

U.S. Customs and Border Protection



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

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

ACTION: Notice of revocation of one ruling letter and revocation of treatment relating to tariff classification of freestanding wooden fireplace mantels.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is revoking New York Ruling Letter (NY) N057275, dated May 8, 2009, relating to the tariff classification of freestanding wooden fireplace mantels under the Harmonized Tariff Schedule of the United States (HTSUS). 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 this Notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 30, 2015.

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

SUPPLEMENTARY INFORMATION:

Background

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N057275 was published on July 1, 2015, in Volume 49, Number 26 of the *Customs Bulletin*. As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY N057275, CBP determined that certain fireplace mantels were classified in heading 4421, HTSUS, as other articles of wood.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N057275 and revoking or modifying any other ruling not specifically identified, in order to reflect the proper classification of the fireplace mantels at issue in heading 9403, HTSUS, as other furniture, according to the analysis contained in Headquarters Ruling Letter (HQ) H129856, which is attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: August 24, 2015

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

Attachments

HQ H129856

August 24, 2015

CLA-2 OT:RR:CTF:TCM H129856 CKG

CATEGORY: Classification

TARIFF NO.: 9403.60.80

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

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

DEAR MS. MOBLEY,

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N057275 was published on July 1, 2015, in Volume 49, Number 26, of the *Customs Bulletin*. No comments were received in response to this notice.

FACTS

The merchandise was described in NY N057275 as follows:

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

ISSUE

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

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

| | | | | |
|-------------|------------------------------------|---|---|---|
| 4421: | Other articles of wood: | | | |
| 4421.90: | Other: | | | |
| | Other: | | | |
| 4421.90.97 | Other... | | | |
| * | * | * | * | * |
| 9403: | Other furniture and parts thereof: | | | |
| 9403.60: | Other wooden furniture: | | | |
| 9403.60.80: | Other... | | | |
| * | * | * | * | * |

Chapter 44, Note 1(o) provides:

This chapter does not cover...

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

Legal Note 2 to Chapter 94 provides that:

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

* * * * *

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

The General EN to Chapter 94 states that for the purposes of this Chapter, the term “furniture” means:

(A) Any “movable” articles (**not included** under other more specific headings of the Nomenclature), which have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres,... Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc. are also included in this category.

(B) The following:

(i) Cupboards, bookcases, other shelved furniture (including single shelves presented with supports for fixing them to the wall) and unit furniture, designed to be hung, to be fixed to the wall or to stand one on the other or side by side, for holding various objects or articles (books, crockery, kitchen utensils, glassware, linen, medicaments, toilet articles, radio or television receivers, ornaments, etc.) and separately presented elements of unit furniture.

(ii) Seats or beds designed to be hung or to be fixed to the wall.

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

...

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

EN 94.03 further provides, in pertinent part:

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

The heading includes furnitures for :

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

...

The heading **does not include** :

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

* * * * *

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

Heading 9403, HTSUS, provides, in relevant part, for “Other furniture and parts thereof.” The term “furniture” is not defined in the Nomenclature; however, the Notes and ENs to Chapter 94 provide numerous examples of the types of articles classified under heading 94.03, and the common physical characteristics which those articles must share. Note 2 to Chapter 94 states, in relevant part, that articles referred to in heading 94.03 must be designed for placing on the floor or ground. Additionally, the EN to Chapter 94

explains that the term “furniture” describes, “any ‘movable’¹ articles (not included under other more specific headings of the Nomenclature),” which are “used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, [etc...]” See EN to Chapter 94, HS. Consequently, the scope of heading 9403, HTSUS, includes articles that are designed for placing on the floor or ground and that are also used mainly with a utilitarian purpose.

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

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

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

HOLDING

By application of GRIs 1 and 6, the instant wood fireplace mantels are classified in heading 9403, HTSUS, specifically subheading 9403.60.80, HTSUS, which provides for “Other furniture and parts thereof: Other wooden furniture: Other.” The 2015 column one, general rate of duty is Free.

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

EFFECT ON OTHER RULINGS:

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

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

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

Sincerely,

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



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

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is modifying one ruling letter pertaining to the tariff classification of four “Mess-Free Glitter” craft kits under the Harmonized Tariff Schedule of the United States (HTSUS). CBP 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*. One comment in support of the modification was received in response to the proposed notice

EFFECTIVE DATE: This modification is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 30, 2015.

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

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (Title VI), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended and related laws. Two new concepts which emerge from the law are “informed compliance” and “shared responsibility.” These concepts are premised on the idea that in order to maximize voluntary 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 modify New York Ruling Letter (NY) N255938, dated September 3, 2014., and proposing to revoke any treatment accorded to substantially identical transactions. One comment in support of the modification was received in response to the proposed action.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), CBP intends to modify any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer’s or CBP’s previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of

reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY N255938, CBP classified eight samples of “Mess-Free Glitter” craft kits. Four were classified as toys of heading 9503, HTSUS. The remaining four kits were not classified as toys. It is now CBP’s position that these remaining four kits, referred to as “Mess-Free Glitter Foam Frames” kit, item #9507, the “Mess-Free Glitter Princess & Fairy Scenes,” item #9509, the “Mess-Free Glitter Treasure Box & Mirror,” item #9517 and the “Mess-Free Glitter Friendship Foam Stickers” kit, item #9500, are also properly classified under subheading, 9503.00.00, HTSUS, as a toy. The portion of the ruling referring to the four kits originally classified as toys remains intact.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY N255938 any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling (HQ) H258767. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is modifying 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 25, 2015

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

HQ H258767

August 25, 2015

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

CATEGORY: Classification

TARIFF NO.: 9503.00.0073

MS. GAIL T. CUMINS

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

75 BROAD STREET

NEW YORK, NY 10004

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

DEAR MS. CUMINS:

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

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), a notice was published in the *Customs Bulletin*, Volume 49, Number 26, on July 1, 2015, proposing to modify NY N255938, and any treatment accorded to substantially identical transactions. One comment in support of the proposed notice was received.

FACTS:

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

The following four kits will not be classified as toys:

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

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

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

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

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

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

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

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

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

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

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

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

ISSUE:

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

LAW AND ANALYSIS:

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

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

- | | |
|------|---|
| 3919 | Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls: |
| *** | |
| 3924 | Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: |
| *** | |
| 3926 | Other articles of plastics and articles of other materials of headings 3901 to 3914: |
| *** | |
| 4819 | Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs or cellulose fibers; box files, letter trays and similar articles, of paper or paperboard of a kind used in offices, shops or the like: |
| *** | |
| 4911 | Other printed matter, including printed pictures and photographs: |
| *** | |
| 9503 | Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: |

Note 2(y) to Chapter 39 states:

This chapter does not cover:

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

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

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

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

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which

constitute the official interpretation of the HTSUS at the international level, may be utilized. The ENs, although not dispositive or legally binding, provides a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. See T.D. 89–80, 54 Fed. Reg 35127, 35128 (August 23, 1989).

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

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

These include:

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

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

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

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

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

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

Next, the Court cited MERRIAM WEBSTER’S COLLEGIATE DICTIONARY (1998) at page 41, which defines “amusement” in relevant part as, “3: a pleasurable

diversion.” Thus, taken together “[t]his common meaning of toy – an object primarily designed and used for pleasurable diversion – is consistent with its judicial interpretation.” *Springs Creative Products Group v. United States*, *supra* at page 15, citing *Processed Plastic Co. v. United States*, 473 F.3d 1164, 1170 (Fed. Cir. 2006) (noting that the principal use of a “toy” is amusement, diversion, or play value rather than practicality); *Minnetonka Brands, Inc. v. United States*, 24 CIT 645, 651 ¶ 37, 110 F. Supp. 2d 1020, 1026 (2000) (noting that for purposes of Chapter 95, HTSUS, “an object is a toy only if it is designed and used for amusement, diversion, or play, rather than practicality.”).

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

Finally, the CIT also consulted the ENs, which inform and shape our understanding of the scope of the heading, though the ENs should not restrict or expand the scope of headings. Rather, they should describe and elaborate on the nature of goods falling within those headings, as well as the nature of goods falling outside of those headings. The EN 95.03 clarifies that “[c]ollections of articles, the individual items of which if presented separately would be classified in other headings in the Nomenclature, are classified in this heading when they are put up in a form clearly indicating their use as toys (e.g., instructional toys such as chemistry, sewing, etc., sets).” Craft kits generally are considered “educational toys” or “instructional toys” classified under Chapter 95, HTSUS, because they are principally used for the amusement of children, and that amusement is derived through the creation and design of the final product. *See* Headquarters Ruling (HQ) 959401, dated April 14, 1997 (classifying “Just Bead It! Fusion Beads Activity Sets” kit as a toy) *See also* EN 95.03 (iii) and (xviii). However, they are distinguishable from drawing or coloring kits, because the tools for writing, coloring, drawing or painting are not designed to amuse, and do not provide significant enough

manipulative play value. See HQ H035564, dated November 4, 2008 (“CBP has never considered writing, coloring, drawing or painting to have significant “manipulative play value,” for purposes of classification as a toy. Nor does CBP classify the tools for writing, coloring, drawing or painting as toys since these tools are not designed to amuse.”); HQ 966198, dated July 21, 2003 (“The amusement derived from art-related activities is secondary to utility because those articles and sets used for drawing, coloring and other art-related activities are not ‘essentially playthings.’”); see also NY N155175, dated April 8, 2011 (classifying six crafts kits, four of which CBP determined the kit’s amusement value was greater than the utilitarian value of the finished article, and further, the completed items will be flimsily constructed and, in all likelihood, will not be used over a long period of time. The remaining two kits, however, were not classified as toys because, “CBP does not consider drawing, writing, coloring or painting to have significant play value for classification purposes as a toy.”).

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

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

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

This is consistent with previous classifications of a similar products whereby children create or produce a final product, but the utilitarian value of the final product is outweighed by the amusement, diversion, or play experienced in making that product. See NY L82030, dated February 3, 2005 (classifying a “Colors & Shapes Foam Activity Kit” in heading 9503, HTSUS); NY F80917, dated January 5, 2000 (classifying five kits: “Make Your Own Bubble Gum,” “Make Your Own Chocolate,” “Make Your Own Bath Fizzer Kit,” “Melt & Pour Soap Kit,” and “Tie Dye Kit,” as “instructional kits designed primarily to provide amusement in the form of mixing, pouring, and basically “creating” a finished product,” in heading 9503, HTSUS); NY N198045, dated January 20, 2012 (classifying a “Foam Frame Kit” consisting of a foam picture frame, foam stickers, dowel stand, glitter pen and a package of rhinestones used to decorate the frames in heading 9503, HTSUS); N189022, dated November 4, 2011 (classifying a “Foam Heart Frame” kit and “Frame Felt Craft” kit, which included overlays and decorating access with the frames under heading 9503, HTSUS)¹.

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

HOLDING

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

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

EFFECT ON OTHER RULINGS

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

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

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

ALLYSON MATTANAH
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF FLY-TRAPPING GLUE
BOARDS**

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

ACTION: Notice of proposed revocation of one ruling letter and revocation of treatment relating to the tariff classification of fly-trapping glue boards.

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

DATES: Comments must be received on or before October 30, 2015.

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

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

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of fly-trapping glue boards. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) NY N238867, dated March 11, 2013 (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 five identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N238867, CBP classified an adhesive-coated cardboard strip designed for the trapping of flies in heading 3808, HTSUS, specifically in sub-heading 3808.91.50, HTSUS, which provides for “Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers): Other: Insecticides: Other.” It is now CBP’s position that the glue board described in NY N238867 is properly classified, by operation of GRIs 1 and 6, in heading 3808, HTSUS, specifically in subheading 3808.91.10, HTSUS, which provides for “Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers): Other: Insecticides: Fly ribbons (ribbon fly catchers).”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N238867 and to revoke any other ruling not specifically identified to reflect the tariff classification of the subject merchandise according to the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H261067, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: August 27, 2015

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N238867

March 11, 2013

CLA-2-38:OT:RR:NC:2:235

CATEGORY: Classification

TARIFF NO.: 3808.91.5000

MR. RAY KNOTT
MODE TRANSPORTATION
100 STEWART LANE
CHALFONT, PA 18914

RE: The tariff classification of Zap and Trap Glue Board Refill from China

DEAR MR. KNOTT:

In your letter dated February 25, 2013 you requested a tariff classification ruling on behalf of Clark Associates.

The subject product is called the Zap and Trap Glue Board Refill. The refills are used in an 18 Watt insect trap. They are imported in packs containing 6 refills. The glue boards are not integral electronic parts, and therefore are not classified as a part of the electrical apparatus to which the refills are inserted. We agree with your assessment that the refills are classified within Heading 3808.

The applicable subheading for the Zap and Trap Glue Board Refill will be 3808.91.5000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers): Other: Insecticides: Other: Other." The general rate of duty will be 5 percent ad valorem.

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

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

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

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H261067
CLA-2 OT:RR:CTF:TCM H261067 NCD
CATEGORY: Classification
TARIFF NO.: 3808.91.1000

LIZ GANT
SAMUEL SHAPIRO & Co.
100 NORTH CHARLES STREET SUITE 1200
BALTIMORE, MD 21201

Re: Revocation of NY N238867; Classification of Zap N Trap Glue Board Refills from China

DEAR MS. GANT:

This is in response to your letter of December 10, 2014, on behalf of Clark Associates, Inc. (“Clark Associates”), requesting reconsideration of New York Ruling Letter (NY) N238867, dated March 11, 2013. In NY N238867, CBP classified a Zap N Trap Glue Board Refill (“glue board”) in subheading 3808.91.50 of the Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers): Other: Insecticides: Other.” We have determined NY N238867 is incorrect and, for the reasons set forth below, are revoking that ruling. We are also enclosing with this letter samples of the subject glue board and similar items that you submitted for our inspection.

FACTS:

In NY N238867, CBP stated, with regard to the subject glue boards, as follows:

“The subject product is called the Zap N Trap Glue Board Refill. The Refills are used in an 18 Watt insect trap. They are imported in packs containing 6 refills.”

In your December 10, 2014 letter, you describe the subject merchandise as follows:

“The subject products are Zap N Trap Glue Board Refills, items numbers 605GBV18 and 605GBV36.¹ 605GBV18 is a six pack of glue boards sized 11 3/8 inches by 5 inches and is a part of the 18 watt Zap N Trap Insect Trap/Bug Zapper Wall Sconce...

The Zap N Traps are for use in food operations. The sconce is mounted on a wall with a UV bulb behind it intended to attract insects. The glue board mounts behind the sconce cover. As insects are attracted to the light, they become trapped on the glue board. The user is able to open the sconce cover to remove the board and insert a replacement.

¹ Because NY N238867 classified only the 605GBV18, the scope of this ruling is limited to classification of that model of glue board, and does not extend to classification of the 605GBV36. However, we note that the two models are substantially similar in design and differ only in size.

The glue boards do not contain any chemicals or scent additives to lure insects to the trap. They are sheets of paperboard with an adhesive on one side. The boards come with a release sheet which is peeled off to expose the adhesive. The insects will stick to the adhesive when they fly to the light.”

We have inspected the sample of the subject glue board and found that it consists of a 19.75 inch by 5.25 inch rectangular cardboard paper strip. It is slightly concaved in shape and is covered on the convex side, but not on the concave side, with adhesive material.²

ISSUE:

Whether the merchandise at issue is properly classified in subheading 3808.91.10, HTSUS, as a fly ribbon, in subheading 3808.91.50, HTSUS, as an “other insecticide,” or in subheading 8543.90.88, HTSUS, as an “other part” of an electrical machine, having individual functions, not specified or included elsewhere in Chapter 85.

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 (AUSRIs). The GRIs and the AUSRIs are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and, *mutatis mutandis*, to GRIs 1 through 5.

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).

The 2015 HTSUS provisions under consideration are as follows:

- 3808** Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers):

² We note that the glue board dimensions reported in your December 10, 2014 letter (11.375” x 5”) differ from the dimensions of the glue board sample (19.75” x 5.25”) you submitted. However, this discrepancy does not affect classification of the subject glue boards.

| | |
|-------------------|---|
| | Other: |
| 3808.91 | Insecticides: |
| 3808.91.10 | Fly ribbons (ribbon fly catchers). |
| | Other: |
| 3808.91.50 | Other: |
| <hr/> | |
| 8543 | Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: |
| 8543.90 | Parts: |
| | Other: |
| | Other: |
| 8543.90.88 | Other: |
| <hr/> | |

In your December 10, 2014 letter, you assert that because the subject glue boards are “a part of the Zap N Trap system,” they are properly classified in heading 8543 as parts of electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85. When considering classification of a particular product in a “parts” provision of the HTSUS, we must apply AUSRI 1(c), which states as follows:

- In the absence of special language or context which otherwise requires—
- (c) a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for “parts” or “parts and accessories” shall not prevail over a specific provision for such part or accessory...

Pursuant to AUSRI 1(c), the subject glue boards are only classifiable as parts if it cannot be established that they are *prima facie* classifiable in a heading that specifically provides for them. See Headquarters Ruling Letter (HQ) 967233, dated February 18, 2005 (citing *Mitsubishi Int’l Corp. v. United States*, 182 F.3d 884 (Fed. Cir. 1999), *Sharp Microelectronics Tech., Inc. v. United States*, 122 F.3d 1446 (Fed. Cir. 1997), and *Nidec Corp. v. United States*, 861 F. Supp. 136 (Ct. Int’l Trade 1994), *aff’d* 68 F.3d 1333 (Fed. Cir. 1995)). We therefore initially consider whether the subject glue boards are specifically described by heading 3808, HTSUS.

Heading 3808 describes, *inter alia*, “Insecticides...and similar articles, put up in forms or packings for retail sale or as preparations or articles (for example, sulphur-treated bands, wicks and candles, and fly-papers).” EN 38.08 provides, in pertinent part, as follows:

This heading covers a range of products...intended to destroy...insects...

These products are classified here in the following cases only:

...

- (3) When they are put up in the form of **articles** such as...fly-papers (including those coated with glue not containing poisonous matter)...

Heading 3808 specifically provides for “fly-paper,” but this term is left undefined in the HTSUS.³ When a tariff term is not defined in either the Nomenclature or its legislative history, “the term’s correct meaning is its common meaning.” *Mita Copystar America v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod America Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, a court may consult “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials.” *C.J. Tower & Sons v. United States*, 69 C.C.P.A. 128, 673 F.2d 1268, 1271 (1982); *Simod* at 1576.

The Oxford Online Dictionary defines fly paper as “[s]ticky, poison-treated strips of paper that are hung indoors to catch and kill flies,” and the Merriam-Webster Online Dictionary defines it as “a long piece of sticky paper that is used for catching and killing flies” and as “paper coated with a sticky often poisonous substance for killing flies.” EN 38.08 is consistent with these definitions insofar as it suggests that fly paper may be covered with glue, but it counsels inclusion of fly paper in heading 3808 where it lacks poisonous matter. Moreover, we have previously classified fly-catching paper strips in heading 3808 where these strips were coated with non-poisonous adhesive. See HQ H563064, dated October 8, 2004 (classifying cardboard strips coated with non-poisonous, fly-trapping adhesive in heading 3808); NY A82387, dated April 22, 1996 (determining that adhesive-coated paper designed to catch flies is properly classified in heading 3808). We accordingly conclude, in considering dictionary definitions of fly paper, the relevant EN, and CBP precedent *in toto*, that fly paper consists of adhesive-covered paper strips designed to catch or kill flies, irrespective of whether the strips contain poison.

The instant glue boards consist of cardboard paper strips that are coated on side with adhesive. As you state in your December 10, 2014 letter, the glue boards are designed to trap and kill flies. We recognize that, as you point out in your letter, the glue boards do not contain any chemicals or scent additives. However, heading 3808 does not require that fly-papers contain such additives, and EN 38.08 suggests that fly-strips containing merely glue remain within the scope of heading 3808. Consequently, we find that the glue boards are “fly-strips” as described by heading 3808. Because they are in

³ As explained by EN 38.08, heading 3808 more specifically provides for fly paper put up in the form of an article. We have consistently ruled that, in its narrowest sense, the term “article” extends to any manufactured thing or product. See HQ H206081, dated October 11, 2012; HQ H236523, dated July 2, 2014; HQ H186959, dated May 10, 2012; HQ H173037, dated March 14, 2012; and HQ 967354, dated January 26, 2005; see also *Precision Specialty Metals v. U.S.*, 116 F. Supp. 2d 1350, 1362 (Ct. Intl. Trade 2000) (“In a tariff sense, the term ‘articles’ is sufficiently comprehensive to include...‘almost every separate substance or material, whether as a member of a class, or as a particular substance or commodity,’ except where the Congress has indicated that the term shall have a narrower signification.”). Fly strips are clearly manufactured products, and can therefore be described as put up in the form of an article when imported. See HQ H563064 (“Relevant 38.08 ENs include within that heading goods put up in the form of articles such as...fly-papers (including those coated with glue not containing poisonous matter. The facts presented indicate that the glue board meets the EN description...”).

turn excluded, by operation of AUSRI 1(c), from classification as parts in heading 8543, HTSUS, the glue boards are properly classified in heading 3808.

In your December 10, 2014 letter, you cite NY 885109, dated April 21, 1993, as support for your contention that the glue boards are properly classified in heading 8543. NY 885109 involved classification of an entire trap and monitoring system that was comprised of a metal housing with a baked enamel finish, a U/V resistant board with a sticky glue surface, and multiple U/V tubes. Thus, unlike the instant glue boards, the product at issue in that case was comprised only in part of an adhesive strip. CBP classified that article in heading 8543 as an “other” machine or apparatus, rather than as a part thereof, and therefore was not obligated to consider AUSRI 1(c) in its ruling. In effect, NY 885109 does not conflict with CBP’s determination in NY N238867 that the instant glue boards are classifiable in heading 3808.

However, we do find NY N238867 to be in error with regard to classification of the glue boards at the subheading level. Because the glue boards are a form of fly paper, a term that is interchangeable with fly ribbons, they are specifically described by subheading 3808.91.10, HTSUS, which provides for “Fly ribbons (ribbon fly catchers).” Consistent with CBP precedent, the glue boards are thus properly classified in that subheading, rather than as “other insecticides” in the basket subheading 3808.91.50, HTSUS. *See* HQ H563064 (concluding that a glue board is properly classified in subheading 3808.10.10); and NY A82387 (classifying paper coated with adhesive in subheading 3808.10.10).

HOLDING:

By application of GRIs 1 and 6, the instant glue boards are classified in heading 3808, HTSUS, specifically subheading 3808.91.1000, HTSUSA, which provides for “Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers): Other: Insecticides: Fly ribbons (ribbon fly catchers).” The column one, general rate of duty is 2.8% *ad valorem*.

This product may be subject to the requirements of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), which are administered by the U.S. Environmental Protection Agency, Office of Pesticide Programs. Information on the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) can be obtained by contacting the National Pesticide Information Center (NPIC) at 1-800-858-7378, or by visiting the EPA website at www.epa.gov.

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:

NY N238867, dated March 11, 2013, is hereby REVOKED in accordance with the above analysis.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED MODIFICATION OF TWO RULING LETTERS
AND PROPOSED REVOCATION OF ONE RULING LETTER
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF TIRES
FOR USE ON DUMP TRUCKS**

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

ACTION: Notice of proposed modification of two ruling letters, proposed revocation of one ruling letter, and the revocation of treatment relating to the classification of certain off-road tires for dump trucks.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP intends to modify HQ 958100, dated March 25, 1997, and HQ 959730, dated May 29, 1997, and to revoke HQ 966360, dated June 13, 2003, concerning the tariff classification of certain off-road tires for use on dump trucks under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before October 30, 2015.

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

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is proposing to modify or revoke three ruling letters pertaining to the tariff classification of dump truck tires. Although in this notice, CBP is specifically referring to HQ 958100, dated March 25, 1997, HQ 959730, dated May 29, 1997, and HQ 966360, dated June 13, 2003, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e. a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In HQ 958100, HQ 959730, and HQ 966360, CBP determined that certain off-road tires for dump trucks were classified in subheading 4011.20, which provides for: “New pneumatic tires, of rubber: Of a kind used on buses or trucks.” It is now CBP’s position that the tires at issue in HQ 958100 (described as off-road tires for dump trucks and bearing the TRA codes E-1/R-5, E-3/G-18, E-3/G-44, E-3/T-331, E-4/G-18ET, E-4/G-28ET, E-4/G-36ET, E-4/T-431, E-4/T-432, E-4/T-433, E-4/T451, and E-7/D-1) are classified in subheading 4011.93 or 4011.94, HTSUS, as “New pneumatic tires, of rubber: Other: Of a kind used on construction or industrial handling vehicles and machines...”, and that the Michelin Earthmover tires (part nos. 248850 and 123475) at issue in HQ 966360 and the Triangle brand tires (style TL-612, designed for use on earthmoving and loader equipment, and bearing the code “E-3”, with or without another code) at issue in HQ 959730 are classified in subheading 4011.62 or subheading 4011.63, HTSUS, as “New pneumatic tires, of rubber: Other, having a herringbone or similar tread: Of a kind used on construction or industrial handling vehicles and machines...”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify HQ 958100 (Attachment A) and HQ 959730 (Attachment B), and to revoke HQ 966360 (Attachment C), and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in Proposed Headquarters Ruling Letter (HQ) H192148, set forth as Attachment D to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: August 31, 2015

JACINTO JUAREZ

For

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ 958100

March 25, 1997

CLA-2 RR:TC:FC 958100 ALS

CATEGORY: Classification

TARIFF NO.: 4011.99.8000

AREA PORT DIRECTOR OF CUSTOMS
U.S. CUSTOMS SERVICE
1000 SECOND AVE., ROOM 2200
SEATTLE, WA 98104

RE: Application for Further Review of Protest 3001-95-100575, dated August 15, 1995, Concerning Off-The-Road Tires

DEAR MR. MORGAN:

This ruling is in reference to the protest that was filed against your decision regarding multiple entries for certain Toyo brand off-the-road tires.

FACTS:

The articles under consideration are certain off-the-road tires in 4 different categories based on intended use, i.e., earthmover tires, loader and dozer tires, grader tires and industrial tires. The importer claims that the tread on these tires meets the definition for “herring-bone” or similar tread tires as that term is used in subheading 4011.91, Harmonized Tariff Schedule of the United States Annotated. The tread design of these tires are stated to be either specifically covered by New York Ruling Letter 807226 (NYRL), dated March 26, 1995, or to meet the criteria of that ruling letter. The entries were liquidated under the provision for other off-the-road tires, i.e., tires without a herringbone or similar design.

ISSUE:

Do the subject tires have a herring bone or similar tread?

LAW AND ANALYSIS:

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRI'S) taken in order. GRI 1 provides that the classification is determined first in accordance with the terms of the headings and any relative section and chapter notes. If GRI 1 fails to classify the goods and if the headings and legal notes do not otherwise require, the remaining GRI's are applied, taken in order.

The importer has indicated that it believes that the classification of certain of its off-the-road tires covered by the entries, the subject of this protest, were liquidated in conflict with the holding in NYRL 807226, dated March 28, 1995. It states that all the entries cover new pneumatic tires with a “herring-bone” or similar design. It also noted that its tires are classified in accordance with the Tire and Rim Association (TRA) coding system. Tires with a TRA code beginning with the letter “E” are tires for earthmover equipment which includes large dump trucks. Tires with a TRA “L” code are for loader and dozers, “G” tires are for graders and “R” tires are for industrial purposes such as forklift use.

Prior to considering which tires might have “herring-bone” or similar tread, we note that such a determination is only necessary for tires falling under the “Other” provision of subheading 4011.91, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). New pneumatic tires for various types of vehicles, e.g., cars, trucks, buses, come under subheadings appearing earlier under the same heading and would be classified thereunder.

In that regard, we note that application chart of off-the-road tires appearing in the importer’s catalog indicates that certain earthmover tires with a TRA code E-1, E-3, E-4 and E-7 are suitable for dump trucks. Accordingly, they would be classifiable in subheading 4011.20.10 or subheading 4011.20.50, HTSUSA, depending on whether they were of radial construction or other type of construction. This would cover tires bearing the following TRA/company coding: E-1/R-5, E-3/G-18, E-3/G-44, E-3/T-331, E-4/G-18ET, E-4/G-28ET, E-4/G-36ET, E-4/T-431, E-4/T-432, E-4/T-433, E-4/T451 and E-7/D-1.

We discussed the meaning of the term “herring-bone” with the importer and various industry representatives. We determined that such term is not a current term in the U.S. industry, although one industry representative remembered the term being used in a colloquial manner in the distant past. It was used to refer to a tread pattern consisting of rows of short slanted parallel lines going in the opposite directions from the center of the tread with the slant alternating row by row. These short slanted rows would meet in the center of the tire tread to form a “V.” This is in line with various dictionary definitions of the term herring-bone, including those referenced by the importer. We also consulted the Explanatory Notes (EN) to the Harmonized System, specifically 40.11 thereof, which represents the view of the international classification experts. All the tire treads pictured therein, except for one, have rows of short slanted parallel lines going in opposite directions with the slant alternating row by row, which meet in the center of the tire and form a “V”. One of the tire treads pictured therein has short slanted parallel line with the slant alternating row by row and these rows meet in the center of the tire tread, they form what would appear to be a very shallow “V” which might be better described as a “U”. Based on our analysis of this information, we have concluded that a true “herring-bone” tread has alternating rows of tread going in opposite directions, on the diagonal, toward the center of the tire with the tread forming a “V” shape design in the center thereof. We have further concluded the term “similar tread” appearing in heading 4011.91, Harmonized Tariff Schedule, is descriptive of a tire tread having the above-noted slanting alternating tire tread which forms a shallow “V” in the center of the tire tread.

With such concept in mind we analyzed other tread patterns listed in application chart of off-the-road tires in the importer’s catalog. Those tires are labeled earthmoving tires designed for use on motor scrapers and wheel cranes; loader and dozer tires designed for use on loaders, dozers, mobile cranes and fork lifts; grader tires designed only for machine graders; and industrial tires designed for use on straddle carriers, tower tractors, and fork lifts. All those tires have the aforementioned alternating rows of slanted tread flowing in opposite directions from the center of the tread and forming a “V” in the center of the tread and would be considered to have a “herring-

bone” tread. They include tires with the following TRA/company coding: E-2/G-15, E-2/G-29, G-2/G-15, G-2/W-15, G-2/G-57, L-2/G-15, L-2/G-29, L-2/G-54 and L-2/W-15.

We have concluded that the remaining tires in such chart, other than those designed for use on dump trucks, have neither a “herring-bone” or similar tread. These tires, coded and designed for use as noted in the immediate preceding paragraph, are as follows: E-3/G-45, E-3/T-361, L-3/G-18, L-3/G-35, L-3/G-39, L-3/G-62, L-3/T-331, L-4/G-18ET, L-4/G-36ET, L-4/G-64, L-4S/S-15, L-4 or L-4S/S-16, L-5/G-25, L-5/G-50, L-5/G-55, L-5/G-65, L-5S/S-25, L-5S/S-26 and G-3/G-18. We have also concluded that the following industrial tires which do not have a TRA code come within the grouping of tires which have neither a “herring-bone” or similar tread: R-5, G-18 and S-10. We have further concluded that New York Ruling Letter (NYRL) 807226, dated March 28, 1995, which held that 5 tread patterns were either “herring-bone” or similar tread no longer reflects Customs thinking with regard to 3 tread patterns. We note that the tread pattern of 2 of those tires, E-4/G-36ET and G-3/G-18, form a zig-zag pattern and have neither short slanting lines going in the opposite directions from the center of the tread nor do they have a tread pattern which forms a “V” at the center of the tread. Likewise, pattern E-3/G-44, is merely a series of lugs flowing across the entire tread surface of the tire and slanting in one direction. We also note that 2 of those tires, having a TRA code “E” and suitable for use on a dump truck, would be classifiable in subheading 4011.20, HTSUSA, which covers new pneumatic tires of a kind used on buses and trucks. Accordingly, NYRL 807226 will be modified pursuant to the provisions of 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).

HOLDING:

Off-the-road suitable for use on buses and trucks are classifiable in subheadings 4011.20.1025 or 4011.20.1035, HTSUSA, if of radial construction, or in subheadings 4011.20.5030 or 4011.20.5050, HTSUSA, if of another construction. Tires bearing the following TRA/company coding are so classifiable: E-1/R-5, E-3/G-18, E-3/G-44, E-3/T-331, E-4/G-18ET, E-4/G-28ET, E-4/G-36ET, E-4/T-431, E-4/T-432, E-4/T-433, E-4/T-451 and E-7/D-1. Radial tires of this group were dutiable at a general rate of duty of 4 percent ad valorem at the time of entry (currently 4 percent ad valorem). Tires of this group of other construction were dutiable at a general rate of duty of 3.9 percent ad valorem at the time of entry (currently 3.6 percent ad valorem).

Other off-the-road tires suitable for use on earthmoving equipment (motor scrapers and wheel cranes), loader and dozer equipment (loader and dozer, mobile cranes, and fork lifts), machine graders only, and industrial tires are classifiable in subheading 4011.91, HTSUSA, if having “herring-bone” or similar tread or in 4011.99, HTSUSA, if having another tread pattern. To be considered as having a “herring-bone” or similar tread, the tread pattern must consist of rows of short slanted parallel lines going in the opposite directions from the center of the tread with the slant alternating row by row. These short slanted rows would meet in the center of the tire tread to form a “V.” Tires bearing the following TRA/company coding would be considered to have a “herring-bone” or similar tread: E-2/G-15, E-2/G-29, G-2/G-15, G-2/W-15, G-2/G-57, L-2/G-15, L-2/G-29, L-2/G-54 and L-2/W-15. Such tires classi-

fiable in subheading 4011.91.1000, HTSUSA, were subject to a free general rate of duty at the time of entry (currently free). Such tires classifiable in subheading 4011.91.5000, HTSUSA, were subject to a general rate of duty of 3.2 percent ad valorem at the time of duty (currently 1.6 percent ad valorem).

Off-the-road tires suitable for the uses noted in the paragraph immediately above which have neither “herring-bone” or similar tread, as described in that paragraph, would be classifiable in subheading 4011.99, HTSUSA. Such tires classifiable in subheading 4011.99.1000, HTSUSA, were subject to a free general rate of duty at the time of entry (currently free). Such tires classifiable in subheading 4011.99.4000, HTSUSA, were subject to a general rate of duty of 4 percent ad valorem at the time of entry (currently 4 percent). Such tires classifiable in subheading 4011.99.8000, HTSUSA, were subject to a general rate of duty of 3.9 percent ad valorem at the time of entry (currently 3.6 percent).

You are instructed to deny the protest, except to the extent reclassification of the merchandise as indicated above results in a net duty reduction and partial allowance and except as hereafter noted. Insofar as any of the tires covered by the instant protest were specifically covered by NYRL 807226, dated March 28, 1995, and since the recipient of a ruling is, pursuant to section 177.9(a), Customs Regulations, entitled to rely thereon until it is modified or revoked, you are instructed to allow the protest as to those tires specifically covered by the ruling.

A copy of this ruling should be attached to the Customs Form 19 and provided to the protestant as part of the notice of action on the protest.

In accordance with Section 3A(1)(b) of Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, this decision should be provided by your office to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entries in accordance with this decision must be accomplished prior to the mailing of the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Rulings Module in ACS and the public via the Diskette Subscription Service, Freedom of Information Act and other public access channels.

Sincerely,

JOHN DURANT,
Director

Tariff Classification Appeals Division

[ATTACHMENT B]

HQ 959730

May 29, 1997

CLA-2 RR:TC:FC 959730 ALS

CATEGORY: Classification

TARIFF NO.: 4011.20.1025; 4011.20.1035;
4011.20.2030; 4011.20.5050;
4011.91.5000; 4011.99.4000;
4011.99.8000

PORT DIRECTOR OF CUSTOMS
U.S. CUSTOMS SERVICE
300 SOUTH FERRY ST
TERMINAL ISLAND, CA 90731

RE: Application for Further Review of Protest 2704-96-102281, date July 15, 1996, Concerning Certain Off-The-Road Tires

DEAR Ms. ADAMS:

This ruling is in reference to the protest that was filed against your decision of June 21, 1996, regarding an entry for Triangle brand off-the-road tires style TL-612.

FACTS:

The articles under consideration are off-the-road tires, style TL-612, designed for use on earthmoving and loader. The importer claims that the tread on these tires meets the definition for "herring-bone" or similar tread tires as that term is used in subheading 4011.91.5000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). It is stated that the tires are classified in accordance with the Tire and Rim Association (TRA) coding system. They bear a TRA code "E" which indicates that they are tires of earthmover equipment and a TRA code "L" which indicates that they are for loaders and dozers. The importer indicates that all these tires concurrently bear both "E" and "L" codes

ISSUE:

Do the subject tires have a herring bone or similar tread?

LAW AND ANALYSIS:

Classification of merchandise under the HTSUSA is governed by the General Rules of Interpretation (GRI's) taken in order. GRI 1 provides that the classification is determined first in accordance with the terms of the headings and any relative section and chapter notes. If GRI 1 fails to classify the goods and if the headings and legal notes do not otherwise require, the remaining GRI's are applied, taken in order.

According to the importer's literature, as further telephonically confirmed by the importer, the tires under consideration, style TL-612, bear a dual TRA code of "E" and "L", indicating that they are designed for earthmover equipment and loaders and dozers. Based on an application chart provided in connection with another protest, we note that a tire with the same type of tread and a TRA code E-3 is listed as being suitable for dump trucks. We presume that these are the ultra-large dump trucks that one would find at a road excavation site.

Prior to considering whether the instant tires might have a “herring-bone” similar tread, we note that such a determination is only necessary for tires falling under the “Other” provision of subheading 4011.91, HTSUSA. New pneumatic tires for various types of vehicles, e.g., cars, trucks, buses, come under subheadings appearing earlier under the same heading and would be classified thereunder, depending on their size and construction, i.e., radial or other.

We have discussed the meaning of the term “herring-bone” or similar tread with the importer and various industry representatives. We determined that such term is not a current term in the U.S. Industry, although one industry representative remembered the term being used in a colloquial manner in the distant past. It was used to refer to a tread pattern consisting of rows of short slanted parallel lines going in the opposite directions from the center of the tread with the slant alternating row by row. These short slanted rows would meet in the center of the tire tread to form a “V.” This is in line with various dictionary definitions of the term herring-bone. We also consulted the Explanatory Notes (EN) to the Harmonized System, specifically 40.11 thereof, which represent the view of the international classification experts. All the tire treads pictured therein, except for one, have rows of short slanted parallel lines going in opposite directions with the slant alternating row by row, which meet in the center of the tire and form a “V.” One of the tire treads pictured therein has short slanted parallel lines with the slant alternating row by row and these rows meet in the center of the tire tread, they form what would appear to be a very shallow “V” which might be better described as a “U.” Based on our analysis of this information, we have concluded that a true “herring-bone” tread has alternating rows of tread going in opposite directions, on the diagonal, toward the center of the tire with the tread forming a “V” shape design in the center thereof. We have further concluded that the term “similar tread” appearing in heading 4011.91, HTSUSA, is descriptive of a tread having the above-noted slanting alternating tire tread which forms a shallow “V” in the center of the tire tread.

With such concept in mind we examined the tread pattern of the instant tires. We note that the tread pattern is of a zig-zag design and that it has neither the short slanting lines going in the opposite directions from the center of the tread nor does it have a tread pattern which forms a “V” at the center of the tread. We have concluded that an off-the-road tire with a zig-zag pattern, would not be classifiable under the provision for “herring-bone” or similar tread. If not classifiable under subheading 4011.20, HTSUSA, the provision for tires of a kind used on buses or truck, tires with the zig-zag tread pattern would be classifiable in the “Other” provision of subheading 4011.99, HTSUSA. We have further concluded that if the tires with such tread pattern bear a dual TRA code and under one code they would be considered suitable for trucks, they would all be classified under the subheading for truck tires, 4011.20, HTSUSA, since that provision comes earlier in the tariff schedule than does the previous referenced “Other” provision.

HOLDING:

Triangle TL 612 off-the-road tires with a zig-zag tread pattern bearing a Tire and Rim Association (TRA) E-3 code, with or without another code, are considered to be suitable for use on dump trucks. They are classifiable in subheading 4011.20.1025 or 4011.20.1035, HTSUSA, if of radial construction, or in subheadings 4011.20.5030 or 4011.20.5050, HTSUSA, if of another

construction. Radial tires of this group are dutiable at a general rate of duty of 4 percent ad valorem. Tires of this group of another construction are dutiable at a general rate of duty of 3.8 (currently 3.6) percent ad valorem. Such tires, if bearing only a TRA L-3 code, indicating a suitability for loaders and dozers, are classifiable in subheading 4011.99.4000 or 4011.99.80000, HTSUSA, depending on the type of construction, since a zig-zag tread pattern is not herring-bone tread pattern. Tires so classified are subject to a general rate of duty of 4 percent or 3.8 (currently 3.6) percent ad valorem, respectively.

Since the rate of duty under the classification indicated above is the same as or more than the liquidated rate, you are instructed to deny the protest in full.

A copy of this ruling should be attached to the Customs Form 19 and provided to the protestant as part of the notice of action on the protest.

In accordance with Section 3A(1)(b) of Customs Directive 099 3553-065, dated August 4, 1993, Subject: Revised Protest Directive, this decision should be provided by your office to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry in accordance with this decision must be accomplished prior to the mailing of the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Ruling Module in ACS and the public via the Diskette Subscription Service, Freedom of Information Act and other public access channels.

Sincerely,

JOHN DURANT,
Director

Tariff Classification Appeals Division.

[ATTACHMENT C]

HQ 966360

June 13, 2003

CLA-2 RR:CR:GC 966360 DSS

CATEGORY: Classification

TARIFF NO: 4011.20.10

Ms. MARGARET V. WILSON
CUSTOMS/DRAWBACK ADMINISTRATOR
MICHELIN NORTH AMERICA, INC.
ONE PARKWAY SOUTH P.O. BOX 19001
GREENVILLE, SOUTH CAROLINA 29602-9001

RE: Reconsideration of New York Ruling Letter (NY) H89898; Certain Earthmover Tires from Netherlands and Canada; Ruling Correct Based on Available Information, Not on Imported Merchandise; Heading 4011

DEAR Ms. WILSON:

This is in response to your letter, dated February 21, 2003, to the National Commodity Specialist Division requesting reconsideration of New York Ruling Letter (NY) H89898, dated March 29, 2002, regarding the classification of certain earthmover tires from the Netherlands and Canada under the Harmonized Tariff Schedule of the United States (HTSUS). Your letter was forwarded to this office for reply. After review of that ruling, the Bureau of Customs and Border Protection (Customs) has determined that the classification for two of the five tread patterns, identified as XK Tread Pattern of Global Part Numbers 284850 and 123475, based on their description at the time, was correct. While NY H89898 is correct on its face, new information provided about the tread patterns, 284850 and 123475, as presented in this ruling, forms the basis for these tread patterns being classified differently.

FACTS:

In NY H89898, we classified five tread patterns for certain Michelin Earthmover tires from the Netherlands and Canada. The five tread patterns consisted of the following: XADT Tread Pattern of Global Part Number (CAI) 123375; XADN Tread Pattern of Global Part Number 123427; XR Tread Pattern Global Part Number 280550; and XK Tread Pattern Global Part Numbers (part numbers) 284850 and 123475. Classification was based on the illustrative literature submitted, which the machinery on which the tires were used, the tread patterns themselves and other data from the Michelin Earthmover data book.

In NY H89898, part numbers 284850 and 123475 were classified under subheading 4011.63.00, HTSUS, which provides for, "New pneumatic tires of rubber: Other, having a "herring-bone" or similar tread: Of a kind used on construction of industrial handling vehicles and machines and having a rim size exceeding 61 cm."

In your letter dated February 21, 2003, you provided the following additional information on part numbers 284850 and 123475:

My request of 03/19/02 mistakenly listed Part (CAI) Number 123475 as TRA Code: L3/G3.

Description: 55/80R 63 XK C E3R TL Rim Diameter: 63 inches The correct TRA Code is L3/E3

* * * * The XK Tread Pattern tires are primarily used on “Transport Machines”, such as Bottom Dumpers, Rigid Dumpers, and Transport Truck[s] relative to the size of the tires and the size of the machines . . .

Michelin has defined the use of these tires to have a variety of applications. The use of the tire determined by the Tire & Rim Association (TRA) is listed. The TRA coding system defined “L” for loaders and dozers, “E” is defined as earthmoving application and “G” is defined as graders.

NY H89898 was issued prior to the explanation provided in your letter about part numbers 284850 and 123475. However, based on the presumed facts and information available to Customs at the time NY H89898 was decided, the classification of part numbers 284850 and 123475 in NY H89898 was correct. Thus, there is no need to revoke or modify NY H89898. This letter provides a binding ruling as to the tariff classification of part numbers 284850 and 123475 based on the newly submitted information.

ISSUE:

Whether the instant tire tread patterns are classified under subheading 4011.20.10, HTSUS, as “New pneumatic tires, of rubber: Of a kind used on buses or trucks: Radial.”

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 may then be applied.

The HTSUS headings under consideration are as follows:

- 4011 New pneumatic tires, of rubber:
- Of a kind used on buses or trucks:
- Radial
- Other, having a “herring-bone” or similar tread:
- 4011.63.00 Of a kind used on construction or industrial handling vehicles
and machines and having a rim size exceeding 61 cm

The Harmonized Commodity Description and Coding System Explanatory Notes (Ens) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the Ens provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the Ens should always be consulted. *See* T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Subheading 4011.63.00, HTSUS, provides for, “New pneumatic tires of rubber: Other, having a “herring-bone” or similar tread: Of a kind used on construction or industrial handling vehicles and machines and having a rim size exceeding 61 cm.” In NY H89898, based on the information provided, classification under the provision of “Other, having a herring-bone or similar tread” seemed appropriate. Based on our understanding of the equipment on which the instant tires were used, part numbers 284850 and 123475 were not

considered to be suitable for use on any of the vehicles specifically listed in the other subheadings under heading 4011, HTSUS. Accordingly, we classified the tires under subheading 4011.63.00, HTSUS.

In your letter, you provided supplementary information about part numbers 248850 and 123475, specifically, that they are used principally in rigid dumpers and transport vehicles. Thus, based on the new information submitted, we are aware that the instant tire models are used on trucks. Therefore, we find that part numbers 248850 and 123475, under the present facts are not properly classified under subheading 4011.63.00, HTSUS.

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

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

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

Prior to considering whether the instant tires might have a “herring-bone” or similar tread, we note that such a determination is only necessary for tires falling under the “Other” provision of subheading 4011.63, HTSUS. New pneumatic tires for various types of vehicles, e.g., cars, trucks, buses, come under subheadings appearing earlier under the same heading and would be classified thereunder, depending on their size and construction, i.e., radial or other. In HQ 959730, dated May 29, 1997, and HQ 958100, dated March 25, 1997, we noted that tires with a tread pattern bearing a Tire and Rim Association (TRA) E-3 code, with or without another code, are considered to be suitable for use on dump trucks. The tires were classified under subheading 4011.20, HTSUS, as new pneumatic tires, of rubber, of a kind used on buses or trucks. The new factual information presented shows that part numbers 284850 and 123475 are used on dump trucks. Thus, based on the new factual information presented, part numbers 248850 and 123475 are classifiable under subheading 4011.20.10, HTSUS.

HOLDING:

Under the authority of GRI 1, the tire tread patterns for part numbers 248850 and 123475 are provided for under heading 4011. They are classified under subheading 4011.20, HTSUS, which provides for “New pneumatic tires, of rubber: Of a kind used on buses or trucks: Radial.”

Sincerely,

MYLES B. HARMON,

Director

Commercial Rulings Division

[ATTACHMENT D]

HQ H192148
CLA-2 OT:RR:CTF:TCM H192148 CkG
CATEGORY: Classification
TARIFF NO.: 4011.62.0000, 4011.63.0000,
4011.93.4000, 4011.93.8000,
4011.94.4000, 4011.94.8000

PORT DIRECTOR
CUSTOMS AND BORDER PROTECTION
PORT OF SEATTLE
1000 SECOND AVE., SUITE 2100
SEATTLE, WA 98104

Re: Modification of HQ 958100, HQ 959730 and Revocation of HQ 966360;
classification of certain off-the-road tires for dump trucks

DEAR PORT DIRECTOR,

This is in reference to Headquarters Ruling Letter (HQ) 958100, issued to the Port Director in Seattle, Washington, on March 25, 1997, with regard to Protest # 3001-95-100575, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of tires for dump trucks. The articles were classified in subheading 4011.20.10, HTSUS, 4011.91, or 4011.99, HTSUS, depending on the tread pattern and use of the tires. Since the issuance of that ruling, Customs and Border Protection (CBP) has reviewed the classification of these items and has determined that the cited ruling is in error.

HQ 958100 is a decision on a specific protest. A protest is designed to handle entries of merchandise which have entered the U.S. and been liquidated by CBP. A final determination of a protest, pursuant to Part 174, Customs Regulations (19 CFR 174), cannot be modified or revoked as it is applicable only to the merchandise which was the subject of the entry protested. Furthermore, CBP lost jurisdiction over the protested entries in HQ 958100 when notice of disposition of the protest was received by the protestant. See, *San Francisco Newspaper Printing Co. v. U.S.*, 9 CIT 517, 620 F.Supp. 738 (1935).

However, CBP can modify or revoke a protest review decision to change the legal principles set forth in the decision. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), 60 days after the date of issuance, CBP may propose a modification or revocation of a prior interpretive ruling or decision by publication and solicitation of comments in the CUSTOMS BULLETIN. This modification will not affect the entries which were the subject of Protest 3001-95-100575, but will be applicable to any entries of similar merchandise made 60 days after publication of the final notice of revocation in the CUSTOMS BULLETIN.

We are also proposing to revoke one additional ruling and modify another ruling classifying similar tires for dump trucks in subheading 4011.20.10, HTSUS, as tires of a kind used on buses or trucks: HQ 966360, dated June 13, 2003, and HQ 959730, dated May 29, 1997.

FACTS:

The articles under consideration are certain off-the-road tires for earth-mover equipment described as large dump trucks. These tires are classified in accordance with the Tire and Rim Association (TRA) coding system with a TRA code that begins with the letter “E”.

In HQ 958100, off-the-road tires suitable for dump trucks and bearing the TRA codes E-1/R-5, E-3/G-18, E-3/G-44, E-3/T-331, E-4/G-18ET, E-4/G-28ET, E-4/G-36ET, E-4/T-431, E-4/T-432, E-4/T-433, E-4/T451, and E-7/D-1 were classified in subheading 4011.20.10, HTSUS. The importer claimed that the tread on these tires met the definition for “herring-bone” or similar tread tires.

In HQ 959730, Triangle brand off-the-road tires style TL-612 designed for use on earthmoving and loader equipment bearing the TRA code “E-3”, with or without another code, were classified in subheading 4011.20.10, HTSUS, if of radial construction, and in 4011.20.50, HTSUS, if of another construction. The importer claimed that the tread on these tires met the definition for “herring-bone” or similar tread tires.

In HQ 966360, Michelin Earthmover tires (part numbers 248850 and 123475) with five tread patterns including a herringbone tread, for use principally in rigid dumpers and transport vehicles, were classified in subheading 4011.20.10, HTSUS.

ISSUE:

Whether the instant tires are classified in subheading 4011.20, HTSUS, as tires “of a kind used on buses or trucks”; in subheading 4011.6, HTSUS, as “other, having a “herring-bone” or similar tread”; or in subheading 4011.9, HTSUS, as “other” tires.

LAW AND ANALYSIS:

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

The HTSUS provisions at issue provide, in pertinent part, as follows:

| | |
|------------|---|
| 4011 | New pneumatic tires, of rubber |
| ... | |
| 4011.20 | Of a kind used on buses or trucks |
| 4011.20.10 | Radial... |
| ... | |
| | Other, having a “herring-bone” or similar tread: |
| 4011.61.00 | Of a kind used on agricultural or forestry vehicles and machines |
| 4011.62.00 | Of a kind used on construction or industrial handling vehicles and machines and having a rim size not exceeding 61 cm |

| | |
|------------------------------|---|
| 4011.63.00 | Of a kind used on construction or industrial handling vehicles and machines and having a rim size exceeding 61 cm |
| 4011.69.00 | Other |
| | Other: |
| 4011.92.00 | Of a kind used on agricultural or forestry vehicles and machines |
| 4011.93 | Of a kind used on construction or industrial handling vehicles and rim size not exceeding 61 cm |
| 4011.93.40 | Radial |
| 4011.93.80 | Other |
| 4011.94 | Of a kind used on construction or industrial handling vehicles and machines and having a rim size exceeding 61 cm |
| 4011.94.40 | Radial |
| 401.94.80 | Other |
| 4011.99 | Other |
| * * * * | |

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).

EN 87.04 provides, in pertinent part, as follows:

This heading also covers :

(1) Dumpers, sturdily built vehicles with a tipping or bottom opening body, designed for the transport of excavated or other materials. These vehicles, which may have a rigid or articulated chassis, are generally fitted with off the road wheels and can work over soft ground. Both heavy and light dumpers are included in this group; the latter are sometimes characterised by a two way seat, two seats facing in opposite directions or by two steering wheels, to enable the vehicles to be steered with the driver facing the body for unloading.

...

Subheading Explanatory Notes.

Subheading 8704.10

These dumpers can generally be distinguished from other vehicles for the transport of goods (in particular, tipping lorries (trucks)) by the following characteristics..."

the dumper body is made of very strong steel sheets; its front part is extended over the driver's cab to protect the cab; the whole or part of the floor slopes upwards towards the rear;

in some cases the driver's cab is half width only;

lack of axle suspension;

high braking capacity;

limited speed and area of operation;

special earth moving tyres;

because of their sturdy construction the tare weight/payload ratio does not exceed 1 : 1.6;

the body may be heated by exhaust gases to prevent materials from sticking or freezing.

It should be noted, however, that certain dumpers are specially designed for working in mines or tunnels, for example, those with a bottom opening body. These have some of the characteristics mentioned above, but do not have a cab or an extended protective front part of the body.

* * * *

Heading 40.11 provides for “New pneumatic tires, of rubber.” There is no dispute that off-the-road tires for dump trucks are classified therein. The issue arises at the six-digit subheading level.

Subheading 4011.20 provides for “New pneumatic tires, of rubber: Of a kind used on buses or trucks.” Subheadings 4011.61–4011.69 provide for “New pneumatic tires, of rubber: Other, having a “herring-bone” or similar tread,” such as tires of a kind used on agricultural or forestry vehicles and machines (4011.61) or of a kind used on construction or industrial handling vehicles (4011.62–4011.63), and others (4011.69). Finally, subheadings 4011.92–4011.99 provides for “New pneumatic tires, of rubber: Other,” (i.e., not having a herring-bone or similar tread), such as tires of a kind used on agricultural or forestry vehicles and machines (4011.92) or of a kind used on construction or industrial handling vehicles (4011.93–4011.94), and others (4011.99).

Trucks are motor vehicles for the transport of goods that are classifiable in Chapter 87. Both dumpers and lorries are trucks classifiable in heading 87.04, as motor vehicles for the transport of goods. However, we note that the EN to subheading 8704.10 draws a distinction between “dumpers” and “lorries” (trucks), stating that “These dumpers can generally be distinguished from other vehicles for the transport of goods (in particular, tipping lorries (trucks)) by the following characteristics”, such as, i.e., “special earth-moving tires.”

The CBP Informed Compliance Publication (ICP) on Classification of Tires further notes that “There are numerous machines identified as classifiable in chapter 84 that move on tires but are not trucks. These would include excavating machines of heading 8429, construction machines and snow plows of heading 8430, agricultural machines of heading 8432 and harvesting machines of heading 8433. Although they all may be designed in some instances to roll on tires, they are not trucks, but machines, and their tires would be classifiable further on in heading 4011.”

Thus, dumpers or dump-body trucks are not trucks (lorries). As such, the off-the-road tires of dumpers or dump-body trucks are not tires “of a kind used on buses or trucks” within the scope of subheading 4011.20, and said tires are not classified therein.

The EN to heading 4011 clarifies, with respect to subheadings 4011.62, 4011.63, 4011.93 and 4011.94, that for the purposes of these subheadings, the expression “construction or industrial handling machines” includes vehicles and machines used for mining. The instant tires, per the TRA code and manufacturer information, are designed for use with dumpers and dump trucks, off-road applications such as construction and mining.

The TRA Yearbook provides the following description of earthmovers:

Earthmover: transportation usually occurs over unimproved surfaces at speeds up to 40 mph and short distances, up to 2.5 miles, one way. Equipment in this category is mainly haulage trucks and scrapers.

Thus, dumper truck tires bearing a TRA code “E”, are designed primarily for off-road use over unimproved surfaces, and for short distances only. They are used in construction and mining operations. They are not of a class or kind used on trucks designed primarily for on-road use. Dumper tires with characteristics for use other than normal on road use or mixed on-road off-road use should be classified in subheading 4011.6 or 4011.9, depending on whether or not the individual tires have a herring-bone or similar tread.

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

The tires at issue in HQ 958100 bearing the TRA codes E-1/R-5, E-3/G-18, E-3/G-44, E-3/T-331, E-4/G-18ET, E-4/G-28ET, E-4/G-36ET, E-4/T-431, E-4/T-432, E-4/T-433, E-4/T451, and E-7/D-1, do not have a herring-bone or similar tread. They do not feature slanted parallel lines with the slant alternating row by row. These tires are thus classified in subheading 4011.93, or 4011.94, HTSUS.

The Triangle brand off-the-road tires style TL-612 at issue in HQ 959730 and the Michelin Earthmover tires (part numbers 248850 and 123475) at issue in HQ 966360 feature tread patterns with slanted, parallel rows with the slant alternating line by line. They therefore have a herringbone tread and are classified in subheadings 4011.62, or 4011.63, HTSUS.

HOLDING:

Pursuant to GRIs 1 and 6, the off-the-road tires suitable for dump trucks and bearing the TRA codes E-1/R-5, E-3/G-18, E-3/G-44, E-3/T-331, E-4/G-18ET, E-4/G-28ET, E-4/G-36ET, E-4/T-431, E-4/T-432, E-4/T-433, E-4/T451 and E-7/D-1, are classified in heading 4011, HTSUS, and if of a kind used on construction or industrial handling vehicles and machines and having a rim size not exceeding 61 cm, are classified in subheadings 4011.93.4000, HTSUS, if of radial construction or 4011.93.8000, HTSUS, if of other construction; and if of a kind used on construction or industrial handling vehicles and machines and having a rim size exceeding 61 cm, are classified in subhead-

ings 4011.94.4000, HTSUS, if of radial construction or 4011.94.8000, HTSUS, if of other construction. The 2015 column one, general rates of duty are 4% and 3.4% ad valorem, respectively.

Pursuant to GRIs 1 and 6, the Triangle brand off-the-road tires style TL-612 and the Michelin Earthmover tires (part numbers 248850 and 123475) are classified in heading 4011, HTSUS, and as other tires having a “herring-bone” or similar tread in subheading 4011.62.0000, HTSUS, if of a kind used on construction or industrial handling vehicles and machines and having a rim size not exceeding 61cm, or in subheading 4011.63.0000, HTSUS, if of a kind used on construction or industrial handling vehicles and machines hand having a rim size exceeding 61cm. The 2015 column one, general rate of duty is Free.

EFFECT ON OTHER RULINGS:

HQ 958100, dated March 25, 1997 is hereby modified with respect to those tires bearing the TRA codes E-1/R-5, E-3/G-18, E-3/G-44, E-3/T-331, E-4/G-18ET, E-4/G-28ET, E-4/G-36ET, E-4/T-431, E-4/T-432, E-4/T-433, E-4/T451; and E-7/D-1.

HQ 959730, dated May 29, 1997, is hereby modified with respect to the Triangle brand off-the-road tires style TL-612 designed for use on earthmoving and loader equipment bearing the TRA code “E-3”, with or without another code.

HQ 966360, dated June 13, 2003, is hereby revoked.

Sincerely,

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division

cc:

Ms. Margaret V. Wilson
Customs/Drawback Administrator
Michelin North America, Inc.
One Parkway South P.O. Box 19001
Greenville, South Carolina 29602-9001

Port Director
U.S. Customs and Border Protection
300 South Ferry St.
Terminal Island, CA 90731



**PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF CERTAIN FLAVORED
BARBECUE WOOD CHIPS CONTAINING A MIXTURE OF
WOOD SHAVINGS AND A MIXTURE OF HERBS AND
SPICES IN A GELATIN BASE**

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

ACTION: Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to tariff classification of certain flavored barbecue wood chips containing a mixture of wood shavings and a mixture of herbs and spices in a gelatin base.

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

DATES: Comments must be received on or before October 30, 2015.

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

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP proposes to revoke a ruling letter pertaining to the tariff classification of certain flavored barbecue wood chips containing a mixture of wood shavings and a mixture of herbs and spices in a gelatin base. Although in this notice CBP is specifically referring to the revocation of Headquarters Ruling Letter (HQ) 951145, dated May 28, 1992, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In HQ 951145, set forth as Attachment A to this document, CBP determined that the subject merchandise was classified under subheading 4421.90.90, HTSUS, which provided for "Other articles of wood: Other: Other." It is now CBP's position that the subject merchandise is properly classified under subheading 4401.39.40, HTSUS, which provides for "Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood chips or particles; sawdust and wood waste

and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms: Sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms: Other: Other.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke HQ 951145 and revoke or modify any other ruling not specifically identified, in order to reflect the proper tariff classification of the subject merchandise according to the classification analysis contained in proposed HQ H261687, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: September 8, 2015

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ 951145

May 28, 1992

CLA-2 CO:R:C:F 951145 ALS

CATEGORY: Classification

TARIFF NO.: 4421.90.9040

MR. PENNFIELD SMITH
INTERNATIONAL BARBEQUE TIME LTD.
(107) 8811 RIVER RD.
RICHMOND, B.C., CANADA V6X 1Y6

RE: Flavored Barbecue Wood Chips Containing a Mixture of Wood Shavings and a Mixture of Herbs and Spices in a Gelatin Base

DEAR MR. SMITH:

This is reference to your letter of January 9, 1992, to our New York Seaport Area Office requesting a binding ruling on the classification of the subject product. Your request along with the 3 samples included therewith have been referred to this office for further consideration.

FACTS:

The product under consideration is used to flavor foods when barbecuing them. The product is composed of wood chips and combinations of herbs and spices in a gelatinous base. The product is made in several flavorings. Each product unit contains a combination of a type of wood and a mixture of herbs and spices depending on the flavoring result desired. The gelatinous base, which when wet weighs 1/2 ounce and when dry weighs 1/4 ounce, is placed on a 3 ounce bed of wood shavings and packed in a 1 inch by 5 inch aluminum pan. The pan is covered with a paper/aluminum combination lid which is held in place by the edges of the pan which fold over the edge of the lid. There are 9 holes in the lid, approximately 1/8 inch in diameter, which are covered by a label which identifies the company and the herb/spice contents in French and English. The product is used for backyard barbecues. In order to use the product the user peels off the label to expose the holes and places the aluminum pan with its contents on the hot coals or lava rocks where it is heated. When so heated the product smolders and smokes causing the herb and spice flavoring and the smoke flavoring of the wood to be carried through the exposed holes to the food on the grill.

ISSUE:

What is the classification of the product which is composed of 2 different component materials which when heated emit 2 different flavorings which are imparted to food?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification is determined first in accordance with the terms of the headings and any relevant section and chapter notes. If GRI 1 fails to classify the goods and if the heading and legal notes do not otherwise require, the remaining GRI's are applied taken in order.

In reviewing the facts in this case, we did not find a subheading which specifically covered the product. The product, depending on whether it was considered a mixed seasoning, a food preparation, a mixture of odoriferous substance, a chemical preparation or a wood product could be classified in Chapters 21, 33, 38 or 44, HTSUSA, respectively.

We note that, while the product does contain herbs and spices and imparts those flavorings along with a smoke flavoring from the wood to the food being grilled, none of the components of the product actually touches the food being grilled. This product thus differs from herbs, spices and vegetables, which are normally used to impart flavoring to food in that it is not topically applied to the food. Historically, this has been considered a prerequisite for classifying merchandise in Chapter 21, HTSUSA. Also, based on a discussion with the Food and Drug Administration (FDA), we understand that such a product would not meet the requirements of section 321(f), title 21, United States Code (21 U.S.C. 321(f)) and would not be considered a food item under the jurisdiction of the FDA.

We considered the possible application of Heading 3302, HTSUSA, regarding mixtures of odoriferous substances. Although at least some samples of the product appear to meet some of the basic requirements of that heading, i.e. mixtures of essential oils, mixtures of resinoids, the product at hand is a finished product, ready to be used in barbecues and, thus, does not meet the provision of Heading 3302, HTSUSA, which specifies that such substances are "of a kind used as raw materials in industry." In other words, products falling under this provision are intermediate products which are used to make finished products and are not themselves finished products.

We next considered the possible application of Heading 3823, HTSUSA, which generally provides for products of the chemical industry. We noted that the products of Chapter 38, HTSUSA, with few exceptions, were generally of the type utilized in industry and not the type related to food components. This is in line with our aforementioned conclusion that the product does not come within the scope of food or foodstuffs. While the provisions of this chapter are very broad and could possibly cover the product, it is not clear that the product is properly classifiable in this chapter. Accordingly, we felt that further classification possibilities should be explored.

Accordingly, we next considered the provisions of Chapter 44 related to articles of wood. In this regard we noted that the purpose of the product is to flavor food. There are two components that flavor the food, a gelatinous base containing herbs and spices and wood. There does not appear to be any quantitative distinction as to the degree to which either component imparts its flavor to the food. In considering the weight of the components of the product, we note that over 80 percent of flavoring components in the product is wood, i.e. 3 ounces of a 3-1/2 ounce total. In physically examining the components one notes that the wood is the most prominent thereof.

In considering the possible headings under which the product might be classified we have, based on the above reasoning, concluded that the product should be classified under either Heading 3823 or Heading 4421. Since neither heading specifically describes the product, classification in accordance with GRI 1 is not possible. Accordingly, we referred to GRI 2 which provides that the classification of goods consisting of more than one material or substance shall be according to the principles of GRI 3. Since each of the competing headings only refer to a part of the product and one is not more specific than the other classification under GRI 3(a) is not possible. We next

referred to GRI 3(b) which provides that composite goods consisting of different materials shall be classified according to the product which gives them their essential character. Since both the herbs and spices and the wood provide flavoring, the primary purposes of the article, we cannot say that essential character of the product is either of those components even though the wood, by weight, makes up most of the product. Accordingly, we turned to GRI 3(c) which provides that when goods cannot be classified by reference to GRI 3(a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration. Thus, the product would be classified in Chapter 44, HTSUSA.

HOLDING:

Barbecue smoking chips of wood which are combined with a gelatinous base containing herbs and spices to provide flavoring to food being grilled are classifiable under subheading 4421.90.9040, HTSUSA, as Other articles of wood, other, other and are dutiable at a general rate of duty of 5.1 percent ad valorem.

The subject barbecue smoking chips, if the product of Canada, are, in accordance with General Note 3(c)(vii)(B), HTSUSA, eligible for a reduced rate of duty, upon compliance with the provisions of the United States - Canada Free Trade Agreement (CFTA) and section 10.301 et seq., Customs Regulations (19 CFR 10.301 et seq.).

Sincerely,
JOHN DURANT,
Director
Commercial Rulings Division

[ATTACHMENT B]

HQ H261687
CLA-2 OT:RR:CTF:TCM H261687 TSM
CATEGORY: Classification
TARIFF NO.: 4401.39.40

MR. PENNFIELD SMITH
INTERNATIONAL BARBEQUE TIME LTD.
(107) 8811 RIVER RD.
RICHMOND, B.C., CANADA V6X 1Y6

RE: Revocation of HQ 951145; Classification of flavored barbecue wood chips containing a mixture of wood shavings and a mixture of herbs and spices in a gelatin base.

DEAR MR. SMITH:

This is in reference to Headquarters Ruling Letter (HQ) 951145, issued to International Barbeque Time Ltd. on May 28, 1992, concerning tariff classification of flavored barbecue wood chips containing a mixture of wood shavings and a mixture of herbs and spices in a gelatin base. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the subject merchandise under heading 4421, HTSUS, which provided for “Other articles of wood.” Upon additional review, we have found this classification to be incorrect. For the reasons set forth below we hereby revoke HQ 951145.

FACTS:

HQ 951145, issued to International Barbeque Time Ltd. on May 28, 1992, describes the subject merchandise as follows:

The product under consideration is used to flavor foods when barbecuing them. The product is composed of wood chips and combinations of herbs and spices in a gelatinous base. The product is made in several flavorings. Each product unit contains a combination of a type of wood and a mixture of herbs and spices depending on the flavoring result desired. The gelatinous base, which when wet weighs 1/2 ounce and when dry weighs 1/4 ounce, is placed on a 3 ounce bed of wood shavings and packed in a 1 inch by 5 inch aluminum pan. The pan is covered with a paper/aluminum combination lid which is held in place by the edges of the pan which fold over the edge of the lid. There are 9 holes in the lid, approximately 1/8 inch in diameter, which are covered by a label which identifies the company and the herb/spice contents in French and English. The product is used for backyard barbecues. In order to use the product the user peels off the label to expose the holes and places the aluminum pan with its contents on the hot coals or lava rocks where it is heated. When so heated the product smolders and smokes causing the herb and spice flavoring and the smoke flavoring of the wood to be carried through the exposed holes to the food on the grill.

ISSUE:

What is the correct classification of the subject flavored barbecue wood chips containing a mixture of wood shavings and a mixture of herbs and spices in a gelatin base?

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:

| | |
|------|--|
| 4401 | Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms |
| * | * * |
| 4421 | Other articles of wood |
| * | * * |
| 0910 | Ginger, saffron, turmeric (curcuma), thyme, bay leaves, curry and other spices |
| * | * * |
| 3503 | Gelatin (including gelatin in rectangular (including square) sheets, whether or not surfaceworked or colored) and gelatin derivatives; isinglass; other glues of animal origin, excluding casein glues of heading 3501 |

HQ 951145 classified the wood chips at issue under heading 4421, as an article of wood. Upon review, we find that the wood chips are specifically provided for in heading 4401, HTSUS, which provides for “wood in chips or particles.” Accordingly, it is our position that the subject wood chips are classified in heading 4401, HTSUS. *See* New York Ruling Letter (NY) N040959, dated November 5, 2008. *See also* NY H89925, dated April 11, 2002.

Upon review, we also find that the mixture of herbs and spices at issue is classified in heading 0910, HTSUS, which provides for “ginger, saffron, turmeric (curcuma), thyme, bay leaves, curry and other spices.” This is consistent with Note 1(b) to Chapter 9, which provides that mixtures of the products of headings 0904 to 0910 are to be classified as follows: (b) mixtures of two or more of the products of different headings are to be classified in heading 0910. Moreover, we also find that the gelatin base is classified in heading 3503, HTSUS, which provides for “gelatin (including gelatin in rectangular (including square) sheets, whether or not surfaceworked or colored) and gelatin derivatives; isinglass; other glues of animal origin, excluding casein glues of heading 3501.”

As discussed above, the subject merchandise is composed of a mixture of wood shavings, herbs and spices in a gelatin base. In this regard, GRI 2(b)

states, in pertinent part, that the classification of goods consisting of more than one material or substance shall be according to the principles of GRI 3.

GRI 3 states that, when goods are prima facie classifiable under two or more headings, classification shall be effected as follows:

- (a) ...when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods... 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,... 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.
- (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.

Inasmuch as the instant merchandise qualifies as a composite good with separable components (wood chips, mixture of herbs, spices and gelatin base), it must be classified accordingly. If imported alone, the wood chips would be classified under heading 4401, HTSUS. The mixture of herbs and spices, if imported separately, would be classified under heading 0910, HTSUS. Finally, the gelatin base, if imported separately, would be classified under heading 3503, HTSUS.

As the instant merchandise is a composite good, we must apply GRI 3(b). Under GRI 3(b), the merchandise must be classified as if it consisted of the component which gives the merchandise its essential character. The term “essential character” is not defined within the HTSUS, GRIs or ENs. However, EN VIII to GRI 3(b) gives guidance, stating 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 a constituent material in relation to the use of the good.”

In the instant case, the role of the gelatin base in relation to the use of the subject merchandise is not significant. Without the gelatin, which would serve no essential function if used alone, the herbs and the spices, together with the wood chips, would serve the essential purpose of the subject merchandise. Since the herbs and the spices, as well as the wood chips, provide flavoring, which is the primary purpose, we cannot say which one of these products gives the subject merchandise its essential character. Therefore, we must next apply GRI 3(c), which provides as follows: “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.” Since the wood chips are classified under heading 4401, HTSUS, which occurs last in numerical order, we find that the subject merchandise should also be classified under this heading.

HOLDING:

By application of GRI 3(c), we find that the subject merchandise is classified under heading 4401, HTSUS. Specifically, it is classified in subheading 4401.39.40, HTSUS, which provides for “Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms: Sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms: Other: Other.” The 2015 column one, general rate of duty is free.

EFFECT ON OTHER RULINGS:

HQ 951145, dated May 28, 1992, 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,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



**MODIFICATION OF ONE RULING LETTER RELATING TO
THE TARIFF CLASSIFICATION OF A SPONGE ART SET**

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

ACTION: Modification of one ruling relating to the tariff classification of a sponge art set.

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 relating to the tariff classification of a sponge art set consisting of six shaped sponges, glitter watercolor paints, six sheets of coated paper and one artist brush under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 23, on June 10, 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 30, 2015.

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 (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. 31, on August 5, 2015, proposing to modify Headquarters’ Ruling 957131, dated February 27, 1995, in which CBP determined that the subject merchandise was classified under subheading 3213.10.1000 HTSUS, which provides for “Artists’, students’ or signboard painters’ colors, modifying tints, amusement colors and the like, in tablets, tubes, jars, bottles, pans or in similar forms or packings: Colors in sets” by application of General Rule of Interpretation (GRI) 1.

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 modifying any treatment previously accorded by CBP to substantially identical transactions. Any person involved with substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying HQ 957131 to reflect the proper tariff classification of this merchandise under sub-heading 3213.10.0000 which provides for "Artists', students' or sign-board painters' colors, modifying tints, amusement colors and the like, in tablets, tubes, jars, bottles, pans or in similar forms or packings: Colors in sets"" by application of GRI 3(b), pursuant to the analysis set forth in HQ H194138, 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: September 8, 2015

GREG CONNOR
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H194138

September 8, 2015

OT:RR:CTF:TCM H194138 PTM

CATEGORY: CLASSIFICATION

TARIFF NO: 3213.10.00

TRANS-BORDER CUSTOMS SERVICES, INC.

ONE TRANS-BORDER DRIVE

P.O. BOX 800

CHAMPLAIN, NY 12919

DEAR SIR OR MADAM:

On February 27, 1995, we issued Headquarters Ruling HQ 957131 in response to your request for internal advice regarding the tariff classification of four separate articles, including a “sponge art” set. In HQ 957131, we determined that the proper tariff classification of the sets under the Harmonized Tariff Schedule of the United States (“HTSUS”) under heading 3213 as a GRI 1 set. We have reviewed HQ 957131 and find it to be in error with respect to the classification analysis pertaining to the sponge art set. For the reasons set forth below, we hereby modify HQ 957131.

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. 31, on August 5, 2015, proposing to modify N009306, and any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

FACTS:

In HQ 957131, we classified several art sets consisting of various articles, including a sponge art set. We described the sponge art set as follows:

The “Sponge Art” article, identified by item no. 05130, consists of six specially shaped sponges (Malaysia), six jumbo glitter watercolor paints (Hong Kong), six sheets of coated paper, and one artist brush (Hong Kong).

Thus, the sponge art set consisted of an array of components of differing origin that were classifiable individually in various tariff headings.

ISSUE:

What is the proper tariff classification of the sponge art set?

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 GRI 1 through 5.

The merchandise at issue consists of a set of glitter watercolor paints, shaped sponges, a brush, and coated paper. The HTSUS provision at issue are as follows:

| | |
|---------|--|
| 3213 | Artists', students' or signboard painters' colors, modifying tints, amusement colors and the like, in tablets, tubes, jars, bottles, pans or in similar forms or packings: |
| 3213.10 | Colors in sets |
| | * * * |
| 4811 | Paper, paperboard, cellulose wadding and webs of cellulose fibers, coated, impregnated, covered, surface-colored, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in heading 4803, 4809 or 4810 |
| 4811.59 | Other: ... |

Heading 3213 covers various painters' colors in different forms of packaging, and includes colors in sets. Consequently, the paint set in the sponge art set is *prima facie* classifiable under heading 3213 HTSUS. Heading 4811 covers coated paper, and therefore the coated paper in the sponge art set is *prima facie* classifiable under heading 4811 HTSUS.

In HQ 957131, the legacy Customs Service stated, with respect to the sponge art set and a separate "paint art set":

We note, however, that the "paint art" and "sponge art" articles essentially consist only of paints and accessories related to the paint's application. In determining whether any one heading would accommodate the components of these two sets, we look to heading 3213, HTSUS.

Heading 3213, HTSUS, provides for "Artists', students' or signboard painters' colors, modifying tints, amusement colors and the like, in tablets, tubes, jars, bottles, pans or in similar forms or packings." The ENs to heading 3213 indicate that, among other items, the heading includes colors and paints (including watercolors) that are sold in sets or outfits, with or without brushes, palettes, palette knives, stumps, pans, etc. It is apparent that the non-paint components of the "paint art" and "sponge art" articles are put up with the paints and colors to enhance the sets' attractiveness to children. As heading 3213 is sufficiently broad to cover these components, it specifically describes the "paint art" and "sponge art" sets. The proper subheading for these colors in sets is 3213.10.0000, HTSUSA.

In HQ H957131, legacy Customs classified the sponge art set under heading 3213.10.1000 by application of GRI 1 set because "heading 3213 is sufficiently broad to cover these components." We disagree that heading 3213 covers all of the component parts of the sponge art set, specifically the coated paper included in the set. We note that the plain language of the heading covers colors, tints, and colors. The language of the heading does not include any reference to sheets of paper or other medium onto which the user will paint.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System

at the international level. While not legally binding, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. *See* T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989). The EN for heading 3213 provides:

This heading covers prepared colours and paints of a kind used by artists, students or signboard painters, modifying tints, amusement colours and the like (water colours, gouache colours, oil paints, etc.), **provided** they are in the form of tablets or put up in tubes, small jars or bottles, pans or in similar forms or packings.

The heading also includes those sold in sets or outfits, with or without brushes, palettes, palette knives, stumps, pans, etc.

The EN clarifies that the heading covers colors and paints, but the heading also includes those sold in sets with brushes, palettes, palette knives, stumps and pans. Each of the items enumerated are used to either prepare or apply the paint in the set. Consequently, the sponges and brush are encompassed by heading 3213. However, there is no indication that heading 3213 covers the medium onto which the painter will apply the paint, i.e., canvas, paper sheets or signboards. In this case, the coated paper in the sponge art set would not be covered under heading 3213. Based on the plain language of heading 3213 HTSUS and the commentary of explanatory note 32.13, we find that the sponge art set may not be classified under heading 3213 HTSUS as a GRI 1 set.

Because the components of the sponge art set are *prima facie* classifiable under separate headings, it must be classified pursuant to GRI 3, which states:

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

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

(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.

Because the sponge art set consists of various components, the set is a composite good classifiable under GRI 3(b). 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.

The application of the “essential character test” requires a fact-intensive analysis. *See Home Depot U.S.A., Inc. v. United States*, 491 F.3d 1334, 1337 (Fed. Cir. 2007). But in addition to the those listed in the EN (VIII) to GRI 3(b), other factors should be considered, including the article’s name, primary function, and the “attribute which strongly marks or serves to distinguish what it is. Its essential character is that which is indispensable to the structure, core or condition of the article, i.e. what it is.” *A.N. Deringer, Inc. v. United States*, 66 Cust. Ct. 378, 383 (1971).

In the instant case, the sponge and paint brush are used to apply the six types of glitter paint. The paint is applied to the coated sheets of paper. Consequently, the primary function of the sponges, brush, and paper is to assist with the application of the watercolor glitter paint. Therefore, we find that the set of six watercolor glitter paint provides the essential character of the set.

Subheading 3213.10 HTSUS provides for paint and colors in sets. Furthermore, prior CBP rulings have classified paint sets under heading 3213 HTSUS. For example, in HQ 561326 (April 26, 1999), we found a childrens’ paint set, consisting of 6 plastic bottles of washable paint was properly classified under subheading 3213.10.00, HTSUS. In N004275 (Jan. 9, 2007), we found an “Easter Fun Paint Set” consisting of 4 water color paint, 1 paint brush and two plaster ornaments in a blister package put up for retail sale to be classified under subheading 3213.10.00 HTSUS. *See also* NY K89008 (Sept. 21, 2004), (where CBP classified a pumpkin paint set under subheading 3213.10.00 HTSUS by application of GRI 3(b)). Based on the foregoing, we find that the paint set in the sponge art kit is properly classified under subheading 3213.10.00 HTSUS.

HOLDING:

By application of GRI 3(b), the sponge art kit is properly classified in heading 3213 HTSUS, specifically subheading 3213.10.0000, which provides for “Artists’, students’ or signboard painters’ colors, modifying tints, amusement colors and the like, in tablets, tubes, jars, bottles, pans or in similar forms or packings: Colors in sets.” The general, column one rate of duty is 6.5 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:

HQ 957131 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

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

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking two rulings concerning the tariff classification of planters made from coconut fibres under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 23, on June 10, 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 30, 2015.

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. 23, on June 10, 2015, proposing to revoke two ruling letters pertaining to the tariff classification of planters made from coir. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) NY N020080, dated December 4, 2007, and NY N010591, dated May 16, 2007, 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 two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of

a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N020080, CBP classified merchandise consisting of a plant container made from coconut fibers (coir) under heading 5305, HTSUS, specifically under subheading 5305.00.00, HTSUS, which provides for “Coconut and other vegetable textile fibers, not elsewhere specified or included, raw or processed but not spun.” In NY N010591, CBP classified a kit containing five seed containers made from coir under heading 1404, HTSUS, specifically under subheading 1404.90.90, HTSUS, which provides for: “Vegetable products not elsewhere specified or included: Other.”

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

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N020080 and N010591, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in Headquarters Ruling Letter (“HQ”) H122355, set forth as an attachment 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: September 8, 2015

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

HQ H122355

September 8, 2015

CLA-2 OT:RR:CTF:TCM H122355 NCD

CATEGORY: Classification

TARIFF NO.: 9602.00.50

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

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

DEAR MR. NEWTON:

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

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

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. 23, on June 10, 2015. No comments were received in response to the notice.

FACTS:

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

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

ISSUE:

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

LAW AND ANALYSIS:

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

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

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

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

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

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

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

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

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

The vegetable fibres classified here include:

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

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

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

We accordingly consider remaining headings 1404, HTSUS, and 9602, HTSUS. Heading 1404, HTSUS, covers, among other things, “Vegetable Products Not Elsewhere Specified or Included.” EN 14.04 provides, in relevant part, that “[t]his heading covers all vegetable products, not specified or included elsewhere in the Nomenclature.” Our research indicates that coir is a type of vegetable fiber. *See* Industrial Applications of Natural Fibres: Structure, Properties, and Technical Applications, (pp. 197–218); Under-

standing Fabrics: From Fiber to Finished Cloth, (p. 3). As such, coir constitutes a vegetable product within the meaning of this term as it appears in EN 14.04. However, the Vaseline, clay, and glue with which the coir is mixed to form the instant products are not “vegetable products,” and thus are not described by heading 1404, HTSUS.

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

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

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

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

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

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

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

GRI 3(a) is known as the “rule of relative specificity.” See *Orlando Food Corp. v. United States*, 140 F.3d 1437, 1441 (Fed. Cir. 1998) (Orlando Food). Where articles can be classified under two HTSUS headings, under GRI 3(a) the classification “turns on which of these two provisions are more specific.”

Orlando Food, 140 F.3d at 1441. Courts undertaking the GRI 3(a) comparison “look to the provision with requirements that are more difficult to satisfy and that describe the article with the greatest degree of accuracy and certainty.” *Faus Group, Inc. v. United States*, 581 F.3d 1369 (Fed. Cir. 2009) (quoting *Orlando Food*, 140 F.3d at 1441).

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

HOLDING:

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

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

EFFECT ON OTHER RULINGS:

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

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

GENERAL NOTICE

PROPOSED REVOCATION OF TWO RULING LETTERS AND TREATMENT RELATED TO THE COUNTRY OF ORIGIN MARKING OF CERTAIN SOLAR PANELS UNDER THE NORTH AMERICAN FREE TRADE AGREEMENT

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

ACTION: Notice of proposed revocation of two ruling letters and proposed revocation of any treatment relating to the country of origin marking of certain solar panels under the North American Free Trade Agreement.

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 two ruling letters, New York Ruling Letter (NY) R00721, dated September 17, 2004 and NY N047417, dated January 14, 2009, relating to the country of origin marking of certain solar panels under the North American Free Trade Agreement. Similarly, CBP is proposing to revoke any treatment previously accorded to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before October 30, 2015.

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

FOR FURTHER INFORMATION CONTACT: Ross Cunningham, Valuation and Special Programs Branch, at (202) 325–0034.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke two ruling letters pertaining to the country of origin marking of certain solar panels under the North American Free Trade Agreement. Although in this notice, CBP is specifically referring to the revocation of NY R00721, dated September 17, 2004 (Attachment A) and NY N047417, dated January 14, 2009 (Attachment B), this notice covers any rulings on these products which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP proposes to revoke NY R00721, dated September 17, 2004, and NY N047417, dated January 14, 2009, in accordance with the analysis set forth in proposed Headquarters Ruling Letter (HQ) H266527 (Attachment C). 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: September 10, 2015

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

NY R00721

September 17, 2004

MAR-2 RR:NC:1:109 R00721

CATEGORY: MARKING

MR. WILLIAM BRENT WEAVER
DIRECTOR OF OPERATIONS
KYOCERA SOLAR, INC.
7812 E ACOMA DRIVE
SCOTTSDALE, AZ 85260

RE: The country of origin marking under the North American Free Trade Agreement (NAFTA), of solar panels from Mexico; Article 509

DEAR MR. WEAVER:

In your letter dated August 19, 2004 you requested a ruling on the country of origin marking for imported solar panels from Mexico under NAFTA.

You state in your letter that Kyocera Solar, Inc. of Scottsdale Arizona is in the process of setting up an assembly line at Kyocera's Maquiladora facility in Tijuana, Mexico. The Maquiladora facility will assemble various solar panels ranging in size from 35 watts to 187 watts from solar cells manufactured at Kyocera's factory in Japan. All the components utilized to produce the solar panels will be imported into Mexico from Japan, with the exception of the glass, which is manufactured in the USA. Descriptive information and technical drawings of the finished solar panels were submitted with your request.

In response to your inquiry as to the country of origin marking for the imported solar panels from Mexico under NAFTA, the marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134) implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

The country of origin marking requirements for a "good of a NAFTA country" are also determined in accordance with Annex 311 of the North American Free Trade Agreement ("NAFTA"), as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat 2057) (December 8, 1993) and the appropriate Customs Regulations. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, Customs Regulations. The marking requirements of these goods are set forth in Part 134, Customs Regulations.

Section 134.1(b) of the regulations, defines "country of origin" as the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin. (Emphasis added).

Section 134.1(j) of the regulations, provides that the “NAFTA Marking Rules” are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g) of the regulations, defines a “good of a NAFTA country” as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules. Section 134.45(a)(2) of the regulations, provides that a “good of a NAFTA country” may be marked with the name of the country of origin in English, French or Spanish.

The articles in question are all processed in Mexico and advanced in value and/or improved in condition prior to being imported into the U.S. Since Mexico is defined under 19 CFR 134.1(g), as a NAFTA country, we must first apply the NAFTA Marking Rules in order to determine whether the imported articles are a “good of a NAFTA country”, and thus subject to the NAFTA marking requirements.

Part 102 of the regulations, sets forth the “NAFTA Marking Rules” for purposes of determining whether a good is a good of a NAFTA country for marking purposes. Section 102.11 of the regulations, sets forth the required hierarchy for determining country of origin for marking purposes.

Applying the NAFTA Marking Rules set forth in Part 102 of the regulations to the facts of this case, we note that the applicable tariff provision for the solar panels will be 8541.40.6020, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for “Solar cells: Assembled into modules or made up into panels.” We also note, that the individual solar cells used in the assembly of the solar panels are classified in subheading 8541.40.6030, while the other components used in the assembly process fall in subheadings other than 8541.40.6020. We find that the imported solar panels are goods of Mexico for marking purposes because they meet the tariff shift requirement set out in Part 102 of the regulations.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 C.F.R. 181).

This ruling letter is binding only as to the party to whom it is issued and may be relied on only by that party.

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Linda M. Hackett at 646-733-3015.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT B

N047417

January 14, 2009
MAR-2 OT:RR:E:NC:1:109
CATEGORY: MARKING

MR. OSCAR O. BRACAMONTE
ACCOUNTANT
KYOCERA SOLAR, INC.
7812 E. ACOMA DR. #2
SCOTTSDALE, AZ 85260

RE: COUNTRY OF ORIGIN MARKING OF IMPORTED MULTICRYSTALLINE PHOTOVOLTAIC (SOLAR) MODULES FROM MEXICO; ARTICLE 509

DEAR MR. BRACAMONTE:

This is in response to your letter dated December 18, 2008 requesting a ruling on the country of origin marking requirements for imported multicrystalline photovoltaic (solar) modules, which are claimed to be goods of a NAFTA country. A marked sample was not submitted with your letter for review.

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134) implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

The country of origin marking requirements for a “good of a NAFTA country” are also determined in accordance with Annex 311 of the North American Free Trade Agreement (“NAFTA”), as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat 2057) (December 8, 1993) and the appropriate Customs Regulations. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, Customs Regulations. The marking requirements of these goods are set forth in Part 134, Customs Regulations.

Section 134.45(a)(2) of the regulations, provides that “a good of a NAFTA country may be marked with the name of the country of origin in English, French or Spanish. Section 134.1(g) of the regulations, defines a “good of a NAFTA country” as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules. Those NAFTA Marking Rules were previously applied and country of origin determined in New York Ruling R00721, as a result of your company’s inquiry as to the country of origin marking of imported solar panels that were assembled at Kyocera’s Maquiladora facility in Tijuana, Mexico from solar cells that were manufactured at Kyocera’s factory in Japan. New York Ruling R00721 determined that solar panels met the tariff shift requirement set out in Part 102 of the regulations with respect to NAFTA Marking Rules. It is understood from your current inquiry, our file number New York Ruling N047417, that the multicrystalline photovoltaic (solar) modules is the same

merchandise and underwent the same assembly process as the solar panels ruled upon in New York Ruling R00721. As such, the imported multicrystalline photovoltaic (solar) modules are considered to be articles of a class of kind described in section 134.43(a) of the regulations. Thus, the special marking requirements of section 134.43(a) must be applied in order to determine the appropriate country of origin marking requirements for the imported multicrystalline photovoltaic (solar) modules. That section provides in part that:

Except for goods of a NAFTA country, articles of a class of kind listed below shall be marked legibly and conspicuously by die stamping, cast-in-mold lettering, etching (acid or electrolytic), engraving, or by means of metal plates which bear the prescribed marking and which are securely attached to the article in a conspicuous place by welding, screws or rivets . . . Goods of a NAFTA country shall be marked by any reasonable method which is legible, conspicuous and permanent as otherwise provided in this part . . . (Emphasis added).

In this case, as the multicrystalline photovoltaic (solar) modules are goods of a NAFTA country, marking by any reasonable method which is legible, conspicuous and permanent is an acceptable country of origin marking for the imported multicrystalline photovoltaic (solar) modules.

New York Ruling R00721 determined that the country of origin of the solar panels was Mexico. Your submission states that you have been marking importations of that merchandise with the working "Made in Mexico." However, you are now requesting that the wording "Components from Japan, Assembled in Mexico" or Components from Japan, Manufactured in Mexico" be determined to be an acceptable country of origin marking for the multicrystalline photovoltaic (solar) modules.

Your ruling request states that the raw materials that are used during the assembly process to produce the multicrystalline photovoltaic (solar) modules are acquired as follows: Japan 96.0%, USA 3.5%, and Mexico 0.5%. Section 134.43 of the regulations does not provide a de minimus rule when taking into account the country of origin of components used in an assembly process. In fact, Section 134.43 3(e) provides in part that

Where an article is produced as a result of an assembly operation and the country of origin of such article is determined under this chapter to be the country in which the article was finally assembled, such article may be marked, as appropriate, in a manner such as the following:

(2) Assembled in (country of final assembly) from components of (name of country or countries of origin of all components)

Therefore, in accordance with Section 134.43 3(e)(2) your proposed wording of "Components from Japan, Assembled in Mexico" or Components from Japan, Manufactured in Mexico" is an unacceptable country of origin marking. Section 134.43(e)(2) states that the countries of all the components must be provided. As you have stated in your submission, the multicrystalline photovoltaic (solar) modules are assembled from components (raw material) from Japan, the USA, and Mexico. As such, if you chose to include the country of origin of the components utilized in the assembly process that takes place in Mexico, an acceptable method of marking would be "Assembled in Mexico from components of Japan, USA, and Mexico."

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 CFR Part 181).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Linda M. Hackett at (646) 733-3015.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

ATTACHMENT C

HQ H266527
 OT:RR:CTF:VS H266527 RMC
 CATEGORY: Country of Origin

WILLIAM BRENT WEAVER
 DIRECTOR OF OPERATIONS
 KYOCERA SOLAR, INC.
 7812 E. ACOMA DR.
 SCOTTSDALE, AZ 85260

Re: Revocation of New York Rulings R00721 and N047417; Country of Origin Marking of Solar Panels from Mexico under the North American Free Trade Agreement

DEAR MR. WEAVER:

This is in reference to two ruling letters issued to Kyocera Solar, Inc.: New York Ruling Letters (NY) R00721, dated Sept. 17, 2004 and NY N047417, dated Jan. 14 2009. Both rulings concerned the country of origin marking of solar panels imported from Mexico. In NY R00721 dated Sept. 17, 2004, we held that solar panels assembled in Mexico were products of Mexico. In NY N047417, dated Jan. 14 2009, we held that it was acceptable to mark the solar panels with the proposed wording “Components from Japan, Assembled in Mexico” or “Components from Japan, Manufactured in Mexico.” After reviewing these two rulings, we found that they are incorrect. For the reasons set forth below, we hereby revoke NY R00721, dated Sept. 17, 2004 and NY N047417, dated Jan. 14 2009.

FACTS:

When Kyocera Solar submitted the ruling for R00721 in August 2004, it was in the process of setting up a solar-panel assembly line in Tijuana, Mexico. The solar panels, classifiable under subheading 8541.40.6020, Harmonized Tariff Schedule of the United States (“HTSUS”), are assembled using solar cells, classifiable under subheading 8541.40.6030, HTSUS, manufactured at Kyocera’s factory in Japan. All other components, classifiable outside of subheading 8541.40, HTSUS, are imported from Japan, except for the glass panel, which is manufactured in the United States.

Based on the outcome in R00721, in the ruling request for NY N047417, Kyocera Solar asked whether it would be acceptable to label the solar panels “Components from Japan, Assembled in Mexico” or “Components from Japan, Manufactured in Mexico.”

ISSUE:

Whether the finished solar panels are a product of Mexico for country of origin marking purposes.

LAW AND ANALYSIS:

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. § 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

Section 134.1(j), CBP Regulations (19 C.F.R. 134.1(j)), provides that the “NAFTA Marking Rules” are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g), CBP Regulations (19 C.F.R. 134.1(g)), defines a “good of a NAFTA country” as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules, set forth at 19 C.F.R. Part 102.

Section 102.11(a), CBP Regulations (19 C.F.R. 102.11(a)), sets forth the required hierarchy under the NAFTA Marking Rules for determining country of origin for marking purposes. This section states that the country of origin of a good is the country in which:

- (1) The good is wholly obtained or produced;
- (2) The good is produced exclusively from domestic materials; or
- (3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in [section] 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

Since the components of the solar panels are manufactured in both Japan and the United States, they are neither “wholly obtained or produced” in one country nor “produced exclusively from domestic materials.” Accordingly, the country of origin of the solar panels may not be determined under the first two steps of the hierarchy in 19 C.F.R. 102.11(a)(1) and (a)(2).

Under the third step of the hierarchy, 19 C.F.R. 102.11(a)(3), the country of origin of a good is the country in which “each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in § 102.20 and satisfies any other applicable requirements of that section.” Section 102.1(e), CBP Regulations (19 C.F.R. 102.1(e)) defines “[f]oreign material” as “a material whose country of origin as determined under these rules is not the same country as the country in which the good is produced.” The finished solar panels are classified in subheading 8541, HTSUS. When Kyocera Solar’s ruling request was submitted in 2004, the tariff shift rule for subheading 8541, HTSUS required:

“A change to heading 8541 through 8542 from any other subheading, including another subheading within that group; or

A change to a mounted chip, die or wafer classified in heading 8541 or 8542 from an unmounted chip, die or wafer classified in heading 8541 or 8542; or

A change to a programmed ‘read only memory’ (ROM) chip from an unprogrammed ‘programmable read only memory’ (PROM) chip.”

NY R00721 incorrectly concluded that the Japanese solar cells classified under subheading 8541.40.6030 satisfied the tariff shift rule from any other subheading. Because the finished solar panels are classified under subheading 8541.40.6020, HTSUS, there is no “change to heading 8541 through 8542 from any other subheading” The 10-digit number is actually the statistical reporting number for an article that is formed by combining the 8-digit subheading number with the appropriate 2-digit statistical suffix. See General Statistical Notes 3(a), HTSUS, which describes the “Statistical Reporting Number.”

Further, there is no evidence that the finished solar panels contain any chips, dies, wafers, or “read only memory” chips. Accordingly, the solar panels do not undergo the required change in tariff classification as a result of the operations in Mexico.

When a good’s country of origin cannot be determined under the three methods described in 19 C.F.R. 102.11(a), 19 C.F.R. 102.11(b) provides that “[e]xcept for a good that is specifically described in the Harmonized System as a set, or is classified as a set . . . the country of origin of the good is the country or countries of origin of the single material that imparts the essential character to the good.” Here, the single material or component that impacts the essential character to the solar panels is the individual solar cell. The individual solar cells allow the solar panels to fulfill their purpose of generating electricity and represent the majority of the finished product’s value. Therefore, under 19 C.F.R. 102.11(b), the country of origin for marking purposes of the finished solar panels is Japan, the country of origin of the individual solar cells. We also note that since 2004, another rule was added in 19 CFR 102.20 for goods of heading 8541, HTSUS; however, this rule is not applicable to solar panels.

Because the panels’ country of origin is Japan, they cannot be labeled “Components from Japan, Assembled in Mexico” or “Components from Japan, Manufactured in Mexico.” 19 C.F.R. 134.43(e) permits such labeling only when the assembled article’s country of origin is “the country in which the article is finally assembled.” As noted above, the solar panels are goods of Japan. Accordingly, NY N047417 is also incorrect.

HOLDING:

The solar panels’ country of origin for marking purposes is Japan pursuant to 19 C.F.R. 102.11(b). Therefore, they may not be labeled “Components from Japan, Assembled in Mexico” or “Components from Japan, Manufactured in Mexico.”

EFFECT ON OTHER RULINGS:

NY R00721, dated Sept. 17, 2004 and NY N047417, dated Jan. 14 2009 are 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,

MYLES B. HARMON,
Director

Commercial Trade & Facilitation Division

GENERAL NOTICE

**PROPOSED REVOCATION OF RULING LETTER RELATING
TO THE ELIGIBILITY OF COPPER SHEETS FOR A
PARTIAL DUTY EXEMPTION UNDER SUBHEADINGS
9802.00.60, HTSUS**

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

ACTION: Notice of proposed revocation of one ruling letter relating to the eligibility of copper sheets for a partial duty exemption under subheading 9802.00.60 of the Harmonized Tariff Schedule of the United States (HTSUS).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) proposes to revoke one ruling letter, Headquarters Ruling (“HQ”) 540430, dated June 30, 1997, relating to the eligibility of copper sheets for a partial duty exemption under subheadings 9802.00.60 of the HTSUS. Similarly, CBP is proposing to revoke any treatment previously accorded to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before October 30, 2015.

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

FOR FURTHER INFORMATION CONTACT: Ross Cunningham, Valuation and Special Programs Branch, at (202) 325–0034.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the eligibility of certain copper sheets for a partial duty exemption under subheadings 9802.00.60 of the HTSUS. Although in this notice, CBP is specifically referring to the revocation of HQ 540430, dated June 30, 1997 (Attachment A), this notice covers any rulings on these products which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

Pursuant to 19 U.S.C. § 1625(c)(1), CBP proposes to revoke HQ 540430, dated June 30, 1997, in accordance with the analysis set forth in proposed HQ H265781 (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: September 10, 2015

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

HQ 560430

June 30, 1997

CLA-2: RR:TC:SM 560430 BLS

CATEGORY: Classification

TARIFF NO.: 9802.00.60

PORT DIRECTOR

10 CAUSEWAY STREET

BOSTON, MA 02222-1059

RE: Applicability of subheading 9802.00.60, HTSUS, to copper sheets produced from scrap obtained from manufacturing operations in the U.S.; HRL 555096

DEAR SIR:

This is in reference to a letter dated April 15, 1997, on behalf of Waterbury Rolling Mills, Inc. ("WRM"), requesting a ruling that certain copper sheets imported from Germany are eligible for the partial duty exemption under subheading 9802.00.60, Harmonized Tariff Schedule of the United States (HTSUS). We understand that entries of the subject merchandise are currently being filed at your port.

FACTS:

WRM imports from Germany copper sheets which are either refined copper sheets or copper alloy sheets. Depending on the requirements of the purchaser in the U.S., WRM will subject these copper sheets to a variety of manufacturing processes including slitting, annealing, milling, rolling and leveling. During each of these processes, a certain amount of scrap is generated in the manufacturing process. WRM collects the scraps into segregated groups of refined copper or copper alloy for shipment back to the manufacturer in Germany. Upon return to the manufacturer, the merchandise is subject to a process of manufacture which will produce copper sheets of refined copper or copper alloy depending on the scrap furnished by WRM. The German manufacturer then returns the copper sheets to WRM at a price which consists of only the tolling charge for processing the scrap into sheets.

ISSUE:

Whether the scrap-generated copper sheets are eligible for the partial duty exemption under subheading 9802.00.60, HTSUS, upon importation into the U.S.

LAW AND ANALYSIS:

Subheading 9802.00.60, HTSUS, provides a partial duty exemption for:

[a]ny article of metal (as defined in U.S. Note 3(d) of this subchapter) manufactured in the United States or subject to a process of manufacture in the United States, if exported for further processing, and if the exported article as processed outside the United States, or the article which results from the processing outside the United States, is returned to the United States for further processing.

This tariff provision imposes a dual "further processing" requirement on eligible articles of metal—one foreign, and when returned, one domestic. Metal articles satisfying these statutory requirements may be classified un-

der this tariff provision with duty only on the value of such processing performed outside the U.S., provided there is compliance with the documentary requirements of section 10.9, Customs Regulations (19 CFR 10.9).

It is WRM's position that the scrap resulting from the various stages of manufacture of the copper sheets in the U.S. is an "article of metal ...manufactured in the U.S. or subjected to a process of manufacture in the U.S." Therefore, WRM is of the opinion that upon importation, the copper sheet made from the scrap is eligible for the partial duty exemption under subheading 9802.00.60, HTSUS. WRM argues that this position is mandated by the statutory language and Customs' prior rulings. Headquarters Ruling Letter (HRL) 555096 (July 7, 1989), cited by WRM in support of its position, concerned the applicability of item 806.30, Tariff Schedules of the United States (TSUS) (predecessor to subheading 9802.00.60, HTSUS), to imported stainless steel articles produced from processed scrap purchased from U.S. junk yards and sent abroad. In that case, we stated that industrial scrap (leftover metal from manufacturing operations performed on metal articles) satisfies the requirement under subheading 9802.00.60 that the scrap be a metal article manufactured or subjected to a process of manufacture in the U.S., if the metal article from which the scrap was obtained was initially manufactured or subjected to a process of manufacture in the U.S. We also stated the following, which may serve to clarify Customs position:

We also do not concur with counsel's contention that industrial scrap (leftover metal such as punchings, turnings and grindings) derived from the processing of imported metal qualifies as a metal article under item 806.30, TSUS. The Customs Service has consistently held that this tariff provision is inapplicable to scrap obtained directly from processing foreign-made metal in the U.S. In order for scrap to be eligible under the statute where foreign metal is involved, the scrap must be obtained from processing (sic) metal initially obtained from processing the foreign metal in the U.S. (Emphasis added.)

The scrap in this case is generated in the U.S. from metal (refined copper or copper alloy sheets) produced in Germany. Accordingly, it is Customs position that the copper sheets produced in Germany from scrap generated in the U.S. from processing the foreign-made metal (also copper or copper alloy sheets) are not eligible for the partial duty exemption under subheading 9802.00.60, HTSUS.

We do not find the case of *Ferrostaal Metals v. United States*, 664 F. Supp. 535 (CIT 1987), to be supportive of WRM's position. The issue in that case was whether certain processing (annealing and galvanizing) of steel products in New Zealand resulted in a substantial transformation of Japanese-origin steel for purposes of determining whether the resulting product was covered by the U.S.-Japan voluntary restraint arrangement. (It was held that the steel was not covered by the arrangement since the annealing and galvanizing operations substantially transformed the Japanese-origin steel into a product of New Zealand). Whether or not a material such as the German copper sheets has been "substantially transformed" in the U.S. is not an issue in determining eligibility under subheading 9802.00.60. The sole question is whether the exported metal product was "manufactured" or subject to a "process of manufacture" in the U.S.

Consistent with our position in HRL 555096, we find that the copper scrap, which is a by-product of the imported metal sheets that were subjected to a manufacturing process in the U.S., does not, itself, meet the subheading

9802.00.60 criteria of being an article of metal which was “manufactured in the United States or subject to a process of manufacture in the United States” before exportation back to Germany to be made into more sheets of copper.

HOLDING:

Scrap from foreign-made metal processed is not considered a metal article “manufactured in the United States or subjected to a process of manufacture in the United States.” Therefore, copper or copper alloy sheet produced in Germany from scrap generated by the processing of foreign-made metal in the U.S. is not eligible for the partial duty exemption under subheading 9802.00.60, HTSUS, when imported into the U.S.

Please provide a copy of this decision to Stephen J. Leahy, Esq., Leahy & Ward, 63 Commercial Wharf, Boston, MA 02110.

Sincerely,

JOHN DURANT,

Director

Tariff Classification Appeals

ATTACHMENT B

HQ H265781
OT:RR:CTF:VS H265781 RMC
CATEGORY: Classification

PORT DIRECTOR
10 CAUSEWAY ST.
BOSTON, MA 02222-1059

Re: Subheading 9802.00.60; Revocation of HQ 560430; Copper Sheets; Scrap

DEAR SIR:

It has come to our attention that a decision issued to you, Headquarters Ruling (“HQ”) 560430, dated June 30, 1997, regarding Waterbury Rolling Mills, Inc., concerning the eligibility of copper sheets for a partial duty exemption under subheading 9802.00.60, Harmonized Tariff Schedule of the United States (“HTSUS”), is in error.

FACTS:

HQ 560430 addresses the eligibility of imported copper sheets for a partial duty exemption under subheading 9802.00.60. Waterbury Rolling Mills imported refined copper sheets or copper alloy sheets and performed a variety of manufacturing processes, including splitting, annealing, milling, rolling, brushing, and leveling in the United States, which produced a certain amount of scrap metal. The scrap metal was returned to the manufacturer abroad, where it was used to create new copper sheets for import to the United States. HQ 560430 held that the copper sheets made from scrap metal were not eligible for a partial duty exemption under subheading 9802.00.60, HTSUS.

ISSUE:

Whether imported copper sheets made from scraps generated from splitting, annealing, milling, rolling, brushing, or levelling imported copper in the United States are eligible for a partial duty exemption under subheading 9802.00.60, HTSUS.

LAW AND ANALYSIS:

Subheading 9802.00.60, HTSUS, provides a partial duty exemption for:

[a]ny article of metal . . . manufactured in the United States or subject to a process of manufacture in the United States, if exported for further processing, and if the exported article as processed outside the United States, or the article which results from the processing outside the United States, is returned for the United States for further processing.

HQ 560430 found that the copper sheets were “articles of metal” for the purposes of subheading 9802.00.60, HTSUS, and that the copper sheets were “exported for further processing.” However, it found that the exported scrap was not “subject to a process of manufacture” in the United States.

With respect to the requirement that the scrap metal be “manufactured or subject to a process of manufacture in the United States,” CBP has noted that there are two types of scrap metal: “obsolete” and “industrial.” See HQ 555096, dated July 7, 1989. “Obsolete” scrap consists of worn-out or dis-

carded metal articles, and “industrial scrap” consists of leftover metal from manufacturing operations performed on metal articles. In HQ 555096, it was determined that in order for scrap to be eligible under the statute where foreign metal is involved, the scrap must be obtained from the processing of foreign metal in the U.S. Furthermore, industrial scrap was found eligible under subheading 9802.00.60, HTSUS, where it resulted from the production of metal tool boxes in the United States. See NY N018085, dated Oct. 26, 2007. In NY N018085, an importer brought aluminum coils from Greece into the United States, where they were cut into sheets and sold to U.S. customers who manufactured them into tool boxes. As a result of the tool box manufacturing process, aluminum scrap was produced, which was sold to the aluminum supplier in Greece where it was melted down and used in the production of aluminum coils to be shipped back to the U.S. The new coils were eligible under subheading 9802.00.60, HTSUS, because the metal article from which the scrap was obtained (the tool boxes) was initially subjected to a process of manufacture in the United States (the cutting of aluminum coils into sheets).

Similarly, the metal article from which the scrap was obtained in this case (the imported copper sheets) was initially subjected to a variety of processes of manufacture in the United States including splitting, annealing, milling, rolling, brushing, and leveling. HQ 560430 is therefore incorrect that “the copper scrap, which is a by-product of the imported metal sheets that were subjected to a manufacturing process in the U.S., does not, itself, meet the subheading 9802.00.60 criteria of being an article of metal which was ‘manufactured in the United States or subject to a process of manufacture in the United States’ before exportation back to Germany to be made into more sheets of copper.”

Accordingly, similar items are eligible for a partial duty exemption so long as the items are returned to the United States for further processing and the documentary requirements of 19 C.F.R. § 10.9 are met.

HOLDING:

The imported copper sheets made from scraps generated from splitting, annealing, milling, rolling, brushing, or levelling imported copper in the United States are eligible for a partial duty exemption under subheading 9802.00.60, HTSUS.

EFFECT ON OTHER RULINGS:

HQ 560430 is hereby revoked.

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