


U.S. Customs and Border Protection



PROPOSED MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF NATAMYCIN 50% WITH LACTOSE AND NATAMYCIN 50% WITH SODIUM CHLORIDE

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

ACTION: Notice of proposed modification of one ruling letter and revocation of treatment relating to the tariff classification of natamycin 50% with lactose and natamycin 50% with sodium chloride.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify one ruling letter concerning tariff classification of natamycin 50% with lactose and natamycin 50% with sodium chloride under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before May 18, 2018.

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

FOR FURTHER INFORMATION CONTACT: Albenia Peters, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–0321.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with 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 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of natamycin 50% with lactose and natamycin 50% with sodium chloride. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") I82455, dated June 3, 2002 (Attachment A), this notice also 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 ruling identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY I82455, CBP classified the natamycin 50% with lactose and natamycin 50% with sodium chloride in heading 3003, HTSUS, specifically in subheading 3003.20.00, HTSUS, which provides for "Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in

forms or packings for retail sale: Other, containing antibiotics.” CBP has reviewed NY I82455 and has determined the ruling letter to be in error. It is now CBP’s position that the natamycin mixtures are properly classified, in heading 3808, HTSUS, specifically in subheading 3808.92.50, HTSUS, which provides for “Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers): Other: Fungicides: Other: Other: Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY I82455 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H261418, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 9, 2018

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

NY I82455

June 3, 2002

CLA-2-29:RR:NC:2:238 I82455

CATEGORY: Classification

TARIFF NO.: 2941.90.1050; 3003.20.0000

MS. KATHY LIN
PROFOOD INTERNATIONAL, INC.
P.O. BOX 4378
LISLE, IL 60532-9378

RE: The tariff classification of Natamycin (CAS-7681-93-8), Natamycin 50% with Lactose, and Natamycin 50% with Sodium Chloride, all imported in bulk form, from China

DEAR MS. LIN:

In your letter dated May 6, 2002, you requested a tariff classification ruling.

The first product, Natamycin (“Pimaricin” is the Japanese Accepted Name (JAN)), is a naturally occurring antibiotic produced by *Streptomyces natalensis* and by *Streptomyces chattanoogensis*. Natamycin is indicated for use in the treatment of some types of fungus infections of the eye.

The remaining two products, Natamycin 50% with Lactose, and Natamycin 50% with Sodium Chloride, consist of mixtures composed of (by weight) 50% Natamycin and 50% lactose (anhydrous) and 50% Natamycin and 50% sodium chloride, respectively.

The applicable subheading for Natamycin, imported in bulk form, will be 2941.90.1050, Harmonized Tariff Schedule of the United States (HTS), which provides for “Antibiotics: Other: Natural: Other.” The rate of duty will be free.

The applicable subheading for Natamycin 50% with Lactose, and Natamycin 50% with Sodium Chloride, imported in bulk form, will be 3003.20.0000, HTS, which provides for “Medicaments ... consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale: Containing other antibiotics.” The rate of duty will be free.

This merchandise may be subject to the requirements of the Federal Food, Drug, and Cosmetic Act, which is administered by the U.S. Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number 301-443-1544.

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 Harvey Kuperstein at 646-733-3033.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT B

HQ H261418
OT:RR:CTF:CPMM H261418 APP
CATEGORY: Classification
TARIFF NO.: 3808.92.50

Ms. KATHY LIN
PROFOOD INTERNATIONAL, INC.
P.O. BOX 4378
LISLE, IL 60532-9378

RE: Modification of NY I82455; Tariff classification of natamycin 50% with lactose and natamycin 50% with sodium chloride

DEAR Ms. LIN:

This is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York Ruling Letter (“NY”) I82455, dated June 3, 2002, regarding the classification, under the Harmonized Tariff Schedule of the United States (“HTSUS”), of natamycin 50% with lactose and natamycin 50% with sodium chloride. In NY I82455, CBP classified the natamycin 50% with lactose and natamycin 50% with sodium chloride mixtures under heading 3003, HTSUS, specifically under subheading 3003.20.00, HTSUS, which provided for “Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale: Containing other antibiotics.” We have determined that this ruling is in error and for the reasons set forth below we hereby modify it with respect to the natamycin 50% with lactose and natamycin 50% with sodium chloride mixtures.¹

FACTS:

The preparations at issue are antifungal mixtures composed of (by weight) 50% natamycin² with 50% lactose (anhydrous) and 50% natamycin with 50% sodium chloride, respectively. These mixtures are prepared from pure natamycin by mixing it with lactose or sodium chloride. The products are imported in bulk form from China to serve as antimyotic food additives to protect food, especially cheese, from mold and yeast growth.³

¹ The natamycin in bulk form in NY I82455, used for fungus infections in the eye, remains classified in subheading 2941.90.10, HTSUS, as an antibiotic.

² Natamycin (other names: Pimaricin, Tenecetin, and Natacyn) is an amphoteric macrolide antifungal antibiotic from *Streptomyces natalensis* or *S. chattanoogaensis* used for fungal infections, mainly topically. See National Institutes of Health, The National Center for Biotechnology Information, <https://www.ncbi.nlm.nih.gov/mesh/68010866> (last visited Feb. 28, 2018); Natamycin 50% in Lactose, <https://www.foodsweeteners.com/products/natamycin-50-in-lactose/> (last visited Feb. 28, 2018) (natamycin 50% in lactose is used in dairy foods, bread, and baked foods to inhibit the growth of mold, yeast, and fungi); Natamycin 50% in NaCl, <https://www.foodsweeteners.com/products/natamycin-50-in-nacl/> (last visited Feb. 28, 2018) (natamycin 50% in sodium chloride is used in dairy products to prevent mold growth).

³ ProFood International, Inc., Applications, <http://www.profoodinternational.com/applications.html> (last visited Feb. 28, 2018).

ISSUE:

Whether the natamycin 50% with lactose and natamycin 50% with sodium chloride are classified in heading 3003, HTSUS, as medicament consisting of two or more constituents mixed together for therapeutic or prophylactic uses, or in heading 3808, HTSUS, as fungicides.

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. Pursuant to GRI 6, classification at the subheading level uses the same rules, *mutatis mutandis*, as classification at the heading level.

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

3003	Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale:
3003.20.00	Other, containing antibiotics
3808	Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers):
	Other:
3808.92	Fungicides:
	Other:
	Other:
3808.92.50	Other

Note 3(b)(1) to chapter 30, HTSUS, states that mixed products for purposes of this chapter include colloidal solutions and suspensions (other than colloidal sulfur).

Note 1(b) to chapter 38, HTSUS, states that this chapter does not cover, “Mixtures of chemicals with foodstuffs or other substances with nutritive value, of a kind used in the preparation of human foodstuffs (generally, heading 2106).”

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

EN 30.03 states, in relevant part, that:

This heading covers medicinal preparations for use in the internal or external treatment or prevention of human or animal ailments. These

preparations are obtained by mixing together two or more substances. However, if put up in measured doses or in forms or packings for retail sale, they fall in **heading 30.04**.

The heading includes:

- (1) Mixed medicinal preparations such as those listed in an official pharmacopoeia, proprietary medicines, etc., including those in the form of gargles, eye drops, ointments, liniments, injections, counter-irritant and other preparations **not falling in heading 30.02, 30.05 or 30.06**.

However, this should not be taken to mean that preparations listed in an official pharmacopoeia, proprietary medicines, etc. are always classified in **heading 30.03**. For example, anti-acne preparations which are designed primarily to cleanse the skin and which do not contain sufficiently high levels of active ingredients to be regarded as having a primary therapeutic or prophylactic effect against acne are to be classified in **heading 33.04**.

- (2) Preparations containing a single pharmaceutical substance together with an excipient, sweetening agent, agglomerating agent, support, etc....

General EN to chapter 38 provides, in relevant part, that:

For the purposes of Note 1(b) to the Chapter, the expression “foodstuffs or other substances with nutritive value” principally includes edible products of Sections I to IV.

The expression “foodstuffs or other substances with nutritive value” also includes certain other products, for example, products of Chapter 28 used as mineral supplements in food preparations ... sugars of heading 29.40 ... It should be noted that this list of products is simply illustrative and should not be taken to be exhaustive.

The mere presence of “foodstuffs or other substances with nutritive value” in a mixture would not suffice to exclude the mixture from Chapter 38, by application of Note 1(b). Substances having a nutritive value that is merely incidental to their function as chemical products, e.g., as food additives or processing aids, are not regarded as “foodstuffs or substances with nutritive value” for the purpose of this Note. The mixtures which are excluded from Chapter 38 by virtue of Note 1(b) are those which are of a kind used in the preparation of human foodstuffs and which are valued for their nutritional qualities.

EN 38.08 states, in relevant part, that:

This heading covers a range of products (**other than** those having the character of medicaments, including veterinary medicaments – **heading 30.03 or 30.04**) intended to destroy pathogenic germs, insects (mosquitoes, moths, Colorado beetles, cockroaches, etc.), mosses and moulds, weeds, rodents, wild birds, etc. Products intended to repel pests or used for disinfecting seeds are also classified here.

These ... fungicides, etc., are applied by spraying, dusting, sprinkling, coating, impregnating, etc., or may necessitate combustion. They achieve their results by nerve-poisoning, by stomach-poisoning, by asphyxiation or by odour, etc ...

The products of heading 38.08 can be divided into the following groups: ...

(II) **Fungicides**

Fungicides are products which protect against the growth of fungi (e.g., preparations based on copper compounds) or which are designed to eradicate the fungi already present (e.g., preparations based on formaldehyde).

Fungicides can be characterised by their mode of action or method of use ... This heading **excludes**: ... (c) Disinfectants, insecticides, etc., having the essential character of medicaments, including veterinary medicaments (**heading 30.03 or 30.04**).

First, we note that heading 3003, HTSUS is a use provision and covers medicaments consisting of two or more constituents mixed together for therapeutic or prophylactic uses that are not put up in measured doses or in forms, or packings for retail sale. Even though the instant mixtures are imported in bulk form, they are not used as medicaments for the treatment or prevention of a disease or ailment. Instead, they are used as antimycotic agents in the food industry. Therefore, they are precluded from classification as medicaments of chapter 30, HTSUS.⁴

We further note that the mere presence of foodstuffs or other substances with nutritive value would not exclude the subject mixtures from chapter 38, HTSUS. *See* EN 38.08. Substances having a nutritive value that is merely incidental to their function as chemical products are not excluded from chapter 38, HTSUS by virtue of Note 1(b) to this chapter. *See id.* The instant mixtures contain 50% natamycin, which is an antifungal substance, mixed with lactose or sodium chloride, and are formulated for use as food additives to prevent growth of mold and yeast particularly in cheese and cured meats. Heading 3808, HTSUS covers a range of products intended to destroy pathogenic germs and molds.

CBP has consistently classified antifungal mixtures in heading 3808, HTSUS. In NY K89236, dated Sept. 13, 2004, CBP classified a formulated microbicide containing nisin used in food processing as a preservative in products such as processed cheese, cooked meat and poultry, and canned fruits and vegetables, in heading 3808, HTSUS, under subheading 3808.90.95, HTSUS (2004) (now subheading 3808.92.50, HTSUS). In NY N231486, dated Sept. 17, 2012, CBP classified preparations containing two different strains of yeasts, *aureobasidium pullulans* strain DSM 14940, and *aureobasidium pullulans* strain DSM 14941, intended for the control of bacterial and fungal diseases in pome fruit, in subheading 3808.92.50, HTSUS. In NY N058539, dated May 8, 2009, CBP classified a formulation comprised of kasugamycin hydrochloride hydrate with application adjuvants, intended to control bacterial and fungal diseases on pepper and tomato, in subheading 3808.92.50, HTSUS.

In NY N255188, dated August 1, 2014, CBP classified a fungicide preparation containing QST 713 strain of *Bacillus subtilis*, used for the control or suppression of plant diseases, in subheading 3808.92.50, HTSUS. In NY

⁴ We also note that the subject mixtures are not classifiable as organic chemicals of chapter 29, HTSUS, since in their imported condition the lactose and sodium chloride are not solvents or stabilizers necessary for preservation or safety of transport, neither are they impurities from the manufacturing process. *See* Notes 1(e) and (f) to chapter 29, HTSUS. In addition, antibiotics are not one of the listed products in Note 1(h) to chapter 29, HTSUS that are allowed to be diluted to standard strengths.

N239545, dated April 1, 2013, CBP classified a mixture of 5-chloro-2-methyl-4-isothiazolin-3-one, 5-chloro-2-methyl-4-isothiazolin-3-one, magnesium chloride, magnesium nitrate, acetic acid and water, and a mixture of benzyl alcohol, dehydroacetic acid, benzoic acid and water, used as preservatives and antimicrobial agents in personal care products, in subheading 3808.92.50, HTSUS. In NY N052863, dated March 10, 2009, CBP classified a broad spectrum fungicide, used to control fungus that attacks turf grass, in subheading 3808.92.50, HTSUS. In NY N027975, dated May 27, 2008, CBP classified a formulated citrus fungicide, creating a protection against various plant diseases, in subheading 3808.92.50, HTSUS.

Similarly, the instant natamycin 50% with lactose and natamycin 50% with sodium chloride mixtures are antifungal mixtures, not aromatic in structure, which are designed for antimycotic use and in their imported condition are not used for therapeutic or prophylactic treatment but rather as food preservatives. As such, the instant natamycin mixtures are classified in heading 3808, HTSUS, specifically under subheading 3808.92.50, HTSUS.

HOLDING:

By application of GRIs 1 and 6, the subject natamycin 50% with lactose and natamycin 50% with sodium chloride mixtures are classified under heading 3808, HTSUS, specifically under subheading 3808.92.50, HTSUS, as “Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers): Other: Fungicides: Other: Other.” The 2018 column one, duty rate is 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 at <https://hts.usitc.gov/current>.

EFFECT ON OTHER RULINGS:

NY I82455, dated June 3, 2002, is hereby MODIFIED with respect to the natamycin 50% with lactose and natamycin 50% with sodium chloride.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF EZ COMB FROM CHINA**

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

ACTION: Notice of proposed revocation of one ruling letter and revocation of treatment relating to the tariff classification of EZ Comb from China.

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

DATE: Comments must be received on or before May 18, 2018.

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

FOR FURTHER INFORMATION CONTACT: Michele A. Boyd, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–0136.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with 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 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 EZ Comb from China. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N048195, dated February 3, 2009 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY N048195, CBP classified EZ Comb from China in heading 9615, HTSUS, specifically in subheading 9615.11.5000, HTSUS, which provides for “Combs, hair-slides and the like; hairpins, curling pins, hair-curlers, and the like, other than those of heading 8516, and parts thereof: Combs, hair-slides, and the like: of hard rubber or plastic: Other: Other.” CBP has reviewed NY N048195 and has determined the ruling letter to be in error. It is now CBP’s position that EZ Comb from China is properly classified in heading 9615, HTSUS, specifically in subheading 9615.11.10 or 9615.11.30, HTSUS, which provides for “Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Combs hair-slides and the like: Of hard rubber or plastics: Combs: Valued not over \$4.50 per gross” or “...Other: Valued over \$4.50 per gross.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N048195 and to revoke or modify any other ruling not specifically

identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H088397, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 9, 2018

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N048195

February 3, 2009

CLA-2-96:OT:RR:NC:SP:233

CATEGORY: Classification

TARIFF NO.: 9615.11.5000

MR. MIKA McLAFFERTY
GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN AND KLESTADT
COUNSELORS AT LAW
399 PARK AVENUE 25TH FLOOR
NEW YORK, NY 10022-4877

RE: The tariff classification of an EZ Comb from China.

DEAR MR. McLAFFERTY:

In your letter dated December 30, 2008 on behalf of Telebrands Corp, you requested a tariff classification ruling. The sample which you submitted will be returned.

The item at issue is a plastic hair accessory referred to as an "EZ Comb." The hair accessory measures 5 inches by 2.5 inches, and features two rows of teeth that are joined together by adjustable bands. The adjustable bands are 2.5 inches long and are embellished with imitation gemstones. This item is used by women and girls to style their hair and to create updos, pony tails, butterfly twists, French twists and additional hair styles.

The applicable subheading for the EZ Comb will be 9615.11.5000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Combs, hair-slides and the like; hairpins, curling pins, hair-curlers, and the like, other than those of heading 8516, and parts thereof: Combs, hair-slides, and the like: of hard rubber or plastic: Other: Other." The rate of duty will be free.

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

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

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

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

ATTACHMENT B

HQ H088397

CLA-2 OT:RR:CTF:CPMAA H088397 MAB

CATEGORY: Classification

TARIFF NO.: 9615.11.10/30

Ms. MIKA McLAFFERTY

GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN AND KLESTADT, LLP

599 LEXINGTON AVENUE 36TH FLOOR

NEW YORK, NY 10022-7648

RE: Revocation of NY N048195; tariff classification of an EZ Comb from China

DEAR Ms. McLAFFERTY:

On February 3, 2009, U.S. Customs and Border Protection (CBP) issued your client, Telebrands Corp., New York Ruling Letter (NY) N048195. The ruling pertained to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a plastic hair accessory known as an “EZ Comb.” We have reviewed additional information and find N048195 to be in error with respect to the tariff classification.

FACTS:

In NY N048195, CBP stated in pertinent part, the following:

The item at issue is a plastic hair accessory referred to as an “EZ Comb.” The hair accessory measures 5 inches by 2.5 inches, and features two rows of teeth that are joined together by adjustable bands. The adjustable bands are 2.5 inches long and are embellished with imitation gemstones. This item is used by women and girls to style their hair and to create updos, pony tails, butterfly twists, French twists and additional hair styles.

The applicable subheading for the EZ Comb will be 9615.11.5000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Combs, hair-slides and the like; hairpins, curling pins, hair-curlers, and the like, other than those of heading 8516, and parts thereof: Combs, hair-slides, and the like: of hard rubber or plastic: Other: Other.” The rate of duty will be free.

Additional information on the Telebrands website describes a similar if not identical item to the instant merchandise (called an “EZ CombsT”) as having “dual combs with 10 durable bungees that stretch and hold your hair.”¹

ISSUE:

Whether the subject plastic hair accessory referred to as EZ Comb is considered a hair comb of subheading 9615.11.10/30, HTSUS, or a hair-slide of subheading 9615.11.50, HTSUS?

¹ TELEBRANDS, <https://inventors.telebrands.com/EZCombs.html> (last visited on Dec. 28, 2017).

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 are as follows:

9615	Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Combs, hair-slides and the like:
9615.11	Of hard rubber or plastics: Combs:
9615.11.10	Valued not over \$4.50 per gross Valued over \$4.50 per gross:
9615.11.20	Of hard rubber
9615.11.30	Other
	Other:
9615.11.40	Not set with imitation pearls or imitation gemstones
9615.11.50	Other

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), constitute the official interpretation of the Harmonized System at the international level. While neither 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. T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Heading 9615, HTSUS, provides for, among other things, combs, hair-slides and the like. The ENs to heading 9615, HTSUS, state that the heading covers, *inter alia*:

- (1) **Toilet combs of all kinds**, including combs for animals.
- (2) **Dress combs of all kinds**, whether for personal adornment or for keeping the hair in place.
- (3) **Hair-slides and the like** for holding the hair in place or for ornamental purposes.

These articles are usually made of plastics, ivory, bone, horn, tortoise-shell, metal, etc.

Heading 9615, HTSUS, specifically provides for combs, hair-slides and the like. Thus, there is no dispute that the instant merchandise is properly classified in heading 9615, HTSUS, and, by application of GRI 6, in subheading 9615.11, HTSUS. The classification dispute occurs at the 8 digit level as to whether it is a comb of subheading 9615.11.10, HTSUS, or a hair-slide and the like of subheading 9615.11.50, HTSUS.

The ENs state that both dress combs and hair-slides may have the dual nature of holding the hair in place and adorning the hair. The EZ Comb indeed possesses this dual nature. However, neither the EN nor the legal notes to chapter 96, provide definitions for the words comb or hair-slides. In the absence of a definition of a term in the HTSUS or ENs, the term's correct meaning is its common and commercial meaning. *Nippon Kogasku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673, F.2d 1268 (1982).

In considering the definition of comb, we note that the previous tariff schedule (TSUSA) in Subpart A, of Schedule 7, provided "the term combs means toothed instruments having not over two rows of teeth, for adjusting, cleaning, or confining hair, or for personal adornment." See Headquarters Rulings Letter HQ 951234 (March 11, 1992). Common definitions found in dictionaries define a comb as "a toothed instrument used especially for adjusting, cleaning, or confining hair,"² as "a toothed strip of plastic, hard rubber, bone, wood, or metal, used for arranging the hair...or holding it in place,"³ as well as a "small comb-shaped object that women put in their hair to hold their hair away from their face or for decoration."⁴

HQ 951234 also addressed the meaning of hair-slides and the like, and found no definition for the word hair-slides. However, common definitions found in dictionaries include that it is British term for "a typically bar-shaped clip or ornament for the hair" and that the North American term is "barrette,"⁵ that it is a British term for "a clip or bar for holding hair in place,"⁶ it is "a decorative hinged clip that girls and women put in their hair to hold it in place,"⁷ and in British it is "a hinged clip with a tortoiseshell, bone, or similar back, used to fasten the hair."

The EZ Comb exhibits the characteristics of a comb and not a hair-slide and the like. Most noteworthy is that EZ Comb contains the word "comb" in its name and not "hair-slide," "barrette," or other like object (i.e., EZ Hair-Slide, EZ Barrette, etc.). The EZ Comb contains two combs with rows of teeth that are joined together on their non-toothed sides by adjustable elastic bands/bungees measuring 2.5 inches in length. Together the combs and bands/bungees hold the hair into place and create versatile hair styles. While the two combs are hidden underneath the hair (and therefore are not visible), the bands/bungees form a visible, decorative pattern on top of the hair. The gemstones attached to the bands/bungees are also decorative, adding to the aesthetic appearance.

² MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/comb> (last visited on Dec. 28, 2017).

³ DICTIONARY.COM, <http://www.dictionary.com/browse/comb> (last visited on Dec. 28, 2017).

⁴ CAMBRIDGE DICTIONARY, <http://dictionary.cambridge.org/us/dictionary/english/comb> (last visited on Dec. 28, 2017).

⁵ ENGLISH OXFORD LIVING DICTIONARIES, <https://en.oxforddictionaries.com/definition/hairslide> (last visited on Dec. 28, 2017).

⁶ MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/hair%20slide> (last visited on Dec. 28, 2017).

⁷ VOCABULARY.COM, <https://www.vocabulary.com/dictionary/hair%20slide> (last visited on Dec. 28, 2017).

A review of our prior rulings indicates that CBP has classified merchandise similar to EZ Comb in subheading 9615.11.30, HTSUS, including fashion double hair combs with metal teeth and decorative beads attached by fabric covered elastics (N086258 dated December 8, 2009), hair combs decorated with imitation pearls or plastic colored balls (NY 884650, dated May 6, 1993), decorative hair comb clips (N137675 dated January 4, 2011) and plastic toothed horseshoe headbands (N118302 dated September 3, 2010).

Since EZ Comb is anchored by two combs with teeth to secure the hair in place and does not contain any bars, hinges, or clips, it does not meet the dictionary definitions of a hair-slide (or the American-term of barrette), as noted above. Nor is it similar to any of the “hair-slides and the like” that CBP typically classifies in subheading 9615.11.50, HTSUS, including barrettes (NY 884650 dated May 6, 1993; NY K85329 dated April 26, 2004; and NY E85470 dated August 13, 1999), hair clips (N016358 dated September 5, 2007 and NY N218827 dated June 13, 2012), plastic tiaras and fabric headbands without teeth (NY PD B83463 dated April 5, 1997 and N199299 dated January 19, 2012) and a ponytailer (or scrunchie) to hold a ponytail (NY N028057 dated May 20, 2008).

Based on the above, the applicable subheading for the EZ Comb is 9615.11.10 or 9615.11.30, HTSUS, depending upon the value of the combs.

HOLDING:

Under the authority of GRIs 1 and 6, the subject EZ Comb is properly classifiable under subheading 9615.11.1000 or 9615.11.3000, HTSUSA (Annotated), which provides for “Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Combs hair-slides and the like: Of hard rubber or plastics: Combs: Valued not over \$4.50 per gross” or “...Other: Valued over \$4.50 per gross.” The 2017 general column one duty rate is 14.4¢/gross + 2% *ad valorem* if valued not over \$4.50 per gross or 28.8¢/gross + 4.6% *ad valorem* if valued over \$4.50 per gross.

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

EFFECT ON OTHER RULINGS:

NY 048195, dated February 3, 2009 is REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**MODIFICATION OF ONE RULING LETTER AND
REVOCATION OF TWO RULING LETTERS, AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF FREE-WHEEL BICYCLE
COGS AND CASSETTES**

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

ACTION: Notice of modification of one ruling letter and revocation of two ruling letters, and of revocation of treatment relating to the tariff classification of free-wheel bicycle cogs and cassettes.

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 or modifying three ruling letters concerning tariff classification of free-wheel bicycle cogs and cassettes under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 51, No. 44, on November 1, 2017. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 18, 2018.

FOR FURTHER INFORMATION CONTACT: Dwayne Rawlings, Electronics, Machinery, Automotive, and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0092.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with 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 19 U.S.C. §1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 51, No. 44, on November 1, 2017, proposing to modify one ruling letter and revoke two ruling letters pertaining to the tariff classification of free-wheel bicycle cogs and cassettes. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In Headquarters Ruling Letters ("HQ") H174522, dated June 5, 2012; HQ H161003, dated May 13, 2013; and New York Ruling Letter ("NY") N116976, dated August 20, 2010, CBP classified free-wheel bicycle cogs and cassettes in heading 8714, HTSUS, specifically in subheading 8714.99.80, HTSUS, which provides for other parts and accessories of vehicles of heading 8711, other, other, other. CBP has reviewed HQ H174522, HQ H161003 and NY N116976, and has determined the ruling letters to be in error. It is now CBP's position that the free-wheel bicycle cogs and cassettes are properly classified, by GRIs 1 and 6, in subheading 8714.93.70, HTSUS, which provides for free-wheel sprocket-wheels.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying HQ H174522 and revoking HQ H161003 and NY N116976, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H288022, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: December 20, 2017

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

Attachment

HQ H288022

December 20, 2017

CLA-2 OT:RR:CTF:TCM H288022 DSR

CATEGORY: Classification

TARIFF NO.: 8714.93.70

U.S. CUSTOMS AND BORDER PROTECTION

SEATTLE SERVICE PORT

1000 SECOND AVENUE, SUITE 2100

SEATTLE, WA 98104

Attn: Heather Scott, Senior Import Specialist

RE: Modification of HQ H174522; revocation of HQ H161003 and NY N116976; tariff classification of free-wheel bicycle cogs; Protest Number 3001-11-100145

DEAR PORT DIRECTOR:

In Headquarters Ruling Letter (“HQ”) H174522, dated June 5, 2012, U.S. Customs and Border Protection (“CBP”) classified certain free-wheel bicycle cogs in subheading 8714.99.80, HTSUS, which provides for other parts of bicycles. The ruling also classified front and rear wheel aluminum bicycle wheel hubs in subheading 8714.93.35, HTSUS, which provides for hubs other than coaster braking hubs and hub brakes, other, other. Since HQ H174522 was issued, CBP has reviewed the ruling and determined that the classification provided for the cogs is incorrect and, therefore, that portion of the ruling must be modified for the reasons set forth in this ruling. Additionally, HQ H161003 (May 13, 2013) and NY N116976 (August 20, 2010), which also classified substantially similar articles under subheading 8714.99.80, HTSUS, are revoked for the same reasons.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed modification of HQ H174522, and revocations of HQ H161003 and NY N116976, was published on November 1, 2017, in the Customs Bulletin, Volume 51, No. 44. CBP received no comments in response to the notice.

FACTS:

The relevant merchandise subject to HQ H174522 was described as one entry of rear hub cogs imported for installation onto bicycles and wheels. The cogs at issue are circular articles of metal with teeth on their outer edges and holes in their middles. They are also referred to as “sprockets” and are assembled to form a “cluster” or “cassette” by being grouped to fit one upon another. The cassette is then attached to the rear hub (center bar from which the spokes extend) of a bicycle wheel by lining up splines on the rear hub with grooves formed by the aligned cogs on the inner surface of the cassette, and pushing the cassette towards the center of the hub. The cassette is then secured to the hub with a lock nut. The cassettes are referred to as “SRAM XG-1099,” “SRAM PG 1050,” and “SRAM PG 1070.” The rear portion of the bicycle pedal chain is wrapped around the cassette so that the rear wheel rotates when the bicycle is pedaled.

The cogs were entered under subheading 8714.93.70, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Parts and accessories of [bicycles]: Other: Hubs, other than coaster braking hubs and hub

brakes, and free-wheel sprocket wheels: Free-wheel sprocket-wheels,” free of duty. CBP reclassified and liquidated the merchandise under subheading 8714.99.80, HTSUS, which provides for “Parts and accessories of [bicycles]: Other: Other: Other...” dutiable at 10% *ad valorem*.

ISSUE:

Whether the articles are classified under subheading 8714.99.80, HTSUS, which provides for other parts of bicycles, or in subheading 8714.93.70, HTSUS, which provides for free-wheel sprocket wheels.

LAW AND ANALYSIS:

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

8714	Parts and accessories of vehicles of headings 8711 to 8713: Other:
8714.93	Hubs, other than coaster braking hubs and hub brakes, and free-wheel sprocket-wheels:
8714.93.70	Free-wheel sprocket-wheels.
8714.99	Other:
8714.99.80	Other.
* * * *	

First, we note that in HQ H174522, CBP incorrectly identified the articles under consideration as single cogs (or “sprockets”) that are assembled into cassettes post-importation. It appears the articles are actually imported as multiple cogs assembled into cassettes by being grouped to fit one upon another. However, this discrepancy does not affect our interpretation of the scope of subheading 8714.93.70, HTSUS, because subheading 8714.93.70 covers both “Multiple free-wheel sprockets” or cassettes (subheading 8714.93.7030), and “Other” or single free-wheel sprocket-wheels (subheading 8714.93.7060).

CBP also concluded that the articles did not meet the common and commercial meaning of the term “free-wheel sprocket-wheels” because the articles did not screw onto a bicycle wheel’s hub and did not possess an internal ratcheting mechanism common to older “traditional” cogs and cassettes that we believed were contemplated by the term “free-wheel sprocket-wheels.” Citing Sutherland’s Handbook for Bicycle Mechanics, 4–26 to 4–49 (7th Ed. 2005); also www.sheldonbrown.com/free-k7.html. We concluded that those differences in design and functionality led to the bicycling industry distinguishing such cassettes from “free-wheels” and marketing them as “freehub cassettes.” Citing www.bikepedia.com/PA/category3.aspx?catkey=2006.

We have now re-examined that conclusion and believe that the interpretation of the subheading term “free-wheel sprocket wheels” in HQ H174522 is unnecessarily restrictive and does not adequately take into account that the more technologically advanced or improved articles at issue share the essential characteristics of the older free-wheel cogs and cassettes that have been within the scope of subheading 8714.93.70, HTSUS. To wit, courts have long ruled that *eo nomine* provisions for the classification of merchandise necessarily include technological advancements or commercially sophisticated versions of the same articles. *Borneo Sumatra Trading Co., Inc. v. United States*, 311 F. Supp. 326, 338–39 (Cust. Ct. 1970) (citing *R.J. Saunders & Co., Inc. v. United States*, 49 C.C.P.A. 87, C.A.D. 801 (1962)). *See also* *Simmon Omega, Inc. v. United States*, 83 Cust. Ct. 14, C.D. 4815 (1979), and *Trans-Atlantic Co. v. United States*, 471 F.2d 1397, 60 C.C.P.A. 100, C.A.D. 1088 (1973), in which the courts have held that technological advancements and “improvement in the design of an article does not militate against its continuing to be a form of the named articles.” In *Wagner Spray Tech. Corp. v. United States*, 31 C.I.T. 676, 680 (2007), the C.I.T. concluded that an *eo nomine* provision may be expanded to include improved merchandise only when the essential characteristic is shared between the original and improved good. (“[A]n article which has been improved or amplified but whose essential characteristic is preserved or only incidentally altered is not excluded from an unlimited *eo nomine* statutory designation.”) (quoting *Casio, Inc. v. United States*, 73 F.3d 1095, 1098 (Fed. Cir. 1996)).

Whether cogs or cassettes slide onto a wheel hub and are locked with a locknut, and contain an internal ratcheting mechanism, or are instead designed to directly screw onto a free-wheel hub without possessing an internal ratcheting mechanism, the purposes and defining features of the articles are to allow a bicycle power train to be engaged when pedaling forward and coast freely when not pedaled or pedaling backwards. Subheading 8714.93.70, HTSUS, does not require that a clutch mechanism must be located inside of a cog, or cassette, and outside of the rear hub, in order for the articles to be classified in that subheading. Nor is there a requirement that such articles screw directly onto a wheel hub. Instead, the overriding question is whether the article under consideration functions as a sprocket-wheel of the free-wheel type. Here, the subject articles act as free-wheel sprocket-wheels of subheading 8714.93.70, HTSUS, by allowing a bicycle power train to be engaged when pedaling forward and coast freely when not pedaled or pedaling backwards. For those reasons, we find that the subject articles (cassettes) of HQ H174522 are instead properly classified in subheading 8714.93.70, HTSUS, as “free-wheel sprocket-wheels,” and free of duty.

In HQ H161003, the items under consideration are described as circular articles of metal with teeth on their outer edges and holes in their middles. They are also referred to as “sprockets” or “cogs” and, after importation, they are assembled to form a “cluster” or “cassette” by being grouped to fit one upon another. The cassette is attached to a rear hub (center bar from which the spokes extend) of a bicycle wheel by lining up splines on the rear hub with grooves formed by the aligned cogs on the inner surface of the cassette, and pushing the cassette towards the center of the hub. The cassette is then secured to the hub with a lock nut. The rear portion of the bicycle pedal chain is wrapped around the cassette so that the rear wheel rotates when the bicycle is pedaled. The items are substantially similar to those of HQ

H174522, *supra*, and were also incorrectly classified in subheading 8714.99.80, HTSUS, as other parts of bicycles, by incorporating the holding of HQ 174522 by reference. Given our reconsideration of that holding, we now find that the cogs of HQ H161003 are instead properly classified in subheading 8714.93.70, HTSUS, as “free-wheel sprocket-wheels.”

Finally, we note that in NY N116976, CBP classified a “Cassette Single-speed Driver Unit” in subheading 8714.99.80, HTSUS, as an “other” part of a bicycle. The article is described as a cylindrical piece of metal with a hole at its center and a star-shaped flange. It possesses internal bearings and attached to the rear wheel hub of a bicycle, where a bicycle chain would be wrapped around it and allow a bicycle power train to be engaged when pedaling forward and coast freely when not pedaled or pedaling backwards. We now also find that the article of NY N116976 is instead properly classified in subheading 8714.93.70, HTSUS, as a “free-wheel sprocket-wheel.”

HOLDING:

By application of GRIs 1 and 6, the cassettes of HQ H174522, and the cogs of H161003 and NY N116976, are classified in subheading 8714.93.70, HTSUS, as “free-wheel sprocket-wheels,” and free of duty. The classification of the hubs of HQ H174522 is not affected by this action. 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.us-itc.gov*.

EFFECT ON OTHER RULINGS:

HQ H174522, dated June 5, 2012, is modified in accordance with this decision. HQ H161003, dated May 13, 2013, and NY N116976, dated August 20, 2010, are revoked.

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

Sincerely,

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**NOTICE OF ISSUANCE OF FINAL DETERMINATION
CONCERNING CERTAIN MONOCHROME LASER
PRINTERS AND REPLACEMENT TONER CARTRIDGES**

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of certain monochrome laser printers and replacement toner cartridges. Based upon the facts presented, CBP has concluded that the country of origin of the monochrome laser printers and replacement toner cartridges in question is Japan, for purposes of U.S. Government procurement.

DATES: The final determination was issued on March 19, 2018. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within April 23, 2018.

FOR FURTHER INFORMATION CONTACT: Yuliya A. Gulis, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–0042.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on March 19, 2018 pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain monochrome laser printers and replacement toner cartridges, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H287548, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. §§ 2511–18). In the final determination, CBP concluded that the country of origin of the monochrome laser printers is Japan for purposes of U.S. Government procurement. CBP also determined that the country of origin of replacement toner cartridges is Japan for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any

party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: March 19, 2018.

Alice A. Kipel,
Executive Director,
Regulations and Rulings, Office of Trade.

HQ H287548

March 19, 2018

OT:RR:CTF:VS H287548 YAG

CATEGORY: Origin

MR. STANLEY R. SOYA
BAKER BOTTS LLP
THE WARNER
1299 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20004-2400

RE: U.S. Government Procurement; Country of Origin of Monochrome Laser Printers and Replacement Toner Cartridges; Title III, Trade Agreements Act of 1979 (19 U.S.C. § 2511 *et seq.*); Subpart B, Part 177, CBP Regulations

DEAR MR. SOYA:

This is in response to your correspondence, dated June 14, 2017, requesting a final determination, pursuant to subpart B of Part 177 of the U.S. Customs and Border Protection (“CBP”) Regulations (19 C.F.R. § 177.21 *et seq.*), on behalf of your clients, Brother Industries (U.S.A.) (“BIUS”) and Brother International Corporation (“BIC”) (collectively “Brother”), concerning the country of origin of monochrome laser printers and replacement toner cartridges.

We note that BIUS and BIC are parties-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and are entitled to request this final determination.

FACTS:

Monochrome Laser Printers:

Brother plans to manufacture two new printer models in the United States: (1) the HL-L6400DWG, a printer, and (2) the MFC-L6900DWG, a multifunctional printer/ scanner/copier/fax (collectively “monochrome laser printers”). These monochrome laser printers will be comprised of approximately 1,100 parts and components from several countries, including Japan, the Philippines, China, and Vietnam. The printers are comprised of 8 main subassemblies, as follows:

(1) Main printed circuit board (“PCB”) assembly or motherboard of the machine: It will communicate with the PC, house the memory in the printer, and form the image printed on the page. The main component of the main PCB will be the Application Specific Integrated Circuit (“ASIC”), which includes the Central Processor Unit (“CPU”) and other functional circuits, including the mechanical control circuit, USB communication control circuit, printing data processing circuit, and memory control circuit. Most of the digital processing functions of the main PCB will be processed by the ASIC. The overall ASIC structure and each functional circuit will be designed in Japan and manufactured by third-party suppliers in Japan. The other main components of the main PCB, which include the random-access memory (“RAM”), read-only memory (“ROM”), electrically erasable programmable read-only memory (“EEPROM”), and printed circuit board, will be produced in various other countries. The components of the main PCB assembly will be assembled in Japan.

(2) Firmware: The firmware will be software embedded in the main PCB of the machines to provide the control program for the device. The overall design and most steps in the development of the firmware will be performed in Japan.

(3) Fuser unit: The fuser unit will apply pressure and heat to the printed page to enable toner to permanently melt onto it. The main components of the fuser unit, including a pressure roller, halogen lamp, thermistor sensor, drive gear, upper case, and lower case, will be produced in various countries. The components of the fuser unit will be assembled in Vietnam.

(4) Automatic Document Feeder (“ADF”) unit: The ADF unit takes up to 80 pages and feeds them one page at a time into the scanner, allowing for the copying, printing or faxing of multi-page documents without requiring the user to manually replace each page. This subassembly will be available for the MFC-L6900DWG. The main components of the ADF unit, including ADF cover, document cover, and document separate roller will be produced in various countries, and assembled in Vietnam.

(5) Organic Photo Conductor (“OPC”) drum unit: The OPC drum unit is an aluminum cylinder that attracts toner using an electrostatic charge that is transferred to paper to create a printed image. The main components of the OPC drum unit, including the OPC drum, corona wire, drive gear, and case, will be produced in various countries, and assembled in Vietnam.

(6) Toner cartridge: The toner cartridge will hold the toner that is transferred to an electrostatically charged OPC drum. The main component of the toner cartridge, the toner powder, will be produced in Japan. All other components of the toner cartridge, including the developer roller, agitator, supply roller, drive gear, and cases, are produced in various countries. The components of the toner cartridge will be assembled in Vietnam.

(7) Operation panel unit: The operation panel unit controls printer functions and communicates information about the printer and print jobs. The main components of the operation panel unit, including the LCD assembly, which displays the machine status and menu, the LCD control board, touch sensor, key switch, and panel cover, will be produced in various countries, and will be assembled in Vietnam.

(8) Body unit: The body unit consists of various components, such as the cover and frame, paper tray, high-voltage and low-voltage power supply boards, paper feeder, laser unit, flatbed document scanner, and modem board. These components will come from various countries, and will be assembled in Vietnam.

It is claimed that the main PCB assembly and the firmware represent the “brains” of the printer. Further, it is claimed that the Vietnamese subassembly production of the fuser unit, ADF unit, OPC drum unit, toner cartridge, and body unit, as described above, does not require sophisticated skills or expensive machinery. The subassemblies will be generally assembled in Vietnam by using jigs and an electric screwdriver to connect the individual parts of each unit together.

The final manufacturing operations of the monochrome laser printers will take place in the United States, and will take approximately 40 minutes to complete (this timeframe includes testing of the final product). The manufacturing process for two models of the monochrome laser printers slightly differs in steps, but in both cases, the process involves threading brittle wires through spaces into necessary ports to connect various subassemblies, which

requires a degree of precision to ensure that cables and connectors are not damaged or improperly connected. Counsel provided a step-by-step description of the finished printer assembly. Counsel also highlighted the complexity of the process by indicating the fact that, if inserted incorrectly, the cables (which are thin strips of conductive aluminum, coated in a thin layer of insulating material) can break and cause the printer to malfunction throughout its lifecycle. Moreover, there are several cables that, if damaged during the assembly, will require replacement of the entire subassembly upon which the cable is soldered. The main PCB assembly and the firmware, though produced in Japan, will be integrated into the printers in the United States.

Once assembly is completed, both printer models will undergo testing and inspection, which is customized by Brother in Japan to ensure optimal functionality of each printer. Testing and inspection includes not only running Brother's proprietary inspection system, but also a manual inspection of components and overall functioning of the product. These steps will include verifying and installing the firmware to the main PCB assembly and calibrating the position of the laser beam's exposure starting point.

Finally, counsel emphasizes that Brother employees responsible for assembling, inspecting and testing the printers in the United States will be required to undergo approximately two weeks of customized training.

Replacement toner cartridges:

Brother also plans to sell new replacement toner cartridges to the U.S. Government as a separate consumable end-product. The toner cartridges can be used interchangeably in both the model HL-L6400DWG, printer; and the model MFC-L6900DWG, printer/scanner/ copier/fax. The cartridges will be mainly comprised of the following parts: (1) toner powder; (2) supply rollers; (3) developer roller; (4) toner uniform blade; and, (5) cleaning unit. Counsel maintains that the toner powder is the most critical component of the cartridge, as it is a complex powder that allows the printers to form an image on paper. Brother's toner powder will be developed and manufactured in Japan at a toner manufacturer's facility. The toner powder will account for approximately 40% of the total parts and cost of the toner cartridges. The finished cartridge will be made of 29 parts from Japan, Vietnam, China, Philippines, Malaysia, and Indonesia. All these components will be brought together by the manufacturing process in Japan to build the replacement cartridges. The most expensive parts of the cartridge include: (1) the toner powder, which is manufactured in Japan; (2) the developer roller, which will be manufactured in Japan and the Philippines; and, (3) the supply roller and the blade, which will be manufactured in China. Counsel claims that the country of origin of Brother replacement toner cartridges is Japan.

ISSUE:

What is the country of origin of the monochrome laser printers and replacement toner cartridges for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the

U.S. Government, pursuant to subpart B of Part 177, 19 C.F.R. § 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979 (“TAA”), as amended (19 U.S.C. § 2511 *et seq.*).

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. *See also* 19 C.F.R. § 177.22(a).

In rendering final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. *See* 19 C.F.R. § 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government’s purchase of products to U.S.-made or designated country end products for acquisitions subject to the Trade Agreements Act. *See* 48 C.F.R. § 25.403(c)(1). The Federal Acquisition Regulations define “U.S.-made end product” as “an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.” *See* 48 C.F.R. § 25.003.

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of the operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 6 C.I.T. 204, 573 F. Supp. 1149 (1983), *aff’d*, 741 F.2d 1368 (Fed. Cir. 1984). If the manufacturing or combining process is a minor one that leaves the identity of the imported article intact, a substantial transformation has not occurred. *Uniroyal, Inc. v. United States*, 3 C.I.T. 220, 542 F. Supp. 1026 (1982).

In *Energizer Battery, Inc. v. United States*, 190 F. Supp. 3d 1308 (2016), the Court of International Trade (“CIT”) interpreted the meaning of “substantial transformation” as used in the TAA for purposes of government procurement. *Energizer* involved the determination of the country of origin of a flashlight, referred to as the Generation II flashlight, under the TAA. All of the components of the Generation II flashlight were of Chinese origin, except for a white LED and a hydrogen getter. The components were imported into the United States where they were assembled into the finished Generation II flashlight.

The court reviewed the “name, character and use” test utilized in determining whether a substantial transformation has occurred and noted, citing *Uniroyal, Inc. v. United States*, 3 C.I.T. at 226, 542 F. Supp. at 1031, *aff’d*, 702 F.2d 1022 (Fed. Cir. 1983), that when “the post-importation processing consists of assembly, courts have been reluctant to find a change in character, particularly when the imported articles do not undergo a physical change.” *Energizer* at 1318. In addition, the court noted that “when the end-use was pre-determined at the time of importation, courts have generally not found a change in use.” *Energizer* at 1319, citing as an example, *National Hand Tool Corp. v. United States*, 16 C.I.T. 308, 310, *aff’d*, 989 F.2d 1201 (Fed. Cir. 1993). Furthermore, courts have considered the nature of the assembly, *i.e.*, whether it is a simple assembly or more complex, such that individual parts lose their separate identities and become integral parts of a new article.

In reaching its decision in *Energizer*, the court expressed the question as one of whether the imported components retained their names after they were assembled into the finished Generation II flashlights. The court found “[t]he constitutive components of the Generation II flashlight do not lose their individual names as a result [of] the post-importation assembly.” The court also found that the components had a pre-determined end-use as parts and components of a Generation II flashlight at the time of importation and did not undergo a change in use due to the post-importation assembly process. Finally, the court did not find the assembly process to be sufficiently complex as to constitute a substantial transformation. Thus, the court found that Energizer’s imported components did not undergo a change in name, character, or use as a result of the post-importation assembly of the components into a finished Generation II flashlight. Virtually all of the components of the military Generation II flashlight, including the most important component, the LED, were of Chinese origin. Thus, the court determined that China was the correct country of origin of the finished Generation II flashlights under the government procurement provisions of the TAA.

Monochrome Laser Printers:

In this case, counsel argues that the country of origin of the monochrome laser printers at issue will be the United States because the printers will be assembled in a process that involves: (1) complex post-importation assembly operations; (2) the installation of the main PCB assembly and a firmware verification and download; and, (3) a customized testing and inspection process. In support of its position, counsel cites Headquarters Ruling Letters (“HQ”) H241146, dated May 21, 2013; HQ H185775, dated December 21, 2011; and, HQ 560677, dated February 3, 1998. We disagree.

In HQ H241146, CBP considered the country of origin of monochrome laser printers. In that case, Chinese subassemblies were imported into the United States, where they were assembled with U.S.-origin PCBs, and programmed with Japanese-origin firmware. CBP found that the last substantial transformation occurred in the United States. While the printers were comprised of subassemblies and components from various countries, they were also comprised of a controller unit assembled in the United States (with U.S.-origin PCBs), which was important to the function of the printers. We note that the case at issue is distinguishable from HQ H241146 because in addition to the final printer assembly in the United States, the printers in HQ H241146 contained U.S.-origin PCBs.

In HQ H185775, CBP considered the country of origin of a multifunction office machine. In that case, the incomplete print engine was produced in Vietnam and consisted of a metal frame, plastic skins, motors, controller board with supplier-provided firmware, a laser scanning system, paper trays, cabling paper transport rollers, and miscellaneous sensing and imaging systems. The incomplete print engine was shipped to Mexico, where the following assemblies were added: the formatter board, scanner/automatic document feeder, control panel, fax card, hard disk drive/solid state drive, firmware (which was developed and written in the United States), along with other minor components and accessories. CBP determined that Mexico was the country of origin because the assembly of the various components resulted in a substantial transformation. We find HQ H185775 distinguishable because the assembly in Mexico involved multiple components from various countries, including TAA-designated countries.

In HQ 560677, CBP considered two different notebook computers manufactured in the United States with parts and components from various countries. CBP concluded that the foreign components used in the manufacture of the notebook computers lost their separate identities and became an integral part of a notebook computer as a result of the operations performed in the United States. We note that HQ 560677 specifically pertains to notebook computers, which is a different product from the monochrome laser printers at issue, and CBP has considered many other scenarios involving the production of printers that are more relevant to this case.

For example, in HQ H219519, dated April 3, 2013, CBP considered the country of origin of a color printer and fax machine under three different scenarios. In scenarios one and two, the color printer and fax machine underwent the following operations in Mexico: final assembly, downloading firmware written in the United States, and testing, which included making settings appropriate to the buyer's country and the client's specific needs. In scenario one, the assembly took 3–4 minutes whereby the external memory drive was installed onto the formatter and the cables were routed as necessary. The firmware for the engine and formatter was downloaded onto the hard drive or solid state drive. In scenario two, the assembly took 7–8 minutes and involved the assembly discussed in scenario one, plus the installation of the intermediate transfer belt. In both scenarios, the testing took 7–14 minutes and included making certain settings for the language, paper, functionality, and other feature settings, as described above. In scenario three, the color printer and fax machine underwent assembly in Mexico that took 2–3 minutes, the firmware for the sub-systems (engine, formatter) was downloaded onto the hard drive or solid state drive, and the product underwent testing. The cost of the incomplete print engine was the most expensive of the hardware components, with the formatter board being the second-most expensive component. CBP determined that the country of origin of the imported printers was China under all three scenarios, since the assembly performed in Mexico was not significant enough to result in a substantial transformation of the Chinese components and subassemblies. In reaching its decision, CBP emphasized that all of the components were produced in China (with the exception of the hard disk from Malaysia), including all the significant parts that were the essence of the finished product, particularly the high-cost print engine and formatter board.

With respect to the final assembly processes in the United States, we find that this case is similar to HQ H219519 and the CIT's decision in *Energizer* because the assembly process in the United States is not sufficiently complex for the last substantial transformation to occur in the United States. Rather, all of the fully finished printer subassemblies are manufactured in Vietnam, and the PCB and firmware are made in Japan. Thus, substantial manufacturing operations are performed in these countries. Once the Vietnamese subassemblies and the Japanese-origin PCB are imported into the United States, these 10 subassemblies are soldered/ wired together, and programmed with the Japanese-origin firmware. All of these processes, including the testing of the finished printer (which accounts for half of the time of the printer's manufacture), are concluded in just 40 minutes. The manufacturing processes of these subassemblies in the United States do not rise to the level of complex processes necessary for a substantial transformation to occur. In fact, the end-use of the imported and fully assembled subassemblies

is already pre-determined at the time of importation. See *Energizer* at 1319. Additionally, despite counsel's attempt to make the manufacturing processes in the United States appear to be more complex, upon reviewing the provided materials, we find that "threading brittle wires through spaces into necessary ports to connect various subassemblies" amounts to nothing more than simply feeding the wiring harnesses through designated areas, especially considering that the subassemblies in question are already manufactured in a manner that allows for a relatively easy downstream installation. Accordingly, the manufacturing processes that occur in the United States will not subsume the individual subassemblies into a new and distinct article of commerce that has a new name, character, and use.

As discussed in *Energizer*, in cases in which the post-importation processing entails assembly, courts have considered the nature of the assembly together with the name, character, or use test in making a substantial transformation determination. See *Ran-Paige Co., Inc. v. United States*, 35 Fed. Cl. 117, 121 (1996); *Belcrest Linens*, 741 F.2d at 1371; *Uniroyal*, 3 C.I.T. at 226, 542 F. Supp. at 1031. The court has sometimes compared the degree of operations in pre versus post-importation processing to evaluate whether a substantial transformation occurred. For example, in *Nat'l Hand Tool*, the court contrasted the pre-importation processing of cold forming and hot-forging and noted that it required more complicated functions than post-importation processing, which included heat treatment and electroplating. 16 C.I.T. at 311; see also *Uniroyal*, 3 C.I.T. at 224–227, 542 F.Supp. at 1029–31 (comparing a post-importation "minor manufacturing or combining process" in which imported shoe uppers were attached to outsoles with "complex manufacturing processes" that occurred pre-importation when the imported uppers were produced). In such cases, CBP has focused on the importance of other components to make an origin determination.

For example, in HQ H018467, dated January 4, 2008, CBP was asked to consider two manufacturing scenarios for multi-function printers. In one scenario, manufacturing took place in two countries; in the other, it took place in three countries. In the two-country scenario, 18 units were manufactured in the Philippines from components produced in various countries. The units were sent to Japan where the system control board, engine control board, OPC drum unit, and the toner reservoir were manufactured and incorporated into the units. The control boards were programmed in Japan with Japanese firmware that controlled the user interface, imaging, memories, and the mechanics of the machines. The machines were then inspected and adjusted as necessary. CBP found that the manufacturing operations in Japan substantially transformed the Philippine units such that Japan was the country of origin of the multifunctional machines. In making the determination (and in addition to the finding that operations performed in Japan were meaningful and complex and resulted in an article of commerce with a new name, character and use), CBP took into consideration the fact that the system control board, the engine control board, and the firmware, which were very important to the functionality of the machines, were manufactured in Japan.

Similarly, in HQ W563491, dated February 8, 2007, CBP was asked to consider a two-country scenario where all of the subassemblies of the multi-function machine were made in China, with the exception of the controller unit subassembly, application specific integrated circuits and firmware, which were made in Japan. In that case, the final assembly, testing, and the

final inspection were done in Japan. Although CBP stated that the product assembly in Japan was also complex and meaningful, CBP focused on the origin of key components in finding that the country of origin was Japan. *See also* HQ H020516, dated November 7, 2008 (CBP considered Sharp Andromeda II J models composed of eight main subassemblies, two of which involved processing in Japan. All the engineering, development, design, and artwork were developed in Japan. The multifunctional printer control unit was described as the brain of the model. While some of the components were installed on the control printer board in China, the flash read-only memory which included firmware developed in Japan, was manufactured in Japan. The other unit that involved production in Japan was the process unit, that housed a drum produced in Japan. The process unit was assembled in China. The other subassemblies were assembled in China but certain key components of the subassemblies originated in Japan. The final assembly was performed in Japan. Based on the totality of the circumstances discussed in this ruling, CBP agreed that the Jupiter II J-models were considered a product of Japan).

Similar to HQ H018467, HQ W563491, and HQ H020516, in this case, the main PCB assembly is the motherboard of the printers, which communicates with the PC, houses the memory in the printer, and forms the image printed on the page. It also includes key functional circuits, including mechanical control and printing data processing. Additionally, the overall structure and each functional circuit of the ASIC, the main component of PCB, will be designed in Japan and manufactured by third-party suppliers in Japan. The firmware itself provides the control program for the printers and enables the main PCB assembly to function as the electronic “brains” of the printers by controlling all printer functions. The main PCB assembly (consisting of approximately 1,028 components) and the firmware, produced in Japan, a TAA-designated country, account for a significant percentage of the total subassembly cost. Together, the firmware and the main PCB, which serve major functions and are high in value, constitute the essential character of the printers. We note that in the three rulings referenced above, the key components and the firmware were manufactured and developed in the same country in which the final assembly took place. This is not the case here. However, considering that the production of the printer occurs in three countries, we find the last substantial transformation to occur in Japan, given that the essential character of the printer is made in Japan. Accordingly, we find that Japan is the country of origin of the monochrome laser printers.

Replacement toner cartridges:

Finally, counsel argues that Japan is the country of origin for the Brother replacement toner cartridges. Several CBP rulings are cited in counsel’s submission. HQ H251592, dated June 24, 2014, describes an AIO cartridge with three main components: 1) toner powder; 2) developer unit; and, 3) cleaning unit. In HQ H251592, CBP determined that the processing in Japan substantially transformed the non-Japanese components. We find that a similar rationale can be applied to Brother’s replacement cartridges. Therefore, it is the opinion of this office that the country of origin of the replacement toner cartridges will be Japan.

HOLDING:

Based on the facts provided, the imported fully assembled printer subassemblies from Japan and Vietnam will not be substantially transformed into finished monochrome laser printers by the processes that take place in the United States. However, the finished monochrome laser printers will be considered a product of Japan for purposes of U.S. Government procurement. With respect to the Brother replacement toner cartridges, the country of origin will be Japan.

Notice of this final determination will be given in the Federal Register, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days of publication of the Federal Register Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

MONIKA R. BRENNER

for

ALICE A. KIPPEL,

Executive Director

Regulations and Rulings Office of Trade

[Published in the Federal Register, March 23, 2018 (83 FR 12803)]

AGENCY INFORMATION COLLECTION ACTIVITIES:**Drawback Process Regulations**

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

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

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection 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 of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted no later than April 30, 2018 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 dhsdeskofficer@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number (202) 325-0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (83 FR 2813) on January 19, 2018, 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 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Drawback Process Regulations.

OMB Number: 1651-0075.

Form Number: CBP Forms 7551, 7552 and 7553.

Current Actions: This submission is being made to extend the expiration date of this information collection with a decrease to the burden hours due to updated agency estimates. There is no change CBP Forms 7551, 7552, 7553, or to the information being collected.

Type of Review: Extension (without change).

Abstract: The collections of information related to the drawback process are required to implement the provisions of 19 CFR part 191, and certain provisions of part 181 (regarding NAFTA drawback claims), which provide for refunds of duties, as well as taxes and fees in certain situations, imposed on imported merchandise where there is a subsequent related exportation or destruction. The claims referred to in this notice are limited to drawback claims filed in compliance with the regulations in parts 181 and 191 and under 19 U.S.C. 1313, as it was in effect prior to the amendments made by the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (Pub. L. 114-125, 130 stat. 122, February 24, 2016). If the requirements set forth in Parts 181 and 191 are met, claimants may file for a refund using CBP Form 7551, *Drawback Entry*. CBP Form 7552, *Delivery Certificate for Purposes of Drawback*, is used to record transfers of merchandise and is also used each time a change to the merchandise occurs as a result of a manufacturing operation.

CBP Form 7553, *Notice of Intent to Export, Destroy or Return Merchandise for Purposes of Drawback*, is used to notify CBP if an exportation, destruction, or return of the imported merchandise will take place. The information collected on these forms is authorized by 19 U.S.C. 1313(l). The drawback forms are accessible at <http://www.cbp.gov/newsroom/publications/forms>.

Affected Public: Businesses.

CBP Form 7551, Drawback Entry

Estimated Number of Respondents: 2,516.

Estimated Number of Responses per Respondent: 20.205.

Estimated Number of Total Annual Responses: 50,836.

Estimated Time per Response: 35 minutes.

Estimated Total Annual Burden Hours: 29,652.

CBP Form 7552, Delivery Certificate for Drawback

Estimated Number of Respondents: 2,000.

Estimated Number of Responses per Respondent: 20.

Estimated Number of Total Annual Responses: 40,000.

Estimated Time per Response: 33 minutes.

Estimated Total Annual Burden Hours: 22,000.

CBP Form 7553, Notice of Intent To Export, Destroy or Return Merchandise for Purposes of Drawback

Estimated Number of Respondents: 150.

Estimated Number of Responses per Respondent: 20.

Estimated Number of Total Annual Responses: 3,000.

Estimated Time per Response: 33 minutes.

Estimated Total Annual Burden Hours: 1,650.

Dated: March 27, 2018

SETH RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

[Published in the Federal Register, March 30, 2018 (83 FR 13765)]

AGENCY INFORMATION COLLECTION ACTIVITIES:**Small Vessel Reporting System**

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

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

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection 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 of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than May 29, 2018) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0137 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov*.

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number (202) 325-0056 or via email *CBP_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions

from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Small Vessel Reporting System.

OMB Number: 1651-0137.

Abstract: The Small Vessel Reporting System (SVRS) is a pilot program that allows certain participants using small pleasure boats to report their arrival telephonically instead of having to appear in person for inspection by a CBP officer each time they enter the United States. In some cases, a participant may also be asked to report to CBP for an in person inspection upon arrival. Participants may be U.S. citizens, U.S. lawful permanent residents, Canadian citizens, and permanent residents of Canada who are nationals of Visa Waiver Program countries listed in 8 CFR 217.2(a). In addition, participants of one or more Trusted Traveler programs and current Canadian Border Boater Landing Permit (CBP Form I-68) holders may participate in SVRS.

In order to register for the SVRS pilot program, participants enter data via the SVRS website, which collects information such as biographical information and vessel information. Participants will go through the in person CBP inspection process during SVRS registration, and in some cases, upon arrival in the United States.

For each voyage, SVRS participants will be required to submit a float plan about their voyage via the SVRS website in advance of arrival in the United States. The float plan includes vessel information, a listing of all persons on board, estimated dates and times of departure and return, and information on the locations to be visited on the trip. Participants in SVRS can create a float plan for an individual voyage or a template for a float plan that can be used multiple times.

SVRS in accordance with 8 U.S.C. 1225, 8 CFR 235.1, 19 U.S.C. 1433, and 19 CFR 4.2. The SVRS website is accessible at: <https://svrs.cbp.dhs.gov/>.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours. There is no change to the information being collected.

Type of Review: Extension (without change).

Affected Public: Individuals.

SVRS Application

Estimated Number of Respondents: 7,509.

Estimated Number of Total Annual Responses: 7,509.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 1,877.

Float Plan

Estimated Number of Respondents: 2,589.

Estimated Number of Total Annual Responses: 2,589.

Estimated Time per Response: 10.6 minutes.

Estimated Total Annual Burden Hours: 457.

Dated: March 27, 2018.

SETH RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

[Published in the Federal Register, March 30, 2018 (83 FR 13766)]