

# U.S. Customs and Border Protection

19 CFR PART 111

RIN 1651-AB03

## CONTINUING EDUCATION FOR LICENSED CUSTOMS BROKERS

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

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** U.S. Customs and Border Protection (CBP) is considering the amendment of its regulations to mandate continuing education for licensed customs brokers. CBP is seeking comments on a potential framework of continuing education requirements for licensed customs brokers in order to assess the current situation among members of the customs broker industry and analyze the potential impact of such a framework on customs brokers.

**DATES:** Comments must be received on or before December 28, 2020.

**ADDRESSES:** You may submit comments, identified by Docket No. USCBP 2020-0042, by *one* of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments via Docket No. USCBP-2020-0042.

2. *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street NE (10th Floor), Washington, DC 20229-1177.

3. *Confidential Information:* If you want to submit a comment with confidential information that you do not wish to be made available to the public, please submit the comment as a written/paper submission by mail to the address listed above (*see* "Mail").

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received (other than those submitted with confidential information) will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Confidential Submissions:* To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies of your comments. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” CBP will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted by CBP on <http://www.regulations.gov>. Submit both copies by mail, as instructed under **ADDRESSES** above (see “Mail”). If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and you must identify this information as “confidential.”

For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Due to the relevant COVID–19 related restrictions, CBP has temporarily suspended on-site public inspection of the public comments. Please note that any submitted comment that CBP receives by mail will be posted on the above-referenced docket for the public’s convenience, except for those containing confidential information (pursuant to the procedures set forth above).

**FOR FURTHER INFORMATION CONTACT:** Elena D. Ryan, Special Advisor, Programs and Policy Analysis, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, at (202) 325–0001 or [ContinuingEducation@cbp.dhs.gov](mailto:ContinuingEducation@cbp.dhs.gov), including questions regarding the submission of confidential information.

## **SUPPLEMENTARY INFORMATION:**

### **I. Public Participation**

Interested persons are invited to participate in this potential rulemaking by submitting written data, views, or arguments on all aspects of this advance notice of proposed rulemaking (ANPRM). U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this ANPRM. See **ADDRESSES** above for information on how to submit comments. The most useful comments

would be those that address the specific questions outlined in section III below.

If you wish to submit any protected information in your comments, you must submit your comment by mail to the address listed under **ADDRESSES**. Protected information includes confidential business or commercial information that is not normally released to the public. Please be sure to indicate whether the entire submission constitutes protected information, or if only portions of the submission need to be protected. If the latter, please identify those portions which constitute protected information clearly within your submission. If you are submitting confidential business information, please explain, within your submission, how this information is normally treated within your company or organization.

## II. Background

### *A. Authority and Potential Framework for Continuing Education Requirements*

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that individuals and business entities must hold a valid customs broker's license and permit to transact customs business on behalf of others. The statute also sets forth standards for the issuance of broker licenses and permits; provides for disciplinary action against brokers in the form of suspension or revocation of such licenses and permits or assessment of monetary penalties; and provides for the assessment of monetary penalties against other persons for conducting customs business without the required broker's license.

Section 641 authorizes the Secretary of the Treasury<sup>1</sup> to prescribe rules and regulations relating to the customs business of brokers as may be necessary to protect importers and the revenue of the United States and to carry out the provisions of section 641. DHS believes that this statute provides the authority to regulate customs brokers by imposing continuing education requirements.

CBP is considering the promulgation of regulations to create a framework of continuing education requirements in order to maintain a high standard of professionalism in the customs broker industry. CBP's goal with the publication of this ANPRM is to gather information and data from the broker industry in order to analyze

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<sup>1</sup> The Homeland Security Act of 2002 generally transferred the functions of the U.S. Customs Service from the Department of the Treasury to the Secretary of the Department of Homeland Security (DHS). See Public Law 107-296, 116 Stat. 2142. The Act provides that the Secretary of the Treasury retains customs revenue functions unless delegated to the Secretary of DHS. Treasury did not retain the subject matter relating to the regulation of customs brokers (19 U.S.C. 1641) as that subject is not listed in paragraph 1(a)(i) of the Treasury Department Order No. 100-16. See appendix to 19 CFR part 0.

and identify information that would help CBP in considering whether, and if so what type of, mandatory requirements would be beneficial for the trade community and CBP. CBP believes that requiring customs brokers to take continuing education courses would enhance the credibility and value of a customs broker's license and improve a broker's skills, performance, and productivity. CBP also believes that this would increase client service and compliance with the customs laws, which would protect the revenue of the United States and the trade community.

*B. Customs Broker's Statutory Duties, Customs Broker Exam, and Licensing*

Under 19 U.S.C. 1641(b)(4), a customs broker has the statutory duty to exercise responsible supervision and control over the customs business that he or she conducts. Maintaining current knowledge and competence is an inherent part of the statutory duty of the customs broker. A customs broker reasonably can be expected to uphold such responsible supervision over his or her employees and control over his or her customs business only by acquiring and maintaining the knowledge of customs and related laws. Requiring a customs broker to fulfill a continuing education requirement during the course of his or her work is a way to ensure that the customs broker keeps up with an ever-changing customs practice following the passing of the broker exam and subsequent receipt of the license.

CBP is responsible for administering the licensing for customs brokers. *See* Title 19 part 111, subpart B of the Code of Federal Regulations (19 CFR part 111, subpart B). A prospective customs broker must pass a broker exam prepared by CBP, which is designed to determine the individual's knowledge of customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters necessary to render valuable service to importers and exporters.

After passing the customs broker exam, CBP will investigate whether an applicant is qualified for a broker's license, taking into account information provided by the applicant and other aspects pertaining to the applicant, such as his or her business integrity. If CBP finds that the applicant is qualified and has paid all applicable fees, CBP will issue a broker's license. Following the issuance of a license, a customs broker administratively maintains a license primarily through the payment of fees required in 19 CFR 111.96, and the reports and notifications to CBP set forth in 19 CFR 111.30.

While the broker exam provides a good initial indication of an individual's knowledge of customs and related laws, regulations and

procedures, bookkeeping, accounting, and all other appropriate matters, the broker exam is, by necessity, limited in scope. The broker exam only captures a state of customs and related laws at a certain point in time and a person's knowledge of such laws at a single point in time. The broker exam also does not test for any of the requirements of the approximately 50 Partner Government Agencies (PGAs) involved in regulating imports and exports. The complex nature of trade and the ever-changing and expanding requirements to comply with U.S. and international law require that a customs broker maintain a high level of functional and accessible knowledge to stay efficient and compliant over time.

*C. A Broker's Responsibilities in a Dynamic Trade Environment*

Recent developments have demonstrated the need for key parties involved in importing and exporting to keep up-to-date on training and continuously build and maintain their knowledge of current requirements. For example, the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (Pub. L. 114–125, 130 Stat. 122, February 24, 2016) required the issuance of new rules to protect domestic industry from dumping by foreign competitors (19 CFR part 165) and to modernize the processes surrounding duty refunds through the drawback program (19 CFR part 190). Both of these rules are complicated and detailed, requiring entities in the trade—particularly customs brokers serving as the fiduciary agents of the affected importers and exporters—to learn entirely new legal and technical processes. In addition to understanding the implementation of new regulations, a customs broker also needs to know how to research answers to complex questions. For example, determining the country of origin of imported merchandise is much less straightforward than it was in the past, as traders source inputs from various countries and may assemble those inputs in yet another country, before a final product results.

The past several years, in particular, have posed challenges for both CBP and the trade alike, requiring quick adaption to new requirements that compelled changes to operational processes. Low-value shipments, which have exploded with the online shopping revolution, have created multiple levels of issues for international trade that touch security, health and safety, information collection, timely clearance, duty evasion, and facility capacity. The recent implementation of the Agreement Between the United States of America, the United Mexican States and Canada (the USMCA), which replaced the North American Free Trade Agreement (NAFTA), requires a new body of

knowledge to successfully implement and maintain compliance. The COVID-19 pandemic has created an unprecedented impact on supply chains and trade processing, both in the import and export environments. The customs broker is at the heart of these challenges as the agent of the importer/exporter to work with CBP to resolve problems and facilitate the safe and secure movement of legitimate cargo.

CBP believes that the vigorous pace and expanding scope of international trade require a more stringent continuing education framework for those individuals involved in the international trade process. Regular continuing education is a professional requirement for many dynamic professions, such as the accounting, legal, and medical industries. CBP believes that maintaining a high level of professionalism of the licensed customs broker is essential for safety, security, efficiency, and trade compliance.

It is in CBP's and the PGAs' interests to have a well-educated customs broker community. A customs broker's involvement in a trade transaction eases the burden of the government—the customs broker takes on the role of educating importers and exporters in the technical requirements of filing in the Automated Broker Interface (ABI) and informing them of regulatory requirements. While there are some self-filers, the vast majority of entry filings are completed under the purview of customs brokers; and, thus, CBP has a smaller group of individuals to train and inform when it comes to revised or new filing requirements. Without a well-educated customs broker community, CBP would need many more resources to assist in ABI transmissions and generally support the trade community with navigating the complex import and export requirements; thus, CBP and the PGAs would have to change their approach to trade compliance, which would divert limited resources away from other critical aspects of the trade mission.

The trade community also benefits from well-educated customs brokers who are aware of current requirements in the dynamic environment of international trade. When an importer or exporter enlists the services of a customs broker, that customs broker is perceived to be knowledgeable of customs laws, regulations, and operational processes; however, an importer does not know if the customs broker is in fact aware and knowledgeable of all newly emerging requirements. A continuing education requirement would provide the trade community greater assurance that their agents are knowledgeable in the field of customs laws and regulations, familiar with operational processes, and are properly exercising their fiduciary responsibilities. However, mandating continuing education is just one approach to

maintaining integrity and professionalism in the broker industry; CBP is open to considering other approaches provided by the public.

CBP generally seeks to ensure that all parties in the customs broker industry are operating under the current best practices. CBP considers customs brokers to be licensed professionals, and as such, CBP seeks comment regarding potential professional standards for brokers' continuing education, comparable to other licensed professionals. This would help maintain a measure of consistency across all customs brokers.

#### *D. Recommendations Regarding Continuing Education for Customs Brokers*

In June 2018, the World Customs Organization (WCO) published the *WCO Customs Brokers Guidelines* (available at <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/wco-customs-brokers-guidelines.aspx>). While the WCO cannot mandate that customs authorities worldwide follow all protocols or require that certain actions be taken by countries, it nevertheless provided the following recommendations in this guidance (page 28):

Customs broker services need to evolve in order to keep pace with changing commercial and regulatory environments in the international supply chain. Like any other professional service, Customs brokers are required to provide added value for their customers, whilst supporting Customs/governments in enhancing overall compliance with regulatory requirements, making supply chains transparent and secure.

Passing an examination is not a guarantee of continued expertise in the long term. To support quality Customs work, those who provide Customs broker services either to their employer or clients should be required to continue their education and strive to evolve professionally. In some jurisdictions, Customs brokers are required to participate in regular information sessions or advanced training on Customs-focused issues, such as valuation or rules of origin and trade agreements.

Customs administrations, on their own or in partnership with private sector bodies, brokers associations and academia, should consider providing training support for Customs brokers. They can play a significant role in enhancing professional standards of Customs brokers by providing training that challenges their acquired knowledge and skills (*e.g.*, electronic filing of declarations), while also teaching them new relevant knowledge/skills.

In September 2019, CBP formed the Requirements for Customs Broker Continuing Education Task Force (Task Force), and this Task

Force was placed within the Commercial Customs Operations Advisory Committee (COAC) under the Rapid Response Subcommittee. This Task Force is comprised of representatives throughout CBP and licensed customs brokers from around the country with decades of experience with the trade community. Through this Task Force, members provided valuable input, advice, and operational perspective. This ANPRM represents the outcomes of the deliberations of the Task Force in 2019 and 2020, including the potential benefits and challenges of, and alternatives to, a continuing education requirement. Prior to the formation of this particular Task Force, in 2013, COAC also provided a recommendation that DHS issue a regulation requiring that brokers complete a minimum of 40 hours of continuing education during a triennial reporting cycle, pursuant to CBP's authority under 19 U.S.C. 1641(f), with the proviso that there be no accreditation requirements for such continuing education (*see* summary of Recommendation 13010 on CBP's website, at [https://www.cbp.gov/sites/default/files/assets/documents/2019-Dec/\\_COAC%20Recommendations%20To%20Date%2010001%20-%2010412.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2019-Dec/_COAC%20Recommendations%20To%20Date%2010001%20-%2010412.pdf), on page 9).

### **III. Discussion of a Potential Framework for Continuing Education for Licensed Customs Brokers**

This ANPRM describes a potential framework for mandatory continuing education for licensed customs brokers. In the sections below, CBP has laid out a series of propositions on various topics, which are followed by questions as to which CBP is seeking more information. The comments received in response to this ANPRM will be used, potentially, to draft a Notice of Proposed Rulemaking (NPRM), which would provide for proposed regulations to implement mandatory continuing education requirements for licensed customs brokers. All comments are welcome, and the most useful comments are those that answer not only the specific questions posed in this document, but also provide reasons and data in support of any views provided by the commenter, describe individual brokers' current practices of updating their knowledge, and address how a mandatory continuing education requirement would affect them, their company, and their clientele (both in terms of the commitment of time and money). CBP is also very interested in receiving comments that describe what individual brokers believe would be the impact of a continuing education requirement on trade facilitation and compliance. For all numerical and quantitative responses, please provide CBP with sufficient information to recreate those calculations. Finally, in your comments, please refer to the specific question number(s) that you are addressing within the various portions of your submission.

*A. How many hours of continuing education would be required?*

In this ANPRM, CBP is considering the establishment of a framework for individual license holders to require the completion of 40 hours of continuing education over the course of 3 years. CBP believes that substantially more could be too burdensome for the broker industry, particularly brokers operating as or working for small businesses. However, CBP is concerned that anything less would not be meaningful enough for customs brokers to keep up with a dynamic trade environment full of changing requirements.<sup>2</sup>

*Question 1. Is 40 hours over 3 years an appropriate level of continuing education directly related to the import and export of goods into and out of the United States? Why or why not? If you disagree, please indicate in your answer what would be a preferred level and your rationale.*

*B. What types of activities should be considered appropriate to qualify as continuing education?*

CBP believes that a wide variety of activities should qualify as continuing education opportunities to fulfill a mandated requirement. Credit could be given to established corporate training, courses offered by customs brokers associations, and CBP online webinars. Other U.S. government agencies (such as the U.S. Department of Agriculture, U.S. Food and Drug Administration, U.S. Environmental Protection Agency, and U.S. Consumer Product Safety Commission) routinely offer training relevant to customs business, which could be used to fulfill the requirement. CBP also hosts the annual CBP Trade Symposium, other conferences and national customs brokers association meetings, and periodic meetings with the brokers locally at the port level. Activities other than those mentioned above, would potentially need accreditation before being considered to be approved coursework. For specific questions related to the accreditation process, see section I below.

CBP currently conducts hundreds of hours of online webinars annually, covering a wide variety of topics—for example on the implementation of new regulations, intellectual property rights (IPR), specific commodities, valuation, free trade agreements, trade remedies, and Automated Commercial Environment (ACE) functionality. These

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<sup>2</sup> Corporate, association, and partnership licenses would not have an additional education component tied to them. Training at the company level is already considered in the regulations as part of the definition of “responsible supervision and control” (19 CFR 111.1). The qualifier for a corporate, association, or partnership license (an individual license holder) would be covered by the new education requirement.

webinars are interactive when broadcast (participants ask questions and receive live answers) and are recorded and available for download later at any time. These webinars are free and available to anyone.<sup>3</sup> CBP believes that through government-provided, online education opportunities alone, an individual license holder can obtain 40 hours of continuing education over 3 years.

*Question 1. In addition to the opportunities offered by CBP and other government agencies as mentioned above, are you aware of other training or coursework that would likely qualify for a continuing education requirement? Please describe those opportunities in detail.*

*Question 1. Are you part of a brokerage or a company that employs licensed customs brokers? Please provide or describe any training materials or training policies that the company has that would likely qualify as continuing education for a licensed customs broker. If you do provide any training materials or training policies and deem any of the content to be confidential commercial information under 6 CFR 5.7, please submit your materials only as a written / paper submission as listed in the **ADDRESSES** section above. Please estimate the costs of providing this training on an annual basis.*

*Question 1. Are you a broker in a small business or do you live / work in a remote area of the country? Would you be able to avail yourself of internet-based training, webinars, or in-person trainings offered by a third party in order to meet a mandatory training requirement?*

*Question 1. Do you believe you would already meet the possible continuing education requirement (40 hours over 3 years) based on the activities you may be already engaged in that you believe would qualify as continuing education?*

*C. Does all continuing education have to relate to international trade?*

Customs regulations and laws covering the import and export of goods are changing constantly all over the world. Given that a licensed customs broker is responsible for knowing these rules and regulations and ensuring that they are followed, CBP believes that the majority of continuing education should focus on laws authorizing CBP operations and processes, as well as CBP regulations and programs. The majority (75 percent, or 30 of the 40 hours) would focus on customs business and CBP operational and process requirements, whereas the remainder (25 percent, or 10 of the 40 hours) would be

<sup>3</sup> For Office of Trade (OT) webinar postings, see <https://www.cbp.gov/trade/stakeholder-engagement/webinars>; for ACE training videos, see <https://www.cbp.gov/trade/ace/training-and-reference-guides>.

available for education that could focus on other areas related to international trade that are not CBP-specific (such as other government agency requirements).

*Question 1. If a continuing education requirement is established, should there be different categories, and if so, how should those be weighted? For example, should continuing education be categorized as “CBP procedures and requirements”, “other government agency requirements”, and “specific areas related to international trade”, and should there be a certain number of courses within each category that must be taken?*

*D. Do all brokers need to comply with continuing education requirements?*

CBP believes that continuing education requirements should apply to all licensed customs brokers, regardless of—

- The length of time a broker has held a license;
- Whether or not a broker is filing entries or otherwise conducting customs business; or
- Whether or not a broker is a sole proprietor, an employee of a brokerage, or an employee of a company engaged in international trade.

With limited exceptions, the requirements of 19 CFR part 111 apply to all licensed customs brokers regardless of their individual situations or practices. CBP is not intending to deviate from current regulations with this ANPRM. The only differentiation among license holders being considered in this ANPRM is whether: (1) The continuing education requirement is tied to an individual license holder, not a corporate license; and (2) brokers who voluntarily suspend their broker license would have adjusted requirements (more detail is provided in subsequent sections below).

*Question 1. Are there any categories of individuals holding licenses whom you feel CBP should exempt from the continuing education requirement?*

*E. How should continuing education be tracked?*

In accordance with 19 CFR 111.30(d)(1), licensed customs brokers are required to file a report by February 1 of every third year, in no particular form or format. The objective of this triennial report is to provide CBP an update regarding the active engagement in transacting customs business for each individual or corporate license holder

(see 19 CFR 111.30(d)(2) and (3)). After submission, the triennial report is reviewed by Broker Management Branch officials at CBP Headquarters, the ports, and the Centers.

To ensure consistency with the existing regulations and the process for providing CBP the triennial report, CBP is not proposing any specific format or method for an individual customs broker to track continuing education hours. Many companies use software that allows their employees to track their training and education and which summarizes their training, as needed. Other customs brokers may choose to use a simple spreadsheet. As long as the customs broker maintains documentation that a customs broker's required continuing education has been completed and a customs broker can provide more detail upon CBP's request, then brokers would be able to track their education as preferred.

*Question 8. If a continuing education requirement were put in place, license holders would need to track their hours. Should CBP require a certain method for tracking the educational requirements and what kind of documentation should CBP require from license holders for purposes of verification?*

*F. How should completed education be reported to CBP?*

CBP is contemplating that an individual customs broker report any education over the past 3 years in ACE, concurrently with the submission of the triennial report. CBP would then conduct compliance activities that would randomly select a certain percentage of customs brokers, who would then be asked to provide the full tracking of their education. During the 2018 reporting cycle, approximately 85 percent of customs brokers submitted their triennial status reports to CBP through *Pay.gov*, when paying the required fees; approximately 15 percent of customs brokers submitted their reports to the ports directly. CBP anticipates the potential implementation of new ACE technology to enable a customs broker to simply check a box in ACE certifying that the 3-year continuing education requirement had been successfully completed.

As an example of compliance activities, CBP could determine that for a particular reporting cycle, a random sample of 10 percent of customs brokers must provide additional documentation to validate that sufficient continuing education took place over the past 3 years. The customs brokers would then provide CBP with a spreadsheet, a report from employee training software, or other documentation available that would support the broker's self-certification that the education had been completed. As noted above, CBP does not anticipate a specific format for tracking continuing education; the only

requirement would be that it is adequately supportive of the education that the customs broker completed and that it could be produced for CBP review upon request.

*Question 9. Is self-certification in ACE, while concurrently filing the triennial report, the most efficient way for customs brokers to report their compliance to CBP with the possible continuing education requirement or is there another method for reporting preferred? Would enforcement of the continuing education requirement by requesting additional documentation from a random sample of customs brokers be an appropriate method? Why or why not? Are there any other ways of enforcing broker compliance that are preferred? If so, why?*

*G. What happens if continuing education is not reported to CBP?*

CBP is envisioning that the reporting of the continuing education occur at the same time as the submission of the customs brokers' triennial reports. CBP is considering two options but would like to receive other ideas, as well as comments on the two options presented below.

*Option 1.* The first option is a path of progressive discipline: Using increasingly severe measures when a customs broker is given reasonable time and opportunity to correct the lack of reporting, but does not comply. After the initial failure to report, the customs broker would receive a warning letter. If the customs broker does not comply with the warning letter, then a suspension of the license would be issued, and with continued lack of reporting and compliance, the license would be revoked. CBP is considering that a customs broker's license would be suspended for a maximum of 120 days, allowing a broker to certify and demonstrate that he or she has completed the required 40 hours of continuing education. After the 120 days, the failure to correct the deficiency would result in the customs broker's license being revoked by operation of law without prejudice. The notice of the revocation would be published in the **Federal Register** and the *Customs Bulletin*, consistent with CBP's current practice with respect to revocations.

*Option 2.* The second option would be the application of the process currently outlined in 19 CFR 111.30(d)(4) (failure to submit a triennial status report) to the reporting of the continuing education requirement. Pursuant to that regulation, if a customs broker fails to file the report required under 19 CFR 111.30(d)(1) by March 1 of the reporting year, then the customs broker's license is suspended by operation of law on that date. By March 31 of the reporting year, CBP must transmit written notice of the suspension to the customs broker

by certified mail, return receipt requested, at the address reflected in CBP records. If the customs broker files the required report and pays the required fee within 60 calendar days of the date of the notice of suspension, then the license will be reinstated. If the customs broker does not file the required report within that 60-day period, then the license is revoked by operation of law without prejudice to the filing of an application for a new license. In this scenario, the failure to self-certify the completion of the continuing education requirement in ACE would have the same impact on an individual customs broker's license as the failure to submit the triennial report. Just as with the failure to submit the triennial report, the customs broker would receive notice by March 31 of the reporting year, with 60 days to rectify the issue, and failure to correct the deficiency would result in the customs broker's license being revoked by operation of law.

Whether CBP implements option 1, option 2, or another option (perhaps one suggested by a commenter), CBP could request additional documentation from a customs broker during a review of triennial reporting to assure that the customs broker had met the continuing education requirement. If a customs broker could not produce any documentation and the evidence showed that the self-certification in ACE was false or misleading with respect to any material fact, that would be considered a violation of 19 U.S.C. 1641(d)(1)(A). The violation could result in a penalty assessment or suspension or revocation of a customs broker's license or permit. Unlike the situations where a customs broker failed to report or failed to complete the continuing education, when the customs broker fails to provide the required supporting documentation in response to a request from CBP, the customs broker's license would not be revoked by operation of law. CBP would have to take additional action to revoke the customs broker's license as provided for in subpart D of 19 CFR part 111 (Cancellation, Suspension or Revocation of License or Permit, and Monetary Penalty in Lieu of Suspension or Revocation).

Under either option above, or any other suggested option, CBP would work with individuals who have temporary or extenuating circumstances surrounding their ability to obtain the required education. This is current CBP practice with regard to the triennial status report filing, and CBP would seek to continue that approach.

*Question 10. What do you think is an appropriate disciplinary action for failing to complete a continuing education requirement?*

*Question 11. Is linking the reporting of the continuing education requirement to the individual license triennial report the most efficient way to communicate compliance without placing undue burden on*

*customs brokers? If not, what alternative means would you recommend and why?*

*Question 12. Is 120 days to take corrective action to obtain the necessary continuing education credits a reasonable period of time? Please explain in your response why you believe the time period should be shorter or longer.*

*Question 13. What do you think is an appropriate disciplinary action for failing to report a customs broker's compliance with a continuing education requirement?*

*H. Should continuing education requirements apply during voluntary suspension?*

Under the current regulations, the Executive Assistant Commissioner, Office of Trade, may accept a customs broker's written voluntary offer of suspension of the customs broker's license or permit for a specific period of time under any terms and conditions to which the parties may agree (19 CFR 111.52). The most common reasons for voluntarily suspending a license are joining the Federal Government or the military, moving out of the country for an extended period of time, or making a lifestyle change, where a customs broker's license is no longer required but may be useful again in the future. During the period of voluntary suspension, a customs broker may forgo paying applicable fees and providing the triennial status report.

To parallel existing regulations, CBP is considering that while a license is in voluntary suspension, the license holder does not need to meet the continuing education requirements. If and when the customs broker contacts CBP to reactivate the suspended license, CBP would notify the customs broker of the continuing education requirements and would provide the timeline and due date for the next round of educating and reporting. CBP does not believe that any continuing education requirements must be fulfilled prior to the license becoming re-activated. However, CBP is considering adding a requirement for the first year after being re-activated for the customs broker to complete a certain number of credits to refresh the knowledge and skill set, especially if the customs broker's license was inactive for several years.

*Question 14. Should customs brokers with their licenses in voluntary suspension be required to meet the continuing education mandate while their licenses are in suspension?*

*Question 15. Should customs brokers with their licenses in voluntary suspension be required to meet the continuing education mandate before their licenses can be reactivated?*

*Question 16. Should customs brokers, who have been voluntarily suspended, be required to complete a certain number of continuing education credits the first year after re-activation, and if so, how many?*

*Question 17. Should CBP differentiate the reactivation requirements based on the nature of the suspension, i.e., a voluntary suspension versus involuntary suspension? If so, how, and why?*

*I. What could the accreditation process look like?*

CBP is contemplating a framework for providing continuing education where all Federal Government-provided content directly relevant to customs business, import, and export (training limited to requirements that CBP administers and/or enforces) would automatically be deemed appropriate and acceptable towards meeting the 3-year requirement. Due to resource constraints, CBP is not currently in a position to accredit education opportunities offered by private-sector entities. Those education opportunities could be provided by an accredited entity. This potential accreditation process would ensure that quality training is provided and accounted for, and provide a structure where a set of objective standards is applied equally across those entities that would like to offer education opportunities to customs brokers. Notwithstanding the above suggestion for an accreditation process, CBP is open to receiving comments whether it should allow for more flexibility and not place any restrictions or requirements on the accreditation of continuing education.

*Question 18. Should informational content that CBP currently provides (webinars, local and national events, industry trade days, etc.) automatically be considered eligible for credit toward a mandatory education requirement?*

*Question 19. Should CBP require accreditation? Why or why not? If yes, should CBP create a framework to accredit education provided by non-government entities?*

*Question 20. Would an established accreditation process help control the quality of the content of the various activities that would be eligible for continued education credit?*

CBP would likely approach selecting accreditors through a Request for Information (RFI) in the manner it currently conducts procurement activities, using the System for Award Management (SAM, <https://sam.gov/SAM/>). SAM is a U.S. government website and there is no cost for any entity to use the system. Through SAM, any entity can register to do business with the U.S. government, update or renew an entity's registration, check the status of an entity registration, and search for any entity registration and exclusion records.

In addition to issuing an RFI, CBP would publish a notice in the **Federal Register** detailing the application process. Unlike a CBP acquisition, a monetary contract would not be awarded; rather, the contract would be an agreement between CBP and the selected accreditor to provide specific services over a designated period of time. The accreditor would be able to charge third parties for its services, to the extent allowed by law, to recoup its expenses to review and approve/deny course credit for proposed content submitted to the accreditor for consideration. CBP is contemplating a 3-year approval cycle for accreditors of continuing education. In advance of the next 3-year period, CBP would conduct another notice and selection activity to choose the next cycle of approved accreditors. CBP believes the contemplated approach would lead to the following benefits:

- (1) More than one approved accreditor, which would allow for competition and keep costs at market level without creating a monopoly;
- (2) An open and transparent application process; and,
- (3) An opportunity for small businesses and non-profit organizations to become approved accreditors.

*Question 21. Should CBP pursue a formal accreditation program with a third-party accreditor, or should CBP be the accrediting party?*

Based on conversations with industry experts, CBP believes that 5–10 entities would apply to CBP to become approved accreditors for continuing education. At this time, CBP is not proposing a floor or a ceiling to the number of accreditors it intends to approve. Any such limits, were they deemed necessary at a later date, would be announced in the **Federal Register** notice detailing the application process, as described above.

*Question 22. How many entities should be approved to accredit content for a continuing education requirement (providing a range is acceptable)? Please provide details on your perspective.*

The precise criteria for how applicants would be evaluated could be added in a regulation. Application instructions would be provided in a **Federal Register** notice. In general, CBP is suggesting that criteria for the entity submitting an application be similar to other government procurements, such as:

- At least one key official in the entity must have a customs broker's license;
- A demonstrated knowledge of international trade laws, regulations, and customs business for goods both imported into and exported from the United States;
- A demonstrated knowledge of other government agencies that are involved in transactions of international trade;
- A list of professional references;

- Resumes for the key personnel who would be involved in accrediting course work;
- A description of the process for how someone would submit his or her activity proposed for credit to the accreditor, including electronic and online methods for submitting materials for consideration;
- A description of the criteria the accreditor would use to approve/deny activities and courses for continuing education credit;
- A description of how the accreditor would avoid conflicts of interest;
- A description of how the accreditor would track accreditation activity for CBP review;
- A description of how customers can provide feedback to the accreditor and CBP on the approval process;
- An estimate of the “turn around” time for approving/denying activities under consideration for accreditation;
- An estimate of the charge, if any, for approving/denying an activity under consideration for accreditation.

*Question 23. Is the above list of criteria to become an approved accreditor of continuing education reasonable? Should additional criteria be added?*

*Question 24. If your company or organization is interested in becoming an approved accreditor, can you estimate the time it would take to put together an application based on the above criteria? If you or your organization deem this information business sensitive, please submit your materials only as a written / paper submission as listed in the **ADDRESSES** section above.*

To avoid any perceived conflicts of interest, CBP is contemplating that any entity that is approved by CBP to provide continuing education should not be allowed to self-approve its own course content and activities. The entity would have to submit the proposed activity to one of the other accreditors for approval or denial of that activity. CBP believes this potential process provides the fairest approach for both content creators and accreditors.

*Question 25. Should accreditors be able to self-approve their own activities and course content?*

At this time, CBP is not proposing that applicants to become accreditors submit an application fee. If CBP determines that an application fee is necessary to re-coup the costs of proposal review, then CBP would propose the relevant regulations in a future NPRM and provide a justification for the fee to be charged.

*Question 26. Should CBP charge a fee to entities who wish to apply to become approved accreditors?*

Each accreditor would make clear on its website and in other materials the process for submitting content for accreditation consideration (note that this is one of the criteria that must be met to receive CBP approval to be an accrediting body). CBP is requiring that an accreditor provide an electronic means for a content provider to submit the details of the activity under consideration. The accreditor must also make clear on its website the average or typical timeframe the content provider can expect before receiving an approval or a rejection.

CBP is not proposing to set the cost of what an accreditor would charge to review and approve/deny activities for continuing education. The accreditor would have to make any charge explicit and clear during the application for course approval.

*Question 27. Should CBP set a limit on the amount an accreditor can charge for course/ activity approval?*

Once an accreditor has been approved under a 3-year agreement, it may become necessary over the course of time to reconsider the suitability of an accreditor to provide services. The terms of the agreement would be written in a way that both CBP and the accreditor independently have the ability to end the agreement with a 30-day notice. This approach parallels the process for CBP monetary contracts.

Any individual or organization would be able apply to become an approved accreditor during the application process that CBP considers opening on a 3-year cycle. Any additional accreditors outside of the 3-year cycle would not be considered.

*Question 28. Given all the considerations raised above and the various questions posed regarding a potential framework for continuing education, CBP would like comments on whether continuing education should be required at all, and whether there are other measures that CBP could take to ensure a high level of integrity and expertise in the broker community.*

#### **IV. Economic Impacts of Mandating Continuing Education for Licensed Customs Brokers**

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flex-

ibility. This ANPRM is not a “significant regulatory action,” under section 3(f) of Executive Order 12866, and has not been reviewed by the Office of Management and Budget (OMB) under that order.

A future regulatory framework to implement continuing education requirements would affect those customs brokers maintaining active licenses so that they may transact customs business, as well as any brokers re-activating their licenses after a period of voluntary suspension. In addition to attendance at trainings, customs brokers would need to track continuing education credits. Providers of customs-related trainings would also be affected, as they would likely see a rise in demand for training and would need to have their offerings accredited by an acceptable organization.

There are currently several accreditors for customs-related trainings, although those organizations operate entirely independently from CBP and have neither sought, nor received, CBP approval. Should continuing education become mandatory, more entities would likely seek to become accreditors. Both existing and new accreditors would need to go through the CBP accreditor application process, described above, in order to provide accreditation and accredited training products. Employers of licensed customs brokers likely would either provide accredited training by going through the accreditation process for in-house trainings, or provide employees with the time and resources to fulfill training requirements on their own. Finally, CBP would need to provide a process by which organizations may become accreditors and track broker reporting to ensure continuing education requirements are being met.

As of January 2020, there are approximately 10,000 individually licensed customs brokers. Details are provided in Table 1 below.

TABLE 1—EMPLOYMENT TYPE FOR INDIVIDUALLY LICENSED CUSTOMS BROKERS

Individual broker type	Number
Individually Licensed Brokers	10,089
Not transacting customs business .....	5,447
Employee .....	3,695
Proprietor (individual or organization) .....	561
Transact customs business, not as an employee or Proprietor .....	386

Source: Triennial report data as filed in ACE; data current as of January 2020.

*A. Costs and Benefits of a Future Rule*

The addition of continuing education to the requirements for maintaining a customs broker license may produce new costs for some brokers, particularly smaller brokerages. However, many customs brokers already pursue additional training and continuing education

and may already be meeting the potential requirements. To determine the net cost or benefit of mandatory continuing education, CBP seeks comments on the following areas:

*Question 29. To what extent do you as a customs broker or employer of brokers already satisfy the potential requirements (40 hours over 3 years) voluntarily or via company policy? Do you believe this is representative of the customs broker industry as a whole? Why or why not? Please provide examples of how you already fulfill the potential requirements.*

*Question 30. What is the number of hours currently spent on training in total by you as a customs broker or by customs brokers employed by you in an average year?*

*Question 31. Of the existing training options for customs brokers, how many hours are supplied in-house by employers of customs brokers, externally by Federal Government agencies, and by third-party providers, in an average year? What types of training options are you as a customs broker taking advantage of?*

*Question 32. Is the training for customs brokers that you provide or consume general, specific to a particular topic, or does it vary depending on the current work environment?*

*Question 33. Are the trainings for customs brokers that are currently provided accredited by some organization? If so, please provide the names of the organizations that accredit the trainings.*

*Question 34. Do employers and employees find these trainings for customs brokers to be beneficial? If yes, can you provide any examples of when training may have prevented or mitigated a negative outcome in a trade process? If no, can you explain how you as a customs broker or employer of customs brokers currently keep abreast of the ever-changing and expanding requirements to comply with U.S. and international law and other knowledge to stay efficient and compliant over time?*

*Question 35. If you are an employer of customs brokers, and the continuing education requirement were to be put in place, would you continue your current approach to education or make changes? If you would change, please explain the changes you might make and if you would increase or decrease the use of in-house, third-party, or Federal Government-produced sources of training?*

*Question 36. How often do you as a customs broker or employer of customs brokers currently attend events requiring travel, and how would a possible continuing education requirement affect the amount of travel, for you or your company?*

*Question 37. Can you provide information on the benefits and efficacy of mandatory continuing education for customs brokers and free trainings provided by CBP and other PGAs?*

*Question 38. In general, how often do you as a customs broker or your customs broker employees take advantage of these government-provided training resources?*

*Question 39. If you are considered a small business, what would the impacts be to your company of the potential continuing education framework for customs brokers?*

*Question 40. Should small businesses that struggle to meet continuing education requirements for customs brokers, due to new costs, receive accommodations in the form of discounts or exemptions?*

*Question 41. What types of costs do you or your company incur to maintain records of the completion of employee trainings? How high are these costs? If you or your company does not currently maintain training records, what types of costs would you incur to do so?*

*Question 42. If you are an individually-licensed customs broker, what would you consider reasonable costs per hour of continuing education, if you had to pay out of your own pocket? Would you take more trainings if the cost were discounted for small businesses?*

### *B. Potential Costs of a Future Rule*

With continuing education requirements in place, customs brokers would face new costs. Those customs brokers already taking part in a continuing education program may see increased costs if they must increase the amount of training they participate in, or if they must switch to different, more expensive training opportunities because their current programs are not accredited. Customs brokers (or their employers) would need to pay tuition and fees, and spend time registering and preparing for, as well as attending trainings. Depending on the type of training, customs brokers (or their employers) may pay expenses related to travel and overnight trips including hotels, rental cars, and meals. To meet requirements, customs brokers would need to track and report completed trainings, which may require new systems or software, though most customs brokers would likely use existing spreadsheet or database applications. Employers may also choose to satisfy requirements by paying to produce training in-house, which would need to be accredited by a CBP-approved organization.

Accrediting organizations would need to go through some type of application process to receive CBP approval to accredit trainings. That application would require time to prepare and submit. CBP would face the costs of creating and providing the accreditor-approval

process. CBP may also need to increase the number of trainings it offers (though as noted above, this is not likely), which would result in increased costs. Finally, CBP would face increased costs of enforcement, likely in the form of more frequent or more thorough audits of customs brokers' records.

*Question 43. Are there any additional qualitative costs, monetary costs, or time expenditures of continuing education for customs brokers that you would like to provide?*

#### *C. Potential Benefits of a Future Rule*

The addition of mandatory continuing education to the requirements for maintaining an individual customs broker license would have several benefits. A better educated and more informed workforce would be more prepared for the dynamic and complex trade environment. The customs broker industry as a whole would likely see improvements in professionalism and reputation. Customs brokers would likely need to spend less time asking questions of CBP and would commit fewer unintentional errors and violations. CBP would benefit as well, with fewer errors, issues, and violations to address. Importers, exporters, and other members of the international trade community would experience greater professionalism from their customs brokers, need to handle fewer mistakes, and likely see increases in efficiency. Accreditors would likely see benefits in the form of increased demand for their services and the profits thereof.

*Question 44. Are there any additional qualitative benefits, monetary cost savings, or time savings of continuing education for customs brokers that you would like to provide, in addition to the benefits described in the Background section above?*

#### **IV. Signature**

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, has delegated the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the **Federal Register**.

CHAD R. MIZELLE,  
*Senior Official Performing the Duties  
of the General Counsel,  
Department of Homeland Security.*

## CUSTOMS BROKER PERMIT USER FEE PAYMENT FOR 2021

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

**ACTION:** General notice.

**SUMMARY:** This document provides notice to customs brokers that the annual user fee that is assessed for each permit held by a broker, whether it may be an individual, partnership, association, or corporation, is due by January 29, 2021. Pursuant to fee adjustments required by the Fixing America’s Surface Transportation Act (FAST ACT) and U.S. Customs and Border Protection (CBP) regulations, the annual user fee payable for calendar year 2021 will be \$150.33.

**DATES:** Payment of the 2021 Customs Broker Permit User Fee is due by January 29, 2021.

**FOR FURTHER INFORMATION CONTACT:** Melba Hubbard, Broker Management Branch, Office of Trade, (202) 325–6986, or [melba.hubbard@cbp.dhs.gov](mailto:melba.hubbard@cbp.dhs.gov).

### SUPPLEMENTARY INFORMATION:

#### Background

Pursuant to section 111.96 of title 19 of the Code of Federal Regulations (19 CFR 111.96(c)), U.S. Customs and Border Protection (CBP) assesses an annual user fee for each customs broker district and national permit held by an individual, partnership, association, or corporation. CBP regulations provide that this fee is payable for each calendar year in each broker district where the broker was issued a permit to do business by the due date. *See* 19 CFR 24.22(h) and (i)(9). Broker districts are defined in the General Notice entitled, “Geographic Boundaries of Customs Brokerage, Cartage and Lighterage Districts,” published in the **Federal Register** on March 15, 2000 (65 FR 14011), and corrected, with minor changes, on March 23, 2000 (65 FR 15686) and on April 6, 2000 (65 FR 18151).

Sections 24.22 and 24.23 of title 19 of the Code of Federal Regulations (19 CFR 24.22 and 24.23) provide for and describe the procedures that implement the requirements of the Fixing America’s Surface Transportation Act (FAST Act) (Pub. L. 114–94, December 4, 2015). Specifically, paragraph (k) in section 24.22 (19 CFR 24.22(k)) sets forth the methodology to determine the change in inflation as well as the factor by which the fees and limitations will be adjusted, if necessary. The customs broker permit user fee is set forth in Appendix A of part 24. (19 CFR 24.22 Appendix A.) On July 29, 2020,

CBP published a **Federal Register** notice, CBP Dec. 20–14, which among other things, announced that the annual customs broker permit user fee would increase to \$150.33 for calendar year 2021. *See* 85 FR 45646.

As required by 19 CFR 111.96, CBP must provide notice in the **Federal Register** no later than 60 days before the date that the payment is due for each broker permit. This document notifies customs brokers that for calendar year 2021, the due date for payment of the user fee is January 29, 2021.

Dated: October 22, 2020.

BRENDA B. SMITH,  
*Executive Assistant Commissioner,  
Office of Trade.*

[Published in the Federal Register, October 28, 2020 (85 FR 68355)]



**PROPOSED MODIFICATION OF RULING LETTERS  
RELATING TO COUNTRY OF ORIGIN AND  
CLASSIFICATION**

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

**ACTION:** Notice of modification of four rulings relating to the tariff classification and country of origin marking of certain steel, iron, and aluminum products to remove citations to cases that have been rescinded.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify four rulings relating to the tariff classification and country of origin marking of certain steel, iron, and aluminum products to remove citations to cases that have been rescinded. Comments on the correctness of the proposed actions are invited.

**DATES:** Comments must be received on or before December 11, 2020.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Cammy Canedo, Regulations and Disclosure Law Division, 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 Ms. Cammy Canedo at (202) 325–0439.

**FOR FURTHER INFORMATION CONTACT:** Joy Marie Virga, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–1511.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to modify three ruling letters regarding the country of origin marking and one ruling letter regarding classification. Although in this notice, CBP is specifically referring to Headquarter Ruling Letters (HQ) 561405, dated October 23, 2001, (Attachment A); H276962, dated March 16, 2018, (Attachment B); H303867, dated June 25, 2019 (Attachment C); and H303868, dated June 27, 2019 (Attachment D), this notice also covers any rulings that cite these rescinded cases which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the rulings 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) citing the rescinded cases 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 modify any Ruling Letters issued by CBP for citing the same rescinded cases. Any person who has been issued such Ruling Letters should advise CBP during this comment period. An importer’s failure to advise CBP of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In HQ 561405, HQ H276962, HQ H303867, and HQ H303868 CBP cited to HQ 561710, HQ 561744, or HQ 561745, which were rescinded on September 19, 2000 in a Customs Bulletin Notice. CBP has reviewed HQ 561405, HQ H276962, HQ H303867, and HQ H303868 and has found the citations to rescinded Ruling Letters to be in error.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify HQ 561405, HQ H276962, HQ H303867, HQ H303868, and any other ruling not specifically identified to remove citations to any revoked Ruling Letter, set forth as Attachments E-H to this notice.

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

CRAIG T. CLARK,  
*Director*  
*Commercial and Trade Facilitation Division*

Attachments

## ATTACHMENT A

HQ 561405

October 23, 2001

MAR-2-05 RR:CR:SM 561405 RSD

CATEGORY: Marking

JASON M. WAITE, ESQ.  
GRUNFELD, DESIDERIO, LEBOWITZ & SILVERMAN  
303 PEACHTREE STREET, N.E.  
SUITE 2980  
ATLANTA, GEORGIA 30308

RE: Country of origin marking for imported castings incorporated into different types of regulators, transducers, and valve positioners; substantial transformation, assembly, 19 CFR 134.35(a)

DEAR MR. WAITE:

This is in response to your letter dated June 3, 1999, on behalf of Marsh Bellofram Corp. (hereinafter MB) requesting a ruling regarding the country of origin marking requirements for imported castings, which will be incorporated in products called regulators, transducers, and valve positioners in the U.S. Your submission was accompanied by samples of the castings and the finished products for our consideration. We regret the delay in responding to your request.

**FACTS:**

The imported products that are the subject of the ruling request are castings, which are incorporated in five types of finished products: spring-loaded regulators, dome-loaded regulators, pilot-operated regulators, transducers and valve positioners. MB makes several different models within each of these general categories of products. Each model may have different engineering features that allow for varying applications. However, for purposes of this ruling, we will only discuss the finished products in terms of the five general categories that you have described in your submission.

**REGULATORS**

Certain of the castings MB imports are used in the manufacture of pressure-limiting devices called regulators. You describe their use as follows: a supply pressure on one side of a nozzle is reduced to a preset output pressure by compressing a control load, often exerted by a range spring, to produce a force equal to and opposite to the force the output pressure exerts on the other side of a diaphragm assembly. Functionally, when there is an imbalance between the output pressure and the control load, there is a corresponding reaction in the diaphragm and nozzle assemblies. If the output pressure rises above the pressure set by the control load, the diaphragm seat is lifted from the plug, venting the excess pressure to the atmosphere until equilibrium is reached. If the output pressure drops below the pressure set by the control load, the control load mechanism acts through the diaphragm assembly unseating the nozzle plug and allowing the supply pressure to flow through the nozzle to the down stream port increasing the output pressure.

Typical applications for the type of pneumatic pressure regulators that MB produces include: medical ventilators, robotic balancing arms, vibration isolation systems, tank blanketing systems, inert gas purging, air motors, natural gas engines, and burner controls.

### *SPRING-LOADED REGULATORS*

MB imports castings for use in 11 types of regulators that fall into three distinct categories. The majority of MB's regulators are spring loaded. In a spring-loaded regulator, the control load is set by a range spring. You have provided a process sheet describing what must be done to produce a representative Type 41 spring-loaded regulator. The imported casting in the Type 41 is called the bonnet. In the U.S., two are holes tapped in the bonnet, and it is combined with a U.S.-produced bushing. In making the Type 41 regulator, a second casting of U.S. origin called the body is used. This casting is sanded, reamed, has holes tapped in it, and is center drilled. Other components in the Type 41, such as the knob, must be assembled with a nut before being ready for use in producing the finished regulator. Another process sheet describes the individual packaging of a pipe plug, which is provided separately with each Type 41 regulator. The last process sheet applies to a particular part number, and it describes the steps necessary to produce the finished regulator.

The process to produce the finished regulator includes positioning the diaphragm assembly, spring and spring guide onto the body; then positioning the bonnet before removing temporary build pins and driving and applying torque to four build screws. The assembled regulator then undergoes performance checking in accordance with quality control specifications. This entails visual checks, leakage tests, setting supply pressure and then recording output pressure to ensure that the device is performing with the critical precision that is demanded of it. Following the testing, the device is prepped for painting. Lubricant is also applied to the threads of the knob before it is installed in the regulator. Labels are subsequently attached.

### *DOME-LOADED REGULATORS*

The second type of regulator that MB makes is called a dome-loaded regulator. These regulators are controlled through the use of dome-pressure transmitted through a diaphragm to provide the desired output pressure. You have included an assembly diagram which includes a parts instruction diagram from the booklet provided with a sample Type 75 dome-loaded regulator. The diagram indicates that there are two imported castings used in making the Type 75 regulator—the body assembly, and a spacer. It also shows that there are many other parts involved in the production of the instrument. We understand that all of these other parts are of U.S. origin.

In the U.S., the imported body casting in the Type 75 regulator is fitted with a set assembly O-ring using special lubricant. Then a screen, a pintle-ring, and a rubber gasket are all set into the body. Finally, another O-ring and baffle guide as well as a baffle plate assembly are installed in the body. The other imported casting, a spacer, is machined, has a hole drilled in it and is sanded and washed to ready it for assembly.

The Type 75 regulator also includes a domestically sourced casting, the bonnet. This casting has a center hole tapped in it, while another component, a piston, must be machined, drilled cut and washed before being ready for use in making the finished regulator. A diaphragm is incorporated into the Type

75 regulator. Making the diaphragms is a complex process that entails forming fabric and elastomers according to specifications, then combining them, shaping them and incorporating them onto a diaphragm assembly that can be built into a Type 75 regulator. The process of producing the finished regulator includes: installing the lower diaphragm assembly after applying O-ring lube to the lip seal, installing the spacer, installing the upper-diaphragm assembly in perfect alignment, positioning the bonnet, and then installing six build screws. The assembled regulator then undergoes performance checking in accordance with quality control specifications. This entails visual checks, leakage tests, and setting supply pressure, then recording the output pressure to ensure that the device is performing with the critical precision that is demanded of it. Following the testing, the device is painted and labels are subsequently applied.

### *PILOT-OPERATED REGULATORS*

MB also manufactures pilot-operated regulators that utilize an atmospheric reference capsule to create a pilot pressure on the topside of the diaphragm. The Type 10 and Type 20 regulators are pilot operated. One of the imported castings in the Type 10 regulator, called the body, is drilled and tapped in several places before it is painted. It is then placed in a fixture where a seat is pressed into the body. This processing is necessary as detailed in the particular part's process sheet, to prepare the body casting for use in the production of the finished Type 10 regulator.

Another imported casting used in making the Type 10 regulator, the spacer, is inspected and painted. A third imported casting, the housing, must be drilled and tapped, before being painted. Then a seat ring is pressed into the housing and a pintle is inserted through the seat ring into the spring slot where the spring is fastened to the housing. A bleed screw is also installed into the housing after it has been assembled with an O-ring, a silencer and an orifice disk. This processing is necessary to prepare the housing for the final assembly of the finished regulator.

A domestically-sourced casting, the bonnet, also undergoes painting, and it has a bushing pressed into it before the capsule is assembled into it. The capsule consists of a top shell and a bottom shell that are both heat-treated before they are used. The top shell has a shaft screw welded to it before the bottom shell is welded to it in three places. The capsule as prepared is tested for leakage. The diaphragm production method sheet describes the formula used to make the necessary fabric and elastomer combination and the dimensions it is formed into. Then the diaphragm is assembled with a piston upper, piston lower, seat, two washers and a staking operation. When the diaphragm assembly is completed, it is specially taped for packaging protection while awaiting final assembly.

The processing necessary to produce the finished Type 10 regulator includes positioning the diaphragm assembly in the body assembly. A coil spring is then placed in the housing assembly. The bonnet assembly is then attached to a gasket using an air driver and four build screws. The assembled regulator then undergoes performance checking in accordance with quality control specifications. This entails visual checks, leakage tests, and setting supply pressure, then recording output pressure to ensure that the device is performing with the critical precision that is demanded of it.

### *TRANSDUCERS*

Another product that MB makes is called a transducer. Transducers are used as a means to convert an electrical signal to a proportional pneumatic pressure. The use of a transducer allows a computerized control system to react to changes in a process. Like regulators, transducers provide a desired output pressure by comparing the actual output pressure to the commanded output pressure and adjusting the actual output pressure as required. Typical applications for electro-pneumatic transducers are position control, chemical processing, louver/damper control, variable pitch fans, breaking systems, pulp bleaching, and porous media test systems.

While regulators use a range spring or pilot pressure to create the control load against which output pressure is balanced on the opposite side of a diaphragm assembly, transducers utilize electrical input signals to operate the nozzle and the diaphragm and maintain a set output pressure. MB imports castings for use in three transducers—the Type 1000, 1001, and 2000.

You indicate that the Type 1000 transducer is representative of all of the transducers, but it is generally one of the least complex and least expensive of the transducers. You have attached a detailed assembly diagram of the Type 1000. The drawing shows the castings that are used in the Type 1000, and also shows that many other parts are necessary for the production of these devices. One of the imported castings in the Type 1000, the housing, is repeatedly drilled and tapped to specifications before it is subject to an assembly operation described on the process sheet for part number 232-802-000-048. Another imported casting, the spacer has an eyelet pressed into it. A domestically-sourced casting, the body, is drilled and tapped to specification before being placed in a fixture where a seat is pressed into it. Then a pintle with a half-ball is placed into the body. Finally, a spring is assembled into the body. This necessary processing, as detailed in a process sheet, is to prepare the body casting for use in producing the finished Type 1000.

You have also included the detailed process sheets describing the preparation of a magnet assembly, coil-pin assembly, heat-treated flexure spring, and coil/spring assembly. The Type 1000 also requires that a diaphragm be made using the method sheet formula. The diaphragm is assembled with a large piston, small piston, seat, two washers and a staking operation, and then coined to a specified depth using an air press. The worm, orifice, the relay, and tubing are subject to processing and or subassembly before they are prepared for assembly into the Type 1000 transducer. You state that the final assembly process alone is highly complex and involves the precise combination of the several other subassemblies that are produced. Finally, the Type 1000 undergoes extensive testing.

### *VALVE POSITIONERS*

Valve positioners are devices which receive a pneumatic command signal at the input port and thus provide an output pressure signal to an actuator until the positioner receives mechanical feedback that the actuator has reached a position proportional to the pneumatic command signal. MB imports castings for use in two valve positioners, the Type 80 and Type 86. The Type 80 gets

mechanical feedback through an extension spring or a flat coiled rotary spring. The Type 86 gets mechanical feedback through a mechanical arm or a universal coupling.

An assembly diagram and a part list/diagram from the booklet that comes with the Type 80 valve positioner shows the castings that are used in building the Type 80. The drawings also show that many other parts are necessary for the construction of these devices. One of the imported castings in the Type 80, the bonnet, is machined and painted and then assembled to a signal spacer equipped with a diaphragm. The signal spacer itself is drilled, sanded, has specific dimension holes tapped and sunk in it, and is painted. Another imported casting, the housing, is drilled and reamed to specification. It is then painted, an orifice is put into it, and tube and eyelets pressed into it. A third imported casting in the Type 80, the body, has holes of a specific dimension tapped in it, and is painted before being fitted with a seat, a pintle to which a half ball is affixed, a spring and pipe plugs. The seat must be prepared for use by crimping a nozzle in it. The baffle must be painted. A manifold must be reamed and tapped to specification and then have a plug pressed into it before being painted.

An included method sheet describes the process of producing the diaphragm that must be incorporated into the finished Type 80. Making diaphragms entails forming fabric and elastomers according to specification and then combining them, shaping them and incorporating them onto a diaphragm assembly that can be built into a type 80. The diaphragm assembly involves the preparation of rubber according to precise formulas, and then assembling the rubber diaphragm into a fixture with a washer using a press.

After all of these component parts have themselves have been prepared for assembly into the finished Type 80, a subassembly of the valve positioner is built using the body assembly, spring, housing, bonnet assembly, build screws and the clevis assembly. The baffle and the manifold are attached to each other before being mounted to the valve positioner subassembly. The finished product then undergoes careful testing.

You have also provided your opinion as to how the imported castings should be classified under the Harmonized Tariff Schedule of the United States (HTSUS). For purposes of this ruling, we are assuming that your proposed classification of the articles is correct. You indicate that the regulators, transducers and valve positioners are classifiable under subheading 9032.81.00, HTSUS and the imported castings specifically designed for use with particular regulators, transducers or valve positioners are classifiable in subheading 9032.90.6060, HTSUS.

#### **ISSUE:**

Whether the imported castings are substantially transformed when they are used to produce regulators, transducers, and valve positioners in the U.S. as described above.

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

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. §1304), requires, subject to certain specified exceptions, that every article of foreign origin imported into the U.S. shall be marked to indicate the country of origin to the ultimate purchaser in the U.S. Part 134, Customs Regulations (19 CFR part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. §1304. An ultimate purchaser is defined in section 134.1,

Customs Regulations (19 CFR 134.1), as “the last person in the U.S. who will receive the article in the form in which it was imported.” The regulation further provides that if an imported article will be used in manufacture, the manufacturer may be the ultimate purchaser if he subjects the imported article to a process that results in a substantial transformation. However, if the manufacturing process is merely a minor one which leaves the identity of the imported article intact, 19 CFR §134.1(d)(2) provides that the consumer or user of the article who obtains the article after the processing will be regarded as the ultimate purchaser.

According to *United States v. Gibson-Thomsen Company, Inc.*, 27 CCPA 267 (C.A.D.98), a U.S. manufacturer is considered to be an ultimate purchaser if a manufacturing process is performed on an imported item so that the item is substantially transformed in that it loses its identity and becomes an integral part of a new article with a new name, character or use. The court determined that in such circumstances, the imported article is excepted from individual marking. Only the outermost container is required to be marked. See Sections 134.32(d) and 134.35(a), Customs Regulations (19 CFR §134.32(d), 19 CFR 134.35(a)).

If the manufacturing or combining process is a minor one which leaves the identity of the imported article intact, a substantial transformation has not occurred and an appropriate marking must appear on the imported article so that the consumer can know the country of origin. See *Uniroyal Inc. v. United States*, 3 CIT 220, 542 F. Supp. 1026 (CIT 1982). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. See C.S.D. 80–111, C.S.D. 85–25, and C.S.D. 90- 97.

The court noted in *Uniroyal* that the imported article, an upper, in its condition as imported, was a complete shoe (except for the absence of an outsole) that had “already attained its ultimate shape, form and size” and was “the very essence of the completed shoe.” The other factors considered by the court included the time involved in the combining process, the significantly less costly nature of the combining process and that five highly skilled operations were involved in making the upper while only one highly skilled operation was necessary to attach the upper and the outsole.

The finished products involved in this case fall into three basic categories: regulators, transducers and valve positioners. Within these basic categories there are various models, each of which may perform different functions and may be used in different applications. Although the processes involved in producing the various regulators, transducers, and valve positioners described in the ruling request differ to a certain extent, it appears that their production basically involves the use of one or more imported castings that usually are processed in the U.S. through different types of machining and various other operations before they are combined through an assembly process with U.S. made components to produce the finished products.

In Headquarters Ruling Letter (HRL) 732940 dated July 5, 1990, Customs considered water pump assemblies comprised of 6–8 components including a casting, bearing, impeller, hub, seal, mounting gasket, and in some cases, a spacer, and tubes or plugs which were assembled in the U.S. Although the assembly process was not exceedingly complex, and in one instance a Taiwanese-origin casting was used to produce the water pump, which remained visible after assembly, a substantial transformation was found. The rationale given was that most of the important components of the water pump

were of U.S. origin, and the foreign casting was permanently attached to the other components. See also HRL 732350 dated June 23, 1989, regarding imported transducers (i.e., microphones and receivers) which were wired to a faceplate in the U.S. along with a signal processing circuit, and were then cemented into a shell to create hearing aids. The transducers were considered substantially transformed and excepted from individual country of origin marking pursuant to 19 CFR 134.35 as they lost their separate identity and were merged into a new and different article (a hearing aid) when they were securely attached to the faceplate.

In *National Hand Tool v. United States*, 16 CIT 308, (1992) *aff'd* 989 F.2d 1201 (Fed. Cir. 1993), a country of origin marking case, certain hand tool components used to make flex sockets, speeder handles, and flex handles, were imported from Taiwan. The components were cold-formed or hot-forged into their final shape prior to importation, with the exception of speeder handle bars, which were reshaped by a power press after importation. The grip of the flex handles were also knurled in the U.S., by turning the grip portion of the handle against a set of machine dies that formed a cross-hatched diamond pattern. The components were subjected to a heat treatment, which increased the strength of the components, sandblasting (a cleaning process), and electroplating (enabling the components to resist rust and corrosion). After these processes were completed, the components were assembled into the final products, which were used to loosen and tighten nuts and bolts.

The Court of International Trade decided the issue of substantial transformation based on three criteria, i.e., name, character, and use. Applying these rules, the court found that the name of the components did not change after the post-importation processing, and that the character of the articles similarly remained substantially unchanged after the heat treatment, electroplating and assembly, as this processing did not change the form of the components as imported. The court further pointed out that the use of the articles was predetermined at the time of importation, i.e., each component was intended to be incorporated in a particular finished mechanic's hand tool. The court dismissed as a basis for a substantial transformation the value of the processing, stating that the substantial transformation test utilizing name, character and use criteria should generally be conclusive in country of origin marking determinations, and that this finding must be based on the totality of the evidence. Based on this test, the court concluded that the processing in the U.S. did not effect a substantial transformation of the foreign hand tool components.

Based largely on the *National Hand Tool Corp. v. United States* case, Customs in several recent rulings has determined that simple machining of imported castings combined with a simple assembly did not result in a substantial transformation of the imported castings. For example, in HRL 561745, dated July 20, 2000, Customs considered three unfinished imported castings known as a nut, head and tail that were machined to final dimensions and assembled to create pipe fittings known as unions. We ruled that while the unfinished pipe fittings for the unions were machined to their final dimensions and subjected to a simple assembly, the processing did not result in a change in the character of the imported head and tail. Furthermore, we found that all three pieces worked together as a unit and comprised the only

components of the pipe fittings, and therefore no substantial transformation resulted from the U.S. processing of the imported castings to create the pipefittings.

In HRL 560399, dated May 14, 1998, a variety of iron and stainless steel pump castings from Finland were imported into the U.S. for further processing. The operations performed in the U.S. on the imported pump castings included turning, boring and/or milling, drilling and/or tapping, balancing and testing. Upon importation into the U.S., the castings were not rough, generic forms but had the same shape as the finished pump parts. As a result, we found that the imported castings did not lose their identity and become an integral part of a new article. Rather, we found that they already had the essential characteristics of finished pump parts at the time of importation.

In HRL 561297, dated June 2, 1999, Customs considered whether a substantial transformation resulted when imported raw castings were processed in the U.S. into receivers, which were then assembled into rifles. The U.S. processing of the raw castings to produce receivers included machining, heat treatment, drilling four holes, sandblasting, dipping the castings into a hot caustic solution, stamping, and final inspection. The receivers were then ready to be assembled into rifles. We noted that the raw castings had the shape, character and predetermined use of the finished receivers and merely required intermediate finishing operations. Accordingly, we held that the processing of the raw castings into receivers in the U.S. did not result in a substantial transformation.

However, in HRL 561297, we also ruled that the processing of the raw castings into receivers and assembling them with other components to create finished rifles in the U.S. resulted in a substantial transformation creating a new article with a new name, character, and use. The factors considered were the complexity of the assembly operation, the number of parts involved, and the need for trained technicians to meet very exacting specifications.

In our opinion, the instant case is analogous to HRL 561297, in that initial processing of the imported castings (e.g., machining, drilling) by itself would not constitute a substantial transformation. However, the processing of the imported raw castings coupled with their assembly with other components manufactured in the U.S. to create the finished products in the U.S. results in a substantial transformation of the imported castings, creating a new article with a new name, character, and use.

Moreover, we believe that facts of this case are distinguishable from the *National Hand Tool* case, HRL 561745, and HRL 560399 because the imported castings do not impart the essential character to the finished products. In this case, most of the imported castings need extensive processing before they can be assembled with various U.S.-produced components to make the finished regulators, transducers, and valve positioners. In the *National Hand Tool* case, the imported castings comprised the only significant components used to make the finished articles. In contrast, in this case, other significant components of U.S. origin are used to make to make the final products. Although it is clear that the imported castings are significant components, we note that the finished products are complex and that a number of other components (including U.S. origin castings) besides the foreign castings are incorporated into the finished transducers, regulators and valve positioners. Consequently, we believe that the imported castings do not constitute the

essence of the finished products. We also find it significant that, except for the imported castings, all of the components in these devices are made in the United States.

Based on the diagrams and the process sheets submitted with the ruling request, the assembly operations appear to be fairly complex while in *National Hand Tool* and HRL 560399, the assembly was not particularly complex. In *National Hand Tool* the assembly consisted largely of putting together only a few pieces. The assembly of the finished products in this case is a multi-step process which appears to be far more intricate and involved than the assembly that was performed in *National Hand Tool*. The regulators also contain more components than the products in *National Hand Tool*. For example, according to a diagram submitted, one of the simpler devices, the Type 41 Regulator, consists of 13 individual components. Certain of the other devices contain more components. All of the individual components must be assembled together to produce the finished regulating devices.

In building the finished regulating devices, the imported castings are drilled, tapped, and machined to exact specifications so that the particular devices can effectively regulate flow. The process may also include pressing components into the castings, positioning springs and spring guides, applying torque to screws, and aligning various other components. In addition, much of the processing done in the United States consists of producing subassemblies such as diaphragm assemblies, pintle assemblies, coil and spring assembly baffles, manifolds, which are then incorporated into the finished products. To make the subassemblies, imported and domestic castings are used. These subassemblies must be carefully prepared before the final assembly to make the finished control devices can proceed. In turn, these subassemblies then must be combined carefully together to make the finished products.

Several of the components in these control devices appear to be quite tiny in addition to being delicate and intricate. This means that during the assembly process workers must use care to make a number of fine and precise adjustments and alignments to the components such as fitting springs and bushings to ensure that the finished products function properly. We are mindful of the fact that these are sophisticated devices, which are designed to precisely regulate flow. Therefore, they must be put together carefully in order to function properly. As a result, it appears that the technicians that perform the assembly operations must be highly trained and skilled.

Accordingly, we find that the imported castings are substantially transformed when combined with the U.S. components in the United States to make the finished pressure controlling devices. Therefore, under 19 CFR 134.35(a), the imported castings are excepted from having to be individually marked with their country of origin.

#### **HOLDING:**

Based upon the information provided, it is our opinion that the imported castings will undergo a substantial transformation in the U.S., when they are processed and combined with other U.S. origin components to form the finished pressure-control devices. Therefore, the imported castings incorporated into the regulators, transducers, and valve positioners are excepted from the marking requirements of 19 U.S.C. 1304 and only the outermost containers in which MB receives the imported castings are required to be marked to indicate the country of origin of the castings. This ruling is limited

to the specific factual circumstances and models of regulators, transducers and valve positioners discussed herein.

A copy of this ruling letter should be attached to the entry documents filed at the time the goods are entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

*Sincerely,*

JOHN DURANT,

*Director*

*Commercial Rulings Division*

## ATTACHMENT B

HQ H276962

March 16, 2018

CLA-2 OT:RR:CTF:EMAIN H276962 NCD

CATEGORY: Classification

TARIFF NO.: 7307.19.3085; 7307.19.9080

DEAN BARCLAY  
WHITE & CASE PC  
701 THIRTEENTH STREET, NW  
WASHINGTON, DC 20005-3807

RE: Request for reconsideration of NY N077237; classification of ductile iron bolt rings and stainless steel bolt rings

DEAR MR. BARCLAY:

This is in response to your letter of June 23, 2016, submitted on behalf of SIGMA Corp. (“SIGMA”), requesting reconsideration of New York Ruling Letter (“NY”) N077237, dated September 28, 2009. NY N077237 involved classification of ductile iron bolt rings and stainless steel bolt rings (collectively, “bolt rings” or “subject merchandise”) under the Harmonized Tariff Schedule of the United States (“HTSUS”). In your June 23, 2016 letter (“reconsideration request”), you contend that the classification determination set forth in NY N077237 is erroneous. We regret the delay in responding to your reconsideration request.

Upon our review of NY N077237, we have determined the ruling to be correct. We are accordingly affirming the ruling. In reaching this decision, we have considered arguments presented in the reconsideration request, in a November 14, 2016 meeting, in a supplemental submission provided at the meeting, and in other communications with our office. Our decision is also based in part upon our inspection of product samples.

The bolt rings at issue are described and depicted as follows in NY N077237:

The products you plan to import are described as cast bolt rings made of two different materials, either ductile iron or stainless steel. The bolt rings are said to be used in the waterworks, sewer, fire protection, food and dairy industries. A sample of the stainless steel bolt ring has been submitted. The circular hollow sample measures 8.75 inches in outside diameter, approximately 4.5 inches in inside diameter, and approximately 1.12 inches in depth. It has a recessed inner circular groove. The circumference of the face of the ring contains six equally spaced holes for placement of bolts.



The bolt rings are described as being used specifically on HDPE (high density poly ethylene) pipes in conjunction with HDPE flange adaptors. The flange adaptors are fused by heat to the ends of the pipe. The flange adaptors provide a tighter seal but do not make a connection between the pipes. The bolt rings slip behind each of the fused flange adaptors. The rings are bolted together and serve as a clamping device to provide a tighter seal and connect the pipes together.

The reconsideration request provides the following additional information:

The bolt rings are placed on HDPE pipes in conjunction with HDPE flange adaptors. After HDPE flanges are fused to HDPE pipe ends, the Bolt Rings are then placed behind the HDPE flanges on the outside of the HDPE pipe (not within or in alignment with the pipe bore). The Bolt Rings do not fill the tube aperture or make an end-to-end connection with the bore...

\* \* \*

Functionally, the Bolt Rings are used as adjoining compression or clamping devices to seal the two HDPE flanges to one another. The Bolt Rings apply high compressive force from outside of the pipe so that the two HDPE flanges press together to form a seal, clamping the flanges together. The Bolt Rings thus do not “chang[e] the direction of [nor even contact] fluid flow” or themselves connect the pipe bores. Customers use the Bolt Rings primarily the waterworks, sewer, fire protection, food, and dairy industries.

In NY N077237, U.S. Customs and Border Protection (“CBP”) classified the subject bolt rings in heading 7307, HTSUS. Specifically, the ductile iron bolt rings were classified in subheading 7307.19.30, HTSUS, which provides for: “Tube or pipe fittings of iron or steel: Cast fittings: Other: Ductile fittings.” The stainless steel bolt rings were classified in subheading 7307.19.90, HTSUS, which provides for: “Tube or pipe fittings of iron or steel: Cast fittings: Other: Other.” In your reconsideration request, you contend that these classifications are incorrect, and that the bolt rings are properly classified in heading 7325, HTSUS, which provides for “other cast articles of iron or steel.”

As a preliminary matter, the subject bolt rings can only be classified in heading 7325, HTSUS, if they are not more specifically classifiable in heading 7307, HTSUS. See EN 73.25 (“This heading covers all cast articles of iron or steel, not elsewhere specified or included.”). Heading 7307, HTSUS, applies to pipe fittings of iron or steel. The tariff 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. *GRK Can., Ltd. v. United States*, 761 F.3d 1354, 1357 (Fed. Cir. 2014). EN 73.07 states, in pertinent 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 **does not** however **cover** articles used for installing pipes and tubes but which do not form an integral part of the bore (e.g., hangers, stays and similar supports which merely fix or support the tubes and pipes on walls, clamping or tightening bands or collars (hose clips) used for clamping flexible tubing

or hose to rigid piping, taps, connecting pieces, etc.) (**heading 73.25 or 73.26**).

The connection is obtained:

- by screwing, when using cast iron or steel threaded fittings;
- or by welding, when using butt-welding or socket-welding steel fittings. In the case of butt-welding, the ends of the fittings and of the tubes are square cut or chamfered;
- or by contact, when using removable steel fittings.

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 heading **excludes**:

- (a) Clamps and other devices specially designed for assembling parts of structures (**heading 73.08**).
- (b) Bolts, nuts, screws, etc., suitable for use in assembly of tube or pipe fittings (**heading 73.18**).

According to the above EN, as well as various technical references, pipe fittings generally include articles used (*inter alia*) to connect separate pipes to each other. *See, e.g.*, Headquarters Ruling Letter (“HQ”) H282297, dated July 6, 2017 (referencing technical definitions cited in various court cases). Additionally, EN 73.07 specifies that “flanges” and “lap joint stub-ends” are among the qualifying connectors of the heading. *See also* subheading 7307.21, HTSUS, and subheading 7307.91, HTSUS (providing for “Flanges” within the subheading structure of heading 7307). With regard to the former, we note that the dimensional criteria of “pipe flanges and flanged fittings” are detailed in industry standard B16.5, promulgated jointly by the American Society of Mechanical Engineers (AMSE) and American National Standards Institute (ANSI). *See Am. Soc’y Mech. Eng’r, Pipe Flanges and Flanged Fittings: NPS 1/2 through NPS 24 Metric/Inch Standard (2017)*. AMSE/ANSI B16.5 is particularly illuminative as to the types of articles falling under the banner of “flanges” and, by extension, pipe fittings of heading 7307. Per the standard, there are six recognized types of pipe flanges in industry, all of which are disc-shaped with a center aperture and smaller apertures encircling the main aperture at even intervals. *See id.*; *see also* CCTF Corp., Forged Steel Flanges 4 (2015) [hereinafter Forged Steel Flanges], *available at* [http://www.cctf.com/catalogues/flanges\\_catalog\\_dec\\_2015.pdf](http://www.cctf.com/catalogues/flanges_catalog_dec_2015.pdf) (summarizing types of flanges covered by AMSE/ANSI B16.5).

Two of these flange types, “lap joint” flanges and “slip-on” flanges, are situated around the outer circumference of the pipe segments to be conjoined. *See Forged Steel Flanges, supra*, at 3. To that extent, both seal the connection between the two pipe lengths without coming into contact with the fluid transmitted through the aperture. In particular, lap joint flanges are placed around short, lipped bores, which are in turn butt-welded to pipe ends. *Id.* These bores are referred to as “stub ends,” which, again, are specifically identified in EN 73.07 as pipe fittings of heading 7307, HTSUS. *Id.* When two counter-facing flange/stub end combinations are conjoined, and the stub ends are aligned to form the inner aperture through which fluid flows, the flanges

are then bolted together to seal the connection between the pipe lengths. *See id.*; *see also* W.M. Huitt, *Eng'g Practice: Piping Design, Part 2 – Flanges 57* (2007), *available at* [http://www.wmhuitco.com/images/Article\\_2\\_Piping\\_Design\\_Part\\_2\\_Flanges.pdf](http://www.wmhuitco.com/images/Article_2_Piping_Design_Part_2_Flanges.pdf). Given the myriad indicia in EN 73.07, the sub-heading breakouts under heading 7307, and AMSE/ANSI B16.5, it is our position that products used in this manner, and which meet the above-stated physical description of flanges, are pipe fittings of heading 7307. *See* HQ 561710, dated July 20, 2000, and HQ 559871, dated February 18, 1997 (accepting claimed classification of slip-on and lap joint flanges in heading 7307, HTSUS, for purposes of determining the flanges' country of origin).

Here, the bolt rings at issue are disc-shaped articles with a center aperture and smaller encircling apertures set at uniform intervals along the article's rim. As such, they take the form of industry-recognized flanges as detailed in AMSE/ANSI B16.5. Product descriptions in both NY N077237 and your reconsideration request indicate that the bolt rings are designed to slip onto the outer circumference of lipped apertures of HDPE referred to as "flange adapters," and that once so placed, they are bolted to counter-facing flanges on adjacent pipe segments. In other words, they are identical in form and function to the lap joint flanges described above. In fact, according to product literature included with your reconsideration request, as well as an inscription found in the inner recesses of the samples, the bolt rings even adhere to the dimensional standards set forth in the above-referenced AMSE/ANSI B16.5. Moreover, our research indicates that in HDPE pipe end assemblies of the specific type in which the instant bolt rings are used, these rings are actually referred to as lap joint flanges and the HDPE flange adapters as stub ends. *See* Plastic Pipe Inst., *Bolt Torque for Polyethylene Flanged Joints 5* (2011), *available at* [https://plasticpipe.org/pdf/tn-38\\_bolt\\_torque\\_flanged\\_joints.pdf](https://plasticpipe.org/pdf/tn-38_bolt_torque_flanged_joints.pdf). In all but product name, therefore, the instant bolt rings are flanges of heading 7307, HTSUS.

In your reconsideration request, you present several arguments opposing this classification. You contend that it is the heat-sealing of the HDPE adapters, rather than the bolting of the rings, which forms the sole "end-to-end connection with the bore"; that the bolt rings instead function merely as "clamps" or "restraining devices" excluded from heading 7307; that the bolt rings do not form an "integral part of the bore," as is purportedly required by EN 73.07, or comply with the connection methods listed in the EN; that the bolt rings could not be considered "complete" fittings because they cannot perform their intended function absent the HDPE adapters, which are not included at entry; that the classification of the bolt rings in heading 7307 conflicts with prior CBP rulings pertaining to similar merchandise; and that this classification also conflicts with a ruling, issued September 20, 2016 by Department of Commerce, that the subject bolt rings fall outside the scope of an antidumping duty order on certain pipe fittings ("Commerce scope ruling").

We disagree with these arguments. As stated above, the bolt rings are physically and functionally identical to lap joint flanges, which are pipe fittings of heading 7307. It is immaterial that the particular stub ends with which the bolt rings are used happen to be heat-sealed prior to the bolting of the rings. It is also of no consequence whether the bolt rings can additionally be characterized as "clamps" (which, per EN 73.07, are included in the heading regardless). The fact remains that the bolt rings are, in form and function alike, flanges classifiable in heading 7307. If the pipe-to-pipe con-

nections formed by the bolting of flanges generally, and lap joint flanges in particular, are sufficient for purposes of the heading, then this is also the case for bolt rings used in exactly the same manner. To this extent, the characterization of bolt rings in NY N077237 as articles which “provide a tighter seal but do not make a connection between the pipes” is incorrect.\*

Moreover, there is nothing to suggest that the bolt rings must form part of the bore to warrant treatment as a pipe fitting of heading 7307, HTSUS. Contrary to your contention, EN 73.07 does not establish integration into the bore as a universal criterion for pipe fittings; rather, it merely states that certain articles which both are used to install pipes and tubes *and* are not an integral part of the bore are excluded from the heading. As stated above, at least two of the flange types recognized in industry as “pipe flanges” are placed along the outer circumference of the aperture, to the effect that they do not form part of the bore or come into contact with the fluid flowing through the bore. *See also* HQ 965939, dated July 16, 2003 (classifying pipe fitting nuts in heading 7307 where they had previously been described, in HQ 965584, dated September 24, 2002, as “never touch[ing] the substance that passes through the pipes”).

For similar reasons, we are not convinced that the bolt rings fall outside the scope of heading 7307, HTSUS, simply because they are used in combination with HDPE adapters to form a connection between separate pipes. Again, as articles specifically identified as products of heading 7307, HTSUS, the bolt rings are in and of themselves constitutive of “complete” pipe fittings. Hence, the statement in NY N270588, dated November 24, 2015, that “classification as tube or pipe fittings requires that the complete fitting be imported,” is inapplicable here. Moreover, upon review of NY N270588, find that the ruling is incorrect and accordingly intend to revoke it.

Lastly, our determination is not precluded by the Commerce scope ruling or any of the prior CBP rulings cited in your reconsideration request. As to the former, it is well-established that scope rulings issued by the Department of Commerce are not binding on CBP for purposes of classification under the HTSUS. *See* HQ 966728, dated June 29, 2004 (citing court precedent in stating that “CBP has been designated to administer the HTSUS” and that “the classification of imported merchandise is a matter properly determined by this agency”). As to the latter, the CBP rulings cited in your request all involve distinguishable merchandise or are otherwise inapplicable. The sleeves and “end rings” at issue in NY K86336, dated June 14, 2004, and NY N097562, dated April 1, 2010, are designed for use internally within larger coupling assemblies which in turn function as joints for pipe ends. Unlike the bolt rings, neither is used to directly bolt separate pipe ends together. Moreover, HQ 967490, *supra*, involved small ferrules that do not remotely resemble the bolt rings in form or function. Lastly, irrespective of whether the glands in NY N118077, dated August 18, 2010, are comparable to the bolt rings, the glands’ classification was not at issue in that case; nor was it material to the determination of the glands’ country of origin, which *was* at issue there. As such, CBP’s passing mention that the glands are products of heading 7325 is not actually dispositive as to their classification.

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\* By extension, we disagree that the role of the bolt rings can be reduced to the kind of “assistive” seal-forming function performed by the ferrules at issue in HQ 967490, dated November 14, 2005.

Accordingly, we remain of the position that the bolt rings are classified as “pipe fittings” in heading 7307, HTSUS, and for all the aforementioned reasons, we hereby affirm NY N077237. As determined in that ruling, the ductile iron bolt rings are specifically classified in subheading 7307.19.3085, HTSUSA (Annotated), which provides for: “Tube or pipe fittings of iron or steel: Cast fittings: Other: Ductile fittings: Other.” The stainless steel bolt rings are specifically classified in subheading 7307.19.9080, HTSUSA, which provides for: “Tube or pipe fittings of iron or steel: Cast fittings: Other: Other: Other: Other: Other.”

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

ATTACHMENT C

HQ H303867

June 25, 2019

OT:RR:CTF:VS: H303867 JMV

CATEGORY: Origin

MICHAEL K. TOMENGA  
1400 16TH STREET, NW, SUITE 350  
WASHINGTON, DC 20036

RE: Country of Origin; Steel Metal; Caulking Guns

DEAR MR. TOMENGA,

This is in response to your letter dated May 6, 2019, on behalf of Newborn Bros. Co., Inc. (“Newborn”). In your letter, you request a ruling pursuant to 19 C.F.R. Part 177 regarding the country origin of steel metal rods for caulking guns processed in the United States from lengths of foreign steel rod.

**FACTS:**

Newborn is an importer and distributor at wholesale of caulking guns, parts and accessories in the United States. Lengths of heat-treated carbon steel rods, Grade S45C, meeting Standard G4061 (JIS) in round, square, or hexagonal profiles may be sourced from suppliers in one or more foreign countries. For the purposes of this ruling, you ask us to assume the country of origin of these steel rods is Taiwan. After importation, the steel rods will be cut to lengths ranging between 18 and 24 inches, threaded at both ends, stamped to make a small concave indent, and treated with black oxide for corrosion resistance.

After post-importation processing, the rods will be used in dispensing guns to push the material to be dispensed. The concave stamp causes a small bulge in the rod to restrict its further travel through the release plate of a dispensing gun. The concave stamp is located at a place on the rod to stop the rod at the point where the other end of the rod has travelled to the front of the barrel of the dispensing gun.

**ISSUE:**

What is the country of origin marking of the steel metal rods?

**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 imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or 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.” *United States v. Friedlaender & Co. Inc.*, 27 CCPA 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 the exceptions of 19 U.S.C. § 1304. Section 134.1(b), Customs Regulations (19 C.F.R. § 134.1(b)), defines “country of origin” as 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.

In *National Hand Tool v. United States*, 16 CIT 308 (1992), aff'd, 989 F.2d 1201 (Fed. Cir. 1993), the court determined that certain hand tool components used to make flex sockets, speeder handles, and flex handles were not substantially transformed within the United States. The components were cold-formed or hot-forged into their final shape prior to importation, with the exception of speeder handle bars, which were reshaped by a power press after importation, and the grips of the flex handles which were knurled in the United States. The imported items were heat treated to strengthen the components, sand-blasted to clean the components, and electroplated to better enable the components to resist rust and corrosion. In making this determination, the court noted that the processing which occurred within the United States did not alter the name of the imported components, the character of the parts remained substantially unchanged upon the completion of such processing, and the intended use of the articles was predetermined at the time of importation. Although the court recognized that a predetermined use for imported articles does not preclude a finding of substantial transformation, the court noted that each component was intended to be incorporated in a particular finished mechanic's hand tool. Moreover, *National Hand Tool* dismissed as a basis for a substantial transformation the value of the processing, stating that the substantial transformation test utilizing name, character and use criteria should generally be conclusive in country of origin marking determinations, and that such a finding must be based on the totality of the evidence.

In determining whether a substantial transformation has occurred in the processing of metals, CBP has generally held that the mere cutting to length or width which does not render the article suitable for a particular use does not constitute a substantial transformation. For example, in Headquarters Ruling (“HQ”) 561744, dated July 20, 2000, CBP found that imported castings were not substantially transformed into flanges. The castings were smoothed, drilled, bolted together, cut, and serrated. CBP noted that the imported articles were at all times intended for use as flanges and imported in dimensions that are close to their finished form. While the unfinished flanges were machined to their final dimension and subjected to a simple assembly, CBP found that these operations did not amount to a change in the article's use or character.

In HQ W968318, dated October 2, 2006, CBP similarly found that subjecting Bulgarian-origin brass strip to one cold-rolling pass in Germany which reduced its thickness by slightly less than three one-thousandths of an inch and smoothed the product's surface did not constitute a substantial transformation of the Bulgarian-origin strip. *See also* HQ 734716, dated November 27, 1992 (finding that polishing grade 304 stainless steel sheet to achieve a No. 8 mirror finish to promote corrosion resistance was a change in a characteristic of the steel but not its character and therefore not a substantial transformation).

Accordingly, we find that the processing of the rods described above in the United States, which includes cutting, threading, stamping and treating with black oxide for corrosion resistance, does not constitute a substantial transformation. Since Newborn, as the importer, will not be the ultimate purchaser, we find that the steel metal rods are subject to the requirements of 19 C.F.R. § 134.26(a). When Newborn files the entry summary, Newborn must also file a certificate for the country of origin marking of articles to be repacked pursuant to 19 C.F.R. § 134.26. The country of origin marking of the steel metal rods must be visible to the ultimate purchaser.

**HOLDING:**

Based on the information provided, the imported steel metal rod will not undergo a substantial transformation in the United States and the country of origin is Taiwan for marking purposes. The steel metal rods are subject to the requirements of 19 C.F.R. § 134.26(a)

Please note that 19 C.F.R. § 177.9(b)(1) provides that “[e]ach ruling letter is issued on the assumption that all of the information furnished in connection with the ruling request and incorporated in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect. The application of a ruling letter by a CBP field office to the transaction to which it is purported to relate is subject to the verification of the facts incorporated in the ruling letter, a comparison of the transaction described therein to the actual transaction, and the satisfaction of any conditions on which the ruling was based.”

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the CBP officer handling the transaction

*Sincerely,*

MONIKA R. BRENNER,  
*Chief*

*Valuation and Special Programs*

ATTACHMENT D

HQ H303868

June 27, 2019

OT:RR:CTF:VS: H303868 JMV

CATEGORY: Origin

MICHAEL K. TOMENGA  
1400 16TH STREET, NW, SUITE 350  
WASHINGTON, DC 20036

RE: Country of Origin; Steel/Aluminum Tubes; Caulking Guns

DEAR MR. TOMENGA,

This is in response to your letter dated May 6, 2019, on behalf of Newborn Bros. Co., Inc. (“Newborn”). In your letter, you request a ruling pursuant to 19 C.F.R. Part 177 regarding the country origin of steel metal rods for caulking guns processed in the United States from lengths of foreign steel rod.

**FACTS:**

Newborn is an importer and distributor at wholesale of caulking guns, parts and accessories in the United States. Carbon steel or aluminum metal tube with an inside diameter of two inches and an outside diameter of 2 1/8 inches may be sourced from suppliers in one or more foreign countries. The steel/aluminum tubes will be imported in lengths of approximately 7.5 feet. For the purposes of this ruling, you ask us to assume that the country of origin of these steel/aluminum tubes is Taiwan. The steel tube would meet Standard STKM 11A (JIS). The aluminum metal tube would meet Standard 6063 (JIS). As imported, the metal tube has plain ends.

After importation, the tube will be cut to lengths of 14 inches or 18 inches, and threaded at each end for use as barrels for caulking dispensing guns. Steel metal barrels will be polished and zinc-plated after threading for corrosion resistance. Aluminum barrels will be polished and anodized after threading for corrosion resistance.

**ISSUE:**

What is the country of origin marking of the steel metal and aluminum tubes?

**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 imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or 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.” *United States v. Friedlaender & Co. Inc.*, 27 CCPA 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 the exceptions of 19 U.S.C. § 1304. Section 134.1(b), Customs Regulations (19 C.F.R. § 134.1(b)), defines “country of origin” as 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.

In *National Hand Tool v. United States*, 16 CIT 308 (1992), aff'd, 989 F.2d 1201 (Fed. Cir. 1993), the court determined that certain hand tool components used to make flex sockets, speeder handles, and flex handles were not substantially transformed within the United States. The components were cold-formed or hot-forged into their final shape prior to importation, with the exception of speeder handle bars, which were reshaped by a power press after importation, and the grips of the flex handles which were knurled in the United States. The imported items were heat treated to strengthen the components, sand-blasted to clean the components, and electroplated to better enable the components to resist rust and corrosion. In making this determination, the court noted that the processing which occurred within the United States did not alter the name of the imported components, the character of the parts remained substantially unchanged upon the completion of such processing, and the intended use of the articles was predetermined at the time of importation. Although the court recognized that a predetermined use for imported articles does not preclude a finding of substantial transformation, the court noted that each component was intended to be incorporated in a particular finished mechanic's hand tool. Moreover, *National Hand Tool* dismissed as a basis for a substantial transformation the value of the processing, stating that the substantial transformation test utilizing name, character and use criteria should generally be conclusive in country of origin marking determinations, and that such a finding must be based on the totality of the evidence.

In determining whether a substantial transformation has occurred in the processing of metals, CBP has generally held that the mere cutting to length or width which does not render the article suitable for a particular use does not constitute a substantial transformation. For example, in Headquarters Ruling (“HQ”) 561744, dated July 20, 2000, CBP found that imported castings were not substantially transformed into flanges. The castings were smoothed, drilled, bolted together, cut, and serrated. CBP noted that the imported articles were at all times intended for use as flanges and imported in dimensions that are close to their finished form. While the unfinished flanges were machined to their final dimension and subjected to a simple assembly, CBP found that these operations did not amount to a change in the article's use or character.

In HQ W968318, dated October 2, 2006, CBP similarly found that subjecting Bulgaria-origin brass strip to one cold-rolling pass in Germany which reduced its thickness by slightly less than three one-thousandths of an inch and smoothed the product's surface did not constitute a substantial transformation of the Bulgarian-origin strip. *See also* HQ 734716, dated November 27, 1992 (finding that polishing grade 304 stainless steel sheet to achieve a No. 8 mirror finish to promote corrosion resistance was a change in a characteristic of the steel but not its character and therefore not a substantial transformation).

Accordingly, we find that the processing of the steel metal and aluminum tubes described above in the United States, which includes cutting, threading, polishing and zinc-plating or anodizing for corrosion resistance, does not constitute a substantial transformation. Since Newborn, as the importer, will not be the ultimate purchaser, we find that the steel metal and aluminum tubes are subject to the requirements of 19 C.F.R. § 134.26(a). When Newborn files the entry summary, Newborn must also file a certificate for the country of origin marking of articles to be repacked pursuant to 19 C.F.R. § 134.26. The country of origin marking of the steel metal and aluminum tubes must be visible to the ultimate purchaser.

**HOLDING:**

Based on the information provided, the imported steel metal and aluminum tubes will not undergo a substantial transformation in the United States and the country of origin is Taiwan for marking purposes. The steel metal and aluminum tubes are subject to the requirements of 19 C.F.R. § 134.26(a)

Please note that 19 C.F.R. § 177.9(b)(1) provides that “[e]ach ruling letter is issued on the assumption that all of the information furnished in connection with the ruling request and incorporated in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect. The application of a ruling letter by a CBP field office to the transaction to which it is purported to relate is subject to the verification of the facts incorporated in the ruling letter, a comparison of the transaction described therein to the actual transaction, and the satisfaction of any conditions on which the ruling was based.”

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the CBP officer handling the transaction

*Sincerely,*

MONIKA R. BRENNER,  
*Chief*

*Valuation and Special Programs*

HQ H308208

OT:RR:CTF:VS JMV H308208

CATEGORY: Marking

JASON M. WAITE, Esq.

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303 PEACHTREE STREET, N.E.

SUITE 2980

ATLANTA, GEORGIA 30308

RE: Country of origin marking for imported castings incorporated into different types of regulators, transducers, and valve positioners; substantial transformation, assembly, 19 CFR 134.35(a)

DEAR MR. WAITE:

This is in reference to Headquarters Ruling Letter (“HQ”) 561405, issued to Marsh Bellofram Corp. (“MB”) on October 23, 2001, concerning the country of origin marking for imported castings incorporated into different types of regulators, transducers, and valve positioners. In that ruling, U.S. Customs and Border Protection (“CBP”) found the imported castings were substantially transformed when combined with the U.S. components in the United States to make the finished pressure controlling devices and therefore, the imported castings were excepted from having to be individually marked with their country of origin. CBP based this decision, in part, on HQ 561745, dated July 20, 2000, which was rescinded on September 19, 2000. *See* 34 Cust. Bull. & Dec., No. 39, 40–41, September 27, 2000. Therefore, we hereby modify HQ 561405 to remove reference to HQ 561745. The finding of HQ 561405 that the imported castings are substantially transformed in the United States and are excepted from marking requirements is unaffected.

**FACTS:**

The imported products that are the subject of HQ 561405 are castings, which are incorporated in five types of finished products: spring-loaded regulators, dome-loaded regulators, pilot-operated regulators, transducers and valve positioners. MB makes several different models within each of these general categories of products. Each model may have different engineering features that allow for varying applications. However, HQ 561405 only discussed the finished products in terms of the five general categories.

**REGULATORS**

Certain of the castings MB imports are used in the manufacture of pressure-limiting devices called regulators. MB described their use as follows: a supply pressure on one side of a nozzle is reduced to a preset output pressure by compressing a control load, often exerted by a range spring, to produce a force equal to and opposite to the force the output pressure exerts on the other side of a diaphragm assembly. Functionally, when there is an imbalance between the output pressure and the control load, there is a corresponding reaction in the diaphragm and nozzle assemblies. If the output pressure rises above the pressure set by the control load, the diaphragm seat is lifted from the plug, venting the excess pressure to the atmosphere until equilibrium is reached. If the output pressure drops below the pressure set by the control load, the control load mechanism acts through the diaphragm

assembly unseating the nozzle plug and allowing the supply pressure to flow through the nozzle to the down stream port increasing the output pressure.

Typical applications for the type of pneumatic pressure regulators that MB produces include: medical ventilators, robotic balancing arms, vibration isolation systems, tank blanketing systems, inert gas purging, air motors, natural gas engines, and burner controls.

#### *SPRING-LOADED REGULATORS*

MB imports castings for use in 11 types of regulators that fall into three distinct categories. The majority of MB's regulators are spring loaded. In a spring-loaded regulator, the control load is set by a range spring. MB has provided a process sheet describing what must be done to produce a representative Type 41 spring-loaded regulator. The imported casting in the Type 41 is called the bonnet. In the United States, two are holes tapped in the bonnet, and it is combined with a U.S.-produced bushing. In making the Type 41 regulator, a second casting of U.S. origin called the body is used. This casting is sanded, reamed, has holes tapped in it, and is center drilled. Other components in the Type 41, such as the knob, must be assembled with a nut before being ready for use in producing the finished regulator. Another process sheet describes the individual packaging of a pipe plug, which is provided separately with each Type 41 regulator. The last process sheet applies to a particular part number, and it describes the steps necessary to produce the finished regulator.

The process to produce the finished regulator includes positioning the diaphragm assembly, spring and spring guide onto the body; then positioning the bonnet before removing temporary build pins and driving and applying torque to four build screws. The assembled regulator then undergoes performance checking in accordance with quality control specifications. This entails visual checks, leakage tests, setting supply pressure and then recording output pressure to ensure that the device is performing with the critical precision that is demanded of it. Following the testing, the device is prepped for painting. Lubricant is also applied to the threads of the knob before it is installed in the regulator. Labels are subsequently attached.

#### *DOME-LOADED REGULATORS*

The second type of regulator that MB makes is called a dome-loaded regulator. These regulators are controlled through the use of dome-pressure transmitted through a diaphragm to provide the desired output pressure. MB provided an assembly diagram which includes a parts instruction diagram from the booklet provided with a sample Type 75 dome-loaded regulator. The diagram indicates that there are two imported castings used in making the Type 75 regulator—the body assembly, and a spacer. It also shows that there are many other parts involved in the production of the instrument. We understand that all of these other parts are of U.S. origin.

In the United States, the imported body casting in the Type 75 regulator is fitted with a set assembly O-ring using special lubricant. Then a screen, a pintle-ring, and a rubber gasket are all set into the body. Finally, another O-ring and baffle guide as well as a baffle plate assembly are installed in the body. The other imported casting, a spacer, is machined, has a hole drilled in it and is sanded and washed to ready it for assembly.

The Type 75 regulator also includes a domestically sourced casting, the bonnet. This casting has a center hole tapped in it, while another component,

a piston, must be machined, drilled cut and washed before being ready for use in making the finished regulator. A diaphragm is incorporated into the Type 75 regulator. Making the diaphragms is a complex process that entails forming fabric and elastomers according to specifications, then combining them, shaping them and incorporating them onto a diaphragm assembly that can be built into a Type 75 regulator. The process of producing the finished regulator includes: installing the lower diaphragm assembly after applying O-ring lube to the lip seal, installing the spacer, installing the upper-diaphragm assembly in perfect alignment, positioning the bonnet, and then installing six build screws. The assembled regulator then undergoes performance checking in accordance with quality control specifications. This entails visual checks, leakage tests, and setting supply pressure, then recording the output pressure to ensure that the device is performing with the critical precision that is demanded of it. Following the testing, the device is painted and labels are subsequently applied.

### *PILOT-OPERATED REGULATORS*

MB also manufactures pilot-operated regulators that utilize an atmospheric reference capsule to create a pilot pressure on the top side of the diaphragm. The Type 10 and Type 20 regulators are pilot operated. One of the imported castings in the Type 10 regulator, called the body, is drilled and tapped in several places before it is painted. It is then placed in a fixture where a seat is pressed into the body. This processing is necessary as detailed in the particular part's process sheet, to prepare the body casting for use in the production of the finished Type 10 regulator.

Another imported casting used in making the Type 10 regulator, the spacer, is inspected and painted. A third imported casting, the housing, must be drilled and tapped, before being painted. Then a seat ring is pressed into the housing and a pintle is inserted through the seat ring into the spring slot where the spring is fastened to the housing. A bleed screw is also installed into the housing after it has been assembled with an O-ring, a silencer and an orifice disk. This processing is necessary to prepare the housing for the final assembly of the finished regulator.

A domestically-sourced casting, the bonnet, also undergoes painting, and it has a bushing pressed into it before the capsule is assembled into it. The capsule consists of a top shell and a bottom shell that are both heat-treated before they are used. The top shell has a shaft screw welded to it before the bottom shell is welded to it in three places. The capsule as prepared is tested for leakage. The diaphragm production method sheet describes the formula used to make the necessary fabric and elastomer combination and the dimensions it is formed into. Then the diaphragm is assembled with a piston upper, piston lower, seat, two washers and a staking operation. When the diaphragm assembly is completed, it is specially taped for packaging protection while awaiting final assembly.

The processing necessary to produce the finished Type 10 regulator includes positioning the diaphragm assembly in the body assembly. A coil spring is then placed in the housing assembly. The bonnet assembly is then attached to a gasket using an air driver and four build screws. The assembled regulator then undergoes performance checking in accordance with quality control specifications. This entails visual checks, leakage tests, and setting supply pressure, then recording output pressure to ensure that the device is performing with the critical precision that is demanded of it.

### *TRANSDUCERS*

Another product that MB makes is called a transducer. Transducers are used as a means to convert an electrical signal to a proportional pneumatic pressure. The use of a transducer allows a computerized control system to react to changes in a process. Like regulators, transducers provide a desired output pressure by comparing the actual output pressure to the commanded output pressure and adjusting the actual output pressure as required. Typical applications for electro-pneumatic transducers are position control, chemical processing, louver/damper control, variable pitch fans, breaking systems, pulp bleaching, and porous media test systems.

While regulators use a range spring or pilot pressure to create the control load against which output pressure is balanced on the opposite side of a diaphragm assembly, transducers utilize electrical input signals to operate the nozzle and the diaphragm and maintain a set output pressure. MB imports castings for use in three transducers—the Type 1000, 1001, and 2000.

You indicate that the Type 1000 transducer is representative of all of the transducers, but it is generally one of the least complex and least expensive of the transducers. You have attached a detailed assembly diagram of the Type 1000. The drawing shows the castings that are used in the Type 1000, and also shows that many other parts are necessary for the production of these devices. One of the imported castings in the Type 1000, the housing, is repeatedly drilled and tapped to specifications before it is subject to an assembly operation described on the process sheet for part number 232-802-000-048. Another imported casting, the spacer has an eyelet pressed into it. A domestically-sourced casting, the body, is drilled and tapped to specification before being placed in a fixture where a seat is pressed into it. Then a pintle with a half-ball is placed into the body. Finally, a spring is assembled into the body. This necessary processing, as detailed in a process sheet, is to prepare the body casting for use in producing the finished Type 1000.

MB has also included the detailed process sheets describing the preparation of a magnet assembly, coil-pin assembly, heat-treated flexure spring, and coil/spring assembly. The Type 1000 also requires that a diaphragm be made using the method sheet formula. The diaphragm is assembled with a large piston, small piston, seat, two washers and a staking operation, and then coined to a specified depth using an air press. The worm, orifice, the relay, and tubing are subject to processing and or subassembly before they are prepared for assembly into the Type 1000 transducer. You state that the final assembly process alone is highly complex and involves the precise combination of the several other subassemblies that are produced. Finally, the Type 1000 undergoes extensive testing.

### *VALVE POSITIONERS*

Valve positioners are devices which receive a pneumatic command signal at the input port and thus provide an output pressure signal to an actuator until the positioner receives mechanical feedback that the actuator has reached a position proportional to the pneumatic command signal. MB imports castings for use in two valve positioners, the Type 80 and Type 86. The Type 80 gets

mechanical feedback through an extension spring or a flat coiled rotary spring. The Type 86 gets mechanical feedback through a mechanical arm or a universal coupling.

An assembly diagram and a part list/diagram from the booklet that comes with the Type 80 valve positioner shows the castings that are used in building the Type 80. The drawings also show that many other parts are necessary for the construction of these devices. One of the imported castings in the Type 80, the bonnet, is machined and painted and then assembled to a signal spacer equipped with a diaphragm. The signal spacer itself is drilled, sanded, has specific dimension holes tapped and sunk in it, and is painted. Another imported casting, the housing, is drilled and reamed to specification. It is then painted, an orifice is put into it, and tube and eyelets pressed into it. A third imported casting in the Type 80, the body, has holes of a specific dimension tapped in it, and is painted before being fitted with a seat, a pintle to which a half ball is affixed, a spring and pipe plugs. The seat must be prepared for use by crimping a nozzle in it. The baffle must be painted. A manifold must be reamed and tapped to specification and then have a plug pressed into it before being painted.

An included method sheet describes the process of producing the diaphragm that must be incorporated into the finished Type 80. Making diaphragms entails forming fabric and elastomers according to specification and then combining them, shaping them and incorporating them onto a diaphragm assembly that can be built into a type 80. The diaphragm assembly involves the preparation of rubber according to precise formulas, and then assembling the rubber diaphragm into a fixture with a washer using a press.

After all of these component parts have themselves have been prepared for assembly into the finished Type 80, a subassembly of the valve positioner is built using the body assembly, spring, housing, bonnet assembly, build screws and the clevis assembly. The baffle and the manifold are attached to each other before being mounted to the valve positioner subassembly. The finished product then undergoes careful testing.

MB has also provided its opinion as to how the imported castings should be classified under the Harmonized Tariff Schedule of the United States (“HTSUS”). For purposes of this ruling, we are assuming that your proposed classification of the articles is correct. You indicate that the regulators, transducers and valve positioners are classifiable under subheading 9032.81.00, HTSUS and the imported castings specifically designed for use with particular regulators, transducers or valve positioners are classifiable in subheading 9032.90.60, HTSUS, which is currently 9032.90.61.

#### **ISSUE:**

Whether the imported castings are substantially transformed when they are used to produce regulators, transducers, and valve positioners in the United States as described above.

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

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. §1304), requires, subject to certain specified exceptions, that every article of foreign origin imported into the United States shall be marked to indicate the country of origin to the ultimate purchaser in the United States Part 134, Customs Regulations (19 CFR part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. §1304. An ultimate pur-

chaser is defined in section 134.1, Customs Regulations (19 CFR 134.1), as “the last person in the United States who will receive the article in the form in which it was imported.” The regulation further provides that if an imported article will be used in manufacture, the manufacturer may be the ultimate purchaser if he subjects the imported article to a process that results in a substantial transformation. However, if the manufacturing process is merely a minor one which leaves the identity of the imported article intact, 19 CFR §134.1(d)(2) provides that the consumer or user of the article who obtains the article after the processing will be regarded as the ultimate purchaser.

According to *United States v. Gibson-Thomsen Company, Inc.*, 27 CCPA 267 (C.A.D.98), a U.S. manufacturer is considered to be an ultimate purchaser if a manufacturing process is performed on an imported item so that the item is substantially transformed in that it loses its identity and becomes an integral part of a new article with a new name, character or use. The court determined that in such circumstances, the imported article is excepted from individual marking. Only the outermost container is required to be marked. See Sections 134.32(d) and 134.35(a), Customs Regulations (19 CFR §134.32(d), 19 CFR 134.35(a)).

If the manufacturing or combining process is a minor one which leaves the identity of the imported article intact, a substantial transformation has not occurred and an appropriate marking must appear on the imported article so that the consumer can know the country of origin. See *Uniroyal Inc. v. United States*, 3 CIT 220, 542 F. Supp. 1026 (CIT 1982). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. See C.S.D. 80–111, C.S.D. 85–25, and C.S.D. 90–97.

The court noted in *Uniroyal* that the imported article, an upper, in its condition as imported, was a complete shoe (except for the absence of an outsole) that had “already attained its ultimate shape, form and size” and was “the very essence of the completed shoe.” The other factors considered by the court included the time involved in the combining process, the significantly less costly nature of the combining process and that five highly skilled operations were involved in making the upper while only one highly skilled operation was necessary to attach the upper and the outsole.

The finished products involved in this case fall into three basic categories: regulators, transducers and valve positioners. Within these basic categories there are various models, each of which may perform different functions and may be used in different applications. Although the processes involved in producing the various regulators, transducers, and valve positioners described in the ruling request differ to a certain extent, it appears that their production basically involves the use of one or more imported castings that usually are processed in the United States through different types of machining and various other operations before they are combined through an assembly process with U.S. made components to produce the finished products.

In HQ 732940 dated July 5, 1990, CBP considered water pump assemblies comprised of 6–8 components including a casting, bearing, impeller, hub, seal, mounting gasket, and in some cases, a spacer, and tubes or plugs which were assembled in the United States. Although the assembly process was not exceedingly complex, and in one instance a Taiwanese-origin casting was used to produce the water pump, which remained visible after assembly, a

substantial transformation was found. The rationale given was that most of the important components of the water pump were of U.S. origin, and the foreign casting was permanently attached to the other components. *See also* HQ 732350 dated June 23, 1989, regarding imported transducers (i.e., microphones and receivers) which were wired to a faceplate in the United States along with a signal processing circuit, and were then cemented into a shell to create hearing aids. The transducers were considered substantially transformed and excepted from individual country of origin marking pursuant to 19 CFR 134.35 as they lost their separate identity and were merged into a new and different article (a hearing aid) when they were securely attached to the faceplate.

In *National Hand Tool v. United States*, 16 CIT 308, (1992) *aff'd* 989 F.2d 1201 (Fed. Cir. 1993), a country of origin marking case, certain hand tool components used to make flex sockets, speeder handles, and flex handles, were imported from Taiwan. The components were cold-formed or hot-forged into their final shape prior to importation, with the exception of speeder handle bars, which were reshaped by a power press after importation. The grip of the flex handles were also knurled in the United States, by turning the grip portion of the handle against a set of machine dies that formed a cross-hatched diamond pattern. The components were subjected to a heat treatment, which increased the strength of the components, sandblasting (a cleaning process), and electroplating (enabling the components to resist rust and corrosion). After these processes were completed, the components were assembled into the final products, which were used to loosen and tighten nuts and bolts.

The Court of International Trade decided the issue of substantial transformation based on three criteria, i.e., name, character, and use. Applying these rules, the court found that the name of the components did not change after the post-importation processing, and that the character of the articles similarly remained substantially unchanged after the heat treatment, electroplating and assembly, as this processing did not change the form of the components as imported. The court further pointed out that the use of the articles was predetermined at the time of importation, i.e., each component was intended to be incorporated in a particular finished mechanic's hand tool. The court dismissed as a basis for a substantial transformation the value of the processing, stating that the substantial transformation test utilizing name, character and use criteria should generally be conclusive in country of origin marking determinations, and that this finding must be based on the totality of the evidence. Based on this test, the court concluded that the processing in the United States did not effect a substantial transformation of the foreign hand tool components.

Based largely on the *National Hand Tool Corp. v. United States* case, CBP in several recent rulings has determined that simple machining of imported castings combined with a simple assembly did not result in a substantial transformation of the imported castings. For example, in HQ 560399, dated May 14, 1998, a variety of iron and stainless steel pump castings from Finland were imported into the United States for further processing. In the United States, the processing of the imported pump castings included turning, boring and/or milling, drilling and/or tapping, balancing and testing. In making its decision, CBP noted that, upon importation into the United States, the castings were not rough, generic forms but had the same shape as the finished pump parts. CBP further noted that the casting already had the

essential characteristics of finished pump parts at the time of importation. Therefore, CBP found that the imported castings did not lose their identity and become an integral part of a new article.

In HQ 561297, dated June 2, 1999, CBP considered whether a substantial transformation resulted when imported raw castings were processed in the United States into receivers, which were then assembled into rifles. The U.S. processing of the raw castings to produce receivers included machining, heat treatment, drilling four holes, sandblasting, dipping the castings into a hot caustic solution, stamping, and final inspection. The receivers were then ready to be assembled into rifles. CBP noted that the raw castings had the shape, character and predetermined use of the finished receivers and merely required intermediate finishing operations. Accordingly, CBP held that the processing of the raw castings into receivers in the United States did not result in a substantial transformation.

However, in HQ 561297, CBP also ruled that the processing of the raw castings into receivers and assembling them with other components to create finished rifles in the United States resulted in a substantial transformation creating a new article with a new name, character, and use. The factors considered were the complexity of the assembly operation, the number of parts involved, and the need for trained technicians to meet very exacting specifications.

In our opinion, the instant case is analogous to HQ 561297, in that initial processing of the imported castings (e.g., machining, drilling) by itself would not constitute a substantial transformation. However, the processing of the imported raw castings coupled with their assembly with other components manufactured in the United States to create the finished products in the United States results in a substantial transformation of the imported castings, creating a new article with a new name, character, and use.

Moreover, we believe that facts of this case are distinguishable from the *National Hand Tool* case and HQ 560399 because the imported castings do not impart the essential character to the finished products. In this case, most of the imported castings need extensive processing before they can be assembled with various U.S.-produced components to make the finished regulators, transducers, and valve positioners. In the *National Hand Tool* case, the imported castings comprised the only significant components used to make the finished articles. In contrast, in this case, other significant components of U.S. origin are used to make the final products. Although it is clear that the imported castings are significant components, we note that the finished products are complex and that a number of other components (including U.S. origin castings) besides the foreign castings are incorporated into the finished transducers, regulators and valve positioners. Consequently, we believe that the imported castings do not constitute the essence of the finished products. We also find it significant that, except for the imported castings, all of the components in these devices are made in the United States.

Based on the diagrams and the process sheets submitted with the ruling request, the assembly operations appear to be fairly complex while in *National Hand Tool* and HQ 560399, the assembly was not particularly complex. In *National Hand Tool* the assembly consisted largely of putting together only a few pieces. The assembly of the finished products in this case is a multi-step process which appears to be far more intricate and involved than the assembly that was performed in *National Hand Tool*. The regulators also

contain more components than the products in *National Hand Tool*. For example, according to a diagram submitted, one of the simpler devices, the Type 41 Regulator, consists of 13 individual components. Certain of the other devices contain more components. All of the individual components must be assembled together to produce the finished regulating devices.

In building the finished regulating devices, the imported castings are drilled, tapped, and machined to exact specifications so that the particular devices can effectively regulate flow. The process may also include pressing components into the castings, positioning springs and spring guides, applying torque to screws, and aligning various other components. In addition, much of the processing done in the United States consists of producing subassemblies such as diaphragm assemblies, pintle assemblies, coil and spring assembly baffles, manifolds, which are then incorporated into the finished products. To make the subassemblies, imported and domestic castings are used. These subassemblies must be carefully prepared before the final assembly to make the finished control devices can proceed. In turn, these subassemblies then must be combined carefully together to make the finished products.

Several of the components in these control devices appear to be quite tiny in addition to being delicate and intricate. This means that during the assembly process workers must use care to make a number of fine and precise adjustments and alignments to the components such as fitting springs and bushings to ensure that the finished products function properly. We are mindful of the fact that these are sophisticated devices, which are designed to precisely regulate flow. Therefore, they must be put together carefully in order to function properly. As a result, it appears that the technicians that perform the assembly operations must be highly trained and skilled.

Accordingly, we find that the imported castings are substantially transformed when combined with the U.S. components in the United States to make the finished pressure controlling devices. Therefore, under 19 CFR 134.35(a), the imported castings are excepted from having to be individually marked with their country of origin.

#### **HOLDING:**

Based upon the information provided, it is our opinion that the imported castings will undergo a substantial transformation in the United States, when they are processed and combined with other U.S. origin components to form the finished pressure-control devices. Therefore, the imported castings incorporated into the regulators, transducers, and valve positioners are excepted from the marking requirements of 19 U.S.C. 1304 and only the outermost containers in which MB receives the imported castings are required to be marked to indicate the country of origin of the castings. This ruling is limited to the specific factual circumstances and models of regulators, transducers and valve positioners discussed herein. HQ 561405 is hereby MODIFIED 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,*

CRAIG T. CLARK,  
*Director*

*Commercial and Trade Facilitation Division*

HQ H308209  
OT:RR:CTF:VS: H308209 JMV  
CATEGORY: Classification  
TARIFF NO.: 7307.19.3085; 7307.19.9080

DEAN BARCLAY  
WHITE & CASE PC  
701 THIRTEENTH STREET, NW  
WASHINGTON, DC 20005-3807

RE: Modification of HQ H276962; classification of ductile iron bolt rings and stainless steel bolt rings

DEAR MR. BARCLAY:

This is in reference to Headquarters Ruling Letter (“HQ”) H276962, issued to you on behalf of your client SIGMA Corp. (“SIGMA”), on March 16, 2018, concerning the reconsideration of New York Ruling Letter (“NY”) N077237, dated September 28, 2009, which considered the classification of ductile iron bolt rings and stainless steel bolt rings. In that ruling, U.S. Customs and Border Protection (“CBP”) found that the subject bolt rings are properly classified in heading 7307 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Specifically, the ductile iron bolt rings are classified in subheading 7307.19.30, HTSUS and the stainless steel bolt rings are classified in subheading 7307.19.90, HTSUS. In making this decision, CBP cited to HQ 561710, dated July 20, 2000, which was rescinded on September 19, 2000. See 34 Cust. Bull. & Dec., No. 39, 40–41, September 27, 2000. Therefore, we hereby modify HQ H276962 to remove reference to HQ 561710. The finding of HQ H276962 that the ductile iron bolt rings are classified in subheading 7307.19.30, HTSUS and the stainless steel bolt rings are classified in subheading 7307.19.90, HTSUS is unaffected.

HQ H276962 was in response to your letter of June 23, 2016, submitted on behalf of SIGMA, requesting reconsideration of NY N077237, dated September 28, 2009. NY N077237 involved classification of ductile iron bolt rings and stainless steel bolt rings (collectively, “bolt rings” or “subject merchandise”) under the HTSUS. In your June 23, 2016 letter (“reconsideration request”), you contend that the classification determination set forth in NY N077237 is erroneous. We regret the delay in responding to your reconsideration request.

Upon our review of NY N077237, we have determined the ruling to be correct. We are accordingly affirming the ruling. In reaching this decision, we have considered arguments presented in the reconsideration request, in a November 14, 2016 meeting, in a supplemental submission provided at the meeting, and in other communications with our office. Our decision is also based in part upon our inspection of product samples.

The bolt rings at issue are described and depicted as follows in NY N077237:

The products you plan to import are described as cast bolt rings made of two different materials, either ductile iron or stainless steel. The bolt rings are said to be used in the waterworks, sewer, fire protection, food and dairy industries. A sample of the stainless steel bolt ring has been submitted. The circular hollow sample measures 8.75 inches in outside diameter, approximately 4.5 inches in inside diameter, and approximately 1.12 inches in depth. It has a recessed inner circular groove. The circumference of the face of the ring contains six equally spaced holes for placement of bolts.



The bolt rings are described as being used specifically on HDPE (high density poly ethylene) pipes in conjunction with HDPE flange adaptors. The flange adaptors are fused by heat to the ends of the pipe. The flange adaptors provide a tighter seal but do not make a connection between the pipes. The bolt rings slip behind each of the fused flange adaptors. The rings are bolted together and serve as a clamping device to provide a tighter seal and connect the pipes together.

The reconsideration request provides the following additional information:

The bolt rings are placed on HDPE pipes in conjunction with HDPE flange adaptors. After HDPE flanges are fused to HDPE pipe ends, the Bolt Rings are then placed behind the HDPE flanges on the outside of the HDPE pipe (not within or in alignment with the pipe bore). The Bolt Rings do not fill the tube aperture or make an end-to-end connection with the bore...

\* \* \*

Functionally, the Bolt Rings are used as adjoining compression or clamping devices to seal the two HDPE flanges to one another. The Bolt Rings apply high compressive force from outside of the pipe so that the two HDPE flanges press together to form a seal, clamping the flanges together. The Bolt Rings thus do not “chang[e] the direction of [nor even contact] fluid flow” or themselves connect the pipe bores. Customers use the Bolt Rings primarily the waterworks, sewer, fire protection, food, and dairy industries.

In NY N077237, U.S. Customs and Border Protection (“CBP”) classified the subject bolt rings in heading 7307, HTSUS. Specifically, the ductile iron bolt rings were classified in subheading 7307.19.30, HTSUS, which provides for: “Tube or pipe fittings of iron or steel: Cast fittings: Other: Ductile fittings.” The stainless steel bolt rings were classified in subheading 7307.19.90, HTSUS, which provides for: “Tube or pipe fittings of iron or steel: Cast fittings: Other: Other.” In your reconsideration request, you contend that these classifications are incorrect, and that the bolt rings are properly classified in heading 7325, HTSUS, which provides for “other cast articles of iron or steel.”

As a preliminary matter, the subject bolt rings can only be classified in heading 7325, HTSUS, if they are not more specifically classifiable in heading 7307, HTSUS. *See* EN 73.25 (“This heading covers all cast articles of iron or steel, not elsewhere specified or included.”). Heading 7307, HTSUS, applies to pipe fittings of iron or steel. The tariff 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. *GRK Can., Ltd. v. United States*, 761 F.3d 1354, 1357 (Fed. Cir. 2014). EN 73.07 states, in pertinent 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 **does not** however **cover** articles used for installing pipes and tubes but which do not form an integral part of the bore (e.g., hangers, stays and similar supports which merely fix or support the tubes and pipes on walls, clamping or tightening bands or collars (hose clips) used for clamping flexible tubing or hose to rigid piping, taps, connecting pieces, etc.) (**heading 73.25 or 73.26**).

The connection is obtained:

- by screwing, when using cast iron or steel threaded fittings;
- or by welding, when using butt-welding or socket-welding steel fittings. In the case of butt-welding, the ends of the fittings and of the tubes are square cut or chamfered;
- or by contact, when using removable steel fittings.

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 heading **excludes**:

- (a) Clamps and other devices specially designed for assembling parts of structures (**heading 73.08**).
- (b) Bolts, nuts, screws, etc., suitable for use in assembly of tube or pipe fittings (**heading 73.18**).

According to the above EN, as well as various technical references, pipe fittings generally include articles used (*inter alia*) to connect separate pipes to each other. *See, e.g.*, Headquarters Ruling Letter (“HQ”) H282297, dated July 6, 2017 (referencing technical definitions cited in various court cases). Additionally, EN 73.07 specifies that “flanges” and “lap joint stub-ends” are among the qualifying connectors of the heading. *See also* subheading 7307.21, HTSUS, and subheading 7307.91, HTSUS (providing for “Flanges” within the subheading structure of heading 7307). With regard to the former, we note that the dimensional criteria of “pipe flanges and flanged fittings” are detailed in industry standard B16.5, promulgated jointly by the American Society of Mechanical Engineers (AMSE) and American National Standards Institute (ANSI). *See* Am. Soc’y Mech. Eng’r, *Pipe Flanges and Flanged Fittings: NPS 1/2 through NPS 24 Metric/Inch Standard* (2017). AMSE/ANSI B16.5 is particularly illuminative as to the types of articles falling under the banner of “flanges” and, by extension, pipe fittings of heading 7307. Per the standard, there are six recognized types of pipe flanges in industry, all of which are disc-shaped with a center aperture and smaller apertures encircling the main aperture at even intervals. *See id.*; *see also* CCTF Corp., *Forged Steel Flanges 4* (2015) [hereinafter *Forged Steel Flanges*], available at [http://www.cctf.com/catalogues/flanges\\_catalog\\_dec\\_2015.pdf](http://www.cctf.com/catalogues/flanges_catalog_dec_2015.pdf) (summarizing types of flanges covered by AMSE/ANSI B16.5).

Two of these flange types, “lap joint” flanges and “slip-on” flanges, are situated around the outer circumference of the pipe segments to be conjoined. *See* Forged Steel Flanges, *supra*, at 3. To that extent, both seal the connection between the two pipe lengths without coming into contact with the fluid transmitted through the aperture. In particular, lap joint flanges are placed around short, lipped bores, which are in turn butt-welded to pipe ends. *Id.* These bores are referred to as “stub ends,” which, again, are specifically identified in EN 73.07 as pipe fittings of heading 7307, HTSUS. *Id.* When two counter-facing flange/stub end combinations are conjoined, and the stub ends are aligned to form the inner aperture through which fluid flows, the flanges are then bolted together to seal the connection between the pipe lengths. *See id.*; *see also* W.M. Huitt, Eng’g Practice: Piping Design, Part 2 – Flanges 57 (2007), available at [http://www.wmhuittco.com/images/Article\\_2\\_Piping\\_Design\\_Part\\_2\\_Flanges.pdf](http://www.wmhuittco.com/images/Article_2_Piping_Design_Part_2_Flanges.pdf). Given the myriad indicia in EN 73.07, the sub-heading breakouts under heading 7307, and AMSE/ANSI B16.5, it is our position that products used in this manner, and which meet the above-stated physical description of flanges, are pipe fittings of heading 7307. *See* HQ 559871, dated February 18, 1997 (accepting claimed classification of slip-on and lap joint flanges in heading 7307, HTSUS, for purposes of determining the flanges’ country of origin).

Here, the bolt rings at issue are disc-shaped articles with a center aperture and smaller encircling apertures set at uniform intervals along the article’s rim. As such, they take the form of industry-recognized flanges as detailed in AMSE/ANSI B16.5. Product descriptions in both NY N077237 and your reconsideration request indicate that the bolt rings are designed to slip onto the outer circumference of lipped apertures of HDPE referred to as “flange adapters,” and that once so placed, they are bolted to counter-facing flanges on adjacent pipe segments. In other words, they are identical in form and function to the lap joint flanges described above. In fact, according to product literature included with your reconsideration request, as well as an inscription found in the inner recesses of the samples, the bolt rings even adhere to the dimensional standards set forth in the above-referenced AMSE/ANSI B16.5. Moreover, our research indicates that in HDPE pipe end assemblies of the specific type in which the instant bolt rings are used, these rings are actually referred to as lap joint flanges and the HDPE flange adapters as stub ends. *See* Plastic Pipe Inst., Bolt Torque for Polyethylene Flanged Joints 5 (2011), available at [https://plasticpipe.org/pdf/tn-38\\_bolt\\_torque\\_flanged\\_joints.pdf](https://plasticpipe.org/pdf/tn-38_bolt_torque_flanged_joints.pdf). In all but product name, therefore, the instant bolt rings are flanges of heading 7307, HTSUS.

In your reconsideration request, you present several arguments opposing this classification. You contend that it is the heat-sealing of the HDPE adapters, rather than the bolting of the rings, which forms the sole “end-to-end connection with the bore”; that the bolt rings instead function merely as “clamps” or “restraining devices” excluded from heading 7307; that the bolt rings do not form an “integral part of the bore,” as is purportedly required by EN 73.07, or comply with the connection methods listed in the EN; that the bolt rings could not be considered “complete” fittings because they cannot perform their intended function absent the HDPE adapters, which are not included at entry; that the classification of the bolt rings in heading 7307 conflicts with prior CBP rulings pertaining to similar merchandise; and that this classification also conflicts with a ruling, issued September 20, 2016 by

Department of Commerce, that the subject bolt rings fall outside the scope of an antidumping duty order on certain pipe fittings (“Commerce scope ruling”).

We disagree with these arguments. As stated above, the bolt rings are physically and functionally identical to lap joint flanges, which are pipe fittings of heading 7307. It is immaterial that the particular stub ends with which the bolt rings are used happen to be heat-sealed prior to the bolting of the rings. It is also of no consequence whether the bolt rings can additionally be characterized as “clamps” (which, per EN 73.07, are included in the heading regardless). The fact remains that the bolt rings are, in form and function alike, flanges classifiable in heading 7307. If the pipe-to-pipe connections formed by the bolting of flanges generally, and lap joint flanges in particular, are sufficient for purposes of the heading, then this is also the case for bolt rings used in exactly the same manner. To this extent, the characterization of bolt rings in NY N077237 as articles which “provide a tighter seal but do not make a connection between the pipes” is incorrect.\*

Moreover, there is nothing to suggest that the bolt rings must form part of the bore to warrant treatment as a pipe fitting of heading 7307, HTSUS. Contrary to your contention, EN 73.07 does not establish integration into the bore as a universal criterion for pipe fittings; rather, it merely states that certain articles which both are used to install pipes and tubes *and* are not an integral part of the bore are excluded from the heading. As stated above, at least two of the flange types recognized in industry as “pipe flanges” are placed along the outer circumference of the aperture, to the effect that they do not form part of the bore or come into contact with the fluid flowing through the bore. *See also* HQ 965939, dated July 16, 2003 (classifying pipe fitting nuts in heading 7307 where they had previously been described, in HQ 965584, dated September 24, 2002, as “never touch[ing] the substance that passes through the pipes”).

For similar reasons, we are not convinced that the bolt rings fall outside the scope of heading 7307, HTSUS, simply because they are used in combination with HDPE adapters to form a connection between separate pipes. Again, as articles specifically identified as products of heading 7307, HTSUS, the bolt rings are in and of themselves constitutive of “complete” pipe fittings. Hence, the statement in NY N270588, dated November 24, 2015, that “classification as tube or pipe fittings requires that the complete fitting be imported,” is inapplicable here. Moreover, upon review of NY N270588, find that the ruling is incorrect and accordingly intend to revoke it.

Lastly, our determination is not precluded by the Commerce scope ruling or any of the prior CBP rulings cited in your reconsideration request. As to the former, it is well-established that scope rulings issued by the Department of Commerce are not binding on CBP for purposes of classification under the HTSUS. *See* HQ 966728, dated June 29, 2004 (citing court precedent in stating that “CBP has been designated to administer the HTSUS” and that “the classification of imported merchandise is a matter properly determined by this agency”). As to the latter, the CBP rulings cited in your request all involve distinguishable merchandise or are otherwise inapplicable. The sleeves and “end rings” at issue in NY K86336, dated June 14, 2004, and NY

\* By extension, we disagree that the role of the bolt rings can be reduced to the kind of “assistive” seal-forming function performed by the ferrules at issue in HQ 967490, dated November 14, 2005.

N097562, dated April 1, 2010, are designed for use internally within larger coupling assemblies which in turn function as joints for pipe ends. Unlike the bolt rings, neither is used to directly bolt separate pipe ends together. Moreover, HQ 967490, *supra*, involved small ferrules that do not remotely resemble the bolt rings in form or function. Lastly, irrespective of whether the glands in NY N118077, dated August 18, 2010, are comparable to the bolt rings, the glands' classification was not at issue in that case; nor was it material to the determination of the glands' country of origin, which *was* at issue there. As such, CBP's passing mention that the glands are products of heading 7325 is not actually dispositive as to their classification.

Accordingly, we remain of the position that the bolt rings are classified as "pipe fittings" in heading 7307, HTSUS, and for all the aforementioned reasons, we hereby affirm NY N077237. As determined in that ruling, the ductile iron bolt rings are specifically classified in subheading 7307.19.3085, HTSUSA (Annotated), which provides for: "Tube or pipe fittings of iron or steel: Cast fittings: Other: Ductile fittings: Other." The stainless steel bolt rings are specifically classified in subheading 7307.19.9080, HTSUSA, which provides for: "Tube or pipe fittings of iron or steel: Cast fittings: Other: Other: Other: Other: Other." HQ H303868 is hereby MODIFIED 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,*

CRAIG T. CLARK,

*Director*

*Commercial and Trade Facilitation Division*

HQ H308207  
OT:RR:CTF:VS: H308207 JMV  
CATEGORY: Origin

MICHAEL K. TOMENGA  
1400 16TH STREET, NW, SUITE 350  
WASHINGTON, DC 20036

RE: Country of Origin; Steel Metal; Caulking Guns

DEAR MR. TOMENGA,

This is in reference to Headquarters Ruling Letter (“HQ”) H303867, issued to you on behalf of your client Newborn Bros. Co. (“Newborn”), on June 25, 2019, concerning the country of origin marking for steel metal rods. In that ruling, U.S. Customs and Border Protection (“CBP”) found the steel metal rods were not substantially transformed by U.S. operations and therefore, must be marked with their country of origin, Taiwan, at the time of entry. CBP based this decision, in part, on HQ 561744, dated July 20, 2000, which was rescinded on September 19, 2000. *See* 34 Cust. Bull. & Dec., No. 39, 40–41, September 27, 2000. Therefore, we hereby modify HQ H303867 to remove reference to HQ 561744. The finding of HQ H303867 that the steel metal rods are not substantially transformed by U.S. operations is unaffected.

**FACTS:**

Newborn is an importer and distributor at wholesale of caulking guns, parts and accessories in the United States. Lengths of heat-treated carbon steel rods, Grade S45C, meeting Standard G4061 (JIS) in round, square, or hexagonal profiles may be sourced from suppliers in one or more foreign countries. For the purposes of this ruling, you ask us to assume the country of origin of these steel rods is Taiwan. After importation, the steel rods will be cut to lengths ranging between 18 and 24 inches, threaded at both ends, stamped to make a small concave indent, and treated with black oxide for corrosion resistance.

After post-importation processing, the rods will be used in dispensing guns to push the material to be dispensed. The concave stamp causes a small bulge in the rod to restrict its further travel through the release plate of a dispensing gun. The concave stamp is located at a place on the rod to stop the rod at the point where the other end of the rod has travelled to the front of the barrel of the dispensing gun.

**ISSUE:**

What is the country of origin marking of the steel metal rods?

**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 imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or 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.” *United States v. Friedlaender & Co. Inc.*, 27 CCPA 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 the exceptions of 19 U.S.C. § 1304. Section 134.1(b), Customs Regulations (19 C.F.R. § 134.1(b)), defines “country of origin” as 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.

In *National Hand Tool v. United States*, 16 CIT 308 (1992), aff’d, 989 F.2d 1201 (Fed. Cir. 1993), the court determined that certain hand tool components used to make flex sockets, speeder handles, and flex handles were not substantially transformed within the United States. The components were cold-formed or hot-forged into their final shape prior to importation, with the exception of speeder handle bars, which were reshaped by a power press after importation, and the grips of the flex handles which were knurled in the United States. The imported items were heat treated to strengthen the components, sand-blasted to clean the components, and electroplated to better enable the components to resist rust and corrosion. In making this determination, the court noted that the processing which occurred within the United States did not alter the name of the imported components, the character of the parts remained substantially unchanged upon the completion of such processing, and the intended use of the articles was predetermined at the time of importation. Although the court recognized that a predetermined use for imported articles does not preclude a finding of substantial transformation, the court noted that each component was intended to be incorporated in a particular finished mechanic’s hand tool. Moreover, *National Hand Tool* dismissed as a basis for a substantial transformation the value of the processing, stating that the substantial transformation test utilizing name, character and use criteria should generally be conclusive in country of origin marking determinations, and that such a finding must be based on the totality of the evidence.

In determining whether a substantial transformation has occurred in the processing of metals, CBP has generally held that the mere cutting to length or width which does not render the article suitable for a particular use does not constitute a substantial transformation. For example, in New York Ruling Letter (“NY”) N284041, dated March 31, 2017, CBP found that black steel and galvanized steel pipes were not substantially transformed in China, where the pipes were cut into shorter lengths, chamfered, threaded, cleaned and subject to anti-rusting treatments. CBP noted that the imported product manufactured in Korea was pipe and the product imported from China remained pipe. Therefore, CBP found that the pipes did not lose their identity and were not substantially transformed when cut and processed in China. *See also* HQ 734186, dated October 24, 1991 (finding that the threading and cutting of steel pipe did not result in a substantial transformation).

In HQ W968318, dated October 2, 2006, CBP similarly found that subjecting Bulgarian-origin brass strip to one cold-rolling pass in Germany which

reduced its thickness by slightly less than three one-thousandths of an inch and smoothed the product's surface did not constitute a substantial transformation of the Bulgarian-origin strip. *See also* HQ 734716, dated November 27, 1992 (finding that polishing grade 304 stainless steel sheet to achieve a No. 8 mirror finish to promote corrosion resistance was a change in a characteristic of the steel but not its character and therefore not a substantial transformation).

Accordingly, we find that the processing of the rods described above in the United States, which includes cutting, threading, stamping and treating with black oxide for corrosion resistance, does not constitute a substantial transformation. Since Newborn, as the importer, will not be the ultimate purchaser, we find that the steel metal rods are subject to the requirements of 19 C.F.R. § 134.26(a). When Newborn files the entry summary, Newborn must also file a certificate for the country of origin marking of articles to be repacked pursuant to 19 C.F.R. § 134.26. The country of origin marking of the steel metal rods must be visible to the ultimate purchaser.

**HOLDING:**

Based on the information provided, the imported steel metal rods will not undergo a substantial transformation in the United States and the country of origin is Taiwan for marking purposes. The steel metal rods are subject to the requirements of 19 C.F.R. § 134.26(a). HQ H303867 is hereby MODIFIED 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,*

CRAIG T. CLARK,

*Director*

*Commercial and Trade Facilitation Division*

HQ H308206

OT:RR:CTF:VS: H308206 JMV

CATEGORY: Origin

MICHAEL K. TOMENGA  
1400 16TH STREET, NW, SUITE 350  
WASHINGTON, DC 20036

RE: Country of Origin; Steel/Aluminum Tubes; Caulking Guns

DEAR MR. TOMENGA,

This is in reference to Headquarters Ruling Letter (“HQ”) H303868, issued to you on behalf of your client Newborn Bros. Co. (“Newborn”), on June 27, 2019, concerning the country of origin marking for steel metal and aluminum tubes. In that ruling, U.S. Customs and Border Protection (“CBP”) found the steel and aluminum tubes were not substantially transformed by U.S. operations and therefore, must be marked with their country or origin, Taiwan, at the time of entry. CBP based this decision, in part, on HQ 561744, dated July 20, 2000, which was rescinded on September 19, 2000. *See* 34 Cust. Bull. & Dec., No. 39, 40–41, September 27, 2000. Therefore, we hereby modify HQ H303868 to remove reference to HQ 561744. The finding of HQ H303868 that the steel and aluminum tubes are not substantially transformed by U.S. operations is unaffected.

**FACTS:**

Newborn is an importer and distributor at wholesale of caulking guns, parts and accessories in the United States. The imported products that are the subject of HQ H303868 are Carbon steel or aluminum metal tube with an inside diameter of two inches and an outside diameter of 2 1/8 inches, which may be sourced from suppliers in one or more foreign countries. The steel/aluminum tubes will be imported in lengths of approximately 7.5 feet. For the purposes of this ruling, you ask us to assume that the country of origin of these steel/aluminum tubes is Taiwan. The steel tube would meet Standard STKM 11A (JIS). The aluminum metal tube would meet Standard 6063 (JIS). As imported, the metal tube has plain ends.

After importation, the tube will be cut to lengths of 14 inches or 18 inches, and threaded at each end for use as barrels for caulking dispensing guns. Steel metal barrels will be polished and zinc-plated after threading for corrosion resistance. Aluminum barrels will be polished and anodized after threading for corrosion resistance.

**ISSUE:**

What is the country of origin marking of the steel metal and aluminum tubes?

**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 imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or 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.” *United States v. Friedlaender & Co. Inc.*, 27 CCPA 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 the exceptions of 19 U.S.C. § 1304. Section 134.1(b), Customs Regulations (19 C.F.R. § 134.1(b)), defines “country of origin” as 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.

In *National Hand Tool v. United States*, 16 CIT 308 (1992), aff’d, 989 F.2d 1201 (Fed. Cir. 1993), the court determined that certain hand tool components used to make flex sockets, speeder handles, and flex handles were not substantially transformed within the United States. The components were cold-formed or hot-forged into their final shape prior to importation, with the exception of speeder handle bars, which were reshaped by a power press after importation, and the grips of the flex handles which were knurled in the United States. The imported items were heat treated to strengthen the components, sand-blasted to clean the components, and electroplated to better enable the components to resist rust and corrosion. In making this determination, the court noted that the processing which occurred within the United States did not alter the name of the imported components, the character of the parts remained substantially unchanged upon the completion of such processing, and the intended use of the articles was predetermined at the time of importation. Although the court recognized that a predetermined use for imported articles does not preclude a finding of substantial transformation, the court noted that each component was intended to be incorporated in a particular finished mechanic’s hand tool. Moreover, *National Hand Tool* dismissed as a basis for a substantial transformation the value of the processing, stating that the substantial transformation test utilizing name, character and use criteria should generally be conclusive in country of origin marking determinations, and that such a finding must be based on the totality of the evidence.

In determining whether a substantial transformation has occurred in the processing of metals, CBP has generally held that the mere cutting to length or width which does not render the article suitable for a particular use does not constitute a substantial transformation. For example, in New York Ruling Letter (“NY”) N284041, dated March 31, 2017, CBP found that black steel and galvanized steel pipes were not substantially transformed in China, where the pipes were cut into shorter lengths, chamfered, threaded, cleaned and subject to anti-rusting treatments. CBP noted that the imported product manufactured in Korea was pipe and the product imported from China remained pipe. Therefore, CBP found that the pipes did not lose their identity and were not substantially transformed when cut and processed in China. *See also* HQ 734186, dated October 24, 1991 (finding that the threading and cutting of steel pipe did not result in a substantial transformation).

In HQ W968318, dated October 2, 2006, CBP similarly found that subjecting Bulgaria-origin brass strip to one cold-rolling pass in Germany which

reduced its thickness by slightly less than three one-thousandths of an inch and smoothed the product's surface did not constitute a substantial transformation of the Bulgarian-origin strip. *See also* HQ 734716, dated November 27, 1992 (finding that polishing grade 304 stainless steel sheet to achieve a No. 8 mirror finish to promote corrosion resistance was a change in a characteristic of the steel but not its character and therefore not a substantial transformation).

Accordingly, we find that the processing of the steel metal and aluminum tubes described above in the United States, which includes cutting, threading, polishing and zinc-plating or anodizing for corrosion resistance, does not constitute a substantial transformation. Since Newborn, as the importer, will not be the ultimate purchaser, we find that the steel metal and aluminum tubes are subject to the requirements of 19 C.F.R. § 134.26(a). When Newborn files the entry summary, Newborn must also file a certificate for the country of origin marking of articles to be repacked pursuant to 19 C.F.R. § 134.26. The country of origin marking of the steel metal and aluminum tubes must be visible to the ultimate purchaser.

**HOLDING:**

Based on the information provided, the imported steel metal and aluminum tubes will not undergo a substantial transformation in the United States and the country of origin is Taiwan for marking purposes. The steel metal and aluminum tubes are subject to the requirements of 19 C.F.R. § 134.26(a). HQ H303868 is hereby MODIFIED 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,*

CRAIG T. CLARK,

*Director*

*Commercial and Trade Facilitation Division*

**PROPOSED MODIFICATION OF A RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF CERTAIN TWO-POST  
VEHICLE LIFTS**

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

**ACTION:** Notice of proposed modification of one ruling letter and proposed revocation of treatment relating to the tariff classification of two-post vehicle lifts.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify a ruling letter concerning the tariff classification of certain two-post vehicle lifts 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 December 11, 2020.

**ADDRESS:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Cammy Canedo, Regulations and Disclosure Law Division, 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 Ms. Cammy Canedo at (202) 325–0439.

**FOR FURTHER INFORMATION CONTACT:** Nataline Viray-Fung, Electronics, Machinery, Automotive, and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at [nataline.viray-fung@cbp.dhs.gov](mailto:nataline.viray-fung@cbp.dhs.gov).

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community’s responsibilities and rights under the customs and

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to modify a ruling letter pertaining to the tariff classification of certain two-post vehicle lifts. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N008193, dated April 5, 2007 (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 N008193, CBP classified certain two-post vehicle lifts in heading 8425, HTSUS, specifically in subheading 8425.41.00, HTSUS, which provides for: Pulley tackle and hoists other than skip joists; winches and capstans; jacks: Jacks; hoists of a kind used for raising vehicles: Built-in jacking systems of a kind used in garages. CBP has reviewed NY N008193 and has determined the ruling letter to be in error. It is now CBP’s position that the two-post vehicle lifts are properly classified, in heading 8428, HTSUS, specifically in subheading 8428.90.02, HTSUS, which provides for: Other lifting, handling, loading or unloading machinery (for example, elevators, escalators, conveyors, teleferics): Other machinery.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N008193 and to revoke or modify any other ruling not specifically

identified to reflect the analysis contained in the proposed Headquarters Ruling Letter H312164, 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.

GREGORY CONNOR  
*for*

CRAIG C. CLARK,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

ATTACHMENT A

N008193

April 5, 2007

CLA-2-84:RR:NC:N1:106

CATEGORY: Classification

TARIFF NO.: 8425.41.0000; 8428.90.0190

MS. GERTRUDE WILSON  
HOCKMAN-LEWIS LTD.  
200 EXECUTIVE DRIVE  
WEST ORANGE, NJ 07052

RE: The tariff classification of various hydraulic jacks and lifting machines for automotive vehicles from China

DEAR MS. WILSON:

In your letter dated March 8, 2007 you requested a tariff classification ruling. You submitted descriptive literature with your request.

The merchandise at issue appears to be 4 models of hydraulically powered lifting machines for automotive vehicles to be installed in repair garages. The first two units are jacks and are designated as model numbers MF-29000A (rated at 9000 lbs. lift capacity) and MF-210000X (rated at 10,000 lbs. lift capacity). These lifts are 2-post asymmetric surface-mounted lifts designed to lift passenger-type vehicles for service. The third and fourth lifts are model numbers MF-212000A and MF-212000E, each rated at 12,000 lbs. lift capacity. These are 4-post surface mounted lifts anchored to the garage floor to allow for a vehicle to be driven on and lifted for service. All 4 models are powered by an electric motor which operates a hydraulic pump to raise and lower the lifting components.

The applicable subheading for the automotive jacks will be 8425.41.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for built-in jacking systems of a type used in garages. The rate of duty will be free.

The applicable subheading for the automotive lifting machines will be 8428.90.0190, HTSUS, which provides for other lifting machinery. 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 Patrick Wholey at 646-733-3013.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

ATTACHMENT B

HQ H312164  
CLA-2 OT:RR:CTF:EMAIN H312164 NVF  
CATEGORY: Classification  
TARIFF NO.: 8428.90.01

MS. GERTRUDE WILSON  
HOCKMAN-LEWIS LTD.  
200 EXECUTIVE DRIVE  
WEST ORANGE, NJ 07052

RE: Modification of NY N008193; Two-Post Vehicle Lifts.

DEAR MS. WILSON:

This ruling is in reference to New York Ruling Letter (NY) N008193, dated April 5, 2007, regarding the classification of certain two-post vehicle lifts under the Harmonized Tariff Schedule of the United States (HTSUS). In NY N008193, U.S. Customs and Border Protection (CBP) classified the subject articles in subheading 8425.41.00, HTSUS, which provides for: Pulley tackle and hoists other than skip joists; winches and capstans; jacks: Jacks; hoists of a kind used for raising vehicles: Built-in jacking systems of a kind used in garages. Upon reconsideration, CBP has determined that NY N008193 is in error.

CBP is modifying NY N008193 according to the analysis set forth below.

**FACTS:**

In NY N008193, the subject merchandise is described as “Model numbers MF-29000A (rated at 9000 lbs. lift capacity) and MF-210000X (rated at 10,000 lbs. lift capacity). These lifts are 2-post asymmetric surface-mounted lifts designed to lift passenger-type vehicles for service.” It is further stated in NY N008193 that the two instant lifts “...are powered by an electric motor, which operates a hydraulic pump to raise and lowers the lifting components.”<sup>1</sup> CBP classified the two-post lifts in subheading 8425.41.00, HTSUS.

**ISSUE:**

Whether two-post lifts are classified as hoists and jacks of heading 8425, HTSUS, or as other lifting machinery of heading 8428, HTSUS.

**LAW AND ANALYSIS:**

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (“GRIs”) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all classification purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relevant section or chapter notes. In the event that the goods cannot be classified solely on the

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<sup>1</sup> Also at issue in NY N008193 were two four-post lifts, identified by model numbers MF-212000A and MF-212000E. These four-post lifts are not subject to the instant ruling.

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.

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

- 8425 Pulley tackle and hoists other than skip joists; winches and capstans; jacks.
- 8428 Other lifting, handling, loading or unloading machinery (for example, lifts, escalators conveyors, teleferics).

The Harmonized Commodity Description and Coding System Explanatory Notes (EN's) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the EN's provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the system. CBP believes the EN's should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The EN to heading 8425, HTSUS states, in pertinent part:

The pulley tackle and hoists classified in this heading consist of more or less complex systems of pulleys and cables, chains, ropework, etc., designed to give a mechanical advantage to facilitate lifting (e.g., by use of pulleys of different diameter, toothed wheels, gearing systems). This group includes, *inter alia*: (1) Tackle and hoists in which the chain engages in specially designed projections on the pulley rims. (2) Drum type pulley hoists in which the cable is wound on a drum enclosing the pulley mechanism. This self-contained type of hoist, usually pneumatic or electric, is often mounted on a trolley or crab running on an overhead rail. (3) Hoists consisting of a roller chain running over a geared system of sprocket wheels operated by a crank handle or lever, somewhat as in a jacking system.

Jacks are designed to raise heavy loads through short distances. The heading includes rack and pawl jacks, screw jacks in which the screw is raised by rotation or by rotating a nut fixed in the jack base, and telescopic screw jacks operated by the action of two or more concentric screws, the outer screw turning in the nut in the jack base. In hydraulic or pneumatic jacks, the lifting piston is forced along a cylinder by pressure generated in a pump or compressor which may be separate or built-in. Special type of jacks include: (3) Garage type built-in jacking systems, usually hydraulic.

The EN to heading 8428, HTSUS states, in pertinent part:

With the exception of the lifting and handling machinery of headings 84.25 to 84.27, this heading covers a wide range of machinery for the mechanical handling of materials, goods, etc. (lifting, conveying, loading, unloading, etc.). They remain here even if specialised for a particular industry, for agriculture, metallurgy, etc.

The heading covers lifting or handling machines usually based on pulley, winch or jacking systems, and often including large proportions of static structural steelwork, etc.

Because the text of heading 8428, HTSUS, covers *other* lifting and handling machinery, we first examine whether the subject merchandise falls under the

scope of heading 8425, HTSUS, *i.e.* whether the subject merchandise are “hoists” or “jacks.”

When a term is not defined in either the HTSUS or the ENs, which constitute the official interpretation of the Harmonized System, we look to its common and commercial meaning. *See Nippon Kogasku (USA) Inc. v. United States*, 69 C.C.P.A. 89, 92–93 (1982); *C.J. Towers & Sons v. United States*, 69 C.C.P.A. 128, 133–134 (1982). In this case, the HTSUS differentiates between various types of lifting and handling equipment classified under headings 8425, HTSUS, through 8428, HTSUS. The ENs accordingly provide features to distinguish the goods covered by these headings. Specifically, the hoists contemplated by heading 8425 are those consisting of a system of pulleys along with some type of cables, chains, or rope, etc., and a jack of heading 8425 is designed to raise heavy loads through short distances. The ENs further explain that if lifting machinery is not classifiable in heading 8425 (through heading 8427) then it is classified under heading 8428, even if specialized for a particular industry.

In HQ H310333, dated June 26, 2020, we classified similar merchandise to the instant two-post lifts and discussed the difference between a hoist and a lift. In summary, we observed that common and commercial meanings of “hoist” do not contradict the definitions set forth in the ENs and concluded that a hoist is machinery which pulls an item up through the vertical plane and often across the horizontal plane, typically with a hook that attaches the cargo to overhead chain or rope. With regard to the definition of a “jack,” we also determined that the ENs and technical definitions are aligned and that a jack is designed to lift loads over short distances.

We next examined two-post vehicle lifts and determined that they are not hoists because they use platforms or arms to lift the weight of the cargo rather than pulling a load using ropework or chains and a hook. We also concluded in HQ H310333 that the two-post lifts at issue were not jacks of heading 8425 because they raise a load more than a short distance. Finally, we observed that CBP has a longstanding practice of classifying vehicle lifts under heading 8428, HTSUS. *See* NY K85073 (May 4, 2004) (scissor type motorcycle lift), NY N008193 (Apr. 5, 2007) (four post lift), NY N119135 (Aug. 20, 2010) (car stacker), NY N287695 (July 24, 2017) (motorcycle lift), NY N299553 (Aug. 15, 2018) (car lift system).

Similarly, the instant two-post vehicle lifts are not hoists nor are they jacks. They do not pull a vehicle up using a hook and chain or rope, and they raise vehicles more than a short distance. Therefore, they cannot be classified under heading 8425, HTSUS as a hoist or a jack. As such, they are properly classified under heading 8428, HTSUS, as other lifting machinery

#### **HOLDING:**

By application of GRIs 1 and 6, the two-post lifts are classified in heading 8428, specifically subheading 8428.90.02, HTSUS, which provides for: Other lifting, handling, loading or unloading machinery (for example, elevators, escalators, conveyors, teleferics): Other machinery. The general, column one rate of duty is free.

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

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

*Sincerely,*  
CRAIG T. CLARK,  
*Director*  
*Commercial and Trade Facilitation Division*

## 19 CFR PART 177

### REVOCATION OF THREE RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF TEXTILE HANGING SHELVES

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

**ACTION:** Notice of revocation of three ruling letters, and of revocation of treatment relating to the tariff classification of textile hanging shelves.

**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 three ruling letters concerning tariff classification of textile hanging shelves 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. 54, No. 22, on June 10, 2020. No comment was received in response to that notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 10, 2021.

**FOR FURTHER INFORMATION CONTACT:** Marina Mekheil, Chemicals, Petroleum, Metals, and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–0974.

#### **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. 54, No. 22, on June 10, 2020, proposing to revoke three ruling letters pertaining to the tariff classification of textile hanging shelves. 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 Letters ("NY") N293709, dated February 23, 2018, NY N295394, dated April 18, 2018, and NY N298740, dated July 16, 2018, CBP classified textile hanging shelves in heading 9403, HTSUS, specifically in subheading 9403.89.6020, HTSUS, which provides for "Other furniture and parts thereof: Furniture of other materials, including cane, osier, bamboo or similar materials: Other: Other: Other" and subheading 9403.89.6015, HTSUS, which provides for "Other furniture and parts thereof: Furniture of other materials, including cane, osier, bamboo or similar materials: Other: Other: Other household." CBP has reviewed NY N293709, NY N295394 and NY N298740 and has determined the ruling letters to be in error. It is now CBP's position that textile hanging shelves are properly classified, in heading 6307, HTSUS, specifically in subheading 6307.90.9889, HTSUS, which provides for "Other made up articles, including dress patterns: Other: Other: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N293709, NY N295394 and NY N298740 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H206079, set forth as Attachment D 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: August 4, 2020

*for*  
CRAIG T. CLARK,  
*Director*  
*Commercial and Trade Facilitation Division*

HQ H308036

August 4, 2020

T:RR:CTF:CPMM H308036 MMM

CATEGORY: Classification

TARIFF NO.: 6307.90.9889

JOSEPH KENNY  
GEODIS USA INC.  
ONE CVS DRIVE  
WOONSOCKET, RI 02895

RE: Revocation of NY N293709, NY N295394 and NY N298740; Classification of textile hanging shelves

DEAR MR. KENNY,

This is reference to the New York Ruling Letter (NY) N293709, issued to you by U.S. Customs and Border Protection (CBP) on February 23, 2018, concerning classification of a “Locker Luxe Hanging Shelf” under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed your ruling, and determined that it is incorrect, and for the reasons set forth below, are revoking your ruling.

We have also reviewed NY N295394, dated April 18, 2018 and NY N298740, dated July 16, 2018 and determined that they are also incorrect, and for the reasons set forth below, we are also revoking those rulings.

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 of the proposed action was published in the Customs Bulletin, Volume 54, No. 22, on June 10, 2020. No comment was received in response to this notice.

**FACTS:**

In NY N293709, CBP stated as follows with respect to the subject merchandise:

The item has a U-shaped form, and consists of two sides made of 100% polyester woven material, two cardboard inserts encased in the same material as the two sides, and two iron or steel brackets. The two textile covered inserts act as shelving for the placement and retrieval of books, notebooks, school supplies, equipment, and various other personal objects and sundries. The two iron and steel brackets allow for the item to be hung from the top shelf of a metal school locker.

CBP classified the “Locker Luxe Hanging Shelf” in heading 9403, HTSUS, specifically subheading 9403.89.6020, HTSUSA (Annotated), which provides for “Other furniture and parts thereof: Furniture of other materials, including cane, osier, bamboo or similar materials: Other: Other: Other.”

Additionally, in NY N295394, which involved the classification of similar merchandise, CBP described the merchandise as follows:

The item has five shelves and is hung by an 8-inch hook and loop closure that fits around a closet bar, and is designed to hold clothing, accessories or other articles. The item is 13 inches wide by 39 inches tall. The organizer is constructed of medium-density fiberboard (MDF) at the top and bottom to provide structure and strength. Cardboard stiffeners are at

the front of each shelf opening to help the organizer hold its shape and provide additional strength. Photographs depict that the item is covered over in polypropylene non-woven textile material.

Lastly, in NY N298740, CBP described the subject merchandise as:

The merchandise concerned is made from outer materials of 70% polyester and 30% cotton (poly-cotton canvas), has a reinforced top panel and shelves sandwiched between cardboard, and attaches to a closet rod by means of two metal hooks. The merchandise concerned holds up to twelve sweaters and can also accommodate other articles of clothing, as well as provide storage capacity for handbags and accessories. This item is depicted on the company website and in sample as having three compartments, shelves, in which to organize sweaters.

In NY N295394 and NY N298740, the above referenced textile hanging shelves were classified in heading 9403 HTSUS, specifically in subheading 9403.89.6015, HTSUSA, which provides for “Other furniture and parts thereof: Furniture of other materials, including cane, osier, bamboo or similar materials: Other: Other: Other household.”

#### **ISSUE:**

Whether the subject hanging closet shelves are classified in heading 6307, HTSUS, as other made up articles or in heading 9403, HTSUS, as other furniture.

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

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. GRI 2(a) provides, in relevant part, that “[a]ny 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 articles has the essential character of the complete or finished article.”

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The 2018 HTSUS provisions under consideration are as follows:

**6307:** Other made up articles, including dress patterns:

**9403:** Other furniture and parts thereof:

Heading 6307 applies to made up articles. Note 7 to Section XI, which includes Chapters 50–63, provides that:

For the purposes of this section, the expression “made up” means:

- (a) Cut otherwise than into squares or rectangles;
- (b) Produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, tablecloths, scarf squares, blankets);
- (c) Hemmed or with rolled edges, or with a knotted fringe at any of the edges, but excluding fabrics the cut edges of which have been prevented from unraveling by whipping or by other simple means;
- (d) Cut to size and having undergone a process of drawn thread work;
- (e) Assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded); or
- (f) Knitted or crocheted to shape, whether presented as separate items or in the form of a number of items in the length.

Heading 9403 applies to furniture and parts thereof. Chapter 94 includes Note 2(a) which states:

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

The following are, however, to be classified in the above-mentioned headings even if they are designed to be hung, to be fixed to the wall or to stand one on the other:

- (a) Cupboards, bookcases, other shelved furniture (including single shelves presented with supports for fixing them to the wall) and unit furniture.

Additionally, the General Explanatory Notes to Chapter 94 states that “furniture” means:

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. (It should be noted that, for the purposes of this Chapter, articles are considered to be “movable” furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.

Courts have construed “furniture” to mean articles “for the use, convenience, and comfort of the house dweller and not subsidiary articles for ornamenta-

tion alone.”<sup>1</sup> Furthermore, the courts have distinguished “furniture” from articles that are “subsidiary adjuncts and appendages designed for the ornamentation of a dwelling or business place, or which are of comparatively minor importance so far as use, comfort, and convenience are concerned.”<sup>2</sup>

In NY N293709, NY N295394 and NY N298740, CBP classified the subject merchandise in heading 9403, following its interpretation of the parenthetical added to Note 2(a) in 2012, which includes single shelves presented with supports as an example of shelved furniture. However, this parenthetical does not apply to the merchandise at issue here, as the subject merchandise is hung in a closet or locker and includes shelves, and is not single shelves and not presented with supports for fixing them to the wall.

In order for the subject merchandise to be classified under heading 9403, it must fall under shelved furniture that is designed to be hung, to be fixed to the wall or to stand one on the other. For instance, NY N302160 classified an “Industrial Pipe Shelf” composed of metal and wood components along with metal assembly hardware designed to be mounted to a wall. Additionally, NY N290432 also classified a wall hanging vanity consisting of a shelf, mirror and metal hooks, where accessories can be placed on the shelf and hung on the hooks, under heading 9403, HTSUS. The merchandise in both of these rulings are shelved furniture because they are designed to equip a dwelling, and include additional materials, such as iron pipes and hanging bars with metal hooks, to allow consumers to mount or hang the shelves on the wall. They do not collapse before being hung and do not rely on gravity for their shape. The subject textile goods, however, are not furniture. Rather, they are textile articles for use in the organization of lockers and closets. Lockers and closets are typically already equipped with a rod, shelf, and floor for the storage and organization of articles kept inside them. Hence, collapsible textile cubbies, pockets or shelves are of comparatively minor importance so far as use, comfort, and convenience are concerned. The parenthetical added to note 2(a) to Chapter 9403 does not describe these goods and did not necessitate a change in their classification. Additionally, prior to 2018, the year these rulings were issued, CBP classified similar merchandise under heading 6307.<sup>3</sup>

By application of GRI 3(b) the subject textile hanging shelves described in NY N293709, NY N295394 and NY N298740 are composite goods classified in

<sup>1</sup> *Pomeroy Collection, Ltd. v. United States*, 893 F. Supp. 2d 1269, 1284 (Ct. Int’l Trade 2013) (citing *Furniture Import Corp. v. United States*, 56 Cust. Ct. (125, 133, C.D. 2619 1966)).

<sup>2</sup> *Id.*

<sup>3</sup> See New York Ruling Letters N251387, dated April 8, 2014 (zippered non-woven textile 5-shelf organizer with pockets and collapsible drawers), N249244, dated January 31, 2014 (zippered non-woven textile 5-shelf organizer with pockets and collapsible drawers), N103441, dated April 30, 2010 (non-woven textile 3-shelf organizer with collapsible drawers), N068155, dated July 17, 2009 (non-woven textile 10-shelf organizer), N028584, dated May 20, 2008 (heavy-duty cotton canvas fabric 6 and 10-shelf hanging organizer), N019965, dated November 28, 2007 (woven man-made fiber fabric 10-shelf hanging organizer and collapsible drawers), N019527, dated November 15, 2007 (woven fabric of polyester and cotton 6-compartment hanging organizer), N005781, dated February 7, 2007 (polyester warp knit fabric 10-shelf hanging organizer), M84060, dated June 22, 2006 (woven and non-woven textile hanging organizers), M81247, dated March 15, 2006 (non-woven polypropylene fabric 6-compartment hanging organizer), L87335, dated September 21, 2005 (cotton 8 and 10 shelf closet organizer), J88740, dated September 18, 2003 (canvas 6-shelf sweater organizer), H82867, dated July 20, 2001 (knit fabric 8-compartment hanging sweater organizer), H82067, dated June 8, 2001 (knit fabric 8-compartment hanging

heading 6307. According to GRI 3(b), composite goods consisting of different materials or made up of different components shall be classified as if they consisted of the material or component which gives them their essential character. Although the GRIs do not provide a definition of “essential character,” EN (VIII) of GRI 3(b) provides guidance. According to this EN, the essential character may 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.

It is well-established that a determination as to “essential character” is driven by the particular facts of the case at hand.<sup>4</sup> Essential character has traditionally been understood as “that which is indispensable to the structure, core or condition of the article, *i.e.*, what it is” and as “the most outstanding and distinctive characteristic of the article.”<sup>5</sup> In this instance, the textile components provide the essential character to the hanging shelves. The cardboard components are merely used to hold shape and the metal hooks and brackets are only used to hang the shelves, both the cardboard and metal components serve no purpose if used alone. Additionally, the textile components are the most distinctive characteristic of the shelves, as they are the only visible component to the consumer when used. The subject merchandise is properly classified in heading 6307, HTSUS, as made-up textile articles.

#### **HOLDING:**

By application of GRI 1 and 3(b), the subject merchandise, is classified in heading 6307, HTSUS. The textile hanging shelves are specifically described in subheading 6307.90.9889, HTSUSA, which provides for: “Other made up articles, including dress patterns: Other: Other: Other.” The 2020 column one general rate of duty for subheading 6307.90.9889, HTSUSA, is 7% *ad valorem*.

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

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

NY N293709, dated February 23, 2018, NY N295394, dated April 18, 2018, and NY N298740, dated July 16, 2018, are hereby REVOKED in accordance with the above analysis.

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

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sweater organizer), E82491, dated June 2, 1999 (fabric 6-shelf sweater organizer), C85528, dated March 27, 1998 (cotton 6-shelf hanging shoe organizer), C81737, dated November 25, 1997 (cotton hanging closet organizers), and 809644, dated May 9, 1995 (cotton hanging closet organizer).

<sup>4</sup> See, e.g., *Alcan Food Packaging (Shelbyville) v. United States*, 771 F.3d 1364, 1366 (Fed. Cir. 2014) (“The ‘essential character’ of merchandise is a fact-intensive issue.”); see also EN VIII to GRI 3(b) (“The factor which determines essential character will vary as between different kinds of goods.”).

<sup>5</sup> *Structural Indus. v. United States*, 360 F. Supp. 2d 1330, 1336 (Ct. Int’l Trade 2005).

*Sincerely,*

*for*

CRAIG T. CLARK,

*Director*

*Commercial and Trade Facilitation Division*

CC: Geri Davidson  
Import Department  
The Container Store  
500 Freeport Parkway  
Coppell, TX 75019-3863

## 19 CFR PART 177

### REVOCATION OF SIX RULING LETTERS, MODIFICATION OF ONE RULING LETTER, AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF RIGID PLASTIC COOLERS

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

**ACTION:** Notice of revocation of six ruling letters, modification of one ruling letter, and proposed revocation of treatment relating to the tariff classification of rigid plastic coolers.

**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 three ruling letters concerning tariff classification of rigid plastic coolers 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. 53, No. 45, on December 11, 2019. One comment was received in response to that notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 10, 2021.

**FOR FURTHER INFORMATION CONTACT:** Marina Mekheil, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–0974.

#### 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. 53, No. 45, on December 11, 2019, proposing to revoke six ruling letters and modify one ruling letter. 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 NY N285560, NY N259674, NY N262814, NY N263691, and NY N276904, CBP classified rigid plastic coolers in heading 9403, HTSUS, specifically in subheading 9403.70.40, HTSUS, which provides for "Other furniture and parts thereof: Furniture of plastics: Of reinforced or laminated plastics," and 9403.70.80, HTSUS, which provides for "Other furniture and parts thereof: Furniture of plastics: Other." In HQ 085323, CBP classified a rigid plastic cooler in heading 3923, HTSUS, specifically in subheading 3923.10.90, HTSUS, which provides for "Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastic: Boxes, cases, crates, and similar articles: Other." In NY N024773, CBP classified a rigid plastic cooler in heading 3924, HTSUS, specifically in subheading 3924.10.40, HTSUS, which provides for "Tableware, kitchenware...of plastics: Tableware and kitchenware: Other."

CBP has reviewed NY N285560, HQ 085323, NY N024773, NY N259674, NY N262814, NY N263691, and NY N276904 and has determined the ruling letters to be in error. It is now CBP's position that rigid plastic coolers are properly classified, in heading 4202, HTSUS, specifically in subheading 4202.12.21, HTSUS, which provides for "Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers: With outer surface of plastics or of textile materials: With outer surface of plastics: Trunks, suitcases, vanity cases and similar containers: Structured, rigid on all sides."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY N285560, and revoking HQ 085323, NY N024773, NY N259674, NY N262814, NY N263691, and NY N276904, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H305292, set forth as Attachment A 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.

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

Dated: June 18, 2020

CRAIG T. CLARK,  
*Director*  
*Commercial and Trade Facilitation Division*

HQ H305292

June 18, 2020  
OT:RR:CTF:CPMM  
H305292MMM  
CATEGORY: Classification  
TARIFF NO.: 4202.12.2120

SAMANTHA JEAN GAGLIO  
CUSTOMS COMPLIANCE MANAGER  
*LIFETIME PRODUCTS*  
*FREEPORT CENTER, BUILDING D-12*  
*CLEARFIELD, UT 84016*

RE: Revocation of NY N285560, HQ 085323, NY N024773, NY N259674, NY N262814, NY N263691, and NY N276904; Classification of rigid plastic coolers

DEAR Ms. GAGLIO,

This is in reference to the New York Ruling Letter (NY) N285560, issued to you by U.S. Customs and Border Protection (CBP) on May 2, 2017, concerning classification of a cooler and two components of the cooler under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed your ruling, and determined that it is incorrect, and for the reasons set forth below, are modifying your ruling in regard to the cooler.

We have also reviewed the following rulings: HQ 085323, dated September 14, 1984, NY N024773, dated April 11, 2008, NY N259674, dated December 12, 2014, NY N262814, dated April 9, 2015, NY N263691, dated April 29, 2015, and NY N276904, dated July 22, 2016, and determined that they are also incorrect, and for the reasons set forth below, we are revoking those rulings.

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 of the proposed action was published in the Customs Bulletin, Volume 53, No. 45, on December 11, 2019. One comment, which will be addressed below, was received in response to this notice.

**FACTS:**

In NY N259674, N262814, N263691, N276904, and N285560, CBP ruled on the classification of hard-sided coolers made of molded plastic and insulated by polyurethane foam. The use of the subject merchandise is to temporarily hold beverages and foods together with ice to keep them cold.

CBP classified the coolers in heading 9403, citing to EN 94.03. The coolers subject to the above rulings were considered ice-boxes and ice-chests because they contained no active refrigerating element and were insulated by polyurethane foam.

In HQ 085323, CBP concluded that the classification of a molded plastic insulated cooler was heading 3923 of the HTSUS, as an article for the conveyance or packing of goods, of plastics. The cooler contained a compartment in the front which contained an opener, a knife, two spoons, and two forks. CBP found that the essential character of the cooler and utensils was the cooler.

Additionally, NY N024773 concluded that a similar plastic cooler was classified under heading 3924, as tableware, kitchenware...of plastics.

**ISSUE:**

Whether the subject rigid plastic coolers are classified in heading 3923, as articles for the conveyance or packing of goods, in heading 3924, as tableware, kitchenware, [or] other household articles of plastics, in heading 4202 as trunks, suitcases...and similar containers, or in heading 9403, as other furniture.

**LAW AND ANALYSIS:**

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. GRI 2(a) provides, in relevant part, that “[a]ny 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 articles has the essential character of the complete or finished article.”

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The 2020 HTSUS provisions under consideration are as follows:

- 3923:** Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics
- 3924:** Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics
- 4202:** Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper
- 9403:** Other furniture and parts thereof:

Chapter 39, note 2(m) excludes “...trunks, suitcases, handbags or other containers of heading 42.02.

The General Explanatory Notes to Chapter 94 states that “furniture” means:

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. (It should be noted that, for the purposes of this Chapter, articles are considered to be “movable” furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.

The EN to heading 9403, states:

[I]ce-boxes, ice-chests and the like, and also insulated cabinets not equipped or designed to contain an active refrigerating element but insulated simply by glass fibre, cork, wool, etc., remain classified in this heading.

We begin our analysis with GRI 1. Under note 2(m) to Chapter 39, if the merchandise is described as a container of 4202, it is excluded from classification in either heading 3923 or heading 3924.

Heading 4202 applies to Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers. The Federal Circuit, in *Totes, Inc. v. United States*, applying the rule of *ejusdem generis*, found that imported merchandise are “of the same kind” as the enumerated articles in 4202 when they are “containers...used to organize, store, and protect specific items.”<sup>1</sup> The Federal Circuit has stated that the appropriate analysis of *ejusdem generis* is as follows:

Under the rule of *ejusdem generis*, which means “of the same kind,” where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is held to refer to things of the same kind as those specified. As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* [by name] in order to be classified under the general terms.

The subject merchandise is “of the same kind” as the enumerated articles, as it used by consumers to store, organize, and protect (through insulation) food and beverages, while travelling. Additionally, coolers and the enumerated articles share physical characteristics; they are rectangular containers with hinged tops and a single compartment for storing specific items, such as food, beverages, clothes, a specific musical instrument, etc. Also, similar to the enumerated articles, when coolers are of a larger size, they usually include handles to allow for ease when traveling.

In *SGI, Inc. v. United States*, the Federal Circuit classified soft-sided vinyl insulated coolers with handles under Heading 3924 over Heading 4202,

<sup>1</sup> 69 F. 3d 495, 498 (Fed. Cir. 1995).

focusing on the involvement of food and beverages.<sup>2</sup> The Federal Circuit found that although soft-sided vinyl insulated bags were designed to protect, store, and carry a wide-range of products, including consumable goods, that the focus of the analysis should be on whether the *eo nomine* exemplars found in 4202 carried food and beverages.<sup>3</sup> At the time of SGI, there were no such examples, however, the second part of 4202 heading now includes “insulated food or beverage bags.”<sup>4</sup> Additionally, the Federal Circuit also relied on the EN to Heading 3924, which specifically mentioned “luncheon boxes” as an example of “other household articles.”<sup>5</sup> The EN to Heading 3924 no longer includes this example.

Furthermore, since the merchandise is classifiable in heading 4202 as a container, it cannot be classified in Chapter 39.

The merchandise is not classifiable as furniture in heading 9403. The courts have construed “furniture” to mean articles “for the use, convenience, and comfort of the house dweller and not subsidiary articles for ornamentation alone.”<sup>6</sup> Furthermore, the courts have distinguished “furniture” from articles that are “subsidiary adjuncts and appendages designed for the ornamentation of a dwelling or business place, or which are of comparatively minor importance so far as use, comfort, and convenience are concerned.”<sup>7</sup>

Although a cooler is a movable article with a utilitarian purpose, as it is useful to those travelling with food and beverages, it lacks the characteristics of furniture found as examples in Chapter 94 and is not likely to equip a private dwelling. It may be stored in a private dwelling, but it would serve its purpose outside of the dwelling—this is especially illustrated by the coolers that include drain plugs, which would allow users to drain melted ice. Additionally, it is not used for comfort and convenience in the home.

We note that the merchandise in Ruling NY R01732, which classified a cooler under 9403, is distinguishable. In that ruling the container was described as follows:

[M]ade of a steel container that mounts to a steel leg structure with rolling plastic castors attached to the bottom of the four legs. The container has a lid that hinges in the middle allowing consumers access from two sides of the container. Both the steel container and lid are insulated with Styrofoam. It can be used both indoors and outdoors to keep beverages cold by placing ice within.

The merchandise in R01732 is more akin to furniture and dissimilar to the plastic coolers, as it can be utilized indoors, includes legs, and is made of steel. This product can be displayed in the house or outside as furniture and serves a utilitarian purpose, unlike the plastic coolers, which tend to be stored in a private dwelling, office, etc., until needed. Rigid plastic coolers cannot be classified under 9403 as furniture.

<sup>2</sup> 122 F.3d 1468, 1472–1473 (Fed. Cir. 1997)

<sup>3</sup> *Id.* at 1470.

<sup>4</sup> See generally *Mitsubishi Int'l Corp. v. United States*, 182 F.3d 884, 886 (Fed. Cir. 1999) (a previous specificity analysis does not apply to classifications made under differing language of a more recently enacted HTSUS.)

<sup>5</sup> 122 F.3d at 1473.

<sup>6</sup> *Pomeroy Collection, Ltd. v. United States*, 893 F. Supp. 2d 1269, 1284 (Ct. Int'l Trade 2013) (citing *Furniture Import Corp. v. United States*, 56 Cust. Ct. 125, 133, C.D. 2619 (1966)).

<sup>7</sup> *Id.*

In the comment we received, the commenter proposed that the coolers should be classified under subheading 3924.10.4000, HTSUS, which provides for “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Tableware and kitchenware: Other.” In particular, the commenter claimed that coolers have a specific purpose, to store food, which is inconsistent with the articles enumerated in heading 4202. The comment also asserts that the coolers are not primarily used to store, organize, and protect items while traveling.

In support of its argument, the commenter relied on *Otter Products, LLC v. United States*, 834 F.3d 1369 (Fed. Cir. 2016), in which the Federal Circuit held that plastic phone cases/covers were not “similar containers” to the exemplars in heading 4202 because they were not containers and they did not organize (“only hold one electronic device”), store (“devices remain fully functional” [and not] “set aside” for future use), and carry (“add nothing to the carrying capability that the electronic device standing alone, would not already have”).

Unlike the phone cases in *Otter Products*, rigid coolers are containers which can organize, store, and carry (include handles) several items for future use. Additionally, the coolers also protect the items stored through insulation. Therefore, we are not persuaded by the commenter’s assertion that the coolers are not “similar containers” to the exemplars in heading 4202. Having considered the submitted comment, CBP finds that the subject rigid plastic coolers are classified under subheading 4202.12.2120, HTSUS.

#### **HOLDING:**

By application of GRI 1, and in the case of the merchandise described in HQ 085323, by GRI 3(b), the subject rigid plastic coolers, are classified in heading 4202, HTSUS, specifically in subheading 4202.12.2120, HTSUS, which provides for: “Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers: With outer surface of plastics or of textile materials: With outer surface of plastics: Trunks, suitcases, vanity cases and similar containers: Structured, rigid on all sides.” The 2020 column one general rate of duty for subheading 4202.12.2120, HTSUS, is 20% *ad valorem*.

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

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

New York Ruling Letter N285560, dated May 2, 2017, is hereby MODIFIED in accordance with the above analysis.

Headquarters Ruling Letter 085323, dated September 14, 1984, and New York Ruling Letters N024773, dated April 11, 2008, N259674, dated December 12, 2014, N262814, dated April 9, 2015, N263691, dated April 29, 2015, and N276904, dated July 22, 2016, are hereby REVOKED in accordance with the above analysis.

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

*Sincerely,  
for*

CRAIG T. CLARK,  
*Director*

*Commercial and Trade Facilitation Division*

- CC: Melinie Prosk  
Bill White, Inc.  
5959 West Century Blvd., Suite 1422  
Los Angeles, CA 90045-6589
- CC: James L.K. Dahlberg  
Big Chili Coolers  
77-6238 C Mamalahoa Highway  
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- CC: Matthew J. Basile  
Vice President  
Star Asia Customs Trade & Security, Inc.  
208 Church Street  
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- CC: Cathy Chafin, President  
Waters Shipping Company  
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- CC: Lisa M. Madrid  
Import Manager  
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550 E. Devon Avenue, Suite 100  
Itasca, IL 60143
- CC: Chris Kuehler  
Director  
Russel A. Farrow (U.S.) Inc.  
431 Isom Road, Suite 107  
San Antonio, TX 78216



**19 CFR PART 177**

**REVOCAION OF ONE RULING LETTER AND  
REVOCAION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF NOTEBOOKS WITH GEL  
PENS**

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

**ACTION:** Notice of revocation of one ruling letter, and of revocation of treatment relating to the tariff classification of notebooks with gel pens.

**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 one ruling letter concerning tariff classification of notebooks with gels pens 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. 54, No. 22, on June 10, 2020. No comment was received in response to that notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 10, 2021.

**FOR FURTHER INFORMATION CONTACT:** Marina Mekheil, Chemical, Petroleum, Metals & Miscellaneous Branch, Regulations and Rulings, Office of Trade, at (202) 325–0974

**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. 54, No. 22, on June 10, 2020, proposing to revoke one ruling letter pertaining to the tariff classification of notebooks with gen. 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") N306048, dated September 24, 2019, CBP classified a notebook with gel pen in heading 4820, HTSUS, specifically in subheading 4820.10.4000, HTSUS, which provides for "Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles: Other." CBP has reviewed NY N306048 and has determined the ruling letter to be in error. It is now CBP's position that the notebook with gel pen is properly classified, in subheading 4820.10.2060, HTSUS, which provides for "Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles, exercise books, blotting pads, binders (looseleaf or other), folders, file covers, manifold business forms, interleaved carbon set: Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles: Diaries, notebooks and address books, bound; memorandum pads, letter pads and similar articles: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking N306048 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H309572, set forth as Attachment B 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: August 5, 2020

*for*  
CRAIG T. CLARK,  
*Director*  
*Commercial and Trade Facilitation Division*

HQ H309572

August 5, 2020

OT:RR:CTF:CPMM H309572MMM

ATEGORY: Classification

TARIFF NO.: 4820.10.2060, 9903.88.03

MS. CARRIE VANDERHOFF

SANTOKI, LLC.

1100 N. OPDYKE RD. SUITE 200

AUBURN HILLS, MI 48326

RE: Revocation of NY N306048; Classification of LEGO Notebook with Gel Pen from China

DEAR MS. VANDERHOFF,

This is in reference to the New York Ruling Letter (NY) N306048, issued to you by U.S. Customs and Border Protection (CBP) on September 24, 2019, concerning classification of a LEGO notebook with a gel pen from China under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed your ruling, and determined that it is incorrect, and for the reasons set forth below, are revoking your ruling.

**FACTS:**

In your ruling NY N306048, CBP stated as follows in reference to the subject merchandise, a LEGO Locking Notebook & Gel Pen; Blue:

This item is a 6.2" x 6.2", 352 page notebook in various colors that resembles a 2" x 2" LEGO brick. The notebook has an embedded LEGO brick located in the back inside cover with a LEGO gel pen attached by the gel pens' embedded LEGO brick.

CBP classified the merchandise in subheading 4820.10.4000.

**ISSUE:**

Whether the LEGO notebook with gel pen are classified in subheading 4820.10.2060, HTSUS, as a bound notebook, or subheading 4820.10.4000, HTSUS as "Other".

**LAW AND ANALYSIS:**

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. GRI 2(a) provides, in relevant part, that "[a]ny 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 articles has the essential character of the complete or finished article.”

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The 2020 HTSUS provisions under consideration are as follows:

4820:	Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles, exercise books, blotting pads, binders (looseleaf or other), folders, file covers, manifold business forms, interleaved carbon sets and other articles of stationery, of paper or paperboard; albums for samples or for collections and book covers (including cover boards and book jackets) of paper or paperboard:
4820.10	Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles:
4820.10.20	Diaries, notebooks and address books, bound; memorandum pads, letter pads and similar articles
4820.10.2060	Other...
4820.10.4000	Other...
9608:	Ball point pens; felt tipped and other porous-tipped pens and markers; fountain pens, stylograph pens and other pens; duplicating styli; propelling or sliding pencils (for example, mechanical pencils); pen-holders, pencil-holders and similar holders; parts (including caps and clips) of the foregoing articles, other than those of heading 9609:

The EN (X), to GRI 3(b) provides that the term “goods put up in sets for retail sale” refers to goods that:

- (a) Consist of at least two different articles which are *prima facie* classifiable in different headings;
- (b) Consist of products or articles put together to meet a particular need or carry out a specific activity; and
- (c) Are put up in a manner suitable for sale directly to users without repacking (e.g. in boxes or cases or on boards).

The subject merchandise consists of two different articles, the notebook and the gel pen, which are *prima facie* classifiable in different headings, 4820, HTSUS and 9608, HTSUS. They are also used together to carry out a specific activity (take notes, draw, etc.), and are put up in a manner suitable for sale directly to users without repacking.

The subject merchandise is a “good put up in a set for retail sale.” According to GRI 3(b), goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character. Although the GRIs do not provide a definition of “essential character,” EN (VIII) of GRI 3(b) provides guidance. According to this EN, the essential character may be deter-

mined 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.

It is well-established that a determination as to “essential character” is driven by the particular facts of the case at hand.<sup>1</sup> Essential character has traditionally been understood as “that which is indispensable to the structure, core or condition of the article, i.e., what it is” and as “the most outstanding and distinctive characteristic of the article.”<sup>2</sup> The most distinctive characteristic of the set is the notebook; the notebook makes up the bulk and weight of the set. Additionally, because the gel pens are packaged on the inside of the notebook and hidden from the consumer, the notebook is the indispensable and distinctive characteristic of the article. The set, in its entirety, will therefore be classified in the provision applicable to the notebook.

There is no dispute that the subject merchandise is properly classified in heading 4820, HTSUS. Further, there is no dispute it is classified in subheading 4820.10 as “Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles.” Therefore, CBP’s analysis turns to whether the subject notebook is classified at the 8-digit level under subheading 4820.10.20, HTSUS, which provides for “Diaries, notebooks and address books, bound; memorandum pads, letter pads and similar articles” or under subheading 4820.10.40, HTSUS, as “Other.” The subject merchandise is a bound notebook and is classified at the 8-digit level under subheading 4820.10.20, HTSUS.

The LEGO notebook and gel pen is classified in subheading 4820.10.2060.<sup>3</sup>

## **HOLDING:**

By application of GRIs 1, 3(b), and 6, the LEGO notebook and gel pen are classified in heading 4820, HTSUS, specifically in subheading 4820.10.2060, HTSUS, which provides for: “Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles, exercise books, blotting pads, binders (looseleaf or other), folders, file covers, manifold business forms, interleaved carbon set: Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles: Diaries, notebooks and address books, bound; memorandum pads, letter pads and similar articles: Other.” The 2020 column one general rate of duty for subheading 4820.10.2060, HTSUS, is free.

Pursuant to U.S. Note 20 to Subchapter III, Chapter 99, HTSUS, products of China classified under subheading 4820.10.2060, HTSUS, unless specifically excluded, are subject to an additional 25 percent *ad valorem* rate of duty. At the time of importation, you must report the Chapter 99 subheading, i.e., 9903.88.03, in addition to subheading 4820.10.2060, HTSUS, listed above.

The HTSUS is subject to periodic amendment so you should exercise reasonable care in monitoring the status of goods covered by the Note cited above and the applicable Chapter 99 subheading. For background informa-

<sup>1</sup> See, e.g., *Alcan Food Packaging (Shelbyville) v. United States*, 771 F.3d 1364, 1366 (Fed. Cir. 2014) (“The ‘essential character’ of merchandise is a fact-intensive issue.”); see also EN VIII to GRI 3(b) (“The factor which determines essential character will vary as between different kinds of goods.”).

<sup>2</sup> *Structural Indus. v. United States*, 360 F. Supp. 2d 1330, 1336 (Ct. Int’l Trade 2005).

<sup>3</sup> [3]

tion regarding the trade remedy initiated pursuant to Section 301 of the Trade Act of 1974, you may refer to the relevant parts of the USTR and CBP websites, which are available at <https://ustr.gov/issue-areas/enforcement/section-301-investigations/tariff-actions> and <https://www.cbp.gov/trade/remedies/301-certain-products-china> respectively.

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

**EFFECT ON OTHER RULINGS**

New York Ruling Letter N306048, dated September 24, 2019, is hereby REVOKED in accordance with the above analysis.

*Sincerely,*  
*for*

CRAIG T. CLARK,  
*Director*

*Commercial and Trade Facilitation Division*

## 19 CFR PART 177

### REVOCATION OF TWO RULING LETTERS AND MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF MACHINE COVERS

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

**ACTION:** Notice of revocation of two ruling letters and modification of one ruling letter and revocation of treatment relating to the tariff classification of machine covers.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (“Customs Modernization”) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) is revoking two ruling letters and modifying one ruling letter concerning the tariff classification of machine covers 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. 54, No. 34, on September 2, 2020. No comments were received in response to that notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 10, 2021.

**FOR FURTHER INFORMATION CONTACT:** Parisa J. Ghazi, Food, Textiles & Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0272.

#### 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. 54, No. 34, on September 2, 2020, proposing to revoke two ruling letters and modify one ruling letter pertaining to the tariff classification of machine covers. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In Headquarters Ruling Letter ("HQ") 966911 and New York Ruling Letter ("NY") N051743, CBP classified machine covers in heading 9019, HTSUS, specifically in subheading 9019.10.20, HTSUS, which provides for "Mechano-therapy appliances; massage apparatus; psychological aptitude-testing apparatus; ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus; parts and accessories thereof: Mechano-therapy appliances; massage apparatus; psychological aptitude-testing apparatus; parts and accessories thereof: Mechano-therapy appliances and massage apparatus; parts and accessories thereof." CBP has reviewed HQ 966911 and NY N051743 and has determined the ruling letters to be in error. It is now CBP's position that the machine covers in HQ 966911 and NY N051743 are properly classified in heading 6307, HTSUS, specifically in subheading 6307.90.98, HTSUS, which provides for "Other made up articles, including dress patterns: Other: Other: Other." CBP is also modifying HQ H283893 to correct the inaccurate description of HQ 966911.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking HQ 966911 and NY N051743, and modifying HQ H283893, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H308383, 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: October 28, 2020

*For*  
CRAIG T. CLARK,  
*Director*  
*Commercial and Trade Facilitation Division*

*Attachment*

HQ H308383

October 28, 2020

OT:RR:CTF:FTM H308383 PJG

CATEGORY: Classification

TARIFF NO.: 6307.90.98

MR. ROBERT LUM

MODERN TECHNOLOGIES GROUP, INC.

#1 MTG WAY @ REEVES STATION ROAD

MEDFORD, NEW JERSEY 08055

RE: Revocation of HQ 966911 and NY N051743; Modification of HQ H283893; tariff classification of machine covers

DEAR MR. LUM:

On April 1, 2004, U.S. Customs and Border Protection (“CBP”) issued Headquarters Ruling Letter (“HQ”) 966911 to you. The ruling pertains to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”) of disposable fleece covers for the Danniflex (CPM 460) machine. We have reviewed HQ 966911 and determined it to be in error with respect to the classification of the merchandise. Accordingly, HQ 966911 is revoked.

Furthermore, CBP has reviewed New York Ruling Letter (“NY”) N051743, dated February 20, 2009, and has determined it to be in error as well. Accordingly, NY N051743 is also revoked. Finally, CBP has reviewed HQ H283893, dated November 15, 2019, and has determined it to be inaccurate with respect to the description of the merchandise in HQ 966911.

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. No. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed action was published on September 2, 2020, in Volume 54, Number 34, of the *Customs Bulletin*. No comments were received in response to this notice.

**FACTS:**

In HQ 966911, CBP described the disposable fleece covers for the Danniflex (CPM 460) machine as follows:

The merchandise at issue is 100 percent knitted polyester polar fleece covers used to cover the frame of a machine called the Danniflex (CPM 460), a mechano-therapy appliance. The machine is used in hospitals and is a passive motion exerciser for simultaneously flexing the hip and knee joints of a human leg. The cover is placed on the hard pieces of the machine that the patient rests on to prevent sores, friction burns, etc. Hook and loop straps secure the pads to the machine. The fleece covers are disposed of after each patient’s treatment on the machine. The covers are not an integral or necessary part of the machine without which the machine would not operate.

CBP classified the merchandise in heading 9019, HTSUS, because it determined that the merchandise is an accessory to the Danniflex (CPM 460) machine. Specifically, CBP classified the disposable fleece covers in subheading 9019.10.2010, HTSUSA, which provides for “Mechano-therapy appliances; massage apparatus; psychological aptitude-testing apparatus; ozone

therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus; parts and accessories thereof: Mechano-therapy appliances; massage apparatus; psychological aptitude-testing apparatus; parts and accessories thereof: Mechano-therapy appliances and massage apparatus; parts and accessories thereof: Mechano-therapy appliances.”<sup>1</sup>

#### ISSUE:

What is the proper classification under the HTSUS for the disposable fleece covers for the Danniflex (CPM 460) machine?

#### LAW AND ANALYSIS:

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

The 2020 HTSUS provisions under consideration are as follows:

**5911** Textile products and articles, for technical uses, specified in note 7 to this chapter:

**6307** Other made up articles, including dress patterns:

**9019** Mechano-therapy appliances; massage apparatus; psychological aptitude-testing apparatus; ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus; parts and accessories thereof:

Note 7 to Section XI, HTSUS, states, in relevant part, as follows:

For the purposes of this section, the expression “made up” means:

\* \* \*

(b) Produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, tablecloths, scarf squares, blankets);

Note 7(b) to Chapter 59, HTSUS, provides as follows:

Heading 5911 applies to the following goods, which do not fall in any other heading of section XI:

\* \* \*

(b) Textile articles (other than those of headings 5908 to 5910) of a kind used for technical purposes (for example, textile fabrics and felts, endless or fitted with linking devices, of a kind used in papermaking or similar machines (for example, for pulp or asbestos-cement), gaskets, washers, polishing discs and other machinery parts).

\* \* \*

---

<sup>1</sup> While CBP determined that the subject merchandise was an accessory, it erroneously classified it as a mechano-therapy appliance. As an accessory to the Danniflex (CPM 460) machine, it should have been classified in subheading 9019.10.2090, HTSUSA.

Note 1 to Chapter 63, HTSUS, provides that “Subchapter 1 applies only to made up articles, of any textile fabric.”

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the “official interpretation of the Harmonized System” at the international level. *See* 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989). While neither legally binding nor dispositive, the ENs “provide a commentary on the scope of each heading” of the HTSUS and are “generally indicative of [the] proper interpretation” of these headings. *See id.*

The EN to 59.11(B) provides, in relevant part, as follows:

**(B) TEXTILE ARTICLES OF A KIND USED FOR TECHNICAL PURPOSES**

All textile articles of a kind used for technical purposes (**other than** those of **headings 59.08 to 59.10**) are classified in this heading and **not** elsewhere in Section XI (see Note 7 (b) to the Chapter); for example:

- (1) Any of the fabrics of (A) above which have been made up (cut to shape, assembled by sewing, etc.), for example, straining cloths for oil presses made by assembly of several pieces of fabric; bolting cloth cut to shape and trimmed with tapes or furnished with metal eyelets or cloth mounted on a frame for use in screen printing.
- (2) Textile fabrics and felts, endless or fitted with linking devices, of a kind used in paper-making or similar machines (for example, for pulp or asbestos-cement) (**excluding** machinery belts of **heading 59.10**).
- (3) Articles formed of linked monofilament yarn spirals and having similar uses to the textile fabrics and felts of a kind used in paper-making or similar machines referred to in (2) above.
- (4) Gaskets and diaphragms for pumps, motors, etc., and washers (**excluding** those of **heading 84.84**).
- (5) Discs, sleeves and pads for shoe polishing and other machines.
- (6) Textile bags for oil presses.
- (7) Cords cut to length, with knots, loops, or metal or glass eyelets, for use on Jacquard or other looms.
- (8) Loom pickers.
- (9) Bags for vacuum cleaners, filter bags for air filtration plant, oil filters for engines, etc.

The textile articles of this heading may incorporate accessories in other material **provided** the articles remain essentially articles of textile.

The EN to 63.07 states in pertinent part, the following:

This heading covers made up articles of any textile material which are **not included** more specifically in other headings of Section XI or elsewhere in the Nomenclature.

It includes, in particular:

\* \* \*

- (7) Loose covers for motor-cars, machines, suitcases, tennis rackets, etc.

\* \* \*

The subject merchandise is not classifiable in Chapter 59, HTSUS, specifically, in heading 5911, HTSUS, which provides for “Textile products and articles, for technical uses, specified in note 7 to this chapter,” because the merchandise is not of a kind used for “technical uses” and it is classifiable in another heading of Section XI, HTSUS. See Note 7(b) to Section XI, HTSUS. The term “technical purposes,” which is used in Note 7(b) to Chapter 59, HTSUS, and “technical uses” are not defined by the HTSUS, however, the subject merchandise is not similar to any of the exemplars provided in Note 7(b) to Chapter 59, HTSUS, or the exemplars provided in EN 59.11(B).

In *Bauerhin Techs. Ltd. Partnership. v. United States*, 110 F.3d 774 (Fed. Cir. 1997), the United States Court of Appeals for the Federal Circuit (“CAFC”) identified two distinct lines of cases defining the word “part.” Consistent with *United States v. Willoughby Camera Stores, Inc.*, 21 C.C.P.A. 322, 324 (1933) (citations omitted), one line of cases holds that a part of an article “is something necessary to the completion of that article. . . . [W]ithout which the article to which it is to be joined, could not function as such article.” The other line of cases evolved from *United States v. Pompeo*, 43 C.C.P.A. 9, 14 (1955), which held that a device may be a part of an article even though its use is optional, and the article will function without it, if the device is dedicated for use upon the article, and, once installed, the article will not operate without it. The definition of “parts” was also discussed in *Rollerblade, Inc. v. United States*, 282 F.3d 1349, 1353 (Fed. Cir. 2002), wherein the CAFC defined parts as “an essential element or constituent; integral portion which can be separated, replaced, etc.” *Id.* at 1353 (citing Webster’s New World Dictionary 984 (3d College Ed. 1988) (holding that inline roller skating protective gear is not an accessory because it “does not directly act on” or “contact” the roller skates)). This line of reasoning has been applied in previous CBP rulings. See *e.g.*, HQ H255093 (Jan. 14, 2015); HQ H238494 (June 26, 2014); HQ H027028 (Aug. 19, 2008).

Insofar as the term “accessory” is concerned, the Court of International Trade (“CIT”) has previously referred to the common meaning of the term because the term is not defined by the HTSUS or its legislative history. See *Rollerblade, Inc. v. United States*, 24 Ct. Int’l Trade 812, 815–819 (2000), *aff’d*, 282 F.3d 1349 (Fed. Cir. 2002)). We also employ the common and commercial meanings of the term “accessory”, as the CIT did in *Rollerblade, Inc.*, wherein the court derived from various dictionaries “that an accessory must relate directly to the thing accessorized.” See *Rollerblade, Inc.*, 24 Ct. Int’l Trade at 817. In *Rollerblade, Inc.*, the CAFC noted that “an ‘accessory’ must bear a direct relationship to the primary article that it accessorizes.” 282 F.3d at 1352. In support of its finding that the protective gear was not an accessory to roller skates, the CAFC also noted that the “protective gear does not directly affect the skates’ operation.” *Id.* At 1353.

The subject merchandise in this case is not a “part” under any of the tests provided in the judicial decisions described above. It is not a “part” under the *Willoughby* test because the disposable fleece cover is not necessary to the completion of the Danniflex (CPM 460) machine and the machine can function without it. It is also not a “part” under the *Pompeo* test because even after the disposable fleece cover is attached to the machine, the machine can function without the cover. The subject merchandise is not a “part” because it is not essential, constituent or integral to the Danniflex (CPM 460) machine. See *Rollerblade, Inc.*, 282 F.3d at 1353 (the CAFC found that the protective gear was not a part to the roller skates because they did not

“attach to or contact” the roller skates, they were “not necessary to make the skates ... work”, nor were “they necessary to make the skates ... work efficiently or safely.”).

The subject merchandise is also not an “accessory” of the Danniflex (CPM 460) machine. Like the protective gear in *Rollerblade, Inc.*, the disposable fleece covers do not directly affect the machine’s operation nor do they contribute to the machine’s effectiveness. See *Rollerblade, Inc.*, 282 F.3d at 1353; HQ 960950 (Jan. 16, 1998) (stating that “[a]ccessories are of secondary importance,” but must “somehow contribute to the effectiveness of the principal article”). Instead, the instant fleece cover is placed on the hard pieces of the machine that the patient rests on to prevent sores, friction burns, etc.

We note that, unlike the protective gear in *Rollerblade, Inc.*, which was never in contact with roller skates, the subject fleece cover does come in contact with the Danniflex (CPM 460) machine while the machine is in use. However, while the fleece cover comes in contact with the machine while it is in use, it does not have a direct relationship to the operation of the machine. As mentioned above, it is used to prevent sores, friction burns, etc. Accordingly, the subject merchandise is neither a “part” nor an “accessory” under heading 9019, HTSUS.

This is similar to HQ H304940, dated December 10, 2019, wherein CBP considered the classification of two stethoscope covers. In that ruling, CBP considered the CIT decision in *Rollerblade, Inc. v. United States*, and determined that “[i]n applying the court’s standard to the instant facts, we must examine whether the subject covers directly contribute to the effectiveness of a stethoscope’s function.” CBP determined that the stethoscope covers “do not directly add to or enhance a stethoscope’s function of detecting sounds in the body. Therefore, the subject stethoscope covers do not rise to the level of an accessory of a medical instrument or appliance of heading 9018, HTSUS.” Similarly, in HQ 966911, the disposable fleece covers for the Danniflex (CPM 460) machine do not contribute to the functioning of the mechano-therapy appliance that it covers. In HQ 966911, CBP specifically states that “[t]he covers are not an integral or necessary part of the machine without which the machine would not operate.” Accordingly, the disposable fleece covers are not an accessory to the Danniflex (CPM 460) machine and therefore, are not classifiable in heading 9019, HTSUS.

The subject merchandise is a “made up” article of textile fabric within the meaning of “made up” provided for in Note 7(b) of Section XI, HTSUS, and the requirement of Note 1 to Chapter 63, HTSUS. Note 7(b) to Section XI, HTSUS, states that “made up” articles are “[p]roduced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, tablecloths, scarf squares, blankets).” The subject merchandise is imported as finished articles that are ready to be used as covers for the machines without sewing or other working, and they are made of open celled polyester-polyurethane foam covered with polyester fabric with loop finish, polyester hook/loop, and elastic. Therefore, the subject merchandise is classified in heading 6307, HTSUS, and specifically under subheading 6307.90.98, HTSUS, which provides for “Other made up articles, including dress patterns: Other: Other: Other.”

**HOLDING:**

Under the authority of GRIs 1 and 6 the disposable fleece covers for the Danniflex (CPM 460) machine are classified under heading 6307, HTSUS, and specifically in subheading 6307.90.98, HTSUS, which provides for “Other made up articles, including dress patterns: Other: Other: Other.” The 2020 column one, general rate of duty is 7 percent *ad valorem*.

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

**EFFECT ON OTHER RULINGS:**

HQ 966911, dated April 1, 2004, is REVOKED.

NY N051743, dated February 20, 2009, is REVOKED.

HQ H283893, dated November 15, 2019, is MODIFIED only insofar as to remove the inaccurate description of HQ 966911. Specifically, it is modified to remove the following language “is integral to the purpose and function of the machine as used for exercise. However,” and replace it with the following language “like.”

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

*For*

CRAIG T. CLARK,

*Director*

*Commercial and Trade Facilitation Division*

**AGENCY INFORMATION COLLECTION ACTIVITIES:****Automated Clearinghouse**

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

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

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

**DATES:** Comments are encouraged and must be submitted no later than November 23, 2020 to be assured of consideration.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of

publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). This particular information collection can be found by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

**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](mailto:CBP_PRA@cbp.dhs.gov). Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at <https://www.cbp.gov/>.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (85 FR 42419) on July 14, 2020, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

### **Overview of This Information Collection**

**Title:** Automated Clearinghouse.

**OMB Number:** 1651–0078.

**Form Number:** CBP Form 400.

**Current Actions:** Extension.

**Type of Review:** Extension without change.

**Affected Public:** Companies enrolled in the Automated Broker Interface (ABI).

**Abstract:** The Automated Clearinghouse (ACH) allows participants in the Automated Broker Interface (ABI) to transmit daily statements, deferred tax, and bill payments electronically through a financial institution directly to a CBP account. ACH debit allows the payer to exercise more control over the payment process. In order to participate in ACH debit, filers must complete CBP Form 400, *ACH Application*. Participants also use this form to notify CBP of changes to bank information or contact information. The ACH procedure is authorized by 19 U.S.C. 58a–58c and 19 U.S.C. 66, and set forth in 19 CFR 24.25. CBP Form 400 is accessible at <https://www.cbp.gov/newsroom/publications/forms>, and is not being updated at this time.

**Estimated Number of Respondents:** 1,443.

**Estimated Number of Annual Responses per Respondent:** 2.

**Estimated Number of Total Annual Responses:** 2,886.

**Estimated Time per Response:** 5 minutes (0.083 hours)

**Estimated Total Annual Burden Hours:** 240.

Dated: October 19, 2020.

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

[Published in the Federal Register, October 23, 2020 (85 FR 67556)]

## AGENCY INFORMATION COLLECTION ACTIVITIES:

### Documents Required Aboard Private Aircraft

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

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

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act

of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than November 25, 2020) to be assured of consideration.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

**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](mailto:CBP_PRA@cbp.dhs.gov). Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at <https://www.cbp.gov/>.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (85 FR 49390) on August 13, 2020, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of informa-

tion 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:** Documents Required Aboard Private Aircraft.

**OMB Number:** 1651–0058.

**Form Number:** None.

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

**Type of Review:** Extension (without change).

**Affected Public:** Individuals.

**Abstract:** In accordance with 19 CFR 122.27(c), a commander of a private aircraft arriving in the U.S. must present several documents to CBP officers for inspection. These documents include: (1) A pilot certificate/license; (2) a medical certificate; and (3) a certificate of registration. CBP officers use the information on these documents as part of the inspection process for private aircraft arriving from a foreign country. This presentation of information is authorized by 19 U.S.C. 1433, as amended by Public Law 99–570.

**Estimated Number of Respondents:** 120,000.

**Estimated Number of Annual Responses per Respondent:** 1.

**Estimated Number of Total Annual Responses:** 120,000.

**Estimated Time per Response:** 1 minute.

**Estimated Total Annual Burden Hours:** 1,992.

Dated: October 20, 2020.

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

[Published in the Federal Register, October 26, 2020 (85 FR 67752)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:**  
**Crew Member's Declaration**

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

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

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than November 25, 2020) to be assured of consideration.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

**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](mailto:CBP_PRA@cbp.dhs.gov). Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (85 FR 49389) on August 13, 2020, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the

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

### Overview of This Information Collection

**Title:** Crew Member's Declaration.

**OMB Number:** 1651-0021.

**Form Number:** CBP Form 5129.

**Current Actions:** CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to CBP Form 5129.

**Type of Review:** Extension (without change).

**Affected Public:** Businesses.

**Abstract:** CBP Form 5129, *Crew Member's Declaration*, is a declaration made by crew members listing all goods acquired abroad which are in his/her possession at the time of arrival in the United States. The data collected on CBP Form 5129 is used for compliance with currency reporting requirements, supplemental immigration documentation, agricultural quarantine matters, and the importation of merchandise by crew members who complete the individual declaration. This form is authorized by 19 U.S.C. 1431 and provided for by 19 CFR 4.7, 4.81, 122.83, 122.84, and 148.61-148.67. CBP Form 5129 is accessible at <https://www.cbp.gov/sites/default/files/assets/documents/2018-Dec/CBP%20Form%205129.pdf>.

**Estimated Number of Respondents:** 6,000,000.

**Estimated Number of Annual Responses per Respondent:** 1.

**Estimated Number of Total Annual Responses:** 6,000,000.

**Estimated Time per Response:** 10 minutes.

**Estimated Total Annual Burden Hours:** 996,000.

Dated: October 20, 2020.

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

[Published in the Federal Register, October 26, 2020 (85 FR 67752)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:**

**Guam-CNMI Visa Waiver Information**

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

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

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

**DATES:** Comments are encouraged and must be submitted (no later than November 27, 2020) to be assured of consideration.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

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

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (85 FR 37466) on June 16, 2020, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

### **Overview of This Information Collection**

**Title:** Guam-CNMI Visa Waiver

**OMB Number:** 1651-0109.

**Form Number:** I-736.

**Current Actions:** Renewal.

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

**Affected Public:** Individuals.

**Abstract:** Public Law 110-229 provides for certain aliens to be exempt from the nonimmigrant visa requirement if seeking entry into Guam or the Commonwealth of the Northern Mariana Islands (CNMI) as a visitor for a maximum stay of 45 days, provided that no potential threat exists to the welfare, safety, or security of the United States, or its territories, and other criteria are met. Upon arrival at the Guam or CNMI Ports-of-Entry, each applicant for admission presents a completed paper Form I-736 to CBP, which collects information about the applicant's identity and travel documents.

Several elements will be added to the Form I-736: The foreign passport type, social media identifier, valid email address, and social

media provider/ platform. Adding these data elements will enhance the existing vetting process and provide CBP additional information to determine travelers' admissibility to enter Guam or the CNMI under the Guam-CNMI Visa Waiver Program. CBP intends to migrate from the paper Form I-736 process to a mandatory automated process via rulemaking.

*Type of Collection:* CBP Form I-736.

**Estimated Number of Respondents:** 1,560,000.

**Estimated Number of Annual Responses per Respondent:** 1.

**Estimated Number of Total Annual Responses:** 1,560,000.

**Estimated Time per Response:** 19 minutes (0.316 hours).

**Estimated Total Annual Burden Hours:** 492,960.

Dated: October 23, 2020.

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

[Published in the Federal Register, October 28, 2020 (85 FR 68354)]

# U.S. Court of International Trade

Slip Op. 20–150

SGS SPORTS INC., Plaintiff, v. UNITED STATES, Defendant,

Before: Jennifer Choe-Groves, Judge  
Court No. 18–00128

## **ORDER GRANTING PLAINTIFF’S MOTION FOR REHEARING**

Upon consideration of Plaintiff SGS Sports Inc.’s Motion For Rehearing, ECF No. 41, Sept. 8, 2020 (“Plaintiff’s Motion”), and all other papers and proceedings in this action, it is hereby

**ORDERED** that Plaintiff’s Motion is granted; and it is further

**ORDERED** that Slip Opinion 20–113, ECF No. 39, and the accompanying Judgment, ECF No. 40, are set aside; and it is further

**ORDERED** that this matter is set for trial on a date to be scheduled by the court.

Dated: October 22, 2020

New York, New York

*/s/ Jennifer Choe-Groves*

JENNIFER CHOE-GROVES, JUDGE

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*Customs Bulletin and Decisions*  
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## *U.S. Court of International Trade*

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