

U.S. Customs and Border Protection



GENERAL NOTICE

19 CFR PART 177

PROPOSED REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF LINZESS® (LINACLOTIDE)

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

ACTION: Notice of proposed revocation of a ruling letter and modification of treatment concerning the tariff classification of Linzess® (Linaclotide) from Sweden.

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

DATES: Comments must be received on or before July 31, 2015.

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

FOR FURTHER INFORMATION CONTACT: Lynne Robinson, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, (202) 325–0067.

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, 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 classification of Linzess® (Linaclotide). Although in this notice CBP is specifically referring to New York Ruling Letter (“NY”) N233631, dated October 23, 2012, (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 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 intends to revoke any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer’s or CBP’s previous interpretation of the Harmonized Tariff Schedule of the United States. 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 N233631 CBP classified Linaclotide under subheading 3004.90.91, HTSUS, which provides for "Medicaments-consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale: Other: Other: Medicaments primarily affecting the digestive system: Other." It is now CBP's position that Linzess® (Linaclotide) is properly classified under subheading 3002.90.51, HTSUS, which provides for "Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products: Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke NY N233631 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter H250309 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: June 01, 2015

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N233631

October 23, 2012

CLA-2-30:OT:RR:NC:N2:238

CATEGORY: Classification

TARIFF NO.: 3004.90.9160

MR. MARK HUNTEBRINKER
FOREST PHARMACEUTICALS, INC.
13600 SHORELINE DRIVE
EARTH CITY, MO 63045

RE: The tariff classification of Linaclotide (CAS-851199-59-2), imported in dosage form, from Sweden

DEAR MR. HUNTEBRINKER:

In your letter dated September 24, 2012, you requested a tariff classification ruling.

The subject product, Linaclotide, imported in 145 mcg and 290 mcg capsules, is a guanylate cyclase-c agonist. Currently, it is undergoing phase III clinical trials for the treatment of irritable bowel syndrome with constipation (IBS-C).

The applicable subheading for the Linaclotide imported in dosage form will be 3004.90.9160, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Medicaments... consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses... or in forms or packings for retail sale: Other: Other: Other: Medicaments primarily affecting the digestive system: 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 merchandise may be subject to the Federal Food, Drug, and Cosmetic Act and/or The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which are administered by the U.S. Food and Drug Administration (FDA). Information on the Federal Food, Drug, and Cosmetic Act, as well as The Bioterrorism Act, can be obtained by calling the FDA at 1-888-463-6332, or by visiting their website at www.fda.gov.

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 Judy Lee at (646) 733-3033.

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H250309
 CLA-2 OT:RR:CTF:TCM H250309 LOR
 CATEGORY: Classification
 TARIFF NO.: 3002.90.50

MR. MARK HUNTEBRINKER
 FOREST PHARMACEUTICALS, INC.
 13600 SHORELINE DRIVE
 EARTH CITY, MO 63045

RE: Revocation of New York Ruling Letter N233631; classification of
 Linzess® (Linaclotide) (CAS-851199-59-2); Guanylate Cyclase-C
 Agonist

DEAR MR. HUNTEBRINKER,

This is in reference to New York Ruling Letter (NY) N233631, dated October 23, 2012, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) Linaclotide. In NY N233631, U.S. Customs and Border Protection (CBP) classified Linzess® (Linaclotide) under subheading 3004.90.9160, HTSUS (Annotated). We have reconsidered this ruling and have determined that product is provided for in heading 3002, HTSUS.

FACTS:

Linzess®, which has Linaclotide as its active ingredient, is a guanylate cyclase-c agonist product, which acts locally in the intestine to reduce intestinal pain and accelerate gastrointestinal transit. It is indicated for the treatment of irritable bowel syndrome with constipation (IBS-C) or chronic idiopathic constipation (CIC) in adults. The U.S. Food and Drug Administration has approved the use of Linzess® (Linaclotide). Linzess® (Linaclotide) is imported in 145 mcg and 290 mcg capsules.

The CBP Laboratory and Scientific and Services Division (LSSD) examined Linzess® (Linaclotide). In LSSD Report No. NY20131257, the report states the following, in pertinent part:

CAS No.: 851199-59-2; Listed in Pharmaceutical Appendix to the HTSUS

Uses: Treatment of irritable bowel syndrome with constipation (IBS-C) and chronic idiopathic constipation (CIC)

Linaclotide is a peptide consisting of 14 amino acids and three disulfide bonds. It is an analog of the naturally occurring E-Coli heat stable enterotoxin ST 1b, differing in a single amino acid (leucine to tyrosine at position four).

Functional Groups: amino acids, phenol, hetrocyclic compound containing both nitrogen and sulfur.

Linaclotide: C-C-E-Y-C-C-N-P-A-C-T-G-C-Y
 Heat stable enterotoxin: C-C-E-L-C-C-N-P-A-C-G-G-C-Y

Linaclotide exerts its biological effect in a similar manner as E. coli heat-stable enterotoxin.

* * *

NY N233631 classified Linaclotide under subheading 3004.90.91, HTSUS, which provides for: “Medicaments... consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale: Other: Other”.

ISSUE:

Whether Linzess®, which contains Linaclotide as its active ingredient, is properly classified in heading 3002, HTSUS, as a toxin; or in heading 3004, HTSUS, as a medicament (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale?

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:

- | | |
|-------|---|
| 3002 | Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products: |
| <hr/> | |
| 3004 | Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale: |

Note 2 to Chapter 30, HTSUS, states, in pertinent part: “For the purposes of heading 3002, the expression “immunological products” applies to peptides and proteins (other than goods of heading 2937) which are directly involved in the regulation of immunological processes, such as... interleukins, interferons (IFN), chemokines and certain tumor necrosis factors (TNF), growth factors (GF), hematopoietins and colony stimulating factors (CSF).¹

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

The EN to Heading 30.02 provides, in pertinent part:

¹ Although the instant merchandise is a peptide, it is not primarily used as a hormone, but rather as an immunological product, and is thus excluded from classification in heading 2937, HTSUS, under Chapter 29 notes 2(e) and 8(b).

This heading covers:

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

These products include:

(2) **Toxins** (poisons), toxoids, crypto-toxins and anti-toxins.

* * * *

The products of this heading remain classified here whether or not in measured doses or put up for retail sale and whether in bulk or in small packings.

* * * *

Ruling N233631 classified the above-identified products under heading 3004, HTSUS. However, the heading specifically excludes goods which can be classified under heading 3002, HTSUS. Therefore, if the above-identified product can be properly classified under heading 3002 HTSUS, it is precluded from classification under heading 3004, HTSUS.²

An enterotoxin is a protein toxin released by a microorganism in the intestine. *Escherichia coli*, also known as *E. coli*, is a bacterium that is commonly found in the gut of warm blooded animals. *E. coli* is a heat stable enterotoxin. Linaclotide is produced by genetically modifying *E. coli* bacteria by substituting two amino acids. Linaclotide maintains some of the effect of an enterotoxin and is an analog of naturally occurring *E. coli*. As toxoids³ are named as an example under the included products of heading 3002, HTSUS, the attenuated effects of Linaclotide is not precluded from classification under this heading. Accordingly, Linzess® (Linaclotide), which is imported in measured dosages, is properly classified under heading 3002, HTSUS. Therefore, Linzess® (Linaclotide) is not classifiable under heading 3004, HTSUS, or in Chapter 29, HTSUS. *See* heading 3004, HTSUS and Note 2 to Chapter 29, HTSUS.

We note that this ruling is in accord with the recent decision of the Harmonized System Committee to classify Linaclotide in heading 3002, HTSUS, (*See*, HSC Report NC1443B1b Ann. P/2, HSC/43) and with NY N243162, dated August 6, 2013.

HOLDING:

By application of GRI 1, the instant product Linzess® (Linaclotide) is properly classified under subheading 3002.90.51, HTSUS, which provides for “Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera, other blood fractions and immunological products, whether or not modified or obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products: Other: Other. The rate of duty is free. Duty rates are provided for your convenience and are subject to change.

² Additionally, if it is an immunological product of heading 3002, HTSUS, it is excluded from classification in Chapter 29, HTSUS, under Note 2 to that chapter.

³ A toxoid is a chemically modified toxin without any toxic effect.

EFFECT ON OTHER RULINGS:

New York Ruling Letter N233631, dated October 23, 2012, is hereby REVOKED.

Sincerely,

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 A CERTAIN RIGID
PAPERBOARD BOX**

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 a certain rigid paperboard box.

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 modify a ruling letter relating to the tariff classification of a certain rigid paperboard box 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 31, 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 a certain rigid paperboard box. Although in this notice CBP is specifically referring to the modification of New York Ruling Letter (NY) N014187, dated August 10, 2007, 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 N014187, set forth as Attachment A to this document, CBP determined that the subject merchandise was classified under sub-heading 4819.50.40, HTSUS, which provides for “Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; box files, letter trays and similar articles, of paper or paperboard of a kind used in offices, shops or the like: Other packing containers, including record sleeves:

Other.” It is now CBP’s position that the subject merchandise is properly classified under heading 4202, HTSUS, which provides for “Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper.” Classification beyond the four-digit heading level will depend on the material that covers the product’s outer surface.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY N014187 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 H137557, 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: June 01, 2015

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N014187

August 10, 2007

CLA-2-48:RR:NC:2:234

CATEGORY: Classification

TARIFF NO.: 4819.50.4040; 5808.90.0010

MR. MICHAEL R. TOOLE
VANDEGRIFT FORWARDING COMPANY, INC.
ONE EVERTRUST PLAZA
JERSEY CITY, NJ 07302

RE: The tariff classification of a rigid paperboard box and decorative tassel from China.

DEAR MR. TOOLE:

In your letter dated July 11, 2007, on behalf of International Packaging Solutions, you requested a tariff classification ruling.

The submitted sample, style 138182, is a rigid, non-corrugated paperboard box measuring 5-7/8" long x 5" high x 5-1/2" deep, with a lid. The interior of the box is lined with polyethylene foam, die cut in the shape of a Christmas ornament. Included in the box is a decorative tassel. The tassel measures 4-3/4" in length, which includes a loop for hanging. The white colored box will be used as a gift box, put up for sale, with a Christmas ornament inside. The applicable subheading for the rigid paperboard box will be 4819.50.4040, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other (than certain enumerated) packing containers of paper or paperboard: rigid boxes and cartons. The rate of duty will be free. The applicable subheading for the tassel will be 5808.90.0010, HTSUS, which provides for... tassels, pompons and similar articles,... of cotton or man-made fibers. The duty rate will be 3.9 percent ad valorem.

The tassel in style 138182, falls within textile category 229. With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Patricia Wilson at 646-733-3037.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H137557
CLA-2 OT:RR:CTF:TCM H137557 TSM
CATEGORY: Classification
TARIFF NO.: 4202.92.90

MR. MICHAEL R. TOOLE
VANDERGRIFT FORWARDING COMPANY INC.
ONE EVERTRUST PLAZA
JERSEY CITY, NJ 07302

RE: Modification of N014187; Classification of a rigid paperboard box.

DEAR MR. TOOLE:

This is in reference to New York Ruling Letter (NY) N014187, issued to International Packaging Solutions on August 10, 2007, concerning a tariff classification of a rigid paperboard box from China. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the subject merchandise under subheading 4819.50.40, HTSUS, which provides for “Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; box files, letter trays and similar articles, of paper or paperboard of a kind used in offices, shops or the like: Other packing containers, including record sleeves: Other.” Upon additional review, we have found this classification to be incorrect. For the reasons set forth below we hereby modify NY N014187.

FACTS:

NY N014187, issued to International Packaging Solutions on August 10, 2007, describes the subject merchandise as follows:

The submitted sample, style 138182, is a rigid, non-corrugated paperboard box measuring 5–7/8” long x 5” high x 5–1/2” deep, with a lid. The interior of the box is lined with polyethylene foam, die cut in the shape of a Christmas ornament. The white colored box will be used as a gift box, put up for sale, with a Christmas ornament inside.

ISSUE:

Whether the paperboard box at issue is classified in heading 4819, HTSUS, as “cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers,” or in heading 4202, HTSUS, as “jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper”?

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:

- 4202 Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper
- * * *
- 4819 Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose fibers; box files, letter trays and similar articles, of paper or paperboard of a kind used in offices, shops or the like

Explanatory Note to Heading 4202, HTSUS, provides, in pertinent part, the following:

The term “jewellery boxes” covers not only boxes specially designed for keeping jewellery, but also similar lidded containers of various dimensions (with or without hinges or fasteners) specially shaped or fitted to contain one or more pieces of jewellery and normally lined with textile material, of the type in which articles of jewellery are presented and sold and which are suitable for long-term use.

The subject paperboard boxes are lidded containers, designed to fit specific Christmas ornaments and suitable for long term use. As such, they are “similar lidded containers” within the meaning of the above-referenced EN to heading 4202, HTSUS. Thus, we find that they are specifically provided for and therefore classified in heading 4202, HTSUS, which provides for “Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper.” *See* HQ 089825, dated April 9, 1993; *see also* NY C86989, dated April 30, 1998; NY I88914, dated November 29, 2002; and NY N012302, dated July 5, 2007.

We note that classification of articles of heading 4202, HTSUS, at the six-digit subheading level is determined according to the material that covers the outer surface of the merchandise. As the facts of NY N014187 are silent regarding the outer surface of the subject paperboard box, we will not provide the full subheading classification here.

HOLDING:

By application of GRI 1, the subject rigid paperboard box is classified in heading 4202, HTSUS, which provides for “Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper.” Classification beyond the four digit heading level will be determined based on the material that comprises the outer surface of the subject merchandise.

EFFECT ON OTHER RULINGS:

NY N014187, dated August 10, 2007, is hereby MODIFIED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED MODIFICATION OF ONE RULING LETTER,
REVOCAION OF ONE RULING LETTER AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF LIQUID HAND SOAPS
CONTAINING ORGANIC SURFACE-ACTIVE AGENTS**

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

ACTION: Notice of proposed modification of one ruling letter, revocation of one ruling letter, and revocation of treatment relating to the tariff classification of liquid hand soaps containing organic surface-active agents.

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 modify one ruling and revoke one ruling letter, both of which concern tariff classification of liquid hand soaps 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 31, 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: Nikolai 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 modify one ruling letter and revoke one ruling letter, both of which pertain to the tariff classification of liquid hand soap containing an organic surface-active agent. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) NY N250161, dated March 10, 2014 (Attachment A), and NY 249908, dated March 3, 2014 (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 five identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In NY N250161, CBP classified a liquid hand soap that constituted one of three component articles in a Holiday Duo Soap/Lotion Caddy set under heading 3401, HTSUS, specifically under sub-heading 3401.20.00, HTSUS, which provides for “Soap in other forms.” In NY N249908, CBP similarly classified a liquid hand and face soap under sub-heading 3401.20.00. It is now CBP’s position that the liquid hand and face soaps described in NY N250161 and NY 249908 are properly classified, by operation of GRIs 1 and 6, under heading 3401, HTSUS, specifically under subheading 3401.30.50, HTSUS, which provides for “Soap; organic surface-active products and preparations for use as soap, in the form of bars, cakes, molded pieces or shapes, whether or not containing soap; organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap; paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent: Organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap: Other”.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY N250161, revoke NY N249908, and revoke 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”) H1261126, 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: June 01, 2015

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N250161

March 10, 2014

CLA-2-34:OT:RR:NC:2:236

CATEGORY: Classification

TARIFF NO.: 3401.20.0000; 3304.99.5000;
7324.90.0000

MS. KELSEY DAWN FASON

PIER 1 IMPORTS

100 PIER 1 PLACE

FORT WORTH, TX 76102

RE: The tariff classification of “Holiday Duo Soap/Lotion Caddy” from China

DEAR MS. FASON:

In your ruling request received February 5, 2014, you requested a tariff classification ruling.

Your submission indicates that the “Holiday Duo Soap/Lotion Caddy” (VIN # PR13029K06-2) is sold as a retail set, intended to be used in the bathroom and kitchen. The product at issue consists of a 16.5 fluid ounce liquid hand soap, a 7.9 fluid ounce hand lotion, and a chrome colored iron caddy, designed to hold the soap and lotion plastic containers.

The articles are imported together and suitably packaged for retail sale; however, we have determined that the “Holiday Duo Soap/Lotion Caddy” is not a set for tariff classification purposes; therefore, each item will be classified separately in its appropriate heading.

The applicable subheading for the liquid hand soap will be 3401.20.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Soap; organic surface-active products and preparations for use as soap, in the form of bars, cakes, molded pieces or shapes, whether or not containing soap; organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap; paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent: Soap in other forms. The general rate of duty will be free.

The applicable subheading for the land lotion will be 3304.99.5000, HTSUS, which provides for Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Other: Other: Other. The general rate of duty will be free.

You have suggested classifying the iron caddy in 7323.91.5040, HTSUS; however, that classification is incorrect because this product is more specifically provided for under heading 7324, HTSUS.

The applicable subheading for the iron caddy will be 7324.90.0000, HTSUS, which provides for sanitary ware and parts thereof, of iron or steel, other, including parts. The general rate of duty will be free.

This merchandise may be subject to the requirements of the Toxic Substances Control Act (TSCA), which are administered by the U.S. Environmental Protection Agency. Information on the TSCA can be obtained by

contacting the EPA at 1200 Pennsylvania Avenue, N.W., Mail Code 70480, Washington, D.C., by telephone at (202) 554-1404, or by visiting their website at www.epa.gov.

This merchandise may be subject to the Federal Food, Drug, and Cosmetic Act and/or The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which are administered by the U.S. Food and Drug Administration (FDA). Information on the Federal Food, Drug, and Cosmetic Act, as well as The Bioterrorism Act, can be obtained by calling the FDA at 1-888-463-6332, or by visiting their website at www.fda.gov.

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 Nuccio Fera at (646) 733-3034.

Sincerely,

GWENN KLEIN KIRSCHNER

Acting Director

National Commodity Specialist Division

[ATTACHMENT B]

N249908

March 3, 2014

CLA-2-34:OT:RR:NC:2:236

CATEGORY: Classification

TARIFF NO.: 3401.20.0000

MR. BOB BUTLER
BERT DISTRIBUTING, LLC
6315 TAMARACK TRAIL
CUMMING, GA 30040

RE: The tariff classification of liquid hand and face soap from the United Kingdom

DEAR MR. BUTLER:

In your ruling request received January 30, 2014, you requested a tariff classification ruling on liquid hand and face soap.

Your submission describes the product at issue as a hand and face cleanser, designed to remove oil and dirt from the pores of the skin. The provided MSDS describes this product as a white liquid, containing surface-active agents and other substances. You have stated that this product's name is "Skin Redeemer" and will be imported in two-ounce squeeze bottles.

The applicable subheading for the liquid hand and face soap will be 3401.20.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Soap and organic surface-active products and preparations, in the form of bars, cakes, molded pieces or shapes, and paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent: Soap in other forms. The general rate of duty will be free.

This merchandise may be subject to the Federal Food, Drug, and Cosmetic Act and/or The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which are administered by the U.S. Food and Drug Administration (FDA). Information on the Federal Food, Drug, and Cosmetic Act, as well as The Bioterrorism Act, can be obtained by calling the FDA at 1-888-463-6332, or by visiting their website at www.fda.gov.

This merchandise may be subject to the requirements of the Toxic Substances Control Act (TSCA), which are administered by the U.S. Environmental Protection Agency. Information on the TSCA can be obtained by contacting the EPA at 1200 Pennsylvania Avenue, N.W., Mail Code 70480, Washington, D.C., by telephone at (202) 554-1404, or by visiting their website at www.epa.gov.

Perfumery, cosmetic, and toiletry products are subject to the requirements of the Food, Drug and Cosmetic Act, and the Fair Packaging and Labeling Act (FPLA), which are administered by the U.S. Food and Drug Administration. Questions regarding FDA requirements may be addressed to the U.S. Food and Drug Administration, Office of Cosmetics and Colors, 5100 Paint Branch Parkway, College Park, MD 20740-3835, telephone number (301) 436-1130.

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 Nuccio Fera at (646) 733-3034.

Sincerely,

GWENN KLEIN KIRSCHNER

Acting Director

National Commodity Specialist Division

[ATTACHMENT C]

HQ H261126
CLA-2 OT:RR:CTF:TCM H261126 NCD
CATEGORY: Classification

SHIRLEY SCHMIDT
TRADE AND PRODUCT COMPLIANCE MANAGER
PIER 1 IMPORTS (U.S.), INC.
100 PIER 1 PLACE, LEVEL 11
FORT WORTH, TEXAS 76102

Re: Modification of NY N250161, dated March 10, 2014; revocation of NY N249908, dated March 3, 2014; liquid hand and face soaps

DEAR Ms. SCHMIDT:

This is in response to your letter of December 15, 2014, on behalf of Pier 1 Imports (U.S.), Inc. ("Pier 1"), requesting reconsideration of New York Ruling Letter (NY) N250161, dated March 10, 2014, as it pertains to classification of a liquid hand soap component of a Holiday Duo Soap/Lotion Caddy Set ("Holiday Duo Set") under the Harmonized Tariff Schedule of the United States (HTSUS). In NY N250161, CBP classified the liquid hand soap under sub-heading 3401.20.00, HTSUS, which provides for "Soap; organic surface-active products and preparations for use as soap, in the form of bars, cakes, molded pieces or shapes, whether or not containing soap; organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap; paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent; Soap in other forms." We have reviewed that ruling and find it to be in error as to classification of the liquid hand soap, and we consequently intend to modify the ruling. A sample of the Holiday Duo Soap/Lotion Caddy Set was forwarded to our office for inspection and will be returned to you.

Additionally, we intend to revoke NY N249908, issued to Bert Distributing, LLC, on March 3, 2014, in which CBP also classified a liquid hand and face soap under subheading 3401.20.00, HTSUS. We have determined that this classification was incorrect and, for the reasons set forth below, intend to revoke NY N249908.

FACTS:

In NY N250161, CBP found that the subject Holiday Duo Set "consists of a 16.5 fluid ounce liquid hand soap, a 7.9 fluid ounce hand lotion, and a chrome colored iron caddy, designed to hold the soap and lotion plastic containers." CBP determined that the subject merchandise was not a set and classified the liquid hand soap, hand lotion, and iron caddy separately.

You do not dispute the classification of the hand lotion or iron caddy. Instead, you provide a list of ingredients of which the liquid hand soap is comprised, including water (92.2797%), sodium laureth sulfate (5.0000%), triethanolamine (0.70000%), benzophenone-4 (0.10000%), methylchloriso-thiazolinone (.0009%), and methylisothiazolinone (0.0003%), among others. You also state that the soap does not contain any aromatic or modified aromatic surface-active agents. CBP Laboratory and Scientific Services (LSS), upon analyzing the listed ingredients, verified the accuracy of your statement. Additionally, we have received a sample of the Holiday Duo Set and, in inspecting the sample, have noted that the label on the liquid hand

soap is entitled “hand wash with vitamin beads”, instructs the user to “[a]pply directly on hands”, and lists ingredients corresponding to those provided in your letter.

In NY N249908, CBP stated as follows with regard to the merchandise at issue:

[The] submission describes the product at issue as a hand and face cleanser, designed to remove oil and dirt from the pores of the skin. The provided [Material Safety Data Sheet (MSDS)] describes this product as a white liquid, containing surface-active agents and other substances.

We note that the MSDS provides a partial list of chemical ingredients that includes only coconut diethanolamide, of which the product is reportedly 1–10% comprised, and sodium lauryl trioxyethylene sulfate, of which the product is also reportedly 1–10% comprised. The CBP laboratory has confirmed, both in its report and in subsequent communications with our office, that both of these chemicals are organic surface-active agents but are not aromatic or modified aromatic surface-active agents.

ISSUE:

Whether the merchandise at issue is properly classified under subheading 3401.20.00, HTSUS, which provides for “Soap in other forms”, or under subheading 3401.30.50, HTSUS, which provides for “Organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap: Other”.

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. 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 GRIs 1 through 5.

As a preliminary matter, it is not disputed that the products at issue are classifiable under heading 3401 as soaps or organic surface-active products and preparations for use as soaps. Nor is it under dispute, with regard to the remaining Holiday Duo Set articles at issue in NY N250161, that CBP properly classified the hand lotion under subheading 3304.99.50, HTSUS, as a preparation for care of the skin, and properly classified the iron caddy under subheading 7324.90.00, HTSUS, as a sanitary ware.

With regard to the subject liquid hand soap, the 2015 HTSUS provisions under consideration are as follows:

- 3401** Soap; organic surface-active products and preparations for use as soap, in the form of bars, cakes, molded pieces or shapes, whether or not containing soap; organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap; paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent:
- 3401.20.00** Soap in other forms
- 3401.30** Organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap:
- 3401.30.10** Containing any aromatic or modified aromatic surface-active agent
- 3401.30.50** 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).

EN 34.01 provides, in pertinent part, as follows:

(I) **SOAP**

Soap is an alkaline salt (inorganic or organic) formed from a fatty acid or a mixture of fatty acids containing at least eight carbon atoms. In practice, part of the fatty acids may be replaced by rosin acids.

The heading covers only soap soluble in water, that is to say true soap. Soaps form a class of anionic surface-active agents, with an alkaline reaction, which lather abundantly in aqueous solutions.

There are three categories of soap:

Hard soaps, which are usually made with sodium hydroxide or sodium carbonate and comprise the bulk of the ordinary soaps. They may be white, coloured or mottled.

Soft soaps, which are made with potassium hydroxide or potassium carbonate. They are viscous and generally green, brown or pale yellow in colour. They may contain small quantities (generally not exceeding 5 %) of synthetic organic surface-active products.

Liquid soaps, which are solutions of soap in water, in some cases with a small quantity (generally not exceeding 5 %) of alcohol or glycerol added, *but not containing synthetic organic surface-active products*.

...

(III) **ORGANIC SURFACE-ACTIVE PRODUCTS AND PREPARATIONS FOR WASHING THE SKIN, IN THE FORM OF LIQUID OR CREAM AND PUT UP FOR RETAIL SALE, WHETHER OR NOT CONTAINING SOAP**

This part includes preparations for washing the skin, in which the active component consists wholly or partly of synthetic organic-surface active agents (which may contain soap in any proportion), **provided** they are in the form of liquid or cream and put up for retail sale. Such preparations not put up for retail sale are classified in **heading 34.02**.

(emphasis added). Thus, the EN distinguishes between “true” liquid soaps and other liquid products that may contain soap but also contain synthetic organic-surface active agents. We note that in adding subheading 3401.30 to the Nomenclature, the Harmonized System Committee (HSC) expressed its understanding that subheading 3401.30 would capture organic surface-active hygiene preparations presented as liquid “soaps,” while leaving true liquid soaps classifiable in subheading 3401.20. (See RSC/17 Doc 41.790 E, January 7, 1998). In other words, the determination of whether a product is classifiable in subheading 3401.30, as opposed to subheading 3401.20, turns on whether the product contains at least one organic surface-active agent.

EN 34.01 does not define “organic surface-active agent.” However, an extensive definition of this term is provided by the EN to heading 3402, which, prior to the creation of 3401.30 in 2002, covered products now classifiable in that subheading. See HQ 959886, dated May 7, 1998 (classifying face wash containing organic surface-active agents in 3402.20.50); NY E84563, dated August 13, 1999 (classifying body wash in 3402.20.50); (HSC/20 Doc. 41.600 Annexes E/9 + IJ/12, dated November 7, 1997). EN 34.02 provides, in relevant part, as follows:

Organic surface-active agents are capable of adsorption at an interface; in this state they display a number of physico-chemical properties, particularly surface activity (e.g., reduction of surface tension, foaming, emulsifying, wetting), which is why they are usually known as “surfactants”...

Organic surface-active agents may be:

- (1) **Anionic**, in which case they ionise in aqueous solution to produce negatively charged organic ions responsible for the surface activity. Examples are: sulphates and sulphonates of fats, vegetable oils (triglycerides) or resin acids derived from fatty alcohols; petroleum sulphonates, e.g., of alkali metals (including those containing a proportion of mineral oil), of ammonium or of ethanolamines; alkylpolyestersulphates; alkylsulphonates or alkylphenylethersulphonates; alkylsulphates, alkylarlsulphonates (e.g., technical dodecylbenzenesulphonates).
- ...
- (3) **Non-ionic**, in which case they do not produce ions in an aqueous solution. Their solubility in water is due to the presence in the molecules of functional groups which have a strong affinity for water. Examples are: products of the condensation of fatty alcohols, fatty acids or alkylphenols with ethylene oxide; ethoxylates of fatty acid amides.

The aforementioned CBP lab report describes sodium laureth sulfate and triethanolamine as surfactants. In addition, our own research confirms that sodium laureth sulfate, a type of sulphate, is an anionic surfactant, and that

coconut diethanolamide is a nonionic surfactant. See TONY HARGREAVES, CHEMICAL FORMULATION: AN OVERVIEW OF SURFACTANT-BASED PREPARATIONS USED IN EVERYDAY LIFE 64 (2003); HIROSHI IWATA & KUNIO SHIMADA, FORMULAS, INGREDIENTS AND PRODUCTION OF COSMETICS 65 (2013).

Both products at issue are in liquid form and are clearly designed for washing of the skin. The liquid hand soap in the Holiday Duo Set is in a bottle whose label is entitled “hand wash” and explicitly directs the user to apply the soap to the hands. Similarly, in NY N249908, the product is described as a liquid hand and face cleanser designed to remove oil and dirt from the pores of the skin.

In addition, both your submitted list of ingredients and the label of the sample bottle include sodium laureth sulfate and triethanolamine as chemical constituents of the liquid hand soap in NY N250161. In fact, according to these materials, sodium laureth sulfate is a main ingredient in the liquid hand soap component of the Holiday Duo Set, insofar as its content by volume is higher than that of any other ingredient barring water. Likewise, the MSDS for the liquid hand and face soap in NY N249908 lists sodium lauryl trioxyethylene sulfate and coconut diethanolamide as relatively prominent ingredients in the soap.

Consequently, as liquid skin cleansers containing organic surface-active agents, both products are described by subheading 3401.30. By extension, they fall outside the scope of subheading 3401.20, which, as discussed above, is reserved for soaps lacking such agents.

Having determined the products’ proper classification at the 6-digit subheading level, we now consider whether they are properly classified under subheading 3401.30.10, which applies to products containing aromatic or modified aromatic surface-active agents, or subheading 3401.30.50, which covers products lacking such agents. Additional U.S. Note 2 to Section VI provides as follows:

For the purposes of the tariff schedule:

- (a) The term “*aromatic*” as applied to any chemical compound refers to such compound containing one or more fused or unfused benzene rings;
- (b) The term “*modified aromatic*” describes a molecular structure having at least one six-membered heterocyclic ring which contains at least four carbon atoms and having an arrangement of molecular bonds as in the benzene ring or in the quinone ring, but does not include any such molecular structure in which one or more pyrimidine rings are the only modified aromatic rings present...

You assert that the subject merchandise contains no aromatic or modified aromatic surface-active agents. Based upon the aforementioned analysis of the subject merchandise by LSS, we agree with your assertion.

Accordingly, as liquids skin cleansers that contain organic surface-active agents but do not contain aromatic or modified aromatic surface-active agents, both products are properly classified in subheading 3401.30.50, HTSUS.

HOLDING:

By application of GRIs 1 and 6, the instant liquid hand and face soaps are classified under heading 3401, HTSUS, specifically subheading 3401.30.50,

HTSUS, which provides for “Organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap: Other”. The column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

In accordance with the above analysis, NY N250161, dated March 10, 2014, will be modified, and NY N249908, dated March 3, 2014, will be revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

CC: Bob Butler
Bert Distributing, LLC
6315 Tamarack Trail
Cumming, GA 30040

GENERAL NOTICE

19 CFR PART 177

REVOCAION OF ONE RULING LETTER, MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF PRINTED STICKERS FROM CHINA

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

ACTION: Revocation of one ruling letter, modification of one ruling letter and revocation of treatment relating to the classification of printed stickers 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 CBP is revoking one ruling letter and modifying one ruling letter concerning the classification of printed stickers from China under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Vol. 49, No. 14, on April 8, 2015. CBP received no comments in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 31, 2015.

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

SUPPLEMENTARY INFORMATION:

Background

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), notice proposing to revoke NY N056183, dated April 29, 2009, and modify NY N056197, dated April 23, 2009, was published on April 8, 2015, in Volume 49, Number 14, of the Customs Bulletin. CBP received no comments in response to this notice.

Although in this notice CBP is specifically referring to NY N056183 and NY N056197, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during the notice period.

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N056183 and modifying NY N056197 in order to reflect the proper classification of this merchandise pursuant to the analysis set forth in Headquarters Ruling Letters ("HQ") H072717 and H072718, set forth as attach-

ments to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: June 01, 2015

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ H072717

June 01, 2015

CLA-2 OT:RR:CTF:TCM H072717 TNA

CATEGORY: Classification

TARIFF NO.: 4823.90.86, 4911.99.60

NANCY QUIRK
EVANS AND WOOD & CO.
612 E. DALLAS RD., STE. 200
GRAPEVINE, TX 76051

RE: Revocation of NY N056183; Classification of printed stickers from China

DEAR MS. QUIRK:

This letter is in reference to New York Ruling Letter (“NY”) N056183, issued to Evans and Wood & Company on April 28, 2009, concerning the tariff classification of chipboard letters, numbers, and punctuation from China. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under subheading 4821.10.20, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Paper and paperboard labels of all kinds, whether or not printed: Printed: Printed in whole or in part by a lithographic process.” We have reviewed NY N056183 and found it to be incorrect. For the reasons set forth below, we hereby revoke NY N056183. Your sample is being returned in accordance with your instructions.

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 N056183 was published on April 8, 2015, in Volume 49, Number 14, of the Customs Bulletin. CBP received no comments in response to this notice.

FACTS:

The subject merchandise consists of two different packages of three-dimensional stickers. Item #509109, entitled “Chipboard Monogram O,” consists of six lithographically, design-printed, die-cut stickers made of paper or paperboard and depicting various forms of the letter “O.” Most are cut to shape the letter itself. The lithographic printing provides only the color and geometric design elements within the shape. Only two are printed with the letter onto rectangular paperboard. The stickers are decorated with small die-cut floral shapes and are embellished with glitter, brads and imitation pearls. The backs contain a square adhesive. The stickers range in size from approximately 1 ¼ inch to 3 inches in diameter.

Item #143073, entitled “Chipboard Wedding,” consists of nine lithographically printed stickers with a wedding theme. Six of them are made of paper or paperboard, and one, which consists of three pieces, is made of textiles. Some have words printed on them, including such words and phrases as “Forever,” “Promise,” “Wedding Day,” “Love of my Life, Love You Forever, and “To Have and to Hold.” The fronts of the merchandise are decorated with embellishments of glitter, braids, sequins and gemstones. Adhesive foam squares are attached to the back. The stickers range in size from approximately 2 inches wide to approximately 4 1/2 inches wide.

In NY N056183, dated April 28, 2009, CBP classified both Item #509109 and Item #143073 under subheading 4821.10.2000, HTSUS, which provides

for “paper and paperboard labels of all kinds, whether or not printed: printed: printed in whole or in part by a lithographic process.”

ISSUE:

Where are the subject stickers classified?

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

4821	Paper and paperboard labels of all kinds, whether or not printed:
4821.10	Printed
4821.10.20	Printed in whole or in part by a lithographic process
	* * *
4823	Other paper, paperboard, cellulose wadding and webs of cellulose fibers, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibers:
4823.90	Other:
	Other:
	Other:
4823.90.86	Other:
	* * *
4911	Other printed matter, including printed pictures and photographs:
	Other:
4911.91	Pictures, designs and photographs:
	Other:
4911.91.30	Over 0.51 mm in thickness
	* * *
4911.99	Other
	Other
4911.99.60	Printed on paper in whole or in part by a lithographic process

Note 12 to Chapter 48, HTSUS, states, in pertinent part, the following:

Except for the articles of heading 4814 or 4821, paper, paperboard, cellulose wadding and articles thereof, printed with motifs, characters or pictorial representations, which are not merely incidental to the primary use of the goods, fall in chapter 49.

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 these headings. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN for heading 4821, HTSUS, states, in pertinent part:

This heading covers all varieties of paper and paperboard labels of a kind used for attachment to any type of article for the purpose of indicating its nature, identity, ownership, destination, price, etc. They may be of the stick-on type (gummed or self-adhesive) or designed to be affixed by other means, e.g., string.

These labels may be plain, printed to any extent with characters or pictures, gummed, fitted with ties, clasps, hooks or other fasteners or reinforced with metal or other materials. They may be perforated or put up in sheets or booklets.

Self-adhesive printed stickers designed to be used, for example, for publicity, advertising or mere decoration, e.g., “comic stickers” and “window stickers,” are excluded (heading 49.11). The heading does not cover “labels” consisting of a relatively strong sheet of base metal covered on one or both sides with a thin sheet of paper, whether or not printed (headings 73.26, 76.16, 79.07, etc., or heading 83.10).

The EN to subheading 4821.10, HTSUS, states, in pertinent part:

This subheading covers all printed labels regardless of the significance or extent of the printing thereon. Labels printed, for example, with lines or other simple borders or merely incorporating small motifs or other symbols are therefore regarded as “printed” for the purposes of this subheading.

The EN to heading 4823, HTSUS, states, in pertinent part:

This heading includes:

- (A) Paper and paperboard, cellulose wadding and webs of cellulose fibres, not covered by any of the previous headings of this Chapter:
- in strips or rolls of a width not exceeding 36 cm;
 - in rectangular (including square) sheets of which no side exceeds 36 cm in the unfolded state;
 - cut to shape other than rectangular (including square).

It is to be noted, however, that paper and paperboard in strips or rolls, or in rectangular (including square) sheets, of any size, of **headings 48.02, 48.10 and 48.11** remain classified in these headings.

- (B) Articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibres, not covered by any of the previous headings of this Chapter nor excluded by Note 2 to this Chapter.

The General EN to Chapter 49, HTSUS, states, in pertinent part:

With the few **exceptions** referred to below, this Chapter covers all printed matter of which the essential nature and use is determined by the fact of its being printed with motifs, characters or pictorial representations.

The EN to heading 4911, HTSUS, states, in pertinent part:

This heading covers all printed matter (including photographs and printed pictures) of this Chapter (see the General Explanatory Note above) but not more particularly covered by any of the preceding headings of the Chapter...

The heading includes the following in addition to the more obvious products: ...

[C]ertain articles of stationery with printing which is merely incidental to their primary use for writing or typing are classified in **Chapter 48** (see Note 12 to Chapter 48 and in particular the Explanatory Notes to **headings 48.17 and 48.20**).

(10) Self-adhesive printed stickers designed to be used, for example, for publicity, advertising or mere decoration, e.g., “comic stickers” and “window stickers.”

The subject merchandise consists of two different types of three-dimensional stickers. The stickers of Item #509109 are all made of similar paperboard and contain similar designs. Thus, the package of these stickers can be classified under GRI 1. In NY N056183, CBP classified Item #509109 in heading 4821, HTSUS, as paperboard labels. However, while paper labels of heading 4821, HTSUS, are printed, they are used to give information about the merchandise to which they are affixed. Such labels tend to indicate the nature, identity, ownership, destination, price, etc. of this merchandise. See Note 12 to Chapter 48, HTSUS; EN 48.21. In fact, the types of labels that CBP has typically classified in heading 4821, HTSUS, have identified merchandise as gifts or have provided other information about the merchandise such as the country of origin. See, e.g., NY N081716, dated November 4, 2009; NY N081718, dated November 4, 2009; NY N058601, dated May 15, 2009. In other words, the nature and use of the printed matter of heading 4821, HTSUS, is determined by the printing. A label, by definition, is a way of identifying that which it labels. Hence, the printing on a label is not merely incidental to the use of the good. To the contrary, the printing is a label of heading 4821, HTSUS, if the entire reason for existence of a label is to be at all useful as such.

By contrast, Item #509109, consists of colorful, embellished stickers that are intended to decorate objects rather than to give information about them. In addition, paper labels tend to be flat and the subject merchandise is three-dimensional. As such, the subject merchandise is not described by the terms of heading 4821, HTSUS, and must be classified elsewhere.

Heading 4823, HTSUS, provides for articles of paper that have been cut to a shape other than rectangular. Merchandise of this heading can be in the shape of a square, and are cut to a width and length that does not exceed 36 cm. See heading 4823, HTSUS; EN 48.23. Item #509109 meets the terms of this heading and is not excluded by the terms of Note 12 to Chapter 48, HTSUS. See Note 12 to Chapter 48, HTSUS; EN 48.23. Lastly, we note that although the stickers of Item #509109 contain glitter and some contain fake pearls, both are for decoration and form only a minimal amount of the total material. As a result, we find the glitter and fake pearls to be de minimis components that do not affect the classification of the subject chipboard

letters. Classification in heading 4823, HTSUS, is also consistent with prior CBP rulings, which have classified self-adhesive, lithographically printed stickers of the kind used for scrapbook embellishments in that heading. *See, e.g.*, NY N040239, dated October 30, 2008; NY L83150, dated March 17, 2005.

In its request for reconsideration, Evans and Woods suggests classification in heading 4911, HTSUS, as “Other printed matter, including printed pictures and photographs.” It is not disputed that the subject stickers are self-adhesive and are made of lithographically printed paper. However, in order to be classified in heading 4911, HTSUS, the printed motifs, characters or pictorial representations must determine the nature of the merchandise rather than being merely incidental to the primary use of the goods. *See* Note 12 to Chapter 48, HTSUS; EN 49.11.

Citing CBP’s Informed Compliance Publication entitled “Decals, Decorative Stickers and Window Clings,” dated January 2007, Evan and Wood argues that the difference between printed paper labels of heading 4821, HTSUS, and the printed paper stickers of heading 4911, HTSUS, is a matter of principal use. The company argues that because its merchandise is decorative rather than utilitarian, it should be classified under heading 4911, HTSUS.

Indeed, the products of heading 4821, HTSUS, are utilitarian and those of 4911, HTSUS, are generally decorative. However, this is not the determining factor for classification in either heading. Note 12 to Chapter 48, HTSUS, states that the printing, characters or motifs on products of Chapter 48, HTSUS, is “merely incidental” to those products. This is in contrast to the printing, characters, or motifs on products of heading 4911, HTSUS, which define the nature and use of the product. Therefore, products of headings 4821 and 4911, HTSUS, must have printing that determines that use and nature of the good as a whole.

By contrast, the printing on Item #509109 is merely incidental to the use of the good. These stickers are purely decorative. The printing on these letters consists of circles, squares, and other shapes in different colors. This printing does not convey the letter “O” that the whole shape of the stickers conveys. This printing does not change the fact that the stickers are “Os.” Thus, the printing is merely incidental to the primary use of the goods, and Item #509109 cannot be classified in heading 4911, HTSUS.

The other item at issue here, Item #143073, is a package of nine stickers, some of which are made of textile, and others of which are made of paper. As such, the package as a whole cannot be classified in accordance with GRI 1, as there is no single heading which covers both the textile and the paper stickers. Furthermore, none of the headings at issue provide a more specific description of the merchandise; as a result, GRI 3(a) does not resolve the matter, and the analysis proceeds to GRI 3(b). GRI 3(b) states, in pertinent part, that:

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

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.

Explanatory Note VIII to GRI 3(b) states, in pertinent part, that:

The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, weight, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods.

Explanatory Note (X) to GRI 3(b) states, impertinent part, that:

For the purposes of this Rule, the term “put up in sets for retail sale” shall be taken to mean goods which:

- (a) consist of at least two different articles which are prima facie classifiable in different headings...
- (b) consist of products or articles put up together to meet a particular needs or carry out a specific activity; and
- (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

Item #143073 contains components that are made of textile and components that are made of paper. They are put up together in a single package to be sold as such to the consumer. Furthermore, the merchandise consists of stickers that are put up together as materials for scrapbooking, which is a specific activity. As a result, the merchandise constitutes a set under GRI 3(b) and must be classified according to its essential character. Six of the nine stickers are made of paper or paperboard. One item, consisting of three pieces, is made of textile. Paper clearly constitutes the greatest number and surface area of these items. As a result, we find that the paper constitutes this set's essential character of the good.

In NY N056183, CBP classified Item #143073 in heading 4821, HTSUS, as “Paper and paperboard labels of all kinds, whether or not printed.” Much like Item #509109 discussed above, Item #143073 does not meet the terms of heading 4821, HTSUS, because it does not consist of flat, printed labels designed to be affixed to merchandise for the purpose of providing information etc. As such, Item #143073 is precluded from heading 4821, HTSUS, and we examine alternate headings.

The stickers of Item #143073 are gummed, die-cut, lithographically printed stickers on paperboard that are designed to have a three-dimensional appearance and be affixed to the surface of another object. They have been embellished with glitter, grommets, beads, and beaded chains, and most are printed with words and phrases such as “love of my life, love you forever,” “to have and to hold,” etc. These words form a significant part of the merchandise's design; it is these letters, rather than the rest of the sticker, that make the product a wedding product as its title denotes. As such, the printed words on these stickers are more than merely incidental. As a result, Item #143073 is not described by the terms of heading 4823, HTSUS.

Because this merchandise is made of paper and printed with motifs and words that are more than merely incidental to the primary use of the goods, it is described by the terms of heading 4911, HTSUS, in accordance with Note 12 to Chapter 48, HTSUS; EN 49.11. Specifically, Item #143073 is described by the terms of subheading 4911.99.60, HTSUS, which provides for: “other printed matter, including printed pictures and photographs: other: other: Printed on paper in whole or in part by a lithographic process.”

We note that Evans and Wood argues for classification of Item #143073 in subheading 4911.91.30, HTSUS. CBP has classified merchandise in this subheading when the merchandise consists of photographs, reproductions thereof, or framed prints of paintings. *See, e.g., HQ W968295*, dated January 19, 2007; *HQ 963858*, dated August 13, 2001. This is in contrast to the subject merchandise, which contains none of these. Furthermore, CBP has stated that at the six digit subheading level, subheading 4911.91, HTSUS, includes other printed matter, pictures, designs, and photographs, while subheading 4911.99, HTSUS, covers printed matter other than pictures, designs, and photographs- that is, printed matter such as characters, symbols, and letters. *See HQ 963858*. As a result, *HQ 963858* classified cards with photos on them in subheading 4911.91, HTSUS.

By contrast, the subject merchandise can readily be distinguished from the merchandise of these rulings, as it contains no photographs or reproductions of photographs; neither does it contain framed prints of paintings. To the contrary, the subject merchandise consists of stickers containing symbols and words associated with weddings and love. As such, these stickers are described by the terms of subheading 4911.99, HTSUS, and will be classified there.

HOLDING:

Under the authority of GRI 1, Item #509109 is provided for in subheading 4823.90.86, HTSUS, which provides for “other paper, paperboard, cellulose wadding, and webs of cellulose fibers, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibers: other: other: other: other: other.” The applicable duty rate is free. Under the authority of GRI 3(b), Item #143073 is classified under subheading 4911.99.60, which provides for “other printed matter, including printed pictures and photographs: other: other: other: Printed on paper in whole or in part by a lithographic process.” As such, the duty rate is free.

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

EFFECT ON OTHER RULINGS:

NY N056183, dated April 29, 2009, is REVOKED.

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

Sincerely,

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

[ATTACHMENT B]

HQ H072718

June 01, 2015

CLA-2 OT:RR:CTF:TCM H072718 TNA

CATEGORY: Classification

TARIFF NO.: 4823.90.86

NANCY QUIRK
EVANS AND WOOD & CO.
612 E. DALLAS RD., STE. 200
GRAPEVINE, TX 76051

RE: Modification of NY N056197; Classification of scrapbooking stickers from China

DEAR Ms. QUIRK:

This letter is in reference to New York Ruling Letter (“NY”) N056197, issued to Evans and Wood & Company on April 23, 2009, concerning the tariff classification of three-dimensional (“3-D”) scrap booking stickers from China. In that ruling, U.S. Customs and Border Protection (“CBP”) classified Item #876516, a set of scrapbooking stickers, under subheading 4821.90.20, Harmonized Tariff Schedule of the United States (“HTSUS”), as “paper and paperboard labels of all kinds, whether or not printed: other (than printed): self-adhesive.” Evans and Wood argue for classification in heading 4911, HTSUS, as “other printed matter.” We have reviewed NY N056183 and found it to be incorrect. However, we have found the correct classification for one item to be in a third heading, as other articles of paperboard. For the reasons set forth below, we hereby modify NY N056197 with respect to the classification of Item #876516. Your sample is being returned in accordance with your instructions.

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 N056197 was published on April 8, 2015, in Volume 49, Number 14, of the Customs Bulletin. CBP received no comments in response to this notice.

FACTS:

In NY N056197, CBP classified four different packages of scrapbooking stickers from China. Only one of those packages, Item #876516, entitled “La Petites,” or “Fall Icons,” is at issue in this reconsideration. Item #876516 consists of die-cut representations of autumn-related items: a squirrel, acorns, leaves, and a rake in a basket full of leaves. These items are each made up of different materials. The leaves and acorns are made of paper and paperboard. The leaves also have plastic gems on them. The squirrel is made of felt, the basket is made of textile, and the rake and leaves are made of paper and paperboard. A sample of Item #876516 was received and examined by this office, and is being returned as per your request.

ISSUE:

Whether lithographically printed stickers made of paper or paperboard or textile should be classified under subheading 4821.90.20, HTSUS, as paper and paperboard labels of all kinds, whether or not printed: printed: printed in whole or in part by a lithographic process or under subheading 4823.90.86, HTSUS, as other paper, paperboard, cellulose wadding and webs of cellulose

fibers, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibers?

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

4821	Paper and paperboard labels of all kinds, whether or not printed:
4821.10	Printed
4821.10.20	Printed in whole or in part by a lithographic process
	* * *
4823	Other paper, paperboard, cellulose wadding and webs of cellulose fibers, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibers:
4823.90	Other:
	Other:
	Other:
4823.90.86	Other
	* * *
4911	Other printed matter, including printed pictures and photographs:
	Other:
4911.91	Pictures, designs and photographs:
	Other:
4911.91.30	Over 0.51 mm in thickness
4911.99	Other
	Other
4911.99.60	Printed on paper in whole or in part by a lithographic process

Note 12 to Chapter 48, HTSUS, states, in pertinent part, the following:

Except for the articles of heading 4814 or 4821, paper, paperboard, cellulose wadding and articles thereof, printed with motifs, characters or pictorial representations, which are not merely incidental to the primary use of the goods, fall in chapter 49.

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 these headings. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN for heading 4821, HTSUS, states, in pertinent part:

This heading covers all varieties of paper and paperboard labels of a kind used for attachment to any type of article for the purpose of indicating its nature, identity, ownership, destination, price, etc. They may be of the stick-on type (gummed or self-adhesive) or designed to be affixed by other means, e.g., string.

These labels may be plain, printed to any extent with characters or pictures, gummed, fitted with ties, clasps, hooks or other fasteners or reinforced with metal or other materials. They may be perforated or put up in sheets or booklets.

Self-adhesive printed stickers designed to be used, for example, for publicity, advertising or mere decoration, e.g., “comic stickers” and “window stickers,” are excluded (heading 49.11).

The heading does not cover “labels” consisting of a relatively strong sheet of base metal covered on one or both sides with a thin sheet of paper, whether or not printed (headings 73.26, 76.16, 79.07, etc., or heading 83.10).

The EN to subheading 4821.10, HTSUS, states, in pertinent part:

This subheading covers all printed labels regardless of the significance or extent of the printing thereon. Labels printed, for example, with lines or other simple borders or merely incorporating small motifs or other symbols are therefore regarded as “printed” for the purposes of this subheading.

The EN for heading 4823, HTSUS, states, in pertinent part:

This heading includes:

(A) Paper and paperboard, cellulose wadding and webs of cellulose fibres, not covered by any of the previous headings of this Chapter:

- in strips or rolls of a width not exceeding 36 cm;
- in rectangular (including square) sheets of which no side exceeds 36 cm in the unfolded state;
- cut to shape other than rectangular (including square)...

(B) Articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibres, not covered by any of the previous headings of this Chapter nor excluded by Note 2 to this Chapter.

Thus the heading includes:

(1) Filter paper and paperboard (folded or not). Generally these are in shapes other than rectangular (including square), such as circular filter papers and boards...

(3) Paper and paperboard, of a kind used for writing, printing or other graphic purposes, not covered in the earlier headings of this Chapter, cut to shape other than rectangular (including square)....

The EN to heading 4911, HTSUS, states, in pertinent part, the following:

This heading covers all printed matter (including photographs and printed pictures) of this Chapter (see the General Explanatory Note above) but not more particularly covered by any of the preceding headings of the Chapter...

Certain printed articles may be intended for completion in manuscript or typescript at the time of use but remain in this heading provided they are essentially printed matter (see Note 12 to Chapter 48)...

On the other hand, certain articles of stationery with printing which is merely incidental to their primary use for writing or typing are classified in Chapter 48 (see Note 12 to Chapter 48 and in particular the Explanatory Notes to headings 48.17 and 48.20)...

The heading includes the following in addition to the more obvious products:...

(10) Self-adhesive printed stickers designed to be used, for example, for publicity, advertising or mere decoration, e.g., “comic stickers” and “window stickers.”...

The following articles, in particular, are also excluded from this heading:...

(b) Goods of heading 39.18, 39.19, 48.14 or 48.21 or printed paper products of Chapter 48 in which the printed characters or pictures are merely incidental to the primary use of the products.

We begin by noting that the scrapbooking stickers of Item #876516 are all made of different materials. The leaves, acorns, the rake and the leaves are all made of paper and paperboard, which are provided for in Chapter 49, HTSUS. Furthermore, the leaves and acorns have plastic on them, which is provided for in Chapter 39, HTSUS. The squirrel is made of felt, which is provided for in heading 5602, HTSUS. The basket is made of textile, whose classification in the headings of Section XI, HTSUS, depends on the specific material. Thus, no single heading completely describes the subject merchandise, and it cannot be classified under GRI 1. As a result, the analysis moves to GRI 3(a). No single heading under consideration most specifically describes the subject merchandise. Thus, the analysis moves to GRI 3(b), and we consider whether Item #876516 can be considered a set for classification purposes. GRI 3(b) states, in pertinent part, that:

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

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.

Explanatory Note VIII to GRI 3(b) states, in pertinent part, that:

The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, weight, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods.

Explanatory Note (X) to GRI 3(b) states, impertinent part, that:

For the purposes of this Rule, the term “put up in sets for retail sale” shall be taken to mean goods which:

- (a) consist of at least two different articles which are prima facie classifiable in different headings...
- (b) consist of products or articles put up together to meet a particular needs or carry out a specific activity; and
- (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

The merchandise in question contains multiple items, made of multiple materials, that are put up together in a single package to be sold as such to the consumer. Furthermore, the merchandise consists of stickers with an autumn theme that are put up together as materials for scrapbooking, which is a specific activity. As a result, the merchandise constitutes a set under GRI 3(b) and must be classified according to its essential character. *See* Explanatory Note IX to GRI 3(b).

One item in the subject merchandise, the squirrel, is made of felt. One item, the basket, is made of textile. The merchandise's other items, such as the leaves, the acorns, and the rake, are made of paper, and the leaves also contain plastic gems. Hence, the greatest surface area and number of items in this merchandise are represented by the paper material. As a result, we find that the paper constitutes the essential character of this set.

In NY N056197, CBP classified the subject merchandise under heading 4821, HTSUS. Upon reconsideration, we note that heading 4821, HTSUS, provides for paper labels used to give information about the merchandise to which they are affixed. Such labels tend to indicate the nature, identity, ownership, destination, price, etc. of this merchandise. *See* EN 48.21. The types of labels that CBP has typically classified in heading 4821, HTSUS, for example, have identified merchandise as gifts or have provided other information about the merchandise such as the country of origin. *See, e.g.,* NY N081716, dated November 4, 2009; NY N081718, dated November 4, 2009; NY N058601, dated May 15, 2009.

By contrast, the subject merchandise consists of stickers in various shapes that depict acorns, leaves, and other items associated with autumn. They are intended to decorate objects rather than giving information about them. In addition, they are three-dimensional and have decorations that are designed to make them appear more so. This further distinguishes them from the flat paper labels that are classified in heading 4821, HTSUS. As a result, the subject merchandise is not described by the terms of heading 4821, HTSUS, and we examine other headings.

In its request for reconsideration, Evans and Woods requests classification in heading 4911, HTSUS, as "Other printed matter, including printed pictures and photographs." It is not disputed that the subject stickers are self-adhesive and are made of lithographically printed paper. Citing CBP's Informed Compliance Publication entitled "Decals, Decorative Stickers and Window Clings," dated January 2007, Evan and Wood argues that the difference between printed paper labels of heading 4821, HTSUS, and the printed paper stickers of heading 4911, HTSUS, is a matter of principal use. The company therefore argues that because its merchandise is decorative rather than utilitarian, it should be classified under heading 4911, HTSUS.

In order to be classified in heading 4911, HTSUS, the printed motifs, characters or pictorial representations must determine the nature of the merchandise rather than being merely incidental to the primary use of the

goods. See Note 12 to Chapter 48, HTSUS; EN 49.11. As Evans and Woods notes, the products of heading 4821, HTSUS, are utilitarian and those of 4911, HTSUS, are generally decorative. However, this is not the only factor for determining classification in either heading. Note 12 to Chapter 48, HTSUS, specifically states that the printing, characters or motifs on products of Chapter 48, HTSUS, is “merely incidental” to those products. This is in contrast to the printing, characters, or motifs on products of heading 4911, HTSUS, which define the nature and use of the product.

In the present case, the subject stickers are lithographically printed. However, it is the shapes of the stickers, not the printing, that conveys the autumn themes of this merchandise. The acorns, squirrel, leaves, etc. of the subject stickers have been produced by cutting the printed stickers into their specific shapes. Furthermore, these stickers have not been printed with any lettering or photographs that would convey any motifs. Thus, the printing on these stickers conveys their color, but little else. As a result, the printing is “merely incidental” to these stickers, and they cannot be classified in heading 4911, HTSUS.

Heading 4823, HTSUS, provides for “Other paper, paperboard, cellulose wadding and webs of cellulose fibers, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibers.” It includes articles of paper that have been cut to a shape other than rectangular. Merchandise of this heading is cut to a width and length that does not exceed 36 cm. See heading 4823, HTSUS; EN 48.23. Item #876516 consists of paper stickers that have been cut to an exact shape and size that is smaller than 36 cm. As a result, the subject merchandise meets the terms of heading 4823, HTSUS, and will be classified there. This conclusion is consistent with prior CBP rulings, which have classified self-adhesive, lithographically printed stickers of the kind used for scrapbook embellishments in heading 4823, HTSUS. See, e.g., NY N040239, dated October 30, 2008; NY L83150, dated March 17, 2005.

HOLDING:

Under the authority of GRIs 3(b), Item #876516 is provided for in subheading 4823.90.86, HTSUS, which provides for other paper, paperboard, cellulose wadding, and webs of cellulose fibers, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibers: other: other: other: other: other. The applicable duty rate is free.

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

EFFECT ON OTHER RULINGS:

NY N056197, dated April 23, 2009, is MODIFIED with respect to the classification of Item #876516.

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

Sincerely,

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

GENERAL NOTICE
19 CFR PART 177

**PROPOSED REVOCATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A WAX DEPILATORY KIT
FOR HAIR REMOVAL**

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

ACTION: Notice of proposed revocation of a ruling letter and revocation of treatment concerning the tariff classification of certain wax depilatory kits designed for hair removal.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the tariff classification of a wax depilatory kit designed for hair removal under the Harmonized Tariff Schedule of the United States (HTSUS). The kit consists of a hand-held electric depilator, wax cartridge, an after-depilation oil, and fabric strips. CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATES: Comments must be received on or before July 31, 2015.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

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

SUPPLEMENTARY INFORMATION:

Background

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the tariff classification of a wax depilatory kit consisting of a hand-held electric depilator, wax cartridge, an after-depilation oil, and fabric strips. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) D83023, dated October 22, 1998 (Attachment A), this notice covers any rulings of 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 intends to revoke any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer’s or CBP’s previous interpretation of the HTSUS. 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 D83023, CBP classified the “BaByliss Institut”, a wax depilatory kit consisting of a hand-held electric depilator, wax cartridge, an after-depilation oil, and fabric strips, under subheading 8543.89.9695, HTSUS, which provides for, “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter...”. Subheading 8543.89.9695 has since been changed to subheading 8543.70.96, HTSUS.

It is now CBP’s position that the wax depilatory kit is properly classified under subheading 8516.79.00, HTSUS, as “Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof: Other.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY D83023, and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling (HQ) H241023, (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, we will give consideration to any written comments timely received.

Dated: June 01, 2015

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY D83023

October 22, 1998

CLA-2-85:RR:NC:1: 112 D83023

CATEGORY: Classification

TARIFF NO.: 8543.89.9695

MR. ART TAYLOR
CONAIR CORPORATION
150 MILFORD ROAD
EAST WINDSOR, NJ 08520

RE: The tariff classification of a roll-on waxer from China

DEAR MR. TAYLOR:

In your letter dated September 25, 1998 you requested a tariff classification ruling.

As indicated by the submitted sample and descriptive literature, the roll-on waxer, identified as the "BaByliss Institut", is a wax depilator kit designed for hair removal. The kit consists of a hand-held electric depilator, wax cartridges, an after-depilation oil, and fabric strips. In operation, the depilator rolls the heated wax onto the skin, and, once this is completed, the user applies the fabric bands to the skin. The bands are then lifted from the skin, thereby removing the hair.

The applicable subheading for the "BaByliss Institut" roll-on waxer kit will be 8543.89.9695, Harmonized Tariff Schedule of the United States (HTS), which provides for other electrical machines and apparatus, ..., not specified or included elsewhere in Chapter 85, HTS. The rate of duty will be 2.9 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 David Curran at 212-466-5680.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H241023
CLA-2OT:RR:CTF:TCM: H213716 ERB
CATEGORY: Classification
TARIFF NO.: 8516.79.00

MR. ART TAYLOR
CONAIR CORPORATION
150 MILFORD ROAD
EAST WINDSOR, NJ 08520

RE: Revocation of NY D83023; Tariff classification of a wax depilatory kit designed for hair removal

DEAR MR. TAYLOR:

U.S. Customs and Border Protection (CBP) issued you, on behalf of Conair Corporation, New York Ruling Letter (NY) D83023, dated October 22, 1998. NY D83023 pertains to the tariff classification under the Harmonized Tariff Schedule of the United States, (HTSUS) of a wax depilatory kit designed for hair removal. We have since reviewed NY D83023 and find it to be in error.

FACTS:

NY D83023 states the following:

As indicated by the submitted sample and descriptive literature, the roll-on waxer, identified as the “BaByliss Institut” is a wax depilator [sic] kit designed for hair removal. The kit consists of a hand-held electric depilator, wax cartridges, an after-depilation oil, and fabric strips. In operation, the depilator rolls the heated wax onto the skin, and, once this is completed, the user applies the fabric bands to the skin. The bands are then lifted from the skin, thereby removing the hair.

The applicable subheading for the “BaByliss Institut” roll-on waxer kit will be 8543.89.9695, Harmonized Tariff Schedule of the United States (HTS), which provides for other electrical machines and apparatus, ..., not specified or included elsewhere in Chapter 85, HTS. The rate of duty will be 2.9 percent ad valorem.

Subheading 8543.89.9695, HTSUS, has since been changed to 8543.70.9650.

ISSUE:

Whether the subject wax depilatory kit which utilizes an electrical heating device is classified as an other electrothermic appliance used for domestic purposes, in heading 8516, HTSUS, or whether they are provided for as other electrical machines having individual functions, in heading 8543, HTSUS.

LAW AND ANALYSIS:

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

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

8516 Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof:

8543 Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:

GRI 3 guides the analysis when classifying goods that are mixtures, composite goods, or goods put up in sets for retail sale, because those goods are, *prima facie*, classifiable under two or more headings. GRI 3(b) provides as follows:

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

A “sets” analysis pursuant to GRI 3(b) is appropriate in this context, as no single heading describes all the products which are packaged and sold together.

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

The EN (X) to GRI 3(b) is relevant here and states, in pertinent part, the following:

(X) For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:

- (a) Consist of at least two different articles which are, *prima facie*, classifiable in different headings. Therefore, for example, six fondue forks cannot be regarded as a set within the meaning of this rule;
- (b) Consist of products or articles put up together to meet a particular need or carry out a specific activity; and
- (c) Are put up in a manner suitable for sale directly to users without repacking (e.g. in boxes or cases or on boards).

The term therefore covers sets consisting, for example, of different food-stuffs intended to be used together in the preparation of a ready-to-eat dish or meal.

For the sets mentioned above, the classification is made according to the component or components taken together, which can be regarded as conferring on the set as a whole its essential character.

The EN 85.16, subsection (E) Other Electro-Thermic Appliances of a Kind Used For Domestic Purposes is also relevant. It states, in part:

This group includes all electro-thermic machines and appliances provided they are normally used in the household.

The subject merchandise is *prima facie* composed of at least two different articles which are classifiable in different headings. Therefore the first criteria of the EN (X) to GRI 3(b) is satisfied.

In operation of the subject wax depilatory kit, the user rolls the heated wax onto the skin by using the hand-held electric depilator. Once this is completed, the user applies the fabric bands to the skin. As the fabric bands are lifted from the skin, the hair is removed. Therefore, the goods are put up together to meet the particular need or specific activity of removing unwanted body hair. Thus, the second criteria of the EN (X) to GRI 3(b) is satisfied.

Finally, the goods are packaged together suitable for sale directly to the consumer without repacking. The third criteria to the EN (X) subsection (c) is satisfied. The subject merchandise is therefore a “set” for tariff purposes, and classification will be made according to the component which imparts the essential character.

Packaged together with the hand-held electric depilator are wax cartridges, an after-depilation oil, and fabric strips. The bulk, weight, and cost of the individual components of this set clearly weigh in favor of the hand-held electric depilator imparting the essential character of the set. Furthermore, the cartridges, oil, and fabric strips are supplies which are consumed as the individual uses the hand-held device. They are replenished as needed, but the hand-held device is used repeatedly. The value of the kit to the consumer is in the hand-held device. Therefore, the hand-held electric depilator imparts the goods essential character and classification will be made pursuant to this component, which is a thermoelectric device. Thermoelectric means heat is produced by electricity. Devices described as such are classified in Chapter 85, as electrical machinery.

The hair-removal system is not manufactured, designed, packaged, or marketed for commercial or industrial use. It is made for individuals to use in their home, or in other words, for domestic use. Heading 8543, HTSUS, states that goods which are not specified or included elsewhere in this chapter (Chapter 85) are classified therein. However, the subject merchandise is more specifically described by the tariff terms of heading 8516, HTSUS, as an other electrothermic appliance of a kind used for domestic purposes. Therefore, classification in heading 8543, HTSUS is precluded. Further, classification in heading 8516, HTSUS, is consistent with other Customs rulings of similar merchandise. *See* NY G86638, dated February 6, 2001 (classifying an electrothermic device used in the home to warm and moisturize hands and feet in heading 8516, HTSUS); *and see* NY E83637, dated July 8, 1999 (classifying a hot wax bath, for use in the home, described as an electric heating resistor, in heading 8516, HTSUS).

HOLDING:

By application of GRI 3(b), the wax depilator kit is classified in heading 8516, HTSUS. It is specifically provided for under subheading 8516.79.00, HTSUS, which provides for, “Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof: Other.” The column one, general rate of duty is 2.7% *ad valorem*.

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

EFFECT ON OTHER RULINGS

NY D83023, dated October 22, 1998, is hereby REVOKED.

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

**PROPOSED MODIFICATION OF ONE RULING LETTER
AND TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF FOUR “MESS-FREE GLITTER”
CRAFT KITS FOR CHILDREN**

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

ACTION: Notice of proposed modification of a ruling letter and treatment concerning the tariff classification of certain “Mess-Free Glitter” craft kits for children.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP intends to modify one ruling letter pertaining to the tariff classification of four “Mess-Free Glitter” craft kits under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to modify any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATES: Comments must be received on or before July 31, 2015.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

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

SUPPLEMENTARY INFORMATION:

Background

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that CBP intends to modify one ruling letter pertaining to the tariff classification of four kits, called the "Mess-Free Glitter Foam Frames" kit, item #9507, the "Mess-Free Glitter Princess & Fairy Scenes," item #9509, the "Mess-Free Glitter Treasure Box & Mirror," item #9517 and the "Mess-Free Glitter Friendship Foam Stickers" kit, item #9500. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) N255938, dated September 3, 2014 (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 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 intends to modify any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUS. 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 N255938, CBP classified eight samples of “Mess-Free Glitter” craft kits. Four were classified as toys of heading 9503, HTSUS. The remaining four kits were not classified as toys. It is now CBP’s position that these remaining four kits, referred to as “Mess-Free Glitter Foam Frames” kit, item #9507, the “Mess-Free Glitter Princess & Fairy Scenes,” item #9509, the “Mess-Free Glitter Treasure Box & Mirror,” item #9517 and the “Mess-Free Glitter Friendship Foam Stickers” kit, item #9500, are also properly classified under subheading, 9503.00.00, HTSUS, as a toy. The portion of the ruling referring to the four kits originally classified as toys remains intact.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY N255938 any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling (HQ) H258767, (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to modify any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: June 01, 2015

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N255938

September 3, 2014

CLA-2-95:OT:RR:NC:N4:424

CATEGORY: Classification

TARIFF NO.: 9503.00.0073, 3924.90.2000,
4911.99.8000, 4819.50.4040, 3919.90.5060,
3924.90.5650, 3926.90.9980

Ms. GAIL T. CUMINS

SHARRETT, PALEY, CARTER & BLAUVELT, P.C.

SEVENTY-FIVE BROAD STREET

NEW YORK, NY 10004

RE: The tariff classification of various “Mess-Free Glitter” craft kits from China

DEAR Ms. CUMINS:

In your letter dated August 4, 2014, you requested a tariff classification ruling on behalf of Melissa & Doug, LLC.

Samples of eight “Mess-Free Glitter” craft kits were received with your inquiry. Please limit future requests to a maximum of 5 items of the same class or kind. The mess-free glitter sheets included with each kit are designed to stick to various adhesive parts/stickers without the mess of traditional glitter. You suggested that all of the kits be classified as toys. However, only four will be classified as such. They include:

The “Mess-Free Glitter Princess Accessories Set,” item #8441, is comprised of components used for children to create a tiara, wand, necklace and bracelet. These components include a foam tiara with hook and loop closure, a purple stick, two foam stars, two foam bracelets with hook and loop closures, five rings, two cords, eight beads, 36 foam stickers and seven mess-free glitter sheets in different colors.

The “Mess-Free Glitter Fashion, Dance & Glamour Set,” item #8439, includes nine paper model cards with stands, four face cards, 12 mess-free glitter sheets in different colors, 109 foam stickers and 43 puffy foam stickers. Children will pretend that they are fashion designers creating their own unique fashions for their runway models.

The “Mess-Free Glitter Treasure Box & Jewelry Set,” item #9514, includes a paperboard treasure box and various components used to make two necklaces and five rings including 11 mess-free glitter sheets in different colors. Children will use the components to create, design and model their own fashionable jewelry while role-playing.

The “Mess-Free Glitter Headband and Barrettes Set,” item #9516, consists of two plastic headbands, two plastic barrettes, 10 plastic pieces cut into various shapes to fit various foam stickers included with the kit and five mess-free glitter sheets in different colors. Children will use the components to create, design and model their own fashionable headbands.

Each of these kits will be used by children to design and make their own creations as well as enable role-play as a glamorous young lady or princess. Each kit’s amusement value is greater than the utilitarian value of the

finished article and will be classified as an educational toy. As assembled, the completed items will be flimsily constructed and, in all likelihood, will not be used over a long period of time. The kits are principally designed for the amusement of girls 5 years of age and older.

The applicable subheading for the “Mess-Free Glitter Princess Accessories Set,” “Mess-Free Glitter Fashion, Dance & Glamour Set,” “Mess-Free Glitter Treasure Box & Jewelry Set,” and “Mess-Free Glitter Headband and Barrettes Set” will be 9503.00.0073, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Tricycles, scooters, pedal cars and similar wheeled toys...dolls, other toys...puzzles of all kinds; parts and accessories thereof... ‘Children’s products’ as defined in 15 U.S.C. § 2052: Other: Labeled or determined by importer as intended for use by persons: 3 to 12 years of age.” The rate of duty will be Free.

The following four kits will not be classified as toys:

The “Mess-Free Glitter Foam Frames” kit, item #9507, consists of two assembled foam frames, two foam sticker sheets, and five mess-free glitter sheets in different colors.

The “Mess-Free Glitter Princess & Fairy Scenes,” item #9509, consists of a picture printed with a scene of a princess and another of a fairy along with five mess-free glitter sheets in different colors.

The “Mess-Free Glitter Treasure Box & Mirror,” item #9517, kit includes a paperboard treasure box, mirror, 56 stickers and five mess-free glitter sheets in different colors.

The “Mess-Free Glitter Friendship Foam Stickers” kit, item #9500, consists of two foam sticker sheets made up of stickers in various shapes and five mess-free glitter sheets in different colors.

In *Springs Creative Products Group LLC v. United States* (Court No. 10–00067, Slip Op. 13–107 (2013)), the Court of International Trade (C.I.T.) weighed in on the issue of children’s craft kits, which have been considered “educational toys” or “instructional toys” classifiable under Chapter 95. The court pointed out that CBP has a history of classifying craft kits for children in which the child will “create, produce, or assemble articles.” The court stated “Implicit within all these rulings is a finding that the practicality of the finished products is secondary to the play value of creating them, which is a mandatory requirement for classification as a toy.”

For the last four aforementioned kits, there is no “creation, assembly or production.” In each of the kits the items are imported complete and/or assembled (e.g. trinket box, mirror, stickers and foam frame). Merely decorating a completed item does not convert it to an educational toy. The practicality of the items are the same both before and after they are decorated.

In the case of the “Mess-Free Glitter Treasure Box & Mirror,” you suggested classification under subheading 4823.90.8600, HTSUS, which provides for other articles of paper or paperboard, with the essential character imparted by the paperboard trinket box if the item was not deemed to be classified as a toy.

GRI 3(b) states, in relevant part, that goods put up in sets for retail sale shall be classified as if consisting of the material or component which gives them their essential character, insofar as this criterion is applicable. Explanatory Note (X) to GRI 3(b) states that for purposes of Rule 3(b) the term

“goods put up in sets for retail sale” means goods which: (a) consist of at least two different articles which are, prima facie, classifiable in different headings; (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and, (c) are put up in a manner suitable for sale directly to users without repacking.

While the item meets elements (a) and (c), the goods do not meet a particular need or carry out a specific activity. Since the item is not considered a set for classification purposes, the individual components must be classified separately. Although you suggested heading 4823 for the classification of the paperboard box, it is specifically provided for in heading 4819.

The applicable subheading for the paperboard trinket box from the “Mess-Free Glitter Treasure Box & Mirror” will be 4819.50.4040, HTSUS, Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; box files, letter trays and similar articles, of paper or paperboard of a kind used in offices, shops or the like: Other packing containers, including record sleeves: Other: Other: Rigid boxes and cartons. The rate of duty will be Free.

The applicable subheading for the foam stickers from the “Mess-Free Glitter Treasure Box & Mirror” will be 3919.90.5060, HTSUS, which provides for self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls: other: other: other. The rate of duty will be 5.8 percent ad valorem.

The applicable subheading for the mirror from the “Mess-Free Glitter Treasure Box & Mirror” will be 3924.90.5650, HTSUS, which provides for... other household articles...of plastics: other: other...other. The rate of duty will be 3.4 percent ad valorem.

The applicable subheading for the mess-free glitter sheets from the “Mess-Free Glitter Treasure Box & Mirror” will be 3926.90.9980, HTSUS, which provides for other articles of plastic...: other: other...other. The rate of duty will be 5.3 percent ad valorem.

The “Mess-Free Glitter Friendship Foam Stickers” kit will be considered a set, with the essential character imparted by the foam stickers. The applicable subheading for the “Mess-Free Glitter Friendship Foam Stickers” kit will be 3919.90.5060, HTSUS, which provides for self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls: other: other: other. The rate of duty will be 5.8 percent ad valorem.

The “Mess-Free Glitter Princess & Fairy Scenes” will be considered a set, with the essential character imparted by the printed scenes. The applicable subheading for the “Mess-Free Glitter Princess & Fairy Scenes” will be 4911.99.8000, HTSUS, which provides for Other printed matter, including printed pictures and photographs: Other: Other: Other: Other. The rate of duty will be Free.

The “Mess-Free Glitter Foam Frames” kit will be considered a set, with the essential character imparted by the foam frames. The applicable subheading for the “Mess-Free Glitter Foam Frames” kit will be 3924.90.2000, HTSUS, which provides for...other household articles...of plastics: other: picture frames. The rate of duty will be 3.4 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 James Forkan at james.p.forkan@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H258767

CLA-20T:RR:CTF:TCM: H258767ERB

CATEGORY: Classification

TARIFF NO.: 9503.00.00

Ms. GAIL T. CUMINS

SHARRETT, PALEY, CARTER & BLAUVELT, P.C.

75 BROAD STREET

NEW YORK, NY 10004

RE: Modification of NY N255938; Tariff classification of four (4) "Mess-Free Glitter" craft kits for children

DEAR Ms. CUMINS:

U.S. Customs and Border Protection (CBP) issued you, on behalf of your client, Melissa & Doug LLC (M&D), New York Ruling Letter (NY) N255938, dated September 3, 2014. NY N255938 pertains to the tariff classification under the Harmonized Tariff Schedule of the United States, (HTSUS) of eight samples of "Mess-Free Glitter" craft kits. We have since reviewed NY N255938, and considered your comments in your request for reconsideration dated October 2, 2014, as well as your letter of May 11, 2015, and the follow-up telephonic conference held on May 13, 2015, with this office. We find NY N255938 to be in error with respect to the classification of four of the "Mess-Free Glitter" kits, which is described in detail herein.

FACTS:

NY N255938 classified four of the eight kits as toys of heading 9503, HTSUS. Regarding the other four kits, NY N255938 stated the following, in relevant part:

The following four kits will not be classified as toys:

The "Mess-Free Glitter Foam Frames" kit, item #9507, consists of two assembled foam frames, two foam sticker sheets, and five mess-free glitter sheets in different colors.

The "Mess-Free Glitter Princess & Fairy Scenes," item #9509, consists of a picture printed with a scene of a princess and another of a fairy along with five mess-free glitter sheets in different colors.

The "Mess-Free Glitter Treasure Box & Mirror," item #9517, kit includes a paperboard treasure box, mirror, 56 stickers and five mess-free glitter sheets in different colors.

The "Mess-Free Glitter Friendship Foam stickers" kit, item #9500, consists of two foam sticker sheets made up of stickers in various shapes and five mess-free glitter sheets in different colors

The applicable subheading for the paperboard trinket box from the "Mess-Free Glitter Treasure Box & Mirror" will be 4819.50.4040, HTSUS, Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; box files, letter trays and similar articles, of paper or paperboard of a kind used in offices, shops

or the like: Other packing containers, including record sleeves: Other: Other: Rigid boxes and cartons. The rate of duty will be Free.

The applicable subheading for the foam stickers from the “Mess-Free Glitter Treasure Box & Mirror” will be 3919.90.5060, HTSUS, which provides for self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls: other: other: other. The rate of duty will be 5.8 percent ad valorem.

The applicable subheading for the mirror from the “Mess-Free Glitter Treasure Box & Mirror” will be 3924.90.5650, HTSUS, which provides for ...other household articles...of plastics: other: other...other. The rate of duty will be 3.4 percent ad valorem.

The applicable subheading for the mess-free glitter sheets from the “Mess-Free Glitter Treasure Box & Mirror” will be 3926.90.9980, HTSUS, which provides for other articles of plastic...: other: other...other. The rate of duty will be 5.3 percent ad valorem.

The “Mess-Free Glitter Friendship Foam Stickers” kit will be considered a set, with the essential character imparted by the foam stickers. The applicable subheading for the “Mess-Free Glitter Friendship Foam Stickers” kit will be 3919.90.5060, HTSUS, which provides for self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls: other: other: other. The rate of duty will be 5.8 percent ad valorem.

The “Mess-Free Glitter Princess & Fairy Scenes” will be considered a set, with the essential character imparted by the printed scenes. The applicable subheading for the “Mess-Free Glitter Princess & Fairy Scenes” will be 4911.99.8000, HTSUS, which provides for Other printed matter, including printed pictures and photographs: Other: Other: Other: Other. The rate of duty will be Free.

The “Mess-Free Glitter Foam Frames” kit will be considered a set, with the essential character imparted by the foam frames. The applicable subheading for the “Mess-Free Glitter Foam Frames” kit will be 3924.90.2000, HTSUS, which provides for...other household articles...of plastics: other: picture frames. The rate of duty will be 3.4 percent ad valorem.

In your reconsideration request, you argue that all eight kits, but specifically the four at issue here are properly classified as “toys” under heading 9503, HTSUS. You state that M&D primarily markets its products to children’s stores, toy stores and through its own website. M&D introduced its “Mess-Free Glitter” product line at the 2014 Toy Fair, one of the largest toy industry conferences, produced by the Toy Industry Association, Inc. The brightly colored packaging states that the product is intended for users ages 5 and up.

ISSUE:

Whether the subject “Mess-Free Glitter” kits are classified as toys, of heading 9503, HTSUS, or whether they are classified according to their individual constituents, because they are neither toys nor “sets.”

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:

- 3919 Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls:

- 3924 Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics:

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

- 4819 Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs or cellulose fibers; box files, letter trays and similar articles, of paper or paperboard of a kind used in offices, shops or the like:

- 4911 Other printed matter, including printed pictures and photographs:

- 9503 Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof.

Note 2(y) to Chapter 39 states:

This chapter does not cover:

- (y) Articles of chapter 95 (for example, toys, games, sports equipment)

Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that:

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

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

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the HTSUS at the international level, may be utilized. The ENs, although not dispositive or legally binding, provides a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89-80, 54 Fed. Reg 35127, 35128 (August 23, 1989).

The EN 95.03 (D), HTSUS, provides for “Other toys” and states, in pertinent part, the following:

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

These include:

(iii) constructional toys (construction sets, building blocks, etc.)

(xviii) Educational toys (e.g. toy chemistry, printing, sewing and knitting sets).

Collections of articles, the individual items of which if presented separately would be classified in other headings in the Nomenclature, are classified in this heading when they are put up in a form clearly indicating their use as toys (e.g. instructional toys such as chemistry, sewing, etc., sets).

The tariff term “toy” is not statutorily defined. The courts and CBP construe statutorily undefined terms in accordance with their common and commercial meaning, which is presumed to be the same. *See E.M. Chems. v. United States*, 920 F.3d 910, 913 (Fed. Cir. 1990). However, the courts, through a series of decisions, have crafted a framework for “toys” of heading 9503, HTSUS, which guides CBP in the instant case.

In *Springs Creative Products Group v. United States*, 35 I.T.R.D. (BNA) 1955, Slip Op. 13–107 (Ct. Int’l Trade Aug. 16, 2013), the Court opined on the tariff classification of a child’s craft kit for making a fleece blanket. In its analysis, the CIT consulted dictionaries, and other reliable sources regarding the meaning of the word “toy.” *See Medline Indus. v. United States*, 62 F.3d 1407, 1409 (Fed. Cir. 1995) (“tariff terms are construed in accordance with their common and popular meaning, and in construing such terms the court may rely upon its own understanding, dictionaries and other reliable sources.”) (citations omitted). First, the Court consulted WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED (1981), at 2419, provides, in relevant part that “toys” are:

3a: something designed for amusement or diversion rather than practical use
b: an article for the playtime use of a child either representational (as persons, creatures, or implements) and intended esp. to stimulate imagination, mimetic activity, or manipulative skill or nonrepresentational (as balls, tops, jump ropes) and muscular dexterity and group integration..

Next, the Court cited MERRIAM WEBSTER’S COLLEGIATE DICTIONARY (1998) at page 41, which defines “amusement” in relevant part as, “3: a pleasurable diversion.” Thus, taken together “[t]his common meaning of toy – an object primarily designed and used for pleasurable diversion – is consistent with its judicial interpretation.” *Springs Creative Products Group v. United States*, *supra* at page 15, citing *Processed Plastic Co. v. United States*, 473 F.3d 1164, 1170 (Fed. Cir. 2006) (noting that the principal use of a “toy” is amusement,

diversion, or play value rather than practicality); *Minnetonka Brands, Inc. v. United States*, 24 CIT 645, 651 ¶ 37, 110 F. Supp. 2d 1020, 1026 (2000) (noting that for purposes of Chapter 95, HTSUS, “an object is a toy only if it is designed and used for amusement, diversion, or play, rather than practicality”).

Heading 9503, HTSUS, is in relevant part, a “principal use” provision, and classification is controlled by the principal use of goods of that class or kind to which the imported goods belong in the United States at or immediately prior to the date of importation, and the controlling use is the principal use. *Springs Creative Products Group v. United States*, *supra* at page 16, citing Additional U.S. Rule of Interpretation 1(a). In *United States v. Carborundum Co.*, 536 F.2d 373, 377 (1976), the U.S. Court of Customs and Patent Appeals stated that in order to determine whether an article is included in a particular class or kind of merchandise, the court must consider a variety of factor, including: (1) the general physical characteristics of the merchandise; (2) the channels, class or kind of trade in which the merchandise moves (where the merchandise is sold); (3) the expectation of the ultimate purchaser; (4) the environment of the sale (i.e., accompanying accessories and marketing); (5) usage, if any, in the same manner as merchandise which defines the class; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. While these factors were developed under the Tariff Schedule of the United States (the predecessor to the HTSUS), the courts, and this office have and continue to apply them to the HTSUS. *See, e.g., Minnetonka Brands v. United States, supra; Aromont USA, Inc. v. United States*, 671 F.3d 1310 (Fed. Cir. 2012), and *see Essex Mfg., Inc. v. United States*, 30 C.I.T. 1 (2006).

Finally, the CIT also consulted the ENs, which inform and shape our understanding of the scope of the heading, though the ENs should not restrict or expand the scope of headings. Rather, they should describe and elaborate on the nature of goods falling within those headings, as well as the nature of goods falling outside of those headings. The EN 95.03 clarifies that “[c]ollections of articles, the individual items of which if presented separately would be classified in other headings in the Nomenclature, are classified in this heading when they are put up in a form clearly indicating their use as toys (e.g., instructional toys such as chemistry, sewing, etc., sets).” Craft kits generally are considered “educational toys” or “instructional toys” classified under Chapter 95, HTSUS, because they are principally used for the amusement of children, and that amusement is derived through the creation and design of the final product. *See Headquarters Ruling (HQ) 959401*, dated April 14, 1997 (classifying “Just Bead It! Fusion Beads Activity Sets kit as a toy) *See also* EN 95.03 (iii) and (xviii). However, they are distinguishable from drawing or coloring kits, because the tools for writing, coloring, drawing or painting are not designed to amuse, and do not provide significant enough manipulative play value. *See HQ H035564*, dated November 4, 2008 (“CBP has never considered writing, coloring, drawing or painting to have significant “manipulative play value,” for purposes of classification as a toy. Nor does CBP classify the tools for writing, coloring, drawing or painting as toys since these tools are not designed to amuse.”); *HQ 966198*, dated July 21,

2003 (“The amusement derived from art-related activities is secondary to utility because those articles and sets used for drawing, coloring and other art-related activities are not “essentially playthings.”); see also NY N155175, dated April 8, 2011 (classifying six crafts kits, four of which CBP determined the kit’s amusement value was greater than the utilitarian value of the finished article, and further, the completed items will be flimsily constructed and, in all likelihood, will not be used over a long period of time. The remaining two kits, however, were not classified as toys because, “CBP does not consider drawing, writing, coloring or painting to have significant play value for classification purposes as a toy”).

Ultimately, the CIT held that the blanket kit was imported as a kit, intended to be assembled by children or adults, and the basis for the classification was not the finished product but rather the kit as a whole, stressing the role creation, amusement, and assembly played in the making of the fleece throw blanket. It was marketed with images which would appeal to children having fun while assembling the blanket. The kits promote the development and education of young children by helping a child develop skills such as manual dexterity, cutting, tying, and counting. It therefore is principally designed for amusement, diversion, or play and is classified as “toys” under heading 9503, HTSUS. *Springs Creative Products Group v. United States*, *supra* at page 24.

Here, the “Mess-Free Glitter Friendship Foam stickers” kit, the “Mess-Free Glitter Foam Frames” kit, the “Mess-Free Glitter Princess & Fairy Scenes” kit, and the “Mess-Free Glitter Treasure Box & Mirror” kit are substantially similar to the fleece throw blanket kit. The instant foam and glitter kits consist of pre-cut foam shapes which do not have any designs or color on them until the child “creates” them by choosing which color from the glitter sheets to apply. Choosing and creating the glitter and foam stickers manifestly expresses a child’s creativity and individuality. Each foam and glitter sticker becomes a unique creation of the child’s imagination, which can then be used elsewhere for play or decoration, or, in the case of the Treasure Box & Mirror kit, or the Foam Frames kit, adornment of these objects. The treasure box, mirror, and frames included in the kits can be described as flimsy or insubstantial. This is because the value is derived from the creative manipulative play and not the resulting decorated object. The goal is for children to have fun making stickers and express imagination through a unique final project.

The glitter and foam kits are clearly marketed towards children to inspire imaginative thinking through play. They are sold primarily in toy stores, or in other normal commercial channels for toys. They are understood by children to be used as toys. The decorated objects have little to no economically practical use beyond that of a play-thing. Lastly, the kits were featured at the Toy Industry of America’s annual Toy Fair conference, which indicates that the trade recognizes their use as toys. The product is thus classified as a “toy” under heading 9503, HTSUS, for tariff purposes.

This is consistent with previous classifications of a similar products whereby children create or produce a final product, but the utilitarian value of the final product is outweighed by the amusement, diversion, or play experienced in making that product. See NY L82030, dated February 3, 2005 (classifying a “Colors & Shapes Foam Activity Kit” in heading 9503, HTSUS); NY F80917, dated January 5, 2000 (classifying five kits: “Make Your Own

Bubble Gum,” “Make Your Own Chocolate,” “Make Your Own Bath Fizzer Kit,” “Melt & Pour Soap Kit,” and “Tie Dye Kit,” as “instructional kits designed primarily to provide amusement in the form of mixing, pouring, and basically “creating” a finished product,” in heading 9503, HTSUS); N198045, dated January 20, 2012 (classifying a “Foam Frame Kit” consisting of a foam picture frame, foam stickers, dowel stand, glitter pen and a package of rhinestones used to decorate the frames in heading 9503, HTSUS); N189022, dated November 4, 2011 (classifying a “Foam Heart Frame” kit and “Frame Felt Craft” kit, which included overlays and decorating access with the frames under heading 9503, HTSUS)¹ .

Lastly, as the instant craft kits are described as “toys” of heading 9503, HTSUS, then the relevant kits are excluded from classification in chapter 39, by operation of Note 1(y) to that chapter.

HOLDING:

By application of GRI 1, the subject “Mess-Free Glitter Foam Frames” kit, item #9507, the “Mess-Free Glitter Princess & Fairy Scenes,” item #9509, the “Mess-Free Glitter Treasure Box & Mirror,” item #9517 and the “Mess-Free Glitter Friendship Foam Stickers” kit, item #9500, are classified in subheading 9503.00.0073, HTSUS, which provides for, “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: “Children’s products” as defined in 15 U.S.C. § 2052: Other: Labeled or determined by importer as intended for use by persons: 3 to 12 years of age.” The column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS

NY N255938, dated September 3, 2014, is hereby MODIFIED, as regards “Mess-Free Glitter Foam Frames” kit, item #9507, the “Mess-Free Glitter Princess & Fairy Scenes,” item #9509, the “Mess-Free Glitter Treasure Box & Mirror,” item #9517 and the “Mess-Free Glitter Friendship Foam Stickers” kit, item #9500. The remainder of the ruling is AFFIRMED.

MYLES B. HARMON,
Commercial and Trade Facilitation Division

¹ As the goods are properly described as “toys”, then an analysis of the goods packaged together for retail sale, including the individual components, as a “set”, pursuant to GRI 3(b) is unnecessary.

GENERAL NOTICE

19 CFR PART 177

MODIFICATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF CYCLING SHOES

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

ACTION: Notice of modification of a ruling letter and revocation of treatment concerning the classification of cycling shoes.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) is modifying one ruling letter relating to the classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of one style of cycling shoes. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on April 22, 2015, in Vol. 49, No. 16 of the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or before August 31, 2015.

FOR FURTHER INFORMATION CONTACT: Nerissa Hamilton-vom Baur, Tariff Classification and Marking Branch, at (202) 325-0104.

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 of the proposed revocation was published on April 22, 2015, in the *Customs Bulletin*, Volume 49, No. 16, proposing to modify New York Ruling Letter (NY) N170022, dated June 29, 2011, pertaining to the tariff classification of a certain style of cycling shoes. CBP received no comments 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 those identified. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the 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 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 N170022, CBP ruled that the "Dominator 5" style of cycling shoe, item # 10205401370 is classified in subheading 6402.19.90, HTSUS, based on the information presented to CBP. This classification is incorrect because subsequent CBP Laboratory analysis showed that the shoe's external surface area of the upper consists of at least 90% rubber/plastics.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY N170022 and any other ruling not specifically identified, to reflect the proper classification of a certain style of cycling shoes to the analysis contained in Headquarters Ruling Letter (HQ) H237638, as set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C.

§ 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Dated: June 01, 2015

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H237638

June 01, 2015

CLA-2 OT:RR:CTF:TCM H237638 HvB

CATEGORY: Classification

TARIFF NO.: 6402.19.15; 6402.19.90

Ms. SHIRLEY MOORE
D.B. GROUP AMERICA, LTD.
245 COUNTRY CLUB DRIVE, SUITE 100A
STOCKBRIDGE, GA 30281

Re: Modification of NY N170022; Request for Reconsideration; Classification of Cycling Shoes.

DEAR Ms. MOORE:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) N170022, dated June 29, 2011, concerning the classification of cycling shoes under the Harmonized Tariff Schedule of the United States (HTSUS). In NY N170022, CBP determined that the cycling shoes, items #10105101410, #10205401370, #11204122410, and #10110101410, were classified in subheading 6402.19.90, HTSUS, which provides for “Other footwear with outer soles and uppers of rubber or plastics: Sports footwear: Other: Other: Valued over \$12/pair.”

In your letter dated September 17, 2012 to the National Commodity Specialist Division (NCSA), on behalf of Sidi America, Inc., you requested reconsideration of NY N170022, as it pertains to the classification of three styles of cycling shoes (Items #10105101410, 10205401370, and 11204122410) in subheading 6402.19.90, HTSUS. You request classification in subheading 6402.19.15, HTSUS, which provides for “Other footwear with outer soles and uppers of rubber or plastics: Sports footwear: Other: Having uppers of which over 90 percent of the external surface area [ESAU] (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter is rubber or plastics...: Other.” We note that Item #10110101410 is not at issue. Your request for reconsideration was forwarded to our office for a decision.

This decision takes into consideration your letter dated March 27, 2013, in which you forwarded independent laboratory reports from ACT Lab LLC (“ACT Lab”) and from Laboratorie Chimico di Venezia, which is located in Italy.

Samples of the subject merchandise have been provided and were examined by the CBP Laboratories and Scientific Services Directorate (LSSD).

We have reviewed NY N170022 and have found that the classification of item #10205401370, Dominator 5 style, in subheading 6402.19.90, HTSUS, was in error. Therefore, for the reasons set forth below, this ruling hereby modifies NY N170022, as it pertains to Item # 10205401370.

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 of the proposed revocation was published on April 22, 2015, in the *Customs Bulletin*, Volume 49, No. 16. CBP received no comments in response to this notice.

FACTS:

The merchandise at issue consists of three styles of unisex cycling shoes with rubber/plastic outer soles which are designed to incorporate cleats. The shoes close by means of a strap. The uppers of each shoe are composed of textile mesh and “Lorica” (micro-fibers treated with special resin), which constitutes rubber/plastic for purposes of tariff classification. The rubber/plastics outer soles of each shoe are said to be composed of a graphite composite material. In your September 17, 2012 letter, you admit that the statement in NY N170022, that the subject merchandise does not have a foxing or foxing-like band and is not protective against water, oil, or grease, or chemicals, is correct.

The styles at issue are as follows. Item # 10105101410 is identified as the “Genus 5 Pro” style. Item # 10205401370 is identified as the “Dominator 5” style. And, item # 11204122410 is identified as the Spider SRS style.

In NY N170022, CBP used visual estimation to conclude that the rubber/plastic components of the shoes did not account for more than 90% of the uppers since no component material breakdowns were provided. Thus, CBP classified the subject footwear in subheading 6402.19.90, HTSUS, which provides for “Other footwear with outer soles and uppers of rubber of plastics: Sports footwear: Other: Other: Valued over \$12/pair.”

Included in your September 17, 2012 and March 27, 2013 submissions were copies of independent laboratory analyses, to support your assertion that the items are properly classified in subheading 6402.19.1561, HTSUSA, the provision for “Other footwear...sports footwear... having uppers of which over 90 percent of the [ESAU] is rubber or plastics.” The reports issued by ACT Lab are undated and were issued on Item # 11204122410, which is identified as the “Spider SRS” style, and on Item # 10105301455, which is identified as the “Gen 5 Pro Carb narrow” style.¹ ACT Lab’s report for Item # 11204122410, the Spider SRS style, states that the “% Exposed Area: 7.26%”, with “mesh” written in handwriting adjacent to the percentage. Below this text, the following is handwritten: “92.74% rub/pl. These reports do not indicate what test methods were utilized. The second independent lab reports were issued by Laboratorie Chimico di Venezia for the “Gen 5 Pro” and the “Spider SRS” styles. The reports are accompanied by certificates. Both the certificates and the laboratory reports are entirely written in Italian and do not provide item numbers. For the “Spider SRS” style, the Italian lab determined that the “material plastico 92%” and that the “material tessile is 8%”. For the “Calzatura Sidi Gen 5 Pro” style, the report states that the “material plastico 94%” and that the “material tessile 6%”. The reports states that method “MI13VEA” was used.

In a letter dated September 17, 2012, you contacted NCSD to request reconsideration of NY N170022, and submitted samples of the merchandise. NCSD sent the samples to LSSD for analysis on September 28, 2012. LSSD reported lab analysis of the subject merchandise on December 6, 2012, which is detailed below:

- For Item # 10205401370, the Dominator 5 style, LSSD found that the External Surface Area of the Upper (ESAU), consisted of 91.1% rubber/

¹ We note that item # 10105301455 is not at issue, thus the results are not relevant to the discussion.

plastic, including reinforcements and/or accessories.² See Lab Report # NY20121859, dated December 6, 2012.

- For item # 10105101410, the Genus 5 Pro style, LSSD found that the ESAU was 89% rubber/plastic, including reinforcements and/or accessories. See Lab Report # NY20121860, dated December 6, 2012.
- For the Spider SRS style, item # 11204122410, the, LSSD determined that the ESAU was 89.7% rubber/plastics, including reinforcements and/or accessories. See Lab Report # 20121857, dated December 6, 2012.

After being advised of these lab results, on March 27, 2013, you requested that we conduct a second laboratory testing of two of the items at issue in the ruling, and enclosed additional samples of the Genus 5 Pro and Spider SRS styles, item # 1010510410 and item # 11204122410, respectively.

On November 8, 2013, LSSD issued Supplemental Laboratory Report # NY 2012860S for Item # 10105101410, the Genus 5 Pro style. LSSD concluded that the ESAU of the upper is 89.1% rubber or plastics. In addition, LSSD issued Supplemental Laboratory Report # NY20121857S for the Spider SRS style, Item # 11204122410. LSSD concluded that the ESAU of the shoe is 89.5% rubber or plastic, including reinforcements and/or accessories.

ISSUE:

Whether the subject cycling shoes should be classified in subheading 6402.19.15, HTSUS, as other sports footwear having uppers of which over 90 percent of the ESAU is rubber or plastics, or under subheading 6402.19.90, HTSUS, as other sports footwear valued over \$12/pair.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings 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 under consideration are the following:

6402	Other footwear with outer soles and uppers of rubber or plastics: Sports footwear: ***
6402.19	Other:

² All percentages taken from CBP Laboratory reports indicate the percentage of rubber/plastic, including reinforcements and/or accessories.

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 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):

6402.19.15

Other:

Other:

6402.19.90

Valued over \$12/pair

Note 3 to Chapter 64, HTSUS, provides in part:

- (a) **The terms “*rubber*” and “*plastics*” include woven fabrics or other textile products with an external layer of rubber or plastics being visible to the naked eye; for the purpose of this provision, no account should be taken of any resulting color; and**

...

Note 4 to Chapter 64, HTSUS, provides in part:

- (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;**

...

* * * * *

In the present case, there is no dispute at the heading level. The subject merchandise consists of cycling shoes with rubber outer soles and uppers composed of rubber/plastic. As such, it is classified in heading 6402, HTSUS, as “Other footwear with outer soles and uppers of rubber.” The instant issue is whether, at the subheading level, the products meet the requirements of subheading 6402.19.15, HTSUS, *i.e.* whether the ESAU of the shoe’s upper is over 90% rubber/plastic.

With respect to Item # 10205401370, the “Dominador 5” style, CBP Lab report # NY20121859, dated December 6, 2012, found that the ESAU is 91.1% rubber or plastics, including reinforcements and/or accessories. Therefore, the Dominador style meets the requirements of HTSUS subheading 6402.19.15.

Next, we consider the two remaining styles of shoes, the Genus 5 Pro and the Spider SRS, respectively, Items # 10105101410 and # 11204122410. You

argue that the uppers of the instant footwear are more than 90 percent rubber/plastic. In support, you submit copies of independent laboratory reports from two different labs.

The first set of laboratory reports is from ACT Lab, one of which is for an item number not at issue. The second set of laboratory reports, which are written in Italian, are from Laboratorie Chimico di Venezia. You also argue that a third lab, Customs Laboratory Services, located in Rockville, MD (that did not examine the merchandise at issue), advised you that “CBPL Method 64-04 was no longer used by [CBP] because of the inherent error in the method caused by the added toner and often inconsistent weight of ink/toner on the photocopied paper pieces that are weight to determine the ESAU.”

Pursuant to 28 U.S.C. § 2639(a)(1) (1994), CBP enjoys a statutory presumption of correctness. Thus, an importer has the burden to prove by a preponderance of the evidence that a CBP decision was incorrect. *Ford Motor Company v. United States*, 157 F.3d 849, 855 (Fed. Cir. 1998). Furthermore, “[i]t is well settled that the methods of weighing, measuring, and testing merchandise used by [CBP] officers and the results obtained are presumed to be correct.” *Aluminum Company of America v. United States*, 60 C.C.P.A. 148, 151, 477 F.2d 1396, 1398 (1973). Absent a conclusive showing that the testing method used by the CBP laboratory is in error, or that the CBP’s laboratory results are erroneous, there is a presumption that the results are correct. See *Exxon Corp. v. United States*, 462 F. Supp. 378, 81 Cust. Ct. 87, C.D. 4772 (1978).

In cases such as this, where an outside laboratory report is submitted that differs from the CBP laboratory report, the CBP laboratory report cannot be disregarded and takes precedence over the outside report. See HQ 957282, dated March 28, 1995 (citing Customs Directive 099 3820-002, dated May 4, 1992). CBP cannot rely on outside reports that may or may not utilize different testing methods and still remain consistent in its tariff classification. Therefore, CBP must rely on its own laboratory analysis when determining the proper tariff classification of merchandise and need not consult an independent laboratory. See HQ 963748, dated November 20, 2000. CBP’s additional laboratory analysis did not deviate from the original lab reports results, which concluded that the ESAU of the uppers of the Genus Pro and Spider SRS styles was less than 90% rubber/plastic. Subheading 6402.19.90, HTSUS, describes other footwear which has “uppers of which *over* 90 percent of the external surface area (including reinforcements [...]) is rubber or plastics [emphasis added].” Since LSSD found that the ESAU (including reinforcements) was 89.1% rubber/plastic in the case of the “Genus 5 Pro” style, and 89.5% rubber/plastic in the case of the “Spider SRS” style, we therefore disagree that the instant footwear is classifiable in subheading 6402.19.90, HTSUS.

Moreover, the independent laboratory reports do not conclusively show that CBP’s lab reports are erroneous. One of the independent lab reports submitted with your September 17, 2012 letter identifies a shoe with a style name and item number that is not at issue. The other independent lab report for the item #11204122410, the Spider SRS Style, is an unreliable document as it has a handwritten notation on it and does not state what testing method was used. The reports are also undated. You have not conclusively shown that

the testing method used by the CBP laboratory is in error or, that the CBP's laboratory results are erroneous, as you simply argue that there is an allegedly better testing method. Therefore, you have failed to overcome CBP's presumption of correctness regarding Item # 10105101410, the Genus 5 Pro style, and Item # 11204122410, the Spider SRS style. See HQ H005111, dated August 20, 2007.

Accordingly, NY N170022 is affirmed with respect to the Spider SRS and the Genus 5 Pro styles (items # 11204122410 and # 10105101410). With respect to Item # 10205401370, the "Dominator 5" style, NY N170022 is modified to reflect that it is correctly classified in subheading 6402.19.15, HTSUS.

HOLDING:

Under the authority of GRI 1, Item # 10205401370, the "Dominator Pro" is provided for in heading 6402, HTSUS. More specifically, it is classified under subheading 6402.19.15, HTSUS, which provides for: "Other footwear with outer soles and uppers of rubber or plastics: Other footwear: 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 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." The general, column one duty rate is 5.1%.

Under the authority of GRI 1, item # 10105101410, the "Genus 5 Pro" style, is provided for in heading 6402, HTSUS. More specifically, it is classified under subheading 6402.19.90, HTSUS, which provides for: "Other footwear with outer soles and uppers of rubber or plastics: Sports footwear: Other: Other: Valued over \$12/pair." The general, column one duty rate is 9%.

Under the authority of GRI 1, item # 11204122410, the "Spider SRS" style, is provided for in heading 6402, HTSUS. More specifically, it is classified under subheading 6402.19.90, HTSUS, which provides for: "Other footwear with outer soles and uppers of rubber or plastics: Sports footwear: Other: Other: Valued over \$12/pair." The general, column one duty rate is 9%.

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/tatalhts/.

EFFECT ON OTHER RULINGS:

NY N170022 is hereby MODIFIED.

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

Sincerely,

ALLYSON MATTANAH

For

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

GENERAL NOTICE**19 CFR PART 177****REVOCAION OF ONE RULING LETTER AND
TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF A HOBBY KNIFE SET WITH LED
LIGHT**

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

ACTION: Notice of revocation of a ruling letter and treatment concerning the tariff classification of the LumiKNIFE™ hobby knife set with LED light.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking one ruling letter pertaining to the tariff classification of the LumiKNIFE™ hobby knife set with attachable LED light, under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on April 8, 2015, in Volume 49, Number 14 of the *Customs Bulletin*. No comments were received in response to the proposed notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from ware house for consumption on or after August 31, 2015.

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

SUPPLEMENTARY INFORMATION:**Background**

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published in the *Customs Bulletin* on Volume 49, Number 14, on April 8, 2015, proposing to revoke New York Ruling Letter (NY) R04558, dated August 22, 2006, and proposing to revoke any treatment accorded to substantially identical transactions. No comments were received in response to the proposed action.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the above noted 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 R04558, CBP classified the LumiKNIFE™ hobby knife set with LED light in subheading 8211.92.90, HTSUS, which provides for, "Knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades and other base metal parts thereof: Other: Other knives having fixed blades: Other." It is now CBP's position that the LumiKNIFE™ hobby knife set with LED light is properly classified under subheading 8211.93.00, HTSUS, which provides for, "Knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades and other base metal parts thereof: Other: Knives having other than fixed blades."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY R04558 and any other ruling not specifically identified in order to reflect the

proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling (HQ) H257274, (Attachment A). 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: June 01, 2015

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H257274

June 01, 2015

CLA-2 OT: RR: CTF: TCM: H257274 ERB

CATEGORY: Classification

TARIFF NO.: 8211.93.00

Ms. CYNTHIA GIBBS
GIBBS GROUP
779 SHASTA STREET
YUBA CITY, CA 95991

RE: Revocation of NY R04558; Tariff Classification of a LumiKNIFE™

DEAR Ms. GIBBS:

U.S. Customs and Border Protection (CBP) issued Gibbs Group New York Ruling Letter (NY) R04558 on August 22, 2006. NY R04558 pertains to the tariff classification under the Harmonized Tariff Schedule of the United States, (HTSUS) of a product called LumiKNIFE™, a professional hobby knife with an attachable Light Emitting Diode (LED). We have since reviewed NY R04558 and find it to be in error with respect to the classification of the knife, which is described in detail herein.

Pursuant to Section 615(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking a ruling concerning the classification of LumiKNIFE™, under the HTSUS. Similarly CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on April 8, 2015, in Volume 49, Number 14, of the *Customs Bulletin*. No comments were received in response to the proposed notice.

FACTS:

In NY R04558, CBP found the following:

You have described the LumiKNIFE™ as a professional hobby knife with LED light. The knife handle is made of zinc alloy and has a plastic level for releasing the interchangeable xacto razor blade. The blade is a fixed blade.

The applicable subheading for the LumiKNIFE™ will be 8211.92.9060, Harmonized Tariff Schedule of the United States (HTSUS), which provides for knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades and other base metal parts thereof: other: other knives having fixed blades: other: other: other. The rate of duty will be 0.4¢ each + 6.1%.

The product is packaged together with a small LED light that attaches to the plastic handle to provide precision lighting to the spot the user is cutting. Online advertisement of the product also state that the product features a quick change design to release interchangeable blades.

ISSUE:

What is the proper classification of a hobby knife with interchangeable blades under the HTSUS?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings 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 HTSUS provisions under consideration in this case are as follows:

- 8211 Knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades and other base metal parts thereof:
- Other:
- 8211.92 Other knives having fixed blades:
- 8211.92.90 Other
- 8211.93 Knives having other than fixed blades

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

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

Additional U.S. Note 3 to Chapter 82, which covers cutlery provides the following:

For the purposes of determining the rate of duty applicable to sets provided for in heading 8205, 8206, 8211 or 8215, a specific rate of duty or a compound rate of duty for any article in the set shall be converted to its ad valorem equivalent rate, i.e., the ad valorem rate which, when applied to the full value of the article determined in accordance with section 402 of the Tariff act of 1930, as amended, would provide the same amount of duties as the specific or compound rate.

Statistical Note 1 to Chapter 82 provides the following:

For the purposes of statistical reporting of sets in heading 8205, 8206, 8211 or 8215, the number of pieces reported shall be the total number of separate pieces in the set(s).

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the HTSUS at the international level, may be utilized. The ENs, although not dispositive or legally binding, provides a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN (4) to heading 8211, states the following:

This heading covers:

- (4) Knives with several interchangeable blades, whether or not these are contained in the handles.

The EN (X) to GRI 3(b) provides that the term “goods put up in sets for retail sale” refer to goods that:

- (a) Consist of at least two different articles which are *prima facie* classifiable in different headings;
- (b) Consist of products or articles put together to meet a particular need or carry out a specific activity; and
- (c) Are put up in a manner suitable for sale directly to users without repacking (e.g. in boxes or cases or on boards).

Initially, we note the subject merchandise is imported in its condition ready for retail sale. In each package is included the plastic handle, blades, and the LED light. Considered separately, the subject merchandise consists of multiple components which are *prima facie* classifiable in different headings. They are packaged, marketed, and meant to be used together to meet a specific need; that is, precision cutting in crafting or hobbying. Lastly, the merchandise does not require repacking or additional components upon importation. As such, the subject merchandise satisfies the above requirements in the EN (X) to GRI 3(b) for “goods put up in sets for retail sale.”

GRI 3(b) continues, in relevant part, “...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.” Although the GRI’s do not provide a definition of “essential character,” the EN (VIII) of GRI 3(b) provides guidance. Essential character may “...be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.” This is known as the “essential character test,” see *Home Depot USA, Inc., v. United States*, 491 F.3d 1334, 1337 (Fed. Cir. 2007) quoting *Better Homes Plastics Corp. v. United States*, 119 F.3d 969, 971 (Fed. Cir. 1997), and the application of this test requires a fact-intensive analysis. See *Rollerblade, Inc. v. United States*, 112 F.3d 481 (Fed. Cir. 1997).

Upon examination, the knife itself clearly provides the bulk and weight of the product. The LED is incidental to the product’s overall weight. No breakdown of the individual components’ cost was provided. Lastly, the product is marketed and advertised as a knife set. It is the expectation of the consumer that s/he is purchasing a knife with blades for the specific use of crafting or hobbying. The LED provides extra illumination to the targeted spot. But the knife will work regardless as to whether the LED is attached or not. Accordingly, for tariff classification purposes, the essential character of the set is imparted by the knife.

The term “interchangeable” is not defined in the HTSUS or the ENs. Thus, to assist in ascertaining the common meaning of the tariff term, CBP may consult lexicographic and scientific authorities, dictionaries, and other reliable sources. See *Brookside Veneers, Ltd. v. United States*, 847 F.2d 786, 789, 6 Fed Cir. 121, 125 (Fed. Cir.) cert. denied, 488 U.S. 943 (1988).

CBP has had previous occasion to consider this term, as well as products substantially similar to the LumiKNIFE™ product. In Headquarters Ruling

(HQ) H952988, dated February 4, 1993, CBP cited *Webster's II New Riverside University Dictionary* (1988) which defined "interchangeable" as: Capable of mutual exchange, 1. To switch each of (two things) into the place of the other. 2. To give mutually: to exchange...to change places with each other. *Webster's Third New International Dictionary* (Unabridged) (1966) defined it as: 1. Capable of being interchanged. 2. Mutual, reciprocal...5. Permitting mutual substitution without loss of function or suitability. [] Thus, CBP concluded that based on cited lexicographic authorities that, "the term "interchangeable blades" refers to the subject spare blades, whether they are contained in the handle of the cutters or packed separately in the blister pack." See HQ 952988, *supra*.

Similarly, the term "fixed blade" is also not defined in the HTSUS or the ENs. But this term is understood to be a knife, whereby the blade itself does not fold, or slide, and is not one which is interchangeable with another, separate, blade. It is typically stronger due to the tang, the extension of the blade into the handle and lack of moving parts.¹ Thus, by definition, a fixed blade knife cannot also be a knife with an interchangeable blade. Furthermore, this differentiation is evidenced by the subheadings in the Tariff which provide *eo nomine* for "knives having fixed blades" and "knives other than fixed blades."

The LumiKNIFE™ has interchangeable blades. When a user releases the blade to exchange it for a replacement blade, and locks the new blade into place, this does not transform the product into a fixed blade product. It remains a knife with interchangeable blades. It is provided for *eo nomine* in the tariff, and is fully described by subheading 8211.93.00, as "Knives having other than fixed blades." This is consistent with previous CBP rulings on similar products. See HQ 952988, dated February 4, 1993 (classifying various models of utility knives which contain spare blades either packaged with the knife, or within the handle of the knife in subheading 8211.93.00, HTSUS); HQ 968129, dated May 15, 2006 (classifying a hobby knife set which included 35 blades and 4 scribs in subheading 8211.93.00, HTSUS); NY I86743, dated September 25, 2002 (classifying a hobby knife set with 42 interchangeable blades in subheading 8211.93.00, HTSUS); NY H80238, dated May 1, 2001 (classifying a hobby knife set with 28 fine interchangeable blades suitable for arts and crafts work in subheading 8211.93.00, HTSUS); and see NY F88518, dated June 26, 2000 (classifying a set including 5 retractable-blade knives in subheading 8211.93.00, HTSUS); N073138, dated September 10, 2009 (classifying a knife blade holder with five metal replacement blades. The knife handle had a retractable slide mechanism that is activated by depressing a button on the top of the handle. When the mechanism is extended, one of the replacement blades can be inserted and locked into the holder. The product was classified in subheading 8211.93.00, HTSUS); N007899, dated March 14, 2007 (classifying a heavy duty utility knife with a retractable blade. One steel blade is installed in the knife ready for use, and it was packaged with five extra blades stored within a compartment in the handle. The product was classified in subheading 8211.93.00, HTSUS).

¹ See *American Knife & Tool Institute*, available at <http://www.akti.org/resources/akti-approved-knife-definitions/>

Articles classified in subheading 8211.93.00 are measured and reported in individual units and assessed a compound rate of duty (currently 3¢ each + 5.4%). As we have previously ruled, where the appropriate provision in Chapter 82, HTSUS, carries a specific or compound rate of duty in addition to the *ad valorem* rate, as it does here, the specific or compound rate is applied to each of the items in the set. *See* HQ 967376, HQ 967377, and HQ 966981, all regarding the classification of pumpkin carving knife sets and dated March 7, 2005. *See generally*, CBP's Informed Compliance Publication, Classification of Sets Under HTSUS, updated March 2004, page 19 (section titled, "Sets Classified in Specific or Compound Rate of Duty Provisions" provides useful background on this topic).

HOLDING:

By application of GRI 1 and GRI 3(b), the subject LumiKNIFE™ set is provided for in heading 8211, HTSUS. It is specifically provided for under subheading 8211.93.00, HTSUS, which provides for, "Knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades and other base metal parts thereof: Other: Knives having other than fixed blades." The column one, general rate of duty is 3¢ + 5.4% *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 at www.usitc.gov

EFFECT ON OTHER RULINGS:

NY R04558, dated August 22, 2006, 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*.

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

GENERAL NOTICE

19 CFR PART 177

MODIFICATION OF ONE RULING LETTER AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN ICE HOCKEY MEMORABILIA

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

ACTION: Final notice of modification of a ruling letter and revocation of treatment concerning the tariff classification of certain ice hockey memorabilia sweaters.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is modifying one ruling letter pertaining to the tariff classification of two hockey memorabilia sweaters under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on April 22, 2015, in Volume 49, Number 16, of the *Customs Bulletin*. One comment in support of the proposed modification was received in response to the proposed notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 31, 2015.

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

SUPPLEMENTARY INFORMATION:

Background

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

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

Pursuant to section 625(c) (1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c) (1)), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the *Customs Bulletin* in Volume 49, Number 16, on April 22, 2015, proposing to modify New York Ruling Letter (NY) N198401, dated January 27, 2012, and proposing to revoke any treatment accorded to substantially identical transactions. One comment in support of the proposed modification was received in response to the proposed action.

Similarly, pursuant to section 625(c) (2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c) (2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY N198401, CBP classified two of three hockey sweaters, (Item number 1, a "Jacques Plante circa 1957 Canadiens Montreal Wool Sweater" and item number 3, a "1926 Detroit Cougars #7 wool sweater") under heading 6110, HTSUS, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted." It is now CBP's position that the two sweaters are collector's pieces of historical interest, and are properly classified under subheading 9705.00.0070, HTSUS, as "Collections and collec-

tors' pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, paleontological, ethnographic or numismatic interest: Archaeological, historical, or ethnographic pieces." The classification of item number 2, the "Ken Morrow 1980 U.S.A. Olympic Hockey Team Game Worn Jersey" under subheading 9705.00.0070, HTSUS, remains intact.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY N198401, and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling (HQ) H213716, (Attachment A). 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: June 01, 2015

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H213716

June 01, 2015

CLA-2OT:RR:CTF:TCM: H213716 ERB

CATEGORY: Classification

TARIFF NO.: 9705.00.00

MR. JOHN M. PETERSON
NEVILLE PETERSON LLP
ONE EXCHANGE PLAZA
55 BROADWAY, SUITE 2602
NEW YORK, NY 10006

RE: Modification of NY N198401; Tariff classification of certain collectors' pieces; ice hockey sweaters

DEAR MR. PETERSON:

U.S. Customs and Border Protection (CBP) issued to you, on behalf of your client, Classic Auctions Inc. (Classic Auctions), New York Ruling Letter (NY) N198401, dated January 27, 2012. NY N198401 pertains to the tariff classification under the Harmonized Tariff Schedule of the United States, (HTSUS) of three ice hockey sweaters or jerseys. We have since reviewed NY N198401 and find it to be in error with respect to the classification of the Jacques Plante circa 1957 Montreal Canadiens Wool Sweater (Item #1) and the circa 1926 Detroit Cougars #7 wool sweater (Item #3), which are described in detail herein.

Pursuant to Section 615(c), of the Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP is modifying a ruling letter concerning the classification of the Jacques Plante circa 1957 Montreal Canadiens wool sweater (Item #1) and the circa 1926 Detroit Cougars #7 wool sweater (Item #3), under the HTSUS. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on April 22, 2015, in Volume 49, Number 16, of the *Customs Bulletin*. One comment was received in support of the proposed notice.

FACTS:

NY N198401 states the following, in relevant part:

Item 1 is described as "Jacques Plante circa 1957 Montreal Canadiens Wool Sweater." Plante played for the Montreal Canadiens from 1953 to 1963 during which time his team won the Stanley Cup six times, including five consecutive wins. Plante was a Canadian professional ice hockey goaltender. His career spanned from 1947 through 1975 playing for teams like the Montreal Canadiens, the St. Louis Blues, the Toronto Maple Leafs, and the Boston Bruins, with a short stint as coach and general manager for the Quebec Nordiques from 1973 through 1974. Plante was included into the Hockey Hall of Fame in 1978, and was chosen as the goaltender of the Canadiens' all-time "Dream Team" in 1985. Plante was awarded the Vezina Trophy. The Canadiens retired Plante's number 1 jersey in 1995.

Item 3 is described as the “1926 Detroit Cougars #7 Wool Sweater.” The Detroit Cougars wool sweater was owned by Erik Brolin, an original member of the team which made its NHL debut in the fall of 1926.

If item #1, the Jacques Plante circa 1957 Montreal Canadiens Wool Sweater and item #3, the 1926 Detroit Cougars #7 Wool Sweater, are in chief weight of wool and are constructed from fabric having a stitch count of 9 or fewer stitches per 2 centimeters measured in the direction the stitches were formed, the applicable subheading will be 6110.11.0015, HTSUS, which provides for “Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of wool or fine animal hair: of wool: Sweaters: Men’s.”

If item #1, the Jacques Plante circa 1957 Montreal Canadiens Wool Sweater and item #3, the 1926 Detroit Cougars #7 Wool Sweater, are in chief weight of wool and are constructed from fabric having a stitch count of more than 9 stitches per 2 centimeters measured in the direction the stitches were formed, the applicable subheading will be 6110.11.0015, HTSUS, which provides for “Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of wool or fine animal hair: of wool: Other: Men’s and boys.”

NY N198401 also classified another item, described as Item #2, “Ken Morrow’s 1980 U.S.A. Olympic Hockey Team Game Worn Jersey.” Morrow was an American professional ice hockey defenseman and he played for the 1980 U.S.A Olympic hockey team, though fame is associated with Morrow and the 1980 Team U.S.A. because of the “Miracle on Ice.” The “Miracle on Ice” is the name in popular culture for the stunning medal-round game where the American team, made up of amateurs and collegiate players, defeated the Soviet Union national team, which had won the gold medal in six of the seven preceding Olympic games, with a final score of 4–3. Team U.S.A. then went on to take the gold medal by winning its last match over Finland. The Soviets settled for a silver medal by beating Sweden in its final game. CBP classified this item in heading 9705.00.0070, HTSUSA, as a collectors’ piece. The classification of this item is not the subject of this revocation, and remains intact.

On February 24th and March 12th, 2015 you provided this office with further information which stated that the single Jacques Plante sweater at issue was presented to a journalist after the 1957 NHL Stanley Cup Finals and remained in the possession of that journalist for nearly 50 years, until Classic Auctions obtained it. You further stated that the Detroit Cougars sweater is 88 years old, and is an original sweater from the inaugural season of the Cougars in Detroit. It remained in the family of Erik Brolin, a player on that team, until Classic Auctions obtained it. You stated that both sweaters are originals and are not replicas, and will be sold with a certification of authenticity.

Classic Auctions was established in 1994, and its business focuses exclusively on auctioning ice hockey memorabilia. It offers a variety of items, including game-worn, used, or player-owned apparel, equipment, posters, and autographed items. Oftentimes, the items are obtained directly from the hockey players and their families. These consignors will certify as to the provenance of the products and certification of authenticity accompany most

of the high-end collectibles Classic Auctions sells. Additional verifications, authentications, and appraisals are conducted in-house.¹ As an auction house, the reputation of Classic Auctions depends on its ability to properly and accurately authenticate the goods it sells, and the information it provides to the public. Classic Auctions sells items of varying degrees of value, its highest being the \$1.275 million sale of Paul Henderson's 1972 Team Canada jersey.²

ISSUE:

Whether the subject Jacques Plante circa 1957 Montreal Canadiens wool sweater and Erik Brolin circa 1926 Detroit Cougars wool sweater are sweaters of heading 6110, HTSUS or whether they are collectors' pieces of heading 9705, HTSUS.

LAW AND ANALYSIS:

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

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

6110 Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted:

9705 Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological, paleontological, ethnographic or numismatic interest:

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

The EN 97.05, HTSUS, states, in pertinent part, the following:

These articles are very often of little intrinsic value but derive their interest from their rarity, their grouping or their presentation. The heading includes:

(B) Collections and collectors' pieces of historical, ethnographic, paleontological or archaeological interest, for example:

(1) Articles being the material remains of human activity suitable for the study of the activities of earlier generations, such as:

¹ A video of Classic Auctions' authentication process is available on its website: <http://www.classicauctions.net/viewuserdefinedpage.aspx?pn=Authentication>

² *See* <http://www.classicauctions.net/aboutus.aspx>

mummies, sarcophagi, weapons, objects of worship, articles of apparel, articles which have belonged to famous persons.

There exists no strict standard or enumerated criteria for articles which are classified in heading 9705, HTSUS. The word “historic” is not defined by the tariff, nor by the ENs, and the dictionary definition is quite broad. The *Oxford English Dictionary* states it is, “A historical work or subject; a history. Now rare”, and “relating to history; concerned with past events”. “historic, n. and adj.” *OED Online*. Oxford University Press, December 2014. Web. 23 February 2015.

In light of this, we turn to the ENs to inform and shape our understanding of the scope of the heading, but with the caveat that the ENs are used for guidance only in interpretation of the HTSUS. The ENs explain the scope of headings, often by means of exemplars, of which these examples are not necessarily all inclusive or all restrictive. The ENs should not restrict or expand the scope of headings, rather, they should describe and elaborate on the nature of goods falling within those headings, as well as the nature of goods falling outside of those headings. Thus, items must be examined on a case-by-case basis, considering all the relevant factors involved. See HQ 088031, dated October 8, 1991 (classifying jewelry belonging to the Duke and Duchess of Windsor in heading 9705, HTSUS).

Pursuant to the ENs, articles of “historical interest” may include items that by virtue of their rarity, age, connection to a specific historical event, or era, or point in time, may be classified in heading 9705, HTSUS, so long as they are the remains of human activity suitable for the study of earlier generations. See HQ W968392, dated February 9, 2007 (classifying a stone ushabti, described as being a stone “Ushabti of Neferhotep” in heading 9705, HTSUS). By way of example, the ENs state that this could include mummies, sarcophagi, weapons, objects of worship, articles of apparel, articles which have belonged to famous persons. See EN 97.05(B)(1). But in using the term, “such as,” preceding the list in the ENs, it is obvious that an object need not be all of those exemplars at once. Rather, these are individual examples. Hence, while “articles belonging to a famous person” might present difficulty administratively, nothing in the list mandates that an article must have a nexus to a historical time *and* have belonged to a famous person. It is simply an example along with others of what might constitute “articles...suitable for study.” See HQ 088031, dated October 8, 1991 (“Articles that have “belonged to famous persons” is susceptible to a broad interpretation that would be impossible to administer” and thus should be judged on a case-by-case basis, considering all relevant factors). The commenter agreed with the above analysis.

Jacques Plante circa 1957 Montreal Canadiens Wool Sweater

Jacques Plante was a Canadian professional ice hockey goaltender. His prolific career lasted from 1947 to 1975 and he is considered one of the most important innovators in the sport, having created and popularized the wearing of face masks by goaltenders, including the forerunner of today’s mask/helmet combination. He played for the Montreal Canadiens (in French, Les Habitants or “Habs”) from 1953 to 1963 and it was during his tenure the team won the Stanley Cup, the championship trophy awarded annually to the

National Hockey League (NHL) playoff winner, six times, including five consecutive wins. After leaving the Habs, Plante played for the St. Louis Blues, the Toronto Maple Leafs and the Boston Bruins. He coached and was the general manager for the Quebec Nordiques from 1973–74. He then returned to the game as the goaltender for the Edmonton Oilers where he ended his professional athletic career in the 1974–75 season. Plante was inducted into the Hockey Hall of Fame in 1978. He was named to the All-Star Game every year from 1956 to 1960, and 1962, 1969, and 1970. He was named to the First All-Star Team in 1956, 1959, and 1962.³ He won the Hart Memorial Trophy in 1962 (for player judged most valuable to his team), and the Vezina Trophy (for goaltender judged to be the best at his position) every year from 1956 to 1960, and 1962 and 1969. His jersey, #1, was retired by the Habs in 1995. In short, he is universally considered one of the best goalies of all time.

The last of the exemplars in the EN 97.05, articles “which have belonged to famous persons” is relevant here. These articles may not in of themselves be noteworthy, in fact they may be quite mundane items, but they are still classified in heading 9705, HTSUS, based on the fame or infamy of the owner. See HQ 960518, dated May 30, 1997 (classifying various household goods of the Duke and Duchess of Windsor).⁴ Given the fame of Jacques Plante, his historically significant actions and contributions to the sport of ice hockey, his prolific career, and myriad awards and trophies presented to him, an article of memorabilia that belonged to him, and which was obtained and authenticated by Classic Auctions, such as the instant sweater, is considered a collectors’ piece for tariff classification purposes. The sweater is properly classified in heading 9705, HTSUS.

Eric Brolin circa 1926 Detroit Cougars #7 Wool Sweater

Ice hockey jerseys are mass-produced. Even special commemorative jerseys are manufactured quite often. Goods produced as a commercial undertaking to commemorate, celebrate, illustrate, or depict an event or any other matter, whether or not production is limited in quantity or circulation, do not fall in this heading as collections or collectors’ pieces of historical interest unless the goods themselves have subsequently attained that interest by reason of their age or rarity. See HQ H021886, dated August 6, 2008 (classifying a “Maison Tropicale,” a structure of sheet steel and aluminum designed by the French architect Jean Prouve in 1949 and produced in 1951; “Maison Tropical [sic] does not derive its value or historical interest from its limited production nor

³ N198401 notes that Plante was chosen as the goaltender of the Canadian’s all-time “Dream Team” in 1985. In its rationale for denying classification in heading 9705, HTSUS, CBP states “there is no indication that the subject sweater or jersey was ever used in the Stanley Cup championships or worn for the Dream Team...”. As regards the “Dream Team” this is not a team that plays a real game, rather, it is a fantasy roster of players from throughout the history of the Habs. Further, he was named to the team in 1985, at the age of 56. He died in 1986. <http://ourhistory.canadiens.com/player/Jacques-Plante>

⁴ Here, the articles included books and manuscripts, photographs, military insignia, regimental buttons, medallions, badges, brooches, ceremonial swords, jewelry, accessories to ceremonial costumes (e.g. Highland dress), rugs, personal stationery, paintings, ceramics and porcelain, phonograph records, household furnishings, musical instruments and silver articles.

is it identified with a particular historical event.”); *and see* HQ 089226, dated July 29, 1991 (where a one-of-a-kind gold watch, valued at \$4,975,000.00 did not qualify it as an article of “historical interest” because it was not connected to a historic time nor a famous person); HQ 961297, dated November 5, 1998 (classifying uniquely designed cars, “Without evidence that each car had been owned by a famous person and/or involved in an historically significant event...they also did not meet the description of an “historical event” under the tariff.”).

The NHL was organized in 1917 in Montreal, Quebec. It started with four teams based in Canada and through a series of expansions, contractions, and relocations is now composed of thirty active franchises in the United States and Canada. In 1926 a group of investors bought the roster of the Western Hockey League’s Victoria Cougars, and relocated them to Detroit as the Detroit Cougars. The team’s inaugural season was 1926–1927, and they played at the Border Cities Arena in Windsor, Ontario, because the arena in Detroit wasn’t yet completed. The team was purchased by grain merchant James E. Norris in 1932 and he renamed the team the Detroit Red Wings, which remains its name today. The team had a rocky start, finishing at the bottom of the American Division as well as the league, and failing to make the playoffs in their inaugural year. But since then, the Red Wings have won the most Stanley Cup championships (11) of any NHL franchise based in the United States. It is one of the most popular franchises in the NHL, and fans and commentators refer to Detroit and its surrounding areas as “Hockeytown”, which has been a registered trademark owned by the franchise since 1996.

The Cougars changed their sweater style and design each of their first four seasons, until they became the Red Wings. Introduced in 1932, the Red Wings sweater has not changed since then, remaining the same for over 80 years.⁵ Original sweaters from those first four years of the franchise, when the team played as the Cougars, are very rare.

Erik Brolin was not a famous hockey player. He was the third-string goalie for the inaugural season.⁶ But the creation of the NHL was a historical occurrence, as was the creation of one of the NHL’s most successful franchises. Thus, original, authentic, verifiable artifacts associated with this particular historical time, the inaugural season of the Detroit Cougars, and especially articles of apparel, which are mentioned specifically as an exemplar in the ENs 97.05(B)(1), may be considered a collectors’ piece, of heading 9705, HTSUS.

There exist no strict guidelines or requirements for authentication of goods classified under heading 9705, HTSUS, because articles classified therein are done so on a case-by-case basis and considering all relevant factors. Regarding the subject merchandise, counsel for Classic Auctions states that the two items at issue have been authenticated as originals, not replicas, are of the vintage they purport to be, and are of the correct provenance. The Port may verify this statement from counsel before liquidation. To do so, the Port may

⁵ See <http://nhluniforms.com/RedWings/RedWings.html>

⁶ See <http://thirdstringgoalie.blogspot.com/2014/11/1926-27-detroit-cougars-eric-brolin.htm> His first name is variously spelled “Eric” or “Erik” depending on the source.

request attestations, appraisals, and certifications of authenticity or other documents that Classic Auctions maintains in the ordinary course of doing business with sports memorabilia.

HOLDING:

By application of GRI 1, and subject to verification by the Port Director as described above, the subject Jacques Plante circa 1957 Montreal Canadiens wool sweater (Item #1) and the 1926 Detroit Cougars #7 wool sweater (Item #3), may be classified in heading 9705, HTSUS. They are specifically provided for under subheading 9705.00.00, HTSUS, which provides for, "Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological, paleontological, ethnographic or numismatic interest." The column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS

NY N198401, dated January 27, 2012, is hereby **MODIFIED**, as regards the Jacques Plante circa 1957 Montreal Canadiens wool sweater (Item #1) and the 1926 Detroit Cougars #7 wool sweater (Item #3).

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

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF FIREPLACE MANTELS**

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 freestanding wooden fireplace mantels.

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 New York Ruling Letter (NY) N057275, dated May 8, 2009, relating to the tariff classification of freestanding wooden fireplace mantels 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 31, 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 a boot upper. Although in this notice, CBP is specifically referring to the revocation of NY N057275, dated May 8, 2009 (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 NY N057275, CBP determined that certain fireplace mantels were classified in heading 4421, HTSUS, as other articles of wood.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N057275 and revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the fireplace mantels at issue in heading 9403, HTSUS, as other furniture, according to the analysis contained in proposed Headquarters Ruling Letter

(HQ) H129856, 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: June 02, 2015

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N057275

May 8, 2009

CLA-2-44:OT:RR:E:NC:2:230

CATEGORY: Classification

TARIFF NO.: 4421.90.9760

MS. DANA N. MOBLEY
JC PENNEY PURCHASING CORP.
6501 LEGACY DR.
PLANO, TX 75024

RE: The tariff classification of a decorative wooden fireplace from Taiwan

DEAR MS. MOBLEY:

In your letter dated April 10, 2009 you requested a tariff classification ruling.

The ruling was requested on a decorative fireplace, identified as lot # 856-4015. Photographs and diagrams of the product were submitted. The product is a free-standing fireplace surround composed of a mantel, side panels, platform base and a backing panel. The dimensions are 45" x 17" x 42". It is constructed entirely of pine and MDF (medium density fiberboard). The backing panel has two holes through which the cords of an optional electric log and heater can run. However, the product will not be imported or sold with the optional electric items included. In the condition as imported, the product is a decorative fireplace surround or frame.

The applicable subheading for the decorative fireplace, # 856-4015, will be 4421.90.9760, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of wood. The rate of duty will be 3.3 percent ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on 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 Paul Garretto at (646) 733-3035.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H129856
CLA-2 OT:RR:CTF:TCM H129856 CKG
CATEGORY: Classification
TARIFF NO.: 9403.60.80

MS. DANA N. MOBLEY
JC PENNEY PURCHASING CORP.
6501 LEGACY DR.
PLANO, TX 75024

Re: Revocation of NY N057275; Classification of Wood Fireplace Mantels

DEAR MS. MOBLEY,

This is in reference to New York Ruling Letter (NY) N057275, dated May 8, 2009, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of wood fireplace mantels. We have reconsidered this decision, and for the reasons set forth below, have determined that the classification of the mantels in heading 4421, HTSUS, as “other” articles of wood, was incorrect.

FACTS:

The merchandise was described in NY N057275 as follows:

The product is a free-standing fireplace surround composed of a mantel, side panels, platform base and a backing panel. The dimensions are 45” x 17” x 42”. It is constructed entirely of pine and MDF (medium density fiberboard). The backing panel has two holes through which the cords of an optional electric log and heater can run. However, the product will not be imported or sold with the optional electric items included. In the condition as imported, the product is a decorative fireplace surround or frame.

ISSUE:

Whether the instant fireplace mantels are classifiable as furniture of heading 9403, HTSUS, or as “other” articles of wood in heading 4421, HTSUS.

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

- 4421: Other articles of wood:
- 4421.90: Other:
- Other:
- 4421.90.97: Other...
- * * * * *

- 9403: Other furniture and parts thereof:
- 9403.60: Other wooden furniture:
- 9403.60.80: Other . . .
- * * * * *

Chapter 44, Note 1(o) provides:

This chapter does not cover...

Articles of chapter 94 (for example, furniture, lamps and lighting fittings, prefabricated buildings);

Legal Note 2 to Chapter 94 provides that:

The articles (other than parts) referred to in headings 9401 to 9403 are to be classified in those headings only if they are designed for placing on the floor or ground.

* * * * *

The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the 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 General EN to Chapter 94 states that for the purposes of this Chapter, the term “furniture” means:

- (A) Any “movable” articles (**not included** under other more specific headings of the Nomenclature), which have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres,... Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc. are also included in this category.
- (B) The following:
 - (i) Cupboards, bookcases, other shelved furniture (including single shelves presented with supports for fixing them to the wall) and unit furniture, designed to be hung, to be fixed to the wall or to stand one on the other or side by side, for holding various objects or articles (books, crockery, kitchen utensils, glassware, linen, medicaments, toilet articles, radio or television receivers, ornaments, etc.) and separately presented elements of unit furniture.
 - (ii) Seats or beds designed to be hung or to be fixed to the wall.

Except for the goods referred to in subparagraph (B) above, the term “furniture” **does not apply** to article used as furniture but designed for placing on other furniture or shelves or for hanging on walls or from the ceiling.

...

Headings 94.01 to 94.03 cover articles of furniture **of any material** (wood, osier, bamboo, cane, plastics, base metals, glass, leather, stone, ceramics, etc.). Such furniture remains in these headings whether or not stuffed or covered, with worked or unworked surfaces, carved, inlaid, decoratively painted, fitted with mirrors or other glass fitments, or on castors, etc.

EN 94.03 further provides, in pertinent part:

This heading covers furniture and parts thereof, **not covered** by the previous headings. It includes furniture for general use (e.g., cupboards, show-cases, tables, telephone stands, writing-desks, escritaires, book-cases, and other shelved furniture, etc.), and also furniture for special uses.

The heading includes furnitures for:

- (1) **Private dwellings, hotels, etc.**, such as : cabinets, linen chests, bread chests, log chests; chests of drawers, tallboys; pedestals, plant stands; dressing-tables; pedestal tables; wardrobes, linen presses; hall stands, umbrella stands; side-boards, dressers, cupboards; food-safes; bedside tables; beds (including wardrobe beds, camp-beds, folding beds, cots, etc.); needlework tables; foot-stools, fire screens; draught-screens; pedestal ashtrays; music cabinets, music stands or desks; play-pens; serving trolleys (whether or not fitted with a hot plate).

...

The heading **does not include**:

- (c) Builders' fittings (e.g., frames, doors and shelves) for cupboards, etc. to be built into walls (**heading 44.18** if of wood).

* * * *

In NY N057275, CBP classified the subject mantels in heading 4421, HTSUS, as other articles of wood. Classification within heading 4421 is subject to Legal Note 1(o) to Chapter 44, which exclude from Chapter 44 goods that are classifiable in Chapter 94, HTSUS. Therefore, if the goods are described in heading 9403, HTSUS, they are excluded from classification in any of the provisions of Chapter 44, even if they are described therein.

Heading 9403, HTSUS, provides, in relevant part, for "Other furniture and parts thereof." The term "furniture" is not defined in the Nomenclature; however, the Notes and ENs to Chapter 94 provide numerous examples of the types of articles classified under heading 94.03, and the common physical characteristics which those articles must share. Note 2 to Chapter 94 states, in relevant part, that articles referred to in heading 94.03 must be designed for placing on the floor or ground. Additionally, the EN to Chapter 94 explains that the term "furniture" describes, "any 'movable'¹ articles (not included under other more specific headings of the Nomenclature)," which are "used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, [etc...]." See EN to Chapter 94, HS. Consequently, the scope of heading 9403, HTSUS, includes articles that are designed for placing on the floor or ground and that are also used mainly with a utilitarian purpose.

¹ We note that mantels which are designed to be built into the wall are not "movable" and are excluded from heading 9403 by exclusion (c) to EN 94.03. These are classified in heading 4418, HTSUS. See NY G81559, dated September 18, 2000.

* * * * *

The Court of International Trade (CIT) in *Pomeroy Collection, Inc. v. United States*, 893 F. Supp. 2d 1269, 1283 (Ct. Int'l Trade 2013) (“*Pomeroy*”) provides guidance on the nature of merchandise described as “furniture” of Chapter 94, and emphasizes that for an article to be classified as “furniture” of heading 9403, HTSUS, the article’s “utilitarian purpose” must not be subsidiary to its decorative or ornamental function. Specifically, the CIT in *Pomeroy* considered, in relevant part, whether various floor and wall articles used for the display of candles were properly classified as “other furniture” of heading 9403, HTSUS, and stated that the EN to Chapter 94, HS, emphasizes that items classified as furniture are those “mainly with a utilitarian purpose.” *Pomeroy*, 893 F. Supp. 2d at 1284. Moreover, the CIT noted that the nature of the items listed in the EN for heading 94.03 further underscored the “seminal notion of utility.” *Id.* (defining the term “utilitarian” to mean “of, pertaining to, consisting in utility; aiming at utility, as distinguished from beauty, ornament.” *Webster’s New International Dictionary* (2d ed. 1953)).

CBP finds that the instant wood fireplace mantels are properly described as an article of furniture of heading 9403, HTSUS, because they are constructed for placing on the floor or ground and exhibit the “mainly utilitarian purpose” of housing electrical inserts and providing a surface on which to store objects. Similar to the exemplars listed in the EN to heading 94.03, HS—which includes, for example, cabinets, chests, and tables—the mantels’ wooden frame and secondary shelving provide for the storage of supplies related to the article’s primary function.

The instant mantels are thus classified in heading 9403, HTSUS. Pursuant to Note 1(o) to Chapter 44, the instant mantels are precluded from classification in Chapter 44 because they are articles of Chapter 94. This decision is consistent with prior rulings. *See e.g.*, NY N257086, dated October 9, 2014; NY N106555, dated June 17, 2010.

HOLDING:

By application of GRIs 1 and 6, the instant wood fireplace mantels are classified in heading 9403, HTSUS, specifically subheading 9403.60.80, HTSUS, which provides for “Other furniture and parts thereof: Other wooden furniture: 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 online at <http://www.usitc.gov/tata/hts/>.

EFFECT ON OTHER RULINGS:

NY N057275, dated May 8, 2009, is hereby revoked.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

**REVOCAION OF RULING LETTERS AND REVOCAION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF CONTACT LENS BUTTONS**

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

ACTION: Notice of revocation of three ruling letters and revocation of treatment relating to the classification of contact lens buttons.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking NY N035645, dated September 9, 2008, NY M80655, dated March 17, 2006, and NY J85736, dated June 23, 2003, concerning the tariff classification of contact lens blanks/buttons under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. No comments were received in response to this Notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 31, 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 N035645, NY M80655, and NY J85736 was published on April 29, 2015, in Volume 49, Number 17 of the *Customs Bulletin*. As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY N035645, NY M80655, and NY J85736, CBP determined that various plastic buttons used in the production of finished contact lenses were classified in heading 9001, HTSUS, as contact lenses.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N035645, NY M80655, and NY J85736, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in Headquarters Ruling Letter (HQ) H050836, which is attached to this notice. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: June 02, 2015

JACINTO JUAREZ
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H050836

June 02, 2015

CLA-2 OT:RR:CTF:TCM H050836 CkG

CATEGORY: Classification

TARIFF NO: 3926.90.99

MR. JOHN PELLEGRINI
MCGUIREWOODS LLP
1345 AVENUE OF THE AMERICAS
NEW YORK, NY 10105-0106

MS. DEANNA WERBER
CONTAMAC US, INC.
GRAND VALLEY BUSINESS PLAZA
2214 SANFORD DRIVE, SUITE B7
GRAND JUNCTION, CO 81505

RE: Revocation of NY N035645, NY M80655, and NY J85736; classification of contact lens buttons

DEAR MR. PELLEGRINI:

This is in response to your letter of January 27, 2009, on behalf of your client, CIBA Vision Puerto Rico, Inc., requesting the reconsideration of New York Ruling Letter (NY) N035645, issued on September 9, 2008. CBP ruled in this decision that contact lens blanks/buttons imported by CIBA Vision Puerto Rico, Inc. were classified in subheading 9001.30.00, HTSUS, as contact lenses. You believe that the correct classification of the subject contact lens buttons is in heading 3926, HTSUS, as "other" articles of plastic. A sample of the subject merchandise was included with the request.

We have reviewed NY N035645, and also rulings NY M80655 and NY J85736, issued to Contamac, Ltd. on March 17, 2006, and June 23, 2003, respectively. In NY M80655 and NY J85736, CBP determined that substantially similar merchandise was classified by application of GRI 2(a) in heading 9001, HTSUS, as unfinished contact lenses. For the reasons set forth below, we find that classification of the contact lens buttons at issue in heading 9001, HTSUS, was incorrect.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N035645, NY M80655, and NY J85736 was published on April 29, 2015, in Volume 49, Number 17, of the *Customs Bulletin*. No comments were received in response to this Notice.

FACTS:

In NY N035645, the subject merchandise was described as follows:

The imported plastic blanks, which you refer to as buttons, are used to manufacture Permalens contact lenses. The disc shaped lens buttons are made of Perfilcon A polymer and trimmed to 12.75 millimeter in diameter and 4.70 millimeter in thickness. Following importation, the contact lens buttons will undergo further manufacturing steps including but not limited to base and front curve cutting, polishing, cleaning, hydration and final packaging.

A sample of the merchandise at issue in NY N035645 was sent to the CBP laboratory for examination (Lab report # SP20100152). The examination concluded that the item did not produce an optical effect such as magnification, collimation, refraction, etc.

NY M80655 described the subject merchandise as follows:

The five styles of Contamac Ltd. contact lens buttons are identified in your letter as GM3F 58, GM3F 49, C38F Contaflex 38, C55F Contaflex 55, and Optimum range. The contact lens buttons are all similar in design and chemical formulation. The contact lens buttons are produced in a disc shape and are polymerized in a hot water bath. After manufacture, the buttons are ejected from the mold and are trimmed to a particular contact lens size. The diameter sizes range from 12mm to 22mm and the most common size is a 12mm diameter. The buttons come in various colors: blue, light blue, green, grey and clear. You state in your letter that these buttons are not a primary form of plastic and that the only use for the contact lens buttons is in the production of finished contact lenses by finishing contact lens laboratories. The contact lens buttons are imported into the United States and sold to contact lens finishing laboratories. The finishing laboratories place the buttons into a CNC lathe. Then a base curve and a front curve are cut forming the finished device, a contact lens.

The merchandise at issue in NY J85736 was described as follows:

The contact lens buttons are produced in a disc shape and are trimmed to 12mm in diameter, which is a particular contact lens size. The packaging is marked Hybrid FS 1077-50 Blue. The material used to produce the Hybrid FS is modified fluoro silicone acrylate. You state that the only use for the contact lens buttons is in the production of finished contact lenses. The contact lens finishing laboratories place the buttons into a CNC lathe and a base curve and a front curve are cut forming the finished device, a contact lens.

ISSUE:

Whether the subject merchandise is classified in heading 3926, HTSUS, as “other” articles of plastic, or heading 9001, HTSUS, as contact lenses.

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 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.

GRI 2(a) provides 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.”

The HTSUS provisions under consideration are as follows:

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

3926.90: Other:

- 3926.90.99: Other.....
 * * * * *
- 9001: Optical fibers and optical fiber bundles; optical fiber cables other than those of heading 8544; sheets and plates of polarizing material; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked:
- 9001.30.00: Contact lenses.....
 * * * * *

Note 2 to Chapter 39 provides in pertinent part, as follows:

2. This chapter does not cover:

- (u) Articles of chapter 90 (for example, optical elements, spectacle frames, drawing instruments);

* * * * *

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).

The Explanatory Note to GRI 2 provides, in pertinent part, as follows:

- (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 90.01 provides:

This heading covers:

...

- (D) **Optical elements of any material other than glass, whether or not optically worked, not permanently mounted** (e.g., elements of quartz (other than fused quartz), fluorspar, plastics or metal; optical elements in the form of cultured crystals of magnesium oxide or of the halides of the alkali or the alkaline-earth metals).

Optical elements are manufactured in such a way that they produce a required optical effect. An optical element does more than merely

allow light (visible, ultraviolet or infrared) to pass through it, rather the passage of light must be altered in some way, for example, by being reflected, attenuated, filtered, diffracted, collimated, etc.

...
The heading **does not cover** :

...

- (b) Mirrors of **heading 70.09**, i.e., glass mirrors not optically worked. Simple plane or even curved mirrors (e.g., shaving mirrors and mirrors for powder compacts) are therefore classified in **heading 70.09**.
- (c) Optical elements of glass of **heading 70.14**, i.e., elements not optically worked (generally moulded) (see Explanatory Note to heading **70.14**).
- (d) Glasses of **heading 70.15**, not optically worked (e.g., blanks for contact lenses or for corrective spectacle lenses, for goggles, for protecting the dials of measuring instruments, etc.).

* * * * *

Note 2(u) to Chapter 39 excludes articles of Chapter 90 from classification in Chapter 39. Therefore, our analysis must begin with Chapter 90. There is no dispute that the instant articles are not contact lenses, but rather buttons used to manufacture contact lenses.

Thus, the issue to be addressed is whether the instant contact lens buttons have the “essential character” of completed or finished contact lenses and should, therefore, be classified pursuant to GRI 2(a) as if they were contact lenses in their completed or finished state. The General Rules of Interpretation do not define the phrase “essential character.” The meaning of this term in the context of GRI 2(a) may, however, be understood from an examination of the Explanatory Notes to GRI 2 (a).

The EN’s to GRI 2 (a) draw a distinction between a “blank” which possesses the essential character of an article and a “semi-manufacture[d]” item that does not have the essential character of an article. A “blank,” as defined in the EN, is 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.” “Semi-manufactures”, on the other hand, are items that do not yet have the essential shape or character of the finished articles. Examples of semi-manufactures set forth in the EN’s are: “bars, discs, tubes, etc.” Semi-manufactures are not regarded as “blanks.”

We agree that the instant articles cannot be classified in heading 9001, HTSUS, because they lack the essential character of contact lenses classifiable in that heading. The buttons conform to the description of “blanks” in the EN to GRI 2(a) only insofar as they can only be used, other than in exceptional cases, for completion into finished contact lenses. However, in their imported condition, the buttons do not possess the essential shape or outline of a finished contact lens. There is nothing in the product as imported that is evocative of a contact lens. The buttons do not possess a single defining characteristic of contact lenses; they have no lens curvature, they cannot be placed in the eye, they are not optically worked, and they produce no optical effect as required by EN 90.01 (a requirement even for those optical

elements which are not optically worked). The buttons are thus semi-manufactures rather than blanks, as they lack the essential shape or character of the finished article. The ENs further note that discs are typically regarded as semi-manufactures rather than blanks, and there is no compelling reason to find an exception in this instance.

The buttons are not described by heading 9001, HTSUS, as lenses, because they lack the essential character of finished contact lenses. Additionally, the buttons are not optical elements of heading 9001, HTSUS, because they produce no optical effect. EN 90.01, in explaining the term “optical elements”, notes that optical elements are manufactured in such a way that they produce an optical effect which consists of more than merely allowing light to pass through it; passage of light must be altered in some way, for example, by being reflected, attenuated, filtered, diffracted, collimated, etc., regardless of whether or not they are optically worked. The CBP Laboratory Report confirms that the buttons do not produce any optical effect such as refraction, magnification, collimation or dispersion. As such, the subject merchandise is not an article of Chapter 90, and is not excluded from Chapter 39 by Note 2(u) to that Chapter.

The subject merchandise can be distinguished from unfinished contact lenses classified by CBP in heading 9001, HTSUS, in NY J89911, dated November 7, 2003, and NY H81137, dated May 25, 2001. NY J89911 and NY H81137 classified unfinished lenses in a more advanced stage of manufacture as contact lenses of heading 9001, HTSUS. In both cases, the lenses were already cut and shaped at the time of importation, but held inside a mold. After importation, the lenses were polished and hydrated, then removed from the mold. In their condition as imported, the merchandise already had the curvature of a lens and therefore the essential shape of the finished product. The lens curvature also produces an optical effect for the purposes of heading 9001, HTSUS.

HOLDING:

By application of GRI 1, the subject contact lens buttons are classified in heading 3926, specifically subheading 3926.90.99, HTSUS, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.” The 2015 column one, general rate of duty is 5.3% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N035645, dated September 9, 2008, NY M80655, dated March 17, 2006, and NY J85736, dated June 23, 2003, are hereby revoked.

Sincerely,

JACINTO JUAREZ

for

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 FOOTWEAR FROM
CHINA**

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

ACTION: Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the tariff classification of footwear 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 Customs and Border Protection (CBP) proposes to revoke a ruling letter relating to the tariff classification of footwear from China, 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 31, 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 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: George Aduhene, Tariff Classification and Marking Branch: (202) 325–0184

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, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP intends to revoke a ruling letter relating to the tariff classification of footwear from China. Although in this notice, CBP is specifically referring to the revocation of NY N219385, dated June 20, 2012, set forth as Attachment A to this document, 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 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 its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY N219385, CBP determined that the submitted half-pair sample identified as style "Patent" did not have a "foxing-like band" and classified the merchandise in subheading 6402.99.3165, HT-SUSA, 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 over-

lapping 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: Other: For women: Other.” The submitted half-pair samples identified as styles “Crushed Velvet” and “Dead Tiedye” were also determined to not have a “foxing-like band” and classified the merchandise in subheading 6404.19.3960, HTSUSA, 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: Other: Footwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except footwear of subheading 6404.19.20 and except footwear having a foxing or foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper: Other: Other: Other: For women.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY N219385 and any other ruling not specifically identified, in order to reflect the proper classification of the style “Patent” in subheading 6402.99.80, HTSUS, and the styles “Crushed Velvet” and “Dead Tiedye” in subheading 6404.19.89, HTSUS, based on the analysis in the proposed HQ H237647, 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 identical transactions.

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

Dated: June 02, 2015

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N219385

June 20, 2012

CLA-2-64:OT:RR:NC:N4:447

CATEGORY: Classification

TARIFF NO.: 6402.99.3165, 6404.19.3960

Ms. SHERI L. BREIT
BUSCEMI CO., INTL LLC
317 S. ISIS AVENUE, SUITE 201
INGLEWOOD, CA 90301

RE: The tariff classification of footwear from China

DEAR Ms. BREIT:

In your letter dated May 21, 2012 you requested a tariff classification ruling on behalf of your client, Magpie Consulting LLC d/b/a SWYT Culture, for three styles of slip-on footwear.

The submitted half-pair sample identified as style "Patent," is a women's closed toe/heel slip-on "ballet flat" with a rubber or plastics outer sole and upper. There is a small section of elasticized material at the rear of the topline of the shoe which helps keep it snug to the wearer's foot. The shoe is neither "protective" nor does it have a foxing or a foxing-like band. The applicable subheading for the women's slip-on shoe, style "Patent" will be 6402.99.3165 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: having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements) 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: other: for women. The rate of duty will be 6 percent ad valorem.

The submitted half-pair samples identified as styles "Crushed Velvet" and "Dead Tiedye" are women's closed toe/heel slip-on "ballet flats" with rubber or plastics outer soles and textile material uppers. There is a small section of elasticized material at the rear of the topline of each shoe which helps keep them snug to the wearer's foot. The shoes are neither "protective" nor do they have a foxing or a foxing-like band.

The applicable subheading for the women's slip-on shoes, styles "Crushed Velvet" and "Dead Tiedye" will be 6404.19.3960, 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: not sports footwear; footwear not designed to be a protection against cold or inclement weather; footwear of the slip-on type; footwear that is not less than 10 percent by weight of rubber or plastics; other: other: for women. The rate of duty will be 37.5% ad valorem. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

The submitted samples are not marked with the country of origin. Therefore, if imported as is, they will not meet the country of origin marking requirements of 19 U.S.C. 1304. Accordingly, the footwear would be consid-

ered not legally marked under the provisions of 19 C.F.R. 134.11 which states, “every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.”

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 (646) 733-3042.

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H237647
CLA-2 OT:RR:CTF:TCM H237647 GA
CATEGORY: Classification
TARIFF NO.: 6402.99.80, 6404.19.89

MR. MICHAEL S. O'ROURKE
RODE & QUALEY
55 WEST 39TH STREET
NEW YORK, N.Y.
NY 10018

RE: Revocation of NY N219385; Classification of footwear from China

DEAR MR. O'ROURKE:

This letter is in response to your request of December 11, 2012, on behalf of your client, Magpie Consulting LLC d/b/a SWYT Culture, for reconsideration of NY N219385, dated June 20, 2012, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of three styles of slip-on footwear from China. The National Commodity Specialist Division (NCSA) forwarded your request to this office for a response. Two samples (identified as "Crushed Velvet" and "Patent") of the merchandise were submitted with your request and will be returned.

In NY N219385, U.S. Customs and Border Protection (CBP) determined that style "Patent" was classified in subheading 6402.99.3165, HTSUSA, 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: Other: For women: Other."

In NY N219385, CBP also determined that styles "Crushed Velvet" and "Dead Tiedye" were classified in subheading 6404.19.3960, HTSUSA, 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: Other: Footwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except footwear of subheading 6404.19.20 and except footwear having a foxing or foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper: Other: Other: Other: For women."

CBP has reviewed NY N219385 and has determined that it is incorrect. For the reasons set forth below, we hereby revoke NY N219385.

FACTS:

In NY N219385, style "Patent" was described as follows:

The submitted half-pair sample identified as style "Patent," is a women's closed toe/heel slip-on "ballet flat" with a rubber or plastics outer sole and upper. There is a small section of elasticized material at the rear of the

		Other:
6402.99.80		Valued over \$6.50 but not over \$12/ pair
* * * * *		
6404	Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials:	
	Footwear with outer soles of rubber or plastics:	
6404.19	Other:	Footwear with open toes or open heels; foot- wear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except foot- wear of subheading 6404.19.20 and except footwear having a foxing or foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlap- ping the upper:
		Other:
6404.19.39		Other
		Other:
6404.19.3960		For women
* * *		
	Other	
		Valued over \$6.50 but not over \$12/pair:
6404.19.89		Other

Counsel argues that NY N219385, dated June 20, 2012, is inconsistent with an Informed Compliance Notice issued by a CBP port, which described the footwear as having foxing-like bands. It has submitted samples for our examination.

Subheadings 6402.99.3165 and 6404.19.3960, HTSUSA, provide for footwear without foxing or foxing-like bands. The issue we must address is whether the footwear in question is constructed with foxing-like bands. The term “foxing-like” is not defined in the HTSUS or the Explanatory Notes. On November 17, 1993, CBP published Treasury Decision (T.D.) 93–88, dated October 25, 1993, in the *Customs Bulletin*, Volume 27, Number 46. In T.D. 93–88, CBP stated that the typical “foxing band” was “a rubber tape, about 1 inch high 1/16 inch thick, which covers the lower part of the upper and the edge of the rubber outersole....” CBP stated that the term “foxing-like band” was defined as “a band around a substantial portion of the lower part of the upper which either has been attached (cemented, sewn, etc.) to the sole or is part of the same molded piece of rubber or plastics which forms the sole.”

In T.D. 83–116, dated June 22, 1983, CBP set forth guidelines relating to the characteristics of foxing and foxing-like bands. CBP noted that unit molded footwear is considered to have a foxing-like band if a vertical overlap of 1/4 inch or more exists from where the upper and the outer sole initially meet (measured on a vertical plane), and that if the overlap is less than 1/4 inch, the footwear is presumed not to have a foxing-like band.

In T.D. 92–108, dated 25, 1992, *Custom Bulletin* Volume 26, Number 48, CBP set forth its position regarding the interpretation of the term “substan-

tially encircle” as it relates to “foxing and foxing-like bands.” In so doing, CBP formally adopted the “40–60 rule,” which is the measurement used by CBP to assist in making a determination regarding encirclement. Generally, under this rule, an encirclement of less than 40 percent of the perimeter of the footwear by the band does not constitute foxing or a foxing-like band. An encirclement, of between 40 percent to 60 percent of the perimeter of the footwear by the band, may or may not constitute a foxing or foxing-like band depending on whether the band functions or looks like a foxing. An encirclement of over 60 percent of the perimeter of the footwear by the band is always considered substantial encirclement.

An examination of the samples submitted by counsel reveals that the styles of footwear at issue have molded rubber/plastics outer soles that overlap the uppers by 1/4 inch, or more, measured on a vertical plane. Additionally, and for each style, the overlap substantially encircles the perimeter of the shoe. Accordingly, the instant footwear is constructed with foxing-like bands.

HOLDING:

Pursuant to GRIs 1 and 6, style “Patent” is classified in heading 6402, HTSUS, specifically, in subheading 6402.99.80, HTSUS, which provides for, “Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Other: Other: Valued over \$6.50 but not over \$12/pair.” The column one, general rate of duty is \$.90/pr + 20% percent *ad valorem*.

Styles “Crushed Velvet” and “Dead Tiedye” are classified in heading 6404, HTSUS, specifically, in subheading 6404.19.89, 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: Other: Other: Valued over \$6.50 but not over \$12/pair: Other.” The column one, general rate of duty is \$.90/pr + 20% percent *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 on the World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY N219385, dated June 20, 2012, is hereby 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 MOBILE PHONE KITS**

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

ACTION: Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the classification of mobile phone kits.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP intends to revoke NY N049055, dated February 4, 2009, concerning the tariff classification of mobile phone kits 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 31, 2015.

ADDRESSES: Written comments are to be addressed to the U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attn: Trade and Commercial Regulations Branch, 10th Floor, 90 K St. NE, 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: 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 amends many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of mobile phone kits. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) N049055, dated February 4, 2009 (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. 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 N049055, CBP classified various mobile phone components (including mobile phone handsets, mobile phone batteries, mobile phone battery covers, mobile phone chargers, and mobile phone instruction manuals), imported together in bulk but packaged separately, in heading 8517, HTSUS, as an unassembled GRI 3(b) set. It

is now CBP's position that the subject kits are not GRI 3(b) sets, and that the components are classified separately.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N049055, 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 Letter (HQ) H252291, set forth as Attachment B 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: June 02, 2015

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N049055

February 4, 2009

CLA-2-85:OT:RR:NC:N1:109

CATEGORY: Classification

TARIFF NO.: 8517.12.0050

MR. DAVID LIM
SENIOR DIRECTOR, SUPPLY CHAIN DIVISION
LG ELECTRONICS MOBILECOMM U.S.A., INC.
10101 OLD GROVE ROAD
SAN DIEGO, CA 92131

RE: The tariff classification of mobile phone kits from Korea

DEAR MR. LIM:

In your letter dated January 8, 2009 you requested a tariff classification ruling.

The merchandise subject to this ruling is mobile phone kits. You indicate in your letter that the mobile phone kits will be imported in a single shipment with each of the components, accessories, and point of sale packing material imported in bulk in separate shipping boxes at the time of entry and subsequently assembled together into retail mobile phone kits immediately after entry into the United States.

The items that comprise the mobile phone kits are mobile phone handsets, mobile phone batteries, mobile phone battery covers, mobile phone chargers, and mobile phone instruction manuals. Each of these items will be packaged with several other identical items in cardboard shipping cartons, i.e., one carton containing batteries, another carton containing handsets, etc. Each of the shipping cartons will be placed on separate pallets with several other shipping cartons containing identical items and shrink-wrapped, i.e., one pallet containing several shipping cartons full of batteries, another pallet containing several cartons full of handsets, etc. All of the pallets will be imported within the same shipment in proportionate quantities, i.e., 1,000 batteries, 1,000 handsets, etc. All of the five items will be imported in this manner for convenience of packing, handling, and transport. However, after importation the merchandise will only be sold as mobile phone kits each consisting of a handset, battery, battery cover, charger, and instruction manual.

It is the opinion of this office that the mobile phone imparts the essential character of the imported merchandise, as an unassembled mobile phone kit. The kit, in its unassembled condition, is classified as a telephone for cellular networks in accordance with General Rule of Interpretation (GRI) 2(a) which states:

“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.”

As referenced in HQ 951511, dated June 1, 1992, goods do not have to be in “kit” form, nor do they have to be shipped in the same packing container, to be unassembled for tariff purposes. As such, the merchandise imported in

bulk in an unassembled fashion as a mobile phone kit is classified upon importation as mobile phone kits in accordance with GRI 2(a).

The applicable subheading for the mobile phone kits will be 8517.12.0050, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Telephones for cellular networks or for other wireless networks: Other radio telephones designed for the public cellular Radiotelecommunication service”. 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 Linda M. Hackett at (646) 733-3015.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H252291
CLA-2 OT:RR:CTF:TCM H252291 CkG
CATEGORY: Classification
TARIFF NO: 4901.99, 8504.40, 8507.60, 8517.12

MR. DAVID LIM
SENIOR DIRECTOR, SUPPLY CHAIN DIVISION
LG ELECTRONICS MOBILECOMM U.S.A., INC.
10101 OLD GROVE ROAD
SAN DIEGO, CA 92131

RE: Revocation of NY N049055; classification of mobile phone kits

DEAR MR. LIM,

This is in reference to New York Ruling Letter (NY) N049055, issued by Customs and Border Protection (CBP) on February 4, 2009, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of mobile phone kits. We have reconsidered this decision, and for the reasons set forth below, have determined that classification of the mobile phone kits as unassembled GRI 3(b) sets in heading 8517, HTSUS, was incorrect.

FACTS:

NY N049055 described the subject merchandise as follows:

The merchandise subject to this ruling is mobile phone kits. You indicate in your letter that the mobile phone kits will be imported in a single shipment with each of the components, accessories, and point of sale packing material imported in bulk in separate shipping boxes at the time of entry and subsequently assembled together into retail mobile phone kits immediately after entry into the United States.

The items that comprise the mobile phone kits are mobile phone handsets, mobile phone batteries, mobile phone battery covers, mobile phone chargers, and mobile phone instruction manuals. Each of these items will be packaged with several other identical items in cardboard shipping cartons, i.e., one carton containing batteries, another carton containing handsets, etc. Each of the shipping cartons will be placed on separate pallets with several other shipping cartons containing identical items and shrink-wrapped, i.e., one pallet containing several shipping cartons full of batteries, another pallet containing several cartons full of handsets, etc. All of the pallets will be imported within the same shipment in proportionate quantities, i.e., 1,000 batteries, 1,000 handsets, etc. All of the five items will be imported in this manner for convenience of packing, handling, and transport. However, after importation the merchandise will only be sold as mobile phone kits each consisting of a handset, battery, battery cover, charger, and instruction manual.

ISSUE:

Whether the instant kits can be classified as unassembled GRI 3(b) sets in heading 8517, HTSUS.

LAW AND ANALYSIS:

The HTSUS provisions at issue are as follows:

- 4901: Printed books, brochures, leaflets and similar printed matter,
whether or not in single sheets:
Other:
- 4901.99: Other:
* * * * *
- 8504: Electrical transformers, static converters (for example, rectifiers)
and inductors; parts thereof:
- 8504.40: Static converters:
8504.40.85: For telecommunication apparatus . . .
* * * * *
- 8507: Electric storage batteries, including separators therefor, whether
or not rectangular (including square); parts thereof:
- 8507.60.00: Lithium-ion batteries . . .
* * * * *
- 8517: Telephone sets, including telephones for cellular networks or for
other wireless networks; other apparatus for the transmission or
reception of voice, images or other data, including apparatus for
communication in a wired or wireless network (such as a local or
wide area network), other than transmission or reception apparatus
of heading 8443, 8525, 8527 or 8528; parts thereof:
Telephone sets, including telephones for cellular networks
or for other wireless networks:
- 8517.12.00: Telephones for cellular networks or for other wireless networks:
* * * * *

GRI 2 provides, in relevant part:

- (a) 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.

GRI 3 provides, in pertinent part:

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

...

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

* * * * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), constitute the official interpretation of the 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 GRI 2(a) provides:

- (VII) For the purposes of this Rule, "articles presented unassembled or disassembled" means articles the components of which are to be assembled either by means of fixing devices (screws, nuts, bolts, etc.) or by riveting or welding, for example, **provided** only assembly operations are involved. No account is to be taken in that regard of the complexity of the assembly method. However, the components shall not be subjected to any further working operation for completion into the finished state. Unassembled components of an article which are in excess of the number required for that article when complete are to be classified separately.
- (IX) In view of the scope of the headings of Sections I to VI, this part of the Rule does not normally apply to goods of these Sections.

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

- (X) For the purposes of this Rule, the term "goods put up in sets for retail sale" shall be taken to mean goods which :
 - (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings. Therefore, for example, six fondue forks cannot be regarded as a set within the meaning of this Rule
 - (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
 - (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

* * * * *

In NY N049055, CBP classified various mobile phone components (including mobile phone handsets, mobile phone batteries, mobile phone battery covers, mobile phone chargers, and mobile phone instruction manuals), imported together in bulk but packaged separately, in heading 8517, HTSUS. The ruling applied GRI 2(a) and GRI 3(b) to classify all of the components together as unassembled GRI 3(b) sets. For the reasons set forth below, this analysis is incorrect.

GRI 2(a) provides, in pertinent part, that "Any reference in a heading to an article shall be taken to 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." 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.” In addition, the Explanatory Note to GRI 3(b) holds that: “[f]or the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:

- (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings.
- (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
- (c) are put up in a manner suitable for sale directly to users without repacking.”

The mobile phone kit components imported by LG are not “goods put up in sets for retail sale.” The instant kit components are not put up in a manner suitable for sale directly to users without repacking. Instead, the various components are all packaged separately and in bulk at the time of importation. Only after importation are the components repacked for sale directly to consumers. Despite these facts, NY N049055 nonetheless concluded that the LG phone kits are “unassembled sets” pursuant to GRI 2(a). This conclusion is incorrect.

First, we note that GRI 2(a) refers specifically to individual articles, not sets. A composite good can be an article, but a set is by definition, several articles. GRI 2(a) and GRI 3 can therefore be read together, and frequently have been with respect to composite goods, but the language of GRI 2(a) does not support extending this rule to GRI 3(b) sets. Second, it is an established rule of tariff classification, set forth in the EN to GRI 3(b) and CBP rulings, that “goods put up in sets for retail sale” “must be put up in a manner suitable for sale directly to users without repacking”. Such goods must meet all three of the criteria listed in the EN to GRI 3(b) in order to be classified as a GRI 3(b) set. *See e.g.*, HQ H236637, dated June 28, 2013; HQ H179957, dated September 20, 2012; HQ H081686, dated August 15, 2012; HQ 950667, dated January 17, 1992; HQ 088681, dated May 14, 1991; NY E87868 October 15, 1999; and NY J85398; June 26, 2003. Thus, if at the time of importation a kit lacks any of the essential elements of a set, it cannot be classified as such under either GRI 2 or GRI 3. For example, in HQ 088681, CBP considered a similar scenario, in which various components of a portfolio were imported in separate cartons in the same container. These components were not, at the time of importation, “put up in a manner suitable for sale directly to users without repacking.” Thus, CBP concluded that the portfolio components did not constitute a set under GRI 3(b), and that GRI 3 should not have been considered in the classification of the merchandise. Similarly, in HQ 950667, CBP concluded that medicine cabinets with built-in mirrors and over the cabinet lights packaged separately were not GRI 3(b) sets because “that the goods may be sold as “sets” after importation is of no importance where those same goods are not “packaged as sets” upon importation.”

NY N049055 cites to HQ 951511, dated June 1, 1992, for the proposition that goods do not have to be in “kit” form, nor do they have to be shipped in the same packing container, to be unassembled for the purposes of GRI 2(a). HQ 951511 classified unassembled motor vehicle wiring harnesses and lamps

used for lighting in subheading 8512.20.20, HTSUS, which provides for [e]lectrical lighting or signaling equipment of a kind used for motor vehicles, by GRI 2(a). However, HQ 951511 describes merchandise that is unassembled. GRI 2(a) does not apply to shipments of mobile phone handsets, mobile phone batteries, mobile phone battery covers, mobile phone chargers and instruction manuals imported in a single shipment, in bulk, and in separate shipping boxes.

The instant kits are not put up in a manner suitable for sale directly to users without repacking, because they are packaged separately at importation and are repackaged after importation. Thus, the instant LG kits do not meet the essential elements of a GRI 3(b) set, and are not classifiable as such under either GRI 2 or 3. Each component will be classified separately.

The mobile phone battery will be classified in heading 8507, HTSUS, which provides for “Electric storage batteries including separators therefor, whether or not rectangular...parts thereof.”

The mobile phone battery charger will be classified in heading 8504, HTSUS, which provides for ““Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof.”

The instruction manual will be classified in heading 4901, HTSUS, which provides for “Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets.”

The LG mobile phone handsets are classified in heading 8517, HTSUS, as a telephone for a cellular or other wireless network.

We do not have sufficient information to determine the classification of the battery cover.

HOLDING:

By application of GRIs 1 and 6, the battery is classified in heading 8507, HTSUS, specifically subheading 8507.60.00, specifically subheading 8507.60.00, which provides for “Electric storage batteries including separators therefor, whether or not rectangular...parts thereof: Lithium-ion batteries.” The 2015 column one, general rate of duty is 3.4%.

The battery charger is classified in heading 8504, HTSUS, specifically subheading 8504.40.85, HTSUS, which provides for “Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof: Static converters: For telecommunication apparatus.” The 2015, column one, general rate of duty is Free.

The instruction manual is classified in heading 4901, HTSUS, specifically subheading 4901.99.00, HTSUS, which provides for “Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets: Other: Other.” The 2015 column one, general rate of duty is Free.

The LG mobile phone is classified in heading 8517, HTSUS, specifically subheading 8517.12.00, HTSUS, which provides for “Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528; parts thereof: Telephone sets, including telephones for cellular networks or for other wireless networks: Telephones for cellular networks or for other wireless networks.” The 2015 column one, general rate of duty is Free.

We do not have sufficient information to determine the classification of the battery cover.

EFFECT ON OTHER RULINGS:

NY N049055, dated February 4, 2009, is hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

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

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 boot uppers.

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) N110715, dated June 30, 2010, relating to the tariff classification of boot uppers 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. 17, on April 29, 2015. No comments were received in response to this Notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 31, 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 N110715 was published on April 29, 2015, in Vol. 49, No. 17 of the *Customs Bulletin*.

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

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

In NY N110715, CBP determined that one style of boot uppers was classified in heading 6406, HTSUS, specifically subheading 6406.10.90, HTSUS, as other parts of footwear.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N110715 in order to reflect the proper classification of the boot uppers at issue in subheading 6406.10.40, HTSUS, as formed uppers, according to the analysis contained in Headquarters Ruling Letter (HQ) H165759, 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.

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

Dated: June 05, 2015

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

Attachment

HQ H165759

June 05, 2015

CLA-2 OT:RR:CTF:TCM H165759 CkG

CATEGORY: Classification

TARIFF NO.: 6406.10.40

MS. DONNA BADE
 SANDLER, TRAVIS & ROSENBERG, P.A.
 225 W. WASHINGTON ST.
 SUITE 1550
 CHICAGO, IL 60606

RE: Revocation of NY N110715; the tariff classification of a footwear upper from China.

DEAR MS. BADE:

This is in reference to New York Ruling Letter (NY) N110715, issued to you on June 30, 2010, on behalf of Red Wing Shoe Company. In NY N110715 CBP classified a boot upper, style #43858, in subheading 6406.10.90, HTSUS. We have reconsidered this decision, and find that it was incorrect.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N110715 was published on April 29, 2015, in Volume 49, Number 17, of the *Customs Bulletin*. No comments were received in response to this Notice.

FACTS:

At issue is a textile boot upper, style #43858. A sample was forwarded to this office for our review. The upper consists of predominately man-made fiber textile materials in a camouflage pattern. One layer of material is sewn to the bottom of the inner lining. Another, outer layer is sewn to the bottom of the upper. There are four holes, each approximately 1 1/8-inch in diameter cut out of the outer (bottom) layer of the upper. The inner layer of the upper is complete. Two of these holes are partially covered by adhesive tape. The other two holes remain open.

ISSUE:

Whether the instant boot uppers are classified as formed uppers in subheading 6406.10.40, HTSUS, or as other footwear uppers in subheading 6406.10.90, HTSUS.

LAW AND ANALYSIS:

The HTSUS provisions under consideration are as follows:

- 6406: Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof:
- 6406.10: Uppers and parts thereof, other than stiffeners:
- Formed uppers:
- Of textile materials:
- Other:

6406.10.40:	Valued over \$12/pair. . . .
	Other:
	Other:
	Other:
6406.10.90:	Other...
	* * * *

Additional U.S. Note 4 to Chapter 64 provides as follows:

4. Provisions of subheading 6406.10 for “formed uppers” cover uppers, with closed bottoms, which have been shaped by lasting, molding or otherwise but not by simply closing at the bottom.

* * * *

You argue that style # 43858 is classified in subheading 6406.10.90, HTSUS, and that the same style was also classified in subheading 6406.10.90, in NY L88785, dated February 15, 2006. However, we note that while the same merchandise was at issue in both rulings, the condition of the merchandise at time of importation was different. At issue in NY L88785 was the same boot upper, but with “an approximately 1-inch diameter hole that has been cut out of the sock bottom in the heel area of an otherwise closed underfoot.” In that case, the hole entirely pierced the bottom of the shoe and the sock liner. Similarly, in previous cases wherein CBP determined that footwear uppers were unformed because of substantial openings cut into the bottom of the upper, the holes punched completely through the material of the upper. See *e.g.*, HQ 085573, dated December 28, 1989, HQ 085291, dated March 1, 1990, and HQ 087458, dated September 19, 1990.

In contrast, the perforations cut into the boot uppers at issue do not pierce the inner liner of the upper, and thus do not constitute “substantial openings” pursuant to the above-cited rulings. A closer analogue to the instant merchandise was classified as a formed upper of subheading 6406, HTSUS, in HQ W968401, dated February 6, 2007, and HQ H007658, dated January 10, 2008 (affirming HQ W968401). HQ W968401 described the merchandise therein as follows: “The sample upper has four circular perforations punched through its sock bottom...The perforations are not complete holes because the complete circumference of each circle has not been cut. Rather, these perforations form circular flaps that remain attached to the stroble outsole...None of the perforations or holes extend through the inner GORE-TEX® liners.” In HQ W968401, CBP concluded that “It remains our position that if the bottoms of uppers have substantial openings cut out of them, they are not closed and the uppers are not formed. However, the certain boot uppers at issue do not have a hole, or holes, cut out of them. Instead, the uppers have four perforations to which circular flaps remain attached, and the flaps are possibly covered by pieces of synthetic material (duct tape or similar) that hold the flaps securely in the perforated circles. As a result, we find that the certain uppers at issue do not have “substantial openings” and must be regarded as “formed uppers” provided for by subheading 6406.10, HTSUS.”

Pursuant to HQ W968401 and HQ H007658, we find that the holes in the instant uppers are not substantial openings. The instant boot uppers are therefore formed uppers under subheading 6406.10, specifically 6406.10.40, HTSUS.

HOLDING:

By application of GRIs 1 and 6, the instant boot uppers are classified in subheading 6406.10.40, HTSUS, which provides for “Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof: Uppers and parts thereof, other than stiffeners: Formed uppers: Of textile materials: Other: Valued over \$12/pair.” The 2015 column one, general rate of duty is 7.5%.

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 N110715, dated June 30, 2010 is hereby revoked.

Sincerely,

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

GENERAL NOTICE**19 CFR PART 177****REVOCAION OF ONE RULING LETTER AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF CHOCOLATE WITH
HAZELNUTS**

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

ACTION: Revocation of one ruling letter and revocation of treatment relating to the tariff classification of chocolate with hazelnuts.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking one ruling letter concerning the tariff classification of chocolate with hazelnuts under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Vol. 49, No. 16, on April 22, 2015. CBP received no comments in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 31, 2015.

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

SUPPLEMENTARY INFORMATION:**Background**

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), notice proposing to revoke New York Ruling Letter (NY) N007869, dated April 2, 2007, was published in the Customs Bulletin, Vol. 49, No. 16, on April 22, 2015.

Although in this notice CBP is specifically referring to NY N007869, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during the notice period.

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N007869 in order to reflect the proper classification of this merchandise pursuant to the analysis set forth in Headquarters Ruling Letter ("HQ") H105330, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: June 05, 2015

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

Attachment

HQ H105330

June 05, 2015

CLA-2 OT:RR:CTF:TCM H105330 TNA

CATEGORY: Classification

TARIFF NO.: 1806.20.99

Ms. SHERRI COMEAU
IMPORT EXPORT MANAGER/CUSTOMS COMPLIANCE
BARRY CALLEBAUT
2950 NELSON STREET
ST-HYACINTHE, QUEBEC J2S 1Y7

RE: Revocation of NY N007869; Classification of milk chocolate with hazelnuts

DEAR Ms. COMEAU:

This letter is in reference to New York Ruling Letter (“NY”) N007869, issued to ROE Logistics on behalf of its client, Barry Callebaut Canada (“Barry Callebaut”) on April 2, 2007, concerning the tariff classification of milk chocolate with hazelnuts. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise in subheading 1806.20.81, Harmonized Tariff Schedule of the United States (“HTSUS”), as a dairy product containing cocoa. We have reviewed NY N007869 and found it to be in error. For the reasons set forth below, we hereby revoke NY N007869.

Notice of the proposed action was published in the Customs Bulletin, Vol. 49, No. 16, on April 22, 2015. CBP received no comments in response to this notice.

FACTS:

The subject merchandise is Product Number M-6LNPL-N0128, which consists of milk chocolate with hazelnuts that contains 39.0 percent sugar, 20.0 percent hazelnuts, 19.5 percent cocoa butter, 8.5 percent non-fat dry milk, 6.5 percent dry whole milk, 6.5 percent cocoa paste, and traces of soy lecithin and vanilla. The total milk fat is 2.2 percent and the total milk solids are 15.0 percent. The percentage of milk fat is included in the percentage of milk solids. The subject merchandise is imported in 2.5-kilogram bags and is ready to use. It is intended to be used on ice cream or in the molding of cakes, pastries and confectionery.

In NY N007869, CBP classified Product Number M-6LNPL-N0128 in subheading 1806.20.81, HTSUS, as a dairy product containing cocoa. Once the quantitative limits of Additional U.S. Note 10 to Chapter 4, HTSUS, were met it was then classified in subheading 1806.20.82, HTSUS.

ISSUE:

Is the instant merchandise classified under subheadings 1806.20.81 and 1802.20.82, HTSUS, as a dairy product containing cocoa, or under subheadings 1806.20.95 and 1806.20.98, as a food preparation containing cocoa and over ten percent by dry weight of sugar, or under subheading 1806.20.99, HTSUS, as an “other” type of food preparation containing cocoa?

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 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 provisions under consideration are as follows:

1806	Chocolate and other food preparations containing cocoa:
1806.20	Other preparations in blocks, slabs or bars, weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packings, of a content exceeding 2 kg
	Other:
	Other:
	Other:
	Dairy products described in additional U.S. note 1 to chapter 4:
1806.20.81	Described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions
	Other:
1806.20.82	Containing less than 21 percent by weight of milk solids
	Articles containing over 10 percent of dry weight of sugar described in additional U.S. note 3 to chapter 17:
1806.20.95	Described in additional U.S. note 8 to Chapter 17 and entered pursuant to its provisions
1806.20.98	Other
1806.20.99	Other

Additional U.S. Note 1 to Chapter 4, HTSUS, provides that:

For the purposes of this schedule, the term “*dairy products described in additional U.S. note 1 to chapter 4*” means any of the following goods: malted milk, and articles of milk or cream (except (a) white chocolate and (b) inedible dried milk powders certified to be used for calibrating infrared milk analyzers); articles containing over 5.5 percent by weight of butterfat which are suitable for use as ingredients in the commercial production of edible articles (except articles within the scope of other import quotas provided for in additional U.S. notes 2 and 3 to chapter 18); or, *dried milk*, whey or buttermilk (of the type provided for in subheadings 0402.10, 0402.21, 0403.90 or 0404.10) *which contains not over 5.5 percent by weight of butterfat* and which is mixed with other ingredients, including but not

limited to sugar, *if such mixtures contain over 16 percent milk solids by weight*, are capable of being further processed or mixed with similar or other ingredients and are not prepared for marketing to the ultimate consumer in the identical form and package in which imported. [emphasis added]

Additional U.S. Note 3 to Chapter 17, HTSUS, provides that:

For the purposes of this schedule, the term “articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17” *means articles containing over 10 percent by dry weight of sugars* derived from sugar cane or sugar beets, whether or not mixed with other ingredients, *except* (a) articles not principally of crystalline structure or not in dry amorphous form, the foregoing that are prepared for marketing to the ultimate consumer in the identical form and package in which imported; (b) blended syrups containing sugars derived from sugar cane or sugar beets, capable of being further processed or mixed with similar or other ingredients, and not prepared for marketing to the ultimate consumer in the identical form and package in which imported; (c) articles containing over 65 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, capable of being further processed or mixed with similar or other ingredients, and not prepared for marketing to the ultimate consumer in the identical form and package in which imported; or (d) *cake decorations and similar products to be used in the same condition as imported without any further processing other than the direct application to individual pastries or confections, finely ground or masticated coconut meat or juice thereof mixed with those sugars, and sauces and preparations therefor*. [emphasis added]

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. 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 (Aug. 23, 1989).

The EN to heading 18.06 of the Harmonized System provides, in pertinent part, as follows:

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

There is no dispute that the subject merchandise is classified in heading 1806, HTSUS. NY N007869 classified Product Number M-6LNPL-N0128 in subheading 1806.20.81, HTSUS. In your request for reconsideration, you argue that the percentages of the subject merchandise’s components make it ineligible for this subheading. By its terms, subheading 1806.20.81, HTSUS, covers dairy products containing cocoa. Dairy products are described in Additional U.S. Note 1 to Chapter 4, HTSUS.

To meet the terms of Additional U.S. Note 1 to Chapter 4, HTSUS, the instant merchandise must consist of: (a) malted milk, and articles of milk or cream (except (a) white chocolate and (b) inedible dried milk powders certified to be used for calibrating infrared milk analyzers); (b) articles containing over 5.5 percent by weight of butterfat which are suitable for use as ingredients in the commercial production of edible articles (except articles within the scope of other import quotas provided for in additional U.S. notes 2 and 3 to chapter 18); or (c) dried milk which contains not over 5.5 percent by weight of butterfat and which is mixed with other ingredients, including but not limited to sugar, if such mixtures contain over 16 percent milk solids by weight, are capable of being further processed or mixed with similar or other ingredients and are not prepared for marketing to the ultimate consumer in the identical form and package in which imported. Of all of these items, the instant merchandise most closely resembles the last.

While Product Number M-6LNPL-N0128 contains dried milk which has less than 5.5 percent milk fat and is mixed with other ingredients, it contains less than 16 percent milk solids. As such, we agree that the subject merchandise does not meet the terms of Additional U.S. Note 1 to Chapter 4, HTSUS, and therefore cannot be classified as a dairy product of subheading 1806.20.82, HTSUS.

In your request for reconsideration, you request classification of the subject merchandise in subheading 1806.20.95, HTSUS. This subheading provides for food preparations containing cocoa that consist of more than 10 percent sugar by dry weight and are described by Additional U.S. Note 3 to Chapter 17, HTSUS. Additional U.S. Note 3 to chapter 17, HTSUS, covers merchandise containing more than 10 percent sugar by weight, derived from sugar cane or sugar beets, but excludes certain merchandise, even when such merchandise contains more than 10 percent sugar. One such exclusion is for cake decorations and similar products that are used in the same condition as imported without any further processing other than the direct application to individual pastries or confections. *See* Additional U.S. Note 3(d) to Chapter 17, HTSUS. This excludes the subject merchandise because it is imported ready to use in the molding of cakes, pastries, and confectionary. As a result, the subject merchandise is excluded from subheading 1806.20.95, HTSUS.

In the alternative, you argue for classification in subheading 1806.20.98, HTSUS. To be classified in this subheading, however, merchandise must still be described by Additional U.S. Note 3 to Chapter 17, HTSUS. Because the subject merchandise is excluded from this note, it cannot be classified in subheading 1806.20.98, HTSUS.

The subject merchandise is a food preparation containing cocoa. As a result, it is classified in subheading 1806.20.99, HTSUS, which provides for "Chocolate and other food preparations containing cocoa: Other preparations in blocks, slabs or bars, weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packings, of a content exceeding 2 kg: Other: Other: Other: Other: Other."

HOLDING:

By application of GRI 1 and GRI 6, Product Number M-6LNPL-N-128 is classified in subheading 1806.20.99, HTSUS, which provides for "Chocolate and other food preparations containing cocoa: Other preparations in blocks, slabs or bars, weighing more than 2 kg or in liquid, paste, powder, granular

or other bulk form in containers or immediate packings, of a content exceeding 2 kg: Other: Other: Other: Other: Other.” The 2015 column one, general rate of duty is 8.5% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N007869, dated April 2, 2007, is hereby REVOKED.

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

Sincerely,

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**REVOCAION OF A RULING LETTER AND REVOCAION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF MAKEDO KITS**

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking a ruling relating to the tariff classification of Makedo kits under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CBP to substantially similar transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 17, on April 29, 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 31, 2015.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “informed compliance” and “shared responsibility.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under 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*, Volume 49, No. 17, on April 29, 2015, proposing to revoke New York Ruling Letter (NY) N103196, dated May 20, 2010, in which CBP determined that the Makedo kits were classified in heading 3926, HTSUS, which provides, in pertinent part, for “Other articles of plastics.” No comments were received in response to this notice.

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

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

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N103196, in order to reflect the proper classification of the Makedo kits as toys of heading 9503, HTSUS, according to the analysis contained in HQ H122351, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: June 05, 2015

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

Attachment

HQ H122351

June 05, 2015

CLA-2 OT:RR:CTF:TCM H122351 EGJ

CATEGORY: Classification

TARIFF NO.: 9503.00.00

KATHY MASTRACCHE
PROCUREMENT DIRECTOR
REEVES INTERNATIONAL
14 INDUSTRIAL ROAD
PEQUANNOCK, NJ 07440

RE: Revocation of NY N103196: Classification of “Makedo” Kits

DEAR MS. MASTRACCHE:

This is in response to your correspondence dated June 14, 2010, in which you requested reconsideration of New York Ruling Letter (NY) N103196, dated May 20, 2010, issued to you concerning the tariff classification of the “Makedo” kits. In NY N103196, U.S. Customs and Border Protection (CBP) classified the subject merchandise in heading 3926, HTSUS, as other articles of plastics. We have reviewed NY N103196 and find it to be in error. For the reasons set forth below, we hereby revoke NY N103196.

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 of the proposed revocation was published on April 29, 2015, in the *Customs Bulletin*, Volume 49, No. 17. CBP received no comments in response to this notice.

FACTS:

The subject merchandise is the “Makedo” series of construction kits. In NY N103196, the Makedo kits are described as follows:

The “Makedo” kits are intended to be used to create original projects using materials found around the home, such as cardboard boxes, plastic containers, egg cartons and fabric scraps. The primary components of the kits are connectors, hinges and a construction tool. The connectors are used to attach the found pieces and scraps together. Each connector consists of a ridged pin with a flat head and a clip that secures onto the ridges of the pin. When the clip is squeezed it releases the pin to allow reuse of both parts. The hinges have holes on each side so they can be secured with the pin and clip connector. The hinges, which can pivot freely or lock in place, can join or create a corner between two materials or can form a swiveling moving part. Each kit contains a construction tool made entirely of plastics that has a serrated blade on one side to safely cut materials such as cardboard and a point on the other to pierce holes. Each kit also includes an inspiration poster featuring project ideas.

According to your reconsideration request, the Makedo kits are marketed and advertised as “green” toys because children use them to construct different articles from found materials, such as cardboard, scrap paper, newspapers, Styrofoam cups, etc. Some Makedo kits include stickers to decorate the finished project. The Makedo kits were featured in the Earth-Friendly Product Zone at New York City’s 2010 Toy Fair. Also, the Makedo kits are sold in the toy sections of online retailers such as Walmart.com, Amazon.com and Ebay.com. The Makedo kits range in retail price from \$20 to \$60,

depending upon the size of the kit. The Makedo Flowers kit has the following statement on its package: “Makedo is a reusable system for creating things from the stuff around you. It aims to inspire social change through playful creativity.” Pictures of sample Makedo kits are provided below:



ISSUE:

Are the Makedo kits classified as toys of heading 9503, HTSUS, or as other articles of plastics of heading 3926, HTSUS?

LAW AND ANALYSIS:

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

The HTSUS headings under consideration are the following:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914: * * *
9503	Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: * * *

Note 2(y) to Chapter 39 states that:

2. This chapter does not cover:

(y) **Articles of chapter 95 (for example, toys, games, sports equipment)**

* * *

Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that:

1. In the absence of special language or context which otherwise requires:
 - (a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

* * *

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 at the international level. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 95.03 states, in pertinent part:

D) Other toys.

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

These include:

(iii) Constructional toys (construction sets, building blocks, etc.).

(xviii) Educational toys (e.g., toy chemistry, printing, sewing and knitting sets).

Collections of articles, the individual items of which if presented separately would be classified in other headings in the Nomenclature, are classified in this heading when they are put up in a form clearly indicating their use as toys (e.g., instructional toys such as chemistry, sewing, etc., sets).

* * *

Note 2(y) to Chapter 39 excludes articles of Chapter 95 from classification in Chapter 39. If the Makedo kits are classifiable in Chapter 95, they cannot be classified in Chapter 39. As such, we will first determine whether the Makedo kits can be classified as toys of heading 9503, HTSUS.

Heading 9503 provides, in pertinent part, for “other toys.” In *Minnetonka Brands v. United States*, 110 F. Supp. 2d 1020, 1026 (Ct. Int’l Trade 2000) (“*Minnetonka*”), the U.S. Court of International Trade (CIT) determined that a toy must be designed and used principally for amusement and should not serve a utilitarian purpose. Thus, the CIT concluded that heading 9503, HTSUS, is a “principal use” provision within the meaning of Additional U.S. Rule of Interpretation 1(a) (AUSR 1(a)), HTSUS. *Id.*

Applying AUSR 1(a), the Makedo kits must belong to the same class or kind of goods which have amusement as a principal use, i.e. toys. In *United States v. Carborundum Co.*, 536 F.2d 373, 377 (1976), the U.S. Court of Customs and Patent Appeals stated that in order to determine whether an article is included in a particular class or kind of merchandise, the court must consider a variety of factors, including: (1) the general physical characteristics of the merchandise; (2) the channels, class or kind of trade in which the merchandise moves (where the merchandise is sold); (3) the expectation of the ultimate purchasers; (4) the environment of the sale (i.e., accompanying accessories and marketing); (5) usage, if any, in the same manner as merchandise which defines the class; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. *Id.* While these factors were developed under the Tariff Schedule of the United States (predecessor to the HTSUS), the courts have also applied them under the HTSUS. *See, e.g. Minnetonka*, 110 F. Supp. 2d 1020, 1027; *see also Aromont USA, Inc. v. United States*, 671 F.3d 1310 (Fed. Cir. 2012), *Essex Manufacturing, Inc. v. United States*, 30 C.I.T. 1 (2006).

In *Springs Creative Products Group v. United States*, 47 Cust. B. & Dec. 37, 131 - 146 (Sept. 4, 2013) ("*Springs Creative*"), the U.S. Court of International Trade (CIT) applied the *Carborundum* factors to determine the tariff classification of the Make-it-Yourself No-Sew Fleece Throw Kits (NSF throw kits). Except for scissors, the NSF throw kits contain all the materials needed to make a finished fleece throw blanket. *Id.* at 134. The CIT noted that the NSF throw kits are marketed with images and videos of an adult and child having fun while assembling the throw together. *Id.* at 136. The CIT stated that the NSF throw kits promote the development and education of young children by helping a child develop skills such as manual dexterity, cutting, tying and counting. *Id.* Also, the CIT pointed out that the NSF throw kits cost more than a finished fleece throw. *Id.* at 135. Finally, the CIT cited to the ENs to heading 95.03, which state that the heading includes constructional toys and educational toys, such as sewing and knitting sets. *Id.* at 140. The ENs further state that collections of articles, which are classifiable in different headings, are classified together when they are put up in a form clearly indicating their use as toys. *Id.* The CIT determined that the NSF throw kits were classifiable as toys of heading 9503, HTSUS, for the following reasons:

[T]he court finds the subject merchandise to be of the class or kind of merchandise whose principle use is amusement, diversion, or play, rather than the practicality of a fleece throw. The unique physical characteristics of the merchandise, the design and marketing of the merchandise as craft kits and as items of amusement (rather than as finished fleece throws or as fleece material), the expectation of the ultimate purchaser that these items will be used to create a fleece throw, the regular use of the merchandise by children for amusement purposes, the fact that the merchandise sells at a significant price premium to finished fleece throws, and other facts revealed at trial support this conclusion. *Id.*

Turning to the Makedo kits, the physical characteristics of the kits are that they consist of plastic hinges, connectors, clips, a kid-safe cutting tool, an inspiration poster, and sometimes stickers. With regard to the channels of

trade, we note that Makedo kits are sold in the toy departments of large retailers. The Makedo kits range in retail price from \$20 to \$60, depending upon the size of the kit. This cost is likely much higher than the cost of the individual components, such as plastic hinges and stickers. The kits are marketed towards children to inspire creative thinking through play. The goal is for children to combine the Makedo kit connectors with found materials to create crafts such as cardboard robots, newspaper flowers, scrap paper dollhouses, etc. The Makedo kits were featured at New York City's Toy Fair, which indicates that the trade recognizes their use as toys.

Like the NSF throw kits in *Springs Creative*, we find that the principal use of the Makedo kits is amusement. Children can spend hours building different types of crafts with the hinges and connectors. They can also decorate their creations with the stickers. CBP has classified similar creative craft kits as toys of heading 9503, HTSUS. See, e.g. NY 811972, dated July 19, 1995 (Make Your Own Fort kits), NY F80917, dated January 5, 2000 (Make Your Own Bubble Gum, Chocolate and Soap kits), and NY L81098, dated December 6, 2004 (Wood Craft Making Kits). As such, the Makedo kits are also classifiable as toys of heading 9503, HTSUS. Since the Makedo kits are classifiable in heading 9503, HSTUS, Note 2(y) to Chapter 39 excludes them from classification in Chapter 39.

HOLDING:

By operation of GRI 1, AUSR 1(a) and GRI 6, the Makedo kits are classifiable as toys in heading 9503, HTSUS, and are specifically provided for in subheading 9503.00.00, HTSUS, which provides for "Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other." The 2015 column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY N103196, dated May 20, 2010 is hereby revoked.

Sincerely,

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**NOTICE OF OPPORTUNITY AND PROCEDURES TO
REQUEST ASSISTANCE ON TARIFF CLASSIFICATION AND
CUSTOMS VALUATION TREATMENT BY OTHER CUSTOMS
ADMINISTRATIONS AFFECTING UNITED STATES
EXPORTS**

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

ACTION: General notice.

SUMMARY: This document describes opportunities available to U.S. exporters to obtain assistance from U.S. Customs and Border Protection (CBP) to resolve matters concerning the tariff classification and customs valuation applied to U.S. exports by other governments. By publication of this notice, CBP invites U.S. exporters to submit requests for such assistance.

DATES: June 18, 2015.

ADDRESSES: Requests for assistance may be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Commercial and Trade Facilitation Division, 90 K St. NE., 10th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT: For tariff classification matters, please contact Jacinto Juarez, Tariff Classification and Marking Branch, at (202) 325-0027, or Greg Connor, Tariff Classification and Marking Branch, at (202) 325-0025. For matters involving customs valuation, please contact Yuliya Gulis, Valuation and Special Programs Branch, at (202) 325-0042.

SUPPLEMENTARY INFORMATION:

Background

U.S. Customs and Border Protection (CBP) has direct responsibility for enhancing U.S. economic competitiveness through the enforcement of the laws of the United States and the fostering of lawful international trade and travel. By reducing costs for industry and enforcing trade laws against counterfeit, unsafe, and fraudulently imported goods, CBP is working to facilitate legitimate trade, contribute to American economic prosperity, and protect against risks to public health and safety.

As part of CBP's mission to secure and facilitate lawful international trade, CBP applies a number of legal requirements to goods

imported into the customs territory of the United States. In almost all cases, imported goods must be “entered” (that is, declared to CBP), and are subject to detention and examination by CBP officers to ensure compliance with all laws and regulations enforced and administered by CBP. As part of the entry process, goods must be classified under the Harmonized Tariff Schedule of the United States (HTSUS) and their customs value must be determined. CBP is responsible for fixing the final tariff classification and customs valuation of entered goods through a process called “liquidation.” In making classification and valuation determinations, CBP applies two international instruments: The Harmonized Commodity Description Coding System (also known as the Harmonized System (HS)), and the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (GATT) 1994 (also known as the World Trade Organization (WTO) Agreement on Customs Valuation or the “WTO Valuation Agreement”). Both international instruments share a similar goal of ensuring, at the technical level, a standard or uniform approach to the interpretation and application of tariff classification and valuation principles, respectively.

Tariff Classification

Pursuant to the International Convention on the Harmonized Commodity Description and Coding System (the “HS Convention”), the World Customs Organization (WCO) developed the HS. The HS is an internationally-standardized product nomenclature used to classify traded products by name and number, and is intended to ensure, at the technical level, a uniform approach to the interpretation and application of tariff classifications. The WCO, established in 1952 as the Customs Co-operation Council (CCC), is an independent, inter-governmental body whose mission is to enhance the effectiveness and efficiency of customs administrations. The United States, along with 149 other countries and the European Union, is a contracting party to the HS Convention and uses the HS as a basis for its customs tariffs and the collection of international trade statistics.

Subtitle B of title I of the Omnibus Trade and Competitiveness Act of 1988 (Sec. 1201, Pub. L. 100–418, 102 Stat. 1147, Aug. 23, 1988 (19 U.S.C. 3001)) (the Act) provides for the approval and implementation in the United States of the tariff classification principles set forth in the HS Convention and its associated Harmonized System nomenclature. More specifically, the Act provides for congressional approval of U.S. accession to the HS Convention (section 1203), enactment of the HTSUS (section 1204), and the publication of foreign trade statistics in conformity with the HS nomenclature (section 1208). In addition,

under section 1209, the United States Trade Representative (USTR) is made responsible for coordinating trade policy concerning the HS Convention.

Section 1210 of the Act provides that, subject to the policy direction of USTR, the Departments of Treasury and Commerce and the United States International Trade Commission (the Commission) shall have responsibility for formulating U.S. positions on technical and procedural issues relating to tariff classification under the HS Convention, and for representing the United States government at the WCO with respect thereto.

To foster international uniformity in tariff classification matters under the HS, contracting parties have vested the WCO with responsibility for securing uniform interpretation of the HS and its periodic updating in light of developments in technology and changes in trade patterns. *See* Article 7 of the HS Convention. The WCO manages this process through the Harmonized System Committee (HSC), a committee composed of contracting parties to the HS Convention which meets twice a year to examine policy matters, take decisions on classification questions, settle disputes, and prepare amendments to the HS nomenclature and its Explanatory Notes. In accord with procedures established by the WCO governing body (the WCO Council), the HSC also prepares amendments updating the HS every four to six years.

On November 10, 1988, the Office of the U.S. Trade Representative published in a **Federal Register** notice procedures to implement sections 1209 and 1210 of the Act. *See* 53 FR 45646. Therein, USTR designated the Treasury Department, represented at the time by legacy U.S. Customs Service (now CBP, as part of the Department of Homeland Security), to lead the U.S. delegation at meetings of the HSC at the WCO in Brussels, Belgium. Accordingly, Regulations and Rulings, within CBP's Office of International Trade, leads U.S. delegations at semi-annual meetings of the HSC at the WCO. CBP also serves with the Commission on U.S. delegations at meetings of the Harmonized System Review Subcommittee, which occur twice per year at the WCO.

Article 10 of the HS Convention provides that any dispute between contracting parties concerning the interpretation or application of the HS Convention is to be settled by negotiation between the contracting parties to the extent possible. If this cannot be accomplished, the parties (that is, the governments concerned) are to refer the dispute to the HSC for its reconsideration and recommendations. The HSC, in turn, is to refer irreconcilable disputes to the WCO Council for its recommendations.

Customs Valuation

With respect to customs valuation, the WTO Valuation Agreement established a standard system for the valuation of imported goods. The WTO Valuation Agreement ensures that determinations of the customs value for the application of duty rates to imported goods are applied in a neutral and uniform manner, precluding the use of arbitrary or fictitious customs values. As one of 160 Members of the WTO, the United States uses the Valuation Agreement as the basis for proper customs valuation methodology.

Merchandise imported into the United States is appraised for customs purposes in accordance with Section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. 1401a) (TAA). Consistent with principles set forth in the WTO Valuation Agreement, the primary method of appraisal is transaction value, which is defined as “the price actually paid or payable for the merchandise when sold for exportation to the United States,” plus amounts for certain statutorily enumerated additions to the extent not otherwise included in the price actually paid or payable. *See* 19 U.S.C. 1401a(b)(1). When transaction value cannot be applied, then the appraised value is determined based on the other valuation methods in the order specified in 19 U.S.C. 1401a(a).

The WTO Valuation Agreement established the Technical Committee on Customs Valuation (TCCV), which operates under the auspices of the WCO, with a view to ensuring the uniform interpretation and application of internationally agreed upon customs valuation principles. The TCCV is responsible for the examination of technical problems arising in the day-to-day administration of the customs valuation systems of WTO Valuation Agreement signatories. In addition, the TCCV renders advisory opinions on appropriate solutions based upon the facts presented. The TCCV meets twice a year at the WCO to discuss issues concerning the interpretation and application of the WTO Valuation Agreement.

Pursuant to Annex II to the WTO Valuation Agreement, the United States has the right to be represented at the TCCV to examine specific problems arising from the administration of the customs valuation systems of Members. The United States, which currently serves as Chair to the TCCV, may nominate one delegate and one or more alternates to be its representatives on the TCCV at semi-annual meetings in Brussels. CBP represents the United States at the semi-annual meetings of the TCCV at the WCO.

Additionally, under Article 19 of the WTO Valuation Agreement, the United States may request consultation with a Member or Members if the U.S. considers any benefit to it under the Agreement is being

nullified or impaired, or that the achievement of any objective of the Agreement is being impeded, directly or indirectly, as a result of the actions of another Member. Disputes arising under Article 19 of the WTO Valuation Agreement may be referred to the TCCV for an examination of any questions requiring technical consideration.

CBP Participation at Meetings of the Harmonized System Committee and the Technical Committee on Customs Valuation

Accordingly, at meetings of the HSC and TCCV at the WCO, the United States and other customs administrations participate and communicate regularly on issues concerning the interpretation and application of the HS and the WTO Valuation Agreement. Historically, it has been useful for CBP to conduct discussions with other customs administrations at the WCO with a view to reaching a common understanding and interpretation of these instruments. Such discussions can often serve to eliminate or resolve export issues for U.S. traders.

For example, in 2014 CBP was contacted by a U.S. exporter who believed that its textile article was being misclassified by another customs administration. The company brought to CBP's attention the analysis applicable to the merchandise under published CBP rulings available at <http://rulings.cbp.gov>. The company requested that CBP contact the foreign customs administration to resolve the tariff classification matter, and if the matter could not be resolved, the U.S. company requested that CBP refer the matter to the HSC at the WCO.

Within 30 days of receiving the technical assistance request, attorneys from the Tariff Classification and Marking Branch and import specialists from the National Commodity Specialist Division, within the Office of Regulations and Rulings (R&R), Office of International Trade reviewed the underlying classification issue and determined that the foreign customs administration's treatment of the merchandise was inconsistent with the proper interpretation of the HS. Following CBP's determination of the correct classification of the merchandise, R&R attorneys raised the issue bilaterally with the foreign customs administration and asked them to consider the matter.

Following this bilateral exchange, and within seven months of the initial technical assistance request, CBP secured a favorable decision by the foreign customs administration to classify the merchandise in a manner consistent with the U.S. position and as requested by the exporter. As a result of CBP's engagement with the foreign customs administration, the U.S. company was able to obtain the correct tariff treatment of its imported merchandise in the foreign country.

Inquiries Concerning Tariff Classification or Customs Valuation by Other Customs Administrations Affecting U.S. Exports

By publication of this notice, U.S. Customs and Border Protection emphasizes that opportunities exist to strengthen communication and coordination between industry, CBP, other customs administrations, and the WCO to advance the shared goal of facilitating international trade. Greater collaboration with industry promotes improved technical understanding among contracting parties and helps to foster uniformity in the interpretation and application of the HS Convention and WTO Valuation Agreement.

On matters involving non-uniform tariff classification or customs valuation treatment by other customs administrations, individual parties or firms do not have standing to initiate dispute settlement procedures or consultations under the HS Convention or the WTO Valuation Agreement. Consequently, for a U.S. individual or firm to raise a tariff classification or customs valuation dispute, that party must file an inquiry or complaint with the U.S. government and provide, or assist in the collection of, any information relating to the matter which may be required.

Accordingly, CBP hereby invites U.S. exporters to file with CBP requests for assistance in resolving any tariff classification or customs valuation treatment by other customs administrations affecting U.S. exports. Of course, as a threshold technical matter, in order to provide the requested assistance, CBP must agree with the position of the exporter with regard to the specific matter brought to CBP's attention.

CBP will endeavor to provide an initial response to such requests within 60 days of their receipt. Thereafter, in cooperation with the appropriate agencies, CBP will consider the appropriate course of action, including but not limited to the initiation of consultations or dispute settlement at meetings of the HSC or TCCV at the WCO. The inquirer or complainant will be informed of the progress achieved in resolving the matter. Requests for assistance on tariff classification or customs valuation treatment by other customs administrations affecting U.S. exports should be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Commercial and Trade Facilitation Division, 90 K St. NE., 10th Floor, Washington, DC 20229-1177.

Confidentiality

Information submitted by U.S. exporters concerning requests for assistance may, in some instances, include confidential commercial or financial information, the disclosure of which could result in competi-

tive harm to the business submitter. Such information is, generally, protected under the provisions of the Freedom of Information Act (5 U.S.C. 552) (FOIA), the Privacy Act (5 U.S.C. 552a), and the Trade Secrets Act (18 U.S.C. 1905). If confidential treatment is requested, submitters should specifically designate the information it considers confidential. Such requests will be handled in accordance with CBP Regulations (19 CFR 103.35) regarding the protection of such information.

Dated: June 12, 2015.

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Office of International Trade.

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