

U.S. Customs and Border Protection



PROPOSED REVOCATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF BRASS PLUMBING COMPONENTS

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

ACTION: Notice of proposed revocation of two ruling letters and revocation of treatment relating to the tariff classification of brass plumbing components.

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 two ruling letters concerning tariff classification of brass plumbing components 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 June 1, 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: Nicholai Diamond, Electronics, Machinery, Automotive, and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0292.

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 two ruling letters pertaining to the tariff classification of brass plumbing components. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N262070, dated March 16, 2015 (Attachment A) and NY L82336, dated February 23, 2005 (Attachment B), 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 two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should 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 N262070 and NY L82336, CBP classified brass plumbing components in heading 7419, HTSUS, specifically in subheading 7419.99.50, HTSUS, which provides for: "Other articles of copper: Other: Other: Other: Other." CBP has reviewed NY N262070 and NY L82336 and has determined the ruling letters to be in error. It is now

CBP's position that the brass plumbing components are properly classified, in heading 7412, HTSUS, specifically in subheading 7412.20.00, HTSUS, which provides for "Copper tube or pipe fittings (for example couplings, elbows, sleeves): Of copper alloys."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N262070 and NY L82336 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H260141, set forth as Attachment C to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 19, 2018

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N262070

March 16, 2015

CLA-2-74:OT:RR:NC:N1:113

CATEGORY: Classification

TARIFF NO.: 7419.99.5010

Ms. JENNIFER MITCHELL
3245 AMERICAN DRIVE
MISSISSAUGA, ONTARIO CANADA L4V 1B8

RE: The tariff classification of a Tubular P-Trap from an unspecified country

DEAR Ms. MITCHELL:

In your letter dated February 20, 2015, on behalf of Oakville Stamping & Bending Limited, you requested a tariff classification ruling. A sample and diagrams were submitted for our review.

The item under consideration is identified in your letter as a Tubular P-Trap, Model 110BDCP. The P-Trap consists of a 1-¼ inch ground joint, 20 gauge tubular brass 7 inch wellbend, brass nuts and a deep bell flange, less cleanout. You have indicated that Tubular P-Traps are used with plumbing fixtures (sinks, bathtubs and toilets) and are designed to prevent hazardous sewer gases from entering the building.

The applicable subheading for the Tubular P-Trap, Model 110BDCP, will be 7419.99.5010, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of copper, other, other, other, brass plumbing goods not elsewhere specified or included. 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 Ann Taub at ann.taub@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER
Director

National Commodity Specialist Division

ATTACHMENT B

NY L82336

February 23, 2005

CLA-2-74:RR:NC:N1:113 L82336

CATEGORY: Classification

TARIFF NO.: 7419.99.5010

MR. CRAIG M. SCHAU
MENLO WORLDWIDE TRADE SERVICES
6940 ENGLE ROAD, SUITE A
MIDDLEBURG HEIGHTS, OH 44130

RE: The tariff classification of brass plumbing goods from Mexico

DEAR MR. SCHAU:

In your letter dated January 31, 2005, on behalf of Oatey Supply Chain Services, you requested a tariff classification ruling.

The samples you provided are brass plumbing goods. The five items are: the 701DFBN-1 P-Trap Kit; the 711A-1 Sink P-trap Kit; the 121A-1 End Outlet Waste Line Kit; the 114-B Combination Sink Waste Line Kit ; and, the 730GPBN-6-1 Sink Trap P-Trap Drain Kit. Most of the articles in the kits are made of brass. The 730GPBN-6-1 contains a PVC drain adaptor.

The applicable subheading for the plumbing kits will be 7419.99.5010, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of copper, other, other, other, brass plumbing goods not elsewhere specified or included. The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist James Smyth at 646-733-3018.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT C

HQ H260141

CLA-2 OT:RR:CTF:EMAIN H260141 NCD

CATEGORY: Classification

TARIFF NO.: 7412.20.0035

MR. CRAIG M. SCHAU
MENLO WORLDWIDE TRADE SERVICES
6940 ENGLE ROAD, SUITE A
MIDDLEBURG HEIGHTS OH, 44130

RE: Revocation of NY N262070 and NY L82336; Classification of brass plumbing components

DEAR MR. SCHAU:

This letter concerns New York Ruling Letter (NY) N262070, issued to you on March 16, 2015 by U.S. Customs and Border Protection (CBP), concerning the tariff classification of five brass plumbing components under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY N262070, determined that it is incorrect, and for the reasons set forth below, are revoking the ruling.

We have additionally reviewed NY L82336, dated February 23, 2005, which likewise pertains to brass plumbing components, and have similarly determined that ruling to be incorrect. Accordingly, we are also revoking NY L82336.

FACTS:

The merchandise at issue in both rulings at issue consists of various articles designed to connect pipe ends and fixtures in plumbing systems. Three of the articles at issue in NY L82336, and the sole article at issue in NY N262070, are brass “p-traps” designed to connect the ends of pipes to plumbing fixtures like sinks, bathtubs, and toilets.¹ They consist of a singular, uninterrupted bore that is straight at one end and convexly curved at the other so as to form the shape of the letter “P” (see Figure 1 below). By all indications, the p-trap at issue in NY N262070 is wholly made up of brass. The three p-traps at issue in NY L82336 are predominantly brass, but all three also include rubber washers and one of the three also includes an adapter of polyvinyl chloride (PVC) or acrylonitrile butadiene styrene (ABS).

The other two articles at issue in NY L82336 are a center outlet waste with slip joint connection and an end outlet waste, both of which are similarly designed to connect the ends of pipes to plumbing fixtures. The former consists of two separate apertures that curve 90 degrees at their ends, and that dovetail at their opposite ends into a single aperture (see Figure 2 below). The end outlet waste consists of a single aperture that curves 90 degrees at one end and that intersects and flows into a perpendicular aperture at the other (see Figure 3 below). Like the p-traps at issue in NY L82336, both variants of the outlet wastes are predominantly brass in composition but also include rubber washers.

¹ Brass is a metal alloy consisting of copper and zinc. See Brass Definition, Oxford Dictionary <https://en.oxforddictionaries.com/definition/brass> (last visited March 6, 2018).

All p-traps and outlet wastes at issue in NY N262070 and NY L82336 were classified by CBP in heading 7419, HTSUS. They were specifically classified in subheading 7419.99.50, HTSUS, which provides for: “Other articles of copper: Other: Other: Other: Other.”



Figure 1



Figure 2



Figure 3

ISSUE:

Whether the brass plumbing components are properly classified in heading 7412, HTSUS, as copper pipe fittings, or in heading 7419, HTSUS, as other articles of copper.

LAW AND ANALYSIS:

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order. GRI 3(b) provides, in relevant part, that “composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale...shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.”

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

The 2018 HTSUS provisions under considerations, in pertinent part, are as follows:

7412	Copper tube or pipe fittings (for example couplings, elbows, sleeves):
7412.20.00	Of copper alloys
7419	Other articles of copper: Other:
7419.99	Other: Other:
7419.99.50	Other

Because heading 7419, HTSUS, applies only to “other” articles of copper, we initially consider heading 7412, HTSUS, which applies more specifically to copper tube or pipe fittings. EN 74.12 provides in relevant part, as follows:

The Explanatory Note to heading 73.07 applies, *mutatis mutandis*, to this heading.

In turn, EN 73.07 provides, in relevant part, as follows:

This heading covers fittings of iron or steel, mainly used for connecting the bores of two tubes together, or for connecting a tube to some other apparatus, or for closing the tube aperture...

* * *

This heading therefore includes flat flanges and flanges with forged collars, elbows and bends and return bends, reducers, tees, crosses, caps and plugs, lap joint stub-ends, fittings for tubular railings and structural elements, off sets, multi-branch pieces, couplings or sleeves, clean out traps, nipples, unions, clamps and collars.

The term “pipe fitting” is not defined in the HTSUS. As such, it must be construed in accordance with its common meaning, which may be ascertained by reference to “standard lexicographic and scientific authorities” and to the pertinent ENs. See *GRK Can., Ltd. v. United States*, 761 F.3d 1354, 1357 (Fed. Cir. 2014). According to various technical references and EN 73.07 alike, pipe fittings denote articles used to connect pipes to each other and/or to wholly separate apparatus. See *L & B Prods. Corp. v. United States*, 66 Cust. Ct. 424, 429 (Cust. Ct. 1971) (citing *Audels Mech. Dictionary*, *Knight’s New Am. Mech. Dictionary* and *The Dictionary of Mech. Eng’g* in defining “pipe fitting” as “auxiliary pieces to the main pipe system which is generally designed to transmit either a fluid or gas”); see also *GRK Canada, Ltd. v. United States*, 761 F.3d 1354, 1358 (Fed. Cir. 2014) (“Although an *eo nomine* provision generally describes the merchandise by name, not by use, such a provision may be limited by use when the name itself inherently suggests a type of use.”). Those authorities and others also indicate that for purposes of tariff classification, pipe fittings encompass tees, traps, and elbows or bends. See EN 73.07 (enumerating those items as exemplars of pipe fittings); see also *Mitsubishi Int’l Corp. v. United States*, 78 Cust. Ct. 4, 19 (1977) (citing various mechanical engineering dictionaries in determining that bends and tees qualify as pipe fittings); *Mundo Corp.*, 56 Cust. Ct. 303, 308, 311 (1966) (determining that cleanouts used in conjunction with traps are describable as pipe fittings).²

Common among those items, as well as various others enumerated in EN 73.07, is that they allow fluids to flow through their apertures while

² As noted in HQ H168717, dated July 17, 2015, H.R. Conf. Rep. No. 100–576, at 549–50 (1988), reprinted in 1988 U.S.C.A.N. 1547, 1582–83, states as follows:

Decisions by the Customs Service and the courts interpreting the nomenclature under the TSUS are not to be deemed dispositive in interpreting the HTSUS. Nevertheless, on a case-by-case basis prior decisions should be considered instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS.

In *Mitsubishi* and the above-cited *L & B Prods.*, the pertinent heading at issue was Schedule 6, part 2, subpart B of the TSUS, which provided for “Pipe and tube fittings, or iron or steel.” 78 Cust. Ct. at 19; 66 Cust. Ct. at 428. In *Mundo Corp.*, the pertinent heading at issue was paragraph 327 of the Tariff Act of 1930, as modified by T.D. 51802, which provided for “Cast-iron pipe of every description, and cast-iron fittings for cast-iron pipe.” 56 Cust. Ct. at 304. While neither of those provisions is identical to heading 7412, HTSUS, all three pertain to “pipe fittings.” Therefore, because the proper interpretation of “pipe fitting” is central to the instant matter, those cases are instructive here.

simultaneously affecting the flow of the fluid in some manner. Specifically, pipe tees combine or split fluid streams whereas bends, elbows, and traps change the directional flow of the fluid and, in the case of the traps, prevent backflow. *See Mitsubishi*, 78 Cust. Ct. at 19–20 (describing functions of bends and elbows). Thus, an article which conducts one or more of these functions while channeling fluid from one adjoining pipe end to another (or to an apparatus intake, as the case may be) qualifies as a pipe fitting. *See LeMans Corp. v. United States*, 660 F.3d 1311, 1320–21 (Fed. Cir. 2011) (holding that use of EN examples to define the scope of a tariff term is permissible). As stated above, the subject p-traps and outlet wastes are all designed to connect pipe ends to various fixtures in plumbing systems. The p-traps, like any other common plumbing traps, consist of conjoined bends that effectively alter the direction in which fluid flows through the plumbing systems while preventing backflow into the fixtures. In light of this, and that “traps” are specifically identified as “pipe fittings” in case law and the relevant EN alike, the p-traps qualify as pipe fittings within the meaning of heading 7412, HTSUS. Both the outlet wastes incorporate the physical and functional aspects of bends and tees, insofar as they include turns and intersections that, respectively, alter directional fluid flow and combine fluid streams. Therefore, they likewise qualify as pipe fittings within the meaning of heading 7412, HTSUS. *See HQ H282297, supra*.

Lastly, we note that all five articles at issue in NY L82336 include rubber washers and, in the case of one of the p-traps, plastic adapters. Even if the articles at issue could be considered “composite goods” on this basis, our determination would remain unchanged. It is clearly the brass components which account for the overwhelming majority of the articles’ surface areas and weights, and which wholly enable the transmission of fluid within plumbing systems. *See EN(VIII) to GRI 3(b)* (“Essential character...may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.”); *see also Home Depot USA, Inc. v. United States*, 491 F.3d 1334, 1337 (Fed. Cir. 2007) (“Many factors should be considered when determining the essential character...specifically including but not limited to those factors enumerated in Explanatory Note (VIII) to GRI 3(b).”).

By any measure, therefore, all articles at issue in NY N262070 and NY L82336 are products of heading 7412, HTSUS. We note that this determination is consistent with NY L83398, which was issued to you March 31, 2005, insofar as that ruling classified various items with the form and function of tees and bends in heading 7412, HTSUS.

HOLDING:

By application of GRI 1, the subject brass components are classified in heading 7412, HTSUS. They are specifically classified in subheading 7412.20.0035, HTSUSA (Annotated), which provides for “Copper tube or pipe fittings (for example couplings, elbows, sleeves): Of copper alloys: Other: Of copper-zinc base alloys (brass): Threaded: Other.” The duty rate is 3 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N262070, dated March 16, 2015, and NY L82336, dated February 23, 2005, are hereby REVOKED.

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 HOT MAX SOAPSTONE
HOLDER**

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 a hot max soapstone holder.

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 a hot max soapstone holder 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 June 1, 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: Reema Radwan, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–7703.

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 a hot max soapstone holder. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N239783, dated April 10, 2013 (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 N239783, CBP classified a hot max soapstone holder in heading 7116, HTSUS, specifically in subheading 7116.20.40, HTSUS, which provides for "articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed)." CBP has reviewed NY N239783 and has determined the ruling letter to be in error. It is now CBP's position that the hot max soapstone

holder is properly classified, in heading 9017, HTSUS, specifically in subheading 9017.20.8080, HTSUSA (Annotated), which provides for “drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tapes, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof: Other drawing, marking-out or mathematical calculating instruments: Other: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N239783 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H293247, 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 19, 2018

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N239783

April 10, 2013

CLA-2-71:OT:RR:NC:N4:433

CATEGORY: Classification

TARIFF NO.: 7116.20.4000

GREG MONTGOMERY
ATTORNEY-IN-FACT
OEC GROUP
11960 WESTLINE INDUSTRIAL DRIVE
ST. LOUIS, MO 63146

RE: The tariff classification of a Hot Max Soapstone Holder from China.

DEAR MR. MONTGOMERY:

In your letter dated March 15, 2013, on behalf of LDL Imports, you requested a tariff classification ruling. As requested, the sample submitted will be returned to you.

Model 22025 is the Hot Max Flat Soapstone Holder. The holder consists of a steel body, threaded collar that tightens the soapstone in place, and a pocket clip. In its imported condition there is a flat rectangular piece of soapstone housed within the holder. This item is used for marking metals and dark materials, and will not burn off even under extreme heat caused by welding and cutting.

The Explanatory Notes (ENs), which constitute the official interpretation of the Harmonized Tariff Schedule at the international level, for Chapter 71, heading 7116 (Articles of natural or cultured pearls, precious and semiprecious stones (natural, synthetic or reconstructed)), state in pertinent part, this heading covers all articles (other than those excluded by Notes 2 (b) and 3 to this Chapter), wholly of natural or cultured pearls, precious or semiprecious stones, or consisting partially of natural or cultured pearls or precious or semi-precious stones, but not containing precious metals or metals clad with precious metal (except as minor constituents).

Since soapstone is listed as a semiprecious stone in the annex to heading 7103, HTSUS, and there appears to be no exclusionary notes in Chapter 71, the holder with its soapstone marking instrument is classified within Chapter 71, heading 7116.

The applicable subheading for the Hot Max Flat Soapstone Holder, will be 7116.20.4000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Of semiprecious stones (except rock crystal): Other." The rate of duty will be 10.5% ad valorem.

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

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,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

ATTACHMENT B

HQ H293247
 OT:RR:CTF:CPMM H293247 RGR
 CATEGORY: Classification
 TARIFF NO.: 9017.20.8080

MR. GREG MONTGOMERY
 ATTORNEY-IN-FACT
 OEC GROUP
 11960 WESTLINE INDUSTRIAL DRIVE
 ST. LOUIS, MO 63146

RE: Revocation of NY N239783; Tariff classification of hot max soapstone holder with soapstone

DEAR MR. MONTGOMERY:

This letter is in reference to one ruling letter issued by U.S. Customs and Border Protection (“CBP”) concerning the classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of a hot max soapstone holder. Specifically, in New York Ruling Letter (“NY”) N239783, dated April 10, 2013, CBP classified a hot max soapstone holder in subheading 7116.20.40, HTSUS. We have reviewed NY N239783 and found it to be in error. For the reasons set forth below, we are revoking NY N239783.

FACTS:

In NY N239783, CBP described the merchandise as follows:

Model 22025 is the Hot Max Flat Soapstone Holder. The holder consists of a steel body, threaded collar that tightens the soapstone in place, and a pocket clip. In its imported condition there is a flat rectangular piece of soapstone housed within the holder. This item is used for marking metals and dark materials, and will not burn off even under extreme heat caused by welding and cutting.

ISSUE:

What is the proper classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of the hot max soapstone holder?

LAW AND ANALYSIS:

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

The 2017 HTSUS provisions under consideration are as follows:

6802 Worked monumental or building stone (except slate) and articles thereof, other than goods of heading 6801; mosaic cubes and the like, of natural stone (including slate), whether or not on a backing; artificially colored granules, chippings and powder, of natural stone (including slate):

* * *

- 6815 Articles of stone or of other mineral substances (including carbon fibers, articles of carbon fibers and articles of peat), not elsewhere specified or included:
* * *
- 7116 Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed):
* * *
- 9017 Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring roots and tapes, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof:

In understanding the language of the HTSUS, the Explanatory Notes (“ENs”) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the Harmonized System at the international level. *See* T.D. 89–90, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The General ENs to chapter 90 state that the chapter covers a wide variety of instruments that are used mainly for scientific purposes, for specialized technical or industrial purposes or for medical purposes. According to the General ENs to chapter 90, the chapter includes “instruments and apparatus designed for certain specifically defined uses (surveying, meteorology, drawing, calculating, etc.).” The General ENs also state that “[t]here are certain exceptions to the general rule that the instruments and apparatus of this Chapter are high precision types,” and provide a non-exhaustive list of examples. The ENs to heading 9017, HTSUS, indicate that, “[m]arking-out consists in marking construction lines, etc., on the surface of a part to be machined, sawn, etc.” and that marking-out instruments include “scribers.”

In NY N239783, the soapstone holder was classified in heading 7116, HTSUS, as “[a]rticles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed).” Prior to March 2012, the Annex to the ENs to Chapter 71 listed soapstone (a variety of natural steatite) and as a precious or semiprecious stone. Noting the discrepancy with the EN to heading 71.03, which excludes steatite from the heading as a semi-precious stone in favor of heading 68.02 in accordance with Note 2 to Chapter 68, the Harmonized System Committee (“HSC”) deleted the terms “soapstone” and “steatite” from the Annex to the ENs to Chapter 71 identifying precious or semiprecious stone. Accordingly, articles of soapstone or steatite are not specifically included in chapter 71 under Note 1 to the chapter, or excluded from classification in chapter 68 under note 1(d) to that chapter.

Notwithstanding the change in the Annex to the ENs to Chapter 71, we find that NY N239783 incorrectly classified the instant merchandise because it only examined the soapstone chalk inside the holder and did not account for the steel holder housing the soapstone. Thus, pursuant to GRI 1, we must determine under which heading the entire soapstone holder, which includes the soapstone chalk, is classified.

The purpose of a soapstone holder is to mark metals, wood or brick for measurements and to indicate where to cut, saw, paint, etc. for welding or other industrial purposes. Soapstone chalk can be used for marking metals

during the welding process.¹ To keep soapstone chalk intact and easier to use, welders utilize a soapstone holder to ensure that the soapstone will not break if dropped.² A soapstone holder also prevents soapstone chalk from wearing down as the welder carries it around in his or her pocket.³ The instant merchandise is imported with a rectangular piece of soapstone housed within the holder as a complete item ready for use. Similar to the exemplars in the General ENs to chapter 90, the instant merchandise is used for technical or industrial purposes to mark metals, wood or brick for measurements and to indicate where to cut, saw, paint, etc. for welding or other industrial purposes. Moreover, like the exemplars in the General ENs to chapter 90, the soapstone holder is an instrument designed specifically for drawing and marking on metals and other materials for industrial uses such as welding and metal cutting. In particular, the instant merchandise is similar to the exemplars in the EN to heading 9017. “Marking-out” is described in the ENs to heading 9017 as “marking construction lines, etc., on the surface of a part to be machined, sawn, etc.” This is precisely how the soapstone holder with soapstone will be used to mark metals and other surfaces for cutting, sawing, measuring, etc. for industrial purposes. Moreover, the soapstone holder with soapstone serves the same purpose as a scribe, which is set forth as an exemplar in the EN to heading 9017. According to the Merriam-Webster Online Dictionary, a scribe is “a sharp-pointed tool for making marks and especially for marking off materials (such as wood or metal) to be cut.”⁴ Based on the foregoing, we find that the instant soapstone and holder is a marking-out instrument classified in heading 9017, HTSUS, which provides for “[d]rawing, marking-out or mathematical calculating instruments.”

HOLDING:

Pursuant to GRIs 1 and 6, the hot max soapstone holder in NY N239783 is classified in heading 9017, HTSUS, specifically in subheading 9017.20.8080, HTSUSA (Annotated), which provides for “[d]rawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tapes, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof: Other drawing, marking-out or mathematical calculating instruments: Other: Other.” The 2018 column one, general rate of duty is 4.6% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N239783, dated April 10, 2013, is REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

¹ “Why Do Welders Use Soapstone Chalk?” <https://www.nissenmarkers.com/blog/why-do-welders-use-soapstone/> (last visited on January 4, 2018).

² *Id.*

³ *Id.*

⁴ <https://www.merriam-webster.com/dictionary/scribe> (last visited on February 12, 2018).

19 CFR PART 177**REVOCAION OF SIX RULING LETTERS AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF METAL STEP STOOLS**

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

ACTION: Notice of revocation of six ruling letters and of revocation of treatment relating to the tariff classification of metal step stools.

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 six ruling letters concerning tariff classification of metal step stools 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. 48, on November 29, 2017. Two 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 July 2, 2018.

FOR FURTHER INFORMATION CONTACT: Albena 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), a notice was published in the *Customs Bulletin*, Vol. 51, No. 48, on November 29, 2017, proposing to revoke six ruling letters pertaining to the tariff classification of metal step stools. 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 New York Ruling Letter ("NY") 855972, dated September 12, 1990, NY R02622, dated October 6, 2005, NY N022949, dated February 12, 2008, NY N023940, dated February 29, 2008, NY N024279, dated March 10, 2008, and NY N042721, dated October 29, 2008, CBP classified metal step stools in heading 9403, HTSUS, specifically in subheading 9403.20.00, HTSUS, which provides for "Other furniture and parts thereof: Other metal furniture." CBP has reviewed NY 855972, NY R02622, NY N022949, NY N023940, NY N024279, and NY N042721, and has determined the ruling letters to be in error. It is now CBP's position that the metal step stools in NY 855972, NY R02622, NY N022949, NY N023940, and NY N042721 are properly classified, in heading 7326, HTSUS, specifically in subheading 7326.90.8660, HTSUSA (Annotated), which provides for "Other articles of iron or steel: Other: Other: Other: Other: Ladders." It is now CBP's position that the aluminum metal stool in NY N024279 is properly classified in heading 7616, HTSUS, specifically in subheading 7616.99.5130, HTSUSA (Annotated), which provides for "Other articles of aluminum: Other: Other: Other: Ladders."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY 855972, NY R02622, NY N022949, NY N023940, NY N024279, and NY N042721, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H202595, 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: March 19, 2018

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H202595

March 19, 2018

OT:RR:CTF:CPMM H202595 APP

CATEGORY: Classification

TARIFF NO.: 7326.90.8660; 7616.99.5130

LAURA S. RABINOWITZ, ESQ.
KELLEY, DRYE & WARREN LLP
101 PARK AVENUE
NEW YORK, NY 10178

RE: Tariff classification of metal step stools; Revocation of NY 855972, NY R02622, NY N022949, NY N023940, NY N024279, and NY N042721

DEAR Ms. RABINOWITZ:

This is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York Ruling Letter (“NY”) 855972, dated September 12, 1990 (issued to Builders Square); NY R02622, dated October 6, 2005 (issued to The Container Store); NY N022949, dated February 12, 2008 (issued to Costco Wholesale); NY N023940, dated February 29, 2008 (issued to Dorel Juvenile Group); NY N024279, dated March 10, 2008 (issued to Dorel Juvenile Group); and NY N042721, dated October 29, 2008 (issued to Dorel Juvenile Group), regarding the classification, under the Harmonized Tariff Schedule of the United States (“HTSUS”), of metal step stools. CBP classified the subject step stools in heading 9403, HTSUS, specifically in subheading 9403.20.00, HTSUS, which provides for “Other furniture and parts thereof: Other metal furniture.”

We have determined that these six rulings are in error. For the reasons set forth below, we hereby revoke NY 855972, NY R02622, NY N022949, NY N023940, NY N024279, and NY N042721.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the *Customs Bulletin*, Volume 51, No. 48, on November 29, 2017, proposing to revoke NY 855972, NY R02622, NY N022949, NY N023940, NY N024279, and NY N042721, and to revoke any treatment accorded to substantially identical transactions. One comment in favor of and one in opposition to the instant action were received in response to the notice and are addressed below.

FACTS:

The subject merchandise consists of metal step stools, which feature two, three, or four steps, covered with plastic ribbed slip-resistant treads to improve a person’s footing when climbing up the ladder. In addition, they feature side-rails to provide stability to a person who is climbing onto the ladder’s uppermost step. All step stools are designed to be placed on the floor or ground, and are used in the household for standing, sitting, and elevating a person.

The folding metal step stool in NY 855972 has two solid steel steps whose height is 10–7/8” to 19–1/2” and folds to 2–1/2”. The main frame is constructed of tubular steel and has non-slip plastic tips. The step stool is lightweight, easy to carry, and can be stored anywhere.

The folding metal two-step stool in NY R02622 is made of steel and plastic resin. The main frame is constructed of tubular steel and has non-slip plastic tips. The step stool is lightweight, easy to carry, and can be stored anywhere.

NY N023940 covers step stool models numbers 11–302, 11–303, 11–380, and 11–435. Model number 11–380 differs from the other models in that it has a plastic tool rack attached to the top loop and the top loop of the tubular frame is a foot higher. All models have two plastic steps and the main frame is made of tubular steel. In addition to being used for standing, sitting, and elevating a person, the step stools are also used for household tasks such as repair, painting, or cleaning of higher places.

The rubbermaid three-step high-back folding steel step stool in NY 022949 is lightweight, easy to carry, and can be stored anywhere. The main frame is constructed of tubular steel and has non-slip plastic tips.

NY N042721 includes five three-step folding stool ladders made of tubular steel (models numbers 11–513, 11–514, 11–515, 11–525, and 11–880). All models are collapsible to facilitate storage. Models numbers 11–515, 11–525, and 11–880 feature plastic trays to hold paint cans or other household articles.

NY N024279 covers model number 11–628 ABL1 (dimensions 39.25” H x 18.75” W x 23.25” D). It is a two-step stool made of aluminum frame with the upper step and feet made of plastic (heavy-duty injection molded polypropylene resin steps with ribbed slip-resistant treads). The step stool is lightweight, easy to carry, and can be stored anywhere.

ISSUE:

Whether the metal step stools are classifiable in heading 9403, HTSUS, as “other furniture and parts thereof” or by their constituent material, in heading 7326, HTSUS, as “other articles of iron or steel”, or in heading 7616, HTSUS, as “other articles of aluminum.”

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (“GRIs”) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation (“AUSR”). The GRIs and the AUSR are part of the HTSUS and are to be considered statutory provision of law for all purposes. GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order. Pursuant to GRI 6, classification at the subheading level uses the same rules, *mutatis mutandis*, as classification at the heading level.

The HTSUS headings under consideration are the following:

7326 Other articles of iron or steel:

7616 Other articles of aluminum:

9403 Other furniture and parts thereof:

Note 1(k) to Section XV (which include Chapter 73), HTSUS states:

1. This section does not cover: ...

(k) Articles of Chapter 94 (for example, furniture, mattress supports, lamps and lighting fittings, illuminated signs, prefabricated buildings)[.]

Note 2 to Chapter 94, HTSUS states:

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

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HS and are thus useful in ascertaining the proper classification of merchandise. It is CBP’s practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The General ENs to Chapter 94, define furniture as:

(A) Any “movable” articles (**not included** under other more specific headings of the Nomenclature), which have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafés, restaurants, laboratories, hospitals, dentists’ surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport ... Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.

(B) The following:

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

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

EN 94.03 provides, in pertinent part, as follows:

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

The heading includes furnitures for:

- (1) **Private dwellings, hotels, etc.**, such as: cabinets, linen chests, bread chests, log chests; chests of drawers, tallboys; pedestals, plant stands; dressing-tables; pedestal tables; wardrobes, linen presses; hall stands, umbrella stands; side-boards, dressers, cupboards; food-safes; bedside tables; beds (including wardrobe beds, camp-beds, folding beds, cots, etc.); needlework tables; stools and foot-stools ... fire screens; draught-screens; pedestal ashtrays; music cabinets, music stands or desks; play-pens; serving trolleys ...

- (2) **Offices**, such as: clothes lockers, filing cabinets, filing trolleys, card index files, etc.
- (3) **Schools**, such as: school-desks, lecturers' desks, easels (for blackboards, etc.).
- (4) **Churches**, such as: altars, confessional boxes, pulpits, communion benches, lecterns, etc.
- (5) **Shops, stores, workshops, etc.**, such as: counters; dress racks; shelving units; compartment or drawer cupboards; cupboards for tools, etc.; special furniture (with cases or drawers) for printing-works.
- (6) **Laboratories or technical offices**, such as: microscope tables; laboratory benches (whether or not with glass cases, gas nozzles and tap fittings, etc.); fume-cupboards; unequipped drawing tables.

The heading **does not include**: ...

- (b) Ladders and steps, trestles, carpenters' benches and the like not having the character of furniture; these are classified according to their constituent material (headings 44.21, 73.26, etc.) ...

The General ENs to Chapter 73 state, in relevant part, that:

This Chapter covers a certain number of specific articles in headings 73.01 to 73.24, and in headings 73.25 and 73.26 a group of articles not specified or included in Chapter 82 or 83 and not falling in other Chapters of the Nomenclature, of iron (including cast iron as defined in Note 1 to this Chapter) or steel.

EN 73.26 provides in pertinent part:

This heading covers all iron or steel articles obtained by forging or punching, by cutting or stamping or by other processes such as folding, assembling, welding, turning, milling or perforating **other than** articles included in the preceding headings of this Chapter or covered by Note 1 to Section XV or included in **Chapter 82** or **83** or more specifically covered elsewhere in the Nomenclature.

The heading includes:

- (1) Horseshoes; ... ladders and steps; trestles

EN 76.16 provides in pertinent part:

This heading covers all articles of aluminium **other than** those covered by the preceding headings of this Chapter, or by Note 1 to Section XV, or articles specified or included in **Chapter 82** or **83**, or more specifically covered elsewhere in the Nomenclature ...

This heading includes, in particular:

- (5) Aluminium articles corresponding to the iron and steel articles referred to in the Explanatory Notes to headings 73.25 and 73.26.

* * * * *

If the instant step stools are properly classified under heading 9403, HTSUS, they cannot be classified under headings 7326 or 7616, HTSUS. See Note 1(k) to Section XV, HTSUS. Therefore, we must first consider whether the instant step stools are classifiable in heading 9403, HTSUS.

The subject step stools are designed to be placed on the floor or ground, and do not fall under the specified exceptions under Note 2 to Chapter 94, HTSUS. However, not all merchandise designed for placing on the floor or ground automatically qualifies as furniture within the meaning of Chapter 94. Consistent with the General ENs to Chapter 94, to qualify as “furniture,” the instant step stools must “have the essential characteristic that they are constructed for placing on the floor or ground” *and* must be “**used, mainly with a utilitarian purpose, to equip private dwellings**” (emphasis added).

EN 94.03 further explains that this heading “includes furniture for general use (e.g., cupboards, show-cases, tables, telephone stands, writing-desks, escritorios, book-cases, and other shelved furniture (including single shelves presented with supports for fixing them to the wall), etc.), and also furniture for special uses.” EN 94.03 goes on to list examples of furniture for private dwellings, offices, and so forth. These exemplars are used for storage, for display, or for a person to sit, lie down, or rest on.

The first commenter contends that according to the American National Standard A14.2–2007, published in August 2007, by the American Ladder Institute, ladders are distinguishable from step stools and a step stool standard is under development. The first commenter argues that the subject articles are not ladders because they are movable articles that are purportedly not provided for under a more specific heading, are constructed to be placed on the floor/ground, and are used mainly with a utilitarian purpose to equip private dwellings. The first commenter claims that EN 94.03 is not restricted to shelved products that store or display mementoes.

We note that Standard A14.2–2007 currently covers ladder-type step stools and excludes furniture type step stools. Standard A14.2–2007 defines ladder-type step stools as “self-supporting, foldable, portable ladder, nonadjustable in length, 32 inches or less in size, with flat steps and without a pail shelf, designed so that the ladder top cap as well as all steps can be climbed on. The side rails may continue above the top cap.” The instant step stools are ladder-type because they are self-supporting, foldable, portable, non-adjustable in length, 32” or less in overall size, with flat steps, and without a pail shelf, and intended for use by one person. Even though the present standard supports our decision to equate step stools with ladders, we note that standards are developed to establish safety guidelines for products and do not guide tariff classification. Standards might help us better understand a given product, but are developed and changed without any consequence to classification in the HTSUS. Hence, Standard A14.2–2007 has no relevance to the instant matter.

We reiterate that while the instant step stools are designed to be placed on the ground or floor, and allow the user to safely complete tasks, which require reaching higher elevations in the household, e.g., cabinets, upper shelves, and walls, unlike furniture-type step stools, they are not used to equip private dwellings because they do not allow a person to sit or lie down, or to store or display articles in a permanent fashion. The instant step stools are not akin to folding chairs. The instant step stools here do not “furnish” a private dwelling. One might be able to sit on the step stools, but only for a short period of time and not comfortably. The steps are ribbed with plastic treads and the top loop does not provide enough back support. The step stools are foldable and are not designed to rest the feet. In addition, the step stools are

not equipped with baskets or any other means to store or display articles in a permanent fashion. The step stools are not akin to any of the exemplars listed in EN 94.03, *see supra*. Accordingly, the subject stools are not classifiable as “other furniture” in heading 9403, HTSUS, because they do not share characteristics with any of the exemplars in EN 94.03, *see supra*, as they are not intended to be used for rest, relaxation, storage, or display.

Moreover, tools such as ladders and steps are excluded from heading 9403, HTSUS. EN 94.03 explains that “[l]adders and steps[,] and the like, not having the character of furniture” are excluded from heading 9403, HTSUS. The HTSUS and the ENs do not define “ladders” or “steps.” When terms are not defined in the HTSUS or the ENs, they are construed in accordance with their common and commercial meaning. *See Nippon Kogaku (USA), Inc. v. United States*, 69 C.C.P.A. 89, 673 F. 2d 380 (1982); *C.J. Tower & Sons, Inc. v. United States*, 69 C.C.P.A. 128, 673 F. 2d 1268 (1982). The online Oxford English Dictionary¹ defines “ladder” as “a piece of equipment consisting of a series of bars or steps between two upright lengths of wood, metal, or rope, used for climbing up or down something” and a “step” as “[a] rung of a ladder.”

In this instance, we find that the subject step stools are similar to ladders. Specifically, the subject articles are ladder-type step stools designed to support the weight of a person, enabling that user to reach higher points, and they feature ladder-like steps that are covered with ribbed plastic to improve the user’s footing and safety. In addition, the subject metal step stools are portable like other household tools, as they are designed to be carried (by their handle), folded, and stored when not in use. They are therefore entirely dissimilar to the furniture exemplars in General ENs to Chapter 94 and EN 94.03, *see supra*.

We further note that the subject articles’ flat surfaces (*i.e.*, the steps) are not suitable for storage or for the display of mementoes, unlike the wooden shelving units with storage baskets classified as “other furniture” in Headquarters Ruling Letter (“HQ”) H240196, dated July 11, 2014.² Like the floor standing steel ashtray cylinders and waste receptacles that we classified as household articles in HQ 964352, dated September 11, 2000, the step stools’ intended use is more like that of an appliance, as it allows a person to accomplish household tasks more effectively. Thus, we find that the subject ladder-type step stools are not furniture-type step stools classifiable in heading 9403, HTSUS, as “other furniture,” because they are designed to serve as a household tool, or as an appendage or extension of the user, by allowing an individual to expand his or her reach. As a result, they are not excluded from classification in Chapters 73 and 76, HTSUS, by Note 1(k) to Section XV, HTSUS.

The subject steel metal stools in NY 855972, NY R02622, NY N022949, NY N023940, and NY N042721 are described by heading 7326, HTSUS, which provides for “Other articles of iron or steel.” EN 73.26 lists ladders as specifically included by heading 7326. *See* NY R01425, dated February 22, 2005 (classifying a two-tier step ladder made of steel in subheading 7326.90, HTSUS). The ENs to heading 7326, HTSUS, state, in relevant part, that this

¹ *See* Ladder Definition, Online Oxford English Dictionary, <https://en.oxforddictionaries.com/definition/ladder> (last visited Sept. 8, 2017); Step Definition, Online Oxford English Dictionary, <https://en.oxforddictionaries.com/definition/step> (last visited Sept. 8, 2017).

² Three of the step stool models in NY N042721 feature trays to hold paint or tools temporarily while in use, not for display.

heading covers all iron or steel articles obtained by forging or punching, by cutting or stamping, or by other processes such as folding, assembling, welding, turning, milling or perforating other than articles included in the preceding headings of this Chapter or covered by Note 1 to Section XV, or more specifically covered elsewhere in the Nomenclature. Accordingly, the subject stool steps in NY 855972, NY R02622, NY N022949, NY N023940, and NY N042721 are classifiable under heading 7326, HTSUS because they are made of steel and are not covered elsewhere in the Nomenclature.

Finally, the aluminum stool in NY N024279 is described by heading 7616, HTSUS, which covers “Other articles of aluminum.” EN 76.16 explains that heading 7616, HTSUS, includes aluminum articles corresponding to the iron and steel articles referred to in the ENs to headings 73.25 and 73.26 that are not covered by the preceding headings of Chapter 76, by Note 1 to Section XV, or articles specified or included in Chapter 82 or 83, or more specifically covered elsewhere in the Nomenclature. In NY R03154, dated February 3, 2006, CBP classified step ladders made of tubular aluminum in heading 7616, HTSUS. Just like the ladders in NY R03154, the step stool in NY N024279 is classifiable in heading 7616, HTSUS because it is made of aluminum and is not covered elsewhere in the Nomenclature.

Lastly, the two commenters believe that GRI 3(b) or GRI 3(c) must be applied to classify the subject step stools. We do not disagree that the step stools are composite goods (steel/plastic or aluminum/plastic) and that the component which imparts the essential character will determine their ultimate classification. The component imparting the essential character of the step stools is the metal (steel or aluminum) because the main frame is constructed of metal and the plastic components are minimal. Since the instant merchandise has an essential character under GRI 3(b), it is unnecessary to apply GRI 3(c). Thus, by application of GRIs 1 and 3(b), we conclude that the instant step stools are classifiable in heading 7326, HTSUS (the step stools in NY 855972, NY R02622, NY N022949, NY N023940, and NY N042721) and heading 7616, HTSUS (the step stool in NY N024279).

HOLDING:

By application of GRIs 1 and 6, and 3(b), the step stools in NY 855972, NY R02622, NY N022949, NY N023940, and NY N042721 are classified in heading 7326, HTSUS, specifically under subheading 7326.90.8660, HTSUSA (Annotated), which provides for “Other articles of iron or steel: Other: Other: Other: Other: Ladders.” The 2018 rate of duty is 2.9% *ad valorem*.

By application of GRIs 1 and 6, and 3(b), the step stool in NY N024279 is classified in heading 7616, HTSUS, specifically under subheading 7616.99.5130, HTSUSA (Annotated), which provides for “Other articles of aluminum: Other: Other: Other: Ladders.” The 2018 rate of duty is 2.5% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY 855972, dated September 12, 1990, is hereby REVOKED.

NY R02622, dated October 6, 2005, is hereby REVOKED.

NY N022949, dated February 12, 2008, is hereby REVOKED.

NY N023940, dated February 29, 2008, is hereby REVOKED.

NY N024279, dated March 10, 2008, is hereby REVOKED.

NY N042721, dated October 29, 2008, is hereby REVOKED.

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

Sincerely,

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

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AGENCY INFORMATION COLLECTION ACTIVITIES:**Entry/Immediate Delivery Application and
Ace Cargo Release**

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

ACTION: 60-Day Notice and request for comments; revision and 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 June 18, 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 1651-0024 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: Entry/Immediate Delivery Application and ACE Cargo Release.

OMB Number: 1651-0024.

Form Number: 3461 and 3461 ALT.

Current Actions: This submission is being made to extend the expiration date with a change in the data collected. There is an increase to the annual burden hours based on updated agency estimates. Since the last OMB Renewal there have been two submissions for a Non Substantive Change for this information collection. The Non Substantive Changes made are the following:

Change one submitted on February 22, 2018: CBP is submitting this Non Substantive Change to OMB to reflect a change in the Harmonized Tariff Schedule (HTS) which is maintained by the U.S. International Trade Commission (USITC). HTS data is provided to CBP at entry.

Effective February 7, 2018, the following changes to the Harmonized Tariff Schedule for units of quantity reporting will take effect:

- For HTS 8450.90.20 and 8450.90.60, certain parts of washing machines, the new unit of quantity will be "No." instead of "X".
- For HTS 8541.40.6030, solar cells, a second unit of quantity, "W" (for total wattage), will be added.
- For statistical reporting purposes under subheading 8541.40.6030, importers should report the total watts at maximum power based on standard test conditions according to the

latest revision of International Electrotechnical Commission (IEC) 60904, “Photovoltaic Devices.”

- These modifications will take effect as announced in Presidential Proclamations 9693 (83 FR 3541) and 9694 (83 FR 3553), of January 23, 2018.

For additional information regarding the HTS please follow this link: <https://hts.usitc.gov/current>

Change two submitted on March 19, 2018: CBP is submitting this Non Substantive change to reflect an adjustment in ACE Cargo due to U.S. Department of Commerce Bureau of Industry and Security (BIS) for Procedures for Submitting Requests for Exclusions from the Section 232 National Security Adjustments of Imports of Steel and Aluminum information collection. Importers who have submitted for exclusion from Section 232 shall submit the BIS exclusion number in the additional importer declaration field. This collection is authorized by 15 CFR 705, <https://www.gpo.gov/fdsys/pkg/CFR-2016-title15-vol2/pdf/CFR-2016-title15-vol2-part705.pdf>

Type of Review: Extension and Revision (with change)

Abstract: All items imported into the United States are subject to examination before entering the commerce of the United States. There are two procedures available to effect the release of imported merchandise, including “entry” pursuant to 19 U.S.C. 1484, and “immediate delivery” pursuant to 19 U.S.C. 1448(b). Under both procedures, CBP Forms 3461, Entry/Immediate Delivery, and 3461 ALT are the source documents in the packages presented to Customs and Border Protection (CBP). The information collected on CBP Forms 3461 and 3461 ALT allow CBP officers to verify that the information regarding the consignee and shipment is correct and that a bond is on file with CBP. CBP also uses these forms to close out the manifest and to establish the obligation to pay estimated duties in the time period prescribed by law or regulation. CBP Form 3461 is also a delivery authorization document and is given to the importing carrier to authorize the release of the merchandise.

CBP Forms 3461 and 3461 ALT are provided for by 19 CFR 141 and 142. These forms and instructions for Form 3461 are accessible at: <http://www.cbp.gov/newsroom/publications/forms>

ACE Cargo Release is a program for ACE entry summary filers in which importers or brokers may file Simplified Entry data in lieu of filing the CBP Form 3461. This data consists of 12 required elements: Importer of record; buyer name and address; buyer employer identification number (consignee number), seller name and address; manufacturer/supplier name and address; Harmonized Tariff Schedule 10-digit number; country of origin; bill of lading; house air waybill

number; bill of lading issuer code; entry number; entry type; and estimated shipment value. Three optional data elements are the container stuffing location; consolidator name and address, and ship to party name and address. The data collected under the ACE Cargo Release program is intended to reduce transaction costs, expedite cargo release, and enhance cargo security. ACE Cargo Release filing minimizes the redundancy of data submitted by the filer to CBP through receiving carrier data from the carrier. This design allows the participants to file earlier in the transportation flow. Guidance on using ACE Cargo Release may be found at <http://www.cbp.gov/trade/ace/features>.

Affected Public: Businesses

CBP Form 3461 paper form only:

Estimated Number of Respondents: 12,307.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 12,307.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 3,077.

ACE Cargo Release to include electronic submission for 3461/3461ALT:

Estimated Number of Respondents: 9,810.

Estimated Number of Responses per Respondent: 2,994.

Estimated Total Annual Responses: 29,371,140.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 4,875,609.

Dated: April 12, 2018.

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