

# U.S. Customs and Border Protection



## GENERAL NOTICE

### **PROPOSED MODIFICATION OF RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE ELIGIBILITY OF CERTAIN GARMENTS FOR PREFERENTIAL TREATMENT UNDER SUBHEADING 9822.05.10, HTSUS, (DR-CAFTA)**

**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), subheading 9822.05.10, Harmonized Tariff Schedule of the United States (HTSUS).

**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) N242661, dated July 1, 2013; NY N018963, dated November 21, 2007; and NY N249027, dated January 21, 2014, relating to the eligibility of certain garments for preferential tariff treatment under subheading 9822.05.10, HTSUS, and General Note (GN) 29, HTSUS. Similarly, CBP is proposing to revoke any treatment previously accorded to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before January 23, 2015.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street, N.E., 10<sup>th</sup> 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 for preferential tariff treatment under subheading 9822.05.10, HTSUS, and General Note (GN) 29, HTSUS, which implements the DR-CAFTA, specifically GN 29(d)(iv). Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) N242661, dated July 1, 2013 (Attachment A); NY N018963, dated November 21, 2007 (Attachment B); and NY N249027, dated January 21, 2014 (Attachment C), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the 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 date of the final notice of this proposed action.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY N242661, NY N018963, and NY N249027, in accordance with the analysis set forth in proposed Headquarters Ruling Letters (HQ) H252907 (Attachment D); HQ H259698 (Attachment E); and HQ H259699 (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 5, 2014

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

Attachments

## ATTACHMENT A

N242661

July 1, 2013

CLA-2-61:OT:RR:E:NC:N3:354

CATEGORY: Classification

TARIFF NO.: 6110.30.3020; 9822.05.10

MR. ROBERT STACK  
TOMPKINS & DAVISON, LLP  
5 HANOVER SQUARE 15TH FLOOR  
NEW YORK, NY 10004

RE: The tariff classification and status under the Dominican Republic-Central America-United States Free Trade Agreement (DR-CAFTA), of ladies' sweater from El Salvador.

DEAR MR. STACK:

In your letter dated May 28, 2013, on behalf of your client, Macy's Merchandising Group, Inc., you requested a ruling on the status of ladies' sweaters from Guatemala under the DR-CAFTA.

The submitted sample, Style D9750AF13, is a woman's "Live Love Dream™" label cut and sewn sweater that is constructed from 56% polyester, 41% rayon, and 3% spandex finely knit jersey fabric. The outer surface of the garment measures nine or fewer stitches per two centimeters in the direction the stitches were formed. The garment features long raglan sleeves with self-fabric cuffs, a round neckline with self-fabric edging, and a self-fabric banded bottom with a heart shaped heat seal. The garment extends to below the waist.

The applicable subheading for Style D9750AF13 will be 6110.30.3020, 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 (con): other: other: sweaters: women's. The duty rate will be 32% ad valorem.

The manufacturing operations are as follows:

- The polyester/rayon/spandex fabric, for the body of the garment, is manufactured in U.S. from non-originating yarns.
- The polyester twill neck tape is produced in China or another non-participating country from non-originating yarns.
- The polyester twill ribbon fabric, for the hanger loops, is manufactured in China or another non-participating country from non-originating yarns.
- The sewing thread is manufactured in U.S. from U.S. yarns.
- The fabrics are cut, sewn and assembled in Guatemala.
- The heart shaped plastic applique is produced in China or another non-participating country.
- The garment is exported directly from El Salvador to the U.S.

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 non-originating 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.

The merchandise does not qualify for preferential treatment under DR-CAFTA because (a) it will not be wholly obtained or produced entirely in the territory of one or more DR-CAFTA countries; (b) one or more of the non-originating materials used in the production of the goods will not undergo the change in tariff classification required by General Note 29(n)/61.25, HTSUS; and (c) it will not be produced entirely in the territory of one or more of the DR-CAFTA parties exclusively from originating materials.

The sweater, however, may be subject to a reduced rate of duty based upon the provisions of subheading 9822.05.10, subchapter XXII of the HTSUS. U.S. Note 22 to that chapter states:

For a textile or apparel good provided for in chapters 61 through 63 of the tariff schedule that is not an originating good under general note 29 and for which the duty treatment set forth in heading 9822.05.10 is claimed, the rate of duty set forth in the general subcolumn of rate of duty column 1 shall apply only on the value of the assembled good minus the value of fabrics formed in the United States, components knit-to-shape in the United States and any other materials of U.S. origin used in the production of such a good, provided that the good is sewn or otherwise assembled in the territory of a party to the Agreement (other than the United States) specified in general note 29(a) with thread wholly formed in the United States, from fabrics wholly formed in the United States and cut in one or more parties to the Agreement (other than the United States) as defined in general note 29(a) or from components knit-to-shape in the United States, or both. For purposes of this note —

- (a) a fabric is wholly formed in the United States if all the production processes and finishing operations, starting with the weaving, knitting, needling, tufting, felting, entangling or other process, and ending with a fabric ready for cutting or assembly without further processing, took place in the United States; and
- (b) a thread is wholly formed in the United States if all the production processes, starting with the extrusion of filaments, strips, film or

sheet, and including slitting a film or sheet into strip, or the spinning of all fibers into thread, or both, and ending with thread, took place in the United States.

The sweater is cut and assembled, as well as sewn in Guatemala, using fabric for the main body of the garment is wholly formed in the U.S., using thread is wholly formed in the U.S, and the finished sweater is classified in chapter 61. In this regard, the sweater may be eligible under 9822.05.10, HTSUS.

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 359 at 646-733-3049. If you have any questions regarding DR-CAFTA eligibility contact National Import Specialist Rosemarie Hayward at 646-733-3064.

*Sincerely,*

THOMAS J. RUSSO

*Director*

*National Commodity Specialist Division*

## ATTACHMENT B

N018963

November 21, 2007

CLA-2-61:0T:RR:E:NC:TAB:354

CATEGORY: Classification

TARIFF NO.: 6108.22.9020

Ms. MATILDE GUTIERREZ  
VANITY FAIR BRANDS, LP  
4600 W. MILITARY HWY.  
SUITE 700  
MCALLEN, TX 78503

RE: The tariff classification and status under the Dominican Republic-Central America-United States Free Trade Agreement (DR-CAFTA), of a panty from Honduras.

DEAR Ms. GUTIERREZ:

In your letter dated October 25, 2007, you requested a ruling on the status of an underwear panty from Honduras under the DR-CAFTA and applicability of subheading 9822.05.10.

Style #13196 is a woman's panty that will be cut and assembled in Honduras with man-made fabric (s# 00457) knit in the U.S. using Mexican nylon (76%) and U.S. spandex yarns (24%) and is classified under heading 6004. You state that the Mexican nylon yarns used in fabric #00457 is classified under subheading 5402.41.90. Fabric #00457 is the fabric that makes up the base fabric used in the construction of the panty. You state that the panty will be sewn using U.S. origin thread; you have not stated its fiber content, however, for the purposes of this ruling we will assume the threads are extruded or spun in the U.S. Other U.S. components include a gusset crotch lining that you state is made of U.S. cotton and classified under subheading 6005.22; for the purposes of this ruling we will assume the lining is wholly formed in the U.S. Foreign materials used in this panty include the leg elastic (VF22010) that originates in Mexico made of 74% Mexican nylon and 26% U.S. spandex and classified under subheading 5806.20, and waist elastic (VF20199) that originates in China made of 88% nylon and 12% lycra and is also classified under subheading 5806.20.

The applicable tariff provision for the panty will be 6108.22.9020, Harmonized Tariff Schedule of the United States (HTSUS), which provides for women's or girls' slips, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted: briefs and panties: of man-made fibers: other, women's. The general rate of duty will be 15.6% ad valorem.

The panty falls within textile category 652. With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" which is available on our web site at [www.cbp.gov](http://www.cbp.gov). For current information regarding possible textile safeguard

actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at [otexa.ita.doc.gov](http://otexa.ita.doc.gov).

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.

The merchandise does not qualify for preferential treatment under DR-CAFTA because (a) it will not be wholly obtained or produced entirely in the territory of one or more DR-CAFTA countries; (b) one or more of the non-originating materials used in the production of the goods will not undergo the change in tariff classification required by General Note 29(n)/61.29, HTSUS; and (c) it will not be produced entirely in the territory of one or more of the DR-CAFTA parties exclusively from originating materials.

In addition, General Note 29(n), Chapter 61, chapter rule 3 is not satisfied, which states that: Notwithstanding chapter rule 2 to this chapter, a good of this chapter containing fabrics of subheading 5806.20 or heading 6002 shall be considered originating only if such fabrics are both formed from yarn and finished in the territory of one or more of the parties to the Agreement.

Chapter note 3 does not require that this fabric provide the essential character, but that the garment “contains” this fabric. Because the waist and leg elastic is classified in subheading 5806.20, it does not meet the tariff change requirements.

The panty, however, may be subject to a reduced rate of duty based upon the provisions of subheading 9822.05.10, subchapter XXII of the HTSUS. U.S. Note 22 to that chapter states:

For a textile or apparel good provided for in chapters 61 through 63 of the tariff schedule that is not an originating good under general note 29 and for which the duty treatment set forth in heading 9822.05.10 is claimed, the rate of duty set forth in the general subcolumn of rate of duty column 1 shall apply only on the value of the assembled good minus the value of fabrics formed in the United States, components knit-to-shape in the United States and any other materials of U.S. origin used in the produc-



tion of such a good, provided that the good is sewn or otherwise assembled in the territory of a party to the Agreement (other than the United States) specified in general note 29(a) with thread wholly formed in the United States, from fabrics wholly formed in the United States and cut in one or more parties to the Agreement (other than the United States) as defined in general note 29(a) or from components knit-to-shape in the United States, or both. For purposes of this note —

- (c) a fabric is wholly formed in the United States if all the production processes and finishing operations, starting with the weaving, knitting, needling, tufting, felting, entangling or other process, and ending with a fabric ready for cutting or assembly without further processing, took place in the United States; and
- (d) a thread is wholly formed in the United States if all the production processes, starting with the extrusion of filaments, strips, film or sheet, and including slitting a film or sheet into strip, or the spinning of all fibers into thread, or both, and ending with thread, took place in the United States.

The panty is cut and assembled, as well as sewn in Honduras, using fabric for the main body of the panty and fabric for the gusset crotch that we assume are wholly formed in the U.S., using thread that we assume is wholly formed in the U.S, and the finished panty is classified in chapter 61. In this regard, the panty may be eligible under 9822.05.10, HTSUS.

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 Deborah Marinucci at 646-733-3054.

*Sincerely,*

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

ATTACHMENT C

N249027

January 21, 2014

CLA-2-61 OT:RR:NC:N3:358

CATEGORY: Classification

TARIFF NO.: 6110.20.2079; 9822.05.10

Ms. EMILIA MACIAS  
JERRY LEIGH  
7860 NELSON ROAD  
VAN NUYS, CA 91402

RE: The tariff classification and status under the Dominican Republic-Central America-United States Free Trade Agreement (DR-CAFTA) of a girl's pullover from Guatemala.

DEAR Ms. MACIAS:

In your letter dated December 30, 2013, you requested a ruling on the status of a girl's short sleeve pullover under the DR-CAFTA.

You have submitted a girl's pullover with short cap sleeves constructed of 100% cotton knitted fabric. The item has a round rib knit neckline and a hemmed bottom. The pullover body has a prominent screen print design. The garment's waistband has an overlay of sequin covered 100% polyester mesh fabric.

The applicable subheading for the girl's pullover will be 6110.20.2079, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Sweaters, pullovers and similar articles, knitted or crocheted, of cotton, other, other, other, women's or girls', other." The rate of duty will be 16.5 percent ad valorem.

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

You propose two manufacturing scenarios.

In the first scenario, which you refer to as style ST14398B, the cotton knitted fabric and the rib knit capping fabric are produced in the United States from U.S. yarns. The sewing thread is wholly formed and finished in Guatemala. The sequined fabric is made in China. In Guatemala, the fabrics are cut, sewn and assembled into the finished garment and a screen print is applied to the front panel. The garments are exported directly from Guatemala to the U.S.

In the second scenario, which you refer to as style ST14398A, the cotton knitted fabric and the rib knit capping fabric are produced in the United States from imported yarns of Korea and Pakistan. The sewing thread is wholly formed and finished in the United States. The sequined fabric is made in China. In Guatemala, the fabrics are cut, sewn and assembled into the finished garment and a heat transfer print is applied to the front panel. The garments are exported directly from Guatemala to the U.S.

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.

In the first scenario, based on the aforementioned facts, style ST14398B does qualify for DR-CAFTA preferential treatment, because it will meet the requirements of HTSUS General Note 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 the rule for that good.” The component that determines the classification is the cotton knitted fabric which is an originating material. The goods will therefore be entitled to a free rate of duty under the DR-CAFTA upon compliance with all applicable laws, regulations, and agreements.

In the second scenario, based on the facts provided, style ST14398A does not qualify for preferential treatment under DR-CAFTA because (a) it will not be wholly obtained or produced entirely in the territory of one or more DR-CAFTA countries; (b) one or more of the non-originating materials used in the production of the goods will not undergo the change in tariff classification required by General Note 29(n)/61.24, HTSUS; and (c) it will not be produced entirely in the territory of one or more of the DRCAFTA parties exclusively from originating materials.

You inquire whether the merchandise may be subject to a reduced rate of duty based upon the provisions of subheading 9822.05.10, subchapter XXII of the HTSUS. U.S. Note 22 to that chapter states: For a textile or apparel good provided for in chapters 61 through 63 of the tariff schedule that is not an originating good under general note 29 and for which the duty treatment set forth in heading 9822.05.10 is claimed, the rate of duty set forth in the general subcolumn of rate of duty column 1 shall apply only on the value of the assembled good minus the value of fabrics formed in the United States, components knit-to-shape in the United States and any other materials of U.S. origin used in the production of such a good, provided that the good is sewn or otherwise assembled in the territory of a party to the Agreement (other than the United States) specified in general note 29(a) with thread wholly formed in the United States, from fabrics wholly formed in the United

States and cut in one or more parties to the Agreement (other than the United States) as defined in general note 29(a) or from components knit-to-shape in the United States, or both.

For purposes of this note—

(a) a fabric is wholly formed in the United States if all the production processes and finishing operations, starting with the weaving, knitting, needling, tufting, felting, entangling or other process, and ending with a fabric ready for cutting or assembly without further processing, took place in the United States; and

(b) a thread is wholly formed in the United States if all the production processes, starting with the extrusion of filaments, strips, film or sheet, and including slitting a film or sheet into strip, or the spinning of all fibers into thread, or both, and ending with thread, took place in the United States.

The pullover is cut and assembled, as well as sewn in a DR-CAFTA country, using fabric that is wholly formed in the U.S., using thread that is wholly formed in the U.S., and the finished pullover is classified in chapter 61. In this regard, the pullover may be eligible under 9822.05.10, HTSUS.

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 Kimberly Praino at 646-733-3053.

*Sincerely,*

GWENN KLEIN KIRSCHNER

*Acting Director*

*National Commodity Specialist Division*

ATTACHMENT D

HQ H252907  
OT:RR:CTF:VS H252907 CMR  
CATEGORY: Classification

ROBERT STACK, ESQ.  
TOMPKINS & DAVIDSON, LLP  
5 HANOVER SQUARE  
15TH FLOOR  
NEW YORK, NY 10004

RE: Modification of New York Ruling Letter (NY) N242661, dated July 1, 2013; Eligibility for preferential tariff treatment; Subheading 9822.05.10; HTSUS; DR-CAFTA

DEAR MR. STACK:

It has come to our attention that an error was made in New York Ruling Letter (NY) N242661, dated July 1, 2013, issued to you on behalf of your client, Macy's Merchandising Group, Inc., regarding the eligibility of certain women's sweaters for preferential tariff treatment under the Dominican Republic-Central America-United States Free Trade Agreement (DR-CAFTA). The ruling indicated that the sweaters may be eligible for preferential tariff treatment under subheading 9822.05.10, Harmonized Tariff Schedule of the United States (HTSUS). This is incorrect.

**FACTS:**

The garment at issue, style 09750AF13, was described NY N242661 as follows:

The submitted sample, Style 09750AF13, is a woman's "Live Love Dream™" label cut and sewn sweater that is constructed from 56% polyester, 41% rayon, and 3% spandex finely knit jersey fabric. The outer surface of the garment measures nine or fewer stitches per two centimeters in the direction the stitches were formed. The garment features long raglan sleeves with self-fabric cuffs, a round neckline with self-fabric edging, and a self-fabric banded bottom with a heart shaped heat seal. The garment extends to below the waist.

The garment was classified in subheading 6110.30.3020, HTSUS, as a women's sweater of man-made fibers.

The manufacturing operations to produce the garment were described as:

The polyester/rayon/spandex fabric, for the body of the garment, is manufactured in U.S. from non-originating yarns.

The polyester twill neck tape is produced in China or another non-participating country from non-originating yarns.

The polyester twill ribbon fabric, for the hanger loops, is manufactured in China or another non-participating country from non-originating yarns.

The sewing thread is manufactured in U.S. from U.S. yarns.

The fabrics are cut, sewn and assembled in Guatemala.

The heart shaped plastic applique is produced in China or another non-participating country.

Your letter, dated May 28, 2013, requesting a ruling indicates that the garment is to be exported directly from Guatemala to the United States. You also indicated that your client was contemplating substituting a solid white neckband fabric formed in Guatemala for the current striped neckband fabric of U.S. origin.

**ISSUE:**

Whether the garment at issue, style D9750AF13, qualifies for preferential tariff treatment under the DR-CAFTA by classification in subheading 9822.05.10, HTSUS.

**LAW AND ANALYSIS:**

The DR-CAFTA was signed by the governments of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and the United States on August 5, 2004. It was approved by the U.S. Congress with the enactment on August 2, 2005, of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (the Act), Pub. L. 109-53, 119 Stat. 462 (19 U.S.C. 4001 *et seq.*). GN 29, HTSUS, implements the DR-CAFTA. GN 29(b), subject to the provisions of subdivisions (c), (d), (m) and (n) of GN 29, sets forth the criteria for determining whether a good (other than agricultural goods provided for in GN 29(a)(ii)) is an originating good for purposes of the DR-CAFTA.

GN 29(d)(iv) states:

For a textile or apparel good provided for in chapters 61 through 63 of the tariff schedule that is not an originating good and for which the duty treatment set forth in subheading 9822.05.10 is claimed, the rate of duty set forth in the general subcolumn of rate of duty column 1 shall apply only on the value of the assembled good minus the value of fabrics formed in the United States, components knit-to-shape in the United States and any other materials of U.S. origin used in the production of the good, provided that the good is sewn or otherwise assembled in the territory of a party to the Agreement (other than the United States) with thread wholly formed in the United States, from fabrics wholly formed in the United States and cut in one or more parties to the Agreement or from components knit-to-shape in the United States, or both. For purposes of this subdivision —

- (1) a fabric is wholly formed in the United States if all the production processes and finishing operations, starting with the weaving, knitting, needling, tufting, felting, entangling or other process, and ending with a fabric ready for cutting or assembly without further processing, took place in the United States; and
- (2) a thread is wholly formed in the United States if all the production processes, starting with the extrusion of filaments, strips, film or sheet, and including slitting a film or sheet into strip, or the spinning of all fibers into thread, or both, and ending with thread, took place in the United States.

In your request of May 28, 2013, you acknowledged that style D9750AF13 was not an originating good under the DR-CAFTA, but you believed the garment to be eligible for a partial duty allowance under subheading 9822.05.10, HTSUS. Subheading 9822.05.10, HTSUS, provides for:

Textile and apparel goods of chapters 61 through 63 described in U.S. Note 22 to this subchapter and entered pursuant to its provisions

Note 22, Subchapter XXII, Chapter 98 restates the language of GN 29(d)(iv).

Unlike some of the preferential rules set forth in GN 29(n) which look to the formation of fiber or yarn, subheading 9822.05.10, HTSUS, liberalizes this requirement and looks to the formation of the fabric of the textile or apparel good but requires that the good be from fabrics wholly formed in the United States. The provision requires that all fabric and thread used in a qualifying textile or apparel article be wholly formed in the U.S.

Similar language to that in subheading 9822.05.10, HTSUS, is found in subheading 9820.11.06, HTSUS, one of the provisions implementing the United States-Caribbean Basin Trade Partnership Act (CBTPA). The provision provides, in relevant part, for preferential tariff treatment to textile apparel articles sewn or otherwise assembled in beneficiary countries “with thread formed in the United States from fabrics wholly formed in the United States.” In interpreting this provision, CBP has held that no foreign fabric may be used in the production of apparel, unless it falls within the findings or trimmings provision set forth in the CBTPA. *See* HQ 966703, dated December 9, 2003, wherein CBP stated that reflective tape and a rear rectangular patch comprising a large surface area of a coverall were not findings or trimmings and if made of foreign fabric would disqualify the coveralls from eligibility for preferential tariff treatment under the CBTPA.

The construction of style D9750AF13 includes not only fabrics which are wholly formed in the United States, but fabrics which have been formed outside the United States—specifically, the polyester twill neckband tape fabric and the polyester twill ribbon hanger fabric, in addition to the possibility of the solid white neckband fabric. The language of Note 22, Subchapter XXII, Chapter 98, which is the same language found in GN 29(d)(iv) requires that the good be produced from fabrics wholly formed in the United States. There is no allowance, or *de minimis*, for fabrics formed outside the U.S. to be used in the production of garments qualifying for classification in subheading 9822.05.10, HTSUS. Therefore, style D9750AF13, produced as described herein of fabrics wholly formed in the U.S. and fabrics formed outside the U.S., cut and sewn in Guatemala with thread wholly formed in the U.S., does not qualify for preferential tariff treatment under subheading 9822.05.10, HTSUS.

**HOLDING:**

Style D9750AF13 is not eligible for classification in subheading 9822.05.10, HTSUS, and therefore, not eligible for preferential tariff treatment under the DR-CAFTA. NY N242661, dated July 1, 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 this merchandise is 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 H259698  
OT:RR:CTF:VS H259698 CMR  
CATEGORY: Classification

Ms. MATILDE GUTIERREZ  
VANITY FAIR BRANDS, LP  
4600 W. MILITARY HIGHWAY  
SUITE 700  
MCALLEN, TX 78503

RE: Modification of New York Ruling Letter (NY) N018963, dated November 21, 2007; Eligibility for preferential tariff treatment; Subheading 9822.05.1 0; HTSUS; DR-CAFTA

DEAR Ms. GUTIERREZ:

It has come to our attention that an error was made in New York Ruling Letter (NY) N018963, dated November 21, 2007, issued to you regarding the eligibility of an underwear panty for preferential treatment under the Dominican Republic-Central America-United States Free Trade Agreement (DR-CAFTA) by classification in subheading 9822.05.10, Harmonized Tariff Schedule of the United States (HTSUS). The ruling indicated that the panty may be eligible for preferential tariff treatment under subheading 9822.05.10, HTSUS. This is incorrect.

**FACTS:**

The panty and the manufacturing process were described in NY N018963 as follows:

Style #13196 is a woman's panty that will be cut and assembled in Honduras with man-made fabric (s# 00457) knit in the U.S. using Mexican nylon (76%) and U.S. spandex yarns (24%) and is classified under heading 6004. You state that the Mexican nylon yarns used in fabric #00457 is classified under subheading 5402.41.90. Fabric #00457 is the fabric that makes up the base fabric used in the construction of the panty. You state that the panty will be sewn using U.S. origin thread; you have not stated its fiber content, however, for the purposes of this ruling we will assume the threads are extruded or spun in the U.S. Other U.S. components include a gusset crotch lining that you state is made of U.S. cotton and classified under subheading 6005.22; for the purposes of this ruling we will assume the lining is wholly formed in the U.S. Foreign materials used in this panty include the leg elastic (VF22010) that originates in Mexico made of 74% Mexican nylon and 26% U.S. spandex and classified under subheading 5806.20, and waist elastic (VF20199) that originates in China made of 88% nylon and 12% lycra and is also classified under subheading 5806.20.

**ISSUE:**

Whether the underwear panty, Style #13196, qualifies for preferential tariff treatment under the DR-CAFTA by classification in subheading 9822.05.10, HTSUS.



**LAW AND ANALYSIS:**

The DR-CAFTA was signed by the governments of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and the United States on August 5, 2004. It was approved by the U.S. Congress with the enactment on August 2, 2005, of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (the Act), Pub. L. 109–53, 119 Stat. 462 (19 U.S.C. 4001 *et seq.*). GN 29, HTSUS, implements the DR-CAFTA. GN 29(b), subject to the provisions of subdivisions (c), (d), (m) and (n) of GN 29, sets forth the criteria for determining whether a good (other than agricultural goods provided for in GN 29(a)(ii)) is an originating good for purposes of the DR-CAFTA.

GN 29(d)(iv) states:

For a textile or apparel good provided for in chapters 61 through 63 of the tariff schedule that is not an originating good and for which the duty treatment set forth in subheading 9822.05.10 is claimed, the rate of duty set forth in the general subcolumn of rate of duty column 1 shall apply only on the value of the assembled good minus the value of fabrics formed in the United States, components knit-to-shape in the United States and any other materials of U.S. origin used in the production of the good, provided that the good is sewn or otherwise assembled in the territory of a party to the Agreement (other than the United States) with thread wholly formed in the United States, from fabrics wholly formed in the United States and cut in one or more parties to the Agreement or from components knit-to-shape in the United States, or both. For purposes of this subdivision —

- (1) a fabric is wholly formed in the United States if all the production processes and finishing operations, starting with the weaving, knitting, needling, tufting, felting, entangling or other process, and ending with a fabric ready for cutting or assembly without further processing, took place in the United States; and
- (2) a thread is wholly formed in the United States if all the production processes, starting with the extrusion of filaments, strips, film or sheet, and including slitting a film or sheet into strip, or the spinning of all fibers into thread, or both, and ending with thread, took place in the United States.

Subheading 9822.05.10, HTSUS, provides for:

Textile and apparel goods of chapters 61 through 63 described in U.S. Note 22 to this subchapter and entered pursuant to its provisions

Note 22, Subchapter XXII, Chapter 98 restates the language of GN 29(d)(iv).

Unlike some of the preferential rules set forth in GN 29(n) which look to the formation of fiber or yarn, subheading 9822.05.10, HTSUS, liberalizes this requirement and looks to the formation of the fabric of the textile or apparel good but requires that the good be from fabrics wholly formed in the United States. The provision requires that all fabric and thread used in a qualifying textile or apparel article be wholly formed in the U.S.

Similar language to that in subheading 9822.05.10, HTSUS, is found in subheading 9820.11.06, HTSUS, one of the provisions implementing the United States — Caribbean Basin Trade Partnership Act (CBTPA). The

provision provides, in relevant part, for preferential tariff treatment to textile apparel articles sewn or otherwise assembled in beneficiary countries “with thread formed in the United States from fabrics wholly formed in the United States.” In interpreting this provision, CBP has held that no foreign fabric may be used in the production of apparel, unless it falls within the findings or trimmings provision set forth in the CBTPA. *See* HQ 966703, dated December 9, 2003, wherein CBP stated that reflective tape and a rear rectangular patch comprising a large surface area of a coverall were not findings or trimmings and if made of foreign fabric would disqualify the coveralls from eligibility for preferential tariff treatment under the CBTPA.

Style #13196 is constructed of fabrics which are wholly formed in the United States and fabrics which are made in China and Mexico, *i.e.*, the leg elastic fabric and the waist elastic fabric which are both classified in subheading 5806.20, HTSUS, which provides for, among other things, narrow woven fabrics, other than woven pile or chenille fabrics, containing by weight 5 percent or more of elastomeric yarn or rubber thread. The language of Note 22, Subchapter XXII, Chapter 98, which is the same language found in GN 29(d)(iv), requires that the good be produced from fabrics wholly formed in the United States. There is no allowance, or *de minimis*, for fabrics formed outside the U.S. to be used in the production of garments qualifying for classification in subheading 9822.05.10, HTSUS. Therefore, the inclusion of Chinese and Mexican fabric in the construction of Style #13196 precludes the garment from qualifying for preferential tariff treatment under subheading 9822.05.10, HTSUS.

**HOLDING:**

Style #13196 is not eligible for classification in subheading 9822.05.10, HTSUS, and therefore, not eligible for preferential tariff treatment under the DR-CAFTA. N018963, dated November 21, 2007, 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 this merchandise is 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 H259699  
OT:RR:CTF:VS H259699 CMR  
CATEGORY: Classification

Ms. EMILIA MACIAS  
JERRY LEIGH  
7860 NELSON ROAD  
VAN NUYS, CA 91402

RE: Modification of New York Ruling Letter (NY) N249027, dated January 21, 2014; Eligibility for preferential tariff treatment; Subheading 9822.05.10; HTSUS; DR-CAFTA

DEAR Ms. MACIAS:

It has come to our attention that an error was made in New York Ruling Letter (NY) N249027, dated January 21, 2014, issued to you regarding the eligibility of a girl's short sleeve knit pullover for preferential tariff treatment under the Dominican Republic – Central America – United States Free Trade Agreement (DR-CAFTA). The ruling indicated that the pullover may be eligible for preferential tariff treatment under subheading 9822.05.10, Harmonized Tariff Schedule of the United States (HTSUS). This is incorrect.

**FACTS:**

The garment at issue, style ST14398, was described NY N249027 as:

... a girl's pullover with short cap sleeves constructed of 100% cotton knitted fabric. The item has a round rib knit neckline and a hemmed bottom. The pullover body has a prominent screen print design. The garment's waistband has an overlay of sequin covered 100% polyester mesh fabric.

The garment was classified in subheading 6110.20.2079, HTSUS, as a girl's knit pullover of cotton.

Two manufacturing operations to produce the garment were described in the ruling as follows:

In the first scenario, which you refer to as style ST14398B, the cotton knitted fabric and the rib knit capping are produced in the United States from U.S. yarns. The sewing thread is wholly formed and finished in Guatemala. The sequined fabric is made in China. In Guatemala, the fabrics are cut, sewn and assembled into the finished garment and a screen print is applied to the front panel. The garments are exported directly from Guatemala to the U.S.

In the second scenario, which you refer to as style ST14398A, the cotton knitted fabric and the rib knit capping fabric are produced in the United States from imported yarns of Korea and Pakistan. The sewing thread is wholly formed and finished in the United States. The sequined fabric is made in China. In Guatemala, the fabrics are cut, sewn and assembled into the finished garment and a heat transfer print is applied to the front panel. The garments are exported directly from Guatemala to the U.S.

In your letter of December 30, 2013, you requested a ruling as to the eligibility of style ST14398B for preferential treatment under the DR-CAFTA

as an originating good and the eligibility of ST14398A for preferential tariff treatment as a non-originating good classified in subheading 9822.05.10, HTSUS.

In NY N249027, style ST14398B was properly found to be an originating good under GN 29 qualifying for preferential tariff treatment under the DR-CAFTA. However, it was stated in NY N249027 that style ST14398A may be eligible for preferential tariff treatment under subheading 9822.05.10, HTSUS. This was incorrect for the reasons set forth below.

#### **ISSUE:**

Whether the garment at issue, style ST14398A, qualifies for preferential tariff treatment under the DR-CAFTA by classification in subheading 9822.05.10, HTSUS.

#### **LAW AND ANALYSIS:**

The DR-CAFTA was signed by the governments of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and the United States on August 5, 2004. It was approved by the U.S. Congress with the enactment on August 2, 2005, of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (the Act), Pub. L. 109-53, 119 Stat. 462 (19 U.S.C. 4001 et seq.). GN 29, HTSUS, implements the DR-CAFTA. GN 29(b), subject to the provisions of subdivisions (c), (d), (m) and (n) of GN 29, sets forth the criteria for determining whether a good (other than agricultural goods provided for in GN 29(a)(ii)) is an originating good for purposes of the DR-CAFTA.

GN 29(d)(iv) states:

For a textile or apparel good provided for in chapters 61 through 63 of the tariff schedule that is not an originating good and for which the duty treatment set forth in subheading 9822.05.10 is claimed, the rate of duty set forth in the general subcolumn of rate of duty column 1 shall apply only on the value of the assembled good minus the value of fabrics formed in the United States, components knit-to-shape in the United States and any other materials of U.S. origin used in the production of the good, provided that the good is sewn or otherwise assembled in the territory of a party to the Agreement (other than the United States) with thread wholly formed in the United States, from fabrics wholly formed in the United States and cut in one or more parties to the Agreement or from components knit-to-shape in the United States, or both. For purposes of this subdivision —

- (1) a fabric is wholly formed in the United States if all the production processes and finishing operations, starting with the weaving, knitting, needling, tufting, felting, entangling or other process, and ending with a fabric ready for cutting or assembly without further processing, took place in the United States; and
- (2) a thread is wholly formed in the United States if all the production processes, starting with the extrusion of filaments, strips, film or sheet, and including slitting a film or sheet into strip, or the spinning of all fibers into thread, or both, and ending with thread, took place in the United States.

Subheading 9822.05.10, HTSUS, provides for:

Textile and apparel goods of chapters 61 through 63 described in U.S. Note 22 to this subchapter and entered pursuant to its provisions

Note 22, Subchapter XXII, Chapter 98 restates the language of GN 29(d)(iv).

Unlike some of the preferential rules set forth in GN 29(n) which look to the formation of fiber or yarn, subheading 9822.05.10, HTSUS, liberalizes this requirement and looks to the formation of the fabric of the textile or apparel good but requires that the good be from fabrics wholly formed in the United States. The provision requires that all fabric and thread used in a qualifying textile or apparel article be wholly formed in the U.S.

Similar language to that in subheading 9822.05.10, HTSUS, is found in subheading 9820.11.06, HTSUS, one of the provisions implementing the United States – Caribbean Basin Trade Partnership Act (CBTPA). The provision provides, in relevant part, for preferential tariff treatment to textile apparel articles sewn or otherwise assembled in beneficiary countries “with thread formed in the United States from fabrics wholly formed in the United States.” In interpreting this provision, CBP has held that no foreign fabric may be used in the production of apparel, unless it falls within the findings or trimmings provision set forth in the CBTPA. See HQ 966703, dated December 9, 2003, wherein CBP stated that reflective tape and a rear rectangular patch comprising a large surface area of a coverall were not findings or trimmings and if made of foreign fabric would disqualify the coveralls from eligibility for preferential tariff treatment under the CBTPA.

Style ST14398A is constructed of fabrics which are wholly formed in the United States and a fabric which is made in China, *i.e.*, the sequined polyester mesh fabric waistband overlay. The language of Note 22, Subchapter XXII, Chapter 98, which is the same language found in GN 29(d)(iv) requires that the good be produced from fabrics wholly formed in the United States. There is no allowance, or *de minimis*, for fabrics formed outside the U.S. to be used in the production of garments qualifying for classification in subheading 9822.05.10, HTSUS. Therefore, the inclusion of Chinese made fabric in the construction of style ST14398A precludes the garment from qualifying for preferential tariff treatment under subheading 9822.05.10, HTSUS.

#### **HOLDING:**

Style ST14398A is not eligible for classification in subheading 9822.05.10, HTSUS, and therefore, not eligible for preferential tariff treatment under the DR-CAFTA. N249027, dated January 21, 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 this merchandise is 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

### PROPOSED MODIFICATION OF RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE COUNTRY OF ORIGIN OF CERTAIN KNIT-TO-SHAPE GARMENTS

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

**ACTION:** Notice of proposed modification of two ruling letters and proposed revocation of any treatment relating to the country of origin of certain knit-to-shape garments.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) proposes to modify two ruling letters, New York Ruling Letter (NY) N026168, dated April 22, 2008, and NY N024465, dated April 9, 2008, relating to the country of origin of certain knit-to-shape garments. Similarly, CBP is proposing to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before January 23, 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 two ruling letters pertaining to the country of origin of certain knit-to-shape garments. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) N026168, dated April 22, 2008 (Attachment A), and NY N024465, dated April 9, 2008 (Attachment B), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the two 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 date of the final notice of this proposed action.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY N026168 and NY N024465, in accordance with the analysis set forth in proposed Headquarters Ruling Letters (HQ) H258586 (Attachment

C), and HQ H259502 (Attachment D). 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 5, 2014

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

Attachments



## ATTACHMENT A

N026168

April 22, 2008

CLA-2-0T: RR: NC:TAB:354

CATEGORY: Classification

MS. ESTHER HA

NURIAN INTERNATIONAL INC.

108 BANGL DONG SONGPA GU

SEOUL, KOREA

RE: Classification and country of origin determination for knit-to-shape undergarments; 19 CFR 102.21 (c)(2) tariff shift; 19 CFR 102.21 (c)(3)

DEAR MS. HA:

This is in reply to your letter dated April 15, 2008, requesting a classification and country of origin determination for knit-to-shape undergarments which will be imported into the United States.

**FACTS:**

The subject merchandise consists of five samples of knit-to-shape women's undergarments that you state will be knit-to-shape and dyed in China or Korea, then sent to Vietnam for cutting along the lines of demarcation, sewing, assembly and packing. All five undergarments are made up of 88% nylon and 12% spandex knit fabric. The garments are then imported into the United States.

Style #7220 "Seamless Brief" and style #7222 "Seamless High Waist Brief," will be knit into tubular components in China or Korea, and feature 1% inch self-start waists and clear and continuous lines of demarcation indicated by a change in the knit pattern delineating the leg openings. In Vietnam, cutting along the lines of demarcation takes place, to create the leg openings. The crotch area that was created after the leg openings were cut is also sewn closed on one side to create the finished briefs. Elasticized capping is also sewn to the leg openings.

Style #7216 "Seamless V-Neck Camisole," and style #7217 "Seamless V-Neck Camisole" will be knit into tubular components in China or Korea, featuring self-start bottoms and clear and continuous lines of demarcation indicated by a change in the knit pattern delineating the arm and neck openings. In Vietnam, cutting along the lines of demarcation takes place to create the arm and neck openings of style #7217, and to create the body of style #7216. Elasticized capping is also sewn to the arm and neck openings of both styles. The elasticized capping of style #7216 extends to form the elasticized, adjustable shoulder straps.

Style #7221 "Seamless High Waist Mid-Leg" is a girdle with two-ply leg extensions that reaches down to the mid thigh, and features a separately sewn-in and lined gusset crotch. Tubular knit components with a self-start waist and lines of demarcation will be created in China or Korea. In Vietnam, cutting along the lines of demarcation takes place to create the leg openings, which are then sewn closed to create the legs, and the crotch portion is sewn in.

**ISSUE:**

What are the classification and country of origin of the subject merchandise?

**CLASSIFICATION:**

The applicable subheading for styles #7220 and #7222 will be 6108.22.9020, Harmonized Tariff Schedule of the United States (HTSUS), which provides for women's or girls' slips, petticoats, briefs, panties, night-dresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted: of man-made fibers: other... women's. The general rate of duty will be 15.6% ad valorem.

The applicable subheading for styles #7216 and #7217 will be 6109.90.1065, HTSUS, which provides for T-shirts, singlets, tank tops and similar garments, knitted or crocheted: of other textile materials, of man-made fibers, women's or girls', tank tops and singlets, women's. The general rate of duty will be 32% ad valorem.

The applicable subheading for style #7221 will be 6212.20.0020, HTSUS, which provides for brassieres, girdles, corsets, braces, garters and similar articles and parts thereof, whether or not knitted or crocheted: girdles and panty-girdles... of man-made fibers. The general rate of duty will be 20% 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/>.

**COUNTRY OF ORIGIN – LAW AND ANALYSIS:**

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

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

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

The following rules shall apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section:

HTSUS	Tariff shift and/or other requirements
6101–6117	(3) If the good is knit to shape, except for goods of subheading 6117.10 provided for in paragraph (e)(2) of this section, a change to 6101 through 6117 from any heading outside that group, provided that the knit to shape components are knit in a single country, territory or insular possession.
6210–6212	(1) If the good consists of two or more component parts, a change to an assembled good of heading 6210 through 6212 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory or insular possession. (2) If the good does not consist of two or more component parts, a change to heading 6210 through 6212 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, 6001 through 6006, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.

As styles #7220, #7222, #7216 and #7217 are knit to shape in a single country, that is, China or Korea, as per the terms of the tariff shift requirement for headings 6101-6117 (above), country of origin is conferred in China or Korea.

For style #7221, which falls within the terms of the tariff shift requirement for headings 6210–6212 (above):

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

As style #7221 is not “wholly assembled” in Vietnam because it consists of a single knit-to-shape component (the attachment of the gusset crotch portion is considered a ‘minor subassembly’), Section 102.21(c)(2) is inapplicable.

Section 102.21 (c)(3) states that, “Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) or (2) of this section”:

(i) If the good was knit to shape, the country of origin of the good is the single country, territory, or insular possession in which the good was knit;

As style #7221 was knit-to-shape in China or Korea, the country of origin is conferred in China or Korea.

**HOLDING:**

The country of origin of all submitted styles will be China or Korea.

Styles #7220 and #7222 fall within textile category 652. Styles #7216 and #7217 fall within textile category 639. Style #7221 falls within textile category 649. With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" which is available on our web site at [www.cbp.gov](http://www.cbp.gov). For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at [otexa.ita.doc.gov](http://otexa.ita.doc.gov).

The holding set forth above applies only to the specific factual situation and merchandise identified in the ruling request. This position is clearly set forth in section 19 CFR 177.9(b)(1). This section states that a ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177). Should it be subsequently determined that the information furnished is not complete and does not comply with 19 CFR 177.9(b)(1), the ruling will be subject to modification or revocation. In the event there is a change in the facts previously furnished, this may affect the determination of country of origin. Accordingly, if there is any change in the facts submitted to Customs, it is recommended that a new ruling request be submitted in accordance with 19 CFR 177.2.

A copy of the ruling and 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 Deborah Marinucci at 646-733-3054.

*Sincerely,*

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

ATTACHMENT B

N024465

April 9, 2008

CLA-2-62:0T:RR:NC:TAB:354

CATEGORY: Classification

TARIFF NO.: 6212.20.0020, 9821.11.01

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

RE: The tariff classification and status under the Andean Trade Promotion and Drug Eradication Act (ATPDEA) of a woman's undergarment from Colombia.

DEAR Ms. TOVAR:

In your letter dated March 4, 2008, written on behalf of your client, Holt Hosiery, you requested a classification ruling.

You have submitted a sample of a "Panty Smoother," style #601 0, which is a woman's girdle constructed of 86% nylon and 14% spandex knit fabric. The garment reaches down to the mid thigh and features a self-fabric hemmed waistband, a separately sewn-in gusset crotch, and two-ply fabric making up each leg extension. The panty girdle portion features a front and back center seam. The undergarment provides body support throughout, from the waist to the mid thighs.

The applicable subheading for style #6010 "Panty Smoother" will be 6212.20.0020, 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: girdles and panty-girdles... of man-made fibers. The duty rate will be 20% ad valorem.

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

The garment components will be knit-to-shape in North Carolina, using nylon and spandex yarns of U.S. origin, where knitting machines will create a separate tubular knit component with a self-start bottom for each leg/panty girdle portion, as well as the gusset crotch component that makes up the garment. The knit-to-shape components will be shipped to Colombia, along with U.S.-origin thread for completion of the garment. In Colombia, the two leg/panty girdle components are slit open and then sewn together, creating the front and back center seam of the panty girdle portion, and the gusset crotch portion is sewn in. The girdles will then be imported directly into the U.S., where they will be dyed, boarded, steamed, and packaged for retail sale.

Colombia is a designated beneficiary Andean country under ATPDEA. See U.S. Note 1, Subchapter XXI, HTSUS.

Subheading 9821.11.01, HTSUS, provides for preferential treatment for articles imported from a designated beneficiary Andean country, as follows:

Apparel articles sewn or otherwise assembled in one or more such countries, or the United States, or both, exclusively from any of the following:

Fabrics or fabric components wholly formed, or components knit-to-shape, in the United States, from yarns wholly formed in the United States or in one or more such countries (including fabrics not formed from yarns, if such fabrics are classifiable in heading 5602 or 5603 of the tariff schedule and are formed in the United States), provided that, if such apparel articles are assembled from knitted or crocheted fabrics or from woven fabrics, all dyeing, printing and finishing of the fabrics is carried out in the United States.

Based on the information you provided, the articles are eligible for duty free treatment in subheading 9821.11.01, HTSUS, which provides for special tariff benefits for certain textile and apparel goods under the Andean Trade Promotion and Drug Eradication Act, provided the apparel articles meet the remaining requirements of the relevant ATPDEA provisions.

### **COUNTRY OF ORIGIN – LAW AND ANALYSIS:**

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

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

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

19 CFR 102.21(e) for heading 6212 states “if the good consists of two or more component parts, a change to an assembled good of heading 6210 through 6212 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.”

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

plackets, pockets) will not affect the status of a good as “wholly assembled” in a single country, territory, or insular possession.

As the finished article consists of two or more parts that are wholly assembled in a single country, that is Colombia, as per the terms of the tariff shift requirement, country of origin is conferred in Colombia.

Based on the information that you supplied, and provided all requirements are met, the article meets the requirements set forth in the aforementioned interim regulations and the description contained at subheading 9821.11.01, HTSUS, for preferential treatment under the ATPDEA. In view of the foregoing, the subject garment is eligible for duty free treatment under subheading 9821.11.01, HTSUS.

You also state that a qualifying nylon filament yarn of subheading 5402.31, HUSUS, from Israel may be used in the production of the panty smoothers. Subchapter XXI, U.S. Note 4(d) states that:

For purposes of subheadings 9821.11.01 through 9821.11.13, inclusive, and subheading 9821.11.25, an article otherwise eligible for preferential treatment under such subheadings shall not be ineligible because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable in subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.45.10, 5402.45.90, 5402.51.00 or 5402.61.00 of the tariff schedule that is a product of Israel, Canada or Mexico.

In this regard, the imported articles that are made with qualifying nylon filament yarn of subheading 5402.31, HTSUS, would also be eligible for duty free treatment under subheading 9821.11.01, HTSUS.

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 Deborah Marinucci at 646-733-3054.

*Sincerely,*

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

ATTACHMENT C

HQ H258586  
OT:RR:CTF:VS H258586 CMR  
CATEGORY: Classification

Ms. ESTHER HA  
NURIAN INTERNATIONAL INC.  
108 BANGL DONG SONPA GU  
SEOUL, KOREA

RE: Modification of New York Ruling Letter (NY) N026168, dated April 22, 2008; Country of origin; 19 U.S.C. § 3592

DEAR Ms. HA:

It has come to our attention that an error was made in the analysis of the country of origin determination for one garment, style #7221, which was the subject of New York Ruling Letter (NY) N026168, dated April 22, 2008. The result was correct; however, the analysis was not. Therefore, we are modifying NY N026168 only with regard to the country of origin analysis relevant to style #7221 and will not address the other styles which were also the subject of the ruling.

**FACTS:**

Style #7221 was described in NY N026168 as follows:

Style #7221 “Seamless High Waist Mid-Leg” is a girdle with two-ply leg extensions that reaches down to the mid thigh, and features a separately sewn-in and lined gusset crotch. Tubular knit components with a self-start waist and lines of demarcation will be created in China or Korea. In Vietnam, cutting along the lines of demarcation takes place to create the leg openings, which are then sewn closed to create the legs, and the crotch portion is sewn in.

The garment was further described as a knit-to-shape undergarment which is knit-to-shape and dyed in China or Korea, then sent to Vietnam for cutting along the lines of demarcation, sewing, assembly and packing. The garment is then shipped to the U.S. The tubular knit components have a fiber content of 88% nylon and 12% spandex.

**ISSUE:**

What is the country of origin of style #7221?

**LAW AND ANALYSIS:**

On December 8, 1994, the President signed into law the Uruguay Round Agreements Act. Section 334 of that Act, codified at 19 U.S.C. § 3592, provides rules of origin for textiles and apparel entered, or withdrawn from warehouse, for consumption, on and after July 1, 1996. Specifically, 19 U.S.C. § 3592(b)(2)(A)(ii) provides:

- (A) Notwithstanding paragraph (1)(D) and except as provided in subparagraphs (B) and (C) —

\* \* \*



- (ii) a textile or apparel product which is knit to shape shall be considered to originate in, and be the growth, product, or manufacture of, the country, territory, or possession in which it is knit.

Paragraph (1)(D) of 19 U.S.C. § 3592 provides that the origin of a textile product, (other than products wholly obtained or produced, or yarn, thread, twine, cordage, rope, cable, braiding, or fabric, provided for in 19 U.S.C. § 3592(b)(1)(A), (B) or (C)) is where the product is wholly assembled from its component pieces. In NY N026168, Customs and Border Protection (CBP) determined the origin of style #7221 by sequential application of the rules of origin set forth in 19 CFR § 102.21 taking into consideration whether the garment was wholly assembled. Under the statute a knit-to-shape textile or apparel product is not subject to the “wholly assembled” rule set forth in 19 U.S.C. § 3592(b)(1)(D). Based upon the statutory language, knit-to-shape textile and apparel products derive their origin from the country, territory or possession in which they are knit-to-shape. A regulatory provision does not override statutory language and CBP is in the process of modifying 19 CFR § 102.21. *See* Headquarters Ruling Letter (HQ) 227844, dated March 5, 1998.

**HOLDING:**

The country of origin of style #7221 is China or Korea.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is 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 D

HQ H259502  
OT:RR:CTF:VS H259502 CMR  
CATEGORY: Classification

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

RE: Modification of New York Ruling Letter (NY) N024465, dated April 9, 2008; Country of origin; 19 U.S.C. § 3592

DEAR Ms. TOVAR:

It has come to our attention that an error was made in the analysis of the country of origin determination for style #6010, which was the subject of New York Ruling Letter (NY) N024465, dated April 9, 2008, issued to you on behalf of your client, Holt Hosiery. The ruling was correct with regard to the classification and eligibility of the garment under the Andean Trade Promotion and Drug Eradication Act (ATPDEA), but was incorrect as to the origin of the garment. Therefore, we are modifying NY N024465 only with regard to the country of origin determination set forth therein.

**FACTS:**

Style #6010 was described in NY N024465 as follows:

You have submitted a sample of a “Panty Smoother,” style #6010, which is a woman’s girdle constructed of 86% nylon and 14% spandex knit fabric. The garment reaches down to the mid thigh and features a self-fabric hemmed waistband, a separately sewn-in gusset crotch, and two-ply fabric making up each leg extension. The panty girdle portion features a front and back center seam. The undergarment provides body support throughout, from the waist to the mid thighs.

**ISSUE:**

What is the country of origin of style #6010?

**LAW AND ANALYSIS:**

On December 8, 1994, the President signed into law the Uruguay Round Agreements Act. Section 334 of that Act, codified at 19 U.S.C. § 3592, provides rules of origin for textiles and apparel entered, or withdrawn from warehouse, for consumption, on and after July 1, 1996. Specifically, 19 U.S.C. § 3592(b)(2)(A)(ii) provides:

(A) Notwithstanding paragraph (1)(D) and except as provided in subparagraphs (B) and (C) —

\* \* \*

(ii) a textile or apparel product which is knit to shape shall be considered to originate in, and be the growth, product, or manufacture of, the country, territory, or possession in which it is knit.

Paragraph (1)(D) of 19 U.S.C. § 3592 provides that the origin of a textile product, (other than products wholly obtained or produced, or yarn, thread, twine, cordage, rope, cable, braiding, or fabric, provided for in 19 U.S.C. § 3592(b)(1)(A), (B) or (C)) is where the product is wholly assembled from its component pieces. In NY N024465, Customs and Border Protection (CBP) determined that style #6010 consisted of two or more component parts that were wholly assembled in a single country, Colombia, and that therefore, pursuant to the rules set forth in 19 CFR § 102.21, the country of origin of style #6010 was Colombia. This was incorrect. Assembly of the garment should not have been considered as style #6010 is a knit to shape garment. Under the statute a knit-to-shape textile or apparel product is not subject to the “wholly assembled” rule set forth in 19 U.S.C. § 3592(b)(1)(D). Based upon the statutory language, knit-to-shape textile and apparel products derive their origin from the country, territory or possession in which they are knit-to-shape. A regulatory provision does not override statutory language and CBP is in the process of modifying 19 CFR § 102.21. *See* Headquarters Ruling Letter (HQ) 227844, dated March 5, 1998. Therefore, the country of origin of style #6010 is where the garment components were knit-to-shape, that is, the United States.

**HOLDING:**

The country of origin of style #6010 is the United States.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is 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**

**REVOCATION OF TWO RULING LETTERS AND  
REVOCATION OF TREATMENT RELATING TO THE  
CLASSIFICATION OF MP3 PLAYER DOCKING STATIONS  
AND A SPEAKER SYSTEM**

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

**ACTION:** Notice of revocation of two ruling letters and revocation of treatment relating to the classification of MP3 player docking stations and a speaker system.

**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 Modern-

ization) 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 two ruling letters concerning the classification of MP3 player docking stations and a speaker system 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 proposing to revoke HQ H213705 and NY R01884 was published on September 4, 2013, in Volume 47, Number 37, of the Customs Bulletin. CBP received one comment in response to this notice.

**DATES:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 23, 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 HQ H213705 and NY R01884 was published on September 4, 2013, in

Volume 47, Number 37, of the Customs Bulletin. This notice advises interested parties that CBP is revoking two ruling letters pertaining to the classification of MP3 player docking stations and a speaker system. Although in this notice CBP is specifically referring to Headquarters Ruling Letter (HQ) H213705, dated August 31, 2012 and New York Ruling Letter (“NY”) NY R01884, dated May 24, 2005, 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 revoking HQ H213705 and NY R01884 in order to reflect the proper classification of these items as sound recording or reproducing apparatus of subheading 8519.89.30, HTSUS, according to the analysis contained in Headquarters Ruling Letter (HQ) H234950, which is attached to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: December 2, 2014

IEVA K. O’ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H234950

December 2, 2014

CLA-2 OT:RR:CTF:TCM HQ H234950 TNA

CATEGORY: Classification

TARIFF NO.: 8519.89.30

MR. ANDY SHIM, PRODUCT MANAGER  
 LG ELECTRONICS U.S.A. INC.  
 1000 SYLVAN AVENUE  
 ENGLEWOOD CLIFFS, NJ 07632

RE: Revocation of HQ H213705 and NY R01884; Classification of the LG ND3520 and ND4520 Docking Stations and the iFi speaker system

DEAR MR. SHIM:

This letter is in reference to your request for reconsideration of Headquarters Ruling Letter (“HQ”) H213705, issued to LG Electronics on August 31, 2012, concerning the tariff classification of the “LG ND3520 Docking Speaker” (“ND3520”). There, U.S. Customs and Border Protection (“CBP”) classified two models of “docking speakers” under subheading 8518.22.00, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets; parts thereof. Loudspeakers, whether or not mounted in their enclosures: Multiple loudspeakers, mounted in the same enclosure.”

This letter also concerns NY Ruling Letter (NY) R01884, dated May 24, 2005, which classified the iFi speaker system made by Klipsch Audio Technologies in subheading 8518.40.20, HTSUS, which provides for “Audio-frequency electric amplifiers.” We have reviewed HQ H213705 and NY R01884 and found them to be incorrect. For the reasons set forth below, we hereby revoke HQ H213705 and NY R01884.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke HQ H213705 and NY R01884 was published on September 4, 2013, in Volume 47, Number 37, of the Customs Bulletin. CBP received one comment in response to this notice, which is discussed in the ruling.

**FACTS:**

In HQ H213705, CBP classified the LG ND3520 and the LG ND4520, docking stations with speakers intended for exclusive use with the iPod, iPad, and iPhone. They are both single units that contain both loudspeakers and a base for the iPod, iPad or iPhone. The electronic device is inserted into this base, and the docking stations serve both to charge the device, and to play the music files on it through the loudspeakers.

The docking stations allow users to charge the device, while the loudspeakers allow the user to play the music that is saved on the iPod, iPad or iPhone. They also have audio input that allows connection to MP3 players, laptops, etc., and Bluetooth<sup>1</sup>, which allows them to play music directly from a laptop

<sup>1</sup> Bluetooth is a proprietary wireless technology that allows wireless connections between electrical devices. The connection allows wireless transfer of data between these devices.

or mobile phone. They also contains a USB port, which allows a user to insert a thumb drive with music on it; once such a drive is inserted, the ND3520 and the ND4520 can read the music from the thumb drive and play it through its speakers. Neither the ND3520 nor the ND4520 contain a radio.

In NY R01884, CBP classified the iFi Multimedia System. This is essentially a speaker system that can play music from an attached hard disc drive unit such as an MP3 Player, iPod, or a similar Flash Memory device. The system consists of 2 speakers, 1 subwoofer with amplifier, 1 radio frequency remote control, 2 speaker wires, 1 AC power cord, 5 plastic spacers, 1 control dock. These components are imported together along with an owner's manual and warranty card.

#### **ISSUE:**

Whether the subject docking stations and speaker system are classified as loudspeakers of heading 8518, HTSUS, or as sound recording or reproducing devices of heading 8519, HTSUS?

#### **LAW AND ANALYSIS:**

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

The HTSUS provisions under consideration are as follows:

8518 Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets; parts thereof:

8519 Sound recording or reproducing apparatus:

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

The EN to heading 85.18 provides, in pertinent part, the following:

This heading covers microphones, loudspeakers, headphones, earphones and audio frequency electric amplifiers of all kinds presented separately, regardless of the particular purpose for which such apparatus may be designed (e.g., telephone microphones, headphones and earphones, and radio receiver loudspeakers).

The heading also covers electric sound amplifier sets ....

#### **(B) LOUSPEAKERS, WHETHER OR NOT MOUNTED IN THEIR ENCLOSURES**

*See, e.g.,* <http://www.bluetooth.com/Pages/about-technology.aspx>.

The function of loudspeakers is the converse of that of microphones: they reproduce sound by converting electrical variations or oscillations from an amplifier into mechanical vibrations which are communicated to the air.

Matching transformers and amplifiers are sometimes mounted together with loudspeakers. Generally the electrical input signal received by loudspeakers is in analogue form, however in some cases the input signal is in digital format. Such loudspeakers incorporate digital to analogue converters and amplifiers from which the mechanical vibrations are communicated to the air.

Loudspeakers may be mounted on frames, chassis or in cabinets of different types (often acoustically designed), or even in articles of furniture. They remain classified in this heading provided the main function of the whole is to act as a loudspeaker. Separately presented frames, chassis, cabinets, etc., also fall in this heading provided they are identifiable as being mainly designed for mounting loudspeakers; articles of furniture of Chapter 94 designed to receive loudspeakers in addition to their normal function remain classified in Chapter 94.

The heading includes loudspeakers designed for connection to an automatic data processing machine, when presented separately.

The EN to heading 85.19 provides, in pertinent part, the following:

This heading covers apparatus for recording sound, apparatus for reproducing sound and apparatus that is capable of both recording and reproducing sound. Generally, sound is recorded onto or reproduced from an internal storage device or media (e.g., magnetic tape, optical media, semiconductor media or other media of heading 85.23)....

#### (IV) OTHER APPARATUS USING MAGNETIC, OPTICAL OR SEMICONDUCTOR MEDIA

The apparatus of this group may be portable. They may also be equipped with, or designed to be attached to acoustic devices (loudspeakers, earphones, headphones) and an amplifier.

In requesting reconsideration, you submitted evidence emphasizing that the ND3520 contains a USB port that can read files from a USB device. You also emphasized that it can play back music when physically connected to such devices as the iPod, iPad and iPhone. As such, in requesting reconsideration of HQ H213705, you argue that the LD3520 is classified in heading 8519, HTSUS, as a sound recording or reproducing device. In support of this argument, you cite NY N133779, dated December 17, 2010, which classified a device that is designed to play and control audio files that it receives over a wireless computer network in heading 8519, HTSUS.

In response, we note that although you only requested reconsideration of model ND3520 in HQ H213705, the ND3520 and the ND4520 contain the same product specifications, including the USB port that you now argue makes the ND3520 a product of heading 8519, HTSUS. As a result, we reconsider our position with respect to both the ND3520 and the ND4520, so as to avoid inconsistent results.

Next, we note that the ENs define a "sound-recording or reproducing device" as including one that functions by way of semiconductor media. Sound that is recorded onto such a medium is done so as digital code con-



verted from analogue signal on the recording medium, and sound that is reproduced is done so by reading such medium. The fact that the ENs allow for semiconductor media to be either permanently installed in the apparatus or in the form of removable solid-state non-volatile storage media means that sound can be recorded onto an internal file or a removable solid state non-volatile media, such as a USB flash memory apparatus. In order for a device to be a sound-reproducing device, it must be able to read the recorded file, either from an internal memory or from a removable solid state non-volatile media, such as a USB flash memory apparatus. *See* EN 85.19.

This definition is in accordance with definitions of dictionaries and other lexicographic sources. For example, the Oxford English Dictionary defines “record” as “of a machine, instrument or device: to set down (a message, reading, etc.) in some permanent form.” *See* [www.oed.com](http://www.oed.com). The Oxford English Dictionary defines “reproduce” as “To relay (sound originating elsewhere) or replay (sound recorded on another occasion) by electrical or mechanical means.... To produce again in the form of a copy.” *See* [www.oed.com](http://www.oed.com). In addition, the McGraw-Hill Encyclopedia of Science and Technology defines “sound recording” as “the technique of entering sound, especially music, on a storage medium for playback at a subsequent time.” *See* McGraw-Hill Concise Encyclopedia of Science and Technology, 6th Ed., 2009 at 2197. This encyclopedia defines “sound-reproducing systems,” in pertinent part, as:

Systems that attempt to reconstruct some or all of the audible dimensions of an acoustic event that occurred elsewhere. A sound-reproducing system includes the functions of capturing sounds with microphones, manipulating those sounds using elaborate electronic mixing consoles and signal processors, and then storing the sounds for reproduction at later times and different places.

*Id.* at 2197.

A machine with a USB port allows a flash drive or other memory device to be plugged directly into the machine. The information submitted states that the instant dock could read information or music stored in an MP3 format directly from the device. The USB device is a semiconductor media device onto which sound is recorded, because it converts the music files on it from an analogue signal to a digital one on the drive itself. The ND3520 and the ND4520, because they can read these files from the USB device, are sound-reproducing devices. Furthermore, sound reproducing devices of 8519, HTSUS, can be equipped with, or designed to be attached to, acoustic devices such as speakers. *See* EN 85.19. The ND3520 and the ND4520 are fully described by the terms of heading 8519, HTSUS, and should be classified there. This conclusion is consistent with prior CBP rulings, including NY N 133779, to which you cited in support of this reconsideration. *See* NY N133779; *see also* NY N182121, dated September 16, 2011 and NY N129141, dated November 16, 2010.

NY R01884 classified the iFi speaker system made by Klipsch Audio Technologies in 8518, HTSUS, according to its speaker function. However, this ruling also noted both that the system reproduced sound from an attached hard disc drive unit, whether it was an MP3 Player, an iPod, or a similar flash memory device. Thus, the iFi system meets the definition of “sound recording or reproducing device” for the same reasons as the ND3520 and ND4520 do.

The comment that CBP received focused on ND3520 and argued that the subject merchandise should remain classified in heading 8518, HTSUS. The commenter argues that nothing in the subject merchandise's product literature indicates that the merchandise actually reproduces sound in the way this ruling states that it does. The commenter also distinguishes this merchandise from other merchandise of heading 8519, HTSUS, that he argues actually record or reproduce sound. The commenter argues that docking stations such as the subject merchandise offer a convenient way of interconnecting multiple devices, without actually being able to perform any function on its own except this connection. The commenter also notes that the merchandise of heading 8519, HTSUS, records or reproduces sound by way of internal mechanisms, such as the needle, armature, etc of a turntable. By contrast, the commenter argues that there is nothing inside the subject merchandise that allows it to record or reproduce sound, and that it is the iPod or other device to which the subject merchandise is connected that actually does the sound recording or reproducing. The commenter further argues that the subject merchandise's functionality is more akin to the type of loudspeakers typically used with an iPod, iPad, or iPhone in that those devices' earbuds receive the signal directly from these devices without having to further process the signal.

In response, we note that the subject merchandise, in reading the audio files off a USB port and allowing them to be played through the attached speakers, acts as more than a mere conduit for the music, as the commenter suggests. Furthermore, heading 8519, HTSUS, provides for sound reproducing devices that have speakers attached to them. *See* EN 85.19. By contrast, heading 8518, HTSUS, provides for speakers, but does not cover the subject merchandise's sound reproducing function. Thus, heading 8519, HTSUS, fully describes the subject merchandise at GRI 1, while heading 8518, HTSUS, does not.

#### **HOLDING:**

Under the authority of GRI 1, the ND3520, the ND4520 and the iFi speaker system are classified in heading 8519, HTSUS. Specifically, they are provided for in subheading 8519.89.30, HTSUS, which provides for "Sound recording or reproducing apparatus: Other apparatus: Other: Other." 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/](http://www.usitc.gov/tata/hts/).

#### **EFFECT ON OTHER RULINGS:**

HQ H213705, dated August 31, 2012, and NY R01884, dated May 24, 2005, are REVOKED.

*Sincerely,*

IEVA K. O'ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

**COPYRIGHT, TRADEMARK, AND TRADE NAME  
RECORDATIONS**

**(No. 11 2014)**

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

**SUMMARY:** The following copyrights, trademarks, and trade names were recorded with U.S. Customs and Border Protection in November 2014. The last notice was published in the CUSTOMS BULLETIN November 26, 2014.

Corrections or updates may be sent to: Intellectual Property Rights Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 90 K Street, NE., 10<sup>th</sup> Floor, Washington, D.C. 20229-1177.

**FOR FURTHER INFORMATION CONTACT:** LaVerne Watkins, Paralegal Specialist, Intellectual Property Rights Branch, Regulations & Rulings, Office of International Trade at (202) 325-0095.

**SUPPLEMENTARY INFORMATION:**

Dated: December 2, 2014

CHARLES R. STEUART  
*Chief,*  
*Intellectual Property Rights Branch*  
*Regulations & Rulings*  
*Office of International Trade*

## CBP IPR RECORDATION — DECEMBER 2014

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 87-00593	11/5/2014	11/5/2024	Design Only	CARTIER INTERNATIONAL A.G.	No
TMK 88-00378	11/5/2014	11/5/2024	MUST DE CARTIER	CARTIER INTERNATIONAL A.G.	No
TMK 03-00891	11/6/2014	11/6/2024	CD	CRISTIAN DIOR COUTURE, S.A.	No
TMK 04-00433	11/6/2014	11/6/2024	CHRISTIAN DIOR	CHRISTIAN DIOR COUTURE, S.A.	No
TMK 01-00453	11/12/2014	11/12/2024	CHRISTIAN DIOR	CHRISTIAN DIOR COUTURE, S.A.	No
TMK 04-00873	11/4/2014	11/4/2024	VIBRAM	VIBRAM S.P.A.	No
TMK 05-00700	11/4/2014	11/4/2024	BURBERRY	BURBERRY LIMITED	No
TMK 90-00113	11/5/2014	11/5/2024	TANK	CARTIER INTERNATIONAL A.G.	No
TMK 05-00801	11/5/2014	11/5/2024	DECLARATION	CARTIER INTERNATIONAL A.G.	No
TMK 05-00190	11/12/2014	11/12/2024	ST. LOUIS RAMS	The St. Louis Rams, LLC	No
TMK 05-00272	11/24/2014	2/8/2025	Rams Helmet Design	THE ST. LOUIS RAMS, LLC	No
TMK 00-00618	11/4/2014	11/4/2024	CD	CHRISTIAN DIOR COUTURE, S.A.	No
TMK 89-00512	11/5/2014	11/5/2024	C (Stylized)	CARTIER INTERNATIONAL A.G.	No
TMK 04-01024	11/18/2014	9/12/2014	DESIGN ONLY (Horseshoe)	ETIENNE AIGNER, INC.	No
TMK 04-00690	11/3/2014	11/3/2024	BOSE	BOSE CORPORATION	No
TMK 88-00353	11/5/2014	11/5/2024	PASHA	CARTIER INTERNATIONAL A.G.	No
TMK 89-00284	11/5/2014	11/5/2024	SANTOS	CARTIER INTERNATIONAL A.G.	No

## CBP IPR RECORDATION — DECEMBER 2014

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 05-00194	11/5/2014	11/5/2024	MIAMI DOLPHINS	Miami Dolphins Ltd. composed of South Florida Sports Corporation, a Florida corporation, and Robbie Sports Corporation, a Florida corporation	No
TMK 05-00797	11/5/2014	11/5/2024	PANTHERE DE CARTIER	CARTIER INTERNATIONAL A.G.	No
TMK 87-00567	11/5/2014	11/5/2024	Design Only	CARTIER INTERNATIONAL A.G.	No
TMK 88-00404	11/5/2014	11/5/2024	CARTIER	CARTIER INTERNATIONAL A. G.	No
TMK 03-00506	11/6/2014	11/6/2024	CHRISTIAN DIOR	CHRISTIAN DIOR COUTURE, SA	No
TMK 01-00455	11/6/2014	11/6/2024	CHRISTIAN DIOR	CHRISTIAN DIOR COUTURE, S.A.	No
TMK 04-00446	11/4/2014	11/4/2024	METAGENICS	METAGENICS, INC.	No
TMK 90-00065	11/5/2014	11/5/2024	SANTOS	CARTIER INTERNATIONAL A.G.	No
TMK 05-00799	11/5/2014	11/5/2024	PANTHERE DE CARTIER	CARTIER INTERNATIONAL A.G.	No
TMK 06-00470	11/5/2014	11/5/2024	PANTHERE	CARTIER INTERNATIONAL A. G.	No
TMK 06-00298	11/4/2014	11/4/2024	747	THE BOEING COMPANY	No
TMK 06-00299	11/4/2014	11/4/2024	757	THE BOEING COMPANY	No
TMK 06-00300	11/1/2014	11/1/2024	767	THE BOEING COMPANY	No
TMK 06-00616	11/12/2014	8/18/2014	COCA-COLA	The Coca-Cola Company	No

## CBP IPR RECORDATION — DECEMBER 2014

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 06-00325	11/4/2014	10/20/2024	U.S. FDRY & MFG CORP	United States Foundry & Manufacturing Corporation	No
TMK 06-00629	11/12/2014	8/25/2014	COKE	The Coca-Cola Company	No
TMK 06-00604	11/13/2014	8/25/2014	COKE	The Coca-Cola Company	No
TMK 06-00621	11/12/2014	8/18/2014	COCA-COLA	The Coca-Cola Company	No
TMK 06-00392	11/12/2014	8/18/2014	COCA-COLA	The Coca-Cola Company	No
TMK 06-00883	11/5/2014	11/5/2024	CARTIER	CARTIER INTERNATIONAL A.G.	No
TMK 06-00960	11/5/2014	11/5/2024	CARTIER	CARTIER INTERNATIONAL A.G.	No
TMK 06-01103	11/5/2014	11/5/2024	MUST DE CARTIER (Stylized)	CARTIER INTERNATIONAL A. G.	No
TMK 06-01066	11/5/2014	11/5/2024	CC (Stylized)	CARTIER INTERNATIONAL A.G.	No
TMK 06-01075	11/5/2014	11/5/2024	CARTIER	CARTIER INTERNATIONAL A.G.	No
TMK 06-01104	11/4/2014	11/4/2024	G in Oval Design	SWINSTAR, INC.	No
TMK 06-01489	11/4/2014	11/4/2024	TYKERB	University of Georgia Athletic Association, Inc.	No
TMK 07-00755	11/5/2014	11/5/2024	I (stylized)	SMITHKLINE BEECHAM (CORK) LIMITED	No
TMK 09-00511	11/4/2014	11/4/2024	POWER 90	INTEL CORPORATION	No
TMK 09-00210	11/4/2014	11/4/2024	ROCKIN' BODY	BEACHBODY, LLC	No

## CBP IPR RECORDATION — DECEMBER 2014

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 09-00191	11/3/2014	11/3/2024	P90X	BEACHBODY, LLC	No
TMK 09-00222	11/3/2014	11/3/2024	CHALEAN EXTREME	BEACHBODY, LLC	No
TMK 09-00192	11/4/2014	11/4/2024	YOGA BOOTY BALLET	BEACHBODY, LLC	No
TMK 09-00197	11/4/2014	11/4/2024	SLIM SERIES	BEACHBODY, LLC	No
TMK 11-00239	11/3/2014	11/3/2024	REVABS	BEACHBODY, LLC	No
TMK 11-00292	11/20/2014	11/20/2024	URBAN ZEN	BEACHBODY, LLC	No
TMK 14-00097	11/25/2014	11/25/2024	ALDO (Stylized)	KARAN, DONNA	No
COP 13-00156	11/3/2014	11/3/2034	Rainbow Loom Hands.	The Aldo Group Inc./Le Groupe Aldo Inc.	No
TMK 14-00582	11/13/2014	12/18/2014	NUTELLA (Stylized)	Choon's Design Inc.	No
TMK 14-01107	11/4/2014	1/5/2021	LEVITON and Block Design	Ferrero S.p.A.	No
TMK 14-01118	11/5/2014	5/19/2023	JUSTE UN CLOU	LEVITON MANUFACTURING CO., INC.	No
TMK 14-01106	11/4/2014	10/17/2022	MHL Mark & Design	CARTIER INTERNATIONAL AG	No
TMK 14-01119	11/5/2014	11/28/2022	Design Only	MHL, LLC	No
TMK 14-01121	11/5/2014	12/30/2016	TRANSWORLD	Cartier International A.G.	No
TMK 14-01148	11/11/2014	1/30/2018	MBT and Design	Masai International Pte. Ltd.	No
TMK 14-01158	11/17/2014	10/28/2019	MBT PHYSIOLOGICAL FOOTWEAR (and Design)	MASAI INTERNATIONAL PTE LTD.	No

## CBP IPR RECORDATION — DECEMBER 2014

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 14-01109	11/4/2014	9/18/2023	FIELD N' FOREST	Fleet Wholesale Supply Co., Inc.	No
TMK 14-01112	11/4/2014	3/8/2023	BUG OFF	WOLF & MOON PRODUCTS, INC.	No
TMK 14-01114	11/5/2014	12/23/2024	Design Only	Cartier International A.G.	No
TMK 14-01117	11/5/2014	5/25/2024	Design Only	Cartier International A.G.	No
TMK 14-01120	11/5/2014	5/18/2024	Design Only	Cartier International A.G.	No
TMK 14-01116	11/5/2014	11/23/2021	MUST	CARTIER INTERNATIONAL AG	No
TMK 14-01100	11/3/2014	12/4/2022	GO GROOVE	AP GLOBAL INC.	No
TMK 14-01102	11/3/2014	11/12/2018	KENSINGTON	ACCO Brands Corporation	No
TMK 14-01091	11/1/2014	11/12/2018	SCOPECOAT	Daniel D. Evans DBA DEVTRON	No
TMK 14-01108	11/4/2014	9/18/2023	IIT	Illinois Industrial Tool, Inc. DBA JMK-IIT, Inc.	No
TMK 14-01101	11/3/2014	3/28/2018	SPEED QUEEN	ALLIANCE LAUNDRY SYSTEMS LLC	No
TMK 14-01104	11/3/2014	8/27/2024	FLOW KIMONOS	FLOW KIMONOS LLC	No
TMK 14-01103	11/3/2014	3/21/2021	BIG EYE	Home Brew Mart, Inc.	No
TMK 14-01099	11/3/2014	9/28/2021	BLACK MARLIN	Home Brew Mart, Inc.	No
COP 14-00236	11/3/2014	9/16/2034	Stick Figure Design.	Candyprints LLC.	No
TMK 14-01092	11/3/2014	2/17/2020	LIFEFACTORY	LIFEFACTORY, INC.	No



## CBP IPR RECORDATION — DECEMBER 2014

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 14-01098	11/3/2014	1/14/2025	elegantpark	Elegantpark Trade LLC	No
TMK 14-01093	11/3/2014	3/6/2022	PIPER DOWN	Home Brew Mart, Inc.	No
TMK 14-01111	11/4/2014	8/1/2022	DORADO	Home Brew Mart, Inc.	No
TMK 14-01094	11/3/2014	1/24/2017	MEDISOFT	Polymer Group, Inc.	No
TMK 14-01113	11/4/2014	3/13/2022	FATHOM	Home Brew Mart, Inc.	No
TMK 14-01095	11/3/2014	7/17/2022	LONGFIN	Home Brew Mart, Inc.	No
TMK 14-01096	11/3/2014	12/9/2024	INDRA KUNINDRA	Home Brew Mart, Inc.	No
TMK 14-01097	11/3/2014	3/24/2024	RIG	Plantronics, Inc.	No
TMK 14-01115	11/5/2014	7/1/2024	21 DAY FIX	BEACHBODY, LLC	No
TMK 14-01105	11/4/2014	6/29/2020	TRIM	PACIFIC WORLD CORPORATION	No
TMK 14-01110	11/4/2014	5/7/2016	SOUND PILLOW	Armbruster Enterprises, Inc. DBA Sound Pillow	No
TMK 14-01122	11/5/2014	7/15/2024	PROBAR	IP Associates, LLC	No
TMK 14-01132	11/6/2014	3/17/2024	PROBAR & Design	IP Associates, LLC	No
TMK 14-01123	11/5/2014	3/24/2024	PROBAR & design	IP Associates, LLC	No
TMK 14-01133	11/6/2014	5/11/2024	ADAMO PEAK	Tampa Bay Recreation, LLC	No
TMK 14-01124	11/5/2014	1/19/2021	ADAMO PODIUM	Tampa Bay Recreation, LLC	No

## CBP IPR RECORDATION — DECEMBER 2014

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 14–01134	11/6/2014	4/7/2024	SADDLEBABY	Tagle, Reimold	No
TMK 14–01125	11/5/2014	1/14/2025	ISM	Tampa Bay Recreation, LLC	No
TMK 14–01135	11/6/2014	8/13/2018	LIL RINSER	SPLASH GUARD, LLC	No
TMK 14–01126	11/5/2014	3/2/2019	ADAMO RACING SADDLE	Tampa Bay Recreation, LLC	No
TMK 14–01136	11/6/2014	12/30/2024	ADAMO TIME TRIAL	Tampa Bay Recreation, LLC	No
TMK 14–01127	11/5/2014	2/26/2024	PODIUM	Tampa Bay Recreation, LLC	No
TMK 14–01137	11/6/2014	2/5/2024	ISM CRUISE	Tampa Bay Recreation, LLC	No
TMK 14–01128	11/5/2014	1/14/2025	ISMSEAT.COM	Tampa Bay Recreation, LLC	No
TMK 14–01141	11/6/2014	10/24/2022	ISM (Stylized)	Tampa Bay Recreation, LLC	No
TMK 14–01129	11/5/2014	10/24/2022	ISM	Tampa Bay Recreation, LLC	No
TMK 14–01138	11/6/2014	10/24/2022	ISM and Design	Tampa Bay Recreation, LLC	No
TMK 14–01130	11/5/2014	9/6/2016	ISM	Tampa Bay Recreation, LLC	No
TMK 14–01142	11/6/2014	10/24/2022	ISM	Tampa Bay Recreation, LLC	No
TMK 14–01131	11/5/2014	2/4/2024	COPPOLA	GMYL, L.P. Sentinel Corp.	No
TMK 14–01139	11/6/2014	12/30/2024	COPPOLA	GMYL, L.P.	No
COP 14–00237	11/12/2014	9/12/2034	Dark pink, purple background with flow-ers and butterflies detail.	NICOLE LEE	No

## CBP IPR RECORDATION — DECEMBER 2014

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 14-01140	11/6/2014	3/18/2018	OMNITROPE	Novartis AG	No
TMK 14-01152	11/12/2014	3/14/2021	Design Only	Lifefactory, Inc.	No
TMK 14-01143	11/6/2014	1/14/2025	DESIGN ONLY (Lifefactory design)	Lifefactory, Inc.	No
TMK 14-01153	11/12/2014	1/7/2025	LIFEFACTORY	Lifefactory, Inc.	No
TMK 14-01144	11/6/2014	10/6/2020	LIFEFACTORY	LIFEFACTORY, INC.	No
TMK 14-01151	11/12/2014	1/21/2025	BANDALOOM	Tristar Products, Inc.	No
TMK 14-01160	11/21/2014	3/11/2023	CALL IT SPRING	The Aldo Group Inc./Le Groupe Aldo Inc.	No
TMK 14-01145	11/6/2014	10/29/2024	PATENTED MAY 20 1873 and Design (Two Horse Design)	Levi Strauss & Co.	No
TMK 14-01147	11/11/2014	2/12/2017	KENSINGTON	ACCO BRANDS CORPORATION	No
TMK 14-01146	11/11/2014	5/11/2024	BLOW	Blow, LLC	No
TMK 14-01150	11/12/2014	8/12/2019	PERFORMANCE QUOTIENT	PRW Industries, Inc.	No
TMK 14-01156	11/17/2014	8/12/2019	PQX	PRW Industries, Inc.	No
TMK 14-01149	11/12/2014	5/21/2022	Z ZIKE and Design	Zike, LLC	No
TMK 14-01154	11/13/2014	1/4/2022	SABER	ZIKE LLC	No
TMK 14-01155	11/13/2014	7/11/2020	IKO (Stylized)	NIPPON THOMPSON CO., LTD.	No
TMK 14-01157	11/17/2014	9/17/2024	Bauer	BAUER HOCKEY, INC.	No

## CBP IPR RECORDATION — DECEMBER 2014

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 14-01159	11/19/2014	7/28/2021	MAKROLON	Bayer Aktiengesellschaft	No
COP 14-00238	11/19/2014	9/5/2033	Suitcase Artwork-Backpack	Picture Case Ltd.	No
TMK 14-01161	11/21/2014	9/21/2015	COMBI	DEPUY SYNTHES, INC.	No
TMK 14-01162	11/21/2014	11/2/2015	TOMOFIX	DEPUY SYNTHES, INC.	No
TMK 14-01163	11/21/2014	6/6/2017	YAKULT	Kabushiki Kaisha Yakult Honsha	No
TMK 14-01164	11/21/2014	5/22/2021	YAKULT	Kabushiki Kaisha Yakult Honsha TA Yakult Honsha Co., Ltd	No
TMK 14-01165	11/21/2014	3/28/2021	LACTOBACILLUS CASEI SHIROTA	Kabushiki Kaisha Yakult Honsha TA Yakult Honsha Co., Ltd.	No
TMK 14-01166	11/21/2014	7/9/2023	L-Casei Shirota/EXCLUSIVELive & Active and Design	Kabushiki Kaisha Yakult Honsha TA Yakult Honsha Co., Ltd.	No
TMK 14-01167	11/21/2014	10/1/2024	DESIGN ONLY (MICROSOFT CORPO-RATE LOGO 2014)	Microsoft Corporation	No
TMK 14-01168	11/21/2014	9/17/2024	Microsoft and Microsoft Corporate Logo 2014 Design	Microsoft Corporation	No
TMK 14-01169	11/21/2014	5/26/2023	BASSPULSE	AP GLOBAL INC.	No
TMK 14-01170	11/21/2014	1/23/2023	BLUESYNC	AP GLOBAL INC.	No
TMK 14-01171	11/21/2014	9/4/2023	SONAVERSE	AP GLOBAL INC.	No

**NOTICE OF CHANGE IN POLICY ON THE PUBLICATION  
OF CUSTOMS BROKER LICENSE AND PERMIT  
CANCELLATIONS**

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

**ACTION:** General Notice.

**SUMMARY:** This document announces U.S. Customs and Border Protection's (CBP's) plan to discontinue publication in the **Federal Register** of the cancellation of individual and corporate customs broker licenses and permits under section 111.51 of title 19 of the Code of Federal Regulations. A current list of active customs brokers is maintained on CBP's Web site: *www.cbp.gov*.

**FOR FURTHER INFORMATION CONTACT:** Maranda Sorrells, U.S. Customs and Border Protection, Office of International Trade, Commercial Targeting and Enforcement, at 202-863-6218 or *brokermanagement@cbp.dhs.gov*.

**SUPPLEMENTARY INFORMATION:**

Customs broker license and permit cancellations fall under § 111.51 of title 19 of the Code of Federal Regulations (19 CFR 111.51) and are voluntarily requested by the customs broker in the event that the broker no longer wants to or cannot conduct customs business. Requests for cancellation of a license or permit are directed to the Port Director of the port through which the license was issued. The Port Director forwards the broker's written request for cancellation of a license or permit to the Broker Management Branch in the Office of International Trade, requesting that it be canceled. Most often, CBP receives the license cancellation request because the customs broker has retired or the business has dissolved. CBP receives permit cancellation requests when a customs broker has ceased operations in a particular district or has determined that a certain permit is no longer necessary for their business operations. Historically, CBP has published notice in the **Federal Register** when a customs broker's license or permit has been cancelled. Publication in the **Federal Register** is not required by statute or regulation, but rather has been provided by CBP as courtesy notice to the public. See section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), and section 111.51 of title 19 of the Code of Federal Regulations (19 CFR 111.51).

Given the ease of access to current information available online and with consideration for the most efficient use of CBP customs broker management resources, CBP will no longer publish notice of customs broker license or permit cancellations pursuant to 19 CFR 111.51 in

the **Federal Register**. Alternatively, CBP will maintain an active customs brokers list at *www.cbp.gov* as a resource for the public to verify active brokers. When a customs broker submits a license or permit cancellation request to the Port Director of the port through which the license was issued, the request is forwarded to the Broker Management Branch in the Office of International Trade at CBP. The Office of International Trade will then acknowledge the receipt of the cancellation request and provide the customs broker with an appropriate CBP point of contact. The confirmation letter will also be copied to the port through which the customs broker's license was issued.

While CBP will no longer publish specific notice in the **Federal Register** reporting customs broker licenses and permits that have been cancelled under 19 CFR 111.51, CBP will continue to publish **Federal Register** notices for customs broker licenses that have been suspended or revoked pursuant to 19 CFR 111.30, 111.45 and 111.74. CBP maintains an active customs brokers list at *www.cbp.gov* to provide notice to the public of all active customs broker licenses.

Dated: December 4, 2014.

BRENDA B. SMITH,  
*Assistant Commissioner,  
Office of International Trade.*

[Published in the Federal Register, December 9, 2014 (79 FR 73099)]

## AGENCY INFORMATION COLLECTION ACTIVITIES:

### Application To Use the Automated Commercial Environment (ACE)

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

**ACTION:** 60-Day notice and request for comments; extension and revision of an existing collection of information.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application to Use the Automated Commercial Environment (ACE). CBP is proposing that this information collection be extended with a change to the burden hours resulting from the addition of a new application for exporters to establish an ACE Portal account. There are no proposed changes to the existing ACE Portal

application for imported merchandise. This document is published to obtain comments from the public and affected agencies.

**DATES:** Written comments should be received on or before February 9, 2015 to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

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

**SUPPLEMENTARY INFORMATION:**

CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

**Title:** Application to Use the Automated Commercial Environment (ACE).

**OMB Number:** 1651-0105.

**Abstract:** The Automated Commercial Environment (ACE) is a trade processing system that will eventually replace the Automated Commercial System (ACS), the current import system for U.S. Customs and Border Protection (CBP) operations. ACE is authorized by Executive Order 13659 which mandates

implementation of a Single Window for trade. *See* 79 FR 10655 (February 25, 2014). ACE supports government agencies and the trade community with border-related missions with respect to moving goods across the border efficiently and securely. Once ACE is fully implemented, all related CBP trade functions and the trade community will be supported from a single common user interface.

Currently, ACE is used for imported merchandise by brokers, carriers, sureties, service providers, facility operators, foreign trade zone operators, cart men and lighter men. In order to establish an ACE Portal account, participants submit information such as their name, their employer identification number (EIN) or social security number, and if applicable, a statement certifying their capability to connect to the Internet. This information is submitted through the ACE Secure Data Portal which is accessible at: <http://www.cbp.gov/trade/automated>.

CBP is proposing to add export functionality to the system which will allow participation from the exporter community. Trade members wishing to establish an exporter account will need to submit the following data elements:

1. Account Type
  - a. ACE Portal Account User ID (if applicable)
  - b. USPPI (yes/no)
  - c. Authorized Agent (yes/no)
  - d. Freight Forwarder (yes/no)
  - FMC License No (if applicable)
2. Company Information
  - a. EIN
  - b. DUNS
  - c. Company Name
  - d. Company Address
3. ACE Export Account Owner Information
  - a. Name
  - b. Date of Birth
  - c. Telephone Number
  - d. Fax Number
  - e. Email
  - f. Account Owner address if different from Company Address



4. Filing Notification Point of Contact
  - a. Name
  - b. Phone Number
  - c. Email

**Current Actions:** CBP is proposing that this information collection be extended with a change to the burden hours resulting from the addition of a new application for exporters to establish an ACE Portal account. There are no proposed changes to the existing ACE Portal application for imported merchandise.

**Type of Review:** Extension (with change).

**Affected Public:** Businesses.

#### **Application to ACE (Import)**

**Estimated Number of Respondents:** 21,000.

**Estimated Number of Total Annual Responses:** 21,000.

**Estimated Time per Response:** .33 hours.

**Estimated Total Annual Burden Hours:** 6,930.

#### **Application to ACE (Export)**

**Estimated Number of Respondents:** 9,000.

**Estimated Number of Total Annual Responses:** 9,000.

**Estimated Time per Response:** .066 hours.

**Estimated Total Annual Burden Hours:** 594.

Dated: December 3, 2014.

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

[Published in the Federal Register, December 9, 2014 (79 FR 73098)]



### **AGENCY INFORMATION COLLECTION ACTIVITIES:**

#### **Arrival and Departure Record (Forms I-94 and I-94W) and Electronic System for Travel Authorization**

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

**ACTION:** 60-Day Notice and request for comments; extension and revision of an existing collection of information.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security (DHS) will be submitting the follow-

ing information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: CBP Form I-94 (Arrival/Departure Record), CBP Form I-94W (Nonimmigrant Visa Waiver Arrival/Departure), and the Electronic System for Travel Authorization (ESTA). CBP is proposing that this information collection be extended with a change to the burden hours and a revision to the information collected. This document is published to obtain comments from the public and affected agencies.

**DATES:** Written comments should be received on or before February 9, 2015 to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

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

**SUPPLEMENTARY INFORMATION:**

CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs, and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

**Title:** Arrival and Departure Record, Nonimmigrant Visa Waiver Arrival/ Departure, and Electronic System for Travel Authorization (ESTA).

**OMB Number:** 1651-0111

**Form Number:** I-94 and I-94W.

**Abstract:**

### **Background**

CBP Forms I-94 (Arrival/Departure Record) and I-94W (Nonimmigrant Visa Waiver Arrival/Departure Record) are used to document a traveler's admission into the United States. These forms are filled out by aliens and are used to collect information on citizenship, residency, and contact information. The data elements collected on these forms enable the DHS to perform its mission related to the screening of alien visitors for potential risks to national security, and the determination of admissibility to the United States. The Electronic System for Travel Authorization (ESTA) applies to aliens traveling to the United States under the Visa Waiver Program (VWP) and requires that VWP travelers provide information electronically to CBP before embarking on travel to the United States. Travelers who are entering under the VWP in the air or sea environment, and who have a travel authorization obtained through ESTA, are not required to complete the paper Form I-94W.

Pursuant to an interim final rule published on March 27, 2013 in the **Federal Register** (78 FR 18457) related to Form I-94, CBP has partially automated the Form I-94 process. CBP now gathers data previously collected on the paper Form I-94 from existing automated sources in lieu of requiring passengers arriving by air or sea to submit a paper I-94 upon arrival. Passengers can access and print their electronic I-94 via the Web site at *www.cbp.gov/I94*.

ESTA can be accessed at *http://www.cbp.gov/xp/cgov/travel/id\_visa/esta/*. Samples of CBP Forms I-94 and I-94W can be viewed at: *http://www.cbp.gov/document/forms/form-i-94-arrivaldeparture-record* and *http://www.cbp.gov/document/forms/form-i-94w-visa-waiver-arrivaldeparture-record*.

### **Recent and Proposed Changes**

In response to the increasing concerns regarding national security, DHS used the emergency Paperwork Reduction Act process to strengthen the security of the VWP by adding data elements to ESTA and to Form I-94W. DHS determined that the addition of these new data elements improves the Department's ability to screen prospective VWP travelers while more accurately and effectively identifying

those who pose a security risk to the United States and facilitates adjudication of ESTA applications.

The following data elements are either new elements that were approved in the emergency PRA submission or data elements that were collected previously that were changed from “optional” to “mandatory” on the ESTA application:

1 .....	Other Names or Aliases .....	Mandatory.
2 .....	Other Country of Citizenship .....	Mandatory.
3 .....	If yes, passport number on additional citizenship passport .....	Optional
4 .....	Home Address	Mandatory.
5 .....	Parents .....	Mandatory.
6 .....	Current or Previous Job Title .....	Optional
7 .....	Current or Previous Employer Name .....	Mandatory.
8 .....	Current or Previous Employer Address .....	Mandatory.
9 .....	Current or Previous Employer Telephone number .....	Optional
10 .....	Primary Email .....	Mandatory—was optional.
11 .....	Primary Telephone Number .....	Mandatory—was optional.
12 .....	U.S. Point of Contact Name .....	Mandatory.
13 .....	U.S. Point of Contact Address .....	Mandatory.
14 .....	U.S. Point of Contact Email .....	Mandatory.
15 .....	U.S. Point of Contact Phone .....	Mandatory.
16 .....	City of Birth .....	Mandatory.
17 .....	National Identification Number .....	Mandatory.
18 .....	Emergency Point of Contact Information Name .....	Mandatory.
19 .....	Emergency Point of Contact Information Email .....	Mandatory.
20 .....	Emergency Point of Contact Information Phone .....	Mandatory.
22 .....	Do you have a current or previous employer? .....	Mandatory.
21 .....	Is your travel to the U.S. occurring in transit to another country? .....	Mandatory.

For the following “mandatory” fields ESTA applicants are permitted to enter “unknown,” if they do not have or know the information, without impeding the submission of their ESTA application: City of

Birth, Parents, National Identification Number, Emergency Contact Information, U.S. Point of Contact information, and Employer Address.

Pursuant to 42 U.S.C. 264(b) and Executive Order 13295, as amended on July 31, 2014, CBP proposes to revise the question on quarantinable communicable diseases as follows:

### **Currently Approved Question**

Do you have a physical or mental disorder; or are you a drug abuser or addict; or currently have any of the following diseases:

- Chancroid
- Gonorrhea
- Granuloma inguinale
- Leprosy, infectious
- Lymphogranuloma venereum
- Syphilis, infectious
- Active Tuberculosis

### **Proposed New Question**

Do you have a physical or mental disorder; or are you a drug abuser or addict; or do you currently have any of the following diseases (communicable diseases are specified pursuant to section 361(b) of the Public Health Service Act):

- Cholera
- Diphtheria
- Tuberculosis, infectious
- Plague
- Smallpox
- Yellow Fever
- Viral Hemorrhagic Fevers, including Ebola, Lassa, Marburg, Crimean-Congo
- Severe acute respiratory illnesses capable of transmission to other persons and likely to cause mortality.

**Current Actions:** This submission is being made to extend the expiration date with a change to the burden hours based on updated estimates of the numbers of respondents. Specifically, the

number of respondents for the I-94 Web site was decreased by 1,188,899 from 5,047,681 to 3,858,782; the number of respondents for the ESTA burden was increased by 870,000 from 22,090,000 to 22,960,000; and the number of respondents paying the ESTA fee was increased by 707,000 from 18,183,000 to 18,890,000.

There is a change to the questions on ESTA and on Form I-94W as described in the Abstract section of this document. There are no changes to the information collected on Form I-94, or the I-94 Web site.

**Type of Review:** Extension (with change).

**Affected Public:** Individuals, Carriers, and the Travel and Tourism Industry.

Form I-94 (Arrival and Departure Record):

**Estimated Number of Respondents:** 4,387,550.

**Estimated Time per Response:** 8 minutes.

**Estimated Burden Hours:** 583,544.

**Estimated Annual Cost to Public:** \$26,325,300.

I-94 Web site:

**Estimated Number of Respondents:** 3,858,782.

**Estimated Time per Response:** 4 minutes.

**Estimated Annual Burden Hours:** 254,679.

Form I-94W (Nonimmigrant Visa Waiver Arrival/Departure):

**Estimated Number of Respondents:** 941,291.

**Estimated Time per Response:** 13 minutes.

**Estimated Annual Burden Hours:** 204,260.

**Estimated Annual Cost to the Public:** \$5,647,746.

Electronic System for Travel Authorization (ESTA):

**Estimated Number of Respondents:** 22,960,000.

**Estimated Time per Response:** 20 minutes.

**Estimated Total Annual Burden Hours:** 7,645,680.

**Estimated Annual Cost to the Public:** \$264,460,000.

Dated: December 3, 2014.

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

# U.S. Court of Appeals for the Federal Circuit

GRK CANADA, LTD., Plaintiff-Appellee, v. UNITED STATES, Defendant-Appellant.

Appeal No. 2013–1255

Appeal from the United States Court of International Trade in No. 09-CV-0390, Senior Judge Judith M. Barzilay.

## ON PETITION FOR REHEARING EN BANC

CRAIG E. ZIEGLER, Montgomery, McCracken, Walker & Rhoads, LLP, of Philadelphia, Pennsylvania, filed a petition for rehearing en banc for plaintiff-appellee.

JASON M. KENNER, Trial Attorney, International Trade Field Office, Commercial Litigation Branch, Civil Division, United States Department of Justice, of New York, New York, filed a response for defendant-appellant. With him on the response were JOYCE R. BRANDA, Acting Assistant Attorney General, JEANNE E. DAVIDSON, Director, and AMY M. RUBIN, Assistant Director. Of counsel on the response was BETH C. BROTMAN, Office of the Assistant Chief Counsel, International Trade Litigation, United States Bureau of Customs and Border Protection, of New York, New York.

Before PROST, *Chief Judge*, NEWMAN, LOURIE, CLEVINGER,<sup>1</sup> DYK, MOORE, O'MALLEY, REYNA, WALLACH, TARANTO, and CHEN, *Circuit Judges*.<sup>2</sup>

NEWMAN, *Circuit Judge*, dissents from the denial of the petition for rehearing en banc without opinion.

REYNA, *Circuit Judge*, with whom WALLACH, *Circuit Judge*, joins, dissents from the denial of the petition for rehearing en banc.

WALLACH, *Circuit Judge*, with whom REYNA, *Circuit Judge*, joins, dissents from the denial of the petition for rehearing en banc.

PER CURIAM.

## ORDER

A petition for rehearing en banc was filed by plaintiff-appellee GRK Canada, Ltd., and a response thereto was invited by the court and filed by defendant-appellant United States. The petition was first referred as a petition for rehearing to the panel that heard the appeal, and thereafter, the petition for rehearing en banc was referred to the

<sup>1</sup> Circuit Judge Clevenger participated only in the decision on the petition for panel rehearing.

<sup>2</sup> Circuit Judge Hughes did not participate.

circuit judges who are authorized to request a poll of whether to rehear the appeal en banc. A poll was requested, taken, and failed.

Upon consideration thereof,

IT IS ORDERED THAT:

- (1) The petition for panel rehearing is denied.
- (2) The petition for rehearing en banc is denied.
- (3) The mandate of the court will issue on December 15, 2014.

Dated: December 8, 2014

*FOR THE COURT*  
*/s/ Daniel E. O'Toole*  
DANIEL E. O'TOOLE  
*Clerk of Court*



GRK CANADA, LTD., Plaintiff-Appellee, v. UNITED STATES, Defendant-Appellant.

Appeal No. 2013–1255

Appeal from the United States Court of International Trade in No. 09-CV-0390, Senior Judge Judith M. Barzilay.

REYNA, *Circuit Judge*, with whom WALLACH, *Circuit Judge*, joins, dissenting from the denial of the petition for rehearing en banc.

For the reasons set forth in *GRK Canada, LTD. v. U.S.*, 761 F.3d 1354, 1361–66 (Fed. Cir. 2014) (Reyna, J., dissenting), I respectfully *dissent* from this Court’s denial of the petition for rehearing en banc.

GRK CANADA, LTD., Plaintiff-Appellee, v. UNITED STATES, Defendant-Appellant.

Appeal No. 2013–1255

Appeal from the United States Court of International Trade in No. 09-CV-00390, Senior Judge Judith M. Barzilay.

WALLACH, *Circuit Judge*, with whom REYNA, *Circuit Judge*, joins, dissenting from the denial of the petition for rehearing *en banc*.

This court has consistently analyzed the headings of the Harmonized Tariff Schedule of the United States (“HTSUS”) by first determining whether the heading is defined by name or by use, and then applying the corresponding classification analysis. This analysis is required not only by our case law, but by the HTSUS itself, a statutory enactment that contains contrasting interpretative frameworks for each type of heading. Indeed, classification is governed by the General Rules of Interpretation (“GRI”) and the Additional United States Rules of Interpretation (“ARI”), which are part of the HTSUS statute. *BenQ Am. Corp. v. United States*, 646 F.3d 1371, 1376 (Fed. Cir. 2011).

The majority opinion in *GRK Canada, Ltd. v. United States (GRK II)*, 761 F.3d 1354 (Fed. Cir. 2014), impermissibly departs from this required framework by incorporating elements of a use analysis into its analysis of an *eo nomine* heading without providing a justification why an exception should be made in this case. In doing so, the majority opinion creates a conflict within our classification cases and confuses what should be a pronounced distinction between *eo nomine* and use headings. For these reasons, this case should be reconsidered *en banc*. I respectfully dissent from this court’s contrary ruling.

## I.

The two distinct types of headings in the HTSUS, *eo nomine* and use provisions, require different analyses. Compare *Kahrs Int’l, Inc. v. United States*, 713 F.3d 640 (Fed. Cir. 2013) (*eo nomine* analysis), with *Aromont USA, Inc. v. United States*, 671 F.3d 1310 (Fed. Cir. 2012) (principle use analysis). This court “consider[s] a HTSUS heading or subheading an *eo nomine* provision when it describes an article by a specific name.” *CamelBak Prods., LLC v. United States*, 649 F.3d 1361, 1364 (Fed. Cir. 2011); see also Black’s Law Dictionary 265 (9th ed. 2009) (The term “*eo nomine*” means “by or in that name.”).

In an *eo nomine* analysis, the court first construes the headings at issue as a matter of law by enumerating and defining each named

element of the headings; the court then moves to the second classification step, a factual inquiry, to determine whether the subject merchandise fulfills each element of a properly-construed heading. *See, e.g., R.T. Foods, Inc. v. United States*, 757 F.3d 1349 (Fed. Cir. 2014); *Link Snacks, Inc. v. United States*, 742 F.3d 962 (Fed. Cir. 2014). By contrast, the ARIs govern classification of imported merchandise under use headings. In a use analysis, the court first construes the headings at issue by defining the uses of the goods described by the heading as directed by ARI 1(a) for principal use headings or by ARI 1(b) for actual use headings. For principal use headings, the court then determines the principal use of the subject merchandise by analyzing the goods using the so-called *Carborundum* factors to determine whether they fall within one of the headings. *See, e.g., Aromont*, 671 F.3d at 1313–14 (citing *United States v. Carborundum Co.*, 536 F.2d 373, 377 (CCPA 1976)).

Mindful of these distinctions, consideration of use in an *eo nomine* analysis is an exception, and, indeed, a very limited one. *See Kahrs*, 713 F.3d at 646 (Fed. Cir. 2013) (“[W]e should not read a use limitation into an *eo nomine* provision unless the name itself inherently suggests a type of use.”) (emphasis added); *see also Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1379 (Fed. Cir. 1999) (“[A] use limitation should not be read into an *eo nomine* provision unless the name itself inherently suggests a type of use.”) (emphasis added).

Nonetheless, the majority opinion appears to question our longstanding definition of *eo nomine* provisions when it attributes the following quotation to the United States Court of International Trade’s (“CIT”) opinion under review: “[The CIT] noted that the subheadings were *eo nomine* provisions and that, as such, they described ‘an article by a specific name, not by use.’” *GRK II*, 761 F.3d at 1356 (quoting *GRK Can., Ltd. v. United States (GRK I)*, 884 F. Supp. 2d 1340, 1345 (Ct. Int’l Trade 2013)) (emphasis in original). However, the majority opinion fails to acknowledge the CIT was directly and accurately quoting *this court’s* case law. *See GRK I*, 884 F. Supp. 2d at 1345 (“The subheadings are *eo nomine* provisions, or more simply, provisions ‘that describe[ ] an article by a specific name, not by use.’”) (quoting *Aromont*, 671 F.3d at 1312) (citing *CamelBak*, 649 F.3d at 1364). The CIT’s characterization reflects how our cases define *eo nomine* provisions—by distinguishing them from use provisions. *See, e.g., Aromont*, 671 F.3d at 1312 (“[T]his heading is an *eo nomine* provision, that is, a provision that describes an article by a specific name, not by use.”) (emphasis added); *BASF Corp. v. United States*, 497 F.3d 1309, 1315 (Fed. Cir. 2007) (same); *Carl Zeiss*, 195 F.3d at 1379 (same).

Further, the majority opinion makes the following unsettling declaration:

[U]se of subject articles may, under certain circumstances, be considered in tariff classification according to *eo nomine* provisions. This may occur at the stage of establishing the proper meaning of a designation when a provision’s name “inherently suggests a type of use.” Or, once tariff terms have been defined, it may be the case that the use of subject articles defines an articles’ identity when determining whether it fits within the classification’s scope.

*GRK II*, 761 F.3d at 1359 (quoting *Carl Zeiss*, 195 F.3d at 1379). Not only is this more permissive rule contrary to our case law, it also blurs the distinction between the legal question of what the subheadings cover—a pure question of law analyzed in a vacuum without regard to the particular merchandise involved in the case—and the factual second step of determining whether the goods fall within that properly-construed heading.

More troubling is the majority opinion’s explicit endorsement of a use analysis and adoption of the ARIs in the context of an *eo nomine* heading:

[U]se may be considered as part of the definition of *eo nomine* provisions, where, even if the *eo nomine* provision describes goods with respect to their names, the name itself may “inherently suggest[ ] a type of use.” . . . Classification of subject articles may then need to reach the [ARIs], which distinguish the treatment of articles based on whether tariff classifications are controlled by principal or actual use.

*Id.* (quoting *Carl Zeiss*, 195 F.3d at 1379) & n.2. Any suggestion that the ARIs may need to be reached in the context of an *eo nomine* analysis is foreign to our classification case law, and conflicts with the clear statutory language of the ARIs. *See, e.g., Dependable Packaging Solutions, Inc. v. United States*, 757 F.3d 1374, 1378 (Fed.Cir. 2014) (“All the relevant HTSUS headings in this case are principal use provisions, which are governed by ARI1(a.)”); *Aromont*, 671 F.3d at 1312 (“Principal use provisions are governed by ARI 1(a.)”); *see also* ARI 1(a) (“[A] tariff classification *controlled by use* . . . is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.”) (emphasis added); ARI 1(b) (“[A] tariff classification controlled by the actual use to which the imported goods are put in the United States is satisfied only if such use is intended at the

time of importation, the goods are so used and proof thereof is furnished within 3 years after the date the goods are entered.”).

In addition, the majority opinion repeatedly references “intended use,” “predominant use,” and “primary use” within the context of its *eo nomine* analysis. *GRK II*, 761 F.3d at 1358–60. This exemplifies the rampant confusion among actual use, intended use, and principal use. These are terms of art governed by the ARIs, and are not synonymous or interchangeable. Existing confusion should be left to cases involving use provisions, and not be allowed to infiltrate our *eo nomine* cases. See *Aromont*, 671 F.3d 1310, 1313 (discussing the differences between principal use and actual use).

## II.

In support of its holding that use plays a proper role in the *eo nomine* analysis, the majority opinion relies heavily on the Court of Customs and Patent Appeals’ (“CCPA”) 1959 decision in *United States v. Quon Quon Co.*, 46 CCPA 70 (1959), ignoring this court’s contemporary classification cases, such as *Link Snacks*, 742 F.3d 962, *Kahrs*, 713 F.3d 640, *BASF*, 497 F.3d 1309, et al. Although the majority opinion acknowledges that “*Quon Quon* is a case determined under the old [Tariff Schedule of the United States (“TSUS”)] that has now been replaced by the HTSUS,” *GRK II*, 761 F.3d at 1358, the opinion fails to recognize the crucial point that the statutory interpretative framework required by the contemporary HTSUS, namely, the *GRI*s and the *ARI*s, did not govern interpretations of TSUS. While this court has acknowledged that “TSUS cases may be instructive in interpreting identical language in the HTSUS,” *JVC Co. of Am., Div. of US JVC Corp. v. United States*, 234 F.3d 1348, 1355 (Fed. Cir. 2000) (emphases added), such cases are *not helpful in defining an interpretative framework that did not exist under the TSUS*. Not only are the *GRI*s and *ARI*s part of the HTSUS statute, this court has made clear they govern the classification of merchandise. *BenQ*, 646 F.3d at 1376.

The majority opinion’s characterization of *Quon Quon* and similar TSUS cases is also not entirely accurate. The opinion states: “In TSUS cases, courts had considered the use of articles in interpreting *eo nomine* provisions.” *GRK II*, 761 F.3d at 1356. No citation is given for this proposition because even under the TSUS it was uncommon for use to be considered in the *eo nomine* analysis. In *Quon Quon*, for example, the CCPA took issue with the Government’s argument that “since the merchandise comes within the meaning of [an *eo nomine*]

term, its *actual use is immaterial*.” *Quon Quon*, 46 CCPA at 72 (emphasis added). The court found “no support in [other TSUS] cases for the allegation that use is immaterial because the designation is eo nomine.” *Id.* In support, the CCPA identified three out of “numerous cases” cited by the Government where “use [was] an important factor in determining classification though an eo nomine designation [was] involved.” *Id.* Thus, beyond its inapplicability to this case, *Quon Quon* stands only for the narrow proposition that, as a limited exception, use can sometimes be considered in the eo nomine analysis. In this way, the CIT’s conclusion that it “cannot support *this instance* of reading use into an *eo nomine* tariff provision under the HTSUS,” *GRK*, 884 F. Supp. 2d at 1353 (emphasis added), does not conflict with *Quon Quon*; it recognizes that use may be an appropriate consideration *in other instances*.

### III.

To be sure, there are limited circumstances where this court has considered use in the eo nomine analysis, such as those described in *CamelBak*, a unique case among our classification cases that has led to some confusion as to the role of use in the eo nomine analysis. In *CamelBak*, this court acknowledged that an eo nomine provision “include[s] all forms of the named article[,] even improved forms.” *CamelBak*, 649 F.3d at 1365 (quoting *Carl Zeiss*, 195 F.3d at 1379). Nonetheless, the court articulated a test to determine when an additional component or function of an article, otherwise named by an eo nomine provision, so significantly transforms the article that it is no longer prima facie classifiable under the eo nomine heading. Thus, *CamelBak* describes the exceptional case where a good that was classifiable in an eo nomine heading undergoes “a change in identity [that] removes [the] article from an *eo nomine* provision.” *Id.* at 1367; *id.* at 1369 (“[T]he hydration component of the subject articles is not merely incidental to the cargo component but, instead, provides the articles with a unique identity and use that removes them from the scope of the *eo nomine* backpack provision.”). To aid in this inquiry, *CamelBak* went on to identify “several analytical tools or factors [used] to assess whether the subject articles are beyond the reach of [an] *eo nomine* . . . provision,” which include the design, use, and function of the subject articles. *Id.* at 1367. Yet, *CamelBak*’s discussion of “use/function” and “design” was in the context of this significant transformation test, and this discussion cannot be read to obscure the difference between eo nomine and use provisions. *Id.* at 1367–68.

Thus, consideration of use in the *eo nomine* analysis is a narrow exception that has rarely been used by this court.<sup>1</sup> Indeed, if an *eo nomine* heading did “inherently suggest[] a type of use,” it would be proper to convert it to a use provision. See *StoreWALL, LLC v. United States*, 644 F.3d 1358, 1365–67 (Fed. Cir. 2011) (Dyk, J., concurring). Therefore, if, as the majority holds, the subheadings at issue are truly defined by use, the majority should have reconsidered the parties’ legal stipulation that the relevant subheadings are *eo nomine*. A narrower holding that, although the subheadings appear to be *eo nomine*, they are as a matter of law use provision governed by the use analysis, would have avoided disruption of our well-settled precedent.

#### IV.

Cognizant of these issues, in its Petition for Rehearing En Banc, GRK recognizes that “the majority decision of the panel improperly—and contrary to well-established and longstanding precedent of this Court—introduced an ‘intended use’ analysis into the analytical framework for construing *eo nomine* classifications, which is only appropriate for those classifications that are defined by how they are used.” Pet. at 2. It also recognizes “[t]he majority decision is directly contrary to numerous precedents of this Court” and “[b]y requiring considerations of ‘use’ even with *eo nomine* provisions, it unnecessarily blurs (if not erases entirely) the well-established, and crucial, distinction between *eo nomine* provisions and ‘use’ provisions—each of which employs, according to this Court’s precedents, a *different* analytical framework.” *Id.* at 11.

In an attempt to downplay the importance of the distinction between use and *eo nomine* provisions, the Government suggests that “GRK’s petition confuses the Panel Majority’s discussion of intended use with the term of art ‘principal use.’” Resp. at 2. Furthermore, it states, “GRK and the Panel Dissent misconstrue the Panel Majority’s

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<sup>1</sup> In addition to *Quon Quon* and *CamelBak*, the majority opinion finds support for its position from one other case: *Len-Ron Mfg. Co., Inc. v. United States*, 334 F.3d 1304, 1311 (Fed. Cir. 2003), a *sui generis* case in which this court *may* have applied an exception; it is unclear. This court affirmed the CIT’s proper construction of the *eo nomine* heading “vanity case,” but added a clarification that reads like a use limitation: “In affirming the [CIT’s] conclusion that ‘vanity case’ means ‘a small handbag or case used to hold cosmetics,’ however, we clarify that for a handbag or case to be classified as a vanity case, containing, carrying, or organizing cosmetics must be its predominant use, rather than simply one possible use.” *Id.* Thus, despite undertaking an *eo nomine* analysis, the court in this instance relied on an analysis used only for use headings. Indeed, in support of its analysis, the court cited *Sports Graphics, Inc. v. United States*, 24 F.3d 1390, 1393–94 (Fed. Cir. 1994). Not only was *Sports Graphics* a case involving a use provision, the heading at issue was a “chief use” provision of the TSUS. “Chief use” headings no longer exist in the HTSUS.

Opinion. Although the Panel Majority referred to ‘the material that screws are principally intended to pass through,’ and used the phrase ‘principal intended use’ . . . , the Panel Majority did *not* direct the trial court to undertake a principal use analysis.” *Id.* at 4 (citations omitted).

The Government’s argument ignores the majority opinion’s explicit statement endorsing a use analysis. *See GRK II*, 761 F.3d at 1359 (“[U]se may be considered as part of the definition of *eo nomine* provisions . . . . Classification of subject articles may then need to reach the [ARIs], which distinguish the treatment of articles based on whether tariff classifications are controlled by principal or actual use.”). This explicit directive that the ARIs, which are unquestionably used only in the use analysis, may be reached, refutes the Government’s argument that “the Panel Majority did not order the trial court to conduct a principal use analysis on remand. It in no way directed the trial court to apply ARI 1(a).” *Resp.* at 5.

## V.

A final concern with the majority opinion is that it is unclear whether the correct analysis was performed or whether the correct standard of review was applied. It is well-established that classification decisions involve a two-step analysis: (1) ascertaining “the proper meaning of the tariff provisions, which is a question of law reviewed *de novo*”; and (2) determining “whether merchandise falls within a particular heading, which is a question of fact we review only for clear error.” *Lemans Corp. v. United States*, 660 F.3d 1311, 1315 (Fed. Cir. 2011) (citing *Cum mins Inc. v. United States*, 454 F.3d 1361, 1363 (Fed. Cir. 2006)). It is also well-settled that when “the nature of the merchandise is undisputed, the inquiry collapses into a question of law we review *de novo*.” *Id.* While the majority opinion correctly articulates the two-step process, it is unclear whether “the nature of the merchandise is undisputed” in this case, and, if so, whether only a question of law remains.

Instead, the opinion describes at length the CIT’s analysis, both in the background and the analysis sections, and notes the errors the CIT made in its decision. But this court does not review classification decisions for error; rather, it performs a *de novo* review. In this way, the majority opinion fails to answer the legal question of the proper construction of the competing subheadings. This court has “an independent responsibility to decide the legal issue of the proper meaning and scope of HTSUS terms.” *Link Snacks*, 742 F.3d at 965. Although unclear, it may be that the majority disagrees with the CIT’s construction of the competing subheadings. The opinion, however, offers



no answer, as a matter of law, on their proper construction, other than that the use of the subject merchandise involved in this case should have a bearing on the legal construction of the subheadings.

In addition to failing to fulfill its responsibility to determine the proper meaning of the competing subheadings, the majority opinion does not identify the governing GRI for this case. It faults the CIT for sequentially proceeding through the GRIs, as required by our case law, and then “end[ing] up at the rarely used ‘tie-breaker’ step of GRI 3(c).” *GRK II*, 761 F.3d at 1360. However, it is unclear which GRI the majority believes should apply. That vital question, this court must answer.

As to the majority opinion’s disposition, it does not specify whether remand is warranted because (1) there are genuine disputes of material fact precluding summary judgment, such that the CIT erred in granting summary judgment and the case should be remanded for trial; (2) there was legal error in the construction of the subheadings; and/or (3) there was clear error in the factual findings. The grounds for vacation must be specified if we are to provide any guidance on the issues involved in this case.

## VI.

It is evident that this is indeed “a challenging case.” *GRK II*, 761 F.3d at 1356 (quoting *GRK I*, 884 F. Supp. 2d at 1345). In disagreeing with the CIT’s ultimate classification conclusion, however, the opinion undermines our case law requiring a distinction between use and *eo nomine* provisions without articulating whether an exception applies in this case, or whether the subheadings at issue should be properly reclassified as use provisions at the beginning of the analysis.

Because the majority opinion upends a once-clear analytical framework and will breed confusion in future cases, the concerns raised are “of exceptional importance” and “en banc consideration is necessary to secure or maintain uniformity of the court’s decisions.” *See* Fed. R. App. P. 35(a). Therefore, I respectfully dissent from the court’s refusal to reconsider this case en banc.

