

U.S. Customs and Border Protection



GENERAL NOTICE

PROPOSED MODIFICATION OF RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE ELIGIBILITY OF CERTAIN AUTOMOTIVE PARTS FOR A PARTIAL DUTY EXEMPTION UNDER SUBHEADINGS 9802.00.60 AND 9802.00.50 HTSUS

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

ACTION: Notice of proposed modification of one ruling letter and proposed revocation of any treatment relating to the eligibility of certain automotive parts for a partial duty exemption under subheadings 9802.00.60 and 9802.00.50 of the 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 one ruling letter, New York Ruling Letter (NY) M87369, dated November 7, 2006, relating to the eligibility of certain automotive parts for a partial duty exemption under subheadings 9802.00.60 and 9802.00.50 of the 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 July 10, 2015.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Valuation & Special Programs 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: Ross Cunningham, Valuation and Special Programs Branch, at (202) 325-0034.

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 one ruling letter pertaining to the eligibility of certain automotive parts for a partial duty exemption under subheadings 9802.00.60 and 9802.00.50 of the HTSUS. Although in this notice, CBP is specifically referring to the modification New York Ruling Letter (NY) M87369, dated November 7, 2006 (Attachment A), this notice covers any rulings on these products which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (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 New York Ruling Letter (NY) M87369, dated November 7, 2006, in accordance with the analysis set forth in proposed Headquarters Ruling Letter (HQ) H263570 (Attachment B). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: May 15, 2015

MONIKA R. BRENNER
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY M87369

November 7, 2006

CLA-2-98:RR:NC:N1:101 M87369

CATEGORY: Classification

TARIFF NO.: 9802.00.5060

MR. JASON COMBS
C J INTERNATIONAL, INC.
7720 BLUFFTON ROAD SUITE A
FORT WAYNE IN 46809-2912

RE: The tariff classification of automotive parts from China.

DEAR MR. COMBS:

In your letter dated October 10, 2006 you requested a tariff classification ruling on behalf Connor Corporation in Fort Wayne, IN.

This ruling requests a determination as to whether the HTS 9802.00.5060 or HTS 9802.00.60000 would apply for items of US manufacture exported by Connor Corp. to China for further working and then imported back into the US by Connor Corp.

1. Item # A-3105W-1167: An outer steel ring is stamped in the US. This ring is then exported to China where it is zinc plated, an adhesive is applied to the inner diameter and then the rubber is molded to the inside of the ring. You have provided a sample of the finished product.
2. Item # 3556B40H01: A nylon plastic ring is molded in the US. This ring is then exported to China where an adhesive is applied to the inner diameter of the ring and then the rubber is molded to the inside of the ring. The sample provided is the nylon ring, as it looks when exported from the US.
3. Item # 53P22-1: The outer steel ring is stamped in the US. This ring is then exported to China where it is zinc plated, (sample provided is painted black), an adhesive is applied to the inner diameter and then the rubber is molded to the inside of the ring. The sample provided is the outer ring, as it looks when exported from the US and the finished product as it looks upon return to the US. The outer ring and the rubber are clearly distinguishable.
4. Item # 53P25-1: The outer steel ring is stamped in the US. This ring is then exported to China where it is zinc plated, (sample provided is painted black), an adhesive is applied to the inner diameter and then the rubber is molded to the inside of the ring. The sample provided is the finished product, as it looks upon return to the US. The outer ring and the rubber are clearly distinguishable.
5. Item 611491-4: The outer and inner steel rings are stamped in the US. These rings are then exported to China where they are zinc plated, (sample provided is painted black), an adhesive is applied to

the inner diameter and then the rubber is molded to the inside of the ring. The inner ring is then attached to the inside of the rubber. The sample provided is the outer ring, as it looks when exported from the US, and the finished product as it looks upon return to the US. The inner ring, outer ring, and rubber are clearly distinguishable.

Under subheading 9802.00.6000, HTSUS, articles of metal (except precious metal) manufactured in the U.S. or subject to a process of manufacture in the U.S., if exported for further processing, and if the exported article as processed outside the U.S., or the article which results from processing outside the U.S., is returned to the U.S. for further processing, may be entered with duty on the cost or value of the processing abroad upon compliance with applicable regulations.

Customs has previously held that for purposes of subheading 9802.00.6000, HTSUS, the term “further processing” has reference to processing that changes the shape of the metal or imparts new and different characteristics which become an integral part of the metal itself and which did not exist in the metal before processing.

In all five cases mentioned above, there is no change in shape of metal nor are there any new and different characteristics which become an integral part of the metal itself and which did not exist in the metal before processing.

It is our opinion that the work performed in China is an alteration within the meaning of subheading 9802.00.5060, HTSUS. Provided the documentary requirements of section 181.64, Customs Regulations (19 CFR 181.64) are satisfied, the metal insert will qualify for a duty exemption under HTSUS subheading 9802.00.5060 when returned to the U.S.

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 Robert DeSoucey at 646-733-3008.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

[ATTACHMENT B]

HQ H263570
OT:RR:CTF:VS H263570 RMC
CATEGORY: Classification

JASON COMBS
CJ INTERNATIONAL, INC.
7220 BLUFFTON ROAD SUITE A
FORT WAYNE, IN 46809-2912

Re: Modification of New York Ruling Letter (NY) M87369, Dated November 7, 2006, Concerning the Tariff Classification of Automotive Parts from China.

DEAR MR. COMBS:

This is in reference to New York Ruling Letter (NY) M87369 issued to you on behalf of your client, Connor Corporation, on November 7, 2006. In your ruling request, you asked whether five automotive parts qualified for a partial duty exemption under Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings 9802.00.50 and 9802.00.60. NY M87369 held that the automotive parts in question qualified as “articles returned to the United States after having been exported to be advanced in value or improved in condition by any process of manufacture or other means” under HTSUS subheading 9802.00.50. It has come to our attention that an error was made in NY M87369. For the reasons set forth below the automotive parts are not entitled to a partial duty exemption under either subheading 9802.00.50 or subheading 9802.00.60, HTSUS.

FACTS:

As described in New York Ruling Letter (NY) M87369, dated November 7, 2006, the following five automotive products are at issue:

1. Item # A-3105W-1167: An outer steel ring that is first stamped in the United States. This ring is then exported to China, where a manufacturer plates it with zinc, applies an adhesive to the inner diameter, and molds rubber to the inside of the ring.
2. Item # 53P22-1: An outer steel ring that is first stamped in the United States. This ring is then exported to China, where a manufacturer plates it with zinc, applies an adhesive to the inner diameter, and molds rubber to the inside of the ring.
3. Item # 53P25-1: An outer steel ring that is first stamped in the United States. This ring is then exported to China, where a manufacturer plates it with zinc, applies an adhesive to the inner diameter, and molds rubber to the inside of the ring.
4. Item 611491-4: Outer and inner steel rings that are stamped in the United States. These rings are then exported to China, where a manufacturer plates them with zinc, applies an adhesive to the inner diameters, and molds rubber to the inside of the rings. The inner ring is then attached to the inside of the rubber.

5. Item # 3556B40H01: A nylon plastic ring that is first molded in the United States. This ring is then exported to China, where a manufacturer applies an adhesive to the inner diameter of the ring and molds rubber to its inside.

ISSUE:

1. Whether products (1) through (4), which are all made of metal, qualify for a partial duty exemption under subheading 9802.00.60 of the HTSUS as an “article of metal . . . manufactured in the United States or subjected to a process of manufacture in the United States, if exported for further processing, and if the exported article as process outside the United States, or the article which results from the processing outside the United States, is returned to the United States for further processing.”
2. Whether products (1) through (5) qualify for a partial duty exemption under subheading 9802.00.50 as “[a]rticles returned to the United States after having been exported to be advanced in value or improved in condition” through repairs or alterations.

LAW AND ANALYSIS:

I. Eligibility of Metal Goods for a Partial Duty Exemption under HTSUS Subheading 9802.00.60

Subheading 9802.00.60, HTSUS, provides a partial duty exemption for any article of metal (as defined in U.S. note 3(d) of this subchapter) manufactured in the United States or subjected to a process of manufacture in the United States, if exported for further processing, and if the exported article as processed outside the United States, or the article which results from the processing outside the United States, is returned to the United States for further processing. This tariff provision imposes a dual “further processing” requirement on eligible, U.S. articles of metal—one foreign, and when returned, one domestic. Metal articles satisfying these statutory requirements may be classified under this tariff provision with duty only on the value of such processing performed outside the U.S., provided the documentary requirements of section 10.9, Customs Regulations (19 CFR 10.9), are met.

In C.S.D. 84-49, 18 Cust.Bull. 957 (1983) we stated that for purposes of item 806.30, TSUS—the predecessor tariff provision to HTSUS subheading 9802.00.60—the term “further processing” refers to “processing that changes the shape of the metal or imparts new and different characteristics which become an integral part of the metal itself and which did not exist in the metal before processing; thus, further processing includes machining, grinding, drilling, threading, punching, forming, plating, and the like, but does not include painting or the mere assembly of finished parts by bolting, welding, etc.”

Although NY M87369 held that no “further processing” of the metal occurred in China under subheading 9802.00.60, that is incorrect. Here, metal rings that are manufactured in the United States are sent to China where a manufacturer plates them with zinc, applies an adhesive, and molds rubber

to the inside of the metal ring. Zinc plating—a process whereby metal is coated in a protective lawyer of zinc—does indeed “impart new and different characteristics which become an integral part of the metal itself and which did not exist in the metal before processing.” We have recognized this in previous rulings. *See, e.g.*, Headquarters Ruling (HQ) H555562, dated Nov. 26, 1990; HQ 556080, dated Aug. 27, 1991;

Despite the error on this point, however, NY M87369 correctly found that subheading 9802.00.60 did not apply because no evidence of further processing in the United States was presented. Subheading 9802.00.60 requires that the imported goods be “returned to the United States for further processing.” Therefore, we continue to hold that the products are ineligible for a partial duty exemption under subheading 9802.00.60, HTSUS.

II. Eligibility of All Goods for a Partial Duty Exemption under HTSUS Subheading 9802.00.50

Subheading 9802.00.50 creates a partial duty exemption for articles returned to the United States after having been exported to be advanced in value or improved in condition through repairs or alterations. The Court of Customs and Patent Appeals has held that “repairs or alterations” can be done only to articles that are complete when exported. Subheading 9802.00.50 therefore does not apply to “intermediate operations which are performed in the manufacture of finished articles.” *Dolliff and Co., Inc. v. United States*, 599 F.2d 1010 (C.C.P.A. 1979).

NY M87369 holding that all five articles at issue are eligible for a partial duty exemption under subheading 9802.00.50 is incorrect because the rings are not complete when exported. As noted above, the metal rings are exported to China for further processing and returned to the United States as finished goods, and the same is true of the nylon rings. The Chinese processing is therefore an “intermediate operation” performed in the manufacture of a finished good, which makes the products ineligible for a partial duty exemption under subheading 9802.00.50.

HOLDING:

We find that the automotive parts do not qualify for a partial duty exemption under either subheading 9802.00.60 or subheading 9802.00.50.

EFFECT ON OTHER RULINGS:

NY M87369, dated Nov. 7, 2006, is hereby modified.

Sincerely,

MYLES B. HARMON,

Director

Commercial & Trade Facilitation Division

**PROPOSED REVOCATION OF RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF TIRES FOR ALL
TERRAIN VEHICLES**

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

ACTION: Notice of proposed revocation of one ruling letter and proposed revocation of treatment relating to tariff classification of tires for all-terrain vehicles (ATVs).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to revoke Headquarters Ruling Letter (HQ) 966112, dated April 2, 2003, relating to the tariff classification of ATV tires under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATES: Comments must be received on or before July 10, 2015.

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

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

SUPPLEMENTARY INFORMATION:

Background

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

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of ATV tires. Although in this notice, CBP is specifically referring to the revocation of Headquarters Ruling Letter (HQ) 966112, dated April 2, 2003 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In HQ 966112, CBP determined that several styles of tires for ATVs were classified in subheading 4011.10, HTSUS, which provides for “New, pneumatic tires, of rubber, of a kind used on motor cars (including station wagons and racing cars).”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke HQ 966112 and revoke or modify any other ruling not specifically identi-

fied, in order to reflect the proper classification of the subject ATV tires in subheading 4011.69.00, HTSUS, which provides for “New pneumatic tires, of rubber: Other, having a “herring-bone” or similar tread: Other”, according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H220277, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: May 19, 2015

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ 966112

April 2, 2003

CLA-2 RR:CR:GC 966112 DSS

CATEGORY: Classification

TARIFF NO.: 4011.10

PORT DIRECTOR
LOS ANGELES-LONG BEACH SEAPORT
U.S. CUSTOMS AND BORDER PROTECTION
300 SOUTH FERRY STREET
LOS ANGELES, CA 90731

RE: Request for Further Review of Protest No. 2704-02-100936; All Terrain Vehicle tires

DEAR PORT DIRECTOR:

This is in response to the request for further review of Protest 2704-02-100936, timely filed on May 7, 2002 by PBB Global Logistics on behalf of the importer Goodyear Tire Co. against your classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain tires for All Terrain Vehicles. Product literature submitted with the protest depicts the tires at issue.

The protestant challenges Customs decision not to reclassify (see below) and claims that the proper classification of the tires at issue is under subheading 4011.91.50, HTSUS (2001), as "herring bone" or similar tires.

FACTS:

The file reflects the following. At issue are several types of Goodyear Dunlop tires for All-Terrain Vehicles (ATVs). The specific types of tires at issue are Models KT 705, KT 404 (which protestant argues is actually Model KT 405), KT 761 and KT 765.

The tires at issue in this protest were entered on February 6, February 26, March 27, April 17, May 1, May 7, and May 21, 2001 under subheading 4011.99.80, HTSUS (2001), as "New pneumatic tires, of rubber: . . . Other: . . . Other: . . . Other."

On September 25, 2001, JM Rodgers Co. Inc. (JM Rodgers), on behalf of Goodyear Tires, requested reclassification and an administrative refund of duties on the above-mentioned entries, arguing that they had been incorrectly entered. JM Rodgers argued that the correct classification for the ATV tires is under subheading 4011.91.50, HTSUS, as "New pneumatic tires, of rubber: . . . Other: Having a 'herring-bone' or similar tread: . . . Other."

On February 15, 2002, the entries were liquidated under subheading 4011.99.80, HTSUS, as new pneumatic rubber tires, "other" than herring-bone. You timely received the protest on May 7, 2002.

ISSUE:

What is the classification under the HTSUS of the ATV tires?

LAW AND ANALYSIS:

Initially we note that the protest was timely filed (*i.e.*, within 90 days after but not before the notice of liquidation; *see* 19 U.S.C. 1514 (c)(3)(A)) and the matter is protestable (*see* 19 U.S.C. 1514 (a)(2) and (5)).

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. GRI 3 is utilized when, by application of GRI 2(b), a good consists of materials or components which are *prima facie* classifiable under two or more headings. In such a case, classification of the goods shall be effected as follows: “[GRI 3](a) [t]he heading which provides the most specific description shall be preferred to headings providing a more general description.” According to GRI 6, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. The relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

The HTSUS (2001) provisions at issue are as follows:

4011	New pneumatic tires, of rubber:
4011.10	Of a kind used on motor cars (including station wagons and racing cars):
4011.10.10	Radial
* * * *	
4011.10.50	Other
* * * *	
	Other:
4011.91	Having a “herring-bone” or similar tread:
* * * *	
4011.91.50	Other
* * * *	
4011.99	Other:
* * * *	
	Other:
* * * *	
4011.99.80	Other

In interpreting the headings and subheadings, Customs looks to the Harmonized Commodity Description and Coding System Explanatory Notes (ENs). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUS. It is Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The proper heading in this case is heading 4011, HTSUS, for new pneumatic tires, of rubber, which is an *eo nomine* provision. The subheadings found within heading 4011, however, are “use” provisions in that they classify products which are “of a kind used” for a specified purpose. In this case, the tires must fall within a class of goods used on the machinery specified by the subheading terms. According to Additional U.S. Rule of Interpretation 1(a):

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

Generally, the principal use is that use which exceeds every other individual use. See HQ 952830, dated February 1, 1993.

Prior to considering whether the tires at issue might have a “herring-bone” or similar tread, we note that such a determination is only necessary for tires not falling under subheadings 4011.10 - 4011.50, HTSUS. New pneumatic tires for various types of vehicles come under these subheadings appearing earlier under the same heading and would be classified thereunder, depending on their size and construction, (*i.e.*, radial or other).

GRI 6 permits us to compare subheadings within the same heading, provided that only subheadings at the same level are comparable. Under GRI 6, the relative section, chapter and subchapter notes apply, unless the context otherwise requires. According to GRI 3(a), when goods are, *prima facie*, classifiable under two or more headings (or in this case, under GRI 6, subheadings), “[T]he heading which provides the most specific description shall be preferred to headings providing a more general description.” The tires at issue appear, *prima facie*, to be classifiable under subheading 4011.11, HTSUS, which provides for “new pneumatic tires, of rubber, of a kind used on motor cars . . .” and 4011.99, HTSUS.

Thus, the merchandise in question must be classified pursuant to the heading providing the most specific description. See *Better Home Plastics Corp v. United States*, 20 C.I.T. 221, 222; 916 F. Supp. 1265, 1266 (1996). ATVs are classified in heading 8703, HTSUS, which provides for “motor cars and other motor vehicles designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars.” See HQ 953745, dated April 7, 1993, NY F84501, dated January 31, 2000, NY I86623 dated October 8, 2002, and NY I89444, dated December 17, 2002. Motor cars are not defined in the legal text of the HTSUS or in the ENs, however, tariff terms are generally construed in accordance with their common and commercial meanings which are presumed to be the same. See *United States v. C.J. Tower & Sons*, 48 CCPA 21, C.A.D. 770 (1961), and related cases. In determining the common meaning of a term, it is appropriate to consult dictionaries, lexicons and other reliable sources of information.

A review of dictionaries and other sources for the definition of “car” revealed a number of definitions, which shared certain common traits: that a car is a multi-wheeled vehicle, powered by an internal combustion engine.

See, e.g., The Motoring Dictionary at <http://www.themotoringdirectory.com/car.htm> and Merriam-Webster Dictionary. In common meaning it appears the term is broad enough to encompass ATVs. In fact, relevant ENs describe ATVs among the vehicles encompassed by heading 8703. ATVs are the functional equivalent of motor cars since they are designed to transport persons, and are multi-wheeled vehicles, powered by an internal combustion engine. Therefore, for tariff purposes, tires for ATVs would fall under the description of tires “of a kind used on motor cars” under heading 4011, HTSUS.

The instant ATV tires are classified under subheading 4011.10, HTSUS, as “new, pneumatic tires, of rubber: of a kind used on motor cars (including station wagons and racing cars).” Based on the foregoing analysis, discussion of whether the tires have a “herring-bone” or similar tread is inapposite.

In NY A81065, dated April 3, 1996, we classified ATV tires under the “other” basket provision of subheading 4011.99, HTSUS. The tires in that ruling appear to be distinguishable from the tires in this protest as the tires in NY A81065 appear to be designed and advertised for use on several different types of vehicles.

It should be noted the information in the file accompanying this protest is inconclusive regarding whether Goodyear Dunlop Model 404 or 405 ATV tires were imported on the above-mentioned entries; based on the information in the file and general nature of the tires as ATV tires, however, it appears Goodyear Dunlop Model 404 and 405 ATV tires would be classified under subheading 4011.10, HTSUS.

To classify the tires under subheading 4011.10, HTSUS, it is necessary to determine whether the tires are of radial construction. However, the file does not indicate whether the tires are of radial construction. Based on the foregoing analysis, the ATV tires at issue are classified in subheading 4011.10, HTSUS. Accordingly, the protest should be denied in full.

HOLDING:

Under the authority of GRI 1, the ATV tires at issue are provided for in heading 4011, HTSUS. Under GRI 3(a), through application of GRI 6, they are classified under subheading 4011.10, HTSUS, as “new, pneumatic tires, of rubber, of a kind used on motor cars (including station wagons and racing cars).” If it is determined that the tires are of radial construction, then they would be classified under subheading 4011.10.10, HTSUS. If it is determined that the tires are not of radial construction, then they would be classified under subheading 4011.10.50, HTSUS.

Since the rate of duty under the classifications indicated above is either more than or the same as the liquidated rate, you are instructed to DENY the protest in full. In accordance with Section 3A(11)(b) of Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, you are to mail this decision, together with Customs Form 19, to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry or entries in accordance with decision must be accomplished prior to mailing the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will make the decision available to Customs personnel, and to

the public on the Customs Home Page on the World Wide Web at *www.customs.gov*, by means of the Freedom of Information Act, and other methods of public distribution.

Sincerely,

/s/

MYLES B. HARMON

Director,

Commercial Rulings Division

[ATTACHMENT B]

HQ H220277

CLA-2 OT:RR:CTF:TCM H220277 CkG

CATEGORY: Classification

TARIFF NO: 4011.69.00

JAMES CARROLL

AIR OCEAN IMPORT-EXPORT

20 N. CENTRAL AVE.

VALLEY STREAM, NY 11580

RE: Revocation of Headquarters Ruling Letter 966112; All-Terrain Vehicle tires

DEAR MR. CARROLL:

This is in reference to Headquarters Ruling Letter (HQ) 966112, issued by Customs and Border Protection (CBP) on April 2, 2003, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of tires for All-Terrain Vehicles (ATVs). We have reconsidered this decision, and for the reasons set forth below, have determined that classification of the tires in subheading 4011.10, HTSUS, as tires of a kind used on motor cars, was incorrect.

HQ 966112 is a decision on Protest 2704–02–100936. A protest pertains to specific entries of merchandise which have entered the U.S. and been liquidated by CBP. A final determination of a protest, pursuant to Part 174, Customs Regulations (19 CFR 174), cannot be modified or revoked as it is applicable only to the merchandise which was the subject of the entry protested. Furthermore, only a denial is voidable under 19 U.S.C. §1515(d). CBP lost jurisdiction over the protested entries in HQ 966112 when notice of disposition of the protest was received by the protestant. *See, San Francisco Newspaper Printing Co. v. U.S.*, 9 CIT 517, 620 F.Supp. 738 (1935).

However, CBP can modify or revoke a protest review decision to change the legal principles set forth in the decision. 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), 60 days after the date of issuance, CBP may propose a modification or revocation of a prior interpretive ruling or decision by publication and solicitation of comments in the *Customs Bulletin*. This revocation will not affect the entries which were the subject of Protest 2704–02–100936, but will be applicable to any entries of similar merchandise made 60 days after publication of the final notice of revocation in the *Customs Bulletin*.

FACTS:

The merchandise at issue was described in HQ 966112 as follows:

At issue are several types of Goodyear Dunlop tires for All-Terrain Vehicles (ATVs). The specific types of tires at issue are Models KT 705, KT 404 (which protestant argues is actually Model KT 405), KT 761 and KT 765.

In HQ 966112, the tires were classified in subheading 4011.10, HTSUS, which provides as follows: “New, pneumatic tires, of rubber: Of a kind used on

motor cars (including station wagons and racing cars).” Protestant argued for classification in subheading subheading 4011.91.50, HTSUS, now subheading 4011.69.00, HTSUS, which provides for “New pneumatic tires, of rubber: Other, having a “herring-bone” or similar tread: Other.”

ISSUE:

Whether ATV tires are classified in subheading 4011.10, as tires of a kind used for motor cars, or in subheading 4011.69, as “other” tires having a herringbone or similar tread.

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

4011:	New pneumatic tires, of rubber:
4011.10:	Of a kind used on motor cars (including station wagons and racing cars):
4011.10.10:	Radial. . .
4011.10.50:	Other. . .
	Other, having a “herring-bone” or similar tread:
4011.69.00:	Other. . .

* * * *

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

The EN to heading 8703, HTSUS, provides, in pertinent part, as follows:

This heading covers motor vehicles of various types (including amphibious motor vehicles) designed for the transport of persons; it **does not**, however, **cover** the motor vehicles of **heading 87.02**. The vehicles of this heading may have any type of motor (internal combustion piston engine, electric motor, gas turbine, etc.).

The heading also includes :

- (1) **Motor cars** (e.g., limousines, taxis, sports cars and racing cars).
- (2) **Specialised transport vehicles** such as ambulances, prison vans and hearses.

- (3) **Motor-homes** (*campers*, etc.), vehicles for the transport of persons, specially equipped for habitation (with sleeping, cooking, toilet facilities, etc.).
- (4) **Vehicles specially designed for travelling on snow** (e.g., snow-mobiles).
- (5) **Golf cars and similar vehicles.**
- (6) **Four-wheeled motor vehicles** with tube chassis, having a motor-car type steering system (e.g., a steering system based on the Ackerman principle).

* * * *

ATVs are classified in heading 8703, HTSUS, which provides for “motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars.” See HQ 953745, dated April 7, 1993, NY F84501, dated January 31, 2000, NY I86623 dated October 8, 2002, and NY I89444, dated December 17, 2002. Subheading 4011.10, however, only provides for tires “of a kind used on motor cars.” Thus, we must determine whether an ATV is a “motor car” for the purposes of subheading 4011.10, HTSUS.

Motor cars are not defined in the legal text of the HTSUS or in the ENs, however, tariff terms are generally construed in accordance with their common and commercial meanings which are presumed to be the same. See *United States v. C.J. Tower & Sons*, 48 CCPA 21, C.A.D. 770 (1961), and related cases. In determining the common meaning of a term, it is appropriate to consult dictionaries, lexicons and other reliable sources of information. In HQ 966112, we consulted several dictionaries for the definition of “car” and concluded that the term was broad enough to encompass ATVs. However, the correct term to use when reviewing dictionaries and other lexicographic sources is “motor car”, and not “car” or “motor vehicle” as only the term “motor car” appears in subheading 4011.10.

A number of definitions of “motor car” establish that a motor car is commonly understood to be an engine-propelled vehicle for on road use. See *Webster’s Third New International Dictionary* (1986) (“automobile: a usu. 4-wheeled automotive vehicle designed for passenger transportation on streets and roadways and commonly propelled by an internal combustion engine-called also car or esp. Brit motorcar”); *The Oxford English Dictionary* (Second Edition) (“motor car”: A wheeled vehicle-propelled by a motor engine and used esp. as a private conveyance on the road; an automobile); *The Random House Dictionary of the English Language* (Second Edition, Unabridged, 1987) (“motor car: Chiefly Brit. an automobile”). Similarly, the *Oxford English Dictionary* online offers this definition of “motor car”: “**2.** A road vehicle powered by a motor (usually an internal-combustion engine), designed to carry a driver and a small number of passengers, and usually having two front and two rear wheels, esp. for private, commercial, or leisure use; an automobile.” See <http://www.oed.com/view/Entry/122742?redirectedFrom=motor%20car#eid>. The Cambridge Dictionary Online even defines “car” as “a road vehicle with an engine, four wheels, and seats for a

small number of people.” See <http://dictionary.cambridge.org/dictionary/american-english/car?q=car>.

A motor car is thus a wheeled motor vehicle used for transporting passengers, primarily designed for use on roads. All Terrain Vehicles are not designed for on-road use. ATVs are manufactured for use off the public roads. Accordingly, neither ATVs nor their tires are regulated by the Department of Transportation, which imposes strict labeling requirements for car tires. See NHTSA (National Highway Safety Administration) Interpretive Letter (May 15, 200), online at <http://iSearch.nhtsa.gov/files/21340.ztv.html>, which further notes that “We regulate “motor vehicles” which are defined, in part, as vehicles “manufactured primarily for use on the public streets, roads, and highways.” All-terrain vehicles are instead regulated by the Consumer Product Safety Commission (CPSC). *Supra*. The CPSC warns that ATVs are not suitable for on-road use, and warns the public to “stay off paved roads” when using ATVs. See U.S. Consumer Product Safety Commission, *Top 10 Things Every Rider Must Know About ATVs*, online at www.atvsafety.gov/safetytips.html.

Moreover, the majority of ATVs are not designed for passenger transportation. The CPSC strictly warns against driving ATVs with a passenger or riding as a passenger, because “The majority of ATVs are designed to carry only one person. ATVs are designed for interactive riding – drivers must be able to shift their weight freely in all directions, depending on the situation and terrain. Interactive riding is critical to maintaining safe control of an ATV especially on varying terrain. Passengers can make it difficult for drivers to control the ATV.” *Supra*. Federal Regulations also primarily define ATVs as off-road, non-passenger vehicles:

“All-terrain vehicle means a land-based or amphibious nonroad vehicle that meets the criteria listed in paragraph (1) of this definition; or, alternatively the criteria of paragraph (2) of this definition but not the criteria of paragraph (3) of this definition:

- (1) Vehicles designed to travel on four low pressure tires, having a seat designed to be straddled by the operator and handlebars for steering controls, and intended for use by a single operator and no other passengers are all-terrain vehicles.
- (2) Other all-terrain vehicles have three or more wheels and one or more seats, are designed for operation over rough terrain, are intended primarily for transportation, and have a maximum vehicle speed higher than 25 miles per hour. Golf carts generally do not meet these criteria since they are generally not designed for operation over rough terrain.
- (3) Vehicles that meet the definition of “offroad utility vehicle” in this section are not all-terrain vehicles. However, §1051.1(a) specifies that some offroad utility vehicles are required to meet the same requirements as all-terrain vehicles.

See 40 CFR §1051.801.

We therefore agree that while All Terrain Vehicles are classified in heading 8703, they are not motor cars, but rather “other motor vehicles principally designed for the transport of persons” of heading 8703. EN 87.03(6) rein-

forces this distinction by separately providing for motor cars and ATVs (four-wheeled vehicles with a tube chassis, having a motor-car type steering system). Classification Opinions 8703.21/1 and 8703.21/2, issued by the World Customs Organization (WCO), confirm that item 6 in EN 87.03 refers to ATVs: **“Four-wheeled (two wheel-driven) All Terrain Vehicle (“A.T.V.”) with tube chassis, equipped with a motorcycle type saddle, handlebars for steering and off-the-road balloon tyres. Steering is achieved by turning the two front wheels and is based on a motor-car type steering system (Ackerman principle).”**

All Terrain Vehicles are therefore not motor cars for the purpose of sub-heading 4011.10, HTSUS. However, this would not automatically preclude tires for ATVs from being considered of a kind used on motor cars, if they shared the characteristics of such tires. Subheading 4011.10 is a “use” provision. As such, the tires must fall within the class or kind of tires used on motor cars. According to Additional U.S. Rule of Interpretation 1(a), “[a] tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.”

Courts have provided several factors to apply when determining whether merchandise falls within a particular class or kind of good. They include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (e.g. the manner in which the merchandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. See *United States v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), *cert denied*, 429 U.S. 979 (1976); *Lennox Collections v. United States*, 20 CIT 194, 196 (1996).

The physical characteristics of ATV tires clearly indicate that they do not belong to the class or kind of tires used on motor cars. Data from the 2009 Tire and Rim Association (TRA) Yearbook indicates that tires for use on ATVs are on average smaller, have a lower ply and load ratings, and lower maximum psi than those for use with motor cars. For example, according to the TRA Yearbook, ATV tires have smaller rims, ranging in size from 6–14 inches, a smaller overall diameter (13–28 inches), lower ply rating (2, 4, or 6)¹, and a much lower maximum load rating (550–600 lbs) compared to passenger car tires, which range in size from a rim width of 12–24 inches, with an overall diameter of 21–33 inches, a ply rating of up to 12 and a maximum load rating of 2900 lbs. ATV tires also have far lower maximum inflation pressures, due to their use on rough terrain (a lower inflation pressure reduces shocks and punctures and ensures a smoother ride in off-road conditions such as mud, sand or dirt trails). Maximum inflation pressure for ATVs thus generally ranges from 3 to 7 psi, whereas maximum air pressure for automobile tires is up to 42 psi.

Moreover, the separate categorization of tires for ATVs and passenger cars in the TRA Yearbook indicates that these are separate products with separate markets, and are not fungible with each other. Additionally, in contrast to automobile tires, the front and rear tires of ATVs are not interchangeable;

¹ The ply rating identifies the maximum recommended load of a given tire. It is an index of the strength and does not necessarily represent the actual number of cord plies in a tire.

rear ATV tires are wider and of more substantial construction to accommodate the heavier load they bear due to engine placement. The tread designs for front and rear ATV tires also differ; ATV front tires are designed primarily for traction and ease in steering as well as channeling away debris, snow, mud, etc. The tire treads of the tires at issue are thus designed for rough terrain conditions rather than on-road use. The marketing of the tires further supports their use with ATVs, as the tires are clearly designated for such use in the submitted product literature. We further note that the subject styles are available from independent retailers, which also categorize them as ATV tires rather than tires for passenger cars. *See e.g., <http://www.atvtires.net/products.asp>; <http://www.tirewholesalers.net/products/index.php/category/ATV+TIRE/manufacture/DUNLOP>.*

The above analysis of the Carborundum factors does not support classification in subheading 4011.10, HTSUS. Therefore the ATV tires are not of a kind principally used on motor cars. Depending on whether the individual tires have a herring-bone or similar tread, they will be classified in either subheading 4011.6, HTSUS, or 4011.9, HTSUS.

CBP has concluded in prior rulings that “herring-bone” refers to a tread pattern consisting of rows of short slanted parallel lines going in the opposite directions from the center of the tread with the slant alternating row by row. These short slanted rows would meet in the center of the tire tread to form a “V” shape. *See* HQ 958100, dated March 25, 1997. This is supported by the Explanatory Notes (EN) heading 40.11, in which tires classified in subheadings 4011.61–4011.69 (having a herringbone or similar tread) are pictured. All the tire treads pictured therein, except for one, have rows of short slanted parallel lines going in opposite directions with the slant alternating row by row, which stop in the center of the tire and form a “V”-like pattern. The remaining tread pictured in the EN has short slanted parallel lines with the slant alternating row by row which do not meet in the center, but instead extend below the opposite slanted line. This is not a standard herring-bone tread, but an example of a “similar” tread. The tread lugs may be one solid line from sidewall to center, individual raised ridges aligned in a herring-bone pattern, or a combination of a strip of tread and ridges forming the angled line. Examples of herringbone and similar treads are pictured below:



The types of tires at issue are similar to the examples pictured above, and are thus classified in subheading 4011.69, HTSUS, as “Other, having a herring-bone or similar tread: Other.”

Please note that the tires at issue may fall within the scope of antidumping and countervailing duty orders A-570-912 and C-570-913, concerning new pneumatic, off-road tires from China, and published by the U.S. Department of Commerce, International Trade Administration (ITA) on July 15, 2008. See 73 FR 40485. We note that the International Trade Administration is not necessarily bound by a country of origin or classification determination issued by CBP, with regard to the scope of antidumping orders or countervailing duties. Written decisions regarding the scope of AD/CVD orders are issued by the Import Administration in the Department of Commerce and are separate from tariff classification and origin rulings issued by Customs and Border Protection. You can contact them at <http://www.trade.gov/ia/> (click on “Contact Us”). For your information, you can view a list of current AD/CVD cases at the United States International Trade Commission website at <http://www.usitc.gov> (click on “Antidumping and countervailing duty investigations”), and you can search AD/CVD deposit and liquidation messages using ACE, the system of record for AD/CVD messages, or the AD/CVD Search tool at <http://adcvd.cbp.gov/index.asp?ac=home>.

HOLDING:

By application of GRI 1, the ATV tires at issue are classified in subheading 4011.69, HTSUS, which provides for “New pneumatic tires, of rubber: Other, having a “herring-bone” or similar tread: Other.” The 2015 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

EFFECT ON OTHER RULINGS:

HQ 966112, dated April 2, 2003, is hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division


**REVOCAION OF A RULING LETTER AND REVOCAION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF CERTAIN FOOTWEAR**

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to tariff classification of certain footwear.

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 inter-

ested parties that Customs and Border Protection (CBP) is revoking a ruling letter relating to the tariff classification of certain footwear under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 14, on April 8, 2015. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 10, 2015.

FOR FURTHER INFORMATION CONTACT: Tatiana Salnik Matherne, Tariff Classification and Marking Branch: (202) 325-0351.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 49, No. 14, on April 8, 2015, proposing to revoke New York Ruling Letter (NY) N161242, dated May 16, 2011, in which CBP determined that the subject merchandise was classified under subheading 6402.99.27, HTSUS, which provides for “Other footwear with outer soles and uppers of rubber or plastics: Other

footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather): Other: Sandals and similar footwear of plastics, produced in one piece by molding.”

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

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930 (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 comment period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N161242 to reflect the proper tariff classification of this merchandise under sub-heading 6402.99.31, HTSUS, which provides for: “Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather): Other: Other,” pursuant to the analysis set forth in HQ H185722, which is attached to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by it to substantially identical transactions.

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

Dated: May 14, 2015

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H185722

May 14, 2015

CLA-2 OT:RR:CTF:TCM H185722 TSM

CATEGORY: Classification

TARIFF NO.: 6402.99.31

MR. JOEL SCHWARTZ
GREAT CHINA EMPIRE, LTD.
1385 BROADWAY
NEW YORK, NY 10018

RE: Revocation of NY N161242; Classification of sandals from China

DEAR MR. SCHWARTZ:

This is in reference to New York Ruling Letter (NY) N161242, issued to Great China Empire, Ltd. on May 16, 2011, concerning the tariff classification of a child's open toe heel sandals from China. In that ruling, U.S. Customs and Border Protection ("CBP") classified the subject merchandise under subheading 6402.99.27, Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for "Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather): Other: Sandals and similar footwear of plastics, produced in one piece by molding." Upon additional review, we have found this classification to be incorrect. For the reasons set forth below we hereby revoke NY N161242.

Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 14, on April 8, 2015. No comments were received in response to the notice.

FACTS:

NY N161242, issued to Great China Empire, Ltd. on May 16, 2011, describes the subject merchandise as follows:

The sample identified as style YX5117 is a child's open toe/open heel sandal. The flat outer sole is a single piece of foamed rubber/plastic, approximately uniform in thickness, and cut in the shape of a footprint. The molded PVC upper is a single piece that is secured by plugs to the rubber/plastic outer sole on either side of the foot and between the first and second toes. Portions of the upper form an adjustable heel strap and a side closure that secures the shoe to the foot.

ISSUE:

Whether the sandals at issue should be classified under subheading 6402.99.27, HTSUS, as "...Sandals and similar footwear of plastics, produced in one piece by molding," or subheading 6402.99.31, HTSUS, as "...Other."

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

The HTSUS provisions under consideration are as follows:

6402	Other footwear with outer soles and uppers of rubber or plastics:
	Other footwear
6402.99	Other
	Other
	Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather):
	Other
6402.99.27	Sandals and similar footwear of plastics, produced in one piece by molding
6402.99.31	Other

Subheading 6402.99.27, HTSUS, provides for “... Sandals and similar footwear of plastics, produced in one piece by molding.” This subheading does not allow for footwear with separately attached rubber and plastic components. Manufacturing or assembling of an upper to an outer sole by such process as stitching, riveting, nailing, screwing, plugging, gluing, plugging, etc., would preclude classification as “produced in one piece by molding.” Since the uppers of the subject sandals, style YX5117, were attached to the outer soles by means of plugs, the sandals were not “produced in one piece by molding” within the meaning of subheading 6402.99.27, HTSUS. Therefore, they cannot be classified in this subheading.

Subheading 6402.99.31, HTSUS, provides for footwear “... Other (than sandals and similar footwear of plastics, produced in one piece by molding).” Sandals with uppers and outer soles of rubber or plastics not produced in one piece by molding are classified in this subheading. The uppers of the subject sandals, style YX5117, are attached to the outer soles by means of plugs. Therefore, the subject sandals cannot be considered to be produced in one piece by molding and are classified in subheading 6402.99.31, HTSUS.

Based on the foregoing, we conclude that the subject sandals are classified in subheading 6402.99.31, HTSUS.

HOLDING:

By application of GRI 1, the subject sandals are classified under subheading 6402.99.31, HTSUS, as “Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather): Other: Other.” The general, column one rate of duty is 6 percent ad valorem.

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

EFFECT ON OTHER RULINGS:

NY N161242, dated May 16, 2011, is hereby REVOKED.

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

Sincerely,

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



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

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is revoking New York Ruling Letter (NY) N234957, relating to the tariff classification of a rain boot under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treat-

ment previously accorded by CBP to substantially identical transactions. Notice of the proposed revocation of NY N234957 was published in the *Customs Bulletin* Vol. 49, No. 9, on March 4, 2015. One comment was received in opposition to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 10, 2015.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N234957 was published on March 4, 2015 in Volume 49, Number 9 of the *Customs Bulletin*. One comment was received in response to this notice.

As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. Any party who has received an interpretive ruling or decision

(i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY N234957, CBP determined that one style of rain boots was classified in heading 6401, HTSUS, specifically subheading 6401.92.90, as waterproof footwear with outer soles and uppers of rubber or plastics.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N234957 and revoking or modifying any other ruling not specifically identified, in order to reflect the proper classification of the subject boots in heading 6405, HTSUS, specifically subheading 6405.90.90, as other footwear, according to the analysis contained in Headquarters Ruling Letter (HQ) H237685, which is attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: May 18, 2015

JACINTO JUAREZ

For

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H237685

May 18, 2015

CLA-2 OT:RR:CTF:TCM H237685 CkG

CATEGORY: Classification

TARIFF NO: 6405.90.90

MICHAEL O'ROURKE
RODE & QUALEY
ATTORNEYS AT LAW
55 WEST 39TH ST.
NEW YORK, NY 10018

RE: Revocation of New York Ruling Letter N234957; classification of a rain boot

DEAR MR. O'ROURKE

This is in response to your letter dated December 10, 2012, on behalf of your client, Rich Footwear Group, requesting the reconsideration of New York Ruling Letter N234957, dated November 26, 2012. In NY N234957, CBP classified the "Angry Birds Rain Boot", style no. AA 300671, in heading 6401, HTSUS, as footwear with outer soles and uppers of rubber or plastics. You claim that the merchandise is properly classified in heading 6405, HTSUS, as other footwear.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N234957 was published on March 4, 2015, in Volume 49, Number 9 of the *Customs Bulletin*. One comment was received in opposition to this notice.

FACTS:

NY N234957 described the subject merchandise as follows:

The submitted half-pair sample identified as style number AA300671 "Angry Birds Rain Boot," is a children's over-the-ankle/below-the-knee "waterproof" pull on boot. The boot is approximately 8 ½ inches in height, does not incorporate a metal toe-cap and is lined with textile material. It has two pull-on loops on either side of the top of the upper and features pictures of bird faces imprinted on it. In your submission, you state that the external surface of the upper is 100% rubber and that the injection molded sole/outer sole (which is attached to the upper by vulcanization or cement) has a combination of rubber and "coated leather material" on the outer sole.

In your submission, you state that the external surface of the upper is 100% rubber and that the injection molded sole/outer sole (which is attached to the upper by vulcanization or cement) has a combination of rubber and "coated leather material" on the outer sole. You further submit a video clip demonstrating how the coating is applied to the leather; in the video, cut leather pieces are subjected to a machine perforation process which creates tiny holes, or pores, throughout the leather. The leather pieces are placed into an injection molding machine. During the molding process, a small amount of plastic oozes through the pores onto the surface of the leather, giving the coated leather a rubber or plastic appearance.

ISSUE:

Whether the instant rain boots have an outer sole “of rubber” and thus properly classified in heading 6401, HTSUS, or whether the outer sole is of leather, and thus classified as other footwear in heading 6405, HTSUS.

LAW AND ANALYSIS:

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

The HTSUS headings at issue are as follows:

6401:	Waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes:
	Other footwear:
6401.92:	Covering the ankle but not covering the knee:
	Other:
6401.92.90:	Other..
* * *	
6405:	Other footwear:
6405.90:	Other:
6405.90.90:	Other..
	* * * * *

Note 4 to Chapter 64 provides as follows:

(a) The material of the upper shall be taken to be the constituent material having the greatest external surface area, no account being taken of accessories or reinforcements such as ankle patches, edging, ornamentation, buckles, tabs, eyelet stays or similar attachments;

(b) The constituent material of the outer sole shall be taken to be the material having the greatest surface area in contact with the ground, no account being taken of accessories or reinforcements such as spikes, bars, nails, protectors or similar attachments.

* * * * *

Note 4 to Chapter 64 provides, in pertinent part, that the constituent material of the outer sole shall be taken to be the material having the greatest surface area in contact with the ground. In NY N234957, after examining the outer sole of the Angry Birds boot, CBP determined that there was no evidence of leather on the exterior of the outer sole in contact with the ground. Consequently, CBP found that the constituent material of the outer sole was rubber or plastics.

However, further examination of a cross section of the outer sole under a microscope revealed that the plastic in contact with the ground was in fact only a thin coating over a layer of leather, as you describe in your submission.

The outer sole of the rain boot is thus a material constructed of a plastic coated leather and, thus, the constituent material of the outer sole is a composite material of plastic coated leather.

Because the boot's outer sole consists of two materials, plastic and leather, GRI 3(b) must be consulted to determine the outer sole's essential character. GRI 3(b) provides that:

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

It is our position that, under GRI 3(b), the essential character of the plastic coated leather is the leather itself. The leather gives the shoe's outer sole its form and shape. The plastic coating merely enhances the leather's durability and water resistant qualities. Therefore, the outer sole of the subject boot is leather.

The comment received in opposition to the proposed revocation disputes the application of GRI 3(b) in the instant case, alleging that a finding that the instant footwear has an outer sole of leather renders Note 4 to Chapter 64 meaningless. The commenter argues that the material having the greater surface area in contact with the ground is plastic, and that the constituent material of the outer sole is therefore plastic pursuant to Note 4 to Chapter 64 and GRI 1. However, the commenter's argument does not take into account that the material of the outer sole is a composite material of plastic coated leather. The application of GRI 3(b) to outer soles consisting of a plastic coated leather is consistent with CBP's long held position that unless there is a special note in chapter 64 (such as note 3 concerning plastic coated textile or note 4(a) concerning multiple materials), the "external surface" of an upper or sole is determined by the composite material (not layer) which is topmost. *See e.g.*, HQ 950568, dated January 6, 1992, which held, pursuant to GRI 3(b), that a women's shoe with a plastic coated leather sole was classified in subheading 6404.20.40, HTSUS, as footwear with outer soles of leather. Similarly, in HQ 089572, dated April 13, 1992, CBP classified a golf shoe with an upper of a plastic coated leather material in heading 6403, pursuant to Note 4(b), EN (D) to Chapter 64, and GRI 3(b); *See also* HQ 950680, dated April 16, 1992; HQ 088390, dated February 19, 1991; NY N256496, dated December 2, 2014; NY N233993, dated November 2, 2012; NY N099942, dated April 30, 2010.

Consequently, based upon GRI 3(b), Note 4 to Chapter 64, and Explanatory Note (D) to Chapter 64, the instant boots thus have an outer sole of leather, and are correctly classified in subheading 6405.90.90, HTSUS, as other footwear.

HOLDING:

By application of GRIs 1, 3(b) and 6, the instant rain boots are classified in heading 6405, HTSUS, specifically subheading 6405.90.90, HTSUS, which provides for "Other footwear: Other: Other." The 2015 column one, general rate of duty is 12.5% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N234957, dated November 26, 2012, is hereby revoked.

Sincerely,

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



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

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

ACTION: Notice of proposed modification of a ruling letter and proposed revocation of treatment relating to tariff classification of certain footwear.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes modify a ruling letter relating to the tariff classification of certain footwear under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATES: Comments must be received on or before July 10, 2015.

ADDRESSES: Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street, 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: Tatiana Salnik Matherne, Tariff Classification and Marking Branch: (202) 325-0351.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that CBP proposes to modify a ruling letter pertaining to the tariff classification of certain footwear. Although in this notice CBP is specifically referring to the modification of New York Ruling Letter (NY) N252090, dated April 19, 2014, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to

advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY N252090, set forth as Attachment A to this document, CBP determined that the subject merchandise was classified under subheading 6402.99.90, HTSUS, which provides for “Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Other: Valued over \$12/pair.” It is now CBP’s position that the subject merchandise is properly classified under subheading 6403.99.90, HTSUS, which provides for “Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather: Other footwear: Other: Other: Other: Other: For other persons: Valued over \$2.50/pair.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY N252090 and revoke or modify any other ruling not specifically identified, in order to reflect the proper tariff classification of the subject footwear according to the classification analysis contained in proposed HQ H260547, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: May 19, 2015

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N252090

April 29, 2014

CLA-2-64:OT:RR:NC:N3:447

CATEGORY: Classification

TARIFF NO.: 6402.99.9005, 6403.51.9030,
6403.99.9031, 6403.99.9065,
6404.19.2060, 6404.19.3760

MS. CHRISTINA STEMLEY
EDDIE BAUER, LLC
10401 NE 8TH STREET, SUITE 500
BELLEVUE, WA 98004

RE: The tariff classification of footwear from China

DEAR MS. STEMLEY:

In your letter dated March 14, 2014 you requested a tariff classification ruling for six styles of women's footwear.

This ruling is being issued based upon the accuracy of the Interim Footwear Invoices provided by you regarding the percentage measurements of the component materials used to manufacture these shoes. This information may be verified at the time of importation.

The submitted sample identified as style 9XX20002 "W. Lukla Pro," is a women's low-cut lace-up athletic shoe with a rubber or plastics outer sole and a predominately PU coated leather upper (52%) that is thick enough to change the external surface appearance from leather to plastic. The shoe has many characteristics in both styling and construction of athletic footwear. You provided an F.O.B. value over \$12/pair.

The applicable subheading for the women's athletic shoe, style 9XX20002 "W. Lukla Pro" will be 6402.99.9005, Harmonized Tariff Schedule of the United States (HTSUS), which provides for footwear with outer soles and uppers of rubber or plastics: other footwear: other: other: not having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements) is rubber or plastics; footwear which is not designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather; footwear that does not have open toes or open heels and is not of the slip-on type; valued over \$12/pair: tennis shoes, basketball shoes, gym shoes, training shoes and the like. The rate of duty will be 20% ad valorem.

The submitted half pair sample identified as style 9XX20013 "W. Sherling Boot Slipper," is a women's slip-on boot slipper which covers the ankle and has an outer sole of suede leather. The predominately suede leather upper has a shearling fur cuff (an extension of the lining) which overlaps the upper by approximately two inches.

The applicable subheading for the women's slip-on boot slipper, style 9XX20013 "W. Sherling Boot Slipper" will be 6403.51.9030, HTSUS, which provides for footwear with outer soles of rubber/plastics, leather or composition leather and uppers of leather: other footwear with outer soles of leather: covering the ankle: other: other: for other persons: for women: other. The rate of duty will be 10% ad valorem.

The submitted sample identified as style 9XX20001 "W. Lukla," is a women's lace-up athletic shoe with a rubber or plastics outer sole and a predomi-

nately suede leather upper (60%) that does not cover the ankle. The shoe has many characteristics in both styling and construction of athletic footwear. You provided an F.O.B. value over \$2.50/pair.

The applicable subheading for the women's athletic shoe, style 9XX20001 "W. Lukla" will be 6403.99.9031, HTSUS, which provides for footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather: other footwear: other: other: other: other: for other persons: valued over \$2.50/pair: other: tennis shoes, basketball shoes, and the like, for women: other. The rate of duty will be 10% ad valorem.

The submitted sample identified as style 9XX20012 "W. Sherling Scuff," is a women's closed toe/open heel slipper with a rubber or plastics outer sole. The predominately suede leather upper has a shearling fur cuff (an extension of the lining) which overlaps the upper by approximately two inches. You provided an F.O.B. value over \$2.50/pair.

The applicable subheading for the women's slipper, style 9XX20012 "W. Sherling Scuff" will be 6403.99.9065, HTSUS, which provides for footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather: other footwear: not covering the ankle; other: other: other: for other persons: valued over \$2.50/pair: other: other: for women: other. The rate of duty will be 10% ad valorem.

The submitted sample identified as style 9XX20006 "W. Microtherm Boot," is a women's lace-up boot with a rubber or plastics outer sole and a predominately textile material upper that covers the ankle. The Interim Footwear Invoice that you provided with the sample shows the upper to be predominately leather (75%), however, visual examination clearly shows the upper to be predominately "Micro Therm Fabric" as indicated on the hang-tag. The hang-tag also identifies the upper as having DWR coating which makes it protective against water for tariff classification purposes. There is two inch wide fur that encircles the topline of the boot.

The applicable subheading for the women's boot, style 9XX20006 "W. Microtherm Boot" will be 6404.19.2060, HTSUS, which provides for footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: footwear with outer soles of rubber or plastics: which is not "sports" or "athletic" footwear; footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather: for women. The rate of duty will be 37.5 percent ad valorem.

The submitted sample identified as style 9XX20014 "W. Microtherm Slipper," is a women's closed toe/open heel slipper with a rubber or plastics outer sole that has a thin layer of textile material applied to its surface. This textile material does not possess the durability and strength of a textile outer sole. The predominately textile material upper has a $\frac{3}{4}$ inch wide faux fur collar that is an extension of the lining.

The applicable subheading for the women's slipper, style 9XX20014 "W. Microtherm Slipper" will be 6404.19.3760, HTSUS, which provides for footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: other: footwear with open toes or open heels; footwear not less than 10 percent by weight of rubber or plastics; footwear with uppers of textile material other than vegetable fibers and having outer soles with textile materials having the greatest surface area in contact with

the ground, but not taken into account under the terms of additional note U.S. note 5 to this chapter: other: for women. The rate of duty will be 12.5% ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stacey Kalkines at: stacey.kalkines@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER

Acting Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H260547
CLA-2 OT:RR:CTF:TCM H260547 TSM
CATEGORY: Classification
TARIFF NO.: 6403.99.90

MR. MICHAEL S. McCULLOUGH
VANDERGRIFT FORWARDING COMPANY INC.
9317 CHESHIRE ROAD
SUNBURY, OH 43074

RE: Modification of N252090; Classification of women's footwear.

DEAR MR. McCULLOUGH:

This is in response to your letter to the National Commodity Specialist Division (NCSA), dated July 23, 2014, in which you requested reconsideration of New York Ruling Letter (NY) N252090, issued to Eddie Bauer, LLC on April 19, 2014. In NY N252090, U.S. Customs and Border Protection ("CBP") responded to a request for tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of six styles of women's footwear from China. One of those footwear styles, identified as style 9XX20002 W. Lukla Pro, was classified in NY N252090 in subheading 6402.99.90, HTSUS, which provides for "Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Other: Valued over \$12/pair." NCSA submitted a sample of the subject merchandise to the CBP Laboratories and Scientific Services for analysis and forwarded the results to this office for a response. We have reviewed NY N252090 and found it to be in error with regard to this footwear style. For the reasons set forth below, we hereby modify NY N252090.

FACTS:

NY N252090, issued to Eddie Bauer, LLC on April 19, 2014, describes the subject merchandise as follows:

The submitted sample identified as style 9XX20002 W. Lukla Pro, is a women's low-cut lace-up athletic shoe with a rubber or plastics outer sole and a predominately PU coated leather upper (52%) that is thick enough to change the external surface appearance from leather to plastic. The shoe has many characteristics in both styling and construction of athletic footwear. You provided an F.O.B. value over \$12/pair.

In your letter dated July 23, 2014, you argued that the subject women's footwear, style 9XX20002 W. Lukla Pro, should be classified in heading 6403, HTSUS, which provides for "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather." You claimed that the upper of the subject footwear is made of solid leather with a PU coating, which was placed on the leather to prevent water absorption that would weigh the footwear down. To support this claim you provided a laboratory report stating that leather comprises 52% of the external surface area of the upper of the subject footwear. You also provided a laboratory report stating that the upper of the subject footwear is comprised of the following materials: leather – 20.91%; coated leather – 36.29%; polyurethane – 3.07; textile – 39.48%; and plastic – 0.25%. CBP Laboratories and Scientific Services also examined the sample and confirmed that the external surface area was

comprised of leather, textile and rubber or plastic, with the plastic coated leather as the constituent material of the upper.

ISSUE:

Whether the footwear at issue should be classified in heading 6402, HTSUS, as “Other footwear with outer soles and uppers of rubber or plastics,” or in heading 6403, HTSUS, as “Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather.”

LAW AND ANALYSIS:

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

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

The HTSUS provisions under consideration are as follows:

6402	Other footwear with outer soles and uppers of rubber or plastics: Other footwear:
6402.99	Other: Other: Other:
6402.99.90	Valued over \$12/pair
* * *	
6403	Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather: Other footwear:
6403.99	Other: Other: Other:
6403.99.90	For other persons: Valued over \$2.50/pair.

Note 4 to Chapter 64, HTSUS, provides in pertinent part, the following:

(a) The material of the upper shall be taken to be the constituent material having the greatest external surface area, no account being taken of

accessories or reinforcements such as ankle patches, edging, ornamentation, buckles, tabs, eyelet stays or similar attachments.

Explanatory Note (D) to Chapter 64, HTSUS, provides, in pertinent part, the following:

If the upper consists of two or more materials, classification is determined by the constituent material which has the greatest external surface area, no account being taken of accessories or reinforcements such as ankle patches, protective or ornamental strips or edging, other ornamentation (e.g., tassels, pompons or braid), buckles, tabs, eyelet stays, laces or slide fasteners. The constituent material of any lining has no effect on classification.

Note 4 (a) to Chapter 64 provides that the material of the upper shall be taken to be the constituent material having the greatest external surface area. According to the record, upon laboratory examination of the sample, CBP concluded that the uppers of the subject footwear are comprised of plastic coated leather. Explanatory Note (D) to Chapter 64 provides that the constituent material of any lining has no effect on classification. Therefore, the plastic coating found on the uppers should not be considered and the constituent material of the upper having the greatest external surface area is leather. Heading 6402, HTSUS, provides for “Other footwear with outer soles and uppers of rubber or plastics.” This heading does not cover footwear with leather uppers. Therefore, the subject footwear is not classified in this heading.

The subject footwear is classified in heading 6403, HTSUS, which provides for “Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather.”

HOLDING:

By application of GRI 1, the subject footwear is classified in heading 6403, HTSUS. Specifically, it is classified in subheading 6403.99.90, HTSUS, which provides for “Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather: Other footwear: Other: Other: Other: Other: For other persons: Valued over \$2.50/pair.” The general, column one rate of duty is 10 percent ad valorem.

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

EFFECT ON OTHER RULINGS:

NY N252090, dated April 19, 2014, is hereby MODIFIED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF A CERTAIN
UNFINISHED DUVET COVER**

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

ACTION: Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to tariff classification of a certain unfinished duvet cover.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to revoke a ruling letter relating to the tariff classification of a certain unfinished duvet cover under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATES: Comments must be received on or before July 10, 2015.

ADDRESSES: Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street, 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: Tatiana Salnik Matherne, Tariff Classification and Marking Branch: (202) 325–0351.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP proposes to revoke a ruling letter pertaining to the tariff classification of a certain unfinished duvet cover. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) K83054, dated March 5, 2004, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY K83054, set forth as Attachment A to this document, CBP determined that the subject merchandise was classified under sub-heading 6302.32.20, HTSUS, which provides for “Bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of man-made fibers: Other.” It is now CBP’s position that the subject merchandise

is properly classified under subheading 6307.90.98, HTSUS, which provides for: “Other made up articles, including dress patterns: Other: Other: Other.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY K83054 and revoke or modify any other ruling not specifically identified, in order to reflect the proper tariff classification of the subject merchandise according to the classification analysis contained in proposed HQ H181679, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: May 19, 2015

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY K83054

March 5, 2004

CLA-2-63:RR:NC:TA:349 K83054

CATEGORY: Classification

TARIFF NO.: 6302.32.2060

Ms. RHECI ABUSTAN
CHF INDUSTRIES, INC.
ONE PARK AVENUE
NEW YORK, NY 10016

RE: The tariff classification of an unfinished duvet cover from China.

DEAR Ms. ABUSTAN:

In your letter dated February 5, 2004 you requested a classification ruling.

The instant sample, referred to as a duvet shell, is an unfinished duvet cover. The cover is comprised of two panels. The top panel is made from 100 percent polyester woven pile fabric. The back is made from 100 percent nylon sateen woven fabric. It is sewn along three sides with an open end along the fourth. After importation, the open end will be hemmed, buttonholes will be made and buttons will be attached.

The General Rules of Interpretation (GRI's) governs classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes, taken in order. GRI 2(a) provides the following:

Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), entered unassembled or disassembled.

Given the general appearance of the submitted sample, the unfinished duvet cover has the essential character of the finished article.

The applicable subheading for the unfinished duvet cover will be 6302.32.2060, Harmonized Tariff Schedule of the United States (HTS), which provides for bed linen, table linen, toilet linen and kitchen linen: other bed linen: of man-made fibers: other... Other: other. The duty rate for will be 11.4 percent ad valorem.

The unfinished duvet cover falls within textile category designation 666. Based upon international textile trade agreements products of China are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *Textile Status Report for Absolute Quotas*, which is available at our Web site at www.cbp.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

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 John Hansen at 646-733-3043.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

*National Commodity
Specialist Division*

[ATTACHMENT B]

HQ H181679
CLA-2 OT:RR:CTF:TCM H181679 TSM
CATEGORY: Classification
TARIFF NO.: 6307.90.98

Ms. RHECI ABUSTAN
CHF INDUSTRIES, INC.
ONE PARK AVENUE
NEW YORK, NY 10016

RE: Revocation of NY K83054; Classification of an unfinished duvet cover from China.

DEAR Ms. ABUSTAN:

This is in reference to New York Ruling Letter (NY) K83054, issued to CHF Industries, Inc. on March 5, 2004, concerning the tariff classification of an unfinished duvet cover from China. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the subject merchandise under subheading 6302.32.20, Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “Bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of man-made fibers: Other.” Upon additional review, we have found this classification to be incorrect. For the reasons set forth below we hereby revoke NY K83054.

FACTS:

NY K83054, issued to CHF Industries, Inc. on March 5, 2004, describes the subject merchandise as follows:

The instant sample, referred to as a duvet shell, is an unfinished duvet cover. The cover is comprised of two panels. The top panel is made from 100 percent polyester woven pile fabric. The back is made from 100 percent nylon sateen woven fabric. It is sewn along three sides with an open end along the fourth. After importation, the open end will be hemmed, buttonholes will be made and buttons will be attached.

ISSUE:

Whether the unfinished duvet cover at issue should be classified under subheading 6302.32.20, HTSUS, as “Bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of man-made fibers: Other,” or subheading 6307.90.98, HTSUS, as “Other made up articles, including dress patterns: Other: Other: Other.”

LAW AND ANALYSIS:

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

GRI 2(a) states, in pertinent part, that:

Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), entered unassembled or disassembled.

The HTSUS provisions under consideration are as follows:

6302	Bed linen, table linen, toilet linen and kitchen linen:
	Other bed linen:
6302.32	Of man-made fibers:
6302.32.20	Other
* * *	
6307	Other made up articles, including dress patterns:
6307.90	Other:
6307.90.98	Other

Legal Note 7 to Section XI (which includes Chapter 63) provides as follows:
For the purposes of this section, the expression “made up” means:

- (a) Cut otherwise than into squares or rectangles;
- (b) Produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, tablecloths, scarf squares, blankets);
- (c) Hemmed or with rolled edges, or with a knotted fringe at any of the edges, but excluding fabrics the cut edges of which have been prevented from unraveling by whipping or by other simple means;
- (d) Cut to size and having undergone a process of drawn thread work;
- (e) Assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded); or
- (f) Knitted or crocheted to shape, whether presented as separate items or in the form of a number of items in the length.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the system. CBP believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The following ENs are relevant to our discussion:

The ENs to GRI 2(a) provide, in pertinent part:

- (I) The first part of Rule 2 (a) extends the scope of any heading which refers to a particular article to cover not only the complete article but also

that article incomplete or unfinished, provided that, as presented, it has the essential character of the complete or finished article.

(II) The provisions of this Rule also apply to blanks unless these are specified in a particular heading. The term “blank” means an article, not ready for direct use, having the approximate shape or outline of the finished article or part, and which can only be used, other than in exceptional cases, for completion into the finished article or part (e.g., bottle preforms of plastics being intermediate products having tubular shape, with one closed end and one open end threaded to secure a screw type closure, the portion below the threaded end being intended to be expanded to a desired size and shape).

Semi-manufactures not yet having the essential shape of the finished articles (such as is generally the case with bars, discs, tubes, etc.) are not regarded as “blanks.”

EN 63.02 provides that:

These articles are usually made of cotton or flax, but sometimes also of hemp, ramie or man-made fibres, etc.; they are normally of a kind suitable for laundering. They include:

- (1) **Bed linen**, e.g., sheets, pillowcases, bolster cases, eiderdown cases and mattress covers.

The courts have addressed the meaning of essential character with respect to GRI 2(a) in prior cases. *The Pomeroy Collection, Ltd. v. United States*, 559 F. Supp. 2d 1374 (Ct. Int'l Trade 2008); *Filmtec Corp. v. United States*, 293 F. Supp. 2d 1364 (Ct. Int'l Trade 2003); and *Baxter Healthcare Corp. of Puerto Rico v. United States*, 22 C.I.T. 82 (1998). The court has specifically noted that the focus of the essential character analysis for purposes of GRI 2(a) is whether or not the identity of the article to be made from the imported good is fixed or certain at the time of importation. *Baxter Healthcare Corp.*, 22 C.I.T. at 101. Following this directive, the longstanding position of CBP is that the term “essential character” for purposes of GRI 2(a) means the attribute which strongly marks or serves to distinguish what an article is; that which is indispensable to the structure, core or condition of the article; the aggregate of distinctive component parts that establishes the identity of an article as what it is, its very essence. See Headquarters Ruling Letter (HQ) 967975, dated March 24, 2006.

The essential character for purposes of GRI 2(a) is determined on a case-by-case basis based on the nature of a given article. See HQ H013671, dated January 16, 2009. As such, the debate hinges upon whether the subject merchandise has the essential character of a finished bed linen of heading 6302, HTSUS. If the merchandise does not have the essential character of a finished bed linen, then it may be classified as an “other made up” article under heading 6307, HTSUS.

In *Medline Industries v. U.S.*, 62 F. 3d 1407, 1409–1410 (Fed. Cir. 1995), the Court of Appeals for the Federal Circuit (CAFC) discussed the meaning of the

tariff term “bed linen.”¹ The CAFC defined bed linen as “linen or cotton articles for a bed; esp. sheets and pillow cases.” *Id.* at 1409 *citing Webster’s Third New International Dictionary* 196 (1981). The CAFC also cited to EN 63.02, which lists “sheets, pillowcases, bolster cases, eiderdown cases and mattress covers” as examples of bed linens. The CAFC stressed that a bed linen is not limited to an article found on all beds; rather a bed linen is a linen, cotton or other fabric article for a bed. *Id.* at 1410.

While the ENs to heading 63.02 do not mention duvet covers, the examples do include eiderdown cases. An eiderdown is “1. the soft, fine breast feathers, or down, of the eider duck, used as a stuffing for quilts, pillows, etc. [or] 2. a bed quilt stuffed with such feathers.” *Webster’s New World Dictionary Third College Edition* 434 (1988). A duvet is “a style of comforter, often filled with down, having a slipcover and used in place of a top sheet and blankets.” *Id.* at 423. An eiderdown is a quilt stuffed with down, and a duvet is a comforter often stuffed with down. Therefore, a duvet cover is very similar to an eiderdown case of heading 6302, HTSUS.

A duvet cover falls squarely within the definition of a bed linen because it is an article of fabric for a bed. Furthermore, it is very similar to eiderdown cases which are listed as an example of bed linens in EN 63.02. Finally, CBP has consistently classified duvet covers as a type of bed linen under heading 6302, HTSUS. *See, e.g.* New York Ruling Letter (NY) N070728, dated August 27, 2009, NY N058473, dated May 14, 2009 and NY N032135, dated July 11, 2008.

In NY K83054, CBP maintained that the subject merchandise was classifiable as a bed linen by application of GRI 2(a). GRI 2(a) allows for the classification of unfinished goods to be classified as finished goods. As noted above, a duvet cover is designed to encase a comforter. The duvet cover has one finished side which can be opened and closed by the consumer. Since the fourth side of the subject merchandise was completely unfinished, it did not have the essential character of a duvet cover and cannot be classified as a bed linen in heading 6302, HTSUS, by application of GRI 2(a).

Legal Note 7(e) to Section XI (which includes Chapter 63) defines “made up”, *inter alia*, as “assembled by sewing ...” Since the subject merchandise is assembled by sewing and has one unfinished edge, Legal Note 7(e) describes the subject merchandise’s condition. Heading 6307, HTSUS, covers “other made up articles.” Under GRI 1, the subject merchandise is classifiable as a made up article of heading 6307, HTSUS. CBP has consistently classified articles similar to the subject merchandise as other made up articles of heading 6307, HTSUS. *See, e.g.* NY G84989, dated December 20, 2000 and NY D81406, dated August 26, 1998.

¹ When, as in this case, a tariff term is not defined by the HTSUS or its legislative history, “the term’s correct meaning is its common meaning.” *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, a court may consult “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials.” *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (CCPA 1982); *Simod*, 872 F.2d at 1576.

Based on the foregoing, we conclude that the subject merchandise is classifiable by application of GRI 1 (Legal Note 7(e) to Section XI) under subheading 6307.90.98, HTSUS, which provides in pertinent part for “Other made up articles, including dress patterns: other: other: other...”

HOLDING:

By application of GRI 1 and Note 7(e) to Section XI, the subject merchandise is classified under subheading 6307.90.98, HTSUS, as “Other made up articles, including dress patterns: Other: Other: Other.” The general, column one rate of duty is 7 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY K83054, dated March 5, 2004, is REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**U.S. CUSTOMS AND BORDER PROTECTION PROPOSED
REVOCATION OF ONE RULING LETTER RELATING TO
THE TARIFF CLASSIFICATION OF A BALANCE BALL
CHAIR**

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

ACTION: Notice of proposed revocation of one ruling relating to the tariff classification of a balance ball chair.

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 revoke one ruling letter relating to the tariff classification of a balance ball chair packaged with exercise bands, an instructional digital video disc (DVD) and air pump under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 10, 2015.

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

FOR FURTHER INFORMATION CONTACT: Peter Martin, Tariff Classification and Marking Branch: (202) 325–0048.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), this Notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the tariff classification of a balance ball chair. Although in this Notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) N009306, dated April 11, 2007 (Attachment A), this Notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice

memorandum or decision or protest review decision) on the merchandise subject to this Notice should advise CBP during this notice period.

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

In N009306, we classified the balance ball chair packaged with an air pump, exercise cords and instructional workout DVD under 9401.80.4045 HTSUS, which provides for "Other seats, Of rubber or plastics, Other, Other." It is now CBP's position that the balance ball chair is properly classified in subheading 9506.91.0030, which provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Articles and equipment for general physical exercise, gymnastics or athletics; parts and accessories thereof...other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke NY N009306, and to revoke or to modify any other ruling not specifically identified, in order to reflect the proper classification of balance ball chairs, according to the analysis contained in proposed HQ H193658, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially similar transactions.

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

Dated: May 19, 2015

GREG CONNOR
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

April 11, 2007

CLA-2-94:RR:E:NC:SP:233

CATEGORY: Classification

TARIFF NO.: 9401.80.4045

MS. VICKI WHITE
GAIAM INTERNATIONAL, INC.
360 INTERLOCKEN BLVD.
BROOMFIELD, CO 80021

RE: The tariff classification of a chair from Taiwan.

DEAR MS. WHITE:

In your letter dated April 4, 2007, you requested a tariff classification ruling.

You have submitted a photograph of the Balance Ball Chair. It is a floor standing chair made of plastic. The seat is an inflatable balance ball that can be removed to use for exercise. Included in the package is an air pump.

The applicable subheading for the Balance Ball Chair will be 9401.80.4045, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other seats, Of rubber or plastics, Other, Other". The rate of duty will be free.

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

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

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

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H193658
OT:RR:CTF:TCM H193658 PTM
CATEGORY: CLASSIFICATION
TARIFF NO: 9506.91.0030

VICKI WHITE
IMPORT LOGISTICS MANAGER
GAIAM INTERNATIONAL
9107 MERIDIAN WAY
WEST CHESTER, OH 45069

DEAR Ms. WHITE,

We are writing in response to your request dated October 26, 2011, on behalf of Gaiam International (“Gaiam”), in which you request reconsideration of New York Ruling (NY) N144757 (Feb. 23, 2011) concerning the tariff classification of in the Harmonized Tariff Schedule of the United States (“HTSUS”), of a balance ball chair. We regret the delay in our response. You note that you received a prior CBP ruling, NY N009306 (Apr. 11, 2007) for a substantially similar balance ball chair packaged with an air pump, instructional digital video disc (“DVD”) and exercise bands. We have examined both rulings and find NY N009306 to be in error for the reasons set forth below.

FACTS:

In N144757, the merchandise was described as follows:

The product consists of an exercise balance ball and ergonomic desk chair frame. The frame portion includes these features: an adjustable narrow cushion back, adjustable legs and lockable castor wheels. The Polyvinyl Chloride (PVC) exercise ball fits securely into the metal frame, forming an ergonomic desk chair. The ball can be removed and used for exercise purposes, while the desk chair frame cannot function as a chair without the ball. The retail package will also include a plastic pump and an instructional DVD demonstrating six different exercise routines.

In NY N144757, U.S. Customs & Border Protection (“CBP”) classified the balance ball chair in 9506.91.0030, which provides for “Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Articles and equipment for general physical exercise, gymnastics or athletics; parts and accessories thereof...other.”

In N009306, we classified the balance ball chair packaged with an air pump, exercise cords and instructional workout DVD under 9401.80.4045 HTSUS, which provides for “Other seats, Of rubber or plastics, Other, Other.” The marketing material for the balance ball chair in N009306 shows the user of the chair performing exercises while seated on the chair. You state that the chair in N009306 was a slightly different model than the one evaluated in N144757. Further, you state that you discontinued the sale of the model evaluated in N144757 and now only sell the model evaluated in N009306.

The following are images of the balance ball chair and exercises or stretches that may be performed on the chair:



The ball can be removed from the chair to perform additional exercises:



The ball is designed to improve posture while sitting and improve core body strength. It can also be used for various exercises and stretches.

ISSUE:

What is the tariff classification of the balance ball chair?

LAW AND ANALYSIS:

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

The HTSUS provisions at issue are as follows:

9401	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof:
* * *	
9506	Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:

Both rulings at issue cover “retail sets,” the components of which are the “balance ball chairs” and the instructional DVD (NY N144757) and the air pump and exercise bands and instructional DVD (NY N009306). In both cases the “balance ball chair” imparts the set with its essential character, so this matter turns on the classification of the “balance ball chair.”

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Explanatory Note 94.01 provides:

Subject to the exclusions mentioned below, this heading covers all seats (including those for vehicles, provided that they comply with the conditions prescribed in Note 2 to this Chapter), for example :

Lounge chairs, arm-chairs, folding chairs, deck chairs, infants’ high chairs and children’s seats designed to be hung on the back of other seats (including vehicle seats), grandfather chairs, benches, couches (including those with electrical heating), settees, sofas, ottomans and the like, stools (such as piano stools, draughtsmen’s stools, typists’ stools, and dual purpose stool-steps), seats which incorporate a sound system and are suitable for use with video game consoles and machines, television or satellite receivers, as well as with DVD, music CD, MP3 or video cassette players.

Thus, heading 9401 covers a wide variety of seats and chairs. The merchandise at issue, a balance ball chair, functions as either an ergonomic chair and as an exercise device. Because the exercise ball chair can serve as an ergonomic chair, it is *prima facie* classifiable under heading 9401.

Explanatory Note 95.06 provides:

This heading covers:

(A) Articles and equipment for general physical exercise, gymnastics or athletics, e.g.,:

Trapeze bars and rings; horizontal and parallel bars; balance beams, vaulting horses; pommel horses; spring boards; climbing ropes and ladders; wall bars; Indian clubs; dumb-bells and bar-bells; medicine balls; rowing, cycling and *other exercising apparatus*; chest expanders; hand grips; starting blocks; hurdles; jumping stands and standards; vaulting poles; landing pit pads; javelins, discuses, throwing hammers and putting shots; punch balls (speed bags) and punch bags (punching bags); boxing or

wrestling rings; assault course climbing walls.
(emphasis added).

Thus, heading 9506 includes various exercising apparatus. Regarding the exercise ball itself, prior CBP rulings that have classified inflatable exercise balls in heading 9506 HTSUS. In NY 156765 (Apr. 19, 2011) we found that an exercise system consisting of an inflatable exercise ball, adjustable exercise resistance tube, ankle toning cuff, a pump to inflate the ball and exercise DVD was properly classified in heading 9506 HTSUS. Similarly, in NY G84170 (Nov. 20, 2000), we classified an inflatable plastic exercise ball and air pump to be properly classified in heading 9506 HTSUS.

Because the balance ball is integral to the function of the balance ball chair, and because the user can perform exercises while sitting on the chair, the balance ball chair in its entirety is suitable for general physical exercise. The balance ball chair is “other exercising apparatus,” within the meaning of EN 95.06 as it is designed to be used for stretching and exercise and for strengthening the core while sitting. The exercise ball sits in the base of the chair and may be used for exercise either in the chair or while removed from the base. The promotional literature shows the user performing stretches and exercises while seated in the chair, or with the ball removed from the chair. The fact that the product includes an instructional DVD that shows the user how to perform exercise on the chair and also includes exercise bands lends additional support the conclusion that the balance ball chair is an exercise apparatus. Thus, the balance ball chair is *prima facie* classifiable under heading 9506 HTSUS.

Because the balance ball chair is *prima facie* classifiable under two separate headings, it must be classified pursuant to GRI 3, which states:

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

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

GRI 3(a) is known as the “rule of relative specificity.” See *Orlando Food Corp. v. United States*, 140 F.3d 1437, 1441 (Fed. Cir. 1998) (*Orlando Food*). Where articles can be classified under two HTSUS headings, under GRI 3(a) the classification “turns on which of these two provisions are more specific.” *Orlando Food*, 140 F.3d at 1441. Courts undertaking the GRI 3(a) comparison “look to the provision with requirements that are more difficult to satisfy and that describe the article with the greatest degree of accuracy and certainty.” *Faus Group, Inc. v. United States*, 581 F.3d 1369 (Fed. Cir. 2009) (quoting *Orlando Food*, 140 F.3d at 1441). And the general rule of customs jurisprudence is that, “in the absence of legislative intent to the contrary, a product described by both a use provision and an *eo nomine* provision is generally

more specifically provided under the use provision.” *Orlando Food*, 140 F.3d at 1441.

However, that principle is not an ironclad rule of law, but merely “a convenient rule of thumb for resolving issues where the competing provisions are in balance.” See *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1380 (Fed. Cir. 1999) (citing *Sports Graphics, Inc. v. United States*, 24 F.3d 1390, 1394 (Fed. Cir. 1994)). The rule does not apply if the competing *eo nomine* provision is “obviously more specific than the ‘use’ provision.” See *United States v. Simon Saw & Steel Co.*, 51 CCPA 33, 40–32 (Cust. Ct. 1964).

In this case, heading 9401 HTSUS is an *eo nomine* provision because it describes a commodity, in this case seats, by a specific name that is common in commerce. See, *Nidec Corp. v. United States*, 68 F.3d 1333, 1336 (Fed. Cir. 1995). By contrast, heading 9506 is a use provision inasmuch as it covers goods “for general physical exercise.” Applying the “convenient rule of thumb” that use provisions are more specific than *eo nomine* provisions, and because the HTSUS heading for “seats” in 9401 is not obviously more specific than the HTSUS heading for “exercise equipment” in 9506 HTSUS, we find heading 9506 provides the most specific description of the balance ball chair. Therefore, by operation of GRI 3(a), the exercise ball chair is properly classified in heading 9506 HTSUS.

HOLDING:

By application of GRI 3(a), the balance ball chair is properly classified in heading 9506 HTSUS, specifically 9506.91.0030, which provides for “Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Other: Articles and equipment for general physical exercise, gymnastics or athletics; parts and accessories thereof.”

The general column one rate of duty is 4.6% *ad valorem*. Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided online at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY N144757 (Feb. 23, 2011) is **AFFIRMED**.

NY N009306 (Apr. 11, 2007) is hereby **REVOKED**.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF TWO RULING LETTERS
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF PLANTERS MADE FROM
COCONUT FIBRES**

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

ACTION: Notice of proposed revocation of two ruling letters and proposed revocation of treatment relating to the tariff classification of planters made from coconut fibers (coir).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke two rulings concerning the tariff classification of planters made from coconut fibres under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 10, 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 St., NE, 10th Floor, Washington, DC 20229–1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Nicholai C. Diamond, Tariff Classification and Marking Branch, at (202) 325–0292.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

“informed compliance” and **“shared responsibility.”** These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke two ruling letters pertaining to the tariff classification of planters made from coir. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) NY N020080, dated December 4, 2007 (Attachment A) and NY N010591, dated May 16, 2007 (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., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In NY N020080, CBP classified merchandise consisting of a plant container made from coconut fibers (coir) under heading 5305, HTSUS, specifically under subheading 5305.00.00, HTSUS, which provides for “Coconut and other vegetable textile fibers, not elsewhere

specified or included, raw or processed but not spun.” In NY N010591, CBP classified a kit containing five seed containers made from coir under heading 1404, HTSUS, specifically under subheading 1404.90.90, HTSUS, which provides for: “Vegetable products not elsewhere specified or included: Other.”

It is now CBP’s position that the merchandise described in NY N020080 and N010591, each consisting of one or more planters made from mixtures of coir with adhesive substances, are properly classified, by operation of GRI 1, under heading 9602, HTSUS, specifically under subheading 9602.00.50, HTSUS, which provides for “Worked vegetable or mineral carving material and articles of these materials; molded or carved articles of wax, of stearin, of natural gums or natural resins, of modeling pastes, and other molded or carved articles, not elsewhere specified or included; worked, unhardened gelatin (except gelatin of heading 3503) and articles of unhardened gelatin.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N020080 and N010591, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H122355, set forth as Attachment C to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: May 19, 2015

MONIKA R. BRENNER
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N020080

December 4, 2007

CLA-2-53:OT:RR:E:NC:N3:351

CATEGORY: Classification

TARIFF NO.: 5305.00.0000

ALBERT C. NEWTON
ACACIA LUMBER TRADING
32838 NW OVERLOOK ST.
P.O. BOX 387
SCAPPOOSE, OR 97056

RE: The tariff classification of coir planters from Brazil

DEAR MR. NEWTON:

In your letter dated Nov. 26, 2007, you requested a tariff classification ruling.

In your letter, you describe the item as a container used for planting potted or hanging plants, constructed from coconut fibers (coir). The fibers are formed into a hollow cylindrical shape with a bottom, including a drain hole. To form the fibers into a shape, Vaseline and clay are added.

The applicable subheading for the coir planters will be 5305.00.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Coconut and other vegetable textile fibers, not elsewhere specified or included, raw or processed but not spun. The rate of duty will be Free.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mitchel Bayer at 646-733-3102.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

[ATTACHMENT B]

N010591

May 16, 2007

CLA-2-14:RR:NC:N2:235

CATEGORY: Classification

TARIFF NO.: 1404.90.9090

MR. JAMAL AHMED
KORD PRODUCTS INC.
C/O FARROW INTERNATIONAL TRADE CONSULTING
5397 EGLINTON AVENUE WEST, SUITE 220
TORONTO, ONTARIO M9C 5K6

RE: The tariff classification of Fiber Grow Greenhouse Kit from Canada.

DEAR MR. AHMED:

In your letter dated 05/01/2007 you requested a tariff classification ruling.

The product described in your ruling is a miniature greenhouse kit which will be imported by your client Kord Products. The sample you provided with your request, consists of a dark plastic tray with a thin clear plastic cover, and five small rectangular fiber grow containers. You state that the container is made out of coir, which is a course fiber obtained from coconut. Each coir container has ten cubical depressions. The containers will be used as a holder for seeds to germinate. Also included in the kit are written instructions on the use of the product. A letter included in the ruling request from Kord Products, indicates that the coir mould is made by mixing the coconut husks with a water soluble latex glue which is then moulded into shape. The letter also states that the product is not charged with any fertilizers to promote plant growth. No soil or seeds are included with this kit at the time of importation. In your request you suggest that the essential character of the kit is the coir growth container. We agree.

The applicable subheading for the Fiber Grow Greenhouse Kit will be 1404.90.9090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for vegetable products not elsewhere specified or included...other. The rate of duty will be free.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding this ruling, contact National Import Specialist Paul Hodgkiss at 646-733-3046.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

[ATTACHMENT C]

HQ H122355
CLA-2 OT:RR:CTF:TCM H122355 NCD
CATEGORY: Classification
TARIFF NO.: 9602.00.50

ALBERT C. NEWTON
ACACIA LUMBER TRADING
32838 NW OVERLOOK ST.
P.O. BOX 387
SCAPPOOSE, OR 97056

RE: Revocation of New York Ruling Letters N020080, dated December 4, 2007, and N010591, dated May 16, 2007; Classification of planters made from coir

DEAR MR. NEWTON:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) N020080, which was issued to Acacia Lumber Trading (“Acacia”) on December 4, 2007. In NY N020080, CBP classified coir planters under subheading 5305.00.00, Harmonized Tariff Schedule of the United States (HTSUS), which provides for: “Coconut and other vegetable textile fibers, not elsewhere specified or included, raw or processed but not spun.” We have reviewed NY N020080 and found it to be incorrect with respect to the classification of the coir planters. For the reasons set forth below, we intend to revoke this ruling.

CBP also intends to revoke NY N010591, issued to Kord Products Inc. on May 16, 2007. In NY N010591, CBP classified a Fiber Grow Greenhouse Kit (“Greenhouse Kit”) under subheading 1404.90.90, HTSUS, which provides for: “Vegetable products not elsewhere specified or included: Other.” We have determined that NY N010591 is incorrect and, for the reasons set forth below, intend to revoke that ruling.

FACTS:

In NY N020080, CBP describes the subject merchandise as “a container used for planting potted or hanging plants, constructed from coconut fibers (coir).” The ruling further states that “the fibers are formed into a hollow cylindrical shape with a bottom, including a drain hole” and that “to form the fibers into a shape, Vaseline and clay are added.”

Similarly, the Greenhouse Kit at issue in N010591 consists of “five small rectangular fiber grow containers,” each of which “will be used as a holder for seeds to germinate.” A letter included in the ruling request states that the coir mold is made via the mixing of coconut husks with a water soluble latex glue and the subsequent molding of this mixture into shape. Included with the merchandise is a dark plastic tray with a thin clear plastic cover upon which the containers are placed. In classifying the product under heading 1404, HTSUS, CBP determined that the fiber grow containers, rather than the plastic tray, impart the essential character of the Greenhouse Kit.

ISSUE:

Whether the instant merchandise is properly classified as vegetable products under heading 1404, HTSUS, as coconut fibers under heading 5305, HTSUS, or as other molded or carved articles under 9602, HTSUS?

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes. GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

Thus, the 2015 HTSUS provisions under consideration are as follows:

1404	Vegetable products not elsewhere specified or included:
1404.90	Other:
1404.90.90	Other:
* * *	
5305	Coconut, abaca (Manila hemp or <i>Musa textilis</i> Nee), ramie and other vegetable textile fibers, not elsewhere specified or included, raw or processed but not spun
* * *	
9602	Worked vegetable or mineral carving material and articles of these materials; molded or carved articles of wax, of stearin, of natural gums or natural resins, of modeling pastes, and other molded or carved articles, not elsewhere specified or included; worked, unhardened gelatin (except gelatin of heading 3503) and articles of unhardened gelatin:
9602.00.50	Other:
* * *	

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

As an initial matter, we note that headings 1404, HTSUS, and 9602, HTSUS, are "basket provisions," into which merchandise should be classified only when it is not more specifically covered by another heading. *See* Headquarters Ruling Letter (HQ) 963233, dated December 13, 2000; HQ 951651, dated August 13, 1992. Accordingly, we first consider whether the products at issue are *prima facie* classifiable under heading 5305, HTSUS.

Heading 5305, HTSUS, provides for vegetable textile fibers that are raw or processed but not spun. EN 53.05 provides, in relevant part, as follows:

This heading covers vegetable textile fibres obtained from the leaves or fruit of certain monocotyledonous plants (e.g., coconut, abaca or sisal)...

Generally they are classified here whether raw, prepared for spinning (e.g., carded or combed into slivers), or in the form of tow or fibrous waste (obtained mainly during combing), yarn waste (obtained mainly during spinning or weaving) or garneted stock (obtained from rags or scrap rope or cordage, etc.).

However, fibres obtained from vegetable materials which, when raw or in certain other forms, fall in Chapter 14, are classified here **only** when they have undergone treatment indicating their use as textile materials, e.g., when they have been crushed, carded or combed in preparation for spinning.

The vegetable fibres classified here include:

Coconut. Coconut fibres (coir) are obtained from the external covering of the nut and are coarse, brittle and brown in colour. They are classified here whether in mass or in bundles.

Thus, based on the above EN, coir, which undergoes processing beyond the methods enumerated in the EN, is not covered by heading 5305, HTSUS. CBP has consistently classified coir that is in raw masses or bundles, carded, combed, or otherwise prepared for spinning, or in the form of waste or garneted stock, in heading 5305, but not when the coir is subjected to other preparations or processes not enumerated in the EN. *See, e.g.*, HQ 961111, dated October 13, 1998 (“Classification under subheading 5305.19, HTSUS, is precluded as the sample coir fibers have undergone further manufacture and subheading 5305, HTSUS, is limited to just the coir textile fibers.”); *see also* HQ 956929, dated May 23, 1995 (ruling that treatment of coconut fibers with an agglutinating substance necessitated their classification outside of heading 5305, HTSUS); HQ 089765, dated July 15, 1991 (classifying coir fibrous waste under heading 5305); and HQ 088276, dated February 8, 1991 (classifying coir bundles under heading 5305).

In NY N020080, CBP describes the coir planters as “formed into hollow cylindrical shape” from a mixture of coir, Vaseline, and clay. Similarly, the Greenhouse Kit containers in NY N010591 are compositions of coconut husks and latex glue, which, after being mixed, are molded into rectangular containers designed to house seeds. Thus, neither the coir planters nor the Greenhouse Kit containers can be considered coir in raw, carded, combed, waste or garneted stock form. As heading 5305, HTSUS, does not extend to coir that has been mixed with adhesive materials and subsequently molded to form, both of the instant products fall outside the scope of the heading.

We accordingly consider remaining headings 1404, HTSUS, and 9602, HTSUS. Heading 1404, HTSUS, covers, among other things, “Vegetable Products Not Elsewhere Specified or Included.” EN 14.04 provides, in relevant part, that “[t]his heading covers all vegetable products, not specified or included elsewhere in the Nomenclature.” Our research indicates that coir is a type of vegetable fiber. *See* *Industrial Applications of Natural Fibres: Structure, Properties, and Technical Applications*, (pp. 197–218); *Understanding Fabrics: From Fiber to Finished Cloth*, (p. 3). As such, coir constitutes a vegetable product within the meaning of this term as it appears in EN 14.04. However, the Vaseline, clay, and glue with which the coir is mixed to form the instant products are not “vegetable products,” and thus are not described by heading 1404, HTSUS.

In contrast, we find that the products are described wholly by heading 9602, HTSUS, which covers “Other Molded or Carved Articles, Not Elsewhere Specified or Included.” EN 96.02 provides, with respect to molded or carved articles, as follows:

This group includes, on the one hand, moulded and carved **articles** of various materials, **provided** those articles are **not specified or included** in other headings of the Nomenclature...

For the purposes of these materials, the expression “**moulded articles**” means articles which have been moulded to a shape appropriate to their intended use.”

As mixtures of various materials that have been molded into shapes appropriate to their respective intended uses, the products at issue are *prima facie* classifiable under heading 9602, HTSUS. See HQ H230037, dated November 13, 2012 (determining that dinnerware made from areca palm leaves was classifiable under heading 9602 where the dinnerware had been heat-pressed into shape); and NY J899942, dated November 4, 2003 (ruling that a garden pot molded to form from vegetable fiber was properly classified under heading 9602). Moreover, unlike heading 1404, HTSUS, which describes only the coir components of the products, heading 9602, HTSUS, covers both products, as molded mixtures of various materials, in their entireties. See *CamelBak Prods., LLC v. United States*, 704 F. Supp. 2d 1335, 1339 (Ct. Int'l Trade 2010). Accordingly, the products at issue are properly classified under heading 9602, HTSUS.

Even assuming *arguendo* that the instant products are *prima facie* classifiable under both heading 1404, HTSUS, and heading 9602, HTSUS, they nevertheless remain properly classified under the latter heading by operation of GRI 3. GRI 3 provides, in pertinent part, as follows:

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

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

GRI 3(a) is known as the “rule of relative specificity.” See *Orlando Food Corp. v. United States*, 140 F.3d 1437, 1441 (Fed. Cir. 1998) (Orlando Food). Where articles can be classified under two HTSUS headings, under GRI 3(a) the classification “turns on which of these two provisions are more specific.” *Orlando Food*, 140 F.3d at 1441. Courts undertaking the GRI 3(a) comparison “look to the provision with requirements that are more difficult to satisfy and that describe the article with the greatest degree of accuracy and certainty.” *Faus Group, Inc. v. United States*, 581 F.3d 1369 (Fed. Cir. 2009) (quoting *Orlando Food*, 140 F.3d at 1441).

In HQ H230037, we determined that heading 9602, HTSUS, is more difficult to satisfy than heading 1404, HTSUS, because the former specifies the manner in which any subject vegetable matter must be worked whereas the latter broadly covers all vegetable products in any form. There, we concluded that food-grade disposable dinnerware made from areca palm nut leaves, a vegetable matter, was properly classifiable under heading 9602, HTSUS, because the leaves had been molded into plate shapes. In the instant case, both the coir planters and Greenhouse Kit are similarly made of a vegetable matter, coir, which has been molded into rectangular container shapes. As in HQ H230037, even though the instant products contain vegetable matter, they are more specifically described by the manner in which this material is worked. Accordingly, even if GRI 3 applied, our conclusion that the instant products are properly classified under heading 9602, HTSUS, would remain unchanged.

HOLDING:

By application of GRI 1, the coir planters and Greenhouse Kit are classified under heading 9602, HTSUS, specifically under subheading 9602.00.50, HTSUS, which provides for “Worked vegetable or mineral carving material and articles of these materials; molded or carved articles of wax, of stearin, of natural gums or natural resins, of modeling pastes, and other molded or carved articles, not elsewhere specified or included; worked, unhardened gelatin (except gelatin of heading 3503) and articles of unhardened gelatin.” The column one, general rate of duty is 2.7 % *ad valorem*.

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

EFFECT ON OTHER RULINGS:

New York Ruling Letters N020080, dated December 4, 2007, and N010591, dated May 16, 2007, are hereby REVOKED in accordance with the above analysis.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

CC: Mr. Jamal Ahmed
Kord Products Inc.
C/O Farrow International Trade Consulting
5397 Eglinton Avenue West, Suite 220
Toronto, Ontario M9C 5K6

**PROPOSED REVOCATION OF TWO RULING LETTERS
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF
SHOWERHEADS**

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

ACTION: Notice of proposed revocation of two ruling letters and proposed revocation of treatment relating to the tariff classification of showerheads.

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 CPB intends to revoke two rulings concerning the tariff classification of showerheads. Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 10, 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., 10th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Jacinto P. Juarez, Jr., Tariff Classification and Marking Branch: (202) 325–0027.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke two ruling letters pertaining to the tariff classification of showerheads. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) R01416, dated February 23, 2005 (Attachment A), and New York Ruling Letter (NY) F87785, dated June 2, 2000 (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 ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In NY R01416, CBP classified two styles of decorative "Water Blossom" showerheads, "Poppy" and "Jonquil" under subheading 7418.20.10, of the Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Table, kitchen or other household articles and parts thereof, of copper; pot scourers and scouring or pol-

ishing pads, gloves and the like, of copper; sanitary ware and parts thereof, of copper: Sanitary ware and parts thereof: Of copper-zinc base alloys (brass)”.

In NY F87785, CBP classified a fixed mount Eurostyle showerhead (item number B1197CP) under subheading 7418.20.10, of the Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Table, kitchen or other household articles and parts thereof, of copper; pot scourers and scouring or polishing pads, gloves and the like, of copper; sanitary ware and parts thereof, of copper: Sanitary ware and parts thereof: Of copper-zinc base alloys (brass)”.

It is now CBP’s position that the showerheads are classified under subheading 7419.99.50, HTSUS, which provides for “Other articles of copper: Other: Other: Other: Other, Brass plumbing goods not elsewhere specified or included”.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY R01416, NY F87785, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letters (HQ) H092556 and HQ H092558, set forth as Attachments C and D to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: May 19, 2015

IEVA K. O’ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY R01416

February 23, 2005

CLA-2-73 :RR:NC:N1:R01416 113

CATEGORY: Classification

TARIFF NO.: 7418.20.1000

MS. LINDSAY WILSON
DIRECT SOURCE INTERNATIONAL
3737 ROUNDBOTTOM ROAD
CINCINNATI, OH 45244

RE: The tariff classification of shower heads from China

DEAR MS. WILSON:

In your letter dated February 9, 2005, you requested a tariff classification ruling.

The merchandise consists of two styles of decorative "Water Blossom" shower head, "Poppy" and "Jonquil." The flower petals are made of brass sheeting and the connector is made of copper. The shower head itself is made of galvanized steel.

The classification of this item at the HTS heading level depends on the principal weight of the metals involved, copper (including the brass) and steel. From the picture, it appears that the copper/brass is the metal of principal weight. For purposes of the HTS subheading, the essential character of the shower head is the brass petals.

The applicable subheading for the shower heads will be 7418.20.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for sanitary ware and parts thereof, of copper-zinc base alloys (brass). The rate of duty will be 3 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist James Smyth at 646-733-3018.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

[ATTACHMENT B]

NY F87785

June 2, 2000

CLA-2-74:RR:NC:N1:113 F87785

CATEGORY: Classification

TARIFF NO.: 7418.20.1000

MR. JUAN DOMINGUEZ
WAL MART STORES, INC.
702 SW 8TH STREET
BENTONVILLE, AR 72716-8023

RE: The tariff classification of a shower head from China

DEAR MR. DOMINGUEZ:

In your letter dated May 22, 2000, you requested a tariff classification ruling.

The sample you submitted is a fixed mount Eurostyle shower head (item number B1197CP). It measures approximately 6 inches in diameter and is made of chrome-plated brass.

The applicable subheading for the shower head will be 7418.20.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for sanitary ware and parts thereof, of copper-zinc base alloys (brass). The rate of duty will be 3 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist James Smyth at 212-637-7008.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT C]

HQ H092558
 CLA-2 OT:RR:CTF:TCM H092558 JPJ
 CATEGORY: Classification
 TARIFF NO.: 7419.99.50

MR. JUAN DOMINGUEZ
 WAL MART STORES, INC.
 702 SW 8TH STREET
 BENTONVILLE, AR 72716-8023

RE: Revocation of NY F87785; Classification of Eurostyle showerhead

DEAR MR. DOMINGUEZ:

This letter is to inform you that Customs and Border Protection (CBP) has reconsidered New York Ruling letter (NY) F87785, issued to you on June 2, 2000. CBP has determined that NY F87785 is incorrect. Therefore, this ruling revokes NY F87785.

NY F87785 determined that a fixed mount Eurostyle showerhead made of chrome-plated brass was classified under heading 7418, of the Harmonized Tariff Schedule of the United States (HTSUS).

FACTS:

The merchandise is described as item number B1197CP, a fixed mount Eurostyle showerhead measuring approximately 6 inches in diameter and made of chrome-plated brass.

ISSUE:

Whether the subject merchandise is classified under heading 7418, HTSUS, as “sanitary ware, and parts thereof, of copper” or under heading 7419, HTSUS as “Other articles of copper”.

LAW AND ANALYSIS:

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

The Harmonized Commodity Description and Coding System Explanatory Notes (“EN's”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

The 2010 HTSUS provisions under consideration are as follows:

- | | |
|------|---|
| 7418 | Table, kitchen or other household articles and parts thereof, of copper; pot scourers and scouring or polishing pads, gloves and the like, of copper; sanitary ware and parts thereof, of copper: |
| 7419 | Other articles of copper: |

The issue presented is whether the showerheads are described as “sanitary ware” within the meaning of heading 7418, HTSUS.

The term “sanitary ware” in heading 7418, HTSUS, is not defined in the section or chapter notes for this heading. When a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. See *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). A tariff term’s meaning is presumed to be its common meaning in the absence of evidence to the contrary. See *Timber Products Co. v. United States*, 515 F.3d 1213, 1219 (Fed. Cir. 2005) (citing *Rohm & Haas Co. v. United States*, 727 F.2d 1095, 1097 (Fed. Cir. 1984)). A tariff term’s common and commercial meanings are presumed to be the same. See *Nippon Kogaku, Inc. v. United States*, 69 CCPA 89, 92, 673 F.2d 380 (1982).

To ascertain the common meaning of a term, a court may consult “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials”. *Id.* (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271, 69 C.C.P.A. 128 (C.C.P.A. 1982); *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989)). Also, the ENs, while not binding law, offer guidance as to how tariff terms are to be interpreted. See *Len-Ron Mfg. Co. v. United States*, 334 F.3d 1304, 1309 (Fed. Cir. 2003) (noting that Explanatory Notes are “intended to clarify the scope of HTSUS subheadings and to offer guidance in their interpretation”). Finally, standards promulgated by industry groups such as ANSI, ASME, and others are often used to define tariff terms. See *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1361 (Fed. Cir. 2001), citing *Hafele Am. Co. v. United States*, 18 C.I.T. 1096, 870 F. Supp. 352, 355 (Ct. Int’l Trade 1994) (using ANSI/ASME Specification B18.2.1); *Wash. Int’l Ins. Co. v. United States*, 16 C.I.T. 873, 803 F. Supp. 420, 422 (Ct. Int’l Trade 1992) (using ASTM standard), *aff’d*, 24 F. 3d 224 (Fed. Cir. 1994).

The EN’s to heading 7418, HTSUS, do not provide any commentary on the scope of “sanitary ware”. The Merriam-Webster on-line dictionary at www.merriam-webster.com, defines “sanitary ware” as:

ceramic plumbing fixtures (as sinks, lavatories, or toilet bowls).

“Sanitary ware” is also defined at www.dictionary.reference.com as:

plumbing fixtures, as sinks or toilet bowls, made of ceramic material or enameled metal.

The American Society of Mechanical Engineers (ASME) and the Canadian Standards Association (CSA) has published joint standards for plumbing supply fittings (ASME A112.18.1/CSA B125.1). From our research on the ASME website at www.asme.org, a standard can be defined as a set of technical definitions and guidelines that function as instructions for designers, manufacturers and users. Standards promote safety, reliability, productivity and efficiency in almost every industry that relies on engineering components or equipment. The ASME/CSA standard for plumbing supply fittings is definite and uniform throughout the United States and Canada.

The scope of the ASME A112.18.1/CSA B125.1 standard for plumbing supply fittings can be found in Part 1, Section 1.1, which states that the

standard applies to plumbing supply fittings *and accessories* located between the supply line stop and the terminal fitting, including, in relevant part, “(b) bath and shower supply fittings” (emphasis added).

Part 3, entitled “Definitions and abbreviations”, at Section 3.1 Definitions, states, in relevant part: “The following definitions apply in this Standard:

Accessory—a component that can, at the discretion of the user, be readily added, removed, or replaced, and that, when removed, will not prevent the fitting from fulfilling its primary function. Note: Examples include aerators, hand-held shower assemblies, *shower heads*, and in-line flow controls (emphasis added).

* * *

Fixture—a device for receiving water, waste matter, or both and directing these substances into a sanitary drainage system

A showerhead does not have the character of a plumbing fixture because unlike a sink, a lavatory, and a toilet, it is not permanently installed in or on walls. Instead, it is easily connected to a faucet or shower pipe and readily added, removed, or replaced. In addition to not being permanently installed, a showerhead is also unlike sinks, lavatories, or toilet bowls because they do not receive water, waste matter, or both, and direct them into a sanitary drainage system. The ASME standard for plumbing supply fittings indicates that a showerhead is an example of an plumbing *accessory* (emphasis added). Therefore, we conclude that a showerhead is not “sanitary ware”. Our conclusion is consistent with two New York Ruling letters (NY) G85952, dated January 17, 2001, and NY I81519, dated June 4, 2002, that determined that brass showerheads are properly classifiable under heading 7419, HTSUS. In NY G85952, CBP determined that a chrome-plated, brass shower head was classifiable under subheading 7419.99.50, HTSUS. In NY I81519 CBP determined, in relevant part, that brass shower heads were classifiable under subheading 7419.99.50, HTSUS.

Our conclusion is also consistent with several CBP rulings that have held that showerheads made of plastic are not “sanitary ware” of heading 3922, HTSUS, but are other household articles and hygienic or toilet articles of heading 3924, HTSUS. For example, in HQ 960011, dated September 23, 1998, regarding the classification of plastic massage shower heads, we stated, in relevant part, as follows:

Heading 3922, HTSUS, provides for baths, shower-baths, wash-basins, bidets, lavatory pans, seats and covers, flushing cisterns and similar sanitary ware of plastics. The shower heads are not like any of the items described by this heading. EN 39.24, at page 621, states that heading 3924 includes

[t]oilet articles (whether for domestic or non-domestic use) such as toilet sets (ewers, bowls, etc.), sanitary pails, bed pans, urinals, chamber-pots, spittoons, douche cans, eye baths; soap dishes, towel rails, tooth-brush holders, toilet paper holders, towel hooks and similar articles for bathrooms, toilets or kitchens, not intended for permanent installation in or on walls. However, such articles intended for permanent installation in or on walls or other parts of buildings (e.g., by screws, nails, bolts or adhesives) are excluded (heading 39.25).

In this instance, the evidence presented illustrates that the shower heads are easily connected to a faucet or shower pipe and do not have the character of being fixtures for permanent installation in or on walls. Moreover, we note NY 810116, dated May 24, 1995, that classified similar shower heads under subheading 3924.90.55, HTSUS. We therefore conclude that the merchandise is described by heading 3924, HTSUS.

See also HQ H046780, dated March 10, 2009; NY N033873, dated August 21, 2008; NY N039939, dated October 28, 2008; NY N039940, dated October 28, 2008; NY N040084, dated October 28, 2008; NY N039938, dated October 29, 2008; NY N042600, dated November 10, 2008; NY G87164, dated March 2, 2001; NY F86127, dated May 8, 2000; HQ 962584, dated July 27, 1999; NY E89558, dated December 8, 1999; NY F80479, dated December 28, 1999; NY 810116, dated May 24, 1995.

HOLDING:

Pursuant to GRI 1, item number B1197CP, a fixed mount Eurostyle showerhead made of chrome-plated brass is classified under heading 7419, HTSUS. It is specifically provided for under subheading 7419.99.50, HTSUS, which provides for “Other articles of copper: Other: Other: Other, Brass plumbing goods not elsewhere specified or included”. The 2015 general column one rate of duty is Free.

EFFECT ON OTHER RULINGS:

NY F87785, dated June 2, 2000, is revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT D]

HQ H092556
CLA-2 OT:RR:CTF:TCM H092556 JPJ
CATEGORY: Classification
TARIFF NO.: 7419.99.50

Ms. LINDSAY WILSON
DIRECT SOURCE INTERNATIONAL
3737 ROUNDBOTTOM ROAD
CINCINNATI, OH 45244

RE: Revocation of NY R01416; Classification of “Water Blossom” showerheads

DEAR Ms. WILSON:

This letter is to inform you that Customs and Border Protection (CBP) has reconsidered New York Ruling letter (NY) R01416, issued to you on February 23, 2005. CBP has determined that NY R01416 is incorrect. Therefore, this ruling revokes NY R01416.

NY R01416 determined, in relevant part, that two styles of decorative “Water Blossom” showerheads, style “Poppy” and style “Jonquil” made of brass were classified under heading 7418, of the Harmonized Tariff Schedule of the United States (HTSUS).

FACTS:

The merchandise is described as two styles of decorative “Water Blossom” showerheads, style “Poppy” and style “Jonquil”. The flower petals are made of brass sheeting, the connector is made of copper, and the showerhead itself is made of galvanized steel.

ISSUE:

Whether the subject merchandise is classified under heading 7418, HTSUS, as “sanitary ware, and parts thereof, of copper” or under heading 7419, HTSUS as “Other articles of copper”.

LAW AND ANALYSIS:

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

The Harmonized Commodity Description and Coding System Explanatory Notes (“EN’s”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN’s provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

The 2010 HTSUS provisions under consideration are as follows:

- 7418 Table, kitchen or other household articles and parts thereof, of copper; pot scourers and scouring or polishing pads, gloves and the like, of copper; sanitary ware and parts thereof, of copper:
- 7419 Other articles of copper:

The issue presented is whether the showerheads are described as “sanitary ware” within the meaning of heading 7418, HTSUS.

The term “sanitary ware” in heading 7418, HTSUS, is not defined in the section or chapter notes for this heading. When a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. *See Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). A tariff term’s meaning is presumed to be its common meaning in the absence of evidence to the contrary. *See Timber Products Co. v. United States*, 515 F.3d 1213, 1219 (Fed. Cir. 2005) (citing *Rohm & Haas Co. v. United States*, 727 F.2d 1095, 1097 (Fed. Cir. 1984)). A tariff term’s common and commercial meanings are presumed to be the same. *See Nippon Kogaku, Inc. v. United States*, 69 CCPA 89, 92, 673 F.2d 380 (1982).

To ascertain the common meaning of a term, a court may consult “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials”. *Id.* (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271, 69 C.C.P.A. 128 (C.C.P.A. 1982); *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989)). Also, the ENs, while not binding law, offer guidance as to how tariff terms are to be interpreted. *See Len-Ron Mfg. Co. v. United States*, 334 F.3d 1304, 1309 (Fed. Cir. 2003) (noting that Explanatory Notes are “intended to clarify the scope of HTSUS subheadings and to offer guidance in their interpretation”). Finally, standards promulgated by industry groups such as ANSI, ASME, and others are often used to define tariff terms. *See Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1361 (Fed. Cir. 2001), citing *Hafele Am. Co. v. United States*, 18 C.I.T. 1096, 870 F. Supp. 352, 355 (Ct. Int’l Trade 1994) (using ANSI/ASME Specification B18.2.1); *Wash. Int’l Ins. Co. v. United States*, 16 C.I.T. 873, 803 F. Supp. 420, 422 (Ct. Int’l Trade 1992) (using ASTM standard), *aff’d*, 24 F. 3d 224 (Fed. Cir. 1994).

The EN’s to heading 7418, HTSUS, do not provide any commentary on the scope of “sanitary ware”. The Merriam-Webster on-line dictionary at www.merriam-webster.com, defines “sanitary ware” as:

ceramic plumbing fixtures (as sinks, lavatories, or toilet bowls).

“Sanitary ware” is also defined at www.dictionary.reference.com as:

plumbing fixtures, as sinks or toilet bowls, made of ceramic material or enameled metal.

The American Society of Mechanical Engineers (ASME) and the Canadian Standards Association (CSA) has published joint standards for plumbing supply fittings (ASME A112.18.1/CSA B125.1). From our research on the ASME website at www.asme.org, a standard can be defined as a set of technical definitions and guidelines that function as instructions for designers, manufacturers and users. Standards promote safety, reliability, productivity and efficiency in almost every industry that relies on engineering

components or equipment. The ASME/CSA standard for plumbing supply fittings is definite and uniform throughout the United States and Canada.

The scope of the ASME A112.18.1/CSA B125.1 standard for plumbing supply fittings can be found in Part 1, Section 1.1, which states that the standard applies to plumbing supply fittings *and accessories* located between the supply line stop and the terminal fitting, including, in relevant part, “(b) bath and shower supply fittings” (emphasis added).

Part 3, entitled “Definitions and abbreviations”, at Section 3.1 Definitions, states, in relevant part: “The following definitions apply in this Standard:

Accessory—a component that can, at the discretion of the user, be readily added, removed, or replaced, and that, when removed, will not prevent the fitting from fulfilling its primary function. Note: Examples include aerators, hand-held shower assemblies, *shower heads*, and in-line flow controls (emphasis added).

* * *

Fixture—a device for receiving water, waste matter, or both and directing these substances into a sanitary drainage system

A showerhead does not have the character of a plumbing fixture because unlike a sink, a lavatory, and a toilet, it is not permanently installed in or on walls. Instead, it is easily connected to a faucet or shower pipe and readily added, removed, or replaced. In addition to not being permanently installed, a showerhead is also unlike sinks, lavatories, or toilet bowls because they do not receive water, waste matter, or both, and direct them into a sanitary drainage system. The ASME standard for plumbing supply fittings indicates that a showerhead is an example of an plumbing *accessory* (emphasis added). Therefore, we conclude that a showerhead is not “sanitary ware”. Our conclusion is consistent with two New York Ruling letters (NY) G85952, dated January 17, 2001, and NY I81519, dated June 4, 2002, that determined that brass showerheads are properly classifiable under heading 7419, HTSUS. In NY G85952, CBP determined that a chrome-plated, brass shower head was classifiable under subheading 7419.99.50, HTSUS. In NY I81519 CBP determined, in relevant part, that brass shower heads were classifiable under subheading 7419.99.50, HTSUS.

Our conclusion is also consistent with several CBP rulings that have held that showerheads made of plastic are not “sanitary ware” of heading 3922, HTSUS, but are other household articles and hygienic or toilet articles of heading 3924, HTSUS. For example, in HQ 960011, dated September 23, 1998, regarding the classification of plastic massage shower heads, we stated, in relevant part, as follows:

Heading 3922, HTSUS, provides for baths, shower-baths, wash-basins, bidets, lavatory pans, seats and covers, flushing cisterns and similar sanitary ware of plastics. The shower heads are not like any of the items described by this heading. EN 39.24, at page 621, states that heading 3924 includes

[t]oilet articles (whether for domestic or non-domestic use) such as toilet sets (ewers, bowls, etc.), sanitary pails, bed pans, urinals, chamber-pots, spittoons, douche cans, eye baths; soap dishes, towel rails, tooth-brush holders, toilet paper holders, towel hooks and similar articles for bathrooms, toilets or kitchens, not intended for

permanent installation in or on walls. However, such articles intended for permanent installation in or on walls or other parts of buildings (e.g., by screws, nails, bolts or adhesives) are excluded (heading 39.25).

In this instance, the evidence presented illustrates that the shower heads are easily connected to a faucet or shower pipe and do not have the character of being fixtures for permanent installation in or on walls. Moreover, we note NY 810116, dated May 24, 1995, that classified similar shower heads under subheading 3924.90.55, HTSUS. We therefore conclude that the merchandise is described by heading 3924, HTSUS.

See also HQ H046780, dated March 10, 2009; NY N033873, dated August 21, 2008; NY N039939, dated October 28, 2008; NY N039940, dated October 28, 2008; NY N040084, dated October 28, 2008; NY N039938, dated October 29, 2008; NY N042600, dated November 10, 2008; NY G87164, dated March 2, 2001; NY F86127, dated May 8, 2000; HQ 962584, dated July 27, 1999; NY E89558, dated December 8, 1999; NY F80479, dated December 28, 1999; NY 810116, dated May 24, 1995.

HOLDING:

Pursuant to GRI 1, the “Water Blossom” showerheads, style “Poppy” and style “Jonquil” are classified under heading 7419, HTSUS. They are specifically provided for under subheading 7419.99.50, HTSUS, which provides for “Other articles of copper: Other: Other: Other, Brass plumbing goods not elsewhere specified or included”. The 2015 general column one rate of duty is Free.

EFFECT ON OTHER RULINGS:

NY R01416, dated February 23, 2005, is revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF A CERTAIN GRADER
SYSTEM**

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

ACTION: Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to tariff classification of a certain grader 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

Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to revoke a ruling letter relating to the tariff classification of a grader system (also called a sizer or weight grader) under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 10, 2015.

ADDRESSES: Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street NE (10th Floor), Washington, D.C. 20229–1177. Submitted comments may be inspected at Customs and Border Protection, 799 90 K Street NE (10th Floor), Washington, D.C. 20002 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: Gregory Connor, Tariff Classification and Marking Branch: (202) 325–0025.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

sary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP proposes to revoke one ruling letter pertaining to the tariff classification of a grader system. Although in this notice, CBP is specifically referring to the proposed revocation of Headquarters Ruling Letter (HQ) 961522, dated August 10, 1998, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(2)), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action. In HQ 961522, set forth as Attachment A to this document, CBP determined that the subject merchandise was classified under subheading 8423.20.00, HTSUS, which provides for, "Weighing machinery (excluding balances of a sensitivity of 5 cg or better), including weight-operated counting or checking machines; weighing machine weights of all kinds; parts of weighing machinery: Scales for continuous weighing of goods on conveyers", by application of General Rules of Interpretation (GRIs) 1, 3(b) and 6. It is now CBP's position that the subject grader system is properly classified under 8423.30.00, HTSUS, which provides for: "Weighing machinery (excluding balances of a sensitivity of 5 cg or better), including weight-operated counting or checking machines; weighing machine weights of all kinds; parts of weighing machinery: Constant-weight scales and scales for discharging a predetermined weight of material into a bag or container, including hopper scales..." by application of GRIs 1 and 6.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke HQ 961522 and revoke or modify any other ruling not specifically identified, in order to reflect the proper tariff classification of the subject

grader system according to the classification analysis set forth in proposed HQ H242605, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: May 19, 2015

IEVA K. O'ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ 961522

AUGUST 10, 1998

CLA-2 RR:CR:GC 961522 JAS

CATEGORY: Classification

TARIFF NO.: 8423.20.00

PORT DIRECTOR OF CUSTOMS
200 GRANBY STREET, SUITE 839
NORFOLK, VA 23510

RE: PRD 1401-98-100001; Grader System; Continuous Weighing Machine, Grader and Sizer; Weighing Scales, Scales for Discharging a Predetermined Weight of Material, Subheading 8423.30.00; Composite Good, Essential Character, GRI 3(b), GRI 6

DEAR PORT DIRECTOR:

This is our decision on Protest 1401-98-100001, filed against your classification under the Harmonized Tariff Schedule of the United States (HTSUS), of a grader system or weight grader from Iceland. The entry under protest was liquidated on October 10, 1997, and this protest timely filed on December 29, 1997.

FACTS:

The merchandise in issue is a grader system, also called a sizer or weight grader, used in the weighing, grading and sizing of chicken fillets and tenders, chunk meats, fish, and other food products. It consists essentially of infeed and take-away conveyors, a weighing machine or scale and, in this case, a batching bin. The product moves by infeed conveyor to the weighing machine which utilizes a weight sensor or load cell. This machine operates without interruption to weigh individual pieces and, based on weight, activates mechanical discharge arms that pull the product from the scale into the pneumatically-operated batching bin. When a predetermined weight of product is reached, the door to the batching bin closes and a signal light activates. A button is then pushed which permits the batched product to fall down the chute into bags or boxes which the take-away conveyor removes. The machinery does not mechanically wrap or package the product, nor does it replace full bags with empty ones. These functions are performed by a technician. There is no indication that this machinery is capable of detecting and removing defective product. The computer that monitors and controls the entire process is not a part of this importation.

The entry was liquidated under a provision in HTS heading 8423 for scales for continuous weighing of goods. The importer/protestant describes the machinery as a catch weighing unit that, unlike the flow scale which the company also produces, is not able to operate as a continuous weight scale. He claims that another provision in heading 8423, scales for discharging a predetermined weight of material into a bag or container, represents the correct classification.

The provisions under consideration are as follows:

8423	Weighing machinery...
8423.20.00	Scales for continuous weighing of goods on conveyors

8423.30.00

[s]cales for discharging a predetermined weight of material into a bag or container, including hopper scales

ISSUE:

Whether the weight grader is a scale for continuous weighing of goods.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

GRI 3(a) states, in part, that where goods are prima facie classifiable under two or more headings, each of which refers to part only of the materials or substances contained in composite goods, those headings are to be regarded as equally specific in relation to those goods. GRI 3(b) states that composite goods made up of different components shall be classified according to their essential character.

GRI 6 states, in part, that goods are classifiable in the subheadings of a heading according to the terms of those subheadings and any related subheading notes and, by appropriate substitution of terms, to GRIs 1 through 5, on the understanding that only subheadings at the same level are comparable. The relative section, chapter and subchapter notes also apply, unless the context requires otherwise.

The parties agree that the grader system under protest is weighing machinery of heading 8423. To compare the competing subheadings, however, it is necessary to apply the GRIs at the subheading level of heading 8423 through GRI 6. Subheading 8423.20.00 describes scales that weigh continuously. In our opinion, it includes scales that operate in a continuous process with brief intervals or with continued recurrence. Subheading 8423.30.00 describes scales for discharging a predetermined weight of material into a bag or container. As each subheading describes part only of the grader system, they are deemed to be equally specific under GRI 3(a).

Whether the conveyors, weighing machine and batching bin are attached together to form a practically inseparable whole or are, in fact, separable, the components are adapted one to the other, are mutually complementary, and there is no indication they are normally offered for sale separately. Under GRI 3(b), this machinery qualifies as a composite good which is to be classified as if consisting of that component which imparts the essential character to the whole. In this case, the collection of pieces into batches of predetermined weight is necessarily predicated on the continuous weighing function. We conclude, therefore, that the weighing component imparts the essential character to the grader system.

HOLDING:

The grader system or weight grader is provided for in heading 8423. Under the authority of GRI 3(b), applied at the subheading level through GRI 6, it is classifiable in subheading 8423.20.00, HTSUS.

The protest should be DENIED. In accordance with Section 3A(11)(b) of Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, you should mail this decision, together with the Customs Form 19, to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry or entries in accordance with the decision must be accomplished prior to mailing the decision.

Sixty days from the date of the decision the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Rulings Module in ACS and to the public via the Diskette Subscription Service, the Freedom of Information Act and other public access channels.

Sincerely,

JOHN DURANT,

Director

Commercial Rulings Division

[ATTACHMENT B]

HQ H242605
CLA-2 OT:RR:CTF:TCM H242605 GC
CATEGORY: Classification and Marking
TARIFF NO.: 8423.30.00

PORT DIRECTOR
U.S. CUSTOMS AND BORDER PROTECTION
NORFOLK SERVICE PORT
101 EAST MAIN STREET NORFOLK, VA 23510

RE: Revocation of HQ 961522; Tariff classification of a “grader system”

DEAR PORT DIRECTOR:

On August 10, 1998, U.S. Customs and Border Protection (then the U.S. Customs Service) issued Headquarters Ruling Letter (HQ) 961522 to dispose of Application for Further Review of Protest 1401-98-100001, which pertained to the tariff classification of the instant “grader system”. We have since reviewed HQ 961522 and find it to be in error.

FACTS:

The merchandise is described in HQ 961522 as follows:

The merchandise in issue is a grader system, also called a sizer or weight grader, used in the weighing, grading and sizing of chicken fillets and tenders, chunk meats, fish, and other food products. It consists essentially of infeed and take-away conveyors, a weighing machine or scale and, in this case, a batching bin. The product moves by infeed conveyor to the weighing machine which utilizes a weight sensor or load cell. This machine operates without interruption to weigh individual pieces and, based on weight, activates mechanical discharge arms that pull the product from the scale into the pneumatically-operated batching bin. When a predetermined weight of product is reached, the door to the batching bin closes and a signal light activates. A button is then pushed which permits the batched product to fall down the chute into bags or boxes which the take-away conveyor removes. The machinery does not mechanically wrap or package the product, nor does it replace full bags with empty ones. These functions are performed by a technician. There is no indication that this machinery is capable of detecting and removing defective product. The computer that monitors and controls the entire process is not a part of this importation.

In HQ 961522, CBP classified the above-described merchandise under subheading 8423.20.00, HTSUS, which provides for, “Weighing machinery (excluding balances of a sensitivity of 5 cg or better), including weight-operated counting or checking machines; weighing machine weights of all kinds; parts of weighing machinery: Scales for continuous weighing of goods on conveyors”, by application of General Rules of Interpretation (GRIs) 1, 3(b) and 6.

ISSUE:

Is the subject grader system classified under subheading 8423.20, HTSUS, as a scale for the continuous weighing of goods on a conveyor, or under subheading 8423.30, HTSUS, as a constant-weight scale and scale for discharging a predetermined weight of material into a bag or container?

LAW AND ANALYSIS:

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

8423	Weighing machinery (excluding balances of a sensitivity of 5 cg or better), including weight-operated counting or checking machines; weighing machine weights of all kinds; parts of weighing machinery:	*	*	*
8423.20.00	Scales for continuous weighing of goods on conveyors...	*	*	*
8423.30.00	Constant-weight scales and scales for discharging a predetermined weight of material into a bag or container, including hopper scales...			

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

Subheading EN 8423.20 provides as follows:

The scales for continuous weighing of goods on conveyors of this subheading, which may be either of the totaliser or integrating kind, measure and record the weight of materials as they go past in buckets, on chains or the like.

There was no dispute in HQ 961522 that the subject grader system was classified under heading 8423, HTSUS, as weighing machinery. This remains CBP's position.

However, in HQ 961522, applying GRI 6¹, CBP concluded that the grader system was a "composite good" of GRI 3(b)² made up of a scale for continuous

¹ GRI 6 states:

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

² GRI 3(b) states:

weighing of goods and a scale for discharging a predetermined weights of material. The conclusion that the subject merchandise constituted a “composite good” was premised on the conclusion that the scope of subheading 8423.20, HTSUS, covers “scales that operate in a continuous process with brief intervals or with continued recurrence”. Indeed, the fact that Subheading EN 8423.20 refers to measured materials located “in buckets, on chains or the like” clarifies that scales for continuous weighing can weigh materials that pass the scale sensor “with brief intervals or with continued recurrence”. However, in spite of the fact that the instant grader system incorporates a continuously moving conveyer belt, it is designed to weigh individual items, which is decidedly discontinuous and is not characteristic of a totalizer or integrating kind of scale described in Subheading EN 8423.20.

Accordingly, we find that the merchandise at issue in HQ 961522 does not perform a function covered by subheading 8423.20, HTSUS. Moreover, as a consequence of the fact that it is equipped with mechanical discharge arms to pull the chicken thighs from the scale into the pneumatically-operated batching bin, it is *prima facie* classifiable under subheading 8423.30, HTSUS, as a scale for discharging a predetermined weight of material into a bag or container.

HOLDING:

By application of GRI 1, the instant grader system is classified under heading 8423, HTSUS, as weighing machinery. By application of GRIs 1 and 6, it is specifically provided for under subheading 8423.30.00, HTSUS, which provides for: “Weighing machinery (excluding balances of a sensitivity of 5 cg or better), including weight-operated counting or checking machines; weighing machine weights of all kinds; parts of weighing machinery: Constant-weight scales and scales for discharging a predetermined weight of material into a bag or container, including hopper scales....” The general column one rate of duty, for merchandise classified in this subheading is free.

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

EFFECT ON OTHER RULINGS:

HQ 961522, dated August 10, 1998, is hereby REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

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

GENERAL NOTICE
19 CFR PART 177

**PROPOSED MODIFICATION OF TWO RULING LETTERS
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO CLASSIFICATION OF CABLE LOCKS SET
FROM CHINA**

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

ACTION: Notice of proposed modification of two ruling letters and revocation of treatment relating to the classification of cable locks from China.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CPB proposes to modify two ruling letters concerning the classification of cable locks under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB intends to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 10, 2015.

ADDRESSES: Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street, 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: Tatiana Salnik-Matherne, Tariff Classification and Marking Branch: (202) 325–0351.

SUPPLEMENTARY INFORMATION:

Background

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to modify two rulings pertaining to the classification of cable locks. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) N113938, dated July 16, 2010 (Attachment A), and NY N077520, dated October 6, 2009 (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 data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

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

In NY N113938, CBP classified the subject cable lock’s in subheading 8301.10.50, HTSUS, as “Padlocks and locks (key, combination or

electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys and parts of any of the foregoing articles, of base metal: Padlocks: Not of cylinder or pin tumbler construction: Over 6.4 cm in width.” In NY N077520, CBP classified the subject cable lock in subheading 8301.10.40, HTSUS, which provides for “Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys and parts of any of the foregoing articles, of base metal: Padlocks: Not of cylinder or pin tumbler construction: Over 3.8 cm but not over 6.4 cm in width.” Upon reconsideration, we note that the width was incorrectly measured in both cases.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY N113938 and NY N077520, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (“HQ”) H168717. (*see* Attachment “C” to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: May 20, 2015

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT A]

July 16, 2010
CLA-2-83:OT:RR:NC:N1:121
CATEGORY: Classification
TARIFF NO.: 8301.10.5000

MS. SILKE REES
MASTER LOCK COMPANY
P.O. BOX 927
137 W. FOREST HILL AVENUE
OAK CREEK, WI 53154

RE: The tariff classification of a cable lock from China

DEAR MS. REES:

In your letter dated July 2, 2010, you requested a tariff classification ruling. The sample you provided will be retained by this office.

The merchandise under consideration is described in your letter as a combination bicycle lock, model 8120D. It features a vinyl-coated, braided, steel cable that measures six feet in length by 3/8 inch in diameter, and a combination locking mechanism capable of being reset to a variety of four number combinations. In addition, it comes with a plastic mounting bracket for easy transport. The retail package indicates that this lock can be used with bicycles, skateboards and sports equipment.

You have indicated in your letter that you believe the lock should be classified in subheading 8301.10.2000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for padlocks, not of cylinder or pin tumbler construction, not over 3.8 cm in width. This office, however, disagrees with this classification. The width of the lock, which is the dimension perpendicular to the length, is measured at the greatest point when in the locked position. The portion you describe as the "shoulders" of the shackle are more than mere protective bumpers; one "shoulder" includes a 1-1/2 inch shaft that is essential to the operation of the locking mechanism. Consequently, this portion of the lock is included when measuring its width.

The applicable subheading for the cable padlock will be 8301.10.5000, HTSUS, which provides for padlocks and locks (key, combination or electrically operated), of base metal...padlocks, not of cylinder or pin tumbler construction, over 6.4 cm in width. The rate of duty will be 3.6 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/>.

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 Barbara Kaiser at (646) 733-3024.

Sincerely,

ROBERT B. SWIERUPSKI
Director

National Commodity Specialist Division

[ATTACHMENT B]

October 6, 2009

CLA-2-83:OT:RR:NC:N1:121

CATEGORY: Classification

TARIFF NO.: 8301.10.4000; 8301.10.6000

Ms. SILKE REES

CUSTOMS COMPLIANCE SPECIALIST II

MASTER LOCK COMPANY

PO BOX 927 137 W. FOREST HILL AVENUE

OAK CREEK, WI 53154

RE: The tariff classification of cable locks from China

DEAR Ms. REES:

In your letter dated September 22, 2009, you requested a tariff classification ruling. The submitted samples are being returned to you.

The merchandise under consideration is two cable locks. The body of each lock is made of base metal with a plastic outer housing.

Cable Lock 8119DPF is a combination lock with a 5 foot long cable made of vinyl coated, braided steel wire. It operates by rotating four numerical dials and allows for easy locking and handling with keyless convenience. It can be used to secure a variety of items, such as power equipment, ladders, trailers, tool boxes, bicycles and sports equipment. The width of the body measures 4.7 cm.

Cable Lock 8154DPF is a keyed lock with a 6 foot long cable made of vinyl coated, braided steel wire. It is imported with two keys that are connected with a metal split ring. The 5 pin cylinder locking mechanism offers maximum pick resistance. It can be used to secure a variety of items including toolboxes, ladders, gates, generators, hand trucks, bicycles, skateboards and sports equipment. The width of the body measures under 3.8 cm.

You state in your letter that you believe Cable Lock 8154DPF should be classified in subheading 8301.10.8000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for padlocks of cylinder or pin tumbler construction, over 3.8 cm but not over 6.4 cm in width. This office, however, has determined that the width of the lock measures less than 3.8 cm.

The applicable subheading for the combination cable lock (Cable Lock 8119DPF) will be 8301.10.4000, HTSUS, which provides for padlocks and locks (key, combination or electrically operated, of base metal-padlocks, not of cylinder or pin tumbler construction, over 3.8 cm but not over 6.4 cm in width. The rate of duty will be 3.8 percent ad valorem.

The applicable subheading for the key operated cable lock (Cable Lock 8154DPF) will be 8301.10.6000, HTSUS, which provides for padlocks and locks (key, combination or electrically operated, of base metal-padlocks, of cylinder or pin tumbler construction, not over 3.8 cm in width. The rate of duty will be 6.1 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/>.

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 Barbara Kaiser at (646) 733-3024.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT C]

HQ H168717

CLA-2: OT:RR:CTF:TCM H168717 TNA

CATEGORY: Classification

TARIFF NO.: 8301.10.20

KENNETH G. WEIGEL
ALSTON & BAIRD, LLP
THE ATLANTIC BUILDING
950 F STREET, NW
WASHINGTON, DC 20004

RE: Modification of NY N113938 and NY N077520; Classification of cable locks from China

DEAR MR. WEIGEL:

This is in response to your request, dated August 12, 2010, filed on behalf of Master Lock Company, LLC (“Master Lock”) for reconsideration of New York Ruling Letters (“NY”) N113938, dated July 16, 2010, and NY N077520, dated October 6, 2009, pertaining to the classification of cable locks. In NY N113938, Model 8120D was classified in subheading 8301.10.50, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys and parts of any of the foregoing articles, of base metal: Padlocks: Not of cylinder or pin tumbler construction: Over 6.4 cm in width.” In NY N077520, Cable Lock 8119DPF was classified in subheading 8301.10.40, HTSUS, which provides for “Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys and parts of any of the foregoing articles, of base metal: Padlocks: Not of cylinder or pin tumbler construction: Over 3.8 cm but not over 6.4 cm in width.”¹ We have reviewed these rulings and believe them both to be partly in error. For the reasons that follow, we hereby modify NY N113938 and NY N077520.

FACTS:

The subject merchandise consists of two types of cable locks. The first is Cable Lock 8119DPF, a combination lock with a five foot long cable made of vinyl-coated, braided steel wire. The body of the lock is made of base metal and has a curved, plastic outer housing that covers part of the cable. The lock, which functions without a key, operates by way of four rotating numerical dials. Cable Lock 8119DPF can be used to secure a variety of items, such as power equipment, ladders, trailers, tool boxes, bicycles, and sports equipment.

The second lock at issue is Model 8120D, and is similar in form to Cable Lock 8119DPF. It consists of a vinyl-coated braided steel cable that is six feet in length and 3/8 of an inch in diameter. Its combination locking mechanism is made of base metal and is capable of being reset. It functions without a key, and operates via four rotating numerical dials. The body of the lock has a curved, plastic outer housing that covers part of the cable. Model 8120D is

¹ We note that NY N077520 classified two different types of cable locks. Only the classification of Cable Lock 8119DPF is at issue in this reconsideration.

imported with a plastic mounting bracket for easy transport and can be used to secure bicycles, skateboards and other sports equipment.

Samples of both cable locks were received and examined by this office.

ISSUE:

Whether the width of the subject cable locks was properly measured?

LAW AND ANALYSIS:

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

The HTSUS subheadings at issue are as follows:

8301	Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys and parts of any of the foregoing articles, of base metal:
8301.10	Padlocks:
	Not of cylinder or pin tumbler construction:
8301.10.20	Not over 3.8 cm in width
8301.10.40	Over 3.8 cm but not over 6.4 cm in width
8301.10.50	Over 6.4 cm in width

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System at the international level. CBP believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The EN to heading 8301, HTSUS, states, in pertinent part:

This heading covers fastening devices operated by a key (e.g., locks of the cylinder, lever, tumbler or Bramah types) or controlled by a combination of letters or figures (combination locks)...

The heading therefore covers, *inter alia*:

- (A) Padlocks of all types for doors, trunks, chests, bags, cycles, etc., including key-operated locking hasps.

There is no dispute that the merchandise should be classified in subheading 8301.10, HTSUS, as a padlock of base metal. Rather, the question, at the 8-digit level, is how to measure the width of the subject locks. In your request for reconsideration, you cite *West Coast Cycle Supply Co. v. United States*, 66 Cust. Ct. 500 (1971) (“*West Coast Cycle Supply*”). There, the court considered the classification of two different types of bicycle padlocks with cables; under the TSUS, as under the HTSUS, classification depended on the width of the

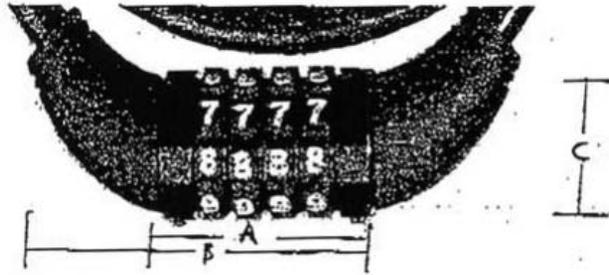
locks, and the sole issue before the court was how to measure the width. *Id.* at 501.

The court, noting that the terms “length” and “width” were not defined in the tariff, consulted multiple dictionaries before defining the term “length” as: “[e]xtension from end to end; the greatest dimension of a body; longitudinal extent: opposed to breadth and thickness”; “[t]he longest, or longer, dimension of any object, in distinction from breadth or width; extent from end to end; the longest straight line that can be drawn through a body parallel to the general direction of its sides”; “the measure of an object from end to end, or along its longest dimension.” *Id.* at 503. Based on these same dictionaries, the court defined the term “width” as “[s]pace between sides, or extent from side to side, breadth; as, the width of the river is two miles”; “[t]he dimension of an object measured across from side to side or in a direction at right angles to the length;” “the extent of a thing from side to side; breadth; opposite of length.” *Id.* at 503. Applying these definitions to the locks in front of it, the court found the width by measuring the dimension that was perpendicular to the length; in doing so, the court noted that “measurement of the ‘width’ of articles may vary somewhat dependant upon their particular shape or configuration.” *Id.* at 504.

In accordance with *West Coast Cycle Supply*, CBP has long classified the width of a padlock as the dimension perpendicular to the length, and has measured the width at the greatest point when the merchandise is in locked position. *See, e.g.*, NY B85123, dated May 8, 1997; HQ *H141716*, dated January 11, 2011; HQ *H166855*, dated June 30, 2011. CBP also has a practice of including the cable of a padlock in the measurement of the padlock’s length. *See, e.g.*, HQ *H166855*; NY K84951, dated April 28, 2004; ORR Ruling 75–0185, dated May 10, 1975.²

This analysis was reiterated in NY N113938, which classified model 8120D, a cable padlock. There, Master Lock advocated for classification in subheading 8301.10.20, HTSUS, as a padlock whose width did not exceed 3.8 cm. CBP disagreed, reasoning that the body, or “shoulders,” of the shackle, were more than mere protective bumpers and therefore had to be included in measuring the width of the lock. As a result, CBP classified model 8120D in subheading 8301.10.50, HTSUS, as a padlock whose width was over 6.4 cm. You argue that, in order to have arrived at this classification, CBP must have measured the body of the lock along the same dimension in which the cable runs- i.e., that CBP actually measured the lock along the dimension that constitutes its length, not its width. As a result, you argue for the width of the lock to be measured as per dimension “C” in the following diagram:

² We note that Ruling 75–0185 was decided under the TSUS. Decisions under the TSUS are not dispositive in interpreting the HTSUS. However, on a case-by-case basis they should be considered instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS. H. Conf. Rep. No. 576, p.550. *See* HQ 956328, dated August 5, 1994; HQ 967400, dated March 29, 2006.



After reexamining the sample of model 8120D, we agree. The curved, plastic outer housing that forms the body of the lock encircles and extends beyond the cable of model 8120D, thereby becoming a part of the lock's longest dimension. Following the definitions of *West Coast Cycle Supply* and subsequent CBP rulings, model 8120D's outer housing and the rotating numerical dials extend the length of the lock; its width should therefore be measured perpendicular to the length, as shown by dimension "C" in the above diagram. Thus, while we continue to agree with NY N113938's statement that the "shoulders" are not merely protective bumpers, and we continue to agree with NY N113938's assessment on how to measure the width of a cable lock, we find that the measurement undertaken in this case does not adhere to that statement. Measuring the width along dimension "C" in the above diagram, we now find the width to be 3.2 cm. As a result, model 8120D is classified in subheading 8301.10.20, HTSUS, which provides for "Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys and parts of any of the foregoing articles, of base metal: Padlocks: Not of cylinder or pin tumbler construction: Not over 3.8 cm in width."

In NY N077520, CBP determined that the width of Cable Lock 8119DPF was 4.7 cm, and classified it in subheading 8301.10.40, HTSUS, as a padlock whose width was over 3.8 cm but not over 6.4 cm. Here as well, you also argue that in order to have obtained a width of 4.7 cm, CBP would have had to measure the body of the lock along the same dimension as the cable, thereby actually measuring the length of the lock. In reexamining the sample at our office, we agree for the same reasons stated above. Thus, after having remeasured the width of Cable Lock 8119DPF, again along dimension "C" in the diagram above, we now find the width to be 2.9 cm. As such, Cable Lock 8119DPF is classified in subheading 8301.10.20, HTSUS, which provides for "Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys and parts of any of the foregoing articles, of base metal: Padlocks: Not of cylinder or pin tumbler construction: Not over 3.8 cm in width."

Lastly, we note that you cite to Internal Advice ("IA") 00/27 for various propositions. On the one hand, you state that it supports your position on how to measure the width of the subject cable locks. On the other hand, you request that we reconsider IA 00/27 because it states that the actual width of the lock being imported is what controls classification. In response, we note

that IA 00/27, which corresponds to Headquarters file (“HQ”) 964611, dated May 22, 2001, was a request for internal advice by Master Lock. There, instead of issuing a ruling in response to this request, CBP simply forwarded Master Lock an internal report on the subject issued by a separate office within CBP. This report is also not publicly available. As such, CBP does not consider HQ 964611 to be binding on the agency. We are not required to follow the position it espouses, nor are we permitted to reconsider it.

HOLDING:

Under the authority of GRI 1, model 8120D and Cable Lock 8119DPF are provided for in heading 8301, HTSUS. Specifically, they are classified in subheading 8301.10.20, HTSUS, HTSUS, which provides for “Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys and parts of any of the foregoing articles, of base metal: Padlocks: Not of cylinder or pin tumbler construction: Not over 3.8 cm in width.” The 2011 column one, general rate of duty is 2.3% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N113938, dated July 16, 2010, is MODIFIED with respect to the classification of Model 8120D. The analysis of how the lock is measured remains unchanged. NY N077520, dated October 6, 2009, is MODIFIED with respect to the classification Cable Lock 8119DPF. The classification of the other items described therein remains unchanged.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division