U.S. Customs and Border Protection

PROPOSED REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE COUNTRY OF ORIGIN OF ENCAPSULATED FISH OIL

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 country of origin of encapsulated fish oil.

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 the country of origin of encapsulated fish oil. 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 August 16, 2019.

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: Tanya Secor, Food, Textiles and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0062.

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 country of origin of encapsulated fish oil. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) N287514, dated July 20, 2017 (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 N287514, CBP determined China to be the country of origin of the encapsulated fish oil. CBP has reviewed NY N287514 and has determined the ruling letter to be in error. It is now CBP's position that the fish oil is not substantially transformed in China, and the country of origin of the encapsulated fish oil is Peru.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N287514 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (HQ) H303093, 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: May 9, 2019

YULIYA A. GULIS
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N287514

July 20, 2017
MAR-2 OT:RR:NC:N2:231
CATEGORY: COUNTRY OF ORIGIN

MR. KEVIN ZHENG
SIRIO PHARMA COMPANY LTD
NO. 83 TAISHAN ROAD
SHANTOU, GUANGDONG
CHINA 515000

RE: The country of origin of Encapsulated Fish Oil

DEAR MR. ZHENG:

This is in response to your letter dated June 20, 2017 requesting a country of origin ruling on Encapsulated Fish Oil.

You have outlined a scenario in which oil derived from Peruvian anchoveta (Engraulis ringens) is refined, bleached, cold filtrated, deodorized and blended with sunflower oil and d-alpha tocopherol (vitamin E) then shipped to China. In China, the fish oil is filled into soft gelatin capsules. The encapsulated fish oil is imported into the United States in retail sized bottles containing 60 capsules or 200 capsules, respectively.

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

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. Pursuant to 19 CFR Section 134.1(b), the country of origin is the country of manufacture, production or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such country the country of origin within the meaning of Part 134 of the regulations. A substantial transformation occurs when a new and different article of commerce emerges from a process with a new name, character or use different from that possessed by the article prior to processing. See United States v. Gibson-Thomsen Co., Inc., 27 C.C.P.A. 267 (C.A.D. 98) (1940).

In the present case, we find that the processing undertaken by the means you outline at the facility in China does effect a substantial transformation. Accordingly, we find that the Encapsulated Fish Oil is a product of China for U.S. Customs and Border Protection marking purposes.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR Part 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 Ekeng Manczuk at Ekeng.Manczuk@cbp.dhs.gov.

Sincerely,
STEVEN A. MACK
Director
National Commodity Specialist Division

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ATTACHMENT B

HQ H303093
OT:RR:CTF:FTM H303093 TJS
CATEGORY: Origin

MR. KEVIN ZHENG
SIRIO PHARMA COMPANY, LTD.
NO. 83 TAISHIN ROAD
SHANTOU, GUANDONG
CHINA 515000

RE: Revocation of NY N287514; Country of Origin Marking; Encapsulated Fish Oil.

DEAR MR. ZHENG:

This letter is to inform you that U.S. Customs and Border Protection ("CBP") has reconsidered New York Ruling Letter ("NY") N287514 issued to you on July 20, 2017. In NY N287514, CBP found that the processing performed in China effected a substantial transformation, and therefore, determined that the encapsulated fish oil was a product of China. We have reviewed NY N287514 and determined it to be in error. For the reasons set forth below, we are revoking the ruling.

FACTS:

In NY N287514, CBP described the encapsulated fish oil as follows:

> ...oil derived from Peruvian anchoveta (*Engraulis ringens*) is refined, bleached, cold filtrated, deodorized and blended with sunflower oil and d-alpha tocopherol (vitamin E) then shipped to China. In China, the fish oil is filled into soft gelatin capsules. The encapsulated fish oil is imported into the United States in retail sized bottles containing 60 capsules or 200 capsules, respectively.

In NY N287514, CBP found that the processing undertaken at the facility in China substantially transformed the fish oil. CBP determined the encapsulated fish oil to be a product of China for CBP marking purposes.

ISSUE:

What is the country of origin of encapsulated fish oil for country of origin marking purposes?

LAW AND ANALYSIS:

The marking statute, Section 304, Tariff Act of 1930, as amended (19 U.S.C. § 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. § 1304 was "that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will." *See United States v. Friedlander & Co.*, 27 C.C.P.A. 297, 302; C.A.D. 104 (1940).

Part 134, Customs Regulations (19 C.F.R. Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. § 1304. Pursuant to 19 C.F.R. § 134.1(b), the "country of origin" means the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within the meaning of the marking laws and regulations.

A substantial transformation occurs when an article emerges from a process with a new name, character or use different from that possessed by the article prior to processing. A substantial transformation will not result from a minor manufacturing or combining process that leaves the identity of the article intact. *See United States v. Gibson-Thomsen Co.*, 27 C.C.P.A. 267 (1940); and *National Juice Products Association v. United States*, 628 F. Supp. 978 (Ct. Int'l Trade 1986).

In determining whether a substantial transformation occurs in the manufacture of chemical products such as pharmaceuticals, CBP has consistently examined the complexity of the processing and whether the final article retains the essential identity and character of the raw material. To that end, CBP has generally held that the processing of pharmaceutical products from bulk form into measured doses does not result in a substantial transformation of the product. *See, e.g.*, Headquarters Ruling Letter ("HQ") H284694, dated August 22, 2017; HQ H233356, dated December 26, 2012; NY N017772, dated October 26, 2007; and, HQ H735146, dated November 15, 1993.

For example, in HQ H284694, CBP held that the processing of bulk imported pharmaceuticals into dosage form did not result in a substantial transformation. In that case, the processing began with Dutch-origin bulk calcium acetate and, after being combined with inactive ingredients in India, resulted in calcium acetate capsules in individual doses of 667 milligrams. CBP determined that the process in India did not change the name, character, or use of the calcium acetate, and therefore, the country of origin was the Netherlands.

Similarly, in HQ H233356, CBP held that the processing and packaging of imported mefenamic acid into dosage form in the United States did not constitute substantial transformation. CBP found that the specific U.S. processing, which involved blending the active ingredients with inactive ingredients in a tumbler and then encapsulating and packaging the product, did not substantially transform the mefenamic acid because its chemical character remained the same. Accordingly, CBP held that the country of origin of the final product was India, where the mefenamic acid was produced.

In HQ H735146, 100 percent pure acetaminophen imported from China was blended with excipients in the United States, granulated and sold to pharmaceutical companies to process into tablets for retail sale under private labels. CBP found that the process in the United States did not substantially transform the imported product because the product was referred to as acetaminophen before importation and after U.S. processing, its use was for medicinal purposes and continued to be so used after U.S. processing, and the granulating process minimally affected the chemical and physical properties of the acetaminophen.

Here, as in the cases cited above, the processing of the fish oil into dosage form as soft gel capsules will not result in a substantial transformation. The fish oil originates from Peru and is encapsulated in China. No change in

name occurs in China because the product is referred to as "fish oil" both before and after encapsulation. Furthermore, the fish oil retains its chemical and physical properties and is merely put into a dosage form in China. Finally, no change in use occurs in China because the fish oil has the same predetermined medicinal use both as bulk and as soft gel capsules. Therefore, in accordance with prior CBP rulings, we find that no substantial transformation occurred during the encapsulation process in China and therefore the country of origin of the final product is Peru.

HOLDING:

Based on the facts provided, encapsulation of fish oil performed in China does not substantially transform the fish oil from Peru. Accordingly, the country of origin of encapsulated fish oil in NY N287514 is Peru.

EFFECT ON OTHER RULINGS:

NY N287514, dated July 20, 2017, is hereby **REVOKED** in accordance with the above analysis.

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

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF A RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF THE 3DOODLER CREATE PEN SET

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

ACTION: Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the tariff classification of the 3Doodler Create Pen Set.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke a ruling letter concerning tariff classification of the 3Doodler Create Pen Set 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 August 16, 2019.

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: Anthony L. Shurn, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0218.

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 a ruling letter pertaining to the tariff classification of the 3Doodler Create Pen Set. Although in this notice, CBP is specifically referring to NY N248177, dated December 18, 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 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 N248177, CBP classified the 3Doodler Create Pen Set in heading 8516, HTSUS, specifically in subheading 8516.79.00, HTSUS, which provides for "Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof: Other." CBP has reviewed NY N248177 and has determined the ruling letter to be in error. It is now CBP's position that the 3Doodler Create Pen Set is properly classified in heading 8477, HTSUS, specifically in subheading 8477.80.00, HTSUS, which provides for "Machinery for working rubber or plastics or

for the manufacture of products from these materials, not specified or included elsewhere in this chapter; parts thereof: Other machinery."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N248177 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed ruling HQ H293445, 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: May 9, 2019

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

Attachments

ATTACHMENT A

N248177
December 18, 2013
CLA-2–85:OT:RR:NC:1:102
CATEGORY: Classification
TARIFF NO.: *8516.79.0000*; *3916.90.3000*

MS. COLLEEN O'SHEA-MORAN
DARICE INC.
13000 DARICE PARKWAY, PARK 82
STRONGSVILLE, OHIO 44149

RE: The tariff classification of a 3D drawing pen from China.

DEAR MS. O'SHEA-MORAN:

In your letter dated November 20, 2013, on behalf of Lamrite West Inc., you requested a tariff classification ruling. A representative sample was submitted with your request and will be returned to you.

The product to be imported is the 3Doodler, a 3D drawing pen. This pen comes with a power adapter, 2 packs of ABS (acrylonitrile butadiene styrene) plastic monofilaments and 2 packs of PLA (polylactic acid) plastic monofilaments. For purposes of this reply, it is assumed that the styrene predominates by weight over each single monomer in the ABS copolymer. Imported in various colors, these monofilaments measure approximately 3 mm in diameter and 25 cm in length. Once the 3Doodler is heated and the monofilament is loaded into the pen, the user presses and holds down the button for the desired speed and plastic is extruded through the pen's tip.

The applicable subheading for the 3Doodler will be *8516.79.0000*, Harmonized Tariff Schedule of the United States (HTSUS), which provides for electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof, other electrothermic appliances, other. The rate of duty will be 2.7 percent ad valorem.

The applicable subheading for the monofilaments, when imported separately, will be *3916.90.3000*, HTSUS, which provides for monofilament of which any cross-sectional dimension exceeds 1 mm, rod, sticks, profile shapes, whether or not surface-worked but not otherwise worked, of plastics: of other plastics: other: other: monofilament. The general rate of duty will be 6.5 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist J. Sheridan at (646) 733–3012.

Sincerely,

GWENN KLEIN KIRSCHNER
Acting Director
National Commodity Specialist Division

ATTACHMENT B

HQ H293445
CLA-2 OT:RR:CTF:TCM H293445 ALS
CATEGORY: Classification
TARIFF NO.: 8477.80.00

MS. COLLEEN O'SHEA-MORAN
DARICE INC.
13000 DARICE PARKWAY, PARK 82
STRONGSVILLE, OHIO 44149

RE: Revocation of NY N248177 (December 18, 2013); Tariff classification of 3Doodler Create Pen Set

DEAR MS. O'SHEA-MORAN:

This letter is to inform you that we have reconsidered and revoked the above-referenced ruling. The ruling was in response to a request for such that you filed on behalf of Lamrite West, Inc. The ruling and this reconsideration addresses the legal tariff classification of 3Doodler Create Pen Set (also referred to herein as the "Create Pen").

FACTS:

The facts as stated in NY N248177 are as follows:

> The product to be imported is the 3Doodler, a 3D drawing pen. This pen comes with a power adapter, 2 packs of ABS (acrylonitrile butadiene styrene) plastic monofilaments and 2 packs of PLA (polylactic acid) plastic monofilaments. For purposes of this reply, it is assumed that the styrene predominates by weight over each single monomer in the ABS copolymer. Imported in various colors, these monofilaments measure approximately 3 mm in diameter and 25 cm in length. Once the 3Doodler is heated and the monofilament is loaded into the pen, the user presses and holds down the button for the desired speed and plastic is extruded through the pen's tip.

Additional facts are that the Create Pen includes a mini screwdriver, a mini spanner, an unblocking tool, an instruction manual, and a quick start guide. The Create Pen is a hand-held 3-dimensional (3D) printer tool that is electrically powered. The Create Pen itself consists of two motors, a guide tube, a gear system, and a heating unit and nozzle at the end of the tool. The Create Pen has an aluminum outer shell with internal materials consisting of plastic and silicone.

The Create Pen utilizes the power adapter by connecting to one end while the other end is plugged into a wall electric outlet. A plastic strand is fed into the Pen towards the heater unit where it is melted and extruded from the Pen's nozzle. The plastic hardens upon extrusion. The effect allows the user to draw objects and shapes in 3D either on a surface or in the air. The Pen has different heat and speed settings to control the flow of the melted plastic.

In NY N248177, CBP ruled that the 3Doodler Create Pen Set is classified under subheading 8516.79.00.

ISSUE:

Is the 3Doodler Create Pen Set, as described above, properly classified under heading 8477, HTSUS, which provides for "Machinery for working rubber or plastics or for the manufacture of products from these materials,

not specified or included elsewhere in this chapter; parts thereof", or under heading 8516, HTSUS, which provides for "Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof"?

LAW AND ANALYSIS:

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

The following headings and subheadings of the HTSUS are under consideration in this case:

8477	Machinery for working rubber or plastics or for the manufacture of products from these materials, not specified or included elsewhere in this chapter; parts thereof:
8477.80.00	Other machinery...
	* * *
8516	Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof:
8516.79.00	Other...

The Create Pen without question works plastic to manufacture products, three-dimension objects in particular. The question is whether it is specified or included somewhere in chapter 84, HTSUS, other than heading 8477.

The Create Pen does not meet the description of any of the articles of heading 8516, HTSUS. Though it is not stated in NY N248177, we surmise from that ruling's conclusion that CBP concluded that the Create Pen fit the description of an electrothermic appliance of a kind used for domestic purposes. While it is an electrothermic device, the Create Pen cannot be said to be a domestic device. We recognize that the Create Pen may be used in a domestic environment, but it is may also be used in a commercial environment, and indeed is marketed as being suitable for domestic, commercial, and educational use. Thus, the Create Pen is not an electrothermic appliance for domestic use. Based on the foregoing, it is not classifiable as an article of heading 8516.

The Create Pen is more akin to the CreoPop 3D Printing Pen Set in CBP Ruling NY N266946 (August 18, 2015). In that ruling, CBP concluded that the CreoPop 3D Printing Pen Set is classified under heading 8477, HTSUS. Upon review of the CreoPop 3D Printing Pen Set in comparison to the subject Create Pen, we find the two articles similar enough in design and function to

find the conclusion of NY N266946 applicable to this case. Given such, we conclude that the 3Doodler Create Pen Set is properly classified under heading 8477, HTSUS. Specifically, it is classified under subheading 8477.80.00, HTSUS, which provides for "Machinery for working rubber or plastics or for the manufacture of products from these materials, not specified or included elsewhere in this chapter; parts thereof: Other machinery..."

HOLDING:

By application of GRI 1, the 3Doodler Create Pen Set is properly classified under heading 8477, HTSUS. Specifically, it is classified under subheading 8477.80.00, HTSUS, which provides for "Machinery for working rubber or plastics or for the manufacture of products from these materials, not specified or included elsewhere in this chapter; parts thereof: Other machinery..." The general column one rate of duty, for merchandise classified in this subheading is 3.1%.

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

EFFECT ON OTHER RULINGS:

CBP Ruling NY N248177 (December 18, 2013) is hereby REVOKED.

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

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

NOTICE OF DECISION ON DOMESTIC INTERESTED PARTY PETITION

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

ACTION: Notice of decision on domestic interested party petition.

SUMMARY: This document provides notice of U.S. Customs and Border Protection's (CBP) decision regarding the tariff classification of certain steel special profiles for the manufacture of forklift truck masts and carriages. On April 3, 2019, CBP published in the **Federal Register** a Notice of Receipt of a Domestic Interested Party Petition, regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of the subject steel special profiles. The Petition asked CBP to review the classification of these products and revoke New York Ruling Letter (NY) N293371, dated February 8, 2018. After reviewing 14 comments received in response to the Petition, CBP has issued a decision agreeing with Steel of West Virginia, Inc. (Petitioner) and revoking NY N293371, *supra,* as well as NY F83480, dated March 13, 2000, which pertained to merchandise substantially similar to the subject steel special profiles. This Notice advises Petitioner and all interested parties of CBP's determination.

DATES: July 3, 2019.

FOR FURTHER INFORMATION CONTACT: Albena Peters, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection at (202) 325–0321.

SUPPLEMENTARY INFORMATION:

Background

This document concerns the tariff classification of certain steel special profiles for the manufacture of forklift truck masts and carriages.

Classification of Nonalloy Steel Special Profiles

Merchandise imported into the customs territory of the United States is classified under the HTSUS. The tariff classification of merchandise under the HTSUS is governed by the principles set forth in the General Rules of Interpretation (GRIs). The GRIs are part of the HTSUS and are to be considered statutory provisions of law for all purposes. *See* Section 1204 of the Omnibus Trade and Competitiveness Act of 1988, Public Law 100–418 (Aug. 23, 1988); 19 U.S.C. 3004.

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, provided such headings or notes do not otherwise require, then according to the other GRIs. *See* GRI 1, HTSUS (2019). GRI 6 prescribes that, for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis,* according to GRIs 1 to 5, on the understanding that only subheadings at the same level are comparable. *See* GRI 6, HTSUS (2019).

The Explanatory Notes to the Harmonized Commodity Description and Coding System (Harmonized System) represent the official interpretation of the World Customs Organization on the scope of each heading. *See* H.R. Conf. Rep. No. 100– 576, 100th Cong., 2d Sess. 549 (1988), *reprinted in* 1988 U.S.C.C.A.N. 1547, 1582; Treasury Decision (T.D.) 89–80, 54 FR 35127, 35128 (August 23, 1989). Although not binding on the contracting parties to the Harmonized System Convention or considered to be dispositive in the interpretation of the Harmonized System, it is CBP's position that the Explanatory Notes should be consulted on the proper scope of the Harmonized System. T.D. 89–80, 54 FR at 35128.

In NY N293371, dated February 8, 2018, the steel special profiles are incomplete mast rails and finger bars (also known as carriage bars) produced by Mannstaedt GmbH in Germany.[1] The articles are imported either cut to a fixed length in accordance with customer instructions or in lengths designed to fit within the transporting cargo container. The subject beams and bars are not joined to form the mast weldments in their condition as imported. The beams need to be drilled and welded to plates and cross bars before acquiring the shape and dimensions necessary for assembly into a mast as well as cleaned to prepare them for painting. The finger bars must be cut to size and notched in specific places along their length depending upon their placement as upper or lower bars, as well as cleaned, painted, and welded to the actual carriage assembly. CBP previously classified the steel profiles in subheading 8431.20.00, HTSUS, as parts suitable for use solely or principally with forklifts of heading 8427, HTSUS.

[1] The Petitioner indicated that it believed the subject steel special profiles were from the United Kingdom and Germany. It is CBP's belief that the steel special profiles covered by NY N293371 are of German origin; however, the reasoning applicable in the attached decision would apply equally to such products of U.K. origin (which are at this time also subject to additional duties).

Filing of Domestic Interested Party Petition

On October 3, 2018, counsel filed a Petition on behalf of Steel of West Virginia, Inc., under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), requesting that CBP reconsider its decision in NY N293371 and classify the subject steel special profiles under subheading 7216.50.00, HTSUS, which provides for "Angles, shapes and sections of iron or nonalloy steel: Other angles, shapes and sections, not further worked than hot-rolled, hot-drawn or extruded." The column one, general rate of duty for subheading 7216.50.00 in 2018 and today is free. However, on March 8, 2018, pursuant to section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862), Presidential Proclamation 9705 (83 FR 11625) imposed additional duties on steel products of Germany of subheading 7216.50.00, HTSUS, and steel products of subheading 7216.50.00 are currently subject to additional 25 percent duties under Subchapter III, Chapter 99, U.S. Note 16(b), HTSUS. Importers of such products must also identify subheading 9903.80.01, HTSUS, at entry.

On April 3, 2019, CBP published a Notice of Receipt of a Domestic Interested Party Petition in the **Federal Register** (84 FR 13057). The Notice invited written comments on the Petition from interested parties. The comment period closed on May 3, 2019. CBP received 14 comments in response to the Notice. Seven comments reiterated the Petitioner's position that the merchandise should be classified in subheading 7216.50.00, HTSUS, as other angles, shapes and sections. The other seven commenters argued that the profiles should remain classified in subheading 8431.20.00, HTSUS, as parts suitable solely or principally with forklifts of heading 8427, HTSUS.

Decision on Petition and Notice of CBP's Decision

After review of the arguments set forth by Petitioner as well as those set forth in the responses to the **Federal Register** Notice, CBP has determined that the classification decision in NY N293371 was incorrect. In HQ H303762, which is attached to this Notice, CBP has granted the Domestic Party Petition and revoked the classification determination set forth in NY N293371.

CBP determined in HQ H303762 that the articles at issue are not parts of forklifts. By application of GRIs 1 and 6, the nonalloy steel mast beams and finger bars in NY N293371 are steel special profile shapes of heading 7216, HTSUS, classified specifically under subheading 7216.50.00, which provides for angles, shapes and sections of iron or nonalloy steel, other angles shapes and sections, not further worked than hot-rolled, hot-drawn or extruded. The instant merchandise, imported in bundles of beams and bars of various sizes and shapes, is described by the term "angles, shapes, and sections" set

forth in note 1(n) to chapter 72, whether or not the product is a standard shape or a special shape designed for a particular application such as use in a lifting mast for a forklift truck. It is simply the beams necessary to compose the weldments that form the inner, intermediate, or outer uprights of the completed mast and crossbars, which in turn are used to construct a portion of the carriage. While the subject merchandise may ultimately be destined for incorporation into a forklift, it is not identifiable as such based on its condition as imported.

Specifically, the beams are not welded to the plates and bars necessary to create the shape and dimensions of an inner, intermediate or outer weldment of a mast. Similarly, the finger bars are not welded to the frame for attachment between the carriage and mast. Without the various cuts, notches, drilled holes and welding, which take place post-importation, the subject beams and bars do not possess characteristics that dedicate them for use in a forklift truck, or even for the weldment of the lifting mast or carriage, based on their condition as imported.

In light of the fact that the subject bars and beams do not have the approximate size or shape of the forklift mast and carriage, or even of the weldment components of the mast and carriage (*i.e.,* they are not identifiable as parts of a lifting mast), they cannot be considered a part of a forklift or a "blank" of a forklift part.

Authority

This Notice is published in accordance with 19 U.S.C. 1516(b) and Section 175.22(a) of the CBP Regulations (19 CFR 175.22(a)).

Dated: June 28, 2019.

JOHN SANDERS,
Chief Operating Officer and Senior Official,
Performing the Functions and
Duties of the Commissioner,
U.S. Customs and Border Protection.

HQ H303762
June 28, 2019
OT:RR:CTF:CPMM H303762 APP
CATEGORY: Classification
TARIFF NO.: 7216.50.0000; 9903.80.01

MS. TAMARA BROWNE
SCHAGRIN ASSOCIATES
900 SEVENTH STREET N.W., SUITE 500
WASHINGTON, D.C. 20001

RE: Steel Special Profiles; New York Ruling N293371; 19 U.S.C. § 1516; 19 C.F.R. Part 175; Domestic Interested Party Petition

DEAR MS. BROWNE:

This letter is in response to the Petition by Domestic Interested Party, dated October 2, 2018, filed on behalf of Steel of West Virginia, Inc., pursuant to 19 U.S.C. § 1516 and 19 C.F.R. Part 175. In accordance with 19 C.F.R. § 175.21(a), U.S. Customs and Border Protection ("CBP") published a Notice titled "Receipt of Domestic Interested Party Petition Concerning the Tariff Classification of Steel Special Profiles for the Manufacture of Forklift Truck Masts and Carriages" in the **Federal Register**, Volume 84, Number 64 on April 3, 2019. The Notice solicited comments, which were due by May 3, 2019. We have reviewed all comments and our decision follows.

FACTS:

The subject of the Petition is the merchandise in New York Ruling Letter ("NY") N293371, dated February 8, 2018, issued to counsel for Mannstaedt GmbH. The merchandise in NY N293371 is described as follows:

> The merchandise in question is described as incomplete steel mast rails and finger bars. The articles are imported either (1) cut to a fixed length in accordance with customer instructions or (2) in lengths designed to fit within the transporting cargo container. You indicate that, in their condition as imported, the mast rails and finger bars are not ready for direct use in fork-lifts. However, the imported articles do have the approximate final shapes of the finished articles. Each article is said to be "manufactured to a single customer's specifications for use in the lift system of a specific fork-lift truck." Minor modifications may be made to the articles subsequent to importation but the value of such operations is said to be estimated substantially lower than the value of the actual imported articles.
>
> The mast rails are the vertical components responsible for lifting, lowering and positioning the loads carried by the fork-lift. The contoured channels in the mast rails are manufactured to fit the specific mast guide bearings used in the fork-lifts. The finger bars are the crossbars to which the forks of a fork-lift are attached. They attach to the mast rails and travel the length of the mast rails during the lifting operations.

A process flow diagram submitted with the ruling request for NY N293371 describes the steps in manufacturing the imported "forklift section" as: purchase, receipt, inspection and transportation of blooms to furnace for heating and reheating in preparation for rolling, descaling, rolling, hot saw to remove crop ends, saw to straightening length, test samples and cool, in line and press straightening, detwisting, recut, bundle, weigh and pack for shipment.

The control plan submitted with the ruling request notes that the product at the rolling stage is a "profile shape" and the sample size for inspection is the "whole bar."

In NY N293371, CBP classified Mannstaedt's mast rails and finger bars (also known as carriage bars) in subheading 8431.20.00, Harmonized Tariff Schedule of the United States ("HTSUS"), as parts suitable for use solely or principally with forklifts of heading 8427, HTSUS. Petitioner contends that the proper classification for the steel special profiles is under heading 7216, HTSUS, and specifically under subheading 7216.50.00, HTSUS, which covers angles, shapes and sections of iron or nonalloy steel. The column one, general rate of duty for both subheadings is free. On March 8, 2018, pursuant to section 232 of the Trade Expansion Act of 1962 (19 U.S.C. § 1862), Presidential Proclamation 9705 (83 FR 11625) imposed additional duties on steel products of Germany[2] of subheading 7216.50.00, HTSUS, and steel products of this subheading are currently subject to additional 25 percent duties under subchapter III, chapter 99, U.S. note 16(b), HTSUS. Importers of products classified under subheading 7216.50.00, HTSUS, must also identify subheading 9903.80.01, HTSUS, at entry. Products of subheading 8431.20.00, HTSUS, on the other hand, are not subject to section 232 duties.

SUMMARY OF COMMENTS:

In the April 3, 2019 Notice, CBP informed the public of the filing of your Petition and invited interested parties to submit comments on or before May 3, 2019. During the comment period, CBP received a total of 14 comments. Seven comments support Petitioner's position and seven comments are opposed to Petitioner's position. Comments were received from steel special profiles manufacturers and suppliers, law firms, Members of the U.S. Senate and U.S. House of Representatives, unions, and local government officials.

Six commenters in favor of the Petition point out that Petitioner and its employees are negatively affected by Mannstaedt's imports from Germany and that the United States is deprived of section 232 duties, and urge CBP to remedy the situation by reconsidering NY N293371. One commenter opposing the Petition states that some of the comments politicize tariff classification and disregard tariff classification principles.

All seven commenters opposing the Petition claim that the profiles have the shape or outline of finished beams and bars, are intended for use as forklift parts at the time of importation and have no other practical use, and the processing after importation is minor and accounts for a relatively small percentage of the total value of the merchandise. They also explain that the imported profiles have non-standard shapes and are manufactured to the customer's specifications and meet the exacting tolerances and quality standards for forklift manufacturing.[3]

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[2] The Petitioner indicated that it believed the subject steel special profiles were from the United Kingdom and Germany. It is CBP's belief that the steel special profiles covered by NY N293371 are of German origin; however, the reasoning applicable in this decision would apply equally to such products of U.K. origin (which are at this time also subject to additional duties).

[3] The seven commenters in opposition to the Petition claim that most profiles are cut to length before importation and are not straightened; machining/torch cutting creates clearance for a load roller and does not materially alter the shape of the profiles; drilling and/or welding is a minor process; and that the profiles may be subject to surface cleaning operations such as pickling, oiling, and shot blasting to prepare them for painting.

Two commenters in opposition to the Petition argue that the profiles cannot be classified solely based on General Rule of Interpretation ("GRI") 1, and that under GRI 2(a), unfinished parts, provided they have the essential character of the finished parts, are classified as if they are finished parts. The commenters argue that the incomplete mast rails and finger bars have the same form and basic structure as the complete beams/bars and should therefore be considered "blanks."[4]

One commenter states that steel profiles are often made of alloy steel and the profiles may be ineligible for heading 7216, HTSUS, which applies only to iron and nonalloy steel. However, heading 7228, HTSUS, contains the same legal language, "angles, shapes and sections," for profiles of "other alloy steel." Therefore, the analysis as to whether the instant merchandise is an unfinished part of a forklift truck is unaffected whether the rails and bars are made of nonalloy or alloy steel, and references to heading 7216, HTSUS, for nonalloy steel will include identical merchandise when made of alloy steel of heading 7228, HTSUS.

ISSUE:

Whether the subject nonalloy steel mast rails and finger bars are classified under heading 7216, HTSUS, as angles, shapes and sections of iron or nonalloy steel, or under heading 8431, HTSUS, as parts suitable for use solely or principally with forklifts.

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS, in accordance with the GRIs. GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. Pursuant to GRI 6, classification at the subheading level uses the same rules, *mutatis mutandis*, as classification at the heading level.

GRI 2(a) states:

> Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), entered unassembled or disassembled.

The HTSUS provisions under consideration are as follows:

7216	Angles, shapes and sections of iron or nonalloy steel:
7216.50.00	Other angles, shapes and sections, not further worked than hot-rolled, hot-drawn or extruded
8427	Fork-lifts; other works trucks fitted with lifting or handling equipment:

[4] One commenter requested an opportunity to review exhibits 11 and 12 that were not released to the public. Members of the public may file a Freedom of Information Act ("FOIA") request at *https://www.cbp.gov/site-policy-notices/foia*.

8431	Parts suitable for use solely or principally with the machinery of headings 8425 to 8430:
8431.20.00	Of machinery of heading 8427

Note 1(f) to section XV, HTSUS, states that, "This section does not cover: . . . Articles of section XVI (machinery, mechanical appliances and electrical goods)."

Note 2(b) to section XVI, HTSUS, states that parts that are "suitable for use solely or principally with a particular kind of machine . . . are to be classified with the machines of that kind or in heading . . . 8431 . . . ."

In interpreting the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") may be utilized. The ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to GRI 2(a) provide, in relevant part:

> (I) The first part of Rule 2 (a) extends the scope of any heading which refers to a particular article to cover not only the complete article but also that article incomplete or unfinished, **provided** that, as presented, it has the essential character of the complete or finished article.
>
> (II) The provisions of this Rule also apply to **blanks** unless these are specified in a particular heading. The term "**blank**" means an article, not ready for direct use, having the approximate shape or outline of the finished article or part, and which can only be used, other than in exceptional cases, for completion into the finished article or part (e.g., bottle preforms of plastics being intermediate products having tubular shape, with one closed end and one open end threaded to secure a screw type closure, the portion below the threaded end being intended to be expanded to a desired size and shape).
>
> Semi-manufactures not yet having the essential shape of the finished articles (such as is generally the case with bars, discs, tubes, etc.) are not regarded as "blanks" ....

The General ENs to chapter 72, note 1(n) describe angles, shapes, and sections of chapter 72 as "[p]roducts having a uniform solid cross-section along their whole length which do not conform to any of the definitions at (ij), (k), (l) or (m) above or to the definition of wire."

EN 72.16 states, in pertinent part, the following:

> **Angles, shapes and sections** are defined in Note 1 (n) to this Chapter.
>
> The sections most commonly falling in this heading are H, I, T, capital omega, Z and U (including channels), obtuse, acute and right (L) angles. The corners may be square or rounded, the limbs equal or unequal, and the edges may or may not be "bulbed" (bulb angles or shipbuilding beams).
>
> Angles, shapes and sections are usually produced by hot-rolling, hot-drawing, hot-extrusion or hot-forging or forging blooms or billets ....
>
> The products of this heading may have been subjected to working such as drilling, punching or twisting or to surface treatment such as coating, plating or cladding—see Part IV (C) of the General Explanatory Note to this Chapter, **provided** they do not thereby assume the character of articles or of products falling in other headings.

> The heavier angles, shapes and sections (e.g., girders, beams, pillars and joists) are used in the construction of bridges, buildings, ships, etc.; lighter products are used in the manufacture of agricultural implements, machinery, automobiles, fences, furniture, sliding door or curtain tracks, umbrella ribs and numerous other articles.

Petitioner is requesting that CBP reconsider the classification of the nonalloy steel mast rails and finger bars described in NY N293371. Petitioner contends that the merchandise is merely nonalloy steel special profile shapes classifiable under heading 7216, specifically under subheading 7216.50.00, HTSUS. Petitioner asserts that the use of GRI 2(a) is inappropriate because the merchandise is a semi-manufactured article, which meets the definition of an angle, shape, or section in note 1(n) to chapter 72, HTSUS. Moreover, Petitioner contends that the profiles must undergo significant manufacturing after importation to create a part suitable for use in the mast or carriage of a forklift.

The instant merchandise, which is imported in bundles of beams and bars of various sizes and shapes, is certainly described by the term "angles, shapes, and sections" set forth in note 1(n) to chapter 72, whether or not the product is a standard shape or a special shape designed for a particular application such as use in a lifting mast for a forklift truck. Heading 7216 includes U, I, H, L and T shapes as well as "other" shapes, such as special profiles of non-standard cross-section including those used in the manufacture of machinery and automobiles. *See* EN 72.16. In Headquarters Ruling Letter ("HQ") 966522, dated December 22, 1994, CBP concluded that, "it is not disputed that . . . S-shaped steel profiles [also known as upper carriage bars] are classified in subheading 7216.50.00, HTSUS." CBP has also classified similar incomplete nonalloy steel profiles in subheading 7216.50.00, HTSUS. In NY N295858, dated May 3, 2018; NY N295670, dated April 27, 2018; and NY J82683, dated April 18, 2003, CBP classified nonalloy steel profiles used in the manufacture of forklift truck attachments under subheading 7216.50.00. Like the products at issue, the profiles in NY N295858 and NY N295670 were further machined, assembled into a frame, and painted after importation.[5] Similarly, in NY I85271, dated September 13, 2002, CBP classified steel beams used in construction that did not have the essential character of the finished parts in heading 7216, HTSUS.[6]

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[5] One commenter points out that in NY J82683, *supra*, the attachments classified under heading 7216, HTSUS, could go on to many vehicles; in NY N295670, *supra*, the frame profiles classified under heading 7216, were made into a sliding arm clamp attachment not for use as a mast or finger bar after importation; in NY N295858, *supra*, the nonalloy steel profiles classified in heading 7216, HTSUS, were assembled into a frame, which was later made into a clamp attachment not for use as a mast or finger bar. The commenter misses the relevance of these rulings to the merchandise under consideration. Although not specifically beams or bars for masts or finger bars, the merchandise was in a similar state of manufacture as the instant merchandise.

[6] Two commenters in opposition to the Petition cite to HQ 965520, dated July 9, 2002, where elevator guide rails, which were cut to length, had the same shape as the finished article, and were subject to additional processing after importation, were classified in heading 8431, HTSUS. Elevator guide rails do not appear to be incorporated into a lifting mast but rather are installed in the elevator shaft. We are currently reviewing the analysis in HQ 965520, as well as in NY I81164, dated May 21, 2002, and

NY A82738, dated May 13, 1996, and intend to initiate a process under 19 U.S.C. § 1625 to allow maximum degree of notice.

Accordingly, the merchandise at issue here is classifiable in heading 7216, HTSUS, by virtue of being worked, unless it has assumed the character of a part of a forklift.

In defining a "part" for tariff classification purposes, the courts have fashioned two distinct, but not inconsistent, tests for determining whether a particular item qualifies as such. *See Bauerhin Techs. Ltd. P'ship v. United States*, 110 F.3d 774, 778–79 (Fed. Cir. 1997). Under the first test, articulated in *United States v. Willoughby Camera Stores, Inc.* ("*Willoughby*"), 21 C.C.P.A. 322, 324, T.D. 46851 (1933), an imported item is a part only if it is "something necessary to the completion of that article without which the article to which it is to be joined, could not function as such article." The second test, set forth in *United States v. Pompeo*, 43 C.C.P.A. 9, 14, C.A.D. 602 (1955), equates "part" to "an imported item dedicated solely for use with another article." *Bauerhin*, 110 F.3d at 779 (*citing Pompeo*, 43 C.C.P.A. at 13).

However, before examining whether the goods in question satisfy one or both of the aforementioned tests, we note that they only qualify to be "parts" of the good (a forklift) if they bear a "direct relationship" to the good, such that the good is the "primary article" of which the item is a component. *See* HQ 255855, dated May 27, 2015. Otherwise, as the Court of International Trade ("CIT") and its predecessor, the Customs Court, have held, the item will be considered merely a "part" of whatever intermediate part constitutes the primary article. *See Mitsubishi Elecs. Am. v. United States*, 19 CIT 378, 383 n.3, 882 F. Supp. 171, 175 n.3 (1995) ("[A] subpart of a particular part of an article is more specifically provided for as a part of the part than as a part of the whole."); *Liebert v. United States*, 60 Cust. Ct. 677, 686–87, 287 F. Supp. 1008, 1014, Cust. Dec. 3499 (1968) (holding that parts of clutches, which clutches are in turn parts of winches, are more specifically provided for as parts of clutches than as parts of winches).

CBP has consistently adhered to this principle by excluding parts of "primary articles" from HTSUS "parts provisions" where the primary articles themselves are parts classifiable in such provisions. For example, in HQ H169057, dated September 4, 2014, CBP ruled that a front frame designed to reinforce a wind engine, which in turn constituted one of two components of a wind generator, could not be classified as part of the wind generator itself. Similarly, HQ H005091, dated January 24, 2007, excluded from heading 8708, which provides for motor vehicle parts, a trunk assembly that constituted one of several component parts of an automobile trunk lock. *See also* HQ 020958, dated November 28, 2008; HQ 963325, dated September 15, 2000. In sum, it is not enough that an item will eventually form a portion of another article. Rather the item must be processed to the point where it is no longer recognizable as a profile but instead has the character of a finished part.

In the instant case, finished mast beams and finger bars are eventually welded to other components of a forklift mast, a complex assembly of interlocking weldments formed of beams, bars, plates and tubing containing, rollers, bearings, brackets, chains and pulleys, and ultimately a hydraulic ram. For instance, as described by one forklift retailer, ". . . the mast is the vertical assembly on the front of the forklift that does the work of raising, lowering, and tilting the load. Most masts are 'three stage' meaning there are three channels on each side. The channels are similar in appearance to

I-Beams."[7] Another states that, "The mast is the vertical structure of a forklift that provides a supporting pathway for the carriage rollers and allows the forklift to raise and lower the forks and material it's carrying".[8] From these descriptions, it is clear that a vertical lifting mast is comprised of much more than beams. The finger bars are horizontal cross bars that are components of the carriage assembly and attach to the mast beams across the front of the lift truck. The carriage assembly is fitted with the forks. Even though the full mast and carriage assembly may be classifiable under heading 8431, HTSUS, as a part of a forklift, heading 8431, HTSUS, does not cover parts of parts of machines of headings 8425 to 8430.

Furthermore, we note that the instant beams and bars are not joined to form the mast weldments in their condition as imported. Moreover, they do not contain the necessary angular cuts for clearance of the rollers, drilled holes for brackets, anchors, and other attachments for pulleys and chains. More importantly, they are not welded to the plates and bars necessary to create the shape and dimensions of an inner, intermediate or outer weldment of a mast. It is the weldments, which are assembled to slide smoothly against the rollers and are sold as a replaceable part.[9] Similarly, the finger bars are not welded to the frame for attachment between the carriage and mast. Rather, the instant merchandise is simply the beams necessary to compose the weldments that form the inner, intermediate, or outer uprights of the completed mast and crossbars necessary to compose a portion of the carriage.[10] Accordingly, while the subject merchandise may ultimately be destined for incorporation into a forklift, it is not identifiable as such based on its condition as imported. Indeed, to the extent a weldment constitutes a part of a forklift, the profiles have not even assumed the character of a weldment.

Commenters in opposition to the Petition emphasize that a portion of the merchandise is cut to a specified customer length and that it is imported to customer specification. Initially, the statement itself concedes that some portion of the imported merchandise is not cut to a specified length for use in the mast assembly. The commenters also do not state that the merchandise is cut to the exact length used in the creation of the weldments for the mast. In fact, one of the submissions shows a picture of "pre-processing mast rail in the condition as it arrives" which is at least three times longer than the rail

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[7] *See* Mast Types and Their Advantages, *https://www.summithandling.com/mast-types-advantages/* (last viewed May 31, 2019).

[8] *See* Glossary of Forklift Terminology and Definitions, *https://www.mcfa.com/en/mcfa/resources/glossary-forklift-terminology-definitions* (last viewed May 31, 2019).

[9] *See* Lifting Masts Parts Manuals, *http://www.lift-tek.com/support.html?sel=s2* (last viewed May 31, 2019).

[10] As the merchandise is fully described by the terms of heading 7216, the issue is whether it is excluded from classification under note 1(f) to section XV as an article of section XVI. Note 1(f), which excludes "*Articles* of Section XVI" (emphasis added), does not apply in this case because heading 8431, HTSUS, merely covers "parts" of forklifts. In this respect, HTSUS legal notes that operate to exclude parts of articles (and not just the articles themselves) from a given chapter or section explicitly indicate as such. For example, in note 3(k) to chapter 71, the exclusion specifically identifies "machinery, mechanical appliances or electrical goods, *or parts thereof*, of Section XVI." (Emphasis added.) The exclusion note at issue in this case, note 1(f) to section XV, is tailored to exclude only articles of section XVI, and not their parts, from section XV. *See* HQ 561353, dated September 19, 2002. Accordingly, even if the subject steel profile shapes were *prima facie* classifiable under heading 8431, HTSUS, which is not the case, the instant beams and bars are not excluded from classification under heading 7216 by operation of note 1(f) to section XV.

shown in the adjacent picture of "post-processing mast rail" prior to incorporation into a mast assembly." Additionally, one commenter notes the angled cut at the top of the rail necessary for clearance of the rollers, though the inner rail does not require this angled cut because no load roller is attached. The commenter also cites to additional drilling and welding for the bearing pad attachment and stub shafts for load rollers.

Commenters in opposition to the Petition also uniformly state that the beams seldom need to be straightened after importation. Again, this statement thus acknowledges the fact that some beams may need straightening or are rejected. All commenters in opposition to the Petition agree that the beams need to be drilled and welded to plates and cross bars before acquiring the shape and dimensions necessary for assembly into a mast as well as subject to surface cleaning operations, such as pickling, oiling, and shot blasting, to prepare them for painting. Finger bars must be cut to size and notched in specific places along their length depending upon their placement as upper or lower bars, as well as cleaned, painted, and welded to the actual carriage assembly.

Commenters further state that the merchandise is manufactured to tight tolerances. We obtained the invoices for a random entry of the merchandise wherein an importer claimed classification in heading 8431, HTSUS. Whereas some invoices indicated certain specifications, others provided for a range of acceptable characteristics of the imported merchandise. This is consistent with the manufacturing process described in the original submission for NY N293371, which showed no steps beyond those necessary to produce a rail or bar. Hence, regardless of whether manufactured to a tight tolerance, without the various cuts, notches, drilled holes and most importantly, welding, that takes place post-importation, there is nothing that dedicates these beams and bars for use solely in a forklift truck, or even for the weldment of the lifting mast or carriage, in accordance with *Bauerhin*.[11]

Commenters opposing the Petition also claim that the merchandise is not a part in and of itself, but a blank for a part of a forklift under GRI 2(a). The EN excludes semi-manufactures not yet having the shape of finished articles, such as bars and rods, from classification as unfinished articles under GRI 2(a). *See* ENs to GRI 2(a), *supra*. As the process and control documents submitted with the ruling request for NY 293371 state, the profiles and bars in their condition as imported are just that: beams and bars. They certainly do not have the shape of the finished forklift part, namely the mast or carriage. Indeed, the process and control documents initially submitted for NY 293371 referred to the products as profiles and bars.

Additionally, we find that the example listed in the EN is particularly instructive to understand the meaning of the term "blank." The bottle preforms have the tubular shape of a bottle, with one closed and one open end. The threads at the open end of the preform that identify the tubular shape as one which will only be fashioned into a bottle are already formed. By contrast, the process in creating a lifting mast and carriage using the imported beams and bars requires significant processing to dedicate their shape to use in a forklift mast or bar carriage. The threads on the bottle preform are like the

[11] Furthermore, there is nothing about the chemistry of the steel used in the profile shapes that dedicates them to a specific use. While the particular chemistry of steel may make it stronger, harder, more malleable, more brittle or ascribe other physical charecteristics to the product, customer specifications for the chemistry of the steel do not dedicate the steel to a specific use beyond a use that necessitates that particular physical characteristic.

notching, welding, drilling or cutting that must be performed on the instant beams and bars. The tubular shape specifically with one open and one closed end forms the shape that needs only be expanded to form a bottle. Here, a significant amount of welding to other metal profiles and plates must be performed in order to create the shape of the object that is incorporated into the mast or carriage. The bars and beams do not have the approximate size or shape of the forklift mast and carriage, or even of the weldment components of the mast and carriage. As such, the instant merchandise cannot be considered a blank of a part for a lifting mast for a forklift.

Therefore, we concur with Petitioner that by application of GRIs 1 and 6, the nonalloy steel mast beams and finger bars in NY N293371 are steel special profile shapes of heading 7216, HTSUS, classified specifically under subheading 7216.50.00, which provides for angles, shapes and sections of iron or nonalloy steel, other angles shapes and sections not further worked than hot-rolled, hot-drawn or extruded.[12]

HOLDING:

Your Petition is granted. By application of GRIs 1 and 6, the instant nonalloy steel special profiles are classified in heading 7216, HTSUS, specifically in subheading 7216.50.00, HTSUS, which provides for "Angles, shapes and sections of iron or nonalloy steel: Other angles, shapes and sections, not further worked than hot-rolled, hot-drawn or extruded." The 2019 column one, general rate of duty is free.[13]

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*.

The steel special profiles from Germany[14] are currently subject to 25 percent *ad valorem* section 232 duties under subheading 9903.80.01, HTSUS, pursuant to subchapter III, chapter 99, U.S. note 16(b).

Section 232 remedies are based on the country of origin. At the time of importation, the importer must report the chapter 99 subheading applicable to the product classification in addition to the chapter 72 subheading listed above. The relevant Proclamations are subject to periodic amendment of the

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[12] One commenter cites to NY F83480, dated March 13, 2000, which also involves lifting mast rails. There, the rails had been cut to length, notched, milled, and drilled with holes for assembly into single or multi-stage forklift masts. However, as the merchandise in that ruling had not been welded into the shape of an inner or outer mast for incorporation into the mast assembly, the merchandise is substantially similar to the instant merchandise in ways material to the determination here. Hence, NY F83480 is also revoked by this decision.

[13] Rails and bars of alloy steel are classified under heading 7228, HTSUS, specifically under subheading 7228.70.3041 and subheading 7228.70.3081, HTSUSA. Subheading 7228.70.3041, HTSUSA, provides for: Other bars and rods of other alloy steel; angles, shapes and sections, of other alloy steel; hollow drill bars and rods, of alloy or nonalloy steel: Angles, shapes and sections: Hot-rolled, not drilled, not punched and not otherwise advanced: Other: With a maximum cross-sectional dimension of 76 mm or more: Other." Subheading 7228.70.3081, HTSUSA, provides for: Other bars and rods of other alloy steel; angles, shapes and sections, of other alloy steel; hollow drill bars and rods, of alloy or nonalloy steel: Angles, shapes and sections: Hot-rolled, not drilled, not punched and not otherwise advanced: Other: With a maximum cross-sectional dimension of less than 76 mm: Other." The 2019 column one, general rate of duty for both subheadings is free. *See* Subchapter III, chapter 99, U.S. note 16, HTSUS, for additional duties that apply.

[14] *See supra* note 1, at 2.

exclusions, so the importer should exercise reasonable care in monitoring the status of goods covered by the Proclamations and the applicable chapter 99 subheadings.

Please be advised that the steel special profiles may be subject to antidumping and countervailing duties ("ADD/CVD"). We note that the U.S. Department of Commerce is not necessarily bound by a country of origin or classification determination issued by CBP, with regard to the scope of ADD/CVD orders. Written decisions regarding the scope of ADD/CVD orders are issued by the Import Administration in the Department of Commerce and are separate from tariff classification and origin rulings issued by CBP. The Import Administration can be contacted at *http://www.trade.gov/ia/* (*see* Contact Information). A list of current ADD/CVD cases at the U.S. International Trade Commission can be viewed on its website at *http://www.usitc.gov* (click on "Import Injury" and then "Antidumping and Countervailing Duty Investigations"). ADD/CVD deposit and liquidation messages can be searched using ACE, the system of record for ADD/CVD messages, or the ADD/CVD Search tool, at *http://adcvd.cbp.dhs.gov/adcvdweb/*.

EFFECT ON OTHER RULINGS:

NY N293371, dated February 8, 2018, is hereby revoked. CBP is also revoking or modifying any other rulings involving substantially identical merchandise, such as NY F83480 (mast rails), *see supra* note 11, at 10, to reflect the analysis contained in this decision. Pursuant to 19 U.S.C. § 1516(b) and 19 C.F.R. § 175.22, this constitutes CBP's decision and it will be published in the **Federal Register** and the *Customs Bulletin*.

Sincerely,

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

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