

U.S. Customs and Border Protection



MODIFICATION OF A RULING LETTER AND 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 modification of a ruling letter and 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) is modifying 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 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. 26, on July 1, 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EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 2, 2015.

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

SUPPLEMENTARY INFORMATION:

Background

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

Tile 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)), a notice was published in the *Customs Bulletin*, Vol. 49, No. 26, on July 1, 2015, proposing to modify New York Ruling Letter (NY) N014187, dated August 10, 2007, in which CBP determined that the subject merchandise was classified 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.” 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.

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY N014187 to reflect the proper tariff classification of the subject merchandise 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." This modification is pursuant to the analysis set forth in HQ H137557, which is attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by it to substantially identical transactions.

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

Dated: August 03, 2015

GREG CONNOR
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

HQ H137557

August 03, 2015

CLA-2 OT:RR:CTF:TCM H137557 TSM

CATEGORY: Classification

TARIFF NO.: 4202

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.

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), a notice was published in the *Customs Bulletin*, Volume 49, No. 26, on July 1, 2015, proposing to modify NY N014187, and revoke any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

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.

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

Sincerely,

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

GENERAL NOTICE
19 CFR PART 177

**PROPOSED MODIFICATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF UNWROUGHT GOLD
FLAKES AND NUGGETS**

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

ACTION: Notice of proposed modification of a ruling letter and revocation of treatment relating to the classification of unwrought gold flakes and nuggets.

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”) intends to modify a ruling concerning the classification of unwrought gold flakes and nuggets under the Harmonized Tariff Schedule of the United States (“HTSUS”). Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before October 2, 2015.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street 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: Anthony L. Shum, Tariff Classification and Marking Branch (202) 325–0218.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), this Notice advises interested parties that CBP intends to modify a ruling letter only with respect to the tariff classification of unwrought gold flakes and nuggets. Although in this Notice, CBP is specifically referring to the modification of CBP Ruling Letter NY N024842, dated April 1, 2008 (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 N024842, CBP ruled that the unwrought gold flakes and nuggets are to be classified under HTSUS subheading 7108.12.5050, which under the Harmonized Tariff Schedule of the United States provided for “Gold (including gold plated with platinum) unwrought or in semimanufactured forms, or in powder form: Nonmonetary: Other unwrought forms: Other ... Other.” The referenced ruling is

incorrect because as unwrought gold in the form of flakes and nuggets, the subject articles are more specifically gold bullion of HTS US subheading 7108.12.10. Thus, the more general classification of “Other” does not apply in this case.

CBP, pursuant to 19 U.S.C. §1625(c)(1), proposes to modify NY N024842 and modify or revoke, as necessary, any other ruling not specifically identified, to reflect the proper classification of the unwrought gold in the form of flakes and nuggets pursuant to the analysis set forth in Proposed Headquarters Ruling Letter HQ H244570 (Attachment B). Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: August 7, 2015

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N024842

April 1, 2008

CLA-2-71:OT:RR:NC:N1:117

CATEGORY: Classification

TARIFF NO.: 7108.11.0000; 7108.12.5050

MR. JOHANNES C. VAN YPEREN
AZEL LAND DEVELOPMENT CO, INC.
P.O. BOX 1000
MORAVIAN FALLS, NC 28654

RE: The tariff classification of alluvial gold from the Republic of the Congo.

DEAR MR. YPEREN:

In your letter dated March 10th 2008, you requested a tariff classification ruling.

The product to be imported consists of alluvial gold in the form of flakes, powder or nuggets. This gold has been obtained from river beds. You state that gold found in placer deposits is between 92 and 95 percent pure. This gold will be further refined upon importation into the United States.

The applicable subheading for the gold powder will be 7108.11.0000 Harmonized Tariff Schedule of the United States (HTSUS), which provides for gold (including gold plated with platinum) unwrought or in semimanufactured forms, or in powder form, nonmonetary, powder, if 90 percent or more by weight of the powder passes through a sieve having a mesh aperture of 0.5 mm. The rate of duty will free. If less than 90 percent of the powder passes through a sieve having a mesh aperture of 0.5 mm, the applicable subheading for the powder will be 7108.12.5050 HTSUS, which provides for gold (including gold plated with platinum) unwrought or in semimanufactured forms, or in powder form, nonmonetary, other unwrought forms, other, other. The rate of duty will be 4.1 percent.

The applicable subheading for the gold flakes and nuggets will be 7108.12.5050, HTSUS, which provides for gold (including gold plated with platinum) unwrought or in semimanufactured forms, or in powder form, nonmonetary, other unwrought forms, other, other. The rate of duty will be 4.1 percent.

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 Gloria Stingone at 646-733-3020.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H244570
CLA-2 OT:RR:CTF:TCM H244570 ALS
CATEGORY: Classification
TARIFF NO.: 7108.12.10

MR. JOHANNES C. VAN YPEREN
AZEL LAND DEVELOPMENT CO, INC.
P.O. BOX 1000
MORAVIAN FALLS, NC 28654

RE: Modification of CBP Ruling NY N024842 (April 1, 2008) regarding the tariff classification of Unwrought Gold Flakes and Nuggets

DEAR MR. VAN YPEREN:

In a letter to U.S. Customs and Border Protection (CBP) dated March 10, 2008, you requested a tariff classification ruling under the Harmonized Tariff Schedule of HTSUS for unwrought gold powder, flakes, and nuggets. In CBP Ruling NY N024842 (April 1, 2008), CBP classified unwrought gold flakes and nuggets under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 7108.12.50, which provides for “Gold (including gold plated with platinum) unwrought or in semimanufactured forms, or in powder form: Nonmonetary: Other unwrought forms: Other “ We have reviewed NY N024842 and find the ruling to be in error with respect to the classification of unwrought gold flakes and unwrought gold nuggets.

For the reasons set forth below, we hereby modify NY N024842 only with respect to the classification of unwrought gold flakes and unwrought gold nuggets. The classification of unwrought gold powder in NY N024842 is not at issue here and remains in effect as of this ruling.

FACTS:

The articles at issue are unwrought gold flakes and nuggets. NY N024842 states, in pertinent part, the following:

The product to be imported consists of alluvial gold in the form of flakes, powder or nuggets. This gold has been obtained from river beds. You state that gold found in placer deposits is between 92 and 95 percent pure. This gold will be further refined upon importation into the United States ... The applicable subheading for the gold flakes and nuggets will be 7108.12.5050, HTSUS, which provides for gold (including gold plated with platinum) unwrought or in semimanufactured forms, or in powder form, nonmonetary, other unwrought forms, other, other.

As noted above, the other article classified in that case, unwrought gold powder, is not at issue here. Thus, NY N024842 remains in effect with regard to unwrought gold powder.

ISSUE:

Are the unwrought gold flakes and nuggets classified as gold bullion of HTSUS subheading 7108.12.10 or more generally as another form of unwrought gold of HTSUS subheading 7108.12.50?

LAW AND ANALYSIS:

Classification under the HTSUS is determined in accordance with the General Rules of Interpretation (“GRI”) and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation (“ARI”). GRI 1 provides that the classification of goods shall be “determined according to the terms of the headings and any relative section or chapter notes.” In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, GRIs 2 through 6 may be applied in order. The HTSUS subheadings at issue are the following **in bold**:

- 7108 Gold (including gold plated with platinum) unwrought or in semimanufactured forms, or in powder form:
Non monetary:
- 7108.12 Other unwrought forms:
- 7108.12.10 Bullion and dore
- 7108.12.50 Other

Subheading Note 1 to HTSUS Chapter 71 states “[f]or the purposes of subheadings 7106.10, 7108.11, 7110.11, 7110.21, 7110.31 and 7110.41, the expressions “powder” and “in powder form” mean products of which 90 percent or more by weight passes through a sieve having a mesh aperture of 0.5 mm.”

Additional U.S. Note 1 (a) to HTSUS Chapter 71 states the following:

1. For the purposes of subchapter II, unless the context otherwise requires: (a) The term “unwrought” refers to metals, whether or not refined, in the form of ingots, blocks, lumps, billets, cakes, slabs, pigs, cathodes, anodes, briquettes, cubes, sticks, grains, sponge, pellets, shot and similar manufactured primary forms, but does not cover rolled, forged, drawn or extruded products, tubular products or cast or sintered forms which have been machined or processed otherwise than by simple trimming, scalping or descaling;

It has been factually established in NY N024842 that the subject gold flakes and nuggets are not gold powder as defined under subheading note 1 to HTSUS Chapter 71. The gold flakes and nuggets meet the definition of “unwrought” in that they are not machined or processed beyond the trimming, scalping, or descaling process. “Alluvial” as an adjective of “alluvium” refers to the fact that the flakes or nuggets are the product of deposits formed from flowing water such as rivers. See. e.g., Definition of “Alluvium,” <http://dictionary.reference.com/browse/alluvium> (2015); Definition of “Alluvial,” <http://www.merriam-webster.com/dictionary/alluvial> (2015).

As unwrought gold, the flakes and nuggets are nonmonetary in nature. “Monetary gold” is generally defined as gold that is owned by government authorities. See. e.g., Definition of “Monetary Gold,” <http://financialdictionary.thefreedictionary.com/Monetary+Gold> (2015); <http://www.likeforex.com/glossary/w/monetary-gold-30302> (2015). Conversely, “nonmonetary gold” is generally defined as a commodity that is traded on the open market and not held for reserve by any government authority. See. e.g., <http://stats.oecd.org/glossary/detail.asp?ID=1817> (2015); <http://>

www.likeforex.com/glossary/w/non-monetary-gold-126937 (2015). The gold flakes and nuggets at issue are being traded on the open market and are not owned by any government authority.

We have previously examined the meaning of the term “bullion” in a tariff classification context. In CBP Ruling HQ H051895 (November 19, 2009), we classified silver grain under HTSUS subheading 7106.91.10, which provides in relevant part for: “Silver ... unwrought ... : Other: Unwrought: Bullion and dore.” In doing so, we determined the following:

The term “bullion” is not defined in the tariff or in the legal notes. When a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. *See* *Rockne! Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). “To ascertain the common meaning of a term, a court may consult ‘dictionaries, scientific authorities, and other reliable information sources’ and lexicographic and other materials.” *Id.* (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271, 69 Cust. Ct. 128 (Cust. Ct. 1982); *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989)). In *Jarell~sh Co. v. United States*, 60 Gust. Ct. 65 (Gust. Ct. 1968), the U.S. Customs Court considered the classification of, among other items, silver grain described as “extremely small, irregularly shaped pieces of ... silver, which have no uniform longitudinal or latitudinal measurement.” The provision under consideration was paragraph 1638 of the Tariff Act of 1930, which exempted from duty “Bullion, gold or silver.” *Id.* n.2. The Court consulted several dictionary definitions before concluding that the common meaning of the term “bullion” is “uncoined gold or silver in the mass considered as so much metal without regard to any value imparted to it by its form.” *Id.* at 67. The Court further noted that “[n]ormally bullion is in the form of ingots, bars, plates and the like ... [b]ut it may also consist of other forms or shapes so long as the form or shape does not impart value to the mass.” *Id.* n.2. Silver grain constitutes silver in the mass, i.e., it has no value imparted to it by its form. (**Emphasis added.**)

As with the silver grain in HQ H051895, the unwrought gold flakes and nuggets at issue here are not “in the form of ingots, bars, plates and the like” to quote *Jarell-Ash*, but are “uncoined gold ... in the mass considered as so much metal without regard to any value imparted to it by its form.” *See Jarell-Ash Company v. United States*, *supra*. Thus, as gold in unwrought form that is nonmonetary and meets the definition of “bullion” as legally established in *Jarell-Ash* and HQ H051895, the subject unwrought gold flakes and unwrought gold nuggets are properly classified under HTS US subheading 7108.12.10 as “Gold (including gold plated with platinum) unwrought or in semimanufactured forms, or in powder form: Nonmonetary: Other unwrought forms: Bullion and dare” *See also* CBP Ruling NY N164118(May13, 2011).

HOLDING:

The unwrought gold flakes and unwrought gold nuggets are properly classified under HTS US subheading 7108.12.10 as “Gold (including gold plated with platinum) unwrought or in semimanufactured forms, or in powder form: Nonmonetary: Other unwrought forms: Bullion and dare” The general column one rate of duty, for merchandise classified under this subheading is Free. Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at *www.usitc.gov*.

EFFECT ON OTHER RULINGS:

CBP Ruling NY N024842 (April 1, 2008) is hereby MODIFIED only with respect to the tariff classification of Unwrought Gold Flakes and Unwrought Gold Nuggets.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



GENERAL NOTICE
19 CFR PART 177

**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**

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

ACTION: Notice of 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) is modifying one ruling letter and revoking one ruling letter, both of which concern tariff classification of liquid hand soaps under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of

the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 26, on July 1, 2015. No comments were received in response to the notice.

DATES: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 2, 2015.

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

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was

published in the *Customs Bulletin*, Vol. 49, No. 26, on July 1, 2015, 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. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) NY N250161, dated March 10, 2014, and NY 249908, dated March 3, 2014, as well as any other 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 have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this 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 subheading 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 modifying NY N250161, revoking NY N249908, and revoking 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 “A” 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.

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

Dated: August 3, 2015

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

HQ H261126

August 3, 2015

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 are consequently modifying 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 are revoking 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, are revoking NY N249908.

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 action was published in the *Customs Bulletin*, Vol. 49, No. 26, on July 1, 2015. No comments were received in response to the notice.

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 sub-heading 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, alkylarylsulphonates (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 trioxoethylene 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 sub-heading 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, is hereby MODIFIED, and NY N249908, dated March 3, 2014, is hereby REVOKED.

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

Sincerely

ALLYSON MATTANAH

for

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 AND
REVOCAION 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 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 is revoking 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 is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on July 1, 2015, in Volume 49, Number 26, of the *Customs Bulletin*. No comments were received in response to the proposed notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 2, 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), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended and related laws. Two new concepts which emerge from the law are “informed compliance” and “shared responsibility.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published in the *Customs Bulletin*, Volume 49, Number 26, on July 1, 2015, proposing to revoke New York Ruling Letter, (NY) NY D83023, dated October 22, 1998, and proposing to revoke any treatment accorded to substantially identical transaction. No comments were received in response to the proposed revocation.

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

In NY 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 8543.89.96 has since been changed to 8543.70.96, HTSUS. It is now CBP's position that the kit is 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 electro-

thermic 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 is revoking 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). Additionally, pursuant to 19 U.S.C. 1625(c) (2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Dated: August 3, 2015

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

HQ H241023

August 3, 2015

CLA-20T: RR: CTF: TCM: H241023 ERB

CATEGORY: Classification

TARIFF NO.: 8516.79.0000

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.

Pursuant to Section 625(c), Tariff Act of 193099 (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), a notice was published in the *Customs Bulletin*, Volume 49, Number 26, on July 1, 2015, proposing to revoke NY D83023, and any treatment accorded to substantially similar transactions. No comments were received in response to the proposed revocation.

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, HTSUSA (Annotated), has since been changed to 8543.70.9650, HTSUSA.

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 it is 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.

During the course of operating 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. As such, the third criteria to the EN (X) to GRI 3(b) 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 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 depilatory kit is classified in heading 8516, HTSUS. It is specifically provided for under subheading 8516.79.0000, HTSUSA, 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.

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 THREE RULING LETTERS RELATING TO THE TARIFF CLASSIFICATION OF AN ANTI-THEFT DEVICE

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

ACTION: Notice of proposed revocation of three rulings relating to the tariff classification of an anti-theft device.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this Notice advises interested parties that U.S. Customs and Border Protection (CBP) proposes to revoke three ruling letters relating to the tariff classification of a plastic anti-theft device containing an ink cartridge 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 October 2, 2015.

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

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

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), this Notice advises interested parties that CBP intends to revoke three ruling letters pertaining to the tariff classification of an anti-theft device. Although in this Notice, CBP is specifically referring to the revocation of New York Ruling Letters

(NY) 888345 (Aug. 10, 1993) (Attachment A), NY C84082 (Feb. 27, 1998) (Attachment B) and NY 885120 (Attachment C), this Notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letters, 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 888345, we classified the anti-theft device with ink under 3215.90.5000 HTSUS, which provides for "Printing ink, writing or drawing ink and other inks, whether or not concentrated or solid: Other: Other." It is now CBP's position that the anti-theft device is properly classified in subheading 3926.90.9995, HTSUS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke NY 888345, NY C84082 and NY 885120 and to revoke or to modify any other ruling not specifically identified, in order to reflect the proper classification of anti-theft devices, according to the analysis contained in proposed HQ H080818, set forth as Attachment D to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially similar transactions.

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

Dated: August 7, 2015

GREG CONNOR
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY 888345

August 10, 1993

CLA-2-32:S:N:N7:236 888345

CATEGORY: Classification

TARIFF NO.: 3215.90.5000

MR. RICHARD J. HARTENSTINE
F.W. MYERS & Co., INC.
149-09 183 STREET
JAMAICA, NY 11413-4030

RE: The tariff classification of a Colored Pin (Ink Anti-Theft Device) from Sweden.

DEAR MR. HARTENSTINE:

In your letter dated July 16, 1993, on behalf of your client, Bumerang Import Export Inc., you requested a tariff classification ruling.

The prospective import is a Colored Pin (Ink Anti-Theft Device) for preventing of the theft of clothes. The device is composed of a plastic capsule which is approximately 1 1/2 inches in diameter by 5/8 inch thick. It is filled with red ink. The ink capsule is attached with a steel pin to clothing or other items in department stores. If unauthorized persons try to remove the pin, the ink will leak onto the clothing.

There is no en nomine provision for this item. GRI 3(b) is applicable in order to determine the essential character. Based upon values indicated below and use of the product, it is our opinion that the ink conveys the essential character to the product.

Ink 34 cents Plastic 13 cents Steel 2 cents

The applicable subheading for the Colored Pin (Ink Anti-Theft Device) will be 3215.90.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for other ink. The duty rate will be 1.8 percent ad valorem.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

[ATTACHMENT B]

NY C84082

February 27, 1998

CLA-2-32:RR:NC:2:236 C84082

CATEGORY: Classification

TARIFF NO.: 3215.90.5000

MR. HENRIK WILS
8000 MONTGOMERY BLVD NE #316
ALBUQUERQUE, NEW MEXICO 87109

RE: The tariff classification of The Swedish "Color Pin" (Ink Anti-Theft Device) from Sweden

DEAR MR. WILS:

In your letter received February 10, 1998, you requested a tariff classification ruling.

The sample submitted is a "Color Pin" (Ink Anti-Theft Device) for preventing of the theft of clothes. The device is composed of a plastic capsule which is approximately 1 1/2" in diameter by 5/8" in thickness. It is filled with red ink. The ink capsule is attached with a steel pin to clothing or other items in department stores. If unauthorized persons try to remove the pin, the ink will leak onto the clothing.

There is no en nomine provision for this item. GRI 3(b) is applicable in order to determine the essential character. Based on use of the product, it is our opinion that the ink conveys the essential character to the product.

The applicable subheading for the "Color Pin" (Ink Anti-Theft Device) will be 3215.90.5000, Harmonized Tariff Schedule of the United States, which provides for Printing ink, writing or drawing ink and other inks, whether or not concentrated or solid: Other: Other. The rate of duty will be 1.8 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 V. Gualario at 212-466-5744.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT C]

May 12, 1993

NY 885120

CLA-2-32:S:N:N7:236

CATEGORY: Classification

TARIFF NO.: 3215.90.5000

MR. J.R. FRANS VERSLUIS
MANAGER NETHERLANDS CHAMBER OF COMMERCE
ONE ROCKEFELLER PLAZA, 11TH FLOOR
NEW YORK, NY 10020

RE: The tariff classification of Combiclip Ink System from the Netherlands.

DEAR MR. VERSLUIS:

In your letter dated April 13, 1993, on behalf of your client, Combiclip Europe B.V., you requested a tariff classification ruling.

The prospective import is a Combiclip Ink System for the prevention of the theft of clothes. The system is composed of a plastic capsule which is approximately 1 inch diameter by 3/8 inch thick. It is filled with red ink. The ink capsule is attached with a steel pin to clothing or other items in department stores. If unauthorized persons in store try to remove the pin the ink will start to leak on the clothing. This is meant as a deterrent against theft of clothes.

There is no *eo nomine* provision for this item. As a result we are applying GRI 3 (b) to determine the essential character. Note the following costs:

Ink 34 cents Plastic 13 cents Steel Pin 1 cents other less 1 cents

Based on value and use, it is our opinion that the ink conveys the essential character of the product.

The applicable subheading for the Combiclip Ink System will be 3215.90.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for other ink. The duty rate will be 1.8 percent *ad valorem*.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

[ATTACHMENT D]

HQ H080818
 OT:RR:CTF:TCM H080818 PTM
 CATEGORY: CLASSIFICATION
 TARIFF NO: 3926.90.9980

MR. RICHARD J. HARTENSTINE
 F.W. MYERS & Co. INC.
 149-09 183 STREET
 JAMAICA, NY 11413-4030

RE: Revocation of NY 888345, dated August 10, 1993; NY C84082, dated February 27, 1998; and NY 885120, dated May 12, 1993; Tariff classification of an anti-theft device with an ink cartridge.

DEAR MR. HARTENSTINE,

On August 10, 1993, we issued New York (NY) Ruling 888345 in response to your request for a ruling concerning the tariff classification of an anti-theft device with an ink cartridge. In NY 888345, we determined that the proper tariff classification of the anti-theft device under the Harmonized Tariff Schedule of the United States (“HTSUS”) was under heading 3215.90, which provides for “Printing ink, writing or drawing ink and other inks, whether or not concentrated or solid: Other.” We have reviewed NY 888345 and found it to be in error. For the reasons set forth below, we hereby revoke NY 888345 several other rulings on substantially similar merchandise: NY C84082 (Feb. 27, 1998), and NY 885120 (May 12, 1993).

FACTS:

In NY 888345 we described the anti-theft device as follows:

The prospective import is a Colored Pin (Ink Anti-Theft Device) for preventing of the theft of clothes. The device is composed of a plastic capsule which is approximately 1 1/2 inches in diameter by 5/8 inch thick. It is filled with red ink. The ink capsule is attached with a steel pin to clothing or other items in department stores. If unauthorized persons try to remove the pin, the ink will leak onto the clothing.

The anti-theft devices are used by retailers to prevent shoplifters from stealing merchandise. The retailers affix the devices to garments with a locking clamp, and the devices can only be removed with a specially designed detaching tool. If a person attempts to remove the device without the detaching tool, a tack in the device will break the vial of ink and ruin the garment. The device is designed to work as both a visual and functional deterrent.

ISSUE:

Are the anti-theft devices properly classified under heading 3215 HTSUS as “other inks” or in heading 3926 HTSUS as “other articles of plastics”?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (“GRI’s”). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the

goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 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 the GRIs 1 through 5.

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 HTSUS provisions at issue are as follows:

3215	Printing ink, writing or drawing ink and other inks, whether or not concentrated or solid:
3215.90	Other:
	* * *
3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:

The anti-theft device consists primarily of two components: a plastic shell housing and an ink capsule. Because the anti-theft device is a composite good, it must be classified pursuant to GRI 3, which states, in pertinent part:

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.

Regarding the determination of which component imparts the instant anti-theft device with its essential character, the EN (VIII) to GRI 3(b) states the following:

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, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

GRI 3(b) requires that classification be based on the component that provides the article with its essential character. As noted above, EN (VIII) to GRI 3(b) provides that when performing an essential character analysis, the factors that should be considered are the bulk, quantity, weight or value, or the role of a constituent material in relation to the use of the goods. There have been several court decisions on “essential character” for purposes of classification under GRI 3(b). See, e.g., *Conair Corp. v. United States*, 29 C.I.T. 888 (2005); *Structural Industries v. United States*, 360 F. Supp. 2d

1330, 1337–1338 (Ct. Int'l Trade 2005); and *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d 1278, 1295–1356 (Ct. Int'l Trade 2006), *aff'd* 491 F.3d 1334 (Fed. Cir. 2007). “[E]ssential character is that which is indispensable to the structure, core or condition of the article, i.e., what it is.” *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d at 1293 quoting *A.N. Deringer, Inc. v. United States*, 66 Cust. Ct. 378, 383 (1971). In particular, in *Home Depot USA, Inc. v. United States*, the court stated “[a]n essential character inquiry requires a fact intensive analysis.” 427 F. Supp. 2d 1278, 1284 (Ct. Int'l Trade 2006). Therefore, a case-by-case determination on essential character is warranted in this situation.

The ink capsule of the anti-theft device is enclosed within the plastic shell housing, which is clamped onto the garment. The plastic shell is the only visible component of the anti-theft device. The shell prevents the ink cartridge from breaking and ruining the merchandise unless the device is tampered with. Additionally, the plastic shell housing accounts for the majority of the bulk and weight of the anti-theft device. The primary function of the anti-theft device is to prevent shoplifters from stealing garments. The plastic shell housing serves as a physical and visual deterrent to would-be shoplifters. The anti-theft device is visible on the garments onto which it is affixed. Furthermore, the garments are unusable if the device is not removed using the removal tool. The ink housed in the plastic shell is an additional deterrent, however, it is incapable of operating on its own. By contrast, the plastic shell housing can function as a theft deterrent without the ink cartridge. Thus, the role of the plastic shell housing is indispensable to the use of the device. Based on the analysis of these factors, we find that the plastic shell housing provides the merchandise with its essential character. Therefore, based on the information available, the merchandise is properly classified as an article of plastic under heading 3926 HTSUS.

Prior CBP rulings have classified similar anti-theft devices in heading 3926 HTSUS. For example, in HQ 082561 (Nov. 25, 1988), the legacy Customs Service classified Colortag anti-shoplifting device under heading 3926 HTSUS. Similarly, in NY N801735 (Sept. 28, 1994), Customs classified an anti-theft device consisting of a plastic shell containing ink under heading 3926 HTSUS. *See also*, NY 868503 (Nov. 11, 1991), NY 855458 (Aug. 29, 1990). Consequently, our holding is consistent with prior rulings.

HOLDING:

By application of GRI 3(b), the anti-theft tag is classified in heading 3926 HTSUS, more specifically in subheading 3926.90.9995, 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 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY 888345 (Aug. 10, 1993), NY C84082 (Feb. 27, 1998), and NY 885120 (May 12, 1993) are hereby REVOKED.

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

**REVOCATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO CLASSIFICATION OF
SMALL GLASS YARD STAKES**

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

ACTION: Revocation of a ruling letter and revocation of treatment relating to the classification of certain small glass yard stakes.

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 (“CPB”) revoking a ruling concerning the classification of small glass yard stakes under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB is revoking any treatment previously accorded by CPB to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 16, on April 22, 2015. One comment requesting revocation of a ruling for a similar product was received in response to the notice. Since that product contains certain components that were not present in the merchandise in NY N248093, it is not substantially similar to the merchandise in NY N248093. Therefore, we will not revoke it under this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Lynne O. Robinson, Tariff Classification and Marking Branch: (202) 325-0067.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 49, No. 16, on April 22, 2015, proposing to revoke New York Ruling letter (NY) N248093, dated December 12, 2013, in which CBP determined that the subject merchandise was classified under heading 7013, HTSUS, and specifically under subheading 7013.99.50, which provides for: “[G]lassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): Other: Valued over \$0.30 but not over \$3.00 each.”

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. § 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his 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 N248093 to reflect the proper tariff classification of this merchandise under sub-heading 8306.29.00, HTSUS, which provides for: “[B]ells, gongs and the like, nonelectric, of base metal, statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base metal; mirrors of base metal; and base metal parts thereof: Other”, pursuant to the analysis set forth in Headquarters Ruling Letter H251139, which is attached to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by it to substantially identical transactions.

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

Dated: August 3, 2015

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H251139

August 3, 2015

CLA-2 OT:RR:CTF:TCM H251139 LOR

CATEGORY: Classification

TARIFF NO.: 8306.29.00

Ms. TONYA DAVENPORT
 CUSTOMS SENIOR ANALYST
 DOLLAR GENERAL CORPORATION, LLC
 100 MISSION RIDGE
 GOODLETTSVILLE, TN

RE: Revocation of New York Ruling (NY) N248093; Small Yard Stakes

DEAR Ms. DAVENPORT:

The following is our decision regarding the request for reconsideration of New York Ruling N248039 that Dollar General Corporation, LLC (“Dollar General”) filed with us on December 12, 2013. In NY N248039, U.S. Customs and Border Protection classified certain yard stakes consisting of glass figures on metal stakes, under subheading 7013.99.50 of the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed the ruling and find it to be in error.

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), a notice was published in the Customs Bulletin, Volume 49, No. 16, on April 22, 2015, proposing to revoke NY N248039, and any treatment accorded to substantially identical transactions. We received one comment in response to the notice wherein the commenter requested that the proposed treatment also be accorded to a product for which the commenter had received a binding ruling.

FACTS:

The instant merchandise consists of yard stakes in the form of a flower and made from iron. Measuring approximately 22 inches, the yard stakes are coated in green paint. One end of the stake is curved and has an iron-backed glass article in the shape of a flower, or a bee, or a bird, or a lady bug affixed to it by means of a small metal ring. Three pieces of metal in the form of petals with two metal flowers are welded at the midpoint of each stake. The ornamental flower, bee, bird or lady bug are covered in broken glass and then painted in assorted colors, depending upon the specific item.¹

You have requested classification under subheading 8306.29.00, HTSUS, which provides for ornaments of metal in accordance with GRI 3(b)(VIII). You claim that the essential character of the garden stakes is imparted by the iron. You described the imported articles as “Small Glass Yard Stake – 4 Styles Asst” in your submission. To support classification under heading

¹ In the samples provided, the metal-backed glass flower is pink and the two smaller flowers on the stem are a paler pink; the metal backed glass bee is gold with black stripes and the two smaller flowers on the stake are blue with yellow embellishment; the metal-backed glass bird is a golden yellow with pink highlights and the two smaller flowers on the stake are a redish-pink with a yellow stamen; and, the metal-backed lady bug is red with black dots and the two smaller flowers on the stake are purple with yellow stamen.

8306, HTSUS, you contend that based on the percentage of glass by weight (9%) and the value (11%) compared to the percentage of iron by weight (91%) and the value (89%), the essential character of the yard stake is imparted by the iron. According to the invoice² that you submitted, the material weight of the glass is 8 grams and the material weight of the iron is 77 grams. Using the invoice values, the total weight of the imported small glass stakes is 85 grams. The dollar values and weights are 10% of the dollar value and 9.412% for the glass component and 90% of the dollar value and 90.59% for the iron component.

ISSUE:

Whether the garden stakes are classified as ornamental articles of glass under heading 7013, HTSUS, or as articles of metal under heading 8306, HTSUS.

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise. The GRIs 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 and, unless otherwise required, according to the remaining GRIs taken in order. GRI 2(b) provides the following:

- (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

GRI 3 provides the following:

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

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

² In addition to the glass and the iron content, the invoice provides the material weight and cost of the paper display stand. The paper, however, is not considered in the classification of the small glass yard stakes.

consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

- (c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

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:

7013	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):
	* * * * *
8306	Bells, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base metal; mirrors of base metal; and base metal parts thereof:
	* * * * *

In understanding the language of 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 EN for heading 7013, HTSUS, provides, in pertinent part, the following:

Articles of glass combined with other materials (base metal, wood, etc.), are classified in this heading only if the glass gives the whole the character of glass articles.

The EN for heading 8306, provides the following, in pertinent part:

(B) STATUETTES AND OTHER ORNAMENTS

This group comprises a wide range of ornaments of base metal (whether or not incorporating subsidiary non-metallic parts) of a kind designed essentially for decoration, e.g., in homes, offices, assembly rooms, places of religious worship, gardens.

It should be noted that the group does not include articles of more specific headings of the Nomenclature, even if those articles are suited by their nature or finish as ornaments.

The group covers articles which have no utility value but are wholly ornamental, and articles whose only usefulness is to contain or support other decorative articles or to add to their decorative effect, for example:

- (1) Busts, statuettes and other decorative figures; ornaments (including those forming parts of clock sets) for mantelpieces, shelves, etc. (animals, symbolic or allegorical figures, etc.); sporting or art trophies (cups, etc.); wall ornaments incorporating fittings for hanging (plaques, trays, plates, medallions other than those for personal adornment); artificial

flowers, rosettes and similar ornamental goods of cast or forged metal (usually of wrought iron); knick-knacks for shelves or domestic display cabinets.

EN (VIII) for GRI 3(b) provides, in pertinent part, the following:

In all these cases the goods are to 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) explains that “[t]he 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, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods.” Court decisions on essential character for GRI 3(b) purposes have looked primarily to the role of the constituent material in relation to the use of the good. See *Better Home Plastics Corp. v. U.S.*, 915 F. Supp. 1265 (CIT 1996), aff’d 119 F. 3d 969 (Fed. Cir. 1997) (“Better Home Plastics”); *Mita Copystar America, Inc. v. U.S.*, 966 F. Supp. 1245 (CIT 1997), rehear’g denied, 994 F. Supp. 393 (1998); *Vista Int’l Packing Co. v. U.S.*, 890 F. Supp. 1095 (CIT 1995). See also *Pillowtex Corp. v. U.S.*, 893 F. Supp. 188 (CIT 1997), aff’d 171 F. 3d 1370 (CAFC 1999); *Avenues in Leather, Inc. v. U.S.*, 2004 Ct. Int’l Trade LEXIS 39, aff’d 2005 U.S. App. LEXIS 19816 (Fed. Cir. 2005).

In *The Home Depot, U.S.A., Inc., v. United States*, 2006 Ct. Int’l Trade, LEXIS 40, aff’d 2007 (CAFC), the Court relied upon the EN for GRI 3(b) (VIII) and case law for guidance in determining what factors constitute essential character. The Court specifically referenced *United China & Glass Co. v. United States*, 61 Cust. Ct. 386, C.D. 3637, 293 F. Supp. 734 (1968) and *A.N. Deringer, Inc. v. United States*, 66 Cust. Ct. 378, C.D. 4218 (1971). Factors considered in *United China* reflected the article’s “name ... other recognized names ... invoices and catalogue descriptions ... size, primary function, uses ... and ordinary common sense.” Id. At 389. Emphasis added. In *A.N. Deringer*, the court noted that “[t]he character of an article is that attribute which strongly marks or serves to distinguish what it is. It’s the essential character that which is indispensable to the structure, core or condition of the article, i.e., what it is.” Id at 383. The Court stressed, however, that in an essential character determination, “the situation must be reviewed as a whole.” Id. at 384 (citation omitted).

In *Home Depot*, the CIT found that the glass in certain light fixtures reflected the imported articles name and had a much greater visible surface area and weighed much more than the metal component as the factor “materials’ role in the relation to the use of the good” as listed in GRI 3(b). When considering the “materials” role for certain light fixtures, however, the Court found the metal components were the most important for design and structure, but also that because it was an exterior fixture, that the glass component was the most important for function and use.

With regard to the iron yard stakes bearing glass-plated ornaments, these articles are composite goods that cannot be classified at GRI 1 because there is no heading that describes the complete good. At GRI 3(b), CBP has considered that the essential character of decorative articles that are com-

posite goods is given by the component which imparts the visual impact in accordance with use of the goods as items of decoration. For instance, in HQ H044562, dated June 1, 2009, CBP determined that certain insect decorative garden stakes, made from metal wire dipped in epoxy with plastic beads added for accent on insects, were composite goods which were classifiable in accordance to GRI 3(b) under heading 3926, HTSUS.

Here, the imported article is a yard stake, made of iron, painted green and bearing metal petals and metal flowers, and also bearing a glass ornament that is backed by iron. The name of the imported article is reflected in the yard stake as opposed to the glass ornament. In considering the 'materials' role in the essential character analysis, we note that the metal stake and the glass ornament are imported as one unit. Based upon the documentary evidence and using the values that you have provided the metal content weighs nearly 10 times more than the glass content of the imported article. The dollar value of the metal content in the stake is also several times more than the value of the glass content of the imported article. In considering the samples that were submitted, we note that the material which provides the most significant visual impact and consumer appeal of the yard stakes rests primarily in the painted broken glass. However, the painted metal stake bearing metal petals and flowers also provides significant visual impact, color and consumer appeal.

In HQ H044562, we found that the material that provided the visual impact, color, consumer appeal and nature of certain metal garden stakes was the plastic beads which gave color and detail to the insect and its wings. We noted that "[A]lthough the insect itself may include a thin wire to hold its shape, the wire and the stake were of lesser importance in relation to the use of this good for solely ornamental purposes." Moreover, in NY N005494, dated May 9, 2007, we noted that the essential character of the article was imparted by the glass ornament. In NY N189576, dated November 14, 2011, we found that the red "light-up" glass ball was the focus of one's attention on the article as opposed to the stake. Lastly, in N246035, dated December 4, 2013 we determined that the thin metal rod (garden stake) was less significant than the glass component.

Unlike the articles discussed in HQ H044562 and in NY N005494, NY N189576, and NY N246035, the decorative metal content of the metal garden stake at issue, including the iron mounting the back of each glass component and the metal ornamentation welded to the metal stake, is significantly greater than the glass content. Although you describe the article as a "small glass yard stake, the metal component most accurately describes the imported article inasmuch as it provides the overall design and structure to the imported article. In addition, the metal stake provides substantial visual impact, thus imparting a decorative presence to the imported article. Lastly, whereas the iron stake is substantial enough to drive into the ground, to serve as a boundary marker, or to support a plant, it does more than merely support the glass component – it enables the stake to function as a decorative yard stake.

The article referenced in the comment consists of a glass ball containing an LED bulb, topped by a metal insect, and surrounded by a metal swirl. The glass ball rests on top of a metal stake that has a plastic panel at the mid-point. The plastic panel stores solar energy. This solar garden stake is not substantially similar to the painted metal stake. Therefore, is not subject to consideration under this ruling.

Whereas the painted metal stake reflects the imported article's function and use, imparts the greatest material content and material value of the imported article, and provides a significant part of the visual impact of the imported article, we are of the opinion that the metal content provides the essential character of the imported article. Therefore, painted metal stake is to be classified under heading 8306, HTSUS.

This decision is consistent with several rulings issued in 2013 where the metal component was found to impart the essential character for certain metal garden stakes incorporating non-metal components. See, NY N246384, dated October 17, 2013, involving certain metal garden stakes with a butterfly and/or a dragon fly with four sections of colorful glass inserts within the wing of each insect; NY N245426, dated September 10, 2013, involving certain metal garden stakes with ornamental figures of base metal and glass or base metal and acrylic; and lastly, NY N237957, dated February 11, 2013, involving certain metal garden stakes with an owl with a glass body, a sun flower with a glass center surrounded by metal flowers, and/or a pumpkin with a glass center surround by a metal border, stems and a leaf on a metal sign. We classified the merchandise in each of these cases under subheading 8306.29.00, HTSUS.

HOLDING:

At GRI 3(b), the instant decorative garden stakes are classified in heading 8306, HTSUS. Specifically, at GRI 6, the merchandise is classified in subheading 8306.29.00, HTSUS, which provides for: "Bells, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base metal; mirrors of base metal; and base metal parts thereof: Other." 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 on the World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY N248039, dated December 12, 2013, is hereby REVOKED.

NY N143675, dated February 14, 2011, is hereby MODIFIED to reflect classification of the Ladybug Solar Stake in subheading 8306.29.00, HTSUS, which provides for: "Bells, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base metal; mirrors of base metal; and base metal parts thereof: Other."

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

Sincerely

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

ACCREDITATION AND APPROVAL OF AMSPEC SERVICES, LLC, AS A COMMERCIAL GAUGER AND LABORATORY

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

ACTION: Notice of accreditation and approval of AmSpec Services, LLC, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that AmSpec Services, LLC, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of April 30, 2015.

EFFECTIVE DATE: The accreditation and approval of AmSpec Services, LLC, as commercial gauger and laboratory became effective on April 30, 2015. The next triennial inspection date will be scheduled for April 2018.

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

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that AmSpec Services, LLC, 4370 Oakes Rd., Unit 732, Davie FL 33314, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. AmSpec Services, LLC is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API Chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
9	Density Determinations.
12	Calculations.
17	Maritime Measurement.

AmSpec Services, LLC is accredited for the following laboratory analysis procedures and methods for petroleum and certain petro-

leum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-02	D1298	Standard Practice for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Meter.
27-04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27-06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-08	D86	Standard Test Method for Distillation of Petroleum Products.
27-11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids.
27-13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry
27-20	D4057	Standard Practice for Manual Sampling of Petroleum and Petroleum Products.
27-48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27-54	D1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method.
27-57	D7039	Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X-Ray Fluorescence Spectrometry.
27-58	D5191	Standard Test Method for Vapor Pressure of Petroleum Products.

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

Dated: August 6, 2015.

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

[Published in the Federal Register, August 17, 2015 (80 FR 49254)]

**AUTOMATED COMMERCIAL ENVIRONMENT (ACE)
EXPORT MANIFEST FOR VESSEL CARGO TEST**

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) plans to conduct the Automated Commercial Environment (ACE) Export Manifest for Vessel Cargo Test, a National Customs Automation Program (NCAP) test concerning ACE export manifest capability. The ACE Export Manifest for Vessel Cargo Test is a voluntary test in which participants agree to submit export manifest data to CBP electronically, at least 24 hours prior to loading of the cargo onto the vessel in preparation for departure from the United States. In most cases, CBP regulations require carriers to submit a paper manifest for export vessel shipments within 4 days after departure or for approved carriers to submit the outbound vessel manifest information electronically within 10 days after departure. This notice provides a description of the test, sets forth eligibility requirements for participation, and invites public comment on any aspect of the test.

DATES: The test will begin no earlier than September 21, 2015 and will run for approximately two years. CBP is accepting applications for participation in this planned test until CBP has received applications from nine parties that meet all test participant requirements. Comments concerning this notice and all aspects of the announced test may be submitted at any time during the test period.

ADDRESSES: Applications to participate in the ACE Export Manifest for Vessel Cargo Test must be submitted via email to CBP Export Manifest at *cbpvesselexportmanifest@cbp.dhs.gov*. In the subject line of the email, please use "ACE Export Manifest for Vessel Cargo Test Application". Written comments concerning program, policy, and technical issues may also be submitted via email to CBP Export Manifest at

cbpvesselexportmanifest@cbp.dhs.gov. In the subject line of the email, please use “Comment on ACE Export Manifest for Vessel Cargo Test”.

FOR FURTHER INFORMATION CONTACT: Vincent C. Huang, Cargo and Conveyance Security, Office of Field Operations, U.S. Customs & Border Protection, via email at *cbpvesselexportmanifest@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

The National Customs Automation Program

The National Customs Automation Program (NCAP) was established in Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, Dec. 8, 1993) (Customs Modernization Act) (19 U.S.C. 1411–14). Through NCAP, the initial thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for CBP and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP’s business functions and the information technology that supports those functions. CBP’s modernization efforts are accomplished through phased releases of ACE component functionality designed to replace a specific legacy ACS or paper function. Each release begins with a test and ends with mandatory use of the new ACE feature, thus retiring the legacy ACS or paper function. Each release builds on previous releases and sets the foundation for subsequent releases.

Authorization for the Test

The Customs Modernization Act provides the Commissioner of CBP with the authority to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. The test described in this notice is authorized pursuant to the Customs Modernization Act and section 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)) which provides for the testing of NCAP programs or procedures. As provided in 19 CFR 101.9(b), for purposes

of conducting an NCAP test, the Commissioner of CBP may impose requirements different from those specified in the CBP regulations.

International Trade Data System (ITDS)

This test is also in furtherance of the International Trade Data System (ITDS) key initiatives, set forth in section 405 of the Security and Accountability for Every Port Act of 2006 (Pub. L. 109–347, 120 Stat. 1884, Oct. 13, 2006) (SAFE Port Act) (19 U.S.C. 1411(d)) and Executive Order 13659 of February 19, 2014, *Streamlining the Export/Import Process for America's Businesses*. The purpose of ITDS, as stated in section 405 of the SAFE Port Act, is to eliminate redundant information requirements, efficiently regulate the flow of commerce, and effectively enforce laws and regulations relating to international trade, by establishing a single portal system, operated by CBP, for the collection and distribution of standard electronic import and export data required by all participating Federal agencies. CBP is developing ACE as the “single window” for the trade community to comply with the ITDS requirement established by the SAFE Port Act.

Executive Order 13659 requires that by December 2016, ACE, as the ITDS single window, have the operational capabilities to serve as the primary means of receiving from users the standard set of data and other relevant documentation (exclusive of applications for permits, licenses, or certifications) required for the release of imported cargo and clearance of cargo for export, and to transition from paper-based requirements and procedures to faster and more cost-effective electronic submissions to, and communications with, U.S. government agencies.

Current Vessel Cargo Export Information Requirements

Under the CBP regulations (title 19 of the Code of Federal Regulations (CFR)), certain information must be submitted to CBP for vessels with export cargo leaving the United States for any foreign area, whether directly or by way of other domestic ports. Section 4.61 (19 CFR 4.61) requires the vessel master or other proper officer to execute a Vessel Entrance or Clearance Statement on CBP Form 1300 filed with CBP pertaining to the outbound vessel. Section 4.63 (19 CFR 4.63) requires the vessel master, or the vessel's agent on behalf of the master, to file a vessel cargo manifest on paper CBP Form 1302–A, Cargo Declaration Outward With Commercial Forms, with copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest attached in such manner as to constitute one document, with CBP at each port from which clear-

ance is being sought.¹ Section 4.75 (19 CFR 4.75), requires the vessel master, or the vessel's agent on behalf of the master, to file the complete vessel cargo manifest generally within 4 business days after clearance from each port in the vessel's itinerary. Section 4.76 (19 CFR 4.76) sets forth procedures and responsibilities of carriers filing outbound vessel manifest information via the Automated Export System (AES) in lieu of paper CBP Form 1302–A. Carriers that are approved to submit outbound vessel manifest information electronically in AES under 19 CFR 4.76 must, with limited exceptions, submit the complete manifest data within 10 calendar days after departure. Finally, section 192.14 (19 CFR 192.14) requires the U.S. Principal Party in Interest (USPPI) to file any required Electronic Export Information (EEI) for the cargo on the vessel.² More details regarding the manifest requirements, the subject of this test, are provided in the next section.

Current Vessel Cargo Manifest Requirements

As indicated in the previous section, the vessel commander or agent must file copies of the vessel cargo manifest on CBP Form 1302–A. CBP Form 1302–A consists of the following data elements:

- (1) Name of Ship
- (2) Port where report is made (not required by United States)
- (3) Nationality of ship
- (4) Name of master
- (5) Port of loading
- (6) Port of discharge
- (7) Bill of Lading number

¹ In addition to the filing of a vessel clearance statement and a vessel cargo declaration with manifest information and commercial documents, section 4.63 requires the filing of export declarations. The term “export declarations” refers to the Shipper's Export Declarations, the Department of Commerce paper forms used by the Bureau of the Census under the Foreign Trade Statistics Regulations to collect information from an entity exporting from the United States. These forms were used for compiling the official U.S. export statistics for the United States and for export control purposes. The Shipper's Export Declarations became obsolete on October 1, 2008, with the implementation of the Foreign Trade Regulations (FTR) and have been superseded by the Electronic Export Information (EEI) filed in the Automated Export System (AES) or through the AESDirect. *See* 15 CFR 30.1. *See also* 19 CFR 192.14, regarding required EEI.

² The USPPI is defined in the FTR as the person or legal entity in the United States that receives the primary benefit, monetary or otherwise, from the export transaction. Generally, that person or entity is the U.S. seller, manufacturer, or order party, or the foreign entity while in the United States when purchasing or obtaining the goods for export. 15 CFR 30.1.

- (8) Marks and Numbers, Container Numbers, Seal Numbers
- (9) Number and kind of packages; Description of goods
- (10) Gross Weight (lb. or kg.) or Measurements (per HTSUS)
- (11) Internal Transaction Number (ITN) or AES Exemption Statement³

The vessel cargo manifest may be filed in complete form or incomplete form (*pro forma*). The complete manifest must be filed with CBP before the vessel will be cleared to depart to a foreign country listed in 19 CFR 4.75(c). Otherwise, for shipments to a foreign country, an incomplete manifest may be filed with CBP at the departure port when accompanied by the proper bond. As provided in 19 CFR 4.84(c)(2), for shipments from any State or the District of Columbia to Puerto Rico, a complete manifest or proper bond shall be filed with CBP within one business day of arrival in Puerto Rico. As provided in 19 CFR 4.84(c)(1), for shipments from any State or the District of Columbia to noncontiguous territories of the United States other than Puerto Rico, or from Puerto Rico to any State or the District of Columbia to any other noncontiguous territory, a complete manifest or proper bond must be filed with CBP before departure.

Under the terms of the bond, the complete manifest must be filed with CBP by the master, or the vessel's agent on behalf of the master, within the appropriate time period. For shipments to foreign countries, the complete manifest must be filed no later than 4 business days post-departure. For shipments from the United States to Puerto Rico, the complete manifest must be filed no later than 7 business days after arrival in Puerto Rico. For shipments between the United States or Puerto Rico and other U.S. territories, the complete manifest must be filed no later than 7 business days after departure.

As mentioned in the previous section, under 19 CFR 4.76, certain carriers are approved to submit outbound vessel manifest information electronically in AES in lieu of submitting a paper CBP Form 1302-A. In most cases, these carriers must submit the complete manifest data within 10 calendar days after departure of the vessel from each port. However, if the destination of the vessel is a foreign port listed in 19 CFR 4.75(c), the carrier must transmit complete manifest information before vessel departure. Also, the time requirements for electronic transmission of complete manifest information

³ Though not a data element on CBP Form 1302-A itself, the carrier must include the ITN or AES Exemption Statement on the outward manifest pursuant to 19 CFR 192.14(c)(3). See also 19 CFR 4.63(b) requiring the number of the export declaration or exemption (replaced by the ITN or AES Exemption Statement as detailed in Note 1 above).

for carriers destined to Puerto Rico and U.S. possessions are the same as the requirements found in 19 CFR 4.84 and described above.

Trade Act and the Automated Export System (AES)

Section 343(a) of the Trade Act of 2002, as amended (Trade Act) (19 U.S.C. 2071 note), requires CBP to promulgate regulations providing for the mandatory transmission of electronic cargo information by way of a CBP-approved electronic data interchange (EDI) system before the cargo is brought into or departs the United States by any mode of commercial transportation (sea, air, rail, or truck). The required cargo information is that which is reasonably necessary to enable high-risk shipments to be identified for purposes of ensuring cargo safety and security and preventing smuggling pursuant to the laws enforced and administered by CBP. Section 192.14 of title 19 of the CFR (19 CFR 192.14) implements the requirements of the Trade Act with regard to cargo departing the United States.

While the vessel cargo manifest described in the previous section must be submitted by the vessel commander or agent, that is, by the vessel carrier, 19 CFR 192.14 specifies that any required EEI must be filed by the USPPI. The USPPI or its authorized agent must transmit any required EEI using a CBP-approved EDI system, and verify system acceptance of this EEI no later than 24 hours prior to departure from the U.S. port where the vessel cargo is to be laden. The vessel carrier may not load cargo without first receiving from the USPPI or its authorized agent either the related EEI filing citation, covering all cargo for which the EEI is required, or exemption legends, covering cargo for which EEI need not be filed. The outbound vessel carrier then must annotate the vessel cargo manifest, waybill, or other export documentation with the applicable AES proof of filing, post departure, downtime, exclusion or exemption citations, conforming to the approved data formats found in the Bureau of the Census Foreign Trade Regulations (FTR) (15 CFR part 30).

Description of the ACE Export Manifest for Vessel Cargo Test

Purpose

The ACE Export Manifest for Vessel Cargo Test will test the functionality regarding the filing of export manifest data for vessel cargo electronically to ACE in furtherance of the ITDS initiatives described above. CBP has re-engineered AES to move it to an ACE system platform. The re-engineering and incorporation of AES into ACE will result in the creation of a single automated export processing platform for certain export manifest, commodity, licensing, export control, and export targeting transactions. This will reduce costs for CBP,

partner government agencies, and the trade community and improve facilitation of export shipments through the supply chain.

The ACE Export Manifest for Vessel Cargo Test will also test the feasibility of requiring the manifest information to be filed electronically in ACE within a specified time before the cargo is loaded on the vessel. (Under the current regulatory requirements, in most cases the complete manifest is not required to be submitted until after the departure of the vessel). As described in the paragraph below, in the test, participants will submit export manifest data electronically to ACE at least 24 hours prior to loading of the cargo on the vessel. This will enable CBP to link the EEI submitted by the USPPPI with the export manifest information earlier in the process. This capability will better enable CBP to assess risk and effectively target and inspect shipments prior to the loading of cargo to ensure compliance with all U.S. export laws.

Procedures

Participants in the ACE Export Manifest for Vessel Cargo Test agree to provide export manifest data to CBP electronically at least 24 hours prior to loading of the cargo onto the vessel in preparation for departure from the United States. If the vessel carrier files this ACE Export Manifest data, the filing is in lieu of the paper filing of CBP Form 1302–A and copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest. If a freight forwarder or non-vessel operating common carrier (NVOCC) files the ACE Export Manifest data, the carrier is still required to file one of the following: the paper CBP Form 1302–A with copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest attached in such manner as to constitute one document; the 19 CFR 4.76 electronic equivalent, if the vessel carrier is approved for this procedure; or the ACE Export Manifest data, if the vessel carrier is a test participant.

The ACE Export Manifest data submission will be used to target high-risk vessel cargo. The data should be available to test participants early in the planning stages of an export vessel cargo transaction. It is anticipated that data provided no later than 24 hours prior to loading will permit adequate time for proper risk assessment and identification of shipments to be inspected early enough in the supply chain to enhance security while minimizing disruption to the flow of goods.

Any vessel cargo identified as potentially high-risk will receive a hold until required additional information related to the shipment is submitted to clarify non-descriptive, inaccurate, or insufficient infor-

mation, a physical inspection is performed, or some other appropriate action is taken, as specified by CBP. Once the cargo is cleared for loading, a release message will be generated and transmitted to the filer.

Data Elements

The ACE Export Manifest for Vessel Cargo Test data elements are similar, but not identical to the data elements required on CBP Form 1302–A. The data elements are mandatory unless otherwise indicated. Data elements that are indicated as “conditional” must be transmitted to CBP only if the particular information pertains to the cargo. The ACE Export Manifest for Vessel Cargo data elements are to be submitted at the lowest bill level. The data elements consist of:

- (1) Mode of transportation (Vessel, containerized or Vessel, non-containerized)
- (2) Name of ship or vessel
- (3) Nationality of ship
- (4) Name of master
- (5) Port of loading
- (6) Port of discharge
- (7) Bill of Lading number (Master and House)
- (8) Bill of Lading type (Master, House, Simple or Sub)
- (9) Number of house Bills of Lading
- (10) Marks and Numbers (conditional)
- (11) Container Numbers (conditional)
- (12) Seal Numbers (conditional)
- (13) Number and kind of packages
- (14) Description of goods
- (15) Gross Weight (lb. or kg.) or Measurements (per HTSUS)
- (16) Shipper name and address
- (17) Consignee name and address
- (18) Notify Party name and address (conditional)
- (19) Country of Ultimate Destination

- (20) In-bond number (conditional)
- (21) Internal Transaction Number (ITN) or AES Exemption Statement (per shipment)
- (22) Split Shipment Indicator (Yes/No)
- (23) Portion of split shipment (e.g. 1 of 10, 4 of 10, 5 of 10—Final. etc.) (conditional)
- (24) Hazmat Indicator (Yes/No)
- (25) UN Number (conditional) (If the hazmat indicator is yes, the four-digit United Nations (UN) Number assigned to the hazardous material must be provided.)
- (26) Chemical Abstract Service (CAS) Registry Number (conditional)
- (27) Vehicle Identification Number (VIN) or Product Identification Number (conditional) (For shipments of used vehicles, the VIN must be reported, or for used vehicles that do not have a VIN, the Product Identification Number must be reported.)

There are currently no additional data elements identified for other participating U.S. Government Agencies (PGAs) for the ACE Export Manifest for Vessel Cargo Test. However, CBP may enhance the test in the future with additional data or processing capabilities to assist with facilitation of vessel shipment movements and to be consistent with Executive Order 13659. Any such enhancement will be announced in the **Federal Register**.

Eligibility Requirements

CBP is limiting this test to nine stakeholders in the vessel cargo environment. Specifically, CBP is seeking participation from:

- At least three, but no more than six, vessel carriers; and
- At least three, but no more than six, freight forwarders or NVOCCs.

There are no restrictions with regard to organization size, location, or commodity type. However, participation is limited to those parties able to electronically transmit export manifest data in the identified acceptable format. Prospective ACE Export Manifest for Vessel Cargo Test participants must have the technical capability to electronically submit data to CBP and receive response message sets via Cargo-IMP, AIR CAMIR, XML, or Unified XML, and must successfully complete certification testing with their client representative. (Uni-

fied XML may not be immediately available at the start of the test. However, parties wishing to utilize Unified XML may be accepted, pending its development and implementation). Once parties have applied to participate, they must complete a test phase to determine if the data transmission is in the required readable format. Applicants will be notified once they have successfully completed testing and are permitted to participate fully in the test. In selecting participants, CBP will take into consideration the order in which the applications are received.

Conditions of Participation

Test participants agree to submit export manifest data electronically to CBP via an approved EDI at least 24 hours prior to the loading of the cargo onto the vessel in preparation for departure from the United States. In addition, test participants agree to establish operational security protocols that correspond to CBP hold messages that mandate the participant to take responsive action and respond to CBP confirming that the requested action was taken to mitigate any threat identified, respond promptly with complete and accurate information when contacted by CBP with questions regarding the data submitted, and comply with any “Do Not Load” instructions.

Finally, test participants agree to participate in any teleconferences or meetings established by CBP, when necessary, to ensure any challenges, or operational or technical issues regarding the test are properly communicated and addressed.

Participation in the ACE Export Manifest for Vessel Cargo Test does not impose any legally binding obligations on either CBP or the participant, and CBP generally does not intend to enforce or levy punitive measures if test participants are non-compliant with these conditions of participation during the test.

Application Process and Acceptance

Those interested in participating in the ACE Export Manifest for Vessel Cargo Test should submit an email to CBP Export Manifest at cbpvessellexportmanifest@cbp.dhs.gov, stating their interest and their qualifications based on the above eligibility requirements. The email will serve as an electronic signature of intent to participate and must also include a point of contact name and telephone number. Applications will be accepted until CBP has received applications from nine parties that meet all test participant requirements. CBP will notify applicants whether they have been selected to participate in the test. Applicants will also be notified once they have successfully completed certification testing and are permitted to participate fully in the test.

Test participants will receive technical, operational, and policy guidance through all stages of test participation, from planning to implementation, on the necessary steps for the transmission of electronic export manifest data.

Costs to ACE Export Manifest for Vessel Cargo Test Participants

ACE Export Manifest for Vessel Cargo Test participants are responsible for all costs incurred as a result of their participation in the test and such costs will vary, depending on their pre-existing infrastructures. Costs may be offset by a significant reduction in expenses associated with copying, storing, and courier services for presenting the paper manifest to CBP.

Benefits to ACE Export Manifest for Vessel Cargo Test Participants

While the benefits to ACE Export Manifest for Vessel Cargo Test participants will vary, several advantages of joining may include:

- Reduction in costs associated with generating copies, transportation, and storage of paper manifest documentation;
- Increases in security by leveraging CBP threat model and other data to employ a risk-based approach to improve vessel cargo security and to ensure compliance with U.S. export laws, rules and regulations through targeted screening;
- Gains in efficiencies by automating the identification of high-risk cargo for enhanced screening and earlier identification of low-risk shipments;
- The ability to provide input into CBP efforts to establish, test, and refine the interface between government and industry communication systems for the implementation of the electronic export manifest; and
- Facilitation of corporate preparedness for future mandatory implementation of electronic export manifest submission requirements.

Waiver of Certain Regulatory Requirements

For purposes of this test, the requirement to file a paper CBP Form 1302–A, as provided in 19 CFR 4.63, 4.75, 4.82, and 4.87–89, will be waived for vessel carrier test participants that submit the ACE Export Manifest for Vessel Cargo data elements electronically as described above. For purposes of this test, the requirement to file copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest attached in such manner as to

constitute one document, as provided in 19 CFR 4.63(a)(1), will also be waived for vessel carrier test participants. If a freight forwarder or NVOCC submits the electronic ACE Export Manifest data, the vessel carrier is still required to file one of the following: The paper CBP Form 1302–A with copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest attached in such manner as to constitute one document; the 19 CFR 4.76 electronic equivalent, if the carrier is approved for the electronic filing; or the electronic ACE Export Manifest data, if the vessel carrier is a test participant. The vessel carrier maintains responsibility for submitting the manifest data to CBP to cover all cargo on the vessel, even if the freight forwarder or NVOCC has also submitted manifest data.

Participation in the test does not alter the participant's obligations to comply with any other applicable statutory and regulatory requirements, including 19 CFR 4.63, 4.75, 4.82, and 4.87–89, and participants will still be subject to applicable penalties for non-compliance. In addition, submission of data under the test does not exempt the participant from any CBP or other U.S. Government agency program requirements or any statutory sanctions in the event that a violation of U.S. export laws or prohibited articles are discovered within a shipment/container presented for export destined from the United States on a vessel owned and/or operated by the participant.

Duration and Evaluation of the ACE Export Manifest for Vessel Cargo Test

The test will be activated on a case-by-case basis with each participant and may be limited to a single or small number of ports until any operational, training, or technical issues on either the trade or government side are established and/or resolved. The test will run for approximately two years from September 21, 2015. While the test is ongoing, CBP will evaluate the results and determine whether the test will be extended, expanded to include additional participants, or otherwise modified. CBP will announce any such modifications by notice in the **Federal Register**. When sufficient test analysis and evaluation has been conducted, CBP intends to begin rulemaking to require the submission of electronic export manifest data before the cargo is loaded onto the vessel for all international shipments destined from the United States. The results of the test will help determine the relevant data elements, the time frame within which data should be submitted to permit CBP to effectively target, identify, and mitigate any risk with the least impact practicable on trade operations, and any other related procedures and policies.

Confidentiality

All data submitted and entered into ACE is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential, except to the extent as otherwise provided by law. However, participation in this or any ACE test is not confidential and upon a written Freedom of Information Act (FOIA) request, the name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552.

Misconduct Under the Test

If a test participant fails to abide by the rules, procedures, or terms and conditions of this and all other applicable **Federal Register** Notices, fails to exercise reasonable care in the execution of participant obligations, or otherwise fails to comply with all applicable laws and regulations, then the participant may be suspended from participation in this test and/or subjected to penalties, liquidated damages, and/or other administrative or judicial sanction. Additionally, CBP has the right to suspend a test participant based on a determination that an unacceptable compliance risk exists.

If CBP determines that a suspension is warranted, CBP will notify the participant of this decision, the facts or conduct warranting suspension, and the date when the suspension will be effective. In the case of willful misconduct, or where public health interests or safety are concerned, the suspension may be effective immediately. This decision may be appealed in writing to the Assistant Commissioner, Office of Field Operations, within 15 days of notification. The appeal should address the facts or conduct charges contained in the notice and state how the participant has or will achieve compliance. CBP will notify the participant within 30 days of receipt of an appeal whether the appeal is granted. If the participant has already been suspended, CBP will notify the participant when their participation in the test will be reinstated.

Paperwork Reduction Act

As noted above, CBP will be accepting no more than nine participants in the ACE Export Manifest for Vessel Cargo Test. This means that fewer than ten persons will be subject to any information collections under this test. Accordingly, collections of information within this notice are exempted from the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3502 and 3507).

Dated: August 17, 2015.

TODD C. OWEN,
Assistant Commissioner,
Office of Field Operations.

ACCREDITATION AND APPROVAL OF SAYBOLT LP AS A COMMERCIAL GAUGER AND LABORATORY

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

ACTION: Notice of accreditation and approval of Saybolt LP as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Saybolt LP has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of April 15, 2015.

EFFECTIVE DATE: The accreditation and approval of Saybolt LP as commercial gauger and laboratory became effective on April 15, 2015. The next triennial inspection date will be scheduled for April 2018.

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

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Saybolt LP, 21730 S. Wilmington Ave., Suite 201, Carson, CA 90810, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Saybolt LP is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API Chapters	Title
3	Tank gauging.
7	Temperature determination.
8	Sampling.
17	Maritime measurement.

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

CBPL No.	ASTM	Title
27-05	D4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27-06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-07	D4807	Standard Test Method for Sediment in Crude Oil by Membrane Filtration.
27-13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27-46	D5002	Density of Crude Oils by Digital Density Meter.

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

Dated: August 5, 2015.

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

[Published in the Federal Register, August 17, 2015 (80 FR 49254)]

APPROVAL OF FREEBOARD INTERNATIONAL AS A COMMERCIAL GAUGER

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

ACTION: Notice of approval of Freeboard International as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Freeboard International has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of April 1, 2015.

EFFECTIVE DATE: The approval of Freeboard International as commercial gauger became effective on April 1, 2015. The next triennial inspection date will be scheduled for April 2018.

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

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that Freeboard International, 2500 Brunswick Ave., Linden, NJ 07036, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Freeboard International is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

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

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

Dated: August 5, 2015.

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

AGENCY INFORMATION COLLECTION ACTIVITIES:

Biometric Identity

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

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

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Biometric Identity. CBP is proposing that this information collection be extended with a change to the burden hours but no change to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before October 19, 2015 to be assured of consideration.

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and

maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Biometric Identity.

OMB Number: 1651-0138.

Abstract: In order to enhance national security, the Department of Homeland Security developed a biometric based entry and exit system capable of improving the information resources available to immigration and border management decision-makers. These biometrics include: Digital fingerprint scans, photographs, facial images and iris images, or other biometric identifiers. Biometrics are collected from those aliens specified in 8 CFR 215.8 and 8 CFR 235.1(f). Non-exempt, non-U.S. citizens will have their facial and iris images captured upon entry to and exit from the United States. The information collected is used to provide assurance of identity and determine admissibility of those seeking entry into the United States.

The federal statutes that mandate DHS to create a biometric entry and exit system include: Section 2(a) of the Immigration and Naturalization Service Data Management Improvement Act of 2000 (DMIA), Public Law 106-215, 114 Stat. 337 (2000); Section 205 of the Visa Waiver Permanent Program Act of 2000, Public Law 106-396, 114 Stat. 1637, 1641 (2000); Section 414 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107-56, 115 Stat. 272, 353 (2001); Section 302 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Border Security Act), Public Law 107-173, 116 Stat. 543, 552, (2002); Section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108-458, 118 Stat. 3638, 3817 (2004); and Section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110-52, 121 Stat. 266 (2007).

Current Actions: This submission is being made to extend the expiration date with a change to the burden hours based on most recent estimates for the annual number of responses. There are no changes to the information being collected.

Type of Review: Extension (with change).

Affected Public: Individuals.

Estimated Number of Respondents: 113,200,000.

Estimated Time per Respondent: .0097 hours.

Estimated Total Annual Burden Hours: 1,098,040.

Dated: August 12, 2015.

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

[Published in the Federal Register, August 18, 2015 (80 FR 50020)]

