

# U.S. Customs and Border Protection



## **ACCREDITATION AND APPROVAL OF SGS NORTH AMERICA, INC., AS A COMMERCIAL GAUGER AND LABORATORY**

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

**ACTION:** Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that SGS North America, Inc., has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes for the next three years as of August 26, 2014.

**DATES:** *Effective Date:* The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on August 26, 2014. The next triennial inspection date will be scheduled for August 2017.

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

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that SGS North America, Inc., 12650 McManus Blvd., Newport News, VA 23602, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. SGS North America, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API chapters	Title
3 .....	Tank gauging.
7 .....	Temperature Determination.

API chapters	Title
8 .....	Sampling.
9 .....	Density Determination.
12 .....	Calculations.
17 .....	Maritime Measurements.

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

CBPL No.	ASTM	Title
27-03 .....	ASTM D-4006	Standard test method for water in crude oil by distillation.
27-04 .....	ASTM D-95	Standard test method for water in petroleum products and bituminous materials by distillation.
27-06 .....	ASTM D-473	Standard test method for sediment in crude oils and fuel oils by the extraction method.
27-08 .....	ASTM D-86	Standard Test Method for Distillation of Petroleum Products.
27-11.....	ASTM D-445	Standard test method for kinematic viscosity of transparent and opaque liquids (and calculations of dynamic viscosity).
27-13 .....	ASTM D-4294	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry.
27-48 .....	ASTM D-4052	Standard test method for density and relative density of liquids by digital density meter.
27-54 .....	ASTM D-1796	Standard test method for water and sediment in fuel oils by the centrifuge method (Laboratory procedure).
27-58 .....	ASTM D-5191	Standard Test Method For Vapor Pressure of Petroleum Products (Mini Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. [http://www.cbp.gov/sites/default/files/documents/gaulist\\_3.pdf](http://www.cbp.gov/sites/default/files/documents/gaulist_3.pdf).

Dated: February 9, 2015.

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

[Published in the Federal Register, February 18, 2015 (80 FR 8680)]



## GENERAL NOTICE

### **PROPOSED MODIFICATION OF RULING LETTER AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN SYNTHETIC SILICA GELS**

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

**ACTION:** Notice of proposed modification of a ruling letter and treatment concerning the tariff classification of synthetic silica gel.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP intends to modify one ruling letter pertaining to the tariff classification of two types of C-560 silica gel from Switzerland, under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to modify any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the proposed action.

**DATES:** Comments must be received on or before April 3, 2015.

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

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

## **SUPPLEMENTARY INFORMATION:**

### **Background**

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that CBP intends to modify one ruling letter pertaining to the classification of two types of C-560 silica gels, from Switzerland. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) J83810, dated June 23, 2003, (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), CBP intends to modify any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer’s or CBP’s previous interpreta-

tion 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 J83810, dated June 23, 2003, CBP classified two of four submitted samples of silicon dioxide, referred to as "C-560" (40–60 microns, Lot 4863 and 200–500 microns, Lot 4934) under subheading 2811.22.50, HTSUS, which provides for Other inorganic acids...: Other inorganic oxygen compounds...: Silicon Dioxide: Other. At the time CBP reasoned that the bound-water content impacted classification.

It is now CBP's position that both lots of "C-560" are properly classified under subheading 2811.22.10, HTSUS, which provides for, ... : Silicon Dioxide: Synthetic silica gel, because the amount of bound water is not relevant to the eight-digit classification under the HTSUS. CBP proposes to modify NY J83810 to alter only the classification of the two types of C-560. The remainder of the ruling remains intact.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY J83810 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise sample pursuant to the analysis set forth in HQ 237643 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: February 13, 2015

MYLES B. HARMON,  
*Director*

COMMERCIAL AND TRADE FACILITATION DIVISION

Attachments

## [ATTACHMENT A]

**NY J83810**

June 23, 2003

CLA-2-28:RR:NC:2:236 J83810

CATEGORY: Classification

TARIFF NO.: 2811.22.1000, 2811.22.5000,  
3824.90.9150

MR. CHARLES SPOTO  
 ALBA WHEELS UP INTERNATIONAL, INC.  
 150-30 132ND AVENUE, SUITE 208  
 JAMAICA, NEW YORK 11434

RE: The tariff classification of 4 grades of Silicon Dioxide "C-Gel" from Switzerland

DEAR MR. SPOTO:

In your letter dated April 23, 2003, you requested a tariff classification ruling.

Samples were submitted for each of the four (4) grades of silicon dioxide "C-Gel". The samples were analyzed by the New York Customs Laboratory.

The technical information you submitted indicates the bound water content of the "C-560 HYD" is over 5 percent. The applicable subheading for the C-gel "C-560 HYD" (40-63 microns, Lot 5718) will be 2811.22.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for Other inorganic acids and other inorganic oxygen compounds of nonmetals: ...Silicon Dioxide: Synthetic silica gel. The rate of duty will be 3.7 percent ad valorem.

The technical information you submitted indicates the bound water content of the both types of "C-560" is under 5 percent. The applicable subheading for the C-gel "C-560" (40-60 microns, Lot 4863 and 200-500 microns, Lot 4934), will be 2811.22.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Other inorganic acids and other inorganic oxygen compounds of nonmetals: Silicon Dioxide: Other. The rate of duty will be Free.

The technical information you submitted for the "C-18 C-490" indicates hydrocarbon chains are chemically bonded to the silica gel surface. The applicable subheading for the C-gel "C18 C-490" (35-70 microns, Lot 1142) will be 3824.90.9150, Harmonized Tariff Schedule of the United States (HTS), which provides for Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other:...Other. The rate of duty will be 5 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Deborah Walsh at (646) 733-3034.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

[ATTACHMENT B]

**HQ H237643**  
**CLA-20T:RR:TCM H237643 ERB**  
**CATEGORY : Classification**  
**TARIFF NO.: 2811.22.10**

MR. CHARLES SPOTO  
 ALBA WHEELS UP INTERNATIONAL, INC.  
 150-30 132ND AVENUE, SUITE 208  
 JAMAICA, NEW YORK 11434

RE: Modification of NY J83810; Tariff classification of two samples of silicon dioxide "C-Gel", synthetic silica gel, from Switzerland

DEAR MR. SPOTO:

On June 23, 2003, U.S. Customs and Border Protection (CBP) issued Wheels Up International, Inc. (Wheels Up) New York Ruling Letter (NY) J83810. NY J83810 pertains to the tariff classification under the Harmonized Tariff Schedule of the United States, (HTSUS) of submitted samples of four grades of silicon dioxide, referred to as "C-Gels." We have since reviewed NY J83810 and find it to be in error with respect to two different lots referred to as "C-560" (40-60 microns, Lot 4863 and 200-500 microns, Lot 4934), which is described in detail herein.

**FACTS:**

According to NY J83810, four samples were submitted to CBP for analysis, one of each of four grades of silicon dioxide being imported:

- (1) "C-560 HYD" (40-63 microns, Lot 5718);
- (2) Two types of "C-560" (40-60 microns, Lot 4863 and 200-500 microns, Lot 4934);
- (3) "C-18 C-490" (35-70 microns, Lot 1142)

At the time, the Lots at issue, 4863 and 4934, were classified in subheading 2811.22.50, HTSUS. Specifically CBP stated:

The technical information you submitted indicates the bound water content of both types of "C-560" is under 5 percent. The applicable subheading for the C-gel "C-560" (40-60 microns, Lot 4863 and 200-500 microns, Lot 4934), will be 2811.22.5000, HTSUS, which provides for Other inorganic acids and other inorganic oxygen compounds of nonmetals: Silicon Dioxide: Other. The rate of duty will be Free.

Thus, in that ruling CBP made note that the bound water content of both types of C-560 was under 5%. The New York Laboratory was asked whether this product meets the criteria for silicon dioxide. Laboratory Report NY 20030621 stated the following in response:

The sample consists of four plastic containers of a white powder of varying mesh size as follows: Lot 4931 (0.200-0.500 MM), Lot 4863 (0.040-0.060MM), Lot 5718 (0.040-0.063MM), and Lot 1142 (0.035-0.070 MM). Laboratory analysis has determined that the four sample [sic] are an amorphous form of silica. Lot number 1142 also contains a coating of an unsaturated 18 carbon non cyclic hydrocarbon. Method reference uscl 25.01.

**ISSUE:**

Are the two subject C-gels classified under subheading 2811.22.10, HTSUS, which provides for “Other inorganic acids and other inorganic oxygen compounds of nonmetals: ... :Silicon Dioxide: Synthetic silica gel” or under subheading 2811.22.50, HTSUS, as “Other inorganic acids and other inorganic oxygen compounds of nonmetals:...: Silicon Dioxide: Other.”

**LAW AND ANALYSIS:**

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

2811	Other inorganic acids and other inorganic oxygen compounds of nonmetals:
2811.22	Other inorganic oxygen compounds of nonmetals: Silicon dioxide:
2811.22.10	Synthetic silica gel
2811.22.50	Other

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

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

In Headquarters Ruling (HQ) 086755, dated September 28, 1990, CBP concluded that “Although most silica gels will have a bound water content of greater than 5 percent, there exists no strict minimum-bound-water-content-cutoff point for the classification of silica gel.” Multiple characteristics must be considered in determining whether a product is “synthetic silica gel” of subheading 2811.22.10, HTSUS or “other silicon dioxide” of subheading 2811.22.50, HTSUS; no single criteria, such as the bound water content, is sufficient to classify in either subheading.

The two C-gels at issue were determined to be inorganic amorphous forms of silica. CBP has had prior occasion to classify amorphous forms of silica. In all cases CBP has determined that the goods are properly classified in subheading 2811.22.10, HTSUS, as synthetic silica gel, without reference to the bound water content. See NY N237450, dated March 15, 2013, whereby CBP classified a sample of white, odorless, granules referred to as silica gel or base

gel, as synthetic amorphous silicon dioxide under subheading 2811.22.10, HTSUS.<sup>1</sup>

Further, the two C-gel products at issue do not contain any impermissible impurities. See *Degussa Corporation, v. United States*, 508 F.3d 1044, (November 26, 2007), where the Court of Appeals for the Federal Circuit (CAFC) reversed the Court of International Trade (CIT) holding that surface-modified treatments changed the nature of the silica particle from hydrophilic (i.e. water-attractive) to hydrophobic (i.e. water-repellant) and constitutes an impermissible impurity and cannot be classified under Chapter 28.

Therefore, silicon dioxide which can be described as synthetic silica gel is classified in subheading 2811.22.10, HTSUS, the *eo nomine* subheading for the merchandise.

### **HOLDING:**

By application of GRI 1 and GRI 6, the two types of “C-560” silica gel (Lots 4863 and 4934) are provided for in heading 2811, HTSUS. They are specifically provided for under subheading 2811.22.10, HTSUS, as “Other inorganic acids and other inorganic oxygen compounds of nonmetals:…Silicon Dioxide: Synthetic silica gel.” The column one, general rate of duty is 3.7 percent *ad valorem*.

Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at [www.usitc.gov](http://www.usitc.gov)

The classification of C-560 HYD (40–63 microns, Lot 5718) and C-18 C-490 (35–70 microns, Lot 1142) of NY J83810 remains unchanged.

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

NY J83810, dated June 23, 2003, is hereby MODIFIED.

Dated: February 13, 2015

MYLES B. HARMON  
*Director*

*Commercial and Trade Facilitation Division*

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<sup>1</sup> See also NY N114488, dated August 9, 2010 (classifying Silica Gel Siliaflash F60); NY L89849, dated January 31, 2006 (classifying silica gel from China); NY K85646, dated May 25, 2004 (classifying silica gel from China); NY H89314, dated March 18, 2002 (classifying New Fresh Step® Crystals (made of silica gel)); NY F88594, dated June 30, 2000, (classifying silica cat litter from China); NY D85977, dated January 5, 1999 (classifying silica gel from Japan) all under subheading 2811.22.10, HTSUS. Note: the bound water content of the silica gel was not discussed in any of those rulings.

**NOTICE OF REVOCATION OF FOUR RULING LETTERS  
AND REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF RETAIL PACKAGES  
CONTAINING ORAL HYGIENE ARTICLES AND,  
ALTERNATIVELY, ORAL HYGIENE ARTICLES PACKAGED  
WITH A PLASTIC TOY**

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

**ACTION:** Notice of revocation of four ruling letters and revocation of treatment relating to the tariff classification of retail packages containing oral hygiene articles and, alternatively, oral hygiene articles packaged with a plastic toy.

**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 four ruling letters concerning the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of retail packages containing oral hygiene articles and, alternatively, oral hygiene articles packaged with a plastic toy. 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 and Decisions, Vol. 48, No. 30, on July 30, 2014. Two comments were received in opposition to the notice.

**DATES:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 4, 2015.

**FOR FURTHER INFORMATION CONTACT:** Laurance W. Frierson, Tariff Classification and Marking Branch, at (202) 325–0371.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

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

pliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the 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, CBP published notice proposing to revoke New York Ruling Letters ("NY") NY N047570, dated December 30, 2008; NY N034382, dated August 1, 2008; NY N021284, dated January 2, 2008; and NY M84609, dated June 27, 2006, in the Customs Bulletin and Decisions, Vol. 48, No. 30, on July 30, 2014. CBP received two comments, dated August 11 and August 20, 2014, in opposition to the notice of proposed action.

The comments asserted that a retail set consisting of a plastic toothbrush holder, plastic toothbrushes, and a plastic rinse cup should be classified pursuant to General Rule of Interpretation 3(b), as if consisting of the plastic toothbrushes which give the set its essential character. CBP has carefully considered the positions advanced in the received comments. However, according to the analysis contained in Headquarters Ruling Letter ("HQ") H123519, set forth as an attachment to this notice, CBP finds that the essential character of such retail sets is imparted not by the plastic toothbrushes, but instead by the plastic toothbrush holder.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical

transactions should have advised CBP during the notice period. An importer's failure to 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 N047570, N034382, and N021284, CBP determined that merchandise consisting of two toothbrushes, a cup holder, and a plastic toy was classified as a set under heading 9603, HTSUS. Similarly, in NY M84609, CBP determined that a plastic toothbrush holder with a mirror attached, two toothbrushes, and a rinse cup were classified as a set under heading 9603, HTSUS. In each of the four rulings, CBP classified the merchandise in subheading 9603.21.00, HTSUS, which provides for "Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorized, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees): Toothbrushes, shaving brushes, hair brushes, nail brushes, eyelash brushes and other toilet brushes for use on the person, including such brushes constituting parts of appliances: Toothbrushes, including dental-plate brushes."

It is now CBP's position that the merchandise described in NY N047570, N034382, and N021284, each consisting of a plastic toothbrush holder, plastic rinse cup, toothbrushes, and plastic toy, is classified separately, by operation of GRI 1, under the tariff provision applicable to the individual articles. The plastic toothbrush holder is classified in heading 3924, HTSUS, specifically in subheading 3924.90.56, HTSUS, which provides for, "Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Other: Other." The plastic rinse cup is classified in heading 3924, HTSUS, specifically in subheading 3924.10.40, HTSUS, which provides for, "Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Tableware and kitchenware: Other." The plastic toy is classified in heading 9503, HTSUS, which provides for, "Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof." The toothbrushes are classified in heading 9603, HTSUS, specifically in subheading 9603.21.00, HTSUS, which provides for, "Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorized, mops and feather dusters; prepared knots

and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees): Toothbrushes, shaving brushes, hair brushes, nail brushes, eyelash brushes and other toilet brushes for use on the person, including such brushes constituting parts of appliances: Toothbrushes, including dental-plate brushes.”

It is now CBP’s position that the merchandise described in NY M84609, consisting of a plastic toothbrush holder, plastic rinse cup, and toothbrushes, is classified in heading 3924, HTSUS, by operation of GRI 3(b). Specifically, the merchandise is classified in subheading 3924.90.56, HTSUS, which provides for, “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Other: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N047570, N034382, N021284, M84609, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in HQ H123519, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. In accordance with 19 U.S.C. §1625(c), ruling letter HQ H123519 will become effective 60 days after publication in the Customs Bulletin and Decisions.

Dated: February 6, 2015

ALLYSON MATTANAH  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H123519

February 6, 2015

CLA-2 OT:RR:CTF:TCM H123519 LWF

CATEGORY: Classification

TARIFF NO.: 3924.90.56

Ms. CHRISTINA YUN  
DIRECTOR OF OPERATIONS/LOGISTICS  
*M.Z.BERGER & COMPANY*  
29-76 NORTHERN BLVD., 4TH FLOOR  
LONG ISLAND CITY, NY 11101

RE: Revocation of New York Ruling Letter N047570, dated December 30, 2008; Revocation of New York Ruling Letter N034382, dated August 1, 2008; Revocation of New York Ruling Letter N021284, dated January 2, 2008; Revocation of New York Ruling Letter M84609, dated June 27, 2006; tariff classification of retail packages containing oral hygiene articles and, alternatively, oral hygiene articles packaged with a plastic toy

DEAR Ms. YUN:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered three New York Ruling Letters (NY) issued to M.Z. Berger & Company ("MZB"). In NY N047570, dated December 30, 2008, CBP determined that various "Splendid Smile Sets," each consisting of a plastic toothbrush holder, toothbrushes, plastic rinse cup, and a plastic toy, were classified as a set in subheading 9603.21.00, Harmonized Tariff Schedule of the United States (HTSUS), which provides for, "Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorized, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees): Toothbrushes, shaving brushes, hair brushes, nail brushes, eyelash brushes and other toilet brushes for use on the person, including such brushes constituting parts of appliances: Toothbrushes, including dental-plate brushes." Similarly, in NY N034382 and NY N021284, issued to MZB on August 1, 2008 and January 2, 2008, respectively, CBP classified substantially similar merchandise as "retail sets" under subheading 9603.21.00, HTSUS. CBP has determined that NY N047570, N034382, and N021284 are incorrect. Accordingly, for the reasons set forth below, CBP is revoking those rulings.<sup>1</sup>

CBP is also revoking NY M84609, issued to JAV International, Inc. on June 27, 2006. In NY M84609, CBP determined that merchandise consisting of a plastic toothbrush holder with a mirror attached, two toothbrushes, and a rinse cup was classified as a set under subheading 9603.21.00, HTSUS. CBP has determined that NY M84609 is incorrect and, for the reasons set forth below, is revoking the 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 proposing to revoke ruling letters NY N047570, N034382, N021284, and M84609 was published on July 30,

<sup>1</sup> In reaching this decision, CBP has considered information and photographs of the merchandise submitted by you on behalf of MZB, via electronic communication dated August 7, 2012.

2014, in Volume 48, Number 30, of the Customs Bulletin and Decisions. CBP received two comments from MZB in opposition to the proposed revocation.

First, in comments dated August 11, 2014, MZB asserts that when it originally submitted the tariff classification ruling requests that resulted in CBP's classification of various models of "Splendid Smile Sets" and "Great Smile Sets" in ruling letters NY N047570, N034382, and N021284, MZB did not intend to describe every model of the "Splendid Smile Sets" and "Great Smile Sets" as including a plastic toy. Consequently, MZB asserts that CBP should classify the merchandise at issue in ruling letters NY N047570, N034382, and N021284 as if consisting only of a plastic toothbrush holder, plastic toothbrushes, and a plastic rinse cup. MZB further asserts that the "Splendid Smile Sets" and "Great Smile Sets," when considered without a plastic toy, should be classified as "retail sets" pursuant to General Rule of Interpretation 3(b), with the toothbrush imparting the essential character of the retail set.

In response to MZB's assertion that it did not intend to describe each model of the merchandise at issue in ruling letters NY N047570, N034382, and N021284 to include a plastic toy, this office notes that CBP's reconsideration of ruling letters NY N047570, N034382, and N021284 is limited to a review of the merchandise identified and classified in those rulings. At the time CBP issued ruling letters NY N047570, N034382, and N021284, CBP did not possess information that would have indicated any of the considered merchandise did not contain a plastic toy. Consequently, CBP's reconsideration of ruling letters NY N047570, N034382, and N021284 is limited to a review of "Splendid Smile Sets" and "Great Smile Sets" that includes a plastic toy.

Additionally, CBP notes that this reconsideration ruling includes a revocation of the analysis contained in ruling letter NY M84609, in which CBP considered the classification of a "Barbie Fairytopia Great Smile Set" consisting of a plastic toothbrush holder, plastic toothbrushes, and a plastic rinse cup, but not including a plastic toy. As this ruling letter therefor sets forth the classification for collections of merchandise both including and not including a plastic toy, CBP notes that this ruling should provide adequate guidance for the tariff classification of future entries of substantially similar goods. Should MZB be concerned that other models of the "Splendid Smile Sets," "Great Smile Sets," or related collections of articles are not substantially similar to the merchandise discussed in the below ruling, MZB may request a prospective ruling concerning the tariff classification of such merchandise to U.S. Customs and Border Protection, National Commodity Specialist Division, One Penn Plaza, 10<sup>th</sup> Floor, New York, NY 10119.

Second, in comments dated August 20, 2014, MZB asserts that the essential character of a retail set consisting of a plastic toothbrush holder, plastic toothbrushes, and a plastic rinse cup is imparted by the plastic toothbrushes. In support of this position, MZB cites the marketing, packaging, "retail taxonomy," and functionality of the "Great Smile Set" to argue that the toothbrushes are indispensable to the structure, core, or condition of the retail set.

In response, CBP notes that the classification of retail sets consisting of a plastic toothbrush holder, plastic toothbrushes, and a plastic rinse cup is set forth below in the reconsideration of ruling letter NY M84609, concerning the classification of MZB's "Barbie Fairytopia Great Smile Set." As examined in this revocation ruling, CBP has considered whether toothbrushes impart the instant "Barbie Fairytopia Great Smile Set" with its essential character and

has determined that they do not. After detailed consideration of the articles included in the “Barbie Fairytopia Great Smile Set,” CBP has determined that the toothbrush holder imparts the retail set with its essential character, because the role of the toothbrush holder in relation to the use of the set is greater than that of the other items. Moreover, the bulk, weight, value, and visual appearance of the toothbrush holder are each greater than those of the other items. Consequently, CBP is not persuaded by comments submitted by MZB in opposition to the proposed revocation and instead, proceeds with its revocation of NY N047570, N034382, N021284, and M84609 as originally proposed in the Customs Bulletin and Decisions, Vol. 48, No. 30, dated July 30, 2014.

#### **FACTS:**

In NY N047570, N034382, and N021284, CBP described the merchandise at issue as various models of the “Splendid Smile Set” and “Great Smile Set” for children, each package consisting of “two toothbrushes, a cup holder, and a plastic toy.” However, based on information and photographs submitted by MZB, via electronic communication dated August 7, 2012, the merchandise previously classified in NY N047570, N034382, and N021284 is appropriately described as consisting of a cartoon-themed plastic toothbrush holder, two plastic toothbrushes, a plastic rinse cup, an a plastic toy. The shape and appearance of the individual articles in each model resemble animated characters from cartoon films and television entertainment, and an example of the subject merchandise appears in Fig. 1 below. The merchandise is package for retail sale and is intended for use by children ages three and older.



**Figure 1, “Piston Cup Smile Set”**

In contrast to the merchandise at issue in NY N047570, N034382, and N021284, which included the consideration of a plastic toy, the “Barbie Fairytopia Great Smile Set” classified in NY M84609 did not include a toy. In M84609, CBP described the “Barbie Fairytopia Great Smile Set,” as follows:

The submitted sample is identified as “Barbie Fairtopia Great Smile Set, Item # Styles CBE10109. The item is comprised of a toothbrush holder with a mirror attached, 2 toothbrushes and a rinse cup, all made of plastic. The toothbrush holder is decorated with flowers and a butterfly

and the rinse cup features a depiction of three “Barbie” fairies. The “Barbie Fairytopia Great Smile Set” is packaged for retail sale and is intended for children ages 3 and up.

\* \* \* \* \*

### ISSUE:

Whether the merchandise is classified as a set for tariff purposes, or separately under their own individual headings, in heading 3924, HTSUS, as hygienic articles of plastic, heading 9503, HTSUS, as toys, or heading 9603, HTSUS, as brushes.

### 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:

3924	Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics:
3924.10	Tableware and kitchenware:
3924.10.40	Other
3924.90	Other:
3924.90.56	Other
* * *	* * *
9503.00.00	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
* * *	* * *
9603	Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorized, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees):
	Toothbrushes, shaving brushes, hair brushes, nail brushes, eyelash brushes and other toilet brushes for use on the person, including such brushes constituting parts of appliances:
9603.21.00	Toothbrushes, including dental-plate brushes
* * *	* * *

The merchandise classified in NY N047570, N034382, N021284, and M84609 consists of individual articles that are, prima facie, classifiable in different headings and packaged together for retail sale. There is no dispute that heading 3924, HTSUS, describes the plastic toothbrush holder and plastic rinse cup. *See* Headquarters Ruling Letter (HQ) H040737, dated July 23, 2009. Similarly, there is no dispute that heading 9603, HTSUS, describes

the toothbrushes, and in the case of rulings NY N047570, N034382, and N021284, heading 9503, HTSUS, describes the plastic toys included in the retail packages.<sup>2</sup> Consequently, because the individual articles are, *prima facie*, classifiable in separate headings, consideration is given to classification pursuant to GRI 3.

GRI 3(b) provides, in pertinent part, as follows:

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

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

\* \* \* \* \*

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs<sup>2</sup>) constitute the official interpretation of the HTSUS. While not legally binding or 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. 89-90, 54 Fed. Reg. 35127 (August 23, 1989).

GRI 3(b) states that when imported merchandise is, *prima facie*, classifiable under two or more headings, “[g]oods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.” The term “set” in GRI 3(b) carries specific meaning and is defined in detail by EN (X) to GRI 3(b), which states:

- (X) For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:
  - (a) Consist of at least two different articles which are, *prima facie*, classifiable in different headings...;
  - (b) Consist of products or articles put up together to meet a particular need or carry out a specific activity; and
  - (c) Are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

\* \* \* \* \*

As detailed above, in the case of the toothbrush holders, toothbrushes, rinse cups, and toys considered in NY N047570, N034382, N021284, there is no dispute that the individual component articles satisfy two of the three criteria for “retail sets” found in GRI 3(b) EN (X). Consistent with GRI 3(b) EN (X)(a) and (c), the articles are, *prima facie*, classifiable in different head-

<sup>2</sup> Unlike the plastic “McQueen Car” at issue in HQ H040737, the plastic toys classified in NY N047570, N034382, and N021284 do not feature circular depressions on the top of the toys in which a rinse cup may be secured for storage. Consequently, the instant plastic toys cannot be considered function cup holders and therefore, are not described by the terms of heading 3924, HTSUS.

ings, and likewise, are put up in a manner suitable for sale directly to users without repacking. However, due to the presence of a plastic toy, CBP finds that the merchandise presented in NY N047570, N034382, and N021284 is not put up to meet a particular need or specific activity for the purposes of GRI 3(b) and therefore, cannot be classified as a retail set.

The courts have provided guidance on what constitutes a “products or articles put up together to meet a particular need or carry out a specific activity” for purposes of classification pursuant to GRI 3(b). See *Estee Lauder, Inc. v. United States*, 815 F. Supp. 2d 1287, 1294 (Ct. Int’l Trade 2012). In *Estee Lauder*, the Court of International Trade (CIT) considered the classification of several cosmetic items put up together for retail sale, and concluded that because each item was specifically related to makeup and possessed an identifiable, individual function that was intended for use together or in conjunction with one another for the single activity of putting on makeup, the cosmetic items met the particular need of makeup application and were therefore properly classified pursuant to GRI 3(b). *Id.* at 1295–96. Noting that each of the exemplars provided in the ENs consist of individual components that are used together or in conjunction with another for a single purpose or activity, the CIT agreed that “for goods put up together to meet the ‘particular need’ or ‘specific activity’ requirement and thereby be deemed a set, they must be so related as to be clearly intended for use together or in conjunction with one another for a single purpose or activity.” *Id.* (citing with approval CBP’s Informed Compliance Publication, “Classification of Sets”, 12 (2004)).<sup>3</sup>

Here, CBP finds that the articles at issue in NY N047570, N034382, and N021284 are not intended for use in a single purpose or activity. Specifically, the toothbrush holders, rinse cups, and toothbrushes are put up for the specific activity of oral hygiene, whereas the toys are to be used for the separate and distinct activity of amusement and entertainment. Consequently, CBP concludes that the articles are not so related as to be clearly intended for use with one another for a single purpose or activity and do not satisfy the “particular need” or “specific activity” description provided by GRI 3(b) EN X(b). *Estee Lauder*, 815 F. Supp. 2d at 1295. Accordingly, the articles at issue in NY N047570, N034382, and N021284 are not GRI 3 “retail sets” and must be classified separately, under the tariff provisions applicable to each of the individual articles.

In contrast to the merchandise at issue in NY N047570, N034382, and N021284, the “Barbie Fairytopia Great Smile Set” in NY M84609 does not contain a plastic toy, and instead, consists only of “a toothbrush holder with a mirror attached, two toothbrushes and a rinse cup, all made of plastic.” As such, unlike the merchandise at issue in NY N047570, N034382, and

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<sup>3</sup> Equally important, however, the CIT in *Estee Lauder* warned against conflating the GRI 3(b) requirements for composite goods (i.e., whether the items are “mutually complementary” or “adapted to one another”), with the requirements for the GRI 3(b) retail sets analysis (do the goods “meet a particular need” or “carry out a specific activity?”). *Id.* at 23 (citing ENs (IX) and (X) to GRI 3(b)), stating:

Requiring set goods to be mutually complementary or adapted to one another effectively joins the Explanatory Notes requirements for composite goods to the Explanatory Notes describing retail sets. This conflation of requirements is unsupported in the statute or the Explanatory Notes. *Id.*

N021284, the articles of the “Barbie Fairytopia Great Smile Set” are not to be used for the separate and distinct activity of amusement and entertainment. Instead, the merchandise at issue in NY M84609 includes separate articles packaged for retail sale that are, *prima facie*, classified in different headings, and which are also put up together for the single “particular need” or “specific activity” of children’s oral hygiene. Consequently, CBP finds that the “Barbie Fairytopia Great Smile Set” meets the definition of a GRI 3(b) retail set.

Under GRI 3(b), sets must be classified according to the material or component which gives them their essential character. The “essential character” of an article is “that which is indispensable to the structure, core or condition of the article, i.e., what it is.” *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (Ct. Int’l Trade 2005). Recent court decisions on the essential character for GRI 3(b) purposes have looked primarily to the role of the constituent material in relation to the use of the goods. *See Structural Industries*, 360 F. Supp. 2d 1330; *Conair Corp. v. United States*, 29 C.I.T. 888 (2005); *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d 1278 (Ct. Int’l Trade 2006), *aff’d* 491 F.3d 1334 (Fed. Cir. 2007). Consequently, CBP finds that an essential character analysis will vary from product to product.

In determining the essential character of the “Barbie Fairytopia Great Smile Set,” CBP notes that the merchandise consists of a toothbrush holder, two plastic toothbrushes, and a plastic rinse cup. The toothbrush holder, toothbrushes, and plastic rinse cup are each used for the purpose of oral hygiene; however, CBP concludes that the toothbrush holder predominates the set by its role in relation to the use of the goods, as well as by bulk, weight, value, and visual appearance. Importantly, CBP observes that the toothbrush holder provides the overall structure of the set by serving as a surface on which a consumer can store the toothbrushes and rinse cup. Unlike toothbrushes that are replaced periodically after normal use, the toothbrush holder is not meant to be discarded. Furthermore, the toothbrush holder is the largest article included with the “Barbie Fairytopia Great Smile Set.” Moreover, the toothbrush holders feature a large, molded plastic likeness of a cartoon character. The characters on the holders are rendered in detail and serve as the primary decoration for the set. By contrast, the toothbrushes and rinse cups associated with the sets are merely accented with simple text or graphics consistent with the motif of the set. Consequently, in comparing the holder, toothbrushes, and rinse cup of the various sets, we conclude that the toothbrush holder imparts the “Barbie Fairytopia Great Smile Set” of NY M84609 with its essential character, pursuant to GRI 3(b). As the plastic toothbrush holders are individually classified in heading 3924, HTSUS, classification of the “Barbie Fairytopia Great Smile Set” in heading 3924, HTSUS, as hygienic articles of plastic, is appropriate.

Our analysis of the instant facts is consistent with NY M83454, dated May 18, 2006, in which CBP considered the essential character of similar cartoon-themed toothbrush holder sets that contained a toothbrush and rinse cup. In that ruling, CBP concluded that although the product’s cartoon decorations or accessories may be amusing to the user, the merchandise’s principal function was that of a toothbrush holder for oral hygiene. Likewise, CBP did not find that the toothbrush imparted the merchandise with its essential character, but instead concluded that the toothbrush holders and cups, together, imparted the essential character to the set and classified the merchandise in heading 3924, HTSUS, which provides for “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics.”

**HOLDING:**

By application of GRI 1, the articles at issue in NY N047570, N034382, and N021284, each consisting of a plastic toothbrush holder, plastic rinse cup, toothbrushes, and plastic toy, are classified separately, under the tariff provision applicable to the individual articles. The plastic toothbrush holder is classified in heading 3924, HTSUS, specifically in subheading 3924.90.56, HTSUS, which provides for, "Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Other: Other." The 2014 column one, general rate of duty for subheading 3924.90.56, HTSUS, is 3.4% ad valorem. The plastic rinse cup is classified in heading 3924, HTSUS, specifically in subheading 3924.10.40, HTSUS, which provides for, "Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Tableware and kitchenware: Other." The 2014 column one, general rate of duty for subheading 3924.10.40, HTSUS, is 3.4% ad valorem. The plastic toy is classified in heading 9503, HTSUS, which provides for, "Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls; other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof." The 2014 column one, general rate of duty for subheading 9503.00.00, HTSUS, is free. The toothbrushes are classified in heading 9603, HTSUS, specifically in subheading 9603.21.00, HTSUS, which provides for, "Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorized, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees): Toothbrushes, shaving brushes, hair brushes, nail brushes, eyelash brushes and other toilet brushes for use on the person, including such brushes constituting parts of appliances: Toothbrushes, including dental-plate brushes." The 2014 column one, general rate of duty for subheading 9603.21.00, HTSUS, is free.

By application of GRI 3(b), the "Barbie Fairytopia Great Smile Set" at issue in NY M86454, consisting of a plastic toothbrush holder, plastic rinse cup, and toothbrushes, is classified in heading 3924, HTSUS; specifically, it is classified in subheading 3924.90.56, HTSUS, which provides for, "Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Other: Other." The 2014 column one, general rate of duty for subheading 3924.90.56, HTSUS, is 3.4% 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 <http://www.usitc.gov>.

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

**EFFECT ON OTHER RULINGS:**

In accordance with the above analysis, NY N047570, dated December 30, 2008, NY N034382, dated August 1, 2008, NY N021284, dated January 2, 2008, and NY M84609, dated June 27, 2006, are hereby REVOKED.

*Sincerely,*

ALLYSON MATTANAH

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**PROPOSED MODIFICATION OF A RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF A FISHING ROD  
HOLDER WITH BOAT MOUNT**

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

**ACTION:** Notice of proposed modification of a ruling letter and proposed revocation of treatment relating to the tariff classification of a certain fishing rod holder with boat mount.

**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 proposing to modify a ruling concerning the tariff classification of a certain fishing rod holder with boat mount under the Harmonized Tariff Schedule of the United States (“HTSUS”). Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before April 3, 2015.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street, N.E., 10th Floor, Washington, D.C, 22209, and may be inspected during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0188.

**FOR FURTHER INFORMATION CONTACT:** Robert Shervette, Office of International Trade, Tariff Classification and Marking Branch, at (202) 325–0274.

**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”), become effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of a fishing rod holder with boat mount. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter ("NY") R00811, dated September 16, 2004, set forth as "Attachment A", this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during 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 is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transaction 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 of this notice.

In NY R00811, CBP classified a fishing rod holder with boat mount under heading 9507, HTSUS, which provides for: "[f]ishing rods, fish hooks and other line fishing tackle; fish landing nets, butterfly nets and similar nets; decoy "birds" (other than those of heading 9208 or 9705) and similar hunting or shooting equipment; parts and accessories thereof." Upon our review of NY R00811, we have determined that the fishing rod holder with boat mount described in that ruling

is properly classified under heading 3926, HTSUS, which provides for “[o]ther articles of plastics and articles of other materials of headings 3901 to 3914.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY R00811, and to revoke or modify any other ruling not specifically identified to reflect the proper classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter (“HQ”) H240612, set forth as “Attachment B” to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: February 13, 2015

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

Attachments

## [ATTACHMENT A]

**NY R00811**

September 16, 2004

CLA-2-95:RR:NC:2:224 R00811

CATEGORY: Classification

TARIFF NO.: 9507.10.0080

SUSAN LAKE

SCOTTY FISHING &amp; MARINE PRODUCTS

2065 HENRY AVE. WEST, SIDNEY

B.C., CANADA V8L 5Z6

RE: The tariff classification of fishing gear from Canada.

DEAR MS. LAKE:

In your electronic ruling request dated September 9, 2004, you requested a tariff classification ruling.

The merchandise consists of two downriggers for fishing, a mount for a downrigger, and a fishing rod holder and mounting device.

The downriggers are plastic fishing accessories that take a fishing line to water depths that cannot be reached with just a fishing rod. A downrigger is a spool of wire mounted on a boat. A heavy weight is hung on the end of the downrigger wire. A downrigger release is hooked to the wire and fishing line is hooked into the release. The downrigger can then be lowered to precisely the fish depth. When a fish hits, the line is released and the fish is fought on a rod and reel free of heavy lines and weights. One of your subject downriggers, model 1080 Downrigger, is a manual version that requires cranking a spool in order to retrieve the cable and weight. Another, model 1099 Downrigger, operates essentially the same but has an electric motor, gears and belt making it a power driven unit.

Both of the described downrigger products are mounted to the boat with a specially designed molded plastic mount identified as model 1025 Right Angle Side Gunnel Mount for Downrigger.

The molded plastic fishing rod holder, model 230 Rod Holder, holds a fishing rod while actively fishing. The rod holder attaches to a boat with a model 241 Side/Deck Mount that is permanently screwed to the boat.

You state that all of the foregoing products are designed and used for recreational fishing only. The applicable subheading for the downriggers, the rod holder and the mounting gear will be 9507.10.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for fishing rods, fish hooks and other line fishing tackle...parts and accessories thereof: fishing rods and parts and accessories thereof, parts and accessories. The rate of duty will be 6 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Tom McKenna at 646-733-3025

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,**National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H240612  
**CLA-2 OT:RR:CTF:TCM** H240612 RES  
**CATEGORY:** Classification  
**TARIFF NO.:** 3926.90.99

SUSAN LAKE  
SCOTTY FISHING & MARINE PRODUCTS  
2065 HENRY AVE. WEST, SIDNEY  
V.C., CANADA V8I 5Z6

**RE:** Modification of NY R00811

DEAR Ms. LAKE:

This is in regard to New York (“NY”) Ruling Letter NY R00811, issued to you on September, 16, 2004, regarding the classification of a fishing rod holder with a boat mounting device, under the Harmonized Tariff Schedule of the United States (“HTSUS”). In NY R00811, Customs and Border Protection (“CBP”) classified the articles as fishing rod accessories, under heading 9507, HTSUS. We have reconsidered this ruling and determined that the articles are properly classified under heading 3926, HTSUS, as other articles of plastic.

**FACTS:**

The following facts were set forth in NY R00811:

The molded plastic fishing rod holder, model 230 Rod Holder, holds a fishing rod while actively fishing. The rod holder attaches to a boat with a model 241 Side/Deck Mount that is permanently screwed to the boat.

The website for Scotty Fishing and Marine Products describes the products this way:

Scotty’s most popular value priced, positive locking, open style rod holder. It’s universal cradle holds almost any reel style and has a front locking ring to prevent rod loss when travelling. Manufactured with fibre reinforced engineering grade nylon, the Power lock offers strength, resilience and reliability.

This Power lock includes a No. 241 Side / Deck Mount which allows mounting on a flat deck surface or on the side of a gunnel or transom.

Power lock Interior Diameter: 1.95”

Mount Dimensions: 4” x 2” x 2”

Bolting Dimension: 1 5/16” x 3 3/16”

*<http://www.scotty.com/fishing-gear-equipment/rod-holders/powerlock.htm>*. The mount is also sold separately.

**ISSUE:**

Whether the plastic fishing rod holder is a part or accessory of a fishing rod of heading 9507, HTSUS, or a plastic article of heading 3926, HTSUS.

**LAW AND ANALYSIS:**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be “determined according to the terms of the headings 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 be applied in order. GRI 3(b), HTSUS, states, in part, that composite goods consisting of different components shall be classified as if consisting of that component which gives the good its essential character.

The following HTSUS provisions are under consideration:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
* * *	
3926.30	Fittings for furniture, coachwork or the like:
3926.30.5000	Other.
* * *	
3926.90	Other:
3926.90.99	Other:
3926.90.9980	Other.
* * * * *	
9507	Fishing rods, fish hooks and other line fishing tackle; fish landing nets, butterfly nets and similar nets; decoy “birds” (other than those of heading 9208 or 9705) and similar hunting or shooting equipment; parts and accessories thereof:
9507.10.00	Fishing rods and parts and accessories thereof:
* * *	
9507.10.0080	Other.

Note 1(k) to Chapter 95, HTSUS, states that Chapter 95 does not cover “[p]arts of general use, as defined in Note 2 to Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39).”

Note 2 to Section XV, HTSUS, defines parts of general use as the following:

Throughout the tariff schedule, the expression “*parts of general use*” means:

- (a) Articles of heading 7307, 7312, 7315, 7317 or 7318 and similar articles of other base metals;
- (b) Springs and leaves for springs, of base metal, other than clock or watch springs (heading 9114); and
- (c) Articles of heading 8301, 8302, 8308 or 8310 and frames and mirrors, of base metal, of heading 8306

In chapters 73 to 76 and 78 to 82 (but not in heading 7315) references to parts of goods do not include references to parts of general use as defined above.

Subject to the preceding paragraph and to note 1 to chapter 83, the articles of chapter 82 or 83 are excluded from chapters 72 to 76 and 78 to 81.

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

The EN to GRI 3 states, in pertinent part, the following;

RULE 3 (b)

(VI) This second method relates only to :

\* \* \*

(iii) Composite goods consisting of different components.

\* \* \*

(VII) In all these cases the goods are to be classified as if they consisted of the material or component **which gives them their essential character**, insofar as this criterion is applicable.

(VIII) 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.

(IX) For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, **provided** these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

Examples of the latter category of goods are:

- (1) Ashtrays consisting of a stand incorporating a removable ash bowl.
- (2) Household spice racks consisting of a specially designed frame (usually of wood) and an appropriate number of empty spice jars of suitable shape and size.

As a general rule, the components of these composite goods are put up in a common packing.

\* \* \*

The ENs to heading 95.07 provide in pertinent part:

This heading covers:

\* \* \* \* \*

- (3) **Line fishing rods and tackle.** Fishing rods may be of various sizes, and may be made of various materials (bamboo, wood, metal, glass fibre, plastics, etc.). They may consist of a single piece or be jointed. Fishing tackle comprises such items as reels and reel mountings; artificial bait (e.g., imitation fish, flies, insects or worms) and hooks

mounted with such bait; spinning bait; mounted lines and casts; fishing floats (cork, glass, quill, etc.) including luminous floats; line winding frames; automatic striking devices; mounted fishing rings (**other than** mounted rings of precious or semi-precious stone); sinkers, and fishing rod bells when mounted or attached to external clamps, clips or other devices.

\* \* \* \* \*

(Emphases in original).

The ENs to 83.02<sup>1</sup> provide in pertinent part:

This heading covers general purpose classes of base metal accessory fittings and mountings, such as are used largely on furniture, doors, windows, coachwork, etc. Goods within such general classes remain in this heading even if they are designed for particular uses (e.g., door handles or hinges for automobiles). The heading **does not**, however, **extend** to goods forming an essential part of the structure of the article, such as window frames or swivel devices for revolving chairs.

The heading covers:

\* \* \*

(C) **Mountings, fittings and similar articles suitable for motor vehicles** (e.g., motor cars, lorries or motor coaches), **not being** parts or accessories of **Section XVII**. For example: made up ornamental beading strips; foot rests; grip bars, rails and handles; fittings for blinds (rods, brackets, fastening fittings, spring mechanisms, etc.); interior luggage racks; window opening mechanisms; specialised ash trays; tail-board fastening fittings.

\* \* \* \* \*

(Emphases in original).

The competing headings for the fishing rod holder with boat mount are headings 3926 and 9507, HTSUS. Note 1(k) to Chapter 95, HTSUS, excludes articles from this Chapter if they are considered similar goods of plastic that would fall under the definition of “parts of general use” as defined in Note 2 to Section XV, HTSUS. In other words, if the fishing rod holder with boat mount is similar to base metal articles that are considered “parts of general use”, then it would be excluded from heading 9507. The heading under consideration in Note 2 to Section XV, would be heading 8302, HTSUS, which provides in pertinent part for “base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like . . .”

For an article classifiable in Chapter 39 to be similar to a “part of general use” in heading 8302, it would have to be a plastic mounting, fitting, or similar article suitable for use on something that is sufficiently similar to the exemplars enumerated in heading 8302, HTSUS. For instance, in NY

<sup>1</sup> The text of heading 8302, HTSUS reads, in pertinent part, as follows: “Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hat-pegs, brackets and similar fixtures;. . .”

N192872, dated December 6, 2011, we classified plastic articles used on boat rails to mount an antennae as fittings for boats in heading 3926, HTSUS.

The tariff terms “mountings” and “fittings” are not defined in the HTSUS or its legislative history. “When a tariff term is not defined in either the HTSUS or its legislative history, the term’s correct meaning is presumed to be its common meaning in the absence of evidence to the contrary.” *Timber Prods. Co. v. United States*, 515 F.3d 1213, 1219 (Fed. Cir. 2008). In discerning this common meaning, dictionaries, encyclopedias, scientific authorities, and other reliable information sources may be consulted to construe the meaning of a statute’s words. See *Len-Ron Mfg. Co. v. United States*, 334 F.3d 1304, 1309 (Fed. Cir. 2003).

Citing various lexicographic sources, CBP noted in HQ 958784, dated May 17, 1996, that the term “mounting” was defined as:

a frame or support, such as, “an undercarriage or part on which a device (as a motor or an artillery piece) rests in service,” or “an attachment for an accessory.” *Webster’s Ninth New Collegiate Dictionary*, pg. 775–776 (1990). Thus, a mounting is generally a component that serves to join two other parts together.

In regard to “fitting”, in HQ 966001, dated October 14, 2003, citing *Webster’s Third New International Dictionary* (unabridged; 1961), CBP noted the definition as:

1 a. something used in fitting up: accessory, adjunct, attachment . . . b. a small often standardized part (as a coupling, valve, gauge) entering into the construction of a boiler, steam, water or gas supply installation or other apparatus

A “fixture”, is defined in pertinent part as:

1 anything firmly in place[.] 2 any of the fittings or furniture of a house, store, etc attached to the building and, ordinarily, considered legally a part of it . . .

See *Webster’s New World College Dictionary* 536 (fourth ed. 2007). Hat and coat racks are examples of “fixtures” because they are permanently attached to a structure and provide a function of non-permanently holding another article (hats and coats). See EN(G) to 83.02.

The instant mount and fishing rod holder are a composite good under GRI 3 consisting of a mount and a fitting both made of plastic. They are packaged together and meant to fit one to the other in attachment to the boat. The plastic mount is a part of general use in that it is a mount. The fishing rod holder is a fitting for the mount in that it is an attachment to the mount. As such, the composite good is comprised of parts of general use which together form a fixture of the boat. Hence, they are excluded from classification in heading 9507 as accessories to fishing rods.

As the composite good is sold as a fishing rod holder, it is that component which, in relation to the use of the goods, determines its essential character under GRI 3(b). Hence, the entire fixture is classified in subheading 3926.90.99, HTSUS, as “[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: [o]ther. See NY B81978, dated February 13, 1997.

**HOLDING:**

Pursuant to GRI 1 and Note 1(k) to Chapter 95, the fishing rod holder with boat mount is classifiable under subheading of 3926.90.99, HTSUS, as “[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: [o]ther.” The column one, rate of duty, is 5.3 percent *ad valorem*.

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

**EFFECTS ON OTHER RULINGS:**

NY R00811, dated September 16, 2004, is revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

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

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

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

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to revoke NY N234957, dated November 26, 2012, relating to the tariff classification of rain boots 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 April 3, 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, 10<sup>th</sup> Floor, 90 K St., N.E., Washington, D.C. 20229–1179. Submitted comments may be inspected at Customs and Border Protection, 10<sup>th</sup> 90 K St. N.E., Washington, D.C. 20229–1179 during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

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

**SUPPLEMENTARY INFORMATION:**

**Background**

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

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of rain boots. Although in this notice, CBP is specifically referring to the revocation of NY N234957, dated November 26, 2012, (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N234957 and revoke or modify any other ruling not specifically iden-

tified, in order to reflect the proper classification of the subject boots in heading 6405, HTSUS, specifically subheading 6405.90.90, as other footwear, according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H237685, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: February 13, 2015

JACINTO JUAREZ

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

N234957

November 26, 2012

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

CATEGORY: Classification

TARIFF NO.: 6401.92.9060

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

RE: The tariff classification of footwear from China

DEAR MR. O'ROURKE:

In your letter dated October 22, 2012 you requested a tariff classification ruling on behalf of your client, Rich Footwear Group.

The submitted half-pair sample identified as style number AA300671 "Angry Birds Rain Boot," is a children's over-the-ankle/below-the-knee "waterproof" pull on boot. The boot is approximately 8 ½ inches in height, does not incorporate a metal toe-cap and is lined with textile material. It has two pull-on loops on either side of the top of the upper and features pictures of bird faces imprinted on it. In your submission, you state that the external surface of the upper is 100% rubber and that the injection molded sole/outer sole (which is attached to the upper by vulcanization or cement) has a combination of rubber and "coated leather material" on the outer sole. You claim that natural leather is molded into the outer sole and is visible with the naked eye, a claim which is supported by the laboratory analysis of "Consumer Testing Laboratories." You further contend that it is the leather which represents the material of the outer sole having the greatest surface area in contact with the ground and suggest classification under subheading 6405.90.9000, Harmonized Tariff schedule of the United States (HTSUS), which provides for in pertinent part; 'other footwear' with uppers other than leather or composition leather or textile materials. We disagree with this suggested classification insofar as the outer sole is concerned.

Under magnified examination of the outer sole, there is no evidence (fibrous or otherwise) to suggest the presence of leather. It is not until the "coating" (presumed to be rubber or plastics) of the "coated leather material" is removed, that fibrous leather material is evident. Consequently, we find the material having the greatest surface area in contact with the ground to be rubber or plastics.

The applicable subheading for the children's waterproof rain boot, style number AA300671 "Angry Birds Rain Boot," will be 6401.92.9060, HTSUS, which provides for waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes: other footwear: covering the ankle but not covering the knee: other: other: other. The rate of duty will be 37.5% ad valorem.

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

The submitted sample is not marked with the country of origin. Therefore, if imported as is, it will not meet the country of origin marking requirements

of 19 U.S.C. 1304. Accordingly, the footwear would be considered not legally marked under the provisions of 19 C.F.R. 134.11 which states, “every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.”

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stacey Kalkines at (646) 733-3042.

*Sincerely,*

THOMAS J. RUSSO

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H237685  
CLA-2 OT:RR:CTF:TCM H237685 CkG  
CATEGORY: Classification  
TARIFF NO: 6405.90.90

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

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

DEAR MR. O'ROURKE

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

**FACTS:**

NY N234957 described the subject merchandise as follows:

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

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

**ISSUE:**

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

**LAW AND ANALYSIS:**

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

The HTSUS headings at issue are as follows:

6401: Waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes:

Other footwear:

6401.92: Covering the ankle but not covering the knee:

Other:

6401.92.90: Other...

\* \* \*

6405: Other footwear:

6405.90: Other:

6405.90.90: Other...

\* \* \* \* \*

Note 4 to Chapter 64 provides, in pertinent part, as follows:

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

\* \* \* \* \*

Note 4 to Chapter 64 provides, in pertinent part, that the constituent material of the outer sole shall be taken to be the material having the greatest surface area in contact with the ground. In NY N234957, after examining the outer sole of the Angry Birds boot, CBP determined that there was no evidence of the presence of leather on the exterior of the outer sole. It was not until the exterior plastic or rubber coating of the "coated leather material" was removed, that fibrous leather material was apparent. Consequently, CBP found that the constituent material of the outer sole was rubber or plastics.

However, further examination of a cross section of the outer sole under a microscope revealed that the plastic was in fact only a thin coating over a layer of leather, as you describe in your submission. The outer sole of the rain boot is constructed of a combination leather plastic material and, thus, the constituent material of the outer sole is a plastic laminated leather.

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

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

It is our position that, under GRI 3(b), the essential character of the plastic laminated leather is the leather itself. The leather gives the shoe's outer sole its form and shape. The plastic lamination merely enhances the leather's durability and water resistant qualities. Leather coated with a layer of rubber or plastics is still considered to have the essential character of leather and is considered leather for tariff purposes. See e.g., HQ 089572, dated April 13, 1992. Therefore, we agree that the constituent material of the outer sole is leather, and that the correct classification of the instant boots is subheading 6405.90.90, HTSUS, as other footwear.

**HOLDING:**

The instant rain boots are classified in heading 6405, HTSUS, specifically subheading 6405.90.90, HTSUS, which provides for "Other footwear: Other: Other." The 2015 column one, general rate of duty is 12.5% *ad valorem*.

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

**EFFECT ON OTHER RULINGS:**

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

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**GENERAL NOTICE****19 CFR PART 177****PROPOSED REVOCATION OF TWO RULING LETTERS  
AND REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF “TAPEFFITI”**

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

**ACTION:** Notice of proposed revocation of two ruling letters and revocation of treatment concerning the tariff classification of “Tapeffiti,” pressure sensitive plastic tape.

**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 two ruling letters pertaining to the tariff classification of “Tapeffiti,” pressure sensitive plastic tape, under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the proposed action.

**DATES:** Comments must be received on or before April 3, 2015.

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

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

**SUPPLEMENTARY INFORMATION:****Background**

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that CBP intends to modify two ruling letters pertaining to the classification of pressure sensitive plastic tape referred to as “Tapeffiti” in the ruling letters. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) N239592, dated April 9, 2013, (Attachment A), and N246346, dated September 20, 2013 (Attachment B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), CBP intends to modify any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or

similar merchandise, or the importer's or CBP's previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY N239592, CBP classified Fashion Angels' "Tapeffiti" product, Item #11728, under subheading 4908.10.00, HTSUS, which provides for Transfers (decalcomanias): Transfers (decalcomanias), vitrifiable. And in N246346, CBP classified the same product, "Tapeffiti," Item #11728, under subheading 3919.10.20, HTSUS, which provides for self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics...in rolls of a width not exceeding 20 cm...other. It is now CBP's position that the original classification (found in N239592) was in error, and the subsequent ruling, (N246346) was not issued pursuant to Customs Regulations regarding modification or revocation of interpretive rulings, found in 19 CFR § 177.12. Therefore, CBP proposes to revoke N239592 and N246346 as it pertains to the classification of the "Tapeffiti" product.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke N239592 and N246346 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling (HQ) H250628, (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, we will give consideration to any written comments timely received.

Dated: February 13, 2015

ALLYSON MATTANAH

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

N239592

April 9, 2013

CLA-2-49:OT:RR:NC:2:234

CATEGORY: Classification

TARIFF NO.: 4908.10.0000

MR. JOSEPH D. PATERICK  
FASHION ANGELS ENTERPRISES  
4353 NORTH RICHARDS STREET  
MILWAUKEE, WI 53212

RE: The tariff classification of Fashion Angels "Tapefitti", Item# 11728, from China.

DEAR MR. PATERICK:

In your letter dated March 5, 2013, you requested a tariff classification ruling.

The sample submitted, "Tapefitti", consists of six plastic dispensers with decal tape measuring approximately 9 feet each and packaged together for retail sale. Tapefitti is a decorative decal tape designed for children that comes with a variety of repetitive printed images including pandas, gems, stars, daisies, robots, dolls, cupcakes, candies, zebras and cheetahs. Tapefitti can be used to decorate scrapbooks, notebooks, folders, bracelets, headbands, sketchbooks, portfolios, journals, picture frames and tote bags. The sample will be retained for training purposes.

The applicable subheading for the "Tapefitti", will be 4908.10.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Transfers (decalcomanias): Transfers (decalcomanias), vitrifiable. The rate of duty will be Free.

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

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

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

*Sincerely,*

THOMAS J. RUSSO

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT B]

N246346

September 20, 2013

CLA-2-39:OT:RR:NC:N4:421

CATEGORY: Classification

TARIFF NO.: 3919.10.2055

MR. JOSEPH D. PATERICK  
FASHION ANGELS ENTERPRISES  
4353 NORTH RICHARDS STREET  
MILWAUKEE, WI 53212

RE: The tariff classification of Fashion Angels "Tapefitti," Item #11728, from China. Correction to Ruling Number N239592

DEAR MR. PATERICK:

This replaces Ruling Number N239592, dated April 9, 2013, which contained an error in the product description. The merchandise was described as decal tape when it is actually pressure sensitive plastic tape. A complete corrected ruling follows.

The sample submitted with your request consists of six plastic dispensers on a retail card, each dispenser containing approximately 9 feet of decorative pressure sensitive plastic tape. This tape, marketed as "Tapefitti," is printed with repetitive images such as pandas, zebras, cheetahs, gems, stars, daisies, robots, dolls, cupcakes and candies. It is marketed for use to decorate scrapbooks, notebooks, folders, bracelets, headbands, sketchbooks, portfolios, journals, picture frames and tote bags. The sample will be retained for training purposes.

You describe the product as decorative decal tape and you suggest classification in subheading 4908.10.0000, Harmonized Tariff Schedule of the United States (HTSUS), as vitrifiable transfers (decalcomanias). The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the HTSUS 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. The Explanatory Notes to heading 4908 state that "Transfers (decalcomanias) consist of pictures, designs or lettering in single or multiple colours, lithographed or otherwise printed on absorbent, lightweight paper (or sometimes thin transparent sheeting of plastics), coated with a preparation, such as of starch and gum, to receive the imprint which is itself coated with an adhesive. This paper is often backed with a supporting paper of heavier quality. The designs are sometimes printed against a background of metal leaf. When the printed paper is moistened and applied with slight pressure to a permanent surface (e.g., glass, pottery, wood, metal, stone or paper), the coating printed with the picture, etc., is transferred to the permanent surface."

This definition of decalcomania is consistent with the common and commercial definition of the term. The Dictionary of Paper, 5th Edition, edited by Michael Kouris (1996), defines decalcomania as "A process of transferring printed designs to porcelain, wood, glass, marble, etc. It consists usually in gumming the paper or other film bearing the colored picture onto the object and then removing the paper with warm water, the colored picture remaining. Often shortened to decal." Both the dictionary definition and the

Explanatory Note definition make it clear that the term “decalcomania” refers to printed images on a carrier material that are transferred to another surface. The carrier material is then discarded.

In the ruling that you cite in support of your claim, NY N032870, dated August 8, 2008, the items identified as tape dispensers did not dispense adhesive tape or any other tape. Each dispenser contained a roll of plastic strip coated with repetitive printed images of patterns or captions. The printed images, or decalcomanias, were transferred when the dispenser was hand rolled along any paper or page. As noted in the ruling, “The plastic strip acts merely as a backing for the images. Only the printed design is transferred to the receiving surface.”

The Tapefitti tape does not contain printed images that will be transferred to another surface, leaving a plastic or other backing behind. The Tapefitti consists of pressure sensitive plastic tape printed with decorative images that remain on the tape. The tape is designed to be cut into sections and the entire decorative tape segment is applied to another product to decorate that product.

Legal Note 2 of Section VII of the HTSUS states, “Except for the goods of heading 3918 or 3919, plastics, rubber and articles thereof, printed with motifs, characters or pictorial representations, which are not merely incidental to the primary use of the goods, fall in chapter 49.” Since the pressure sensitive tape is provided for in heading 3919, it remains classified in heading 3919 rather than in chapter 49 even when printed and even when the printing is not merely incidental to the primary function of the goods.

The applicable subheading for the Tapefitti decorative pressure sensitive plastic tape will be 3919.10.2055, HTSUS, which provides for self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics...in rolls of a width not exceeding 20 cm...other. The rate of duty will be 5.8 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 Joan Mazzola at (646) 733-3023.

*Sincerely,*

MYLES B. HARMON  
*Acting Director*

*National Commodity Specialist Division*

[ATTACHMENT C]

**HQ H250628**  
**CLA-20T:RR:CTF:TCM: H250628ERB**  
**CATEGORY: Classification**  
**TARIFF NO.: 3919.10.20**

MR. ERIC WILSON  
GODFREY KAHN S.C.  
*ONE EAST MAIN STREET, SUITE 500*  
*P.O. BOX 2719*  
*MADISON, WI 53701-2719*

RE: Revocation of NY N239592 and N246346; Tariff classification of Fashion Angels “Tapeffiti,” (Item #11728)

DEAR MR. WILSON:

U.S. Customs and Border Protection (CBP) issued your client, M&G Partners, LLP d/b/a Fashion Angels Enterprises (Fashion Angels), New York Ruling Letter (NY) N239592, dated April 9, 2013, in response to your client’s binding ruling request, dated March 5, 2013. The request concerned the tariff classification of the “Tapeffiti” product, (Item #11728). Subsequent to the issuance of NY N239592, CBP became aware of errors in the product description in Fashion Angels’ ruling request submission. CBP issued NY N246346, dated September 20, 2013 as a correction. Pursuant to 19 C.F.R. §1625(c) and 19 C.F.R. § 177.12(b), Customs is to follow a notice and comment procedure if conflicting or inconsistent rulings exist. We have reviewed NY N239592, and find it to be in error with respect to the classification of the Tapeffiti, which is described in detail herein, and in conflict with NY N246346. As such, we are revoking NY N239592 and NY N246346, pursuant to the reasoning contained herein.

**FACTS:**

NY N239592, dated April 9, 2013 stated the following regarding the subject merchandise:

The sample submitted, “Tapeffiti”, consists of six plastic dispensers with decal tape measuring approximately 9 feet each and packaged together for retail sale. Tapeffiti is a decorative decal tape designed for children that comes with a variety of repetitive printed images including pandas, gems, stars, daisies, robots, dolls, cupcakes, candies, zebras and cheetahs. Tapeffiti can be used to decorate scrapbooks, notebooks, folders, bracelets, headbands, sketchbooks, portfolios, journals, picture frames and tote bags. The sample will be retained for training purposes.

The applicable subheading for the “Tapeffiti”, will be 4908.10.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Transfers (decalcomanias): Transfers (decalcomanias), vitrifiable. The rate of duty will be Free.

NY N246346, dated September 20, 2013, stated the following:

This replaces Ruling Number N239592, dated April 9, 2013, which contained an error in the product description. The merchandise was described as decal tape when it is actually pressure sensitive plastic tape. A complete corrected ruling follows.

The sample submitted with your request consists of six plastic dispensers on a retail card, each dispenser containing approximately 9 feet of decorative pressure sensitive plastic tape. This tape, marked as “Tapeffiti” is printed with repetitive images such as pandas, ... and candies. It is marketed for use to decorate scrapbooks, ...and tote bags. The sample will be retained for training purposes.

\*\*\*

The Tapeffiti tape does not contain printed images that will be transferred to another surface, leaving a plastic or other backing behind. The Tapeffiti consists of pressure sensitive plastic tape printed with decorative images that remain on the tape. The tape is designed to be cut into sections and the entire decorative tape segment is applied to another product to decorate that product. Legal Note 2 of Section VII of the HTSUS states, “Except for the goods of heading 3918 or 3919, plastics, rubber and articles thereof, printed with motifs, characters or pictorial representations, which are not merely incidental to the primary use of the goods, fall in chapter 49.” Since the pressure sensitive tape is provided for in heading 3919, it remains classified in heading 3919 rather than in chapter 49 even when printed and even when the printing is not merely incidental to the primary function of the goods.

Fashion Angels argues that the subject merchandise was classified correctly in the original ruling, NY N239592.

#### **ISSUE:**

Whether the subject Tapeffiti is classified as self-adhesive tape of heading 3919, HTSUS, or as a transfer of heading 4908, HTSUS.

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

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

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

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

\* \* \*

4908            Transfers (decalcomanias):

Legal Note 2 to Section VII, which covers Chapter 39, states the following:

2. Except for the goods of heading 3918 or 3919, plastics, rubber and articles thereof, printed with motifs, characters or pictorial representations, which are not merely incidental to the primary use of the goods, fall in chapter 49.

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 Harmonized System. 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 39.19 provides the following:

This heading covers all self-adhesive flat shapes of plastics, whether or not in rolls, other than floor, wall or ceiling covers of heading 39.18. The heading is, however, limited to flat shapes which are pressure-sensitive, i.e., which at room temperature, without wetting or other addition, are permanently tacky (on one or both sides) and which firmly adhere to a variety of dissimilar surfaces upon mere contact, without the need for more than finger or hand pressure.

It should be noted that this heading includes articles printed with motifs, characters or pictorial representations, which are not merely incidental to the primary use of the goods (see Note 2 to Section VII)

The General EN to chapter 49 states, in relevant part, the following:

Goods of heading 39.18, 39.19, 48.14 or 48.21 are also **excluded** from this chapter, even if they are printed with motifs, characters or pictorial representations, which are not merely incidental to the primary use of the goods.

It continues:

In addition to the more common forms of printed products...this Chapter covers such articles as: printed transfers (decalcomanias); ...

The EN 49.08 provides the following:

Transfers (decalcomanias) consist of pictures, designs or lettering in single or multiple colours, lithographed or otherwise printed on absorbent, lightweight paper (or sometimes thin transparent sheeting of plastics), coated with a preparation, such as of starch and gum, to receive the imprint which is itself coated with an adhesive. This paper is often backed with a supporting paper of heavier quality. The designs are sometimes printed against a background of metal leaf.

When the printed paper is moistened and applied with slight pressure to a permanent surface (e.g., glass, pottery, wood, metal, stone or paper), the coating printed with the picture, etc., is transferred to the permanent surface.

Transfers may be used for decoration or utility purposes, e.g., for decorating pottery or glass, or for marking various articles such as vehicles, machines and instruments.

Transfers produced and supplied mainly for the amusement of children are also covered by this heading, as are also articles such as embroidery or hosier transfers which consist of papers on which designs are outlined in pigment which is transferred, usually to a textile surface, by pressure with a heated smoothing iron.

Therefore, if the Tapeffiti product meets the terms of heading 3919, HTSUS, it is excluded from classification in chapter 49.

Tapeffiti, is a roll of self-adhesive plastic strip, printed on one side with repetitive images including depictions of animals, such as pandas, or patterns, such as houndstooth. The opposite side is permanently tacky and is

thus capable of being stuck to various surfaces at room temperature. A user will unroll the plastic strip and cut it to a desired length. The user needs no more than finger pressure to adhere the tape onto a surface as decoration, without any additional method of transfer (e.g. water or heat). Further, the image is never transferred from the tape to a surface because there is no temporary backing material as the image is permanently fixed on the tape. If the tape is removed, the image is also removed because it is part of the tape. It therefore meets the terms of heading 3919, HTSUS, explained in the ENs to 39.19, and thus is excluded from classification in chapter 49, under the general EN to that chapter.

If *arguendo*, the merchandise is not excluded from classification in Chapter 49, it still does not meet the terms of heading 4908, HTSUS. In Headquarters Ruling (HQ) 965703, dated August 13, 2002, CBP cited the Merriam-Webster's Collegiate Dictionary, 10<sup>th</sup> Ed. which defined "decalomania" as: the art or process of transferring pictures and designs from specially prepared paper (as to glass)." There, in classifying temporary tattoos, CBP ruled that a product that transfers an image with moisture and pressure from paper to skin is classified in heading 4908, HTSUS, as a "decal." *See also*, NY 884872, dated April 22, 1993 (classifying temporary tattoos, where the user places the picture face down on skin, rubs firmly with damp cloth or sponge, and peels away the backing paper after the image as been transferred onto the surface and off of the backing paper, as a "decal" under heading 4908, HTSUS); *and see*, HQ 961550, dated July 17, 2001, where CBP cited The Dictionary of Paper, 5<sup>th</sup> Edition, edited by Michael Kouris (1996), which defines decalomania and decalomania paper as follows:

A process of transferring printed designs to porcelain, wood, glass, marble, etc. It consists usually in gumming the paper or other film bearing the colored picture onto the object and then [sic] removing the paper with warm water, the colored picture remaining.

CBP has also consistently classified products as decals of heading 4908, HTSUS, when the image is transferred to a surface via rubbing. In NY G86280, dated January 22, 2001, CBP classified a "Rub'n Wear Glitter Body Art Transfers" under heading 4908, HTSUS, wherein the directions instruct "users are to remove the release paper, place the printed side of the acetate onto the skin, and rub with a fingernail tip. This will cause the design to be transferred onto the skin. The resulting temporary tattoo can subsequently be removed with adhesive tape, baby oil or petroleum jelly." Finally, in NY K85599, dated May 7, 2004, CBP stated that a "Rub-Off Egg Tattoo" which instructed users to place a selected portion of the printed film on the surface of an [Easter] egg and rub it with a popsicle stick or other tool, whereupon the image is transferred to an egg as decoration, was classified in heading 4908, HTSUS, as a decal. But a second item, "Fuzzy Stickers" made of flocked, pressure-sensitive vinyl film whereby the flocked vinyl shapes were meant to be peeled off their paper backing and applied to eggs as decoration, were classified in heading 3919, HTSUS, as a sticker.

The subject merchandise does not allow for any transfer of its images. It does not use water or heat for its application. It does not have a temporary backing material. It is simply a plastic tape containing repetitive designs. Hence, it is properly classified under subheading 3919.90.50, HTSUS, which provides for, "self-adhesive sheets of plastics."

Lastly, NY N032870, dated August 8, 2008, classifying decal transfer dispensers in heading 4908, HTSUS, is not relevant here. The instant merchandise is neither a dispenser, nor a decal transfer tool as explained above.

**HOLDING:**

By application of GRI 1 the subject “Tapeffiti” Item #11728 is provided for in heading 3919, HTSUS. It is specifically provided for under subheading 3919.10.20, HTSUS, which provides for, “Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls: In rolls of a width not exceeding 20 cm: Other: Other.” The column one, general rate of duty is 5.8% *ad valorem*.

Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at [www.usitc.gov](http://www.usitc.gov)

**EFFECT ON OTHER RULINGS:**

NY N239592, dated April 9, 2013 and NY N246346, dated September 20, 2013, are hereby REVOKED.

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

**AGENCY INFORMATION COLLECTION ACTIVITIES:****Application To Use the Automated Commercial Environment (ACE)**

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

**ACTION:** 30-Day notice and request for comments; revision of an existing collection of information.

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

**DATES:** Written comments should be received on or before March 20, 2015 to be assured of consideration.

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-5806.

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

**SUPPLEMENTARY INFORMATION:** This proposed information collection was previously published in the **Federal Register** (79 FR 73098) on December 9, 2014, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/ or continuing information collections

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

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

**OMB Number:** 1651–0105.

**Abstract:** The Automated Commercial Environment (ACE) is a trade processing system that will eventually replace the Automated Commercial System (ACS), the current import system for U.S. Customs and Border Protection (CBP) operations. ACE is authorized by Executive Order 13659 which mandates implementation of a Single Window for trade. *See* 79 FR 10655 (February 25, 2014). ACE supports government agencies and the trade community with border-related missions with respect to moving goods across the border efficiently and securely. Once ACE is fully implemented, all related CBP trade functions and the trade community will be supported from a single common user interface.

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

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

1. Company Information
  - a. EIN
  - b. DUNS (optional)
  - c. Company Name
  - d. Company Address
  - e. End of Fiscal Year
2. ACE Export Account Owner Information
  - a. Name
  - b. Date of Birth
  - c. Telephone Number
  - d. Fax Number (optional)
  - e. Email
  - f. Account Owner address if different from Company Address
3. Filing Notification Point of Contact
  - a. Name
  - b. Phone Number
  - c. Email

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

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

**Affected Public:** Businesses.

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

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

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

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

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

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

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

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

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

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

Dated: February 12, 2015.

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

