFF NO.: 8479.89.9897

MR. K. TURKIA
KALTEK, INC.
P.O. BOX 88390
ATLANTA, GA 30356

RE: The tariff classification of landfill compactors from Finland

DEAR MR. TURKIA:

In your letter dated October 1, 2003 on behalf of Tanacorp Ltd. you requested a tariff classification ruling.

The Tana G series landfill compactors are self-propelled machines designed to crush, compact and spread trash and garbage. The machines basically consist of an articulated frame, front and rear compaction drums with crushing teeth, a front mounted dozer blade, and an enclosed operator's cabin. The compaction drums are 2660 or 3800 millimeters in width, while the dozer blade may be 3650, 4500 or 5000 millimeters wide. The pyramid shaped crushing teeth are made of wear resistant steel, are 200 millimeters in length, and are kept clean by adjustable scraper bars. The compactors utilize hydrostatic drives and are powered by engines generating from 290 horsepower to 540 horsepower. Depending on the particular model, the G series compactors weigh from 29,000 to 50,000 kilograms and produce a crushing force of 142 to 245 kiloNewtons.

You suggested classifying these machines in subheading 8430.50.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for other moving, grading, leveling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores : other machinery, self-propelled: other. Subheading 8430.50.5000 encompasses machines for "attacking" the earth's crust (for example, for cutting and breaking down rock, earth, coal, etc.) or for preparing or compacting the terrain (for example, scraping, leveling, grading, tamping or rolling). The landfill compactors do not crush rock or earth, nor do they level, grade or tamp these materials. Thus these machines are not classifiable in subheading 8430.50.5000, HTS.

The applicable subheading for the Tana G series landfill compactors will be 8479.89.9897, Harmonized Tariff Schedule of the United States (HTS), which provides for machines and mechanical appliances having individual functions, not specified or included elsewhere (in Chapter 84): other machines and mechanical appliances: other: other: other: other. The rate of duty will be 2.5 percent ad valorem.

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 Alan Horowitz at 646-733-3010.

Sincerely,

ROBERT B. SWIERUPSK

Director,

National Commodity Specialist Division

ATTACHMENT B

N064482

July 8, 2009

CLA-2-84:0T:RR:E:NC:1:104

CATEGORY: Classification

TARIFF NO.: 8479.89.9899

MS. ALICIA P. WELLS
INTERNATIONAL CUSTOMS SERVICES
13114 SPIVEY DRIVE
LAREDO, TX 78045

RE: The tariff classification of Landfill Compactors from the United States

DEAR MS. WELLS:

In your letter dated June 9, 2009 on behalf of your client Maquinaria Diesel, you requested a tariff classification ruling.

The landfill compactor is manufactured by Caterpillar with the model number 816F Series 2. The 816F Series 2, landfill compactor is a self-propelled machine used in the solid waste landfill. The unit contains a Cat C9 engine with ACERT. The engine provides superior performance and reliability in landfill applications. This engine has a rated speed of 2,100 rpm, net power of 173kW (232 hp). The operator's cab is self-enclosed with access from the left side platform. It provides excellent visibility, careful positioning of levers, switches and gauges. The cab also provides a built-in storage compartment for the operator's personal items. The landfill compactor contains self cleaning chopper wheels which are designed to deliver maximum compaction and traction. Aggressive chopping action is provided by 20 blades per wheel. The blades are mounted differently on the front and rear wheels to maximize chopping and compaction in both forward and reverse. The straight blade which has a height of 6ft 4in is a standard attachment. Built to withstand the rigors of heavy duty dozing, it is an ideal blade for waste management applications. The applicable subheading for the 816F Series 2 landfill compactor will be 8479.89.9899, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and mechanical appliances: Other: Other: Other. The general rate of duty will be 2.5% ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <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 Patricia O'Donnell at (646) 733-3011.

Sincerely,
ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

ATTACHMENT C

NY A89554
December 11, 1996
CLA-2-84:RR:NC:1:103 A89554
CATEGORY: Classification
TARIFF NO.: 8479.89.9598

MR. SAULI NIINIST"
FINN-PARTNERS, INC.
1100 QUAIL STREET, SUITE 207
NEWPORT BEACH, CA 92660

RE: The tariff classification of a landfill compactor from Finland

DEAR MR. NIINIST":

In your letter dated November 12, 1996 you requested a tariff classification ruling.

With your inquiry you submitted a brochure describing the Tana 40, a self-propelled machine designed for use at a sanitary landfill. The machine basically consists of a large articulated frame mounted on two drums with a hydraulically operated landfill blade attached to the front of the unit. It also features an enclosed operator's cab mounted over the front compaction drum, a 450 horsepower diesel engine mounted over the rear drum, and a hydrostatic transmission. The two compaction drums, which provide the unit with mobility, each have 234 solid steel feet projecting from their surface. The design of the Tana 40, along with its heavy, rigid frame, allows fifty percent of the weight of the machine to be concentrated on a single foot for maximum compaction. The drums are kept clean by means of two specially designed scrapers. The unit is 8.34 meters long, 4.34 meters wide, and weighs 40,000 kilograms. It is capable of compacting refuse to an average density of over 1,000 kilograms per cubic meter.

The applicable subheading for the Tana 40 landfill compactor will be 8479.89.9598, Harmonized Tariff Schedule of the United States (HTS), which provides for machines and mechanical appliances having individual functions, not specified or included elsewhere (in chapter 84): other machines and mechanical appliances: other: other: other: other. The current rate of duty is 3.2 percent ad valorem. In 1997 the rate of duty will be reduced to 3 percent ad valorem.

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 Alan Horowitz at 212-466-5494.

Sincerely,
ROGER J. SILVESTRI
Director,
National Commodity Specialist Division

ATTACHMENT D

HQ H255319
CLA-2 OT:RR:CTF:TCM H255319 TNA
CATEGORY: Classification
TARIFF NO.: 8479.10.00

MR. K. TURKIA
KALTEK, INC.
PO Box 88390
ATLANTA, GA 30356

RE: Revocation of NY J89586, NY N064482, NY A89554; Classification of a Landfill Compactors

DEAR MR. KALTEK:

This letter is in reference to New York Ruling Letter (“NY”) J89586, issued to you on October 28, 2003, concerning the tariff classification of landfill compactors from Finland. There, U.S. Customs and Border Protection (“CBP”) classified the landfill compactors in subheading 8479.89.98, Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and mechanical appliances: Other.” We have reviewed NY J89586 and found it to be incorrect with respect to the classification of its merchandise. We have also reviewed NY N064482, dated July 8, 2009, and NY A89554, dated December 11, 1996, which classify substantially similar landfill compactors in subheading 8479.89.98, HTSUS. For the reasons that follow, we hereby modify NY J89586 and revoke NY N064482 and NY A89554.

FACTS:

The subject merchandise consists of self-propelled machines designed to crush, compact, and spread trash, garbage, household waste, construction materials and other forms of compactible material in solid-waste landfills. Each compactor consists of a 232 to 540 horsepower engine within a large articulated frame mounted on two drums with a hydraulically operated landfill blade attached to the front and rear of the unit. They all contain an enclosed operator’s cab mounted over the machine’s compaction drums and wheels, and chopper blades. The blades are mounted differently on the front and rear wheels to maximize chopping and compaction in both forward and reverse. The operator of the compactor drives over the waste in order to crush and compact it. The blades chop the waste so that it uses as little space as possible in the landfill.

In NY J89586, NY N064482 and NY A89554, CBP the subject merchandise in 8479.89.98, HTSUS, which provides for “Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and mechanical appliances: Other.”

ISSUE:

Whether the subject landfill compactors are classified as self-propelled bulldozers, tamping machines or road rollers of heading 8429, HTSUS; as compacting machinery of heading 8430, HTSUS; machinery for public works, building or the like of subheading 8479.10.00, HTSUS; or as other machines and mechanical appliances of subheading 8479.89.98, HTSUS?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. GRI 6 states, in pertinent part, that “the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable.”

The HTSUS provisions under consideration are as follows:

8429	Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers:
8430	Other moving, grading, leveling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snowplows and snowblowers:
8479	Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof:
8479.10.00	Machinery for public works, building or the like Other machines and mechanical appliances:
8479.89	Other
8479.89.98	Other

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 HTSUS 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 8429, HTSUS, states in pertinent part, that:

The heading covers a number of earth digging, excavating or compacting machines which are explicitly cited in the heading and which have in common the fact that they are all self-propelled.

The provisions of Explanatory Note to heading 84.30 relating to self-propelled and multi-function machines apply, *mutatis mutandis*, to the self-propelled machinery of this heading, which includes the following: ...

(D) **Tamping machines** as used in road making, for packing rail-road ballast, etc. (but *see* paragraph (a) of the introduction to Explanatory Note to heading 84.30 regarding machines mounted on vehicles of Chapter 86).

(E) Self-propelled **road rollers** as used in road building or other public works (e.g., for levelling the ground or rolling the road surface).

These machines are fitted with heavy cast iron or steel cylinders of large diameter, smooth or studded with metal feet which press into the soil (“sheep’s-foot” rollers), or with wheels and heavy grade solid or pneumatic tyres.

The EN to heading 8430, HTSUS, states in pertinent part, the following:

This heading covers machinery, other than the self-propelled machines of heading 84.29 and agricultural, horticultural or forestry machinery (heading 84.32), for “attacking” the earth’s crust (e.g., for cutting and breaking down rock, earth, coal, etc.; earth excavation, digging, drilling, etc.), or for preparing or compacting the terrain (e.g., scraping, levelling, grading, tamping or rolling). It also includes pile-drivers, pile-extractors, snow-ploughs, and snow-blowers

The heading includes: ...

(IV) TAMPING OR COMPACTING MACHINES

This group includes:

(A) **Road rollers designed to be pushed or towed.** This group includes “sheep’s-foot” tamping rollers studded with metal feet which press into the soil, and tamping rollers made up of a series of lorry type wheels with heavy grade pneumatic tyres mounted on a common axle.

However, the heading **excludes** self-propelled road rollers, whether or not fitted with “sheep’s-feet” or with solid or pneumatic tyres (**heading 84.29**) and agricultural rollers (**heading 84.32**).

(B) **Tamping machines** as used in road making, for packing rail-road ballast, etc., not self-propelled. Tools for working in the hand, pneumatic, hydraulic or with self-contained motor, are, however, **excluded (heading 84.67)**.

(C) **Machines, usually pneumatic, for compacting the sides of embankments, etc.**

The EN to heading 8479, HTSUS, states in pertinent part, that:

This heading is restricted to machinery having individual functions, which:

- (a) Is not excluded from this Chapter by the operation of any Section or Chapter Note.
- and (b) Is not covered more specifically by a heading in any other Chapter of the Nomenclature.
- and (c) Cannot be classified in any other particular heading of this Chapter since:

- (i) No other heading covers it by reference to its method of functioning, description or type.
- and (ii) No other heading covers it by reference to its use or to the industry in which it is employed.
- or (iii) It could fall equally well into two (or more) other such headings (general purpose machines)...

(II) MACHINERY FOR CERTAIN INDUSTRIES

This group includes:

(A) **Machinery for public works, building or the like**, e.g.:

- (1) Machines for spreading mortar or concrete (**excluding** mixers for preparing concrete or mortar — **heading** 84.74 or 87.05).
- (2) Road making machines which vibrate the concrete to consolidate it and to camber the surface, sometimes also spreading the concrete.

However this heading **does not include** levellers of **heading** 84.29.

- (3) Machines, whether or not self-propelled, for spraying gravel on road or similar surfaces and self-propelled machines for spreading and tamping bituminous road-surfacing materials. Gravel sprayers mounted on a motor vehicle chassis are **excluded** (**heading** 87.05).
- (4) Machinery and mechanical appliances for smoothing, grooving, checkering, etc., fresh concrete, bitumen or other similar soft surfaces.

Heating apparatus for bitumen, etc., are excluded (heading 84.19).

- (5) Small pedestrian directed motorised apparatus for the maintenance of roads (e.g., sweepers and white line painters).

Mechanical rotating brooms, which may be mounted with a dirt hopper and a sprinkler system on a wheeled chassis powered by a tractor of heading 87.01, are also classified in this heading as interchangeable equipment, even if they are presented with the tractor.

- (6) Salt and sand spreaders for clearing snow, designed to be mounted on a lorry, consisting of a tank for storing sand and salt, equipped with a lump-breaking agitator, a system for crushing/grinding the lumps of salt, and a hydraulic projection system with spreading disk. The machines' various functions are operated from the cab of the lorry, by remote control.

The subject merchandise consists of self-propelled machines that compact trash in a landfill. Heading 8429, HTSUS, provides for "Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers." We acknowledge that the subject landfill compactors contain many of the same physical features as bulldozers and road rollers of heading 8429, HTSUS. They also use the same large wheel drums to compact layers of soil and waste as is used by road rollers and bulldozers. However, the subject merchandise is not used for

road-building. The machines of heading 8429, HTSUS, are characterized by their use in compacting earth for making roads. The subject machines, by contrast, compact trash in a landfill. Even their incidental soil compacting capabilities are for covering the trash they compact, not for building roads. As a result, the subject merchandise is not described by the terms of heading 8429, HTSUS, and we examine alternate headings.

In submitting your ruling request for NY J89586, you argued for classification in heading 8430, HTSUS, which provides for “other moving, grading, leveling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snow-plows and snowblowers.” However, as explained in NY J89586, heading 8430, HTSUS, encompasses machines for “attacking” the earth’s crust, an action that includes such actions as cutting and breaking down rock, earth, coal, etc. *See* EN 84.30; NY J89586. We also reasoned that heading 8430, HTSUS, encompasses machines for preparing or compacting the terrain, an operation that includes scraping, leveling, grading, tamping or rolling. *See* EN 84.30; NY J89586. *See also* HQ 966618, dated January 16, 2004.

In the present case, the subject landfill compactors compact trash so as to make the best use of the space in a landfill. This does not require the crushing of rock or earth; nor does it require the leveling, grading or tamping of these materials. Thus, the subject landfill compactors do not “attack” the Earth’s crust. As a result, they are fundamentally different from the machinery of heading 8430, HTSUS. Therefore, the subject merchandise does not meet the terms of heading 8430, HTSUS, and cannot be classified there.

Having excluded the subject merchandise from other headings in Chapter 84, HTSUS, we consider classification in heading 8479, HTSUS, which provides for “Machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter.” In particular, subheading 8479.10.00, HTSUS, provides for “machinery for public works, building or the like.” The question of whether landfills are public works is an issue of first impression.

CBP has stated that public works consist of (1) projects, such as highways, dams, and bridges, which are (2) financed by public funds and (3) are for use by the general public. *See* NY H87937, dated February 21, 2002; HQ 956637, dated August 29, 1994. Merchandise has been classified in subheading 8479.10.00, HTSUS, only when it meets all three criteria. In NY 849386, February 22, 1990, for example, CBP classified refuse treatment equipment, used in municipal waste treatment plants, for resource recovery and compacting non-combustible refuse. There, CBP described the plants as “municipal” to stress that they were not for private commercial use, and classified the machinery at issue in subheading 8479.10.00, HTSUS, as being for public works. *See also* NY 898924 (classifying machinery designed to remove ice sheets which can form on road surfaces, bridges, city sidewalks or other public areas in subheading 8479.10.00, HTSUS); NY 875235, dated July 1, 1992 (classifying machinery designed to clean a paved surface such as a road, walkway, or airport runway of snow, slush, dirt, leaves, stones, etc., in subheading 8479.10, HTSUS).

In the present case, we note that many municipalities maintain landfills as part of their public duties. *See, e.g.*, <http://www.epa.gov/osw/nonhaz/municipal/landfill/section3.pdf>; <http://www.brunswickme.org/departments/public-works/landfill/>; http://en.wikipedia.org/wiki/Public_works. Furthermore, published statistics show that approximately 65 percent of landfills are publicly owned, while only 35 percent are privately owned. *See, e.g.*, “Policy Study No. 267: Privatizing Landfills: Market Solutions for Solid-waste Disposal,” by Geoffrey F. Segal and Adrian T. Moore, <http://research.policyarchive.org/6336.pdf> (last accessed May 29, 2014). In addition, while privatization of landfills has been an increasing trend recently, discussions about it recognize that landfills have traditionally been the purview of state and local governments. These governments have used public funds for them and not restricted their use beyond the general public. *See, e.g.*, “Policy Study No. 267: Privatizing Landfills: Market Solutions for Solid-waste Disposal”; Jim Johnson: “Slow, but steady: Parties more cautious about privatizing services.” *Waste News*, May 8, 2006; <http://www.wastebusinessjournal.com/overview.htm>. As a result, we find that landfills are public works. The landfills that are run by local governments are works of the same type as highways and dams. Furthermore, they are publicly funded and are open to the public. Thus, they meet the definition of “public works.” *See* NY H87937; HQ 956637; NY 849386.

In the present case, it is not in dispute that the subject compactors are used primarily with landfills. Because landfills are public works pursuant to the analysis above, the subject merchandise is machinery for public works. As a result, the subject merchandise is classified in subheading 8479.10.00, HTSUS. With respect to NY J89586 in particular, we note that we are modifying this ruling with respect to the classification of its landfill compactor, while affirming its reasoning with respect to heading 8430, HTSUS, as discussed above.

Lastly, we note that NY J89586, NY N064482, and NY A89554 classified the subject landfill compactors in subheading 8479.89.98, HTSUS. This is a basket subheading that provides for “Other machines and mechanical appliances: Other: Other.” Merchandise can only be classified in this subheading when it is not provided for elsewhere in the nomenclature. Pursuant to the analysis above, the subject merchandise is described by the terms of subheading 8479.10.00, HTSUS. As a result, it cannot be classified in subheading 8479.89.98, HTSUS.

HOLDING:

Under the authority of GRI 1, the subject landfill compactors are classified in heading 8479, HTSUS. They are specifically classified in subheading 8479.10.00, HTSUS, which provides for “Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Machinery for public works, building or the like.” The column one general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY J89586, dated October 28, 2003, is MODIFIED with respect to the classification of its merchandise.

NY N064482, dated July 8, 2009, and NY A89554, dated December 11, 1996, are REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade

Facilitation Division



GENERAL NOTICE

**PROPOSED MODIFICATION OF RULING LETTERS AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE ELIGIBILITY OF CERTAIN GARMENTS FOR
PREFERENTIAL TREATMENT UNDER THE DR-CAFTA,
PERU TRADE PROMOTION ACT AND COLOMBIA TRADE
PROMOTION ACT**

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

ACTION: Notice of proposed modification of three ruling letters and proposed revocation of any treatment relating to the eligibility of certain garments for preferential tariff treatment under the Dominican Republic-Central America United States Free Trade Agreement (DR-CAFTA), the United States-Peru Trade Promotion Agreement (PETPA) or the United States-Colombia Trade Promotion Agreement (CTPA).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) proposes to modify three ruling letters, New York Ruling Letter (NY) N251778, dated April 16, 2014; NY N242940, dated July 10, 2013; and NY N248184, dated December 13, 2013; relating to the eligibility of certain garments for preferential tariff treatment under the DR-CAFTA, PETPA, or CTPA. Similarly, CBP is proposing to revoke any

treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness if the proposed actions.

DATES: Comments must be received on or before January 16, 2015.

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

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Valuation and Special Programs Branch, (202) 325–0046.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify three ruling letters pertaining to the eligibility of certain garments to preferential tariff treatment under the DR-CAFTA, PETPA, or CTPA. Although in this

notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) N251778, dated April 16, 2014 (Attachment A); NY N242940, dated July 10, 2013 (Attachment B); and NY N248184, dated December 13, 2013 (Attachment C), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in additions to the three 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 proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions, or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective dated of the final notice of this proposed action.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY N251778, dated April 16, 2014; NY N242940, dated July 10, 2013; and NY N248184, dated December 13, 2013; in accordance with the analysis set forth in proposed Headquarters Ruling Letters (HQ) H256780 (Attachment D); HQ H255492 (Attachment E); and HQ H259359 (Attachment F). Additionally, pursuant to 19 U.S.C.§ 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: December 1, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation
Division

Attachments

ATTACHMENT A

N251778

April 16, 2014

CLA-2-61:OT:RR:NC:N3:348

CATEGORY: Classification

TARIFF NO.: 6110.30.3059

Ms. KAY MORRELL
JC PENNEY
6501 LEGACY DR MS 2216
PLANO, TX 75024

RE: The tariff classification and status under the United States-Peru Trade Promotion Agreement Implementation Act (Peru TPAIA), and the Dominican Republic-Central America-United States Free Trade Agreement (DR-CAFTA), of a woman's garment from Peru or Guatemala.

DEAR Ms. MORRELL:

In your letter dated March 20, 2014, you requested the status of a women's garment from Peru under the Peru TPAIA and Guatemala under the DR-CAFTA

Item PPK # 101673 is a woman's cut-and-sewn pullover that is constructed from 100% rayon jersey knitted fabric. The outer surface of the garment's fabric measures more than nine stitches per two centimeters in the direction in which the stitches were formed. The garment features a capped round neckline, short capped sleeves, a 100% woven polyester insert on the rear panel extending from the neckline to the garment bottom, and a hemmed garment bottom. The garment extends from the shoulders to below the waist.

The applicable subheading for item PPK # 101673 will be 6110.30.3059, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted (con.): Of man-made fibers: Other: Other: Other: Women's or girls': Other. The duty rate will be 32% 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 <http://www.usitc.gov/tata/hts/>.

You have requested a determination under the Peru TPAIA. The manufacturing operations are as follows:

The rayon fabric is knitted in Peru.

The polyester fabric is woven in Peru.

All of the fabrics are cut, sewn and assembled in Peru.

The man-made filament sewing thread is formed and finished in U.S. or Peru.

The garment will be imported directly into the U.S. from Peru.

General Note (GN) 32, HTSUS, sets forth the criteria for determining whether a good is originating under the Peru TPAIA. GN 32(b), HTSUS, (19 U.S.C. §1202) states, in pertinent part, that

For the purposes of this note, subject to the provisions of subdivisions (c), (d), (m) and (n) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good under the terms of this note if-

(i) the good is a good wholly obtained or produced entirely in the territory of Peru, the United States, or both;

(ii) the good was produced entirely in the territory of Peru, the United States, or both, and-

(A) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (n) of this note; or

(B) the good otherwise satisfies any applicable regional value content or other requirements specified in subdivision (n) of this note;

and the good satisfies all other applicable requirements of this note; or

(iii) the good was produced entirely in the territory of Peru, the United States, or both, exclusively from materials described in subdivision (b)(i) or (b)(ii) of this note.

You state the good was produced entirely in the territory of one of the parties to the Agreement exclusively from originating materials. As a result GN 32(b)(iii) must be applied, and each component will have to undergo an applicable change in tariff classification in order to meet the requirements of GN 32(b)(iii).

The rayon knit fabric is classified in heading 6006. The polyester woven fabric is classified 5513. The yarns, for both fabrics, are manufactured in Peru. The rayon fibers and polyester fibers are manufactured in India or Asia. If not carded, combed or otherwise processed for spinning the rayon staple fibers are classified under heading 5504 and the polyester stable fibers are classified under heading 5503. If carded, combed or otherwise processed for spinning the rayon staple fibers are classified under heading 5507 and the polyester staple fibers are classified under heading 5506. The sewing thread is classified in heading 5401, HTSUS.

The product-specific rule for goods classified in heading 6006, General Note 32(n), Chapter 60.3 is as follows:

A change to headings 6003 through 6006 from any other chapter, except from headings 5106 through 5113, chapter 52, headings 5307 through 5308, 5310 through 5311, 5401 through 5402, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through 5403.49, headings 5404 through 5408 or chapter 55.

Since the rayon fibers are classified in either heading 5504 or 5507, they would not meet the terms of the tariff shift, and the fabric would not qualify as an originating material under the provisions of the Peru TPAIA.

As a result, the garments are not considered goods produced exclusively from originating materials, and would not be entitled to a free rate of duty under the requirements of GN 32(b)(iii).

Since the goods have been determined to contain non-originating materials, they will have to undergo an applicable change in tariff classification in order to meet the requirements of GN 32(b)(ii)(A).

General Note 32 (n), Chapter 61, Chapter rule 2 states:

For purposes of determining whether a good of this chapter is originating, the rule applicable to that good shall only apply to the component that determines the tariff classification of the good and such component must satisfy the tariff change requirements set out in that rule for that good.

The component that determines the classification is the non-originating rayon knit fabric.

For goods classified in heading 6110, General Note 32 (n), 61.20 requires:

A change to headings 6105 thru 6111 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311, 5401 through 5402, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through 5403.49, headings 5404 through 5408, 5508 through 5516 or 6001 through 6006, provided that the good is cut or knit to shape, or both and sewn or otherwise assembled in the territory of Peru, the United States, or both.

The rayon fabric classified in heading 6006 does not meet the terms of the tariff shift. Therefore, the goods would not be entitled to a free rate of duty under the Peru TPAIA

You also requested a determination under the DR-CAFTA. The manufacturing operations are as follows:

The rayon fabric is knitted in one of the parties to the Agreement.

The polyester fabric is woven in one of the parties to the Agreement.

All of the fabrics are cut, sewn and assembled in Guatemala.

The man-made filament sewing thread is formed and finished in one of the parties to the Agreement.

The garment will be imported directly into the U.S. from Peru.

General Note 29, HTSUS, sets forth the criteria for determining whether a good is originating under the DR-CAFTA. General Note 29(b), HTSUS, (19 U.S.C. § 1202) states, in pertinent part, that

For the purposes of this note, subject to the provisions of subdivisions (c), (d), (m) and (n) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good under the terms of this note if-

(i) the good is a good wholly obtained or produced entirely in the territory of one or more of the parties to the Agreement;

(ii) the good was produced entirely in the territory of one or more of the parties to the Agreement, and-

(A) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (n) of this note; or

(B) the good otherwise satisfies any applicable regional value content or other requirements specified in subdivision (n) of this note;

and the good satisfies all other applicable requirements of this note; or

(iii) the good was produced entirely in the territory of one or more of the parties to the Agreement exclusively from originating materials.

You state the good was produced entirely in the territory of one of the parties to the Agreement exclusively from originating materials. As a result

GN 29(b)(iii) must be applied, and each component will have to undergo an applicable change in tariff classification in order to meet the requirements of GN 29(b)(iii).

The rayon knit fabric is classified in heading 6006. The polyester woven fabric is classified 5513. The yarns, for both fabrics, are manufactured in Guatemala. The rayon fibers and polyester fibers are manufactured in India or Asia. If not carded, combed or otherwise processed for spinning the rayon staple fibers are classified under heading 5504 and the polyester staple fibers are classified under heading 5503. If carded, combed or otherwise processed for spinning the rayon staple fibers are classified under heading 5507 and the polyester staple fibers are classified under heading 5506. The sewing thread is classified in heading 5401, HTSUS.

The product-specific rule for goods classified in heading 6006, General Note 29(n), Chapter 60.3 is as follows:

A change to headings 6003 through 6006 from any other chapter, except from headings 5106 through 5113, chapter 52, headings 5307 through 5308, 5310 through 5311, 5401 through 5402, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through 5403.49, headings 5404 through 5408 or chapter 55.

Since the rayon fibers are classified in either heading 5504 or 5507, they would not meet the terms of the tariff shift, and the fabric would not qualify as an originating material under the provisions of the DR-CAFTA.

As the good contains non-originating materials, it would have to undergo an applicable change in tariff classification in order to meet the requirements of GN 29(b)(ii)(A). General Note 29 (n), Chapter 61 , Chapter rule 2 states:

For purposes of determining whether a good of this chapter is originating, the rule applicable to that good shall only apply to the component that determines the tariff classification of the good and such component must satisfy the tariff change requirements set out in that rule for that good.

The component that determines the classification is the non-originating rayon knit fabric.

For goods classified in heading 6110, General Note 29 (n), 61.25 requires:

A change to headings 6105 thru 6111 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311, 5401 through 5402, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through 5403.49, headings 5404 through 5408, 5508 through 5516 or 6001 through 6006, provided that the good is cut or knit to shape, or both and sewn or otherwise assembled in the territory of Peru, the United States, or both.

The rayon fabric classified in heading 6006 does not meet the terms of the tariff shift. Therefore, the goods would not be entitled to a free rate of duty under the DR-CAFTA.

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 classification, contact

National Import Specialist Renee Orsat via email at renee.orsat@cbp.dhs.gov. If you have any questions regarding the eligibility for preferential treatment under the Peru TPAIA or DR-CAFTA, contact National Import Specialist Rosemarie Hayward via email at rosemariecasey.hayward@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER

Acting Director

National Commodity Specialist Division

ATTACHMENT B

N242940

July 10, 2013

CLA-2-61:OT:RR:NC:N3:361

CATEGORY: Classification

TARIFF NO.: 6114.20.0010, 6110.20.2079,
6109.10.0060

MR. RICKY VILLENA
NEUTRALOGISTICS CHB
8400 NW 25 STREET, SUITE 100
MIAMI, FL 33122

RE: The tariff classification and status under the United States-Peru Trade Promotion Agreement Implementation Act (Peru TPAIA), of a woman's tank top, pullover and top from Peru.

DEAR MR. VILLENA:

In your letter received June 6, 2013 you requested the status of three women's garments from Peru under the Peru TPAIA on behalf of your client Peace Love World.

The submitted sample, Style LS2013 Peace, is a woman's top constructed of 52.2% cotton and 47.8% modal rayon knit fabric. The sleeveless garment features a deep and revealing V-shaped front; short hemmed sleeves; screen print designs on the front, back and right sleeve; embroidered designs on the lower left side of the front panel, lower right side of the back panel and both sleeves; an applique on the upper back panel; and a hemmed bottom.

The submitted sample, Style LS2113 happy is a woman's cut and sewn pullover that is constructed from 52.2% cotton and 47.8% modal rayon jersey knit fabric. The outer surface of the garment measures more than nine stitches per two centimeters in the direction that the stitches were formed. The garment features a rib knit crew neck; short hemmed sleeves; a screen print design on the front panel with contrast color embroidery thread; a screen print of the words "i am happiness" on the lower front panel; a screen print of the words "Love 2 Love" with contrast color embroidery thread on one sleeve component; a heart design embroidered on one sleeve component; a contrast color embroidered design on the lower front panel; an applique on the upper rear panel; and a straight hemmed flared garment bottom. The garment extends to below the waist.

The submitted sample, Style LSI012 Happy, is a woman's tank top constructed of 52.2% cotton and 47.8% modal rayon knit fabric. The sleeveless garment features a U-shaped front; a racer style back neckline; 2 inch wide shoulder straps; shoulder straps and armholes finished with textile trim; screen printing on front and rear panels; embroidered designs on the front and rear panels; an applique on the upper rear panel; and a hemmed bottom.

Garments which are claimed to be constructed from such a blend are subject, upon importation, to laboratory analysis by U.S. Customs and Border Protection to verify the actual weight of the component fibers. Please be advised that a slight variation from the above stated fiber content may affect the classification of the subject garments. The weights of the component

fibers will be determined as they exist in the goods as imported, with no tolerance factor being allowed per HQ 082863.

We are returning your samples.

The applicable subheading for style LS2013 Peace will be 6114.20.0010, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Other garments, knitted or crocheted: Of cotton: Tops: Women's. The duty rate will be 10.8% ad valorem.

The applicable subheading for style LS2113 happy will be 6110.20.207,9, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of cotton: Other: Other: Other: Women's or girls': Other. The duty rate will be 16.5%.

The applicable subheading for style LS1012 Happy will be 6109.10.0060, Harmonized Tariff Schedule of the United States (HTSUS), which provides for T-shirts, singlets, tank tops and similar garments, knitted or crocheted: Of cotton: Women's: Tank tops: Women's. The duty rate will be 16.5% 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 <http://www.usitc.gov/tata/hts/>.

You have requested a determination under the Peru TPAIA. The manufacturing operations, for all the garments, are as follows:

The fabric is knitted in Peru from yarn spun in Peru.

The fabric is cut, sewn and assembled in Peru.

The sewing thread is made in Peru from Peruvian fibers and yarns.

The appliques are produced in Peru from U.S. fibers and yarns.

The embroidery is done in Peru using U.S. fibers and yarns.

The screen printing is done in Peru using U.S. ink.

The goods are imported directly into the U.S. from Peru.

General Note (GN) 32, HTSUS, sets forth the criteria for determining whether a good is originating under the Peru TPAIA. GN 32(b), HTSUS, (19 U.S.C. §1202) states, in pertinent part, that

For the purposes of this note, subject to the provisions of subdivisions (c), (d), (m) and (n) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good under the terms of this note if-

(i) the good is a good wholly obtained or produced entirely in the territory of Peru, the United States, or both;

(ii) the good was produced entirely in the territory of Peru, the United States, or both, and

(A) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (n) of this note; or

(B) the good otherwise satisfies any applicable regional value content or other requirements specified in subdivision (n) of this note;

and the good satisfies all other applicable requirements of this note; or

(iii) the good was produced entirely in the territory of Peru, the United States, or both, exclusively from materials described in subdivision (b)(i) or (b)(ii) of this note.

You state the good was produced entirely in the territory of one of the parties to the Agreement exclusively from originating materials. As a result GN 32(b)(iii) must be applied, and each component will have to undergo an applicable change in tariff classification in order to meet the requirements of GN 32(b)(iii).

The fabric, used to manufacture all the garments, is classified in heading 6006. The fabric is composed of Peruvian cotton fibers and Australian modal rayon fibers. If not carded, combed or otherwise processed for spinning the rayon staple fibers are classified under heading 5504. If carded, combed or otherwise processed for spinning the rayon staple fibers are classified under heading 5507.

The product-specific rule for goods classified in heading 6006, General Note 32(n), Chapter 60.3 is as follows:

A change to headings 6003 through 6006 from any other chapter, except from headings 5106 through 5113, chapter 52, headings 5307 through 5308, 5310 through 5311, 5401 through 5402, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through 5403.49, headings 5404 through 5408 or chapter 55.

Since the rayon fibers are classified in either heading 5504 or 5507, they would not meet the terms of the tariff shift, and the fabric would not qualify as an originating material under the provisions of the Peru TPAIA.

As a result, the garments are not considered goods produced exclusively from originating materials, and would not be entitled to a free rate of duty under the requirements of GN 32(b)(iii).

Since the goods have been determined to contain non-originating materials, they will have to undergo an applicable change in tariff classification in order to meet the requirements of GN 32(b)(ii)(A).

General Note 32 (n), Chapter 61, Chapter rule 2 states:

For purposes of determining whether a good of this chapter is originating, the rule applicable to that good shall only apply to the component that determines the tariff classification of the good and such component must satisfy the tariff change requirements set out in that rule for that good.

The component that determines the classification, for each garment, is the cotton/rayon fabric.

For goods classified in heading 6114, General Note 32 (n), 61.24 requires:

A change to headings 6113 through 6117 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311, 5401 through 5402, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through 5403.49, headings 5404 through 5408, 5508 through 5516 or 6001 through 6006, provided that the good is cut or knit to shape, or both and sewn or otherwise assembled in the territory of Peru, the United States, or both.

For goods classified in headings 6109 and 6110, General Note 32 (n), 61.20 requires:

A change to headings 6105 through 6111 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311, 5401 through 5402, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through 5403.49, headings 5404 through 5408, 5508 through 5516 or 6001 through 6006, provided that the good is cut or knit to shape, or both and sewn or otherwise assembled in the territory of Peru, the United States, or both.

The cotton/rayon fabric classified in heading 6006 does not meet the terms of the tariff shift. Therefore, the goods would not be entitled to a free rate of duty under the Peru TPAIA.

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 classification, contact National Import Specialist Peggy Fitzgerald at 646-733-3052. If you have any questions regarding the eligibility for preferential treatment under the Peru TPAIA, contact National Import Specialist Rosemarie Hayward at 646-733-3064.

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

ATTACHMENT C

N248184

December 13, 2013

CLA-2-62:OT:RR:NC:N3:348

CATEGORY: Classification

TARIFF NO.: 6212.10.9020

MR. RICKY VILLENA
NEUTRALOGISTICS, LLC.
8400 NW 25 ST. SUITE 100
DORAL, FL 33122

RE: The tariff classification and status under the United States-Colombia Trade Promotion Act (Colombia TPA), of women's bras/bralettes from Colombia.

DEAR MR. VILLENA:

In your letter dated, November 15, 2013, on behalf of your client, Top Secret Society, you requested the status of bras and bralettes under the Colombia TPA. The samples are being returned to you, as requested.

Style 0113 is a woman's bralette constructed of two-ply 90% polyamide and 10% elastane knit fabric. The bralette features elasticized shoulder straps, elasticized neck and arm openings, and an elasticized bottom band.

Style 0213 is a woman's strapless bra constructed of two-ply 90% polyamide and 10% elastane knit fabric. The bra features elasticized top and bottom bands.

Style 1313 is a woman's strapless bra constructed with an outer ply of 87% polyamide and 13% elastane lace-like knit fabric and an inner ply of 85% polyamide and 15% elastane knit fabric. The garment features elasticized top and bottom bands.

Style 2113 is a woman's bralette constructed of an outer ply of 87% polyamide and 13% elastane lace-like knit fabric and an inner ply of 85% polyamide and 15% elastane knit fabric. The bralette features a V-neckline, elasticized shoulder straps, elasticized neck and arm openings, and an elasticized bottom band.

The applicable subheading for styles 0113, 0213, 1313, and 2113 will be 6212.10.9020, Harmonized Tariff Schedule of the United States (HTSUS), which provides for brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted: brassiere: other: other ... of man-made fibers. The duty rate will be 16.9% ad valorem.

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

You have requested a determination under the Colombia TPA. The manufacturing operations, for all of the bra components, are as follows:

- All fabric is manufactured in Colombia.
- All fabric is cut, sewn and assembled in Colombia.
- The sewing thread is produced in Colombia.

- The heat transfer is produced in Colombia.
- The goods are imported directly into the U.S. from Colombia.

General Note (GN) 34, HTSUS, sets forth the criteria for determining whether a good is originating under the Colombia TPA. GN 34(b), HTSUS, (19 U.S.C. §1202) states, in pertinent part, that

For the purposes of this note, subject to the provisions of subdivisions (c), (d), (m) and (n) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good under the terms of this note if –

- (i) the good is a good wholly obtained or produced entirely in the territory of Colombia, the United States, or both;
- (ii) the good was produced entirely in the territory of Colombia, the United States, or both, and –
 - (A) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (n) of this note; or
 - (B) the good otherwise satisfies any applicable regional value content or other requirements specified in subdivision (n) of this note;
 and the good satisfies all other applicable requirements of this note; or
- (iii) the good was produced entirely in the territory of Colombia, the United States, or both, exclusively from materials described in subdivision (b)(i) or (b)(ii) of this note.

You state the good was produced entirely in the territory of one of the parties to the Agreement exclusively from originating materials. As a result ON 34(b)(iii) must be applied, and each component will have to undergo an applicable change in tariff classification in order to meet the requirements of GN 34(b)(iii).

The fabric, for Styles 0113 and 0213, is classified in heading 6004. The fabric is composed of 10% elastane filament yarns from U.S. and 90% polyamide filament yarns from Mexico.

The lace-like fabric for Styles 1313 and 2113 is classified in heading 6005. The lining fabric for Styles 1313 and 2113 is classified in heading 6004. The lace-like fabric is composed of 85.5% polyamide filament yarns Colombia, 0.45% polyamide yarns from Mexico and 15% polyamide filament yarns from Mexico. The lining fabric is composed of 15% elastane filament yarns from Mexico and 85% polyamide filament yarns from Mexico. The strap fabric is composed of 12% elastane filament yarns from Mexico and 82% polyamide filament yarns from Mexico.

The product-specific rule for goods classified in heading 6004 and 6005, General Note 34(n), Chapter 60.3 is as follows:

A change to headings 6003 through 6006 from any other chapter, except from headings 5106 through 5113, chapter 52, headings 5307 through 5308, 5310 through 5311, 5401 through 5402, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through 5403.49, headings 5404 through 5408 or chapter 55.

Since the non-originating polyamide yarns and non-originating elastane yarns are classified in heading 5402, they would not meet the terms of the tariff shift, and the fabric would not qualify as an originating material under the provisions of the Colombia TPA.

As a result, the bras/bralettes are not considered goods produced exclusively from originating materials, and would not be entitled to a free rate of duty under the requirements of ON 34(b)(iii).

Since the goods have been determined to contain non-originating materials, they will have to undergo an applicable change in tariff classification in order to meet the requirements of GN 34(b)(ii)(A).

General Note 34 (n), Chapter 62, Chapter rule 2 states:

For purposes of determining whether a good of this chapter is originating, the rule applicable to that good shall only apply to the component that determines the tariff classification of the good and such component must satisfy the tariff change requirements set out in that rule for that good.

The component that determines the classification, for bras, is the 90% polyamide/10% elastane fabric. The component that determines the classification, for bralettes, is lace-like fabric composed of the 87% polyamide/13% elastane fabric.

For goods classified in heading 6212, General Note 34 (n), 62.35 requires:

A change to subheadings 6212.10 from any other chapter, provided that the good is cut or knit to shape, or both and sewn or otherwise assembled in the territory of Peru, the United States, or both.

The fabric, for Styles 1313 and 2113, is classified in heading 6005 and the fabric, for Styles 0113 and 0213, is classified in heading 6004. The bras/bralettes are cut, sewn and assembled in Colombia. As a result, the fabrics, for each style, meet the terms of the tariff shift.

GN 34(d)(ii), HTSUS, also states in pertinent part,

A textile or apparel good containing elastomeric yarns in the component of the good that determines the classification of the good shall be considered to be originating good only if such yarns are wholly formed in the territory of the party to the Agreement.

The elastane yarn used in the component that determines the classification for Styles 0113 and 0213 are formed in the U.S. However the elastane yarn used in the component that determines the classification for Styles 2113 and 1313 has not been formed in one of the parties to the Agreement.

General Note 34 (n), Chapter 62, Chapter rule 4 states:

Notwithstanding chapter rule 2 for this chapter, a good of this chapter containing sewing thread of headings 5204 or 5401 shall be considered originating only if such sewing thread is both formed and finished on the territory of Colombia or of the United States, or both.

The sewing thread, for all Styles, is formed and finished in the United States.

Based on the facts provided, Styles 0113 and 0213 qualify for Colombia FTA preferential treatment, because they meet the requirements of HTSUS General Note 34(b)(ii)(A). The merchandise will be entitled to a free rate of duty under the Colombia TPA.

Styles 2113 and 1313 do not meet the requirements of HTSUS General Note 34 and will not be entitled to a free rate of duty under the Colombia TPA.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.P.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 classification, contact National Import Specialist Kimberly Rackett at 646-733-3051. If you have any questions regarding the eligibility for preferential treatment under the Colombia TPA, contact National Import Specialist Rosemarie Hayward at 646-733-3064.

Sincerely,

GWENN KLEIN KIRSCHNER

Acting Director

National Commodity Specialist Division

ATTACHMENT D

HQ H256780
 OT:RR:CTF:VS H256780 CMR
 CATEGORY: Classification

Ms. KAY MORRELL
 CUSTOMS MANAGER
 JCPENNEY PURCHASING CORPORATION
 6501 LEGACY DRIVE, MS 2216
 PLANO, TX 75024

RE: Request for Reconsideration of New York Ruling Letter (NY) N251778, dated April 16, 2014; eligibility of garments for preferential treatment under the DRCAFTA

DEAR Ms. MORRELL:

This is in response to your request of July 23, 2014, wherein you requested this office reconsider the decision in New York Ruling Letter (NY) N251778, dated April 16, 2014, denying preferential tariff treatment to a garment, item PPK 101673, produced under two different scenarios through processing in the U.S. or beneficiary countries under the Dominican Republic-Central America-United States Free Trade Agreement (DR-CAFTA) or the United States-Peru Trade Promotion Agreement (PETPA). We have considered your request and agree the ruling should be modified with regard to the garment's eligibility for preferential tariff treatment under the DRCAFTA and the PETPA.

FACTS:

The garment at issue is, item PPK 101673 is a woman's pullover garment constructed of 100% rayon jersey knit fabric with a woven polyester doobby insert in the center back extending from the neckline to the garment bottom. The knit fabric is constructed with more than nine stitches per two centimeters in the direction in which the stitches were formed. The garment features a capped round neckline, short capped sleeves¹, and a hemmed garment bottom. The garment extends from the shoulders to below the waist.

The garment was classified in NY N251778 in subheading 6110.30.3059, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of man-made fibers: Other: Other: Other: Women's or girls': Other.

In your March 20, 2014, request for a ruling you described the two scenarios for manufacturing the garment as follows:

Option 1: Yarn, knit and woven body fabrics and sewing thread will be formed and finished in the U.S. or a beneficiary CAFTA country. Cut and sew will occur in Guatemala. Fibers for the rayon yarn and for the polyester yarn will be formed and/or finished in India or Asia.

Labels will be made and printed in China with ink from unknown sources.

¹ We note you described the garment as sleeveless in your ruling request of March 20, 2014.

Option 2: Yarn, knit and woven body fabrics and sewing thread will be formed and finished in the U.S. or Peru. Cut and sew will occur in Peru. Fibers for the rayon yarn and for the polyester yarn will be formed and/or finished in India or Asia.

Labels will be formed and finished in Peru or the U.S. and printed in the U.S. or Peru with ink from unknown sources.

The garments will be imported directly to the U.S. from the country of production, *i.e.*, Guatemala or Peru.

NY N251778 determined that the garment did not qualify for preferential treatment under the DR-CAFTA nor the PEPTA. That determination was in error. Therefore, we are modifying NY N251778 regarding the eligibility of item PPK 101673 for preferential treatment under the DR-CAFTA and the PETPA.

ISSUE:

Whether item PPK 101673 qualifies for preferential tariff treatment under the DR-CAFTA and the PETPA.

LAW AND ANALYSIS:

The Dominican Republic – Central America – United States Free Trade Agreement (DR-CAFTA) and the United States – Peru Trade Promotion Agreement (PETPA) were approved by the U.S. Congress and enacted into law pursuant to the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act, Public Law 109–53, 119 Stat. 462 (19 U.S.C. 4001 et seq.) and the U.S.-Peru Trade Promotion Agreement Implementation Act, Public Law 110–138, 121 Stat. 1455 (19 U.S.C. 3805 note). These laws are implemented in the Harmonized Tariff Schedule of the United States at General Notes (GNs) 29 and 32, respectively.

GN 29(b) provides in relevant part:

- (b) For the purposes of this note, subject to the provisions of subdivisions (c), (d), (m) and (n) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good under the terms of this note if —

* * *

- (ii) the good was produced entirely in the territory of one or more of the parties to the Agreement, and —

- (A) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (n) of this note; or

* * *

and the good satisfies all other applicable requirements of this note....

GN 32(b) provides in relevant part:

- (b) For the purposes of this note, subject to the provisions of subdivisions (c), (d), (m) and (n) thereof, a good imported into the customs

territory of the United States is eligible for treatment as an originating good under the terms of this note if —

* * *

(ii) the good was produced entirely in the territory of Peru, the United States, or both, and —

(A) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (n) of this note; or

* * *

and the good satisfies all other applicable requirements of this note.

As the garment at issue contains non-originating material, it is appropriate to look to GN 29(b)(ii)(A) and GN 32(b)(ii)(A). As the garment is classified in subheading 6110.30, HTSUS, the applicable tariff shift rules in each GN are: GN 29(n) —

25. A change to headings 6105 through 6111 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties.

GN 32(n) —

20. A change to headings 6105 through 6111 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311, 5401 through 5402, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through 5403.49, headings 5404 through 5408, 5508 through 5516 or 6001 through 6006, provided that the good is cut or knit to shape, or both and sewn or otherwise assembled in the territory of Peru, the United States, or both.

Additionally, Chapter Rule 4, Chapter 61, GN 29(n) and Chapter Rule 4, Chapter 61, GN 32(n), each require sewing thread of heading 5201 or 5401 contained in a good of the chapter to be both formed and finished in the territory of a Party or Parties to the Agreement for a good of the chapter to be considered an originating good.

The fibers in both scenarios will be formed and/or finished in India or Asia. As indicated in NY N251778, if not carded, combed or otherwise processed for spinning, the rayon staple fibers are classified under heading 5504 and the polyester staple fibers are classified under heading 5503. If carded, combed or otherwise processed for spinning, the rayon staple fibers are classified under heading 5507 and the polyester staple fibers are classified under heading 5506. The sewing thread is classified under heading 5401.

A review of the tariff shift rules cited above reveals that a change to heading 6110 from the non-originating rayon and polyester fibers, whether classifiable in headings 5503, 5504, 5506 or 5507, is allowed. Therefore, the garment meets the tariff shift rules for both GN 29 and GN 32. In addition,

as the sewing thread was formed and finished in the U.S. or a beneficiary country, in option 1, and the U.S. or Peru, in option 2, Chapter Note 4, Chapter 61 in both GNs is met.

HOLDING:

The pullover garment at issue, item PPK 101673, qualifies for preferential tariff treatment under the DR-CAFTA and the PETPA. NY N251778, dated April 16, 2014, is hereby modified in accordance with the analysis set forth above.

A copy of this ruling letter should be attached to the entry documents filed at the time the goods are entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the CBP officer handling the transaction.

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

ATTACHMENT E

HQ H255492
OT:RR:CTF:VS H255492 CMR
CATEGORY: Classification

MR. RICKY VILLENA
NEUTRALOGISTICS CHB
8578 NW 23RD STREET
MIAMI, FL 33122

RE: Reconsideration of New York Ruling Letter (NY) N242940, dated July 10, 2013; eligibility of garments for preferential treatment under the PETPA

DEAR MR. VILLENA:

It has come to our attention that an error was made in New York Ruling Letter (NY) N242940, dated July 10, 2013, issued to you on behalf of your client, Peace Love World, regarding the eligibility of three garments for preferential tariff treatment under the United States-Peru Trade Promotion Agreement (PETPA). The classifications provided in the ruling letter are correct. However, we are modifying NY N242940 as to the determination of eligibility under the PETPA.

FACTS:

The garments are described in the ruling as follows:

The submitted sample, Style LS2013, Peace, is a woman's top constructed of 52.2% cotton and 47.8% modal rayon knit fabric. The sleeveless garment features a deep and revealing V-shaped front; short hemmed sleeves; screen print designs on the front, back and right sleeve; embroidered designs on the lower left side of the front panel, lower right side of the back panel and both sleeves; an applique on the upper back panel; and a hemmed bottom.

The submitted sample, Style LS2113, Happy, is a woman's cut and sewn pullover that is constructed from 52.2% cotton and 47.8% modal rayon jersey knit fabric. The outer surface of the garment measures more than nine stitches per two centimeters in the direction that the stitches were formed. The garment features a rib knit crew neck; short hemmed sleeves; a screen print design on the front panel with contrast color embroidery thread; a screen print of the words "i am happiness" on the lower front panel; a screen print of the words "Love 2 Love" with contrast color embroidery thread on one sleeve component; a heart design embroidered on one sleeve component; a contrast color embroidered design on the lower front panel; an applique on the upper rear panel; and a straight hemmed flared garment bottom. The garment extends to below the waist.

The submitted sample, Style LS1012, Happy, is a woman's tank top constructed of 52.2% cotton and 47.8% modal rayon knit fabric. The sleeveless garment features a U-shaped front; a racer style back neckline; 2 inch wide shoulder straps; shoulder straps and armholes finished with textile trim; screen printing on front and rear panels; embroidered designs on the front and rear panels; an applique on the upper rear panel; and a hemmed bottom.

In NY N242940, Style LS2013 was classified as a women's top under the

provision for women's knitted or crocheted other garments of cotton, *i.e.*, subheading 6114.20.0010, Harmonized Tariff Schedule of the United States (HTSUS). Style LS2113 was classified as a women's cotton knitted pullover in subheading 6110.20.2079, HTSUS; and, Style LS1012 was classified as a women's cotton knitted tank top in subheading 6109.10.0060, HTSUS.

The ruling describes the manufacturing process for the garments as:

The fabric is knitted in Peru from yarn spun in Peru. The fabric is cut, sewn and assembled in Peru.

The sewing thread is made in Peru from Peruvian fibers and yarns.

The appliques are produced in Peru from U.S. fibers and yarns. The embroidery is done in Peru using U.S. fibers and yarns.

The screen printing is done in Peru using U.S. ink.

The goods are imported directly into the U.S. from Peru.

In your response of May 21, 2103 to our New York office's request for information, you indicate that the rayon fiber used in the production of the garments is staple rayon fiber from Australia.

ISSUE:

Whether the subject garments, manufactured as described above, qualify for preferential tariff treatment under the PECTPA.

LAW AND ANALYSIS:

The U.S.-Peru Trade Promotion Agreement Implementation Act, Public Law 110138, 121 Stat. 1455 (19 U.S.C. 3805 note) is implemented in the Harmonized Tariff Schedule of the United States at General Note (GN) 32.

GN 32(b) provides in relevant part:

- (b) For the purposes of this note, subject to the provisions of subdivisions (c), (d), (m) and (n) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good under the terms of this note if —

* * *

- (ii) the good was produced entirely in the territory of Peru, the United States, or both, and —

- (A) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (n) of this note; or

* * *

and the good satisfies all other applicable requirements of this note....

As the garments at issue contain non-originating material, it is appropriate to look to GN 32(b)(ii)(A). As the garments are classified in headings 6109, 6110 and 6114, HTSUS, the applicable tariff shift rules in GN 32 are:

GN 32(n) —

20. A change to headings 6105 through 6111 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311, 5401 through 5402, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through 5403.49, headings 5404 through 5408, 5508 through 5516 or 6001 through 6006, provided that the good is cut or knit to shape, or both and sewn or otherwise assembled in the territory of Peru, the United States, or both.

* * *

24. A change to headings 6113 through 6117 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311, 5401 through 5402, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through 5403.49, headings 5404 through 5408, 5508 through 5516 or 6001 through 6006, provided that the good is cut or knit to shape, or both and sewn or otherwise assembled in the territory of Peru, the United States, or both.

Additionally, Chapter Rule 4, Chapter 61, GN 32(n), requires sewing thread of heading 5201 or 5401 contained in a good of the chapter to be both formed and finished in the territory of Peru, the United States, or both, for a good of the chapter to be considered an originating good.

The rayon staple fibers are classifiable as either staple fibers of heading 5504, HTSUS, if not carded, combed or otherwise processed for spinning, or of heading 5507, HTSUS, if carded, combed or otherwise processed for spinning.

A review of the tariff shift rules cited above reveals that a change to headings 6109, 6110 or 6114 from the non-originating rayon fibers, whether classifiable in headings 5504 or 5507, is allowed. Therefore, the garments meet the applicable tariff shift rules set forth in GN 32(n). In addition, as the sewing thread was formed and finished in Peru, Chapter Note 4, Chapter 61 is met.

HOLDING:

The garments at issue, Styles LS2013, LS2113 and LS1012 qualify for preferential tariff treatment under the PETPA. NY N242940, dated July 10, 2013, is hereby modified in accordance with the analysis set forth above.

A copy of this ruling letter should be attached to the entry documents filed at the time the goods are entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the CBP officer handling the transaction.

Sincerely,

MYLES B. HARMON,

Director

*Commercial and Trade
Facilitation Division*

ATTACHMENT F

HQ H259359
OT:RR:CTF:VS H259359 CMR
CATEGORY: Classification

MR. RICKY VILLENA
NEUTRALOGISTICS CHB
8578 NW 23RD STREET
MIAMI, FL 33122

RE: Reconsideration of New York Ruling Letter (NY) N248184, dated December 13, 2013; eligibility of garments for preferential treatment under the CTPA

DEAR MR. VILLENA:

It has come to our attention that an error was made in New York Ruling Letter (NY) N248184, dated December 13, 2013, issued to you on behalf of your client, Top Secret Society, regarding the eligibility of four garments for preferential tariff treatment under the United States-Colombia Trade Promotion Agreement (CTPA). The classifications provided in the ruling letter are correct. However, we are modifying NY N248184 as to the determination of eligibility under the CTPA.

FACTS:

The garments are described in the ruling as follows:

Style 0113 is a woman's bralette constructed of two-ply 90% polyamide and 10% elastane knit fabric. The bralette features elasticized shoulder straps, elasticized neck and arm openings, and an elasticized bottom band.

Style 0213 is a woman's strapless bra constructed of two-ply 90% polyamide and 10% elastane knit fabric. The bra features elasticized top and bottom bands.

Style 1313 is a woman's strapless bra constructed with an outer ply of 87% polyamide and 13% elastane lace-like knit fabric and an inner ply of 85% polyamide and 15% elastane knit fabric. The garment features elasticized top and bottom bands.

Style 2113 is a woman's bralette constructed of an outer ply of 87% polyamide and 13% elastane lace-like knit fabric and an inner ply of 85% polyamide and 15% elastane knit fabric. The bralette features a V-neckline, elasticized shoulder straps, elasticized neck and arm openings, and an elasticized bottom band.

In NY N248184, all four garments were classified in subheading 6121.10.9020, Harmonized Tariff Schedule of the United States (HTSUS), which provides for brassieres of man-made fibers, not containing lace, net or embroidery, and not containing 70 percent or more by weight of silk or silk waste.

The ruling describes the manufacturing process for the garments as:

All fabric is manufactured in Colombia. All fabric is cut, sewn and assembled in Colombia.

The sewing thread is produced in Colombia.

The heat transfer is produced in Colombia.

The goods are imported directly into the U.S. from Colombia

ISSUE:

Whether the subject garments, manufactured as described above, qualify for preferential tariff treatment under the CTPA.

LAW AND ANALYSIS:

The U.S.-Colombia Trade Promotion Agreement Implementation Act, Public Law 112-42, 125 Stat. 462, is implemented in the Harmonized Tariff Schedule of the United States at General Note (GN) 34.

GN 34(b) provides in relevant part:

- (b) For the purposes of this note, subject to the provisions of subdivisions (c), (d), (n) and (o) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good of Colombia or of the United States under the terms of this note if —

* * *

- (ii) the good is produced entirely in the territory of Colombia or of the United States, or both, and —
 - (A) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (o) of this note; or
 - (B) the good otherwise satisfies any applicable regional value-content or other requirements set forth in such subdivision (o); and
 satisfies all other applicable requirements of this note and of applicable regulations; or

For the purposes of subdivision (b)(ii)(A), the term “used” means utilized or consumed in the production of the goods.

The ruling indicates that all fabric is manufactured in Colombia and that the fabrics contain yarns produced in Mexico. Therefore, as the garments at issue contain non-originating material, it is appropriate to look to GN 34(b)(ii)(A). As the garments are classified in subheading 6112.10.9020, HT-SUS, the applicable tariff shift rule in GN 34 is:

GN 34(o) —

- 34. A change to subheading 6212.10 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of Colombia or of the United States, or both.

Additionally, Chapter Rule 4, Chapter 62, GN 34(o), requires sewing thread of heading 5201 or 5401 contained in a good of the chapter to be both formed and finished in the territory of Colombia, the United States, or both, for a good of the chapter to be considered an originating good.

A review of the tariff shift rule cited above reveals that the production of the goods from fabric which is cut and assembled into the garments meets the requirements of the tariff shift rule. In addition, as the sewing thread was produced in Colombia, *i.e.*, formed and finished there, Chapter Note 4, Chapter 62 is met.

HOLDING:

The garments at issue, Styles 0113, 0213, 1313, and 2113 qualify for preferential tariff treatment under the CTPA. NY N248184, dated December 13, 2013, is hereby modified in accordance with the analysis set forth above.

A copy of this ruling letter should be attached to the entry documents filed at the time the goods are entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the CBP officer handling the transaction.

Sincerely,

MYLES B. HARMON,
Director

*Commercial and Trade
Facilitation Division*



GENERAL NOTICE

19 CFR PART 177

**MODIFICATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
CLASSIFICATION OF SUGAR CONFECTIONARY**

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

ACTION: Modification of ruling letter and revocation of treatment relating to the classification of sugar confectionary.

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 modifying one ruling letter concerning the classification of sugar confectionary 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. 47, No. 37, on September 4, 2013. CBP received no comments in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 16, 2015.

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

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), notice proposing to modify new York Ruling Letter (NY) N232564, dated September 19, 2012, was published on September 4, 2013, in Volume 47, Number 37, of the *Customs Bulletin*. CBP received no comments in response to this notice.

Although in this notice CBP is specifically referring to NY N232564, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice

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

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY N232564 in order to reflect the proper classification of this merchandise pursuant to the analysis set forth in Headquarters Ruling Letter ("HQ") H240495, 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 action will become effective 60 days after publication in the Customs Bulletin.

Dated: November 24, 2014

ALLYSON MATTANAH
for Director
Commercial and Trade
Facilitation Division

HQ H240495

November 24, 2014

CLA-2 OT:RR:CTF:TCM H240495 TNA

CATEGORY: Classification

TARIFF NO.: 1704.90.35

DARLENE MINIACI, SENIOR IMPORT SPECIALIST

CARMICHAEL INTERNATIONAL SERVICE

20 W. LINCOLN AVE., SUITE 300

VALLEY STREAM, NY 11580

RE: Modification of NY N232564; Classification of “Maccha” confectionary

DEAR Ms. MINIACI:

This letter is in reference to New York Ruling Letter (“NY”) N232564, dated September 19, 2012, issued to Carmichael International Service on behalf of its client, Royce Confect USA, Inc. (“Royce”), concerning the tariff classification of “Maccha” confectionary. There, U.S. Customs and Border Protection (“CBP”) classified five different Royce brand chocolates in subheading 1806.90.90, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Chocolate and other food preparations containing cocoa: Other: Other: Other: Other: Other: Other.” We have reviewed NY N232564 and found it to be partly in error. For the reasons set forth below, we hereby modify NY N232564 with respect to the product “Maccha” (Item Number 12089).

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 N232564 was published on September 4, 2013, in Volume 4 7, Number 37, of the Customs Bulletin. CBP received no comments in response to this notice.

FACTS:

The subject merchandise is Item Number 12089, also called “Maccha.”¹ It is described as a four inch square, scored block of candy. Product specifications submitted by Royce show that the subject merchandise consists of 31.5% fresh cream, 23.4% cocoa butter, 19.9% sugar, 10.1% skim milk powder, 7.7% whole milk powder, 2.6% powdered green tea, 2.6% lactose, 1.9% brandy, and less than 1% each of emulsifier and flavor. The subject merchandise is wrapped in a plastic tray and packaged in a cardboard box; the item’s net weight is 4.4 ounces. It is imported packaged for retail sale.

In NY N232564, CBP classified Item Number 12089 in subheading 1806.90.90, HTSUS, as: “Chocolate and other food preparations containing cocoa: Other: Other: Other: Other: Other.”

ISSUE:

Whether the subject merchandise is classified in heading 1704, HTSSU, as “sugar confectionery (including white chocolate), not containing cocoa” or in heading 1806, HTSUS, as “chocolate and other food preparations containing cocoa”?

¹ We note that NY N232564 classified five different types of Royce’s candy. Only the classification of the “Maccha” is at issue in this reconsideration.

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

1704	Sugar confectionery (including white chocolate), not containing cocoa:
1704.90	Other:
	Confections or sweetmeats ready for consumption:
	Other:
1704.90.35	Other
1806	Chocolate and other food preparations containing cocoa:
1806.90	Other:
	Other:
	Other:
1806.90.90	Other

Note 1 to Chapter 17, HTSUS, provides that:

This chapter does not cover:

- (a) Sugar confectionery containing cocoa (heading 1806)

Note 2 to Chapter 18, HTSUS, provides that:

Heading 1806 includes sugar confectionery containing cocoa, and, subject to note 1 to this chapter, other food preparations containing cocoa.

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 HTSUS 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 1704, HTSUS, provides, in pertinent part:

This heading covers most of the sugar preparations which are marketed in a solid or semi-solid form, generally suitable for immediate consumption and collectively referred to as sweetmeats, confectionery or candies. It includes, inter alia...

- (6) White chocolate composed of sugar, cocoa butter, milk powder and flavouring agents, but not containing more than mere traces of cocoa (cocoa butter is not regarded as cocoa)...

The heading excludes...

(b) Sugar preparations containing cocoa (heading 18.06). (For this purpose cocoa butter is not regarded as cocoa.)

The EN to heading 1806, HTSUS, provides, in pertinent part:

Chocolate is composed essentially of cocoa paste and sugar or other sweetening matter, usually with the addition of flavouring and cocoa butter; in some cases, cocoa powder and vegetable oil may be substituted for cocoa paste. Milk, coffee, hazelnuts, almonds, orange-peel, etc., are sometimes also added....

The heading also includes all sugar confectionery containing cocoa in any proportion (including chocolate nougat), sweetened cocoa powder, chocolate powder, chocolate spreads, and, in general, all food preparations containing cocoa (other than those excluded in the General Explanatory Note to this Chapter)....

Heading 1806, HTSUS, requires that merchandise classified therein contain chocolate or cocoa. You contend that the subject merchandise contains no chocolate or cocoa and have submitted product specifications showing its ingredients.

Note 1 to Chapter 17, HTSUS, excludes sugar confectionery containing cocoa. *See* Note 1 to Chapter 17, HTSUS. Products of heading 1806, HTSUS, are sugar confectionery containing cocoa, and other food preparations containing cocoa. *See* Note 2 to Chapter 18, HTSUS; heading 1806, HTSUS; EN 18.06. Furthermore, chocolate of this heading consists of cocoa paste and sugar or other sweetening matter, usually with the addition of flavoring and cocoa butter. It may also contain items such as milk, coffee, hazelnuts, etc. *See* EN 18.06. Sugar confectionary containing cocoa is also classified in this heading, even if the percentage of cocoa contained therein is small. *See* EN 18.06.

Here, the subject merchandise contains no cocoa. Its largest ingredients, by percentage, are fresh cream, cocoa butter, sugar, and skim milk powder. Cocoa butter is not considered cocoa. *See* EN 17.04. Heading 1704, HTSUS, provides for “sugar confectionary (including white chocolate), not containing cocoa.” It includes products made of sugar that are marketed in a solid or semisolid form, are suitable for immediate consumption and are called sweetmeats, confectionery or candies. *See* EN 17.04. This heading also includes such products as white chocolate that are composed of sugar, cocoa butter, milk powder and flavoring agents, but do not contain more than mere traces of cocoa. *See* EN 17.04. Products can contain cocoa butter and remain classified in this heading, as cocoa butter is not considered cocoa. *See* EN 17.04.

In the present case, sugar is one of the largest ingredients of the subject merchandise. It also contains many of the same ingredients as white chocolate, such as sugar, cocoa butter, milk powder and flavoring agents. It is imported as an edible sweet, and is sold at retail as imported. As such, we find that the subject merchandise is described by the terms of heading 1704, HTSUS, and will be classified there.

HOLDING:

Under the authority of GRI 1, Item Number 12089, also called “Maccha,” is classified in heading 1704, HTSUS. It is specifically classified in subheading 1704.90.35, HTSUS, which provides for “Sugar confectionery (including white chocolate), not containing cocoa: Other: Other: Other.” The column one general rate of duty is 5.6% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N232564, dated September 19, 2012, is MODIFIED.

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

Sincerely,

ALLYSON MATTANAH
for Director
Commercial and Trade
Facilitation Division