U.S. Customs and Border Protection

PROPOSED REVOCATION OF ELEVEN RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF NON-SLIP GRIP PADS

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

ACTION: Notice of proposed revocation of eleven ruling letters, and proposed revocation of treatment relating to the tariff classification of non-slip grip pads.

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

DATE: Comments must be received on or before May 10, 2024.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Shannon L. Stillwell, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. CBP is also allowing commenters to submit electronic comments to the following email address: *1625Comments@cbp.dhs.gov*. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Arrangements to inspect submitted comments should be made in advance by calling Ms. Shannon L. Stillwell at (202) 325–0739.

FOR FURTHER INFORMATION CONTACT: Reema Bogin, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–7703.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to modify eleven ruling letters pertaining to the tariff classification of non-slip grip pads. Although in this notice, CBP is specifically referring to Headquarters Ruling Letter ("HQ") H305115, dated July 12, 2019 (Attachment A); HQ 088142, dated January 18, 1991 (Attachment B); HQ 088909, dated April 22, 1991 (Attachment C); New York Ruling Letter ("NY") PD 816479, dated December 5, 1995 (Attachment D); NY G83216, dated October 31, 2000 (Attachment E); NY H86099, dated December 14, 2001 (Attachment F); NY I83543, dated July 31, 2002 (Attachment G); NY K82162, dated January 15, 2004 (Attachment H); NY L86033, dated July 20, 2005 (Attachment I); NY N033496, dated July 18, 2008 (Attachment J); and NY N044145, dated December 4, 2008 (Attachment K), 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 eleven 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 HQ H302153, NY PD 816479, NY G83126, NY H86099, NY I83543, NY K82162, NY L86033, NY N033496, and NY N044145, CBP classified non-slip grip pads in heading 3921, HTSUS, specifically in subheading 3921.12.19, HTSUS, which provides for "other plates, sheets, film foil and strip, of plastic: cellular: of polymers of vinyl chloride: other." In HQ 088142 and HQ 088909, CBP classified non-slip grip pads in heading 3921, HTSUS, specifically in subheading 3921.12.11, HTSUS, which provides for "other plates, sheets, film foil and strip, of plastic: cellular: of polymers of vinyl chloride: products with textile components in which man-made fibers predominate by weight over any other single textile fiber: over 70 percent by weight of plastics," and in subheading 3921.12.15, HTSUS, "other plates, sheets, film foil and strip, of plastic: cellular: of polymers of vinyl chloride: products with textile components in which man-made fibers predominate by weight over any other single textile fiber: other." CBP has reviewed HQ H302153, HQ 088142, HQ 088909, NY PD 816479, NY G83126, NY H86099, NY I83543, NY K82162, NY L86033, NY N033496, and NY N044145 and has determined the ruling letters to be in error. It is now CBP's position that non-slip grip pads are properly classified, in heading 3926, HTSUS, specifically in subheading 3926.90.99, HTSUS, which provides for "other articles of plastics and articles of other materials of heading 3901 to 3914: other: other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke HQ H302153, HQ 088142, HQ 088909, NY PD 816479, NY G83126, NY H86099, NY I83543, NY K82162, NY L86033, NY N033496, and NY N044145 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H305115, set forth as Attachment L 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.

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachments

HQ H302153

July 12, 2019
OT:RR:CTF:CPMM H302153 RRB
CATEGORY: Classification
TARIFF NO.: 3921.12.1950

Victor Quintana
Import Supervisor
Mohawk Industries, Inc.
160 S. Industrial Blvd.
P.O. Box 12069
Calhoun, GA 30703

RE: Request for classification of non-slip grip pads

Dear Mr. Quintana:

This is in response to your request, dated September 28, 2018, on behalf of Aladdin Manufacturing Corp., for a binding ruling as to the classification of non-slip grip pads under the Harmonized Tariff System of the United States ("HTSUS"). Your request was received by the National Commodity Specialist Division of U.S. Customs and Border Protection ("CBP") and was forwarded to our office for review. We apologize for the delay in responding.

Our decision as to the proper classification of the subject merchandise under the HTSUS is set forth below. Descriptions of the subject merchandise are based on descriptions of the same included in your ruling request and upon our inspection of product samples.

FACTS:

Your request pertains to four styles of non-slip grip pads. The non-slip grip pads are made from one hundred percent warp knitted, polyester open mesh fabric that is visibly coated on both sides with foamed polyvinyl chloride ("PVC"). The spaces within the mesh of each of the samples vary, with the largest spaces being approximately 0.125 inches by 0.125 inches[1]. The grip pads come in the following sizes: 20 inches x 30 inches, 20 inches x 32 inches, 28 inches x 42 inches, 40 inches x 60 inches, and 56 inches x 90 inches.

These grip pads are used under rugs to add cushioning underfoot in order to reduce fatigue. They are also used for lining shelves, drawers and cabinets in the kitchen, bathroom and garage work areas.

ISSUE:

Whether the subject non-slip grip pads are classified in heading 3921, HTSUS, as "other plates, sheets, film, foil and strip, of plastics"; in heading 3926, HTSUS, as "other articles of plastics and articles of other materials of headings 3901 to 3914"; or in heading 5903, HTSUS, as "textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902."

[1] For comparison to other rulings, this is equivalent to about 3.175 mm x 3.175 mm.

LAW AND ANALYSIS:

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

The following provisions of the HTSUS are under consideration:

3921 Other plates, sheets, film, foil and strip, of plastics:

3926 Other articles of plastics and articles of other materials of headings 3901 to 3914:

5903 Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902:

* * * *

Section XI, note 1(h) excludes the following from classification under Section XI, "Textile and Textile Articles": "[w]oven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with plastics, or articles thereof, of chapter 39."

Note 2(p) to chapter 39, HTSUS, provides as follows:

> 2. This chapter does not cover:
>
> ***
>
> (p) Goods of section XI (textiles and textile articles);

Note 10 to chapter 39, HTSUS, provides as follows:

> In headings 3920 and 3921, the expression "*plates, sheets, film, foil and strip*" applies only to plates, sheets, film, foil and strip (other than those of chapter 54) and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use).

Chapter 59, note 2(a)(3) excludes the following from classification is subheading 5903, HTSUS: "[p]roducts in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of color (chapter 39)."

* * * *

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the proper classification of merchandise. It is CBP's practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–90, 54 Fed. Reg. 35127 (August 23, 1989).

Under the title "Plastics and textile combinations" in the General Notes to the ENs to chapter 39, the following products are also covered by this chapter:

> (b) Textile fabrics and nonwovens, either completely embedded in plastics or entirely coated or covered on both sides with such material, provided

> that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of colour.

The General Notes to the ENs to chapter 39 also state that "[h]eading 39.26 is a residual heading which covers articles, not elsewhere specified or included, of plastics or of materials of heading 39.01 to 39.14."

* * * *

Because note 2 to chapter 39 excludes articles of section XI (textiles and textile articles) from classification in chapter 39, the initial issue before CBP is whether the subject merchandise is a textile fabric of heading 5903, HTSUS.

To determine whether the instant merchandise is a textile fabric of heading 5903, HTSUS, we must look to the terms of note 2(a)(3) to chapter 59, which excludes products in which the textile fabric is entirely coated or covered on both sides with plastic. Here, the polyester mesh fabric is visibly coated on both sides with PVC. In addition, the EN to chapter 39 explains that textile fabrics that are entirely coated on both sides with plastic are covered under chapter 39, HTSUS. Thus, pursuant to note 2(a)(3) to chapter 53 and the EN to chapter 39, the subject merchandise is excluded from classification in chapter 59.

Turning to classification in either heading 3921 or 3926, we note that heading 3926 is a residual provision that covers articles of plastics not specified elsewhere. Thus, the subject merchandise can only be classified in heading 3926, HTSUS, if they are excluded from heading 3921, HTSUS.

Classification in heading 3921, HTSUS, depends on whether non-slip grip pads are "sheets" of plastic under the terms of the heading. The term "sheets" is not defined in the text of the HTSUS or the Explanatory Notes. When terms are not so defined, they are construed in accordance with their common and commercial meaning. *Nippon Kogasku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982).

According to the Merriam-Webster Online Dictionary, a "sheet" is "a surface or part of a surface in which it is possible to pass from any one point of it to any other without leaving the surface." *See* https://www.merriam-webster.com/dictionary/sheet (last visited May 30, 2019). The Oxford English Dictionary defines "sheet" as "a relatively thin piece of considerable breadth of a malleable, ductile, or pliable substance." *See* https://www.oed.com (last visited May 30, 2019). The MacMillan Dictionary defines "sheet" as "a thin flat piece of paper, metal, plastic, glass, etc." *See* https://www.macmillandictionary.com/us/dictionary/american/sheet (last visited May 30, 2019).

Pursuant to the Merriam-Webster dictionary definition of a sheet, the instant grip pads feature a weave tight enough that it is possible to pass from any one point of it to another point without leaving the surface. Furthermore, CBP has consistently classified similar merchandise to the non-slip grip pads in past rulings. *See* Headquarters Ruling Letter ("HQ") 088142, dated January 18, 1991 (classifying anti-slip mesh warp knit fabric that is completely encased in PVC in heading 3921); HQ 088909, dated April 22, 1991 (classifying stay put rug pad made of an open mesh warp knit fabric that is completely covered in PVC in heading 3921); New York Ruling Letter ("NY")

PD 816479, dated December 5, 1995 (classifying non-skid fabric covered in PVC in heading 3921); NY G83126, dated October 16, 2000 (classifying non-slip grip liner made of a PVC coated textile with an open-work warp knit construction in heading 3921); NY H86099, dated December 14, 2001 (classifying grip net shelf lining material consisting of an open work warp knit fabric that has been coated with PVC in heading 3921); NY I83543, dated July 31, 2002 (classifying non-skid material constructed from open mesh fabric that is coated on both sides with PVC and is used as drawer liners, non-skid rug pads, and shelf liners in heading 3921); NY K82162, dated January 15, 2004 (classifying non-skid material consisting of an open mesh fabric that is coated on both sides with PVC in heading 3921); NY L86033, dated July 20, 2005 (classifying anti-skid material consisting of an open mesh fabric coated on both sides with PVC in heading 3921); NY N033496, dated July 18, 2008 (classifying PVC coated anti-skid material composed of an open mesh fabric in heading 3921); and NY N044145, dated December 4, 2008 (classifying drawer liners composed of an open mesh fabric and encased on both sides with PVC in heading 3921). In each of these rulings, the subject merchandise was described as a non-slip/anti-skid/non-skid material composed of an open mesh fabric that was coated on both sides with PVC. Similar to the merchandise in these rulings, the subject non-slip grip pads are constructed from an open mesh fabric that is coated with PVC on both sides, creating a thin, continuous surface. Accordingly, the non-slip grip pads, which are constructed from fabric that is completed covered in PVC on both sides, are considered sheets of plastic and are properly classified in heading 3921, HTSUS.

We note that certain rulings relying on the definition of "sheeting" in *Sarne Handbags Corp. v. United States*, 100 F. Supp. 2d 1126 (CIT 2000) classify geotextile mesh material[2] and extruded polypropylene or polyethylene mesh[3] in heading 3926, HTSUS. In *Sarne*, the Court of International Trade ("CIT") defined the term "sheeting" as follows:

> the common meaning of "sheeting" is material in the form of or suitable for forming into a broad surface of something that is unusually thin, or is a material in the form of a continuous thin covering or coating.

Sarne Handbags Corp., 100 F. Supp. 2d at 1134. The definition of "sheeting" in *Sarne Handbags Corp.* is similar to the above-mentioned dictionary definitions of "sheet", which also describe a thin piece of material "in which it is possible to pass from any one point of it to any other without leaving the surface" (i.e., continuous). In HQ 965889, dated March 17, 2003, CBP relied on the *Sarne Handbags Corp.* definition in concluding that geotextile material is not classifiable in heading 3921, HTSUS:

> [t]he open spaces of the instant geotextile material are large enough that the material cannot be considered to have a "broad surface." The unusually wide spacing in the weave interrupts any sort of surface continuity that could be formed. . . .The weave is not tight enough, and the yarns are not close enough, for them to form a continuous surface. Accordingly, the

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[2] *See* HQ 965889, dated March 17, 2003 and HQ 966281, dated March 17, 2003. The Harmonized System Committee (HSC) has also classified geotextile material in heading 3926. *See* Annex G/11 to Doc. NC0510E2 (HSC/28/Nov. 2001) and Annex L/5 to Doc. NC0590B2 (HSC/29/May 2002).

[3] *See* HQ 967325, dated November 8, 2004 and HQ 967346, dated January 25, 2005.

> instant geotextile material is not a 'sheeting,' nor a sheet of plastic that is classifiable in heading 3921, HTSUSA.

In HQ 965889, the size of the open spaces in the geotextile mesh varied from 16 mm x 16 mm to 21 mm x 24 mm. Similarly, in HQ 966281, the size of the open spaces in the geotextile mesh varied from approximately 0.5 inches by 0.5 inches to 2 inches x 2 inches.

Compared to the open spaces in the geotextile mesh material in HQ 965889 and HQ 966281, and the open spaces generally found in extruded polypropylene or polyethylene mesh as in HQ 967325 and HQ 967346,[4] the spaces in the subject merchandise are noticeably smaller, as the sample with the largest sized spaces in the mesh fabric are only 0.125 inches by 0.125 inches. Accordingly, we find that these rulings, which relied on *Sarne Handbags Corp.* in finding that geotextile mesh and extruded mesh are not classified in heading 3921, are not dispositive of the classification of non-slip grip pads, which consist of a much tighter weave to form a thin, continuous surface. Thus, the non-slip grip pads are properly classified in heading 3921, HTSUS, as "[o]ther plates, sheets, film, foil and strip, of plastics."

HOLDING:

By application of GRIs 1 and 6, the instant non-slip grip pads are classified in heading 3921, HTSUS, specifically under subheading 3921.12.1950, HTSUSA (Annotated), which provides for: "[o]ther plates, sheets, film foil and strip, of plastics: [c]ellular: [o]f polymers of vinyl chloride: [c]ombined with textile materials: [o]ther: [o]ther." The column one, general rate of duty is 5.3% *ad valorem*.

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

A copy of this ruling letter should be attached to the entry documents filed at the time the goods are entered.

Sincerely,

ALLYSON R. MATTANAH,
Chief
Chemicals, Petroleum, Metals and Miscellaneous Classification Branch

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[4] HQ 967325 and HQ 967346 do not identify the size of the spaces in the open mesh of the merchandise. However, other types of extruded mesh similar to the merchandise in those rulings can be found at https://www.topzeven.com/mesh-type/extruded-mesh/?lang=en (last visited June 3, 2019) and https://www.plasticscreenmesh.com/product/extruded-plastic-mesh.htm I (last visited June 3, 2019).

HQ 088142
January 18, 1991
CLA-2 CO:R:C:T 088142 KWM
CATEGORY: Classification
TARIFF NO.: 3921.12.1100; 3921.12.1500;
3926.90.9050

Mr. Roger T. Sithithum
EIC, Inc.
3900 N. Troy Street
Chicago, Illinois 60618

RE: Magic Anti-Slip Mesh; Textile and plastic combination; Impregnated, coated, covered or laminated; Plastic; Further worked or processed.

Dear Mr. Sithithum:

We are in receipt of your letter dated September 19, 1990, requesting binding classification ruling for Magic Anti-Slip Mesh. Your letter and samples of the goods were forwarded to this office for a response.

FACTS:

Four different samples were included with your request. They are referred to collectively in the request as "Magic Anti-Slip Mesh." They have been labeled A, B, C and D for our purposes, and are described as follows:

(1) Samples A, B & C - Constructed of varying degrees of open mesh warp knit fabric of man-made fibers. The yarns of each fabric are completely encased in cellular PVC plastics. Samples A & B are of a similar size mesh, the primary difference being the amount of plastic applied. Sample C is a more tightly closed mesh.

(2) Sample D - Sample D is a sheet of ready to use cut-out shapes, made from a textile fabric covered on both sides by foamed cellular plastic. One surface has an adhesive coating with paper backing. The sheet is packaged and labeled "Anti-Slip Protector."

The goods are intended to be used on the bottom of lamps, furniture, and other items to prevent slipping, scratching, etc.

Your request further indicates that the mesh is available in "various sizes and thicknesses" depending on usage. The pre-cut cellular foam is presumably imported and marketed as packaged. The goods will be produced in Taiwan.

ISSUE:

How are these goods classified under the Harmonized Tariff Schedule of the United States Annotated?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI's). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, 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 basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may be applied, taken in order.

SAMPLES A, B & C

Subheading 5603.00, HTSUSA, provides for:

5603	Nonwovens, whether or not impregnated, coated, covered or laminated:
5603.00	Floor covering underlays:

This heading would appear to classify the instant goods, but for the following exclusion of Legal Note 3(b) to Chapter 56, HTSUSA:

> 3. Headings 5602 and 5603 cover respectively, felt and nonwovens, impregnated, coated, covered or laminated with plastics or rubber whatever the nature of these materials (compact or cellular).
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> 5603 also includes nonwovens in which the plastics or rubber forms the bonding substance.
>
> Headings 5602 and 5603 do not, however, cover:
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> . . .
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> (b) Nonwovens, either completely embedded in plastics or rubber, or entirely coated or covered on both sides with such materials, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of color (Chapter 39 or 40);
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> . . .

(Emphasis added). The Legal Notes to Chapter 59, HTSUSA, concerning textile fabrics (i.e., woven materials) contain a similar exclusion. The intent is to classify those products "embedded" or "completely covered" with plastics under the headings which provide for plastics or articles of plastics because, for classification purposes, they have acquired the characteristics of the plastics. Examples of such products are present in this case, and they are excluded from classification in heading 5603, HTSUSA.

Heading 3918, HTSUSA provides for "floor coverings." We believe that the mesh in this case is not properly considered a "floor covering." While this product may cover the floor, the goods encompassed by heading 3918, HTSUSA, are those which have an exposed surface with which pedestrian and other traffic has contact. It does not apply to underlays such as these. In Headquarters Ruling Letter (HRL) 087649, we stated:

> Although the polyurethane foam underlay material covers flooring when used as carpet underlay, we do not believe it falls within the common meaning of floor coverings. Floor coverings are commonly thought to be articles such as carpets, rugs, mats, etc. These are articles which cover a floor area and which are open to view. Carpet underlay, on the other hand, is not seen, but is under the perceived floor covering, i.e. the carpet. Therefore, we do not believe carpet underlay is encompassed within the common meaning of floor covering.

We continue to adhere to this view. Having found that the merchandise is not a floor covering, we believe that the mesh imported as piece goods is classified as a plate or sheet of plastic of heading 3921, HTSUSA. Subheading 3921.12 provides for:

3921	Other plates, sheets, film, foil and strip of plastics:
3921.12	Of polymers of vinyl chloride:
	Combined with textile materials:
	Products with textile components in which man-made fibers predominate by weight over any other single textile fiber:
3921.12.1100	Over 70 percent by weight of plastics
3921.12.1500	Other

Samples A, B, & C in the form of piece goods will be classified, therefore, in either subheading 3921.12.1100 or 3921.12.1500, HTSUSA, depending on whether or not the plastic component contributes over 70 percent of the total weight of the mesh. If the mesh has been further worked or processed, e.g., hemmed or cut to shapes other than rectangular (including squares), it is not considered a plate or sheet, and will be classified under subheading 3926.90.9050, HTSUSA, as other articles of plastics.

SAMPLE D

Sample D, like the other samples, is not a textile, but rather an article of plastic by application of the Legal Note to Chapter 59, HTSUSA. And, although it would appear to have been a sheet at some stage of the manufacturing process, it has been further worked or processed into ready to use cut-out shapes. Sample D is therefore classified in subheading 3926.90.9050, HTSUSA, as other articles of plastics.

HOLDING:

The samples referred to above as A, B & C, consisting of open mesh knit fabrics of man-made fiber, completely embedded or coated with cellular plastics are classified in subheading 3921.12.1100, HTSUSA, if the plastics component comprises over 70 percent of the weight of the product, and if the merchandise is imported as piece goods. The rate of duty for this classification is 4.2 percent ad valorem.

Samples A, B & C are classified in subheading 3921.12.1500, HTSUSA, if the plastics component comprises 70 percent or less of the total weight of the product, and if the merchandise is imported as piece goods. The applicable rate of duty will be 8.5 percent ad valorem for this classification. Goods classified in subheading 3921.12.1500, HTSUSA are also subject to textile category 229.

Samples A,B & C, imported in a form further worked or processed are classified in subheading 3926.90.9050, HTSUSA, regardless of the plastic/textile weight ratio. The rate of duty for this classification is 5.3 percent ad valorem.

Sample D, consisting of a textile layer embedded between layers cellular foam and pre-cut into ready to use cut-out shapes is classified in subheading 3926.90.9050, HTSUSA. The applicable rate of duty is 5.3 percent ad valorem.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota category requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an issuance of the U.S. Customs Service, which is updated weekly and is available at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to the importation of this merchandise to determine the current status of any import restraints or requirements.

Sincerely

JOHN A. DURANT
Director
Commercial Rulings Division

HQ 088909
April 22, 1991
CLA-2 CO:R:C:T 088909 CMR
CATEGORY: Classification
TARIFF NO.: 3921.12.1100; 3921.12.1500

MS. ELAINE G. PONCE
HOMEMAKER INDUSTRIES, INC.
295 5TH AVENUE
NEW YORK, NEW YORK 10016

RE: Revocation of HRL 086551 of May 10, 1990; Classification of a stay put rug pad

DEAR MS. PONCE:

This ruling is to inform you that an error was made in HRL 086551 issued to you by this office on May 10, 1990, and classifying a stay put rug pad.

FACTS:

In HRL 086551, the merchandise in question, a stay put rug pad, was classified as a floor covering of plastic in subheading 3918.10.1050, HTSUSA. Upon reexamination of the issue of what is a floor covering, we believe that the rug pad is not a floor covering within the common meaning of that term.

ISSUE:

Was the stay put rug pad of HRL 086551 properly classified as a floor covering in subheading 3918.10.1050, HTSUSA?

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRIs). GRI 1 provides that "classification shall be determined according to the terms of the headings and any relative section or chapter notes, provided such headings or notes do not otherwise require, according to [the remaining GRIs taken in order]."

The Explanatory Notes, which are the official interpretation of the HTS at the international level, provide some guidance in deciding under which heading the subject rug pad should be classified.

Heading 3918 provides for, among other things, floor coverings of plastics, whether or not self-adhesive, in rolls or in the form of tiles. The Explanatory Notes for the heading state in pertinent part:

> The first part of the heading covers plastics of the types normally used as floor coverings, in rolls or in the form of tiles. It should be noted that self-adhesive floor coverings are classified in this heading.
>
> * * *
>
> It should be noted that this heading includes articles printed with motifs, characters or pictorial representations, which are not merely incidental to the primary use of the goods * * *.

Heading 3921 provides for other plates, sheets, film, foil and strip, of plastics. The Explanatory Notes for the heading state in pertinent part:

> This heading covers plates, sheets, film, foil and strip, of plastics, other than those of heading 39.18, 39.19 or 39.20 or of Chapter 54. It therefore

covers only cellular products or those which have been reinforced, laminated, supported or similarly combined with other materials. * * *

In order to determine which heading most specifically describes the rug pad, we must decide if it may be considered a floor covering.

Although the rug pad covers flooring when used under a rug, we do not believe it falls within the common meaning of floor coverings. Floor coverings are commonly thought to be articles such as carpets, rugs, mats, tiles, etc. These are articles which cover a floor area and which are open to view. The rug pad, on the other hand, is not seen, but is under the perceived floor covering, i.e. the rug. Therefore, we do not believe the rug pad is encompassed within the common meaning of floor covering.

HOLDING:

The stay put rug pad at issue is classified in subheading 3921.12, HTSUSA, which provides for other plates, sheets, film, foil and strip, of cellular plastics, of polymers of vinyl chloride, combined with textile materials. The rug pad is either classified in subheading 3921.12.1100, HTSUSA, as over 70 percent by weight of plastics, or 3921.12.1500, HTSUSA, if not over 70 percent by weight of plastics. If classified in 3921.12.1100, HTSUSA, the rug pad is subject to a 4.2 percent rate of duty; if classified in 3921.12.1500, HTSUSA, the rug pad is subject to a 8.5 percent rate of duty and textile category 229.

In order to insure uniformity in Customs classification of this merchandise and eliminate uncertainty, we are revoking HRL 086551 of May 10, 1990, to reflect the above classification effective with the date of this letter. However, if after your review of this ruling letter, you disagree with the legal basis for our decision, we invite you to submit any arguments you might have with respect to this matter for our review. Any submission you wish to make should be received within 30 days of the date of this letter.

This notice to you should be considered a revocation of HRL 086551 under 19 CFR 177.9(d)(1). It is not to be applied retroactively to HRL 086551 (19 CFR 177.9(d)(2)) and will not, therefore, affect past transactions for the importation of your merchandise under that ruling. However, for the purposes of future transactions in merchandise of this type, HRL 086551 will not be valid precedent. We recognize that pending transactions may be adversely affected by this revocation in that current contracts for importation arriving at a port subsequent to this decision will be classified pursuant to it. If such a situation arises, you may, at your discretion, notify this office and may apply for relief from the binding effects of this decision as may be warranted by the circumstances. However, please be advised that in some instances involving import restraints, such relief may require separate approvals from other government agencies.

Sincerely,

JOHN DURANT,
Director
Commercial Rulings Division

PD 816479

December 5, 1995
CLA-2–39:S:N3:H14
CATEGORY: Classification
TARIFF NO.: 3921.12.1950

WARREN ESLINGER
THE HUNGARIAN SPIRIT, INC.
6495 HAPPY CANYON ROAD
UNIT 665
DENVER, COLORADO 80237

RE: The tariff classification of non-skid fabric of pvc and textile made in Germany

DEAR MR. ESLINGER:

In your letter dated October 26, 1995, you requested a binding ruling on a pvc and textile fabric which is made in Germany. The material is made by Friedola of Meinhard-Frieda, Germany. You anticipate the port of entry will be Houston, Texas.

You have submitted a sample of the material. You describe this as "floor covering material" which is called TendeRug. The material will be imported in rolls and is placed on the floor under the carpet to prevent slipping and reduce wear on the carpet. The material is pvc which is reinforced with a scrim of man-made fibers. The total weight is 900 grams per square meter.

It is noted that there is no country of origin marking on the sample which you submitted. You should be aware that all goods imported to the United States are subject to country of origin marking unless specifically exempted.

The applicable subheading for this pvc and textile material is 3921.12.1950, Harmonized Tariff Schedule of the United States (HTS), which provides for other plates, sheets, film, foil and strip, of plastics, cellular, of polymers of polyvinyl chloride, combined with textile materials, other. The duty rate will be 5.3%.

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

A copy of this letter should be attached to the entry documents filed at the time this merchandise is imported. 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,

JOSEPH J. WILSON
Port Director

NY G83126
October 16, 2000
CLA-2–39:RR:NC:TA:350 G83126
CATEGORY: Classification
TARIFF NO.: 3921.12.1950

Ms. Sandra Keyser
Con-Tact Brand
1 Mill Street
Fort Edward, NY 12828–1727

RE: The tariff classification of a PVC coated textile, non-slip, "grip liner" material, used to protect areas such as countertops, shelves and drawers, etc., from Taiwan.

Dear Ms. Keyser:

In your letter dated October 5, 2000, you requested a classification ruling.

One representative sample was submitted bearing the product code #'s: 6F76–00 (Forest Green) and GN-43, respectively. The material, packaged in a roll for retail sale, is a rectangle length 30 cm wide by 150 cm long (about 12 x 60 inches). You indicate that the product is made with a polyester textile base, which is of an open-work warp knit construction. The fabric is coated with polyvinyl chloride plastic that contains a foaming agent and stabilizer. The material is then cured in an oven expanding the plastic (cellular). Because of the open-work mesh of the material, only the yarns are covered with the foamed plastic leaving a uniform set of voids in the material. The weights of the plastic and textile components are given as 87% and 13%, respectively.

You believe that this material is classifiable in tariff subheading 5903.10.2010 which provides for "*textile fabrics impregnated, coated, covered or laminated with plastics, with polyvinyl chloride, of man-made fibers,...* ***fabrics, of yarns sheathed with polyvinyl chloride, not otherwise, coated, covered or laminated"*** *(emphasis added)*.

Noting that the textile fabric is already constructed before being dipped into the PVC solution negates the possibility of classification in the above subheading. Specifically, chapter 59, note 2(b) states that heading 5903 applies to *"fabrics made from yarn, strip or the like, impregnated, coated, covered or sheathed with plastics..."*. Your material is not constructed from PVC encased yarns that were subsequently knit to form the finished material, but of a knitted fabric subsequently dipped into the PVC.

Further, a reading of chapter 59, note 2(a)(3) states: "*heading 5903 applies to textile fabrics, impregnated, coated, covered or laminated with plastics, ...* ***other than products in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye ...(chapter 39)".*** *(emphasis added).* The yarns of this fabric are entirely covered with the PVC.

As such, the applicable subheading for the product will be 3921.12.1950, Harmonized Tariff Schedule of the United States (HTS), which provides for other plates, sheets, film, foil and strip, of plastics, cellular, of polymers of vinyl chloride, combined with a single textile material, other. The rate of duty will be 5.3 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist George Barth at 212–637–7085.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

NY H86099

December 14, 2001
CLA-2–39:RR:NC:TA:350 H86099
CATEGORY: Classification
TARIFF NO.: 3921.12.1950

Ms. Amanda B. Key
Beijing Trade Exchange, Inc.
1200 Park Avenue
Hoboken, NJ 07030

RE: The tariff classification of PVC foam "grip net" shelf lining material, from China

Dear Ms. Key:

In your letter dated December 4, 2001, you requested a tariff classification ruling.

The material consists of an open work warp knit fabric that has been coated (dipped) with a PVC plastic containing a blowing agent, then foamed, completely covering the textile yarns, but leaving an open mesh between the yarns. In a phone conversation with this office you related that you did not know what type of yarn was used. From observation, it was determined that the lightweight knit fabric is constructed entirely of grouped filament yarns of man-made fibers. The weight of the entire material was calculated to be approximately 300 g/m ^{2}.

You state that this material will be imported in rolls measuring 36" wide x 60" long with each roll covered with a plastic bag and box which will be marked with the country of origin. This material is destined for use in supermarkets for the purpose of lining slanted meat shelves, etc, to prevent slippage when displaying various products.

The applicable subheading for the material will be 3921.12.1950, Harmonized Tariff Schedule of the United States (HTS), which provides for other plates, sheets, film, foil and strip, of plastics, cellular, of polymers of vinyl chloride, combined with a single textile material, other. The rate of duty is 5.3 percent ad valorem. The rate of duty will be the same effective January 1, 2002.

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 George Barth at 646–733–3044.

Sincerely,

Robert B. Swierupski
Director,
National Commodity Specialist Division

NY I83543

July 31, 2002
CLA-2–39: RR:NC:TA:350 I83543
CATEGORY: Classification
TARIFF NO.: 3921.12.1950

MR. MARTIN KIRBY
CAPITOL USA, LLC
300 CROSS PLAINS BLVD.
P.O. BOX 2023
DALTON, GEORGIA 30722

RE: The tariff classification of five styles of non-skid material for use as tool box liners, etc., from China.

DEAR MR. KIRBY:

In your letter dated June 21, 2002, you requested a tariff classification ruling. The manufacturer is Yantai Chinaoury Rubber & Plastics Products Co. Ltd., Yantai, China.

You submitted five representative samples which were identified as #1, #2, #3, #4 and #5, respectively.

All five materials are constructed from open mesh base fabrics of knit construction which are composed of flat filament 270 denier polyester yarns. The size of the open meshes vary according to the individual knit constructions. These fabrics are subsequently coated or covered on both sides with a blown (foam) non-skid PVC plastics material. According to your letter, these materials have application as tool box drawer liners, auto fender covers, closet shelf liners, non-skid rug pads, grocery refrigerated case and produce case liners as well as several others.

You further state that these materials will be imported in up to five coating weights and final products weights as follows:

Style	%PVC	% fabric	Wt. (Oz/yd^2)
#1	70	30	4.0
#2	80	20	7.5
#3	74	26	6.5
#4	85	15	16.5
#5	82	18	13.5

You suggest classification in tariff heading 5903.10.2010 which provides for “textile fabrics impregnated, coated, covered or laminated, with plastics, with polyvinyl chloride, of man-made fibers, over 70 percent by weight of rubber or plastics, fabrics, of yarns sheathed with polyvinyl chloride, not otherwise impregnated, coated, covered or laminated.”

This subheading is not correct for the following two reasons:

First, these materials were not formed from yarns which were previously coated and then knit to form the finished product. The fabric was constructed first and then coated/covered with the PVC plastic.

Secondly, consideration under any tariff subheading in heading 5903 would not be proper following Chapter 59, note 2(a)(3) which reads in part “heading 5903 applies to textile fabrics, impregnated, coated, covered or laminated with plastics, ... other than: products in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides

with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of color (chapter 39)”.“ Since your materials are coated/covered on both sides, no further consideration can be given to heading 5903.

The applicable subheading for the five materials will be 3921.12.1950, Harmonized Tariff Schedule of the United States (HTS), which provides for other plates, sheets, film, foil and strip, of plastics, cellular, of polymers of vinyl chloride, combined with a single textile material, other. The rate of duty will be 5.3 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist George Barth at 646–733–3044.

Sincerely,

Robert B. Swierupski
Director,
National Commodity Specialist Division

NY K82162

January 15, 2004
CLA-2–39:RR:NC:3:350 K82162
CATEGORY: Classification
TARIFF NO.: 3921.12.1950

Michael Brooks
The Square Yard Inc.
5150 S. Decatur
Las Vegas, NV 89118

RE: The tariff classification of non-skid material from China

Dear Mr. Brooks:

In your letter dated December 1, 2003, you requested a tariff classification ruling.

You submitted two representative samples that were identified as A (style V501) and B (style V515). Your letter indicates that both samples were constructed from open mesh base fabrics of knit construction that were composed of filament polyester yarns. They were then coated or covered on both sides with a blown (foam) non-skid PVC plastic material.

The applicable subheading for both non-skid materials, styles V501 and V515, will be 3921.12.1950, Harmonized Tariff Schedule of the United States (HTS), which provides for other plates, sheets, film, foil and strip, of plastics, cellular, of polymers of vinyl chloride, combined with a single textile material, other. The rate of duty will be 5.3 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Deborah Walsh at (646) 733–3044.

Sincerely,

Robert B. Swierupski
Director,
National Commodity Specialist Division

NY L86033

July 20, 2005
CLA-2–39:RR:NC:TA:350 L86033
CATEGORY: Classification
TARIFF NO.: 3921.12.1950

Ms. Francine Marcoux
Hampton Direct Incorporated
350 Pioneer Drive
P.O. Box 1199
Williston, VT 05495

RE: The tariff classification of an anti-skid strip material, from China.

Dear Ms. Marcoux:

In your letter dated July 12, 2005, which was a follow-up to an earlier inquiry, where we requested additional information, you requested a tariff classification ruling.

The instant sample, identified as style #50730, consists of a roll of anti-skid material, which measures about 3 inches in width. The material consists of an open mesh base fabric of leno woven construction that has been coated or covered on both sides with a blown (foam) non-skid PVC plastics material. According to your letter, the material is 70% PVC/30% Dacron (Polyester), by weight.

The applicable subheading for the material will be 3921.12.1950, Harmonized Tariff Schedule of the United States (HTS), which provides for other plates, sheets, film, foil and strip, of plastics, cellular, of polymers of vinyl chloride, combined with a single textile material, other. The rate of duty will be 5.3 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Deborah Walsh at 646–733–3044.

Sincerely,

Robert B. Swierupski
Director,
National Commodity Specialist Division

N033496

July 18, 2008
CLA-2–39:RR:NC:TA:350
CATEGORY: Classification
TARIFF NO.: 3921.12.1950

MR. TROY D. CRAGO
ATICO INTERNATIONAL USA, INC.
501 SOUTH ANDREWS AVENUE
FT. LAUDERDALE, FL 3301

RE: The tariff classification of a PVC coated anti-skid material, from China.

DEAR MR. CRAGO:

In your letter dated July 11, 2008, you requested a tariff classification ruling.

The instant sample, identified as style #A038ZA00707, consists of a roll of anti-skid material measuring 12-inches wide x 48-inches in length. It is composed of what appears to be an open mesh, knit substrate fabric of unspecified man-made fibers that has been thoroughly coated and encased in a foamed or cellular polyvinyl chloride plastics material.

The applicable subheading for the product will be 3921.12.1950, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other plates, sheets, film, foil and strip, of plastics, cellular, of polymers of vinyl chloride, combined with a single textile material, other. The rate of duty will be 5.3 percent ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on 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 Deborah Walsh at 646–733–3044.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

N044145
December 4, 2008
CLA-2–39:OT:RR:NC:N3:350
CATEGORY: Classification
TARIFF NO.: 3921.12.1950

MS. SILKE REES
WATERLOO INDUSTRIES, INC.
137 FOREST HILL AVENUE
OAK CREEK, WI 53154

RE: The tariff classification of PVC drawer liners, from China.

DEAR MS. REES:

In your letter dated September 18, 2008, you requested a tariff classification ruling.

You submitted two representative samples which were rather similar in construction and composition. You identified one of them as item 965534. Specifically, these materials are rectangular in configuration and measure 22 1/8” x 16 3/8” x 0.94” thick. They are composed of an open mesh fabric of terylene man-made fiber construction that has been completely encased on both sides with a cellular polyvinyl chloride plastics material. Both surfaces of the material display a somewhat woven effect created by the terylene fabric which is encased in the plastic. These liners are finally die stamped or embossed with various logos. When in use, these drawer liners will keep tools from sliding around and, additionally, the vinyl coating resists liquids such as battery acids or gasoline, etc.

The applicable subheading for the product will be 3921.12.1950, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other plates, sheets, film, foil and strip, of plastics, cellular, ... of polyvinyl chloride, combined with a single textile material, other. The duty rate will be 5.3 percent ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on 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 Deborah Walsh at (646) 733–3044.

Sincerely,

ROBERT B. SWIERUPSKI
Director
National Commodity Specialist Division

HQ H305115
OT:RR:CTF:CPMMA H305115 RRB
CATEGORY: Classification
TARIFF NO.: 3926.90.99

MR. VICTOR QUINTANA
IMPORT SUPERVISOR
MOHAWK INDUSTRIES, INC.
160 S. INDUSTRIAL BLVD.
P.O. BOX 12069
CALHOUN, GA 30703

RE: Revocation of HQ H302153, HQ 088142, HQ 088909, NY PD 816479, NY G83126, NY H86099, NY I83543, NY K82162, NY L86033, NY N033496, NY N044145; Tariff classification of non-slip grip pads

DEAR MR. QUINTANA:

This is to inform you that U.S. Customs and Border Protection ("CBP") has reconsidered Headquarters Ruling Letter ("HQ") H302153, dated July 12, 2019, regarding the classification under the Harmonized Tariff Schedule of the United States ("HTSUS"), of non-slip grip pads. After reviewing this ruling in its entirety, we believe that it is in error. For the reasons set forth below, we hereby revoke HQ H302153.

For the reasons set forth below, we are also revoking ten other rulings on substantially similar merchandise: HQ 088142[1], dated January 18, 1991; HQ 088909[2], dated April 22, 1991; New York Ruling Letter ("NY") PD 816479[3], dated December 5, 1995; NY G83216[4], dated October 31, 2000; NY H86099[5], dated December 14, 2001; NY I83543[6], dated July 31, 2002; NY K82162[7], dated January 15, 2004; NY L86033[8], dated July 20, 2005; NY N033496[9], July 18, 2008; and NY N044145[10], dated December 4, 2008.

FACTS:

In HQ H302153, we described the product as follows:

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[1] HQ 088142 classified an anti-slip mesh warp knit fabric that is completely encased in PVC in heading 3921, HTSUS.

[2] HQ 088909 classified a stay put rug pad made of an open mesh warp knit fabric that is completely covered in PVC in heading 3921, HTSUS.

[3] NY PD 816479 classified non-skid fabric covered in PVC in heading 3921, HTSUS.

[4] NY G83216 classified a non-slip grip liner made of a PVC coated textile with an open-work warp knit construction in heading 3921, HTSUS.

[5] NY H86099 classified a grip net shelf lining material consisting of an open work warp knit fabric that has been coated with PVC in heading 3921, HTSUS.

[6] NY I83543 classified non-skid material constructed from open mesh fabric that is coated on both sides with PVC and is used as drawer liners, non-skid rug pads, and shelf liners in heading 3921, HTSUS.

[7] NY K82162 classified non-skid material consisting of an open mesh fabric that is coated on both sides with PVC in heading 3921, HTSUS.

[8] NY L86033 classified anti-skid material consisting of an open mesh fabric coated on both sides with PVC in heading 3921, HTSUS.

[9] NY N033496 classified PVC coated anti-skid material composed of an open mesh fabric in heading 3921, HTSUS.

[10] NY N044145 classified drawer liners composed of an open mesh fabric and encased on both sides with PVC in heading 3921, HTSUS.

> The non-slip grip pads are made of one hundred percent warp knitted, polyester open mesh fabric that is visibly coated on both sides with foamed polyvinyl chloride (“PVC”). The spaces within the mesh of each of the samples vary, with the largest spaces being approximately 0.125 inches by 0.125 inches. The grip pads come in the following sizes: 20 inches x 30 inches, 20 inches x 32 inches, 28 inches x 42 inches, 40 inches x 60 inches, and 56 inches x 60 inches.
>
> These grip pads are used under rugs to add cushioning underfoot in order to reduce fatigue. They are also used for lining shelves, drawers and cabinets in the kitchen, bathroom and garage work areas.

ISSUE:

Whether non-slip grip pads are classified in heading 3921, HTSUS, as “other plates, sheets, film, foil and strip, of plastics,” in heading 3924, HTSUS, as “tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics,” or in heading 3926, HTSUS, as “other articles of plastics and articles of other materials of headings 3901 to 3914.”

LAW AND ANALYSIS:

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

The 2024 HTSUS provisions under consideration are as follows:

3921 Other plates, sheets, film, foil and strip, of plastics:
3924 Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics:
3926 Other articles of plastics and articles of other materials of headings 3901 to 3914:

* * * *

Note 10 to chapter 39, HTSUS, provides as follows:

> In headings 3920 and 3921, the expression “*plates, sheets, film, foil and strip*” applies only to plates, sheets, film, foil and strip (other than those of chapter 54) and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use).

* * * *

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the proper classification of merchandise. It is CBP’s practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–90, 54 Fed. Reg. 35127 (August 23, 1989).

The General Notes to the ENs to chapter 39 also state that “[h]eading 39.26 is a residual heading which covers articles, not elsewhere specified or in-

cluded, of plastics or of materials of heading 39.01 to 39.14." Thus, the subject merchandise can only be classified in heading 3926, HTSUS, if they are excluded from heading 3921, HTSUS, and heading 3924, HTSUS.

The non-slip grip pads in HQ H302153 consist of warp knitted, polyester open mesh fabric coated with foamed PVC. The mesh fabrics include open spaces that are still present following the application of the PVC coating. The largest spaces within the mesh samples are approximately 0.125 inches by 0.125 inches[11]. Despite the presence of a knitted fabric, CBP correctly noted in HQ H302153 that the non-slip grip pads are not classified as a textile of chapter 59.[12]

In HQ H302153, CBP classified the non-slip grip pads in heading 3921, HTSUS, because CBP determined that the merchandise were sheets of plastic under the terms of the heading. The term "sheet" is not defined in the text of the HTSUS or in the Explanatory Notes. In HQ H302153, CBP examined various dictionary definitions of the term "sheet" for purposes of heading 3921, HTSUS. For example, HQ H302153 cited to the Merriam-Webster Online Dictionary definition of "sheet" as "a surface or part of a surface in which it is possible to pass from any one point of it to any other without leaving the surface." *See* https://www.merriam-webster.com/dictionary/sheet (last visited August 27, 2019). That ruling also cited to definitions of "sheet" that are set forth in the Oxford English Dictionary and the MacMillan Dictionary.[13] Relying on dictionary definitions to determine the common and commercial meaning of "sheet," CBP held that "the instant grip pads feature a weave tight enough that it is possible to pass from any one point of it to another point without leaving the surface." For the reasons set forth below, we now find this to be in error.

While we accept and agree with the above definitions, we find that they were incorrectly applied in HQ H302153. There, CBP stated that "the instant grip pads feature a weave tight enough that it is possible to pass from any one point of it to another point without leaving the surface." However, it would, in fact, be impossible to do this as the non-slip grip pads consist of areas without surface where there are holes in the open-work knit base fabric and plastic mesh. Upon reexamination of the merchandise, we note that the construction of the mesh is not tight enough to allow one to go from one point to another without leaving the surface.

Though the term "sheet" is not defined in the HTSUS or the Explanatory Notes, CBP, the Court of International Trade ("CIT") and the World Customs Organization ("WCO") have identified accepted definitions of the term "sheet"

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[11] For comparison to other rulings, this is equivalent to approximately 3.175 mm x 3.175 mm.

[12] We note a clerical error in HQ H302153 on page 4, in which CBP excluded the non-slip grip pads from classification in chapter 59 "pursuant to note 2(a)(3) to chapter 53." Rather, the non-slip grip pads are excluded from classification in chapter 59 pursuant to note 2(a)(3) to chapter 59.

[13] In HQ H302153, CBP stated that "[t]he Oxford English Dictionary defines 'sheet' as 'a relatively thin piece of considerable breadth of a malleable, ductile, or pliable substance.' *See* https://www.oed.com (last visited May 30, 2019). The MacMillan Dictionary defines "sheet" as "a thin flat piece of paper, metal, plastic, glass, etc." *See* https://www.macmillandictionary.com/us/dictionary/american/sheet (last visited May 30, 2019); HQ 967346, dated January 25, 2005, which classified extruded polyethylene mesh netting in heading 3926, HTSUS, also relied on the Oxford English Dictionary definition of "sheet."

in heading 3921, HTSUS. In *3G Mermet Fabric Corp. v. United States*, 25 C.I.T. 174, 178; 135 F. Supp. 2d 151, 156 (2001), the CIT defined the term "sheet" in the context of "sheets of plastic" as a "material in the form of a continuous stem covering or coating." *3G Mermet Fabric Corp.* 25 C.I.T. at 178. There, the CIT classified window shade fabrics with a mesh component that was coated with acrylic or PVC plastic in heading 3926, HTSUS, under GRI 3(b) based upon the plastic mesh component imparting the essential character. In defining "sheet" for purposes of classification as a plastic of chapter 39, the court relied on the definition of "sheeting of plastic" in *Sarne Handbags Corp. v. United States,* 100 F. Supp. 2d 1126, 1136 (CIT 2000). *3G Mermet Fabric Corp.* 25 C.I.T. at 177. Moreover, the WCO has determined that articles with holes are excluded from classification in heading 3921, HTSUS. In particular, the Harmonized System Committee of the WCO classified a similar article in heading 3926. The article was described as a flexible reinforcement grid of high-strength polyester fibers woven and covered on all sides with a protective layer of PVC visible to the naked eye, where "each element of the grid takes the form of a narrow fabric made of parallel yarns, with the 'weft' inserted at right angles between the yarns of the 'warp', forming mesh openings measuring 35 x 40 mm." *See* WCO Compendium of Classification Opinions (C.O.) at C.O. 3926.90/9 (2002).

In HQ H302153, CBP noted that certain rulings relying on the definition of "sheeting" in *Sarne Handbags Corp.* classified geotextile mesh material and extruded polypropylene or polyethylene mesh in heading 3926, HTSUS. *See* HQ 965889, dated March 17, 2003; HQ 966281, dated March 17, 2003; HQ 967325, dated November 8, 2004; HQ 967346, dated January 25, 2005; HQ 967348, dated January 25, 2005; and HQ 967349, dated January 25, 2005. CBP had distinguished the geotextile and extruded plastic mesh items in those rulings from the non-slip grip pads based on the size of the open mesh spaces. For example, in HQ 965889, the size of open spaces in the geotextile mesh varied from 16 mm x 16 mm to 21 mm x 24 mm, while the size of the open spaces in HQ 966281 varied from approximately 0.5 inches to 2 inches x 2 inches. Accordingly, CBP found that because the spaces in the non-slip grip pads were smaller than the spaces in the geotextile and extruded mesh, those rulings classifying geotextile and extruded mesh material in heading 3926, HTSUS, based on *Sarne* were inapplicable.

However, we now find this conclusion to be in error as the construction of the non-slip grip pad surface in HQ H302153 is not tight enough to pass from one point to another without leaving the surface due to the presence of holes in the open-work knit base fabric. Moreover, CBP incorrectly determined that the non-slip grip pads are sheets of plastic based on the size of the mesh openings. While the size of the open mesh spaces in the non-slip grips pads are smaller than the spaces in the merchandise in HQ 967346 and HQ 966281, we have identified other rulings classifying similar grip pads in heading 3926, HTSUS, where the size of the open spaces in the mesh surface was the same size or smaller than those in HQ H302153. For example, in NY N292335, dated December 19, 2017, CBP classified PVC coated debris netting of a non-pile warp knit construction, which had holes measuring 0.125 inches, in heading 3926, HTSUS, rather than as sheets of plastic of heading 3921, HTSUS, even though the holes in the netting were, in fact, the same size or smaller than the holes in the non-slip grip pads in HQ H302153. Thus, CBP inconsistently applied its analysis of sheets of plastic based on the size of mesh openings for purposes of classification in heading 3921, HTSUS.

Consequently, CBP incorrectly distinguished HQ 965889, HQ 966281, HQ 967325, and HQ 967346, which relied on the definition of "sheeting" of plastic in *Sarne*, from the non-slip grip pads in HQ H302153. Therefore, these rulings are, in fact, dispositive of the classification of the subject non-slip grip pads as both sets of merchandise consist of surfaces in which it is not possible to pass from any one point of it to any other without leaving the surface. Accordingly, the non-slip grip pads are not classifiable in heading 3921, HTSUS, as sheets of plastic.

We note that HQ 088142, HQ 088909, and NY PD 816479 involved merchandise that is exceedingly similar to the non-slip grip pads in HQ H302153. These rulings were issued prior to *Sarne* and the WCO's decision to exclude merchandise with holes from classification in heading 3921, HTSUS. Although these rulings were revoked by operation of law following the *Sarne* decision, we are including these decisions in the instant revocation to prevent further confusion. Moreover, as NY G83126, NY H86099, NY I83543, NY K82162, NY L86033, NY N033496, and NY N044145 each involved the classification of non-skid/non-slip open mesh material that is similar to the non-slip grip pads in HQ H302153, we are revoking these rulings as well.

Noting that the non-slip grip pads are not classifiable in heading 3921, HTSUS, we next determine whether they are classifiable as household articles of plastic under heading 3924, HTSUS. Classification of merchandise under heading 3924, HTSUS, as a household article presumes that it is not more specifically provided for elsewhere in the HTSUS. In fact, most common household articles are provided for more specifically in other headings of the HTSUS. For example, household hand tools such as vegetable peelers are classified as hand tools under heading 8205, HTSUS. *See, e.g.*, HQ 964648, dated March 26, 2001. Here, although the non-slip grip pads are stated to be used under rugs, in the kitchen, bathroom or garage, the merchandise can be used in any setting outside the home as well. The fact that the non-slip grip pads can be used in the home occasionally in itself is not sufficient to warrant its classification as a household article of heading 3924, HTSUS. Therefore, the non-slip grip pads are more specifically provided for outside of heading 3924, HTSUS, as an article of plastic under heading 3926, HTSUS.

Based on the foregoing, we find that the non-slip grip pads and similar merchandise in HQ H302153, HQ 088142, HQ 088909, NY PD 816479, NY G83126, NY H86099, NY I835543, NY K82162, NY L86033, NY N033496, and NY N044145 are properly classified in subheading 3926.90.99, HTSUS, as "Other articles of plastics and articles of other materials of heading 3901 to 3914: Other: Other."

HOLDING:

By application of GRIs 1 and 6, the non-slip grip pads are classified in heading 3926, HTSUS, specifically under subheading 3926.99.99, HTSUS, which provides for "Other articles of plastics and articles of other materials of heading 3901 to 3914: Other: Other[.]" The 2024 column one, general rate of duty is 5.3% *ad valorem*.

EFFECT ON OTHER RULINGS:

HQ H302153, dated July 12, 2018; HQ 088142, dated January 18, 1991; HQ 088909, dated, April 22, 1991; NY PD 816479, dated December 5, 1995; NY G83216, dated October 31, 2000; NY H86099, dated December 14, 2001; NY I83543, dated July 31, 2002; NY K82162, dated January 15, 2004; NY

L86033, dated September 20, 2005; NY N033496, July 18, 2008; and NY N044145, dated December 4, 2008, are hereby revoked.

Sincerely,

YULIYA A. GULIS,
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19 CFR PART 177

MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF RICE PROTEIN POWDER

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

ACTION: Notice of modification of one ruling letter and revocation of treatment relating to the tariff classification of rice protein powder.

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 modifying one ruling letter concerning tariff classification of rice protein powder 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. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 57, No. 32, on September 6, 2023. 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 June 10, 2024.

FOR FURTHER INFORMATION CONTACT: Marie J. Durane, Food, Textiles, and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0984.

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. 57, No. 32, on September 6, 2023, proposing to modify one ruling letter pertaining to the tariff classification of rice protein powder. 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") N308405, dated January 9, 2020, CBP classified rice protein powder in heading 3504, HTSUS, specifically in subheading 3504.00.50, HTSUS, which provides for "Peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed: Other." It is now CBP's position that rice protein powder is properly classified, in heading 2106, HTSUS, specifically in subheading 2106.10.00, HTSUS, which provides for "Food preparations not elsewhere specified or included: Protein concentrates and textured protein substances."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY N308405 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H315652 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*.

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H315652
March 21, 2024
OT:RR:CTF:FTM H315652 TJS/MJD
CATEGORY: Classification
TARIFF NO.: 2106.10.00

MR. LUCAS A. ROCK
GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN & KLESTADT, LLP
599 LEXINGTON AVENUE
NEW YORK, NY 10022

RE: Modification of NY N308405; Tariff Classification of Rice Protein Powder

DEAR MR. ROCK:

This is in reference to New York Ruling Letter ("NY") N308405 issued to you, on behalf of Top Health Ingredients, Inc., on January 9, 2020, concerning the tariff classification of certain rice protein powder and pea protein powder under the Harmonized Tariff Schedule of the United States ("HTSUS"). In that ruling, U.S. Customs and Border Protection ("CBP") classified the protein powders at issue under subheading 3504.00.50, HTSUS, which provides for "Peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed: Other." Upon further review, we have found the classification of the rice protein powder under heading 3504, HTSUS, to be incorrect. For the reasons set forth below, we hereby modify NY N308405.

FACTS:

The product at issue is *AdvantaRice*™ Premier 300. It is a rice protein powder consisting of 80 percent or greater rice protein on a dry basis. The remaining 20 percent consists of residual materials of the protein extraction process such as ash, moisture, and fat. The rice protein powder does not contain additives. The manufacturing process begins with soaking rice flour, which is produced from milling rice. Then, an alkali solution is used to precipitate the protein. Once the excess amount of alkali solution is washed off, the product is sterilized, evaporated, and dried into powder form. The protein is imported in 20kg poly-lined paper bags and sold to food manufacturers for use as an ingredient in various food applications, which according to the importer's website, include bars, chips, protein blends, RTD (ready-to-drink) beverages, and dips. The website further states that *AdvantaRice*™ has a "[m]ild, neutral flavor [that] is easily masked" and "can be used in both sweet and savory formulas."[1]

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), notice of the proposed action was published in the Customs Bulletin, Volume 57, Number 32 on September 6, 2023. One comment was received in response to this notice, which we will address below.

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[1] *AdvantaRice™ - A High-Protein Alternative*, Top Health Ingredients, https://www.tophealthingredients.com/advantarice (last visited April 28, 2022).

ISSUE:

What is the tariff classification of the rice protein powder under the HTSUS?

LAW AND ANALYSIS:

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

The 2024 HTSUS provisions under consideration are as follows:

2106: Food preparations not elsewhere specified or included:

2106.10.00: Protein concentrates and textured protein substances...

* * *

3504: Peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed:

3504.00.50: Other...

* * *

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While not legally binding, and therefore not dispositive, the ENs 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. *See* T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The ENs to heading 2106, HTSUS, provides in pertinent part as follows:

Provided that they are not covered by any other heading of the Nomenclature, this heading covers:

(A) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.), for human consumption.

(B) Preparations consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption. The heading includes preparations consisting of mixtures of chemicals (organic acids, calcium salts, etc.) with foodstuffs (flour, sugar, milk powder, etc.), for incorporation in food preparations either as ingredients or to improve some of their characteristics (appearance, keeping qualities, etc.) (see the General Explanatory Note to Chapter 38).

...

The heading includes, inter alia:

...

(6) Protein hydrolysates consisting mainly of a mixture of amino-acids and sodium chloride, used in food preparations (e.g., for flavouring); protein concentrates obtained by the elimination of certain constituents of defatted soya-bean flour, used for protein-enrichment of food preparations; soya-bean flour and other protein substances, textured. However, the heading excludes non-textured defatted soya-bean flour, whether or not fit for human consumption (heading 23.04) and protein isolates (heading 35.04).

* * *

The ENs to heading 3504, HTSUS, provides in pertinent part as follows:

This heading covers:

...

(B) Other protein substances and their derivatives, not covered by a more specific heading in the Nomenclature, including in particular:

(1) Glutelins and prolamins (e.g., gliadins extracted from wheat or rye, and zein extracted from maize), being cereal proteins.

(2) Globulins, e.g., lactoglobulins and ovoglobulins (but see exclusion (d) at the end of the Explanatory Note).

(3) Glycinin, the main soya protein.

(4) Keratins obtained from hair, nails, horns, hoofs, feathers, etc.

(5) Nucleoproteids, being proteins combined with nucleic acids, and their derivatives. Nucleoproteids are isolated, for example, from brewer's yeast, and their salts (of iron, copper, etc.) are used mainly in pharmacy.

However, nucleoproteids of mercury answering to a description in heading 28.52 are excluded.

(6) Protein isolates obtained by extraction from a vegetable substance (e.g., defatted soya bean flour) and consisting of a mixture of proteins contained therein. The protein content of these isolates is generally not less than 90%.

* * *

NY N308405 classified the rice protein powder in heading 3504, HTSUS, as "other protein substances and their derivatives, not elsewhere specified or included." Heading 2106, HTSUS, covers food preparations, provided that the product is not covered by any other heading of the HTSUS. The issue here is whether the rice protein powder is classified as a protein substance of heading 3504, HTSUS, or as a food preparation of heading 2106, HTSUS.

According to the ENs to heading 3504, HTSUS, and prior CBP rulings, substances that have been classified in heading 3504 have at least four things in common. First, these protein substances are generally for use in making pharmaceuticals, textiles, or plastics. *See* Headquarters Ruling Letter ("HQ") 950915 (Apr. 3, 1992). Second, the protein substances consist of a very high percentage of protein. Third, the protein in substances of heading 3504 are derived from a single source, such as milk or wheat gluten. *See* HQ H053650 (June 1, 2009); HQ 963306 (Sept. 6, 2000). Lastly, the substances classified in heading 3504, HTSUS, may be mixtures of protein and other substances, such as ash and moisture, but these other substances are a product of the derivation of the protein substance from its source, not a deliberate prepa-

ration of different protein substances mixed with flavoring and anti-caking agents. *See* HQ H008628 (Feb. 14, 2008).

The rice protein product under consideration is derived from a single source – rice – which is not mixed with other protein substances, flavoring, or anti-caking agents. However, importantly, the rice protein product is to be used as an ingredient in various food applications for human consumption, not for making pharmaceuticals, textiles or plastics. Additionally, none of the items listed in the ENs specifically describe the rice protein product. For these reasons, we find that heading 3504, HTSUS, does not cover the *AdvantaRice*™ Premier 300.

Heading 2106, HTSUS, covers food preparations. In *Orlando Food Corp. v. United States*, the United States Court of Appeals for the Federal Circuit considered the definition of "preparation" for purposes of classification under the HTSUS. *Orlando Food Corp. v. United States*, 140 F.3d 1437 (1998). The court held that "inherent in the term 'preparation' is the notion that the object involved is destined for a specific use. The relevant definition from *The Oxford English Dictionary* defines 'preparation' as 'a substance specially prepared, or made up for its appropriate use or application, e.g., as food or medicine, or in the arts or sciences.'" *Id*. at 1441 (citing 12 *The Oxford English Dictionary* 374 (2d. ed. 1989)). Under our facts, the subject rice protein powder satisfies the definition of a preparation as it has been prepared and processed for a specific use. In this case, the rice protein powder is specifically used as a protein or nutritional supplement. In the context of "food preparations" for purposes of tariff classification in heading 2106, HTSUS, the finished subject rice protein powder is specifically intended to be incorporated and consumed in food applications.

The ENs for heading 2106, HTSUS, provide that food preparations of heading 2106 include preparations consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption. Heading 2106, HTSUS, includes certain preparations for incorporation in food preparations either as ingredients or to improve some of their characteristics. Here, food manufacturers use the rice protein as an ingredient and protein supplement in various food and beverage applications. Therefore, we find that the rice protein powder is a "preparation consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption" within the meaning of the ENs to heading 2106, HTSUS. Conversely, we find that the ENs to heading 3504, HTSUS, do not describe the subject rice protein powder. The ENs to heading 3504, HTSUS, list proteins from specific sources, none of which would include rice as a protein source nor are *ejusdem generis* to the product at issue.

Furthermore, in HQ 950915, CBP distinguished a rice protein powder, which was manufactured and used in a manner similar to the subject rice protein, from products of heading 3504, HTSUS. The rice protein powder of HQ 950915 was described as a precipitate derived from rice that had been steeped, milled, screened and centrifuged. The resulting rice substance was thereafter concentrated, dried, and sieved before being packaged for export. In distinguishing the scope of headings 2106 and 3504, HTSUS, HQ 950915 explained the following:

> In essence, 2106 covers products which serve as, or are incorporated in, food preparations, while 3504 covers products which are not usually consumed, but are used, for instance, in making pharmaceuticals (pep-

> tones), textiles and plastics (glutelins and prolamins) and elastic fibers (keratins). The subject product is designed to be used as a protein source in baby foods, nutritional drinks and tablets and, thus, is *ejusdem generis* to the nutritional food products and supplements which have been classified in heading 2106. Its principal use is as a food preparation. *See* Additional U.S. Rule of Interpretation 1(a). As the EN's above stated, a product may still be classified in 2106 even if it may require further processing to be used as a food preparation or if it is merely used as an ingredient in order to make or improve a beverage or food preparation.

As such, HQ 950915 determined that the rice protein powder was classified according to its principal use as a food preparation in heading 2106, HTSUS. *See also* HQ H008628 (finding that a powdered protein mixture, which was used in shakes, soups, sauces and other foods to enhance their protein content, was *ejusdem generis* to the products classified in heading 2106, HTSUS, as a food preparation).

HQ H280419, dated December 7, 2020, also classified a rice protein powder in subheading 2106.10.00, HTSUS. The rice protein powder of HQ H280419 was enzymatically extracted from multiple layers of whole grain brown rice. The product was sold as a bulk ingredient to be used as a protein-based nutritional supplement in food or feed products, as well as in beverages, infant formula, nutraceuticals and nutritional products, small animal nutrition, weight management products, and cosmetic products. CBP determined that the rice protein powder subject in HQ H280419 was similar to the product of HQ 950915 as they were both the result of extensive production processing and additional advanced refinement, as well as used as a protein source or nutritional protein supplement in food preparations and beverages. CBP further noted that the importer marketed and sold the rice protein powder as a protein source, protein supplement and nutritional supplement for consumption.

We find that the subject rice protein powder is substantially similar to the rice protein powders of HQ 950915 and HQ H280419. In each of these cases, the protein powder was processed from a single rice source and used as a food preparation designed to supplement the protein content in various consumption applications. Likewise, the subject rice protein powder is the result of extensive production processing and is incorporated as an ingredient in various food applications for human consumption. Additionally, the subject rice protein powder is marketed for applications such as bars, chips, protein blends, RTD beverages, and dips. Accordingly, based on the composition of the product, the manner of production, how the product is marketed, and its ultimate use in food and beverage applications, we find that heading 2106, HTSUS, encompasses the subject rice protein powder. Specifically, the rice protein powder is classified under subheading 2106.10.00, HTSUS, which provides for "Food preparations not elsewhere specified or included: Protein concentrates and textured protein substances."

As noted above, we received one comment in response to the notice of the proposed modification to NY N308405. The commenter argues that the *AdvantaRice*™ Premier 300 is prima facie classifiable in heading 3504, HTSUS, and is precluded from classification in heading 2106, HTSUS. The commenter cites to HQ H053650, dated June 1, 2009, where CBP states that "[t]he only limit that is placed on the protein substances that can be classified in heading 3504, HTSUS, is that they cannot be provided for more specifically elsewhere in the nomenclature." Since the rice protein powder at issue is a protein

substance and is not classified elsewhere, the commenter provides that it can only be classified in heading 3504, HTSUS.

Similarly, the commenter states that the rice protein powder is classified in heading 3504, HTSUS, per GRI 3(a) which provides that "[t]he heading which provides the most specific description shall be preferred to headings providing a more general description." As heading 3504, HTSUS, provides for a narrower class of products and heading 2106 HTSUS, is a "basket provision" only appropriate if no other provision covers the product more specifically, under GRI 3(a) the rice protein powder should be classified in heading 3504, HTSUS. Additionally, the commenter provides that the subject rice protein powder is classifiable under heading 3504, HTSUS, per GRI 3(c) which states that "[w]hen goods cannot be classified by reference to [GRI] 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration." Since between heading 2106, HTSUS, and heading 3504, HTSUS, heading 3504, HTSUS, occurs last in numerical order, per GRI 3(c), the rice protein powder is classified in heading 3504, HTSUS.

Moreover, the commenter explains that the rice protein powder is *ejusdem generis* to the cereal proteins listed in the ENs to heading 3504, HTSUS, and not *ejusdem generis* to the examples cited in the ENs to heading 2106, HTSUS. The commenter mentions that the proteins extracted from rice, include glutelin, which is specifically provided for in the ENs to heading 3504, HTSUS. In addition, because the rice protein powder meets the definition of protein isolate, which is also specifically listed as an example in the ENs to heading 3504, HTSUS, the product is classified therein. Furthermore, because the product is considered a "protein isolate" of heading 3504, HTSUS, which is specifically excluded from classification in heading 2106, HTSUS, according to the ENs to heading 2106, HTSUS, the subject product cannot be classified therein. Lastly the commenter opines that the requirement that products of heading 3504, HTSUS, be "generally for use in making pharmaceuticals, textiles, or plastics" is not supported by administrative precedent. The commenter cites to several CBP rulings where protein substances used in food products were classified in heading 3504, HTSUS.

CBP disagrees with the commenter. The *AdvantaRice*™ Premier 300 rice protein powder is not prima facie classifiable in heading 3504, HTSUS. The rice protein powder is a food preparation that has been prepared and processed for a specific use, namely as a protein or nutritional supplement. As a result, the rice protein powder at issue meets the exception to the provision that all protein substances are classified in heading 3504, HTSUS, as the product is provided more specifically in heading 2106, HTSUS, as a food preparation. In addition, the rice protein powder is not classified per GRI 3(a) or GRI 3(c). The rice protein powder is classified in heading 2106, HTSUS, under GRI 1 because it is a food preparation of heading 2106, HTSUS, and no other heading provides for it.

Moreover, the rice protein powder is not *ejusdem generis* to the cereal proteins listed in the ENs to heading 3504. The ENs to heading 3504, HTSUS, state that the heading includes, among other protein substances and their derivatives, glutelin and protein isolates obtained by extraction from a vegetable substance. The rice protein powder at issue here is made from one single source, rice, which is not listed in the ENs to heading 3504, HTSUS. Lastly, the commenter cites to several CBP rulings where protein substances were used in food products and not for use in making pharmaceuticals,

textiles, or plastics, but were nevertheless classified in heading 3504, HTSUS. While the products in those ruling were used in food products, they were not food preparations like the rice protein powder at issue here. As mentioned beforehand the *AdvantaRice*™ Premier 300 is a food preparation because it is used to supplement the protein content in various consumption applications and is incorporated as an ingredient in various food applications for human consumption. Moreover, the subject rice protein powder is marketed for application in food products such as bars, chips, protein blends, RTD beverages, and dips.

Accordingly, we find that the *AdvantaRice*™ Premier 300 is properly classified in heading 2106, HTSUS, and specifically in subheading 2106.10.00, HTSUS, which provides for "Food preparations not elsewhere specified or included: Protein concentrates and textured protein substances."

HOLDING:

By application of GRI 1, we find that the rice protein powder at issue is classified under heading 2106, HTSUS, and specifically in subheading 2106.10.00, HTSUS, which provides for "Food preparations not elsewhere specified or included: Protein concentrates and textured protein substances." The 2023 column one, general rate of duty is 6.4% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N308405, dated January 9, 2020, is hereby modified.

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

Sincerely,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF A RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF AN AUTOMOTIVE CLUTCH TUBE

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

ACTION: Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the tariff classification of an Automotive Clutch Tube.

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

DATE: Comments must be received on or before May 10, 2024.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Ms. Shannon Stillwell at (202) 325–0739.

FOR FURTHER INFORMATION CONTACT: Julio Ruiz-Gomez, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0736.

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 responsibil-

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

Pursuant to 19 U.S.C. §1625(c)(1), this notice advises interested parties that CBP is proposing to revoke a ruling letter pertaining to the tariff classification of an Automotive Clutch Tube. Although in this notice, CBP is specifically referring to NY 816028, dated October 26, 1995 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY 816028, CBP classified an Automotive Clutch Tube in subheading 8708.93, HTSUS, more specifically 8708.93.75, HTSUS, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Clutches and parts thereof: Other." CBP has reviewed NY 816028 and has determined the ruling letter to be in error. It is now CBP's position that an Automotive Clutch Tube is properly classified in subheading 8708.99, HTSUS, more specifically 8708.99.81, HTSUS, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY 816028 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed ruling HQ H294714 (Attachment B). 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
YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

NY 816028

October 26, 1995
CLA-2–87:R:N1:101 816028
CATEGORY: Classification
TARIFF NO.: 8708.93.7500

Ms. Ann Salo
Project Manager
F.W. MYERS & CO., INC.
85 N. Main Street
Suite 300
Mt. Clemens, MI 48043–5616

RE: The tariff classification of an automotive clutch tube from Japan

Dear Ms. Salo:

In your letter dated October 17, 1995 you requested a tariff classification ruling.

The item in question is a gray, zinc and fluorocarbon resin-coated steel tube which is approximately 15” in “bent-to-shape” length; fitted on both ends of the tube are gold-colored metal nuts which are 22/40″L. You state that the clutch tube is part of the transmission system and its purpose is to carry hydraulic fluid from the slave cylinder to the clutch pressure plate. You further state that the clutch tube will solely be used in “motor vehicles of the kind classified under [HTS] heading 8703”.

The applicable subheading for the clutch tube will be 8708.93.7500, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Clutches and parts thereof: For other vehicles: Other. The rate of duty will be 3% ad valorem.

This ruling is being issued under the provisions of Section 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 Robert DeSoucey at 212–466–5667.

Sincerely,

Roger J. Silvestri
Director
National Commodity Specialist Division

ATTACHMENT B

HQ H294714
OT:RR:CTF:TCM H294714 JRG
CATEGORY: Classification
TARIFF NO.: 8708.99.81

MS. ANN SALO
PROJECT MANAGER
F.W. MYERS & COMPANY
85 N. MAIN STREET, SUITE 300
MT. CLEMENS, MICHIGAN 48043–5616

RE: Revocation of NY 816028 (October 26, 1995); Tariff classification of an Automotive Clutch Tube

DEAR MS. SALO:

This is regarding New York Ruling Letter (NY) 816028, dated October 26, 1995, in which CBP classified a certain "Automotive Clutch Tube" under subheading 8708.93.75 of the Harmonized Tariff Schedule of the United States (HTSUS). Upon reconsideration, we find the classification of the subject merchandise in NY 816028 to be in error. For the reasons set forth below, we hereby revoke NY 816028.

FACTS:

The facts, as noted in NY 816028, are as follows:

> The item in question is a gray, zinc and fluorocarbon resin-coated steel tube which is approximately 15" in "bent-to-shape" length; fitted on both ends of the tube are gold-colored metal nuts which are 22/40″L. You state that the clutch tube is part of the transmission system and its purpose is to carry hydraulic fluid from the slave cylinder to the clutch pressure plate. You further state that the clutch tube will solely be used in "motor vehicles of the kind classified under [HTS] heading 8703".

As also noted in NY 816028, you stated in your original ruling request that the Automotive Clutch Tube would be used exclusively in motor vehicles of the kind classified under heading 8703, HTSUS.

ISSUE:

Is the Automotive Clutch Tube, as described above, properly classified under subheading 8708.93, HTSUS, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Clutches and parts thereof," or under subheading 8708.99, HTSUS, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other"?

LAW AND ANALYSIS:

Classification under the HTSUS is determined in accordance with the General Rules of Interpretation (GRIs) and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation (ARI). GRI 1 provides that the classification of goods shall be "determined according to the terms of the headings and any relative section

or chapter notes." If the goods cannot be classified solely using GRI 1, and the headings and legal notes do not otherwise require, GRIs 2 through 6 may be applied in order. GRI 6 provides:

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

The HTSUS headings and subheadings at issue are the following:

8708	Parts and accessories of the motor vehicles of headings 8701 to 8705:
	Other parts and accessories:
8708.93	Clutches and parts thereof:
8708.93.75	Other...
	* * *
8708.99	Other:
8708.99.81	Other...

There is no dispute that the Automotive Clutch Tube is a part covered by heading 8708, HTSUS. Therefore, the threshold question, applying GRI 6, is whether the Automotive Clutch Tube is a part of an automobile clutch. The courts have considered the nature of "parts" under the HTSUS and two distinct, though not inconsistent, tests have resulted. *See Bauerhin Techs. Ltd. P'ship. v. United States* (*Bauerhin*), 110 F.3d 774 (Fed. Cir. 1997). The first, articulated in *United States v. Willoughby Camera Stores, Inc.* (*Willoughby*), 21 C.C.P.A. 322, 324 (1933), requires a determination of whether the imported item is an "integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article." *Bauerhin*, 110 F.3d at 778 (quoting *Willoughby*, 21 C.C.P.A. at 324). The second, set forth in *United States v. Pompeo* (*Pompeo*), 43 C.C.P.A. 9, 14 (1955), states that an "imported item dedicated solely for use with another article is a 'part' of that article within the meaning of the HTSUS." *Id.* at 779 (citing *Pompeo*, 43 C.C.P.A. 9 at 13). Under either line of cases, an imported item is not a part if it is "a separate and distinct commercial entity." *Bauherin*, 110 F. 3d at 779.

We also note that the term "clutches" in subheading 8708.93, HTSUS, is not defined in the HTSUS or the Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System. When a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. *See Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001) ("To ascertain the common meaning of a term, a court may consult 'dictionaries, scientific authorities, and other reliable information sources' and 'lexicographic and other materials.'" (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271, 69 C.C.P.A. 128 (C.C.P.A. 1982))); *see also Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989)).

Merriam-Webster defines a clutch as "a coupling used to connect and disconnect a driving and a driven part (such as an engine and a transmission) of a mechanism." *Clutch*, Merriam-Webster, https://www.merriam-webster.com/dictionary/clutch (last visited Sept. 21, 2023). An automotive

clutch connects the engine to the transmission to ensure they spin at the same speed and disconnects them to allow for gear changes without requiring the constantly spinning engine to be turned off. *See* Karim Nice et al., *How Clutches Work*, howstuffworks.com (February 1, 2024), https://auto.howstuffworks.com/clutch.htm (last visited March 14, 2024). While there are various types of clutches, an automotive clutch generally uses a pressure plate to push together a flywheel, connected to the engine, and a clutch plate, connected to the transmission, causing the friction between the two to make the engine and transmission spin together. When disengaged, the clutch pulls the pressure plate away from the clutch plate, disconnecting the engine from the transmission and allowing for a gear change.

Based on this understanding of an automotive clutch's function, an Automotive Clutch Tube is not a part of an automobile clutch or clutch assembly. The function of the Automotive Clutch Tube is to convey hydraulic fluid from the slave cylinder to the clutch pressure plate. The slave cylinder is attached to the master cylinder of the hydraulic system that engages the clutch's pressure plate to disengage the clutch. *See, e.g.*, Spencer Lowe, *Why a Clutch Slave Cylinder is Important and How to Spot a Bad One*, FanBuzz Racing (Aug. 9, 2021), https://alt-driver.com/gearhead/why-a-clutch-slave-cylinder-is-important-and-how-to-spot-a-bad-one/ (last visited March 14, 2024). Although the Automotive Clutch Tube serves as a conduit for hydraulic fluid that ultimately plays a role in the operation of a clutch, the tube itself is not integral to the function of connecting and disconnecting a vehicle's motor and transmission. Furthermore, a review of technical sources indicated an Automotive Clutch Tube is generally not considered a part of the clutch mechanism. *See* Martin W. Stockel et al., *Auto Fundamentals* (11th ed. 2014); *Anatomy of Your Car's Clutch*, Haynes Publishing, https://haynes.com/en-gb/tips-tutorials/anatomy-your-cars-clutch (last visited March 14, 2024).

Based on these findings, we conclude that the Automotive Clutch Tube is not a part of an automobile clutch. As such, the Automotive Clutch Tube is a part of an automobile and is properly classified under subheading 8708.99, HTSUS, specifically under subheading 8708.99.81, HTSUS.

HOLDING:

By application of GRIs 1 and 6, the Automotive Clutch Tube is properly classified under heading 8708, HTSUS, and specifically under subheading 8708.99.81, HTSUS, which provides "Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other." The general column one rate of duty, for merchandise classified under this subheading is 2.5%.

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

Pursuant to U.S. Note 20(f) to Subchapter III, Chapter 99, HTSUS, products of China classified under subheading 8708.99.81, HTSUS, unless specifically excluded, are subject to an additional 25% ad valorem rate of duty. At the time of importation, an importer must report the Chapter 99 subheading, i.e., 9903.88.03, in addition to subheading 8708.99.81, HTSUS, noted above, for products of China.

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-

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.

EFFECT ON OTHER RULINGS:

NY 816028, dated October 26, 1995, is hereby REVOKED.

Sincerely,

Yuliya A. Gulis,
Director
Commercial and Trade Facilitation Division

PROPOSED MODIFICATION OF TWO RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF VARIOUS SPOT LOCATOR BEACONS

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

ACTION: Notice of proposed modification of two ruling letters, and proposed revocation of treatment relating to the tariff classification of various SPOT locator beacons.

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 two ruling letters concerning tariff classification of various SPOT locator beacons under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to modify any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before May 10, 2024.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Shannon Stillwell, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. CBP is also allowing commenters to submit electronic comments to the following email address: 1625Comments@cbp.dhs.gov. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Arrangements to inspect submitted comments should be made in advance by calling Ms. Shannon Stillwell at (202) 325–0739.

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.

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 two ruling letters pertaining to the tariff classification of various SPOT locator beacons. Although in this notice, CBP is specifically referring to Headquarters Ruling Letter ("HQ") H300872, dated September 30, 2019 (Attachment A) and HQ H300873, dated September 30, 2019 (Attachment B) this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the two 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) 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 HQ H300872 and HQ H300873, CBP classified various SPOT locator beacons in heading 8426, HTSUS, specifically in subheading 8526.91.00, HTSUS, which provides for "Radar apparatus, radio navigational aid apparatus and radio remote control apparatus: Other: Radio navigational aid apparatus." In both rulings, CBP clas-

sified these goods pursuant to HTSUS General Rules of Interpretation (GRIs) 1, 3(b) and 6. CBP has reviewed HQ H300872 and HQ H300873 and has determined the ruling letters to be in error. It is now CBP's position that the subject SPOT locator beacons are classified pursuant to GRIs 1 (Note 3 to Section XVI) and 6 of the HTSUS. CBP is not proposing to change the subheadings in which the subject locator beacons are classified. CBP is proposing only to modify the legal analysis applied in HQ H300872 and HQ H300873.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify HQ H300872 and HQ H300873 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H333773, set forth as Attachment C to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

GREGORY CONNOR
for
YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

HQ H300872
September 30, 2019
CLA-2 OT:RR:CTF:EMAIN H300872 NVF
CATEGORY: Classification
TARIFF NO.: 8526.91.11

MICHAEL K. TOMENGA
NEVILLE PETERSON LLP
ONE EXCHANGE PLAZA
55 BROADWAY, SUITE 2602
NEW YORK, NEW YORK 10006

RE: Tariff classification of Globalstar SPOT X® and GEN3® personal locator beacons from China.

DEAR MR. TOMENGA:

This is in response to your letter of September 17, 2018, submitted on behalf of Globalstar Inc. ("Globalstar), requesting a prospective ruling ("ruling request") as to the classification of the SPOT GEN3® ("GEN3") and SPOT X® ("SPOT X") personal locator beacons under the Harmonized Tariff Schedule of the United States ("HTSUS"). In reaching the below determination, we have considered information presented in your September 17, 2018 letter (hereinafter "ruling request"), public information from the Globalstar website, and information presented during the conference between your firm and CBP.

FACTS:

The GEN3 is a small, square device that has a GPS receiver and transmitter and a few buttons. It is intended for use by people when they travel to remote, rugged locations without cellular phone service. The primary feature of the GEN3 is automatic, motion-activated tracking which can be monitored by contacts. The GEN3 has various other location-related functions: it can send a pre-written check in message with GPS location to contacts; if the SOS button is pushed, it will send an emergency distress signal and GPS information to local response teams; and the user can push the help button to send a non-emergency assistance signal to contacts along with GPS information if the user needs assistance.

The SPOT X is rectangular handheld device that has the same functions as the GEN 3, with the addition of a screen and QWERTY keyboard and additional features. Like the GEN 3, the SPOT X is intended for use by people travelling in rugged, remote locations. The SPOT X tracks the user's GPS location and sends the GPS location data to contacts or local authorities accompanied by different preset messages, depending on the option selected by the user. In addition to motion-activated automatic tracking and SOS and non-emergency alert buttons, the SPOT X can send and receive SMS messages, update social media pages, and contains an electronic compass and altimeter.

In your ruling request, you assert that the GEN3 and SPOT X are classified under subheading 8517.62.0050, HTSUS, as other apparatus for the transmission of voice, images, or other data. As justification for your position, you state that they are composite devices which transmit and receive telemetric signals and therefore are communication devices. You also state that "the

wireless transceiver in the asset tracking devices enables the user to fully access all of [their] functionality" and therefore provides their essential character. Finally, you contend that the Globalstar devices are analogous to personal fitness devices classified in HQ H279898 (Apr. 5, 2017) (Fitbit workout device), HQ H260060 (July 14, 2015) (Apple watch), H257947 (July 14, 2015) (Samsung Gear LiveAndroid wearable smart device), HQ H273382 (Jan. 3, 2017) (Garmin VivoActive and VivoSmart), and HQ H265035 (Jan. 19. 2016) (Microsoft Band fitness tracker).

ISSUE:

Whether the GEN3 and SPOT X are composite goods classified as other apparatus for the transmission or reception of voice, images or other data in subheading 8517.62.0090, HTSUS, or as other radio navigational aid apparatus in subheading 8526.91.1140, HTSUS.

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. Goods that are *prima facie* classifiable under two or more headings are classifiable in accordance with GRI 3.

GRI 3(a) states that the heading that provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings refer to only part of the items in a composite good or set, those headings are to be regarded as equally specific in relation to the goods, even if one of the gives a more complete or precise description of the good. As such, they are regarded as equally specific and classification of the composite good or set is to be determined by GRI 3(b) or GRI 3(c).

GRI 3(b) states that composite goods or sets which cannot be classified by reference to GRI 3(a) are to be classified as if they consisted of the component that gives them their essential character.

GPS receivers are not specifically provided for in the HTSUS. However, CBP has consistently classified GPS receivers in subheading 8526.91, HTSUS, which provides for radio navigational aid apparatus. *See, e.g.,* HQ H014564 (Dec. 6, 2017) (Holux GPS Receiver Set), N26635 (July 16, 2015) (LugTrack GPS tracking device for luggage), N267981 (Sep. 21, 2015) (Crane bluetooth GPS watch), and HQ 955510 (Sep. 15, 1994) (GPS cards for PC).

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).

EN 85.26(1) states, in pertinent part, that heading 8526, HTSUS "also includes global positioning system (GPS) receivers."

Therefore, the HTSUS headings under consideration are as follows:

8517 Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528; parts thereof

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8526 Radar apparatus, radio navigational aid apparatus and radio remote control apparatus:

The GEN3 and SPOT X are devices that determine their GPS location using the internal GPS receiver and then transmit GPS location data to contacts who are tracking the user's location. GPS location data can be accompanied by a preset message, and in the case of the SPOT X, satellite network text messages can be sent to and received from contacts using the screen and keyboard. The devices are therefore composite goods pursuant to GRI 3 consisting of, among others, a GPS receiver and a transmitter which are fitted together, and must be classified as if they consisted of the component which imparts their essential character. It is well-established that a determination as to "essential character" is driven by the particular facts of the case at hand. *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."). That said, 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." *Structural Indus. v. United States*, 360 F. Supp. 2d 1330, 1336 (Ct. Int'l Trade 2005).

In the present case, the GEN3 is a satellite device which allows users to send their GPS location and preset messages to contacts. It can send location automatically, or if the check-in button is selected, it will send location data accompanied by a preset message, such as, "I am fine," to contacts. It also has an emergency response button which, when pushed, sends an alert to local authorities and the user's GPS location. The primary function of the device is to track the user's GPS location when in remote locations that do not have cellular data service. In order to perform its intended function, the GEN3 must be able to discern its location via a GPS receiver and transmit the GPS location data to contacts. Without the ability to determine its location via GPS receiver, the GEN3 does not have any GPS coordinates to transmit. This renders the motion-activated tracking, emergency signal, and non-emergency signal function useless as contacts and local authorities will be unable to track or locate the user, or provide assistance or rescue if requested.

The above analysis also applies to the SPOT X, which similarly functions as a GPS location tracking device. The SPOT X must be able to discern its location via GPS receiver in order to transmit that location via transmitter. Without the GPS receiver, the motion-activated tracking, emergency signal, and non-emergency signal cannot function as intended. While the SPOT X is capable of receiving and sending text messages from contacts or local authorities, the presence of a custom messaging feature does not outweigh the

primary GPS tracking function of the SPOT X. Indeed, the service plans offered by Globalstar support this position. All service plans currently offered for the SPOT X include unlimited SOS requests, check in messages, predefined messages, and unlimited tracking, all of which are forms of GPS location tracking. By contrast, custom messages are limited in the majority of the plans offered and the user is charged for every message sent or received beyond the preset limit.[1]

In light of the foregoing, we find that the essential character of the GEN3 and SPOT X is imparted by the GPS receiver. Thus, pursuant to GRI 3(b), the GEN3 and SPOT X are classified under heading 8526, HTSUS, which provides for "radar apparatus, radio navigational aid apparatus and radio remote control apparatus." This is consistent with our classification decision in N26635, which classified a similar GPS tracking device for luggage under heading 8526, HTSUS. See NY N26635 (Jul. 16, 2015).

In support of your argument that the GEN3 and SPOT X are classified under heading 8517, HTSUS, you assert that the "wireless transceiver in the asset tracking devices enables the user to fully access all of the asset tracker devices functionality and thus provides the 'essential character' of the devices." You assert that the subject devices are analogous to the devices in HQ H279898 (Fitbit workout device), HQ 260060 (Apple watch), H257947 (Samsung Gear LiveAndroid wearable smart device), HQ H273382 (Garmin VivoActive and VivoSmart), and HQ H265035 (Microsoft Band fitness tracker).

The fitness trackers in the abovementioned CBP rulings are not analogous to the GEN3 and SPOT X because they do not function in the same manner. The fitness trackers are wearable personal fitness trackers/monitors designed to connect via Bluetooth to the user's smartphone or other device and which are used to convey and/or control information collected either by the fitness tracker or the portable device to which they are connected. This information includes, but is not limited to: tracking heart rate (Fitbit, Apple watch, Samsung Gear, Microsoft Band), tracking time slept (Fitbit, Microsoft Band), displaying the phone number of incoming calls or text messages (Fitbit, Apple watch, Samsung Gear, Microsoft Band), accessing contacts on a smartphone (Samsung Gear, Fitbit), and controlling a television (Apple watch). Notably, the fitness trackers cannot perform the full range of functions for which they are marketed until they are paired via Bluetooth to a smartphone or other portable device. HQ H279898 at 7, HQ H260060 at 2, H257947 at 6, HQ H273382 at 5, HQ H265035 at 5.

By contrast, the GEN3 and SPOT X cannot be paired with a smartphone via Bluetooth and indeed, do not need to do so in order to perform their full range of tracking and communication functions. They are capable of independently accessing GPS location data and transmitting such data, along with messages, without being connected to another device. Additionally, the instant devices do not function as controllers in the same manner as the personal fitness trackers. Therefore, the GEN3 and SPOT X are not analogous to personal fitness trackers.

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[1] Compare the Basic, Advanced, Flex Basic, and Flex Advanced service plans with the more expensive Unlimited and Flex Unlimited plans. *https://www.globalstar.com/en-us/products/spot/SPOTX* last visited February 28, 2019.

HOLDING:

By operation of GRI 3(b), the GEN3 and SPOT X are classified in heading 8526.91.00, HTSUS. The column one, general rate of duty for merchandise of subheading 8526.91.00, HTSUS is free.

Effective July 6, 2018, the Office of the United States Trade Representative (USTR) imposed an additional tariff on certain products of China classified in the subheadings enumerated in Section XXII, Chapter 99, Subchapter III U.S. Note 20(b), HTSUS. The USTR imposed additional tariffs, effective August 23, 2018, on products classified under the subheadings enumerated in Section XXII, Chapter 99, Subchapter III U.S. Note 20(d), HTSUS. Subsequently, the USTR imposed further tariffs, effective September 24, 2018, on products classified under the subheadings enumerated in Section XXII, Chapter 99, Subchapter III U.S. Note 20(f) and U.S. Note 20(g), HTSUS. For additional information, please see the relevant Federal Register notices dated June 20, 2018 (83 Fed. Reg. 28710), August 16, 2018 (83 Fed. Reg. 40823), and September 21, 2018 (83 Fed. Reg. 47974). Products of China that are provided for in subheading 9903.88.01, 9903.88.02, 9903.88.03, or 9903.88.04 and classified in one of the subheadings enumerated in U.S. Note 20(b), U.S. Note 20(d), U.S. Note 20(f) or U.S. Note 20(g) to subchapter III shall continue to be subject to antidumping, countervailing, or other duties, fees and charges that apply to such products, as well as to those imposed by the aforementioned Chapter 99 subheadings.

Products of China classified under subheading 8526.91.00, HTSUS, unless specifically excluded, are subject to the additional 25 percent *ad valorem* rate of duty. At the time of importation, you must report the Chapter 99 subheading, *i.e.*, 9903.88.01, in addition to subheading 8526.91.00, HTSUS, listed above.

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/.

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 CBP officer handling the transaction.

Sincerely,

GREGORY CONNOR,
Chief
Electronics, Machinery, Automotive, and International Nomenclature Branch.

ATTACHMENT B

HQ H300873
September 30, 2019
CLA-2 OT:RR:CTF:EMAIN H300873 NVF
CATEGORY: Classification
TARIFF NO.: 8517.62.00, 8526.91.11

MICHAEL K. TOMENGA
NEVILLE PETERSON LLP
ONE EXCHANGE PLAZA
55 BROADWAY, SUITE 2602
NEW YORK, NEW YORK 10006

RE: Tariff classification of Globalstar SPOT TRACE®, STINGR, STX3-S, and SmartOne™ tracking devices from China.

DEAR MR. TOMENGA:

This is in response to your letter of September 17, 2018, submitted on behalf of Globalstar Inc. (“Globalstar), requesting a prospective ruling (“ruling request”) as to the classification of the STX3-S, SPOT TRACE® (“SPOT TRACE”), STINGR, and SmartOne™ C (“SmartOne”) global asset data and tracking devices under the Harmonized Tariff Schedule of the United States (“HTSUS”). In reaching the below determination, we have considered information presented in your September 17, 2018 letter (hereinafter “ruling request”), public information from the Globalstar website, and information presented during the conference between your firm and CBP.

FACTS:

The STX3-S is a small, low power satellite transmitter. It is sold to original equipment manufacturers (“OEMs”) for integration into items such as liquid petroleum gas tanks, water tanks, pipelines, meters, cars, trucks, boats, and containers. The STX3-S does not have a power source or receiver; its sole function is to transmit binary data supplied by a separate device. The type of data transmitted varies according to the end user. The STX3-S transmits data to Globalstar’s satellite network which forwards the information to the end user.

The STINGR is similar to the STX3-S, but has additional features. In addition to a small, low power satellite transmitter, the STINGR also contains an integrated global positioning system (“GPS”) receiver. It is sold to OEMs for integration into items such as liquid petroleum gas tanks, water tanks, pipelines, meters, cars, trucks, boats, and containers and is used to track the location of the item that it is attached to. The STINGR is designed to receive binary data supplied by separate sensors, *i.e.* when a cargo door opens, which it combines with GPS data from its GPS receiver. The combined data are transmitted to Globalstar’s satellite network which forwards the information to the end user.

The SPOT TRACE is a theft alert and tracking device that contains a GPS receiver, a transmitter, a motion sensor, a battery compartment, and an internal antenna. It is a ready-to-use product which is sold directly to end users. The SPOT TRACE can be mounted on an automobile, boat, or other item that the user wishes to track. It can be programmed to alert the user when the item it is attached to moves. The SPOT TRACE can also be

programmed for automatic tracking, wherein it determines and transmits its location at regular intervals of 2.5, 5, 10, 30, or 60 minutes and sends its location to the end user.

The SmartOne is a theft alert and tracking device that contains a motion sensor, GPS receiver, satellite transmitter, internal antenna, and inputs which allows it to accept signals from separate sensors. The SmartOne is a ready-to-use product which is sold directly to end users. It can be mounted on an automobile, boat, or other item. In addition to receiving GPS signals at regular intervals, the SmartOne can be programmed to send an alarm and GPS location information if the item it is attached to moves out of a predetermined range or outside motion sensor/vibration parameters.

In your ruling request, you assert that the STX3-S, STINGR, SPOT TRACE, and SmartOne are classified under subheading 8517.62.0050, HTSUS, as other apparatus for the transmission of voice, images, or other data. As justification for your position, you state that they are composite devices which transmit and receive telemetric signals and therefore are communication devices. You also state that "the wireless transceiver in the asset tracking devices enables the user to fully access all of [their] functionality" and therefore provides their essential character. Finally, you contend that the Globalstar devices are analogous to personal fitness devices classified in HQ H279898 (Apr. 5, 2017) (Fitbit workout device), HQ H260060 (July 14, 2015) (Apple watch), H257947 (July 14, 2015) (Samsung Gear LiveAndroid wearable smart device), HQ H273382 (Jan. 3, 2017) (Garmin VivoActive and VivoSmart), and HQ H265035 (Jan. 19. 2016) (Microsoft Band fitness tracker).

ISSUE:

Whether the SPOT TRACE, STINGR, STX3-S, and SmartOne are composite goods classified as other apparatus for the transmission or reception of voice, images or other data in subheading 8517.62.0090, HTSUS, or as other radio navigational aid apparatus in subheading 8526.91.1140, HTSUS.

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. Goods that are *prima facie* classifiable under two or more headings are classifiable in accordance with GRI 3.

GRI 3(a) states that the heading that provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings refer to only part of the items in a composite good or set, those headings are to be regarded as equally specific in relation to the goods, even if one of the gives a more complete or precise description of the good. As such, they are regarded as equally specific and classification of the composite good or set is to be determined by GRI 3(b) or GRI 3(c).

GRI 3(b) states that composite goods or sets which cannot be classified by reference to GRI 3(a) are to be classified as if they consisted of the component that gives them their essential character.

GPS receivers are not specifically provided for in the HTSUS. However, CBP has consistently classified GPS receivers in subheading 8526.91, HTSUS, which provides for radio navigational aid apparatus. *See, e.g.,* HQ H014564 (Dec. 6, 2017) (Holux GPS Receiver Set), N26635 (July 16, 2015)

(LugTrack GPS tracking device for luggage), N267981 (Sep. 21, 2015) (Crane bluetooth GPS watch), and HQ 955510 (Sep. 15, 1994) (GPS cards for PC).

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).

EN 85.26(1) states, in pertinent part, that heading 8526, HTSUS "also includes global positioning system (GPS) receivers."

Therefore, the HTSUS headings under consideration are as follows:

8517 Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528; parts thereof

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8526 Radar apparatus, radio navigational aid apparatus and radio remote control apparatus:

The STX3-S is distinct from the SPOT TRACE, STINGR, and SmartOne in that it only performs one function, that of a transmitter. Because it lacks a GPS receiver, the STX3-S does not have any GPS location or tracking capabilities. Rather, it transmits a binary signal provided by a separate, external device.

By contrast, the SPOT TRACE, STINGR, and SmartOne are theft alert and tracking devices that have a GPS receiver and are capable of transmitting pertinent GPS location data to Globalstar's network and the end user. Therefore, unlike the STX3-S, the SPOT TRACE, STINGR, and SmartOne are each a composite good pursuant to GRI 3 consisting of, among others, a GPS receiver and a transmitter which are fitted together, and must be classified as if they consisted of the component which imparts their essential character. It is well-established that a determination as to "essential character" is driven by the particular facts of the case at hand. *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."). That said, 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." *Structural Indus. v. United States*, 360 F. Supp. 2d 1330, 1336 (Ct. Int'l Trade 2005).

In the present case, the SPOT TRACE, STINGR, and SmartOne are tracking devices intended to assist a user with monitoring and tracking property such as cargo containers, automobiles, boats, etc. In order for the devices to perform their intended function, they must be able to discern their location via a GPS receiver in order to transmit the GPS location data to Globalstar's satellite network, which forwards the information to end users. Without the

ability to determine their location via GPS receiver, the devices do not have any location data to transmit. This is consistent with our classification decision in N26635, which classified a similar GPS tracking device for luggage under heading 8526, HTSUS. See NY N26635 (Jul. 16, 2015).

In light of the foregoing, we find that the essential character of the SPOT TRACE, STINGR, and SmartOne is imparted by the GPS receiver. Thus, pursuant to GRI 3(b), the SPOT TRACE, STINGR, and SmartOne are classified under heading 8526, HTSUS, which provides for "radar apparatus, radio navigational aid apparatus and radio remote control apparatus."

In support of your argument that the STX3-S, STINGR, SPOT TRACE, and SmartOne are classified under heading 8517, HTSUS, you assert that the "wireless transceiver in the asset tracking devices enables the user to fully access all of the asset tracker devices functionality and thus provides the 'essential character' of the devices." You assert that the subject devices are analogous to the devices in HQ H279898 (Fitbit workout device), HQ 260060 (Apple watch), H257947 (Samsung Gear LiveAndroid wearable smart device), HQ H273382 (Garmin VivoActive and VivoSmart), and HQ H265035 (Microsoft Band fitness tracker).

The fitness trackers in the abovementioned CBP rulings are not analogous to the instant theft alert and asset tracking devices because they do not function in the same manner.[1] They are wearable personal fitness trackers/monitors designed to connect via Bluetooth to the user's smartphone or other device and which are used to convey and/or control information collected either by the fitness tracker or the portable device to which they are connected. This information includes, but is not limited to: tracking heart rate (Fitbit, Apple watch, Samsung Gear, Microsoft Band), tracking time slept (Fitbit, Microsoft Band), displaying the phone number of incoming calls or text messages (Fitbit, Apple watch, Samsung Gear, Microsoft Band), accessing contacts on a smartphone (Samsung Gear, Fitbit), and controlling a television (Apple watch). Notably, the fitness trackers cannot perform the full range of functions for which they are marketed until they are paired via Bluetooth to a smartphone or other portable device. HQ H279898 at 7, HQ H260060 at 2, H257947 at 6, HQ H273382 at 5, HQ H265035 at 5.

By contrast, the STINGR, SPOT TRACE, and SmartOne as imported cannot be paired with a smartphone via Bluetooth and indeed, do not need to do so in order to perform their full range of theft alert or asset tracking functions. They are designed to independently access GPS location data if certain parameters are reached and automatically transmit such data and alert the user or the user's contacts. Additionally, the instant devices do not function as controllers in the same manner as the personal fitness trackers. Therefore, the STINGR, SPOT TRACE, and SmartOne are not analogous to personal fitness trackers.

[1] We observe that your arguments are inapplicable to the STX3-S. As discussed above, the STX3-S is a single function device consisting of a transmitter. It is therefore not a composite good requiring the application of the essential character test.

HOLDING:

By operation of GRIs 1 and 6, the STX3-S is classified under subheading 8517.62.0090, HTSUS, which provides for "Telephone sets . . . ; other apparatus for the transmission or reception of voice, images or other data . . . ." The column one, general rate of duty for merchandise of subheading 8517.62.00, HTSUS is free.

By operation of GRI 3(b), the STINGR, SPOT TRACE, and SmartOne are classified in heading 8526.91.00, HTSUS. The column one, general rate of duty for merchandise of subheading 8526.91.00, HTSUS is free.

Effective July 6, 2018, the Office of the United States Trade Representative (USTR) imposed an additional tariff on certain products of China classified in the subheadings enumerated in Section XXII, Chapter 99, Subchapter III U.S. Note 20(b), HTSUS. The USTR imposed additional tariffs, effective August 23, 2018, on products classified under the subheadings enumerated in Section XXII, Chapter 99, Subchapter III U.S. Note 20(d), HTSUS. Subsequently, the USTR imposed further tariffs, effective September 24, 2018, on products classified under the subheadings enumerated in Section XXII, Chapter 99, Subchapter III U.S. Note 20(f) and U.S. Note 20(g), HTSUS. For additional information, please see the relevant Federal Register notices dated June 20, 2018 (83 Fed. Reg. 28710), August 16, 2018 (83 Fed. Reg. 40823), and September 21, 2018 (83 Fed. Reg. 47974). Products of China that are provided for in subheading 9903.88.01, 9903.88.02, 9903.88.03, or 9903.88.04 and classified in one of the subheadings enumerated in U.S. Note 20(b), U.S. Note 20(d), U.S. Note 20(f) or U.S. Note 20(g) to subchapter III shall continue to be subject to antidumping, countervailing, or other duties, fees and charges that apply to such products, as well as to those imposed by the aforementioned Chapter 99 subheadings.

Products of China classified under subheading 8526.91.00, HTSUS, unless specifically excluded, are subject to the additional 25 percent *ad valorem* rate of duty. At the time of importation, you must report the Chapter 99 subheading, *i.e.*, 9903.88.01, in addition to subheading 8526.91.00, HTSUS, listed above.

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/.

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 CBP officer handling the transaction.

Sincerely,

GREGORY CONNOR,
Chief
Electronics, Machinery, Automotive, and International Nomenclature Branch.

ATTACHMENT C

HQ H333773
OT:RR:CTF:EMAIN H333773 NVF
CATEGORY: Classification
TARIFF NO.: 8517.62.00, 8526.91.00

MICHAEL K. TOMENGA
NEVILLE PETERSON LLP
ONE EXCHANGE PLAZA
55 BROADWAY, SUITE 2602
NEW YORK, NEW YORK 10006

RE: Modification of HQ H300872, dated September 30, 2019, and HQ H300873, dated September 30, 2019; Tariff classification of certain Global Position System (GPS) positioning devices from China.

DEAR MR. TOMENGA:

This letter pertains to Headquarters Ruling Letter (HQ) H300872, dated September 30, 2019 and HQ H300873, dated September 30, 2019. Both rulings were issued to you in your capacity as representative of Globalstar, Inc. ("Globalstar"), and pertain to the classification of the STX3-S, SPOT TRACE® ("SPOT TRACE"), STINGR, and SmartOne™ C ("SmartOne") global asset data and tracking devices, and the SPOT GEN3® ("GEN3") and SPOT X® ("SPOT X") personal locator beacons under the Harmonized Tariff Schedule of the United States ("HTSUS"). We have since reconsidered HQ H300872 and HQ H300873, and while the goods at issue were correctly classified, we are modifying the analysis in the rulings as detailed below.[1]

FACTS:

In HQ H300872 and HQ H300873, the products at issue were described as follows:

> The STINGR is similar to the STX3-S but has additional features. In addition to a small, low power satellite transmitter, the STINGR also contains an integrated global positioning system ("GPS") receiver. It is sold to OEMs for integration into items such as liquid petroleum gas tanks, water tanks, pipelines, meters, cars, trucks, boats, and containers and is used to track the location of the item that it is attached to. The STINGR is designed to receive binary data supplied by separate sensors, *i.e.* when a cargo door opens, which it combines with GPS data from its GPS receiver. The combined data are transmitted to Globalstar's satellite network which forwards the information to the end user.
>
> The SPOT TRACE is a theft alert and tracking device that contains a GPS receiver, a transmitter, a motion sensor, a battery compartment, and an internal antenna. It is a ready-to-use product which is sold directly to end

[1] We also note that this ruling does not impact the classification or analysis concerning the "STX3-S", which was at issue in HQ H300873. The STX3-S, classified pursuant to General Rule of Interpretation (GRI) 1, is described in HQ H300873 as a low power satellite transmitter that does not have a power source or receiver; its sole function is to transmit binary data supplied by a separate device. The type of data transmitted varies according to the end user. The STX3-S transmits data to Globalstar's satellite network which forwards the information to the end user.

users. The SPOT TRACE can be mounted on an automobile, boat, or other item that the user wishes to track. It can be programmed to alert the user when the item it is attached to moves. The SPOT TRACE can also be programmed for automatic tracking, wherein it determines and transmits its location at regular intervals of 2.5, 5, 10, 30, or 60 minutes and sends its location to the end user.

The SmartOne is a theft alert and tracking device that contains a motion sensor, GPS receiver, satellite transmitter, internal antenna, and inputs which allows it to accept signals from separate sensors. The SmartOne is a ready-to-use product which is sold directly to end users. It can be mounted on an automobile, boat, or other item. In addition to receiving GPS signals at regular intervals, the SmartOne can be programmed to send an alarm and GPS location information if the item it is attached to moves out of a pre-determined range or outside motion sensor/vibration parameters.

The GEN3 is a small, square device that has a GPS receiver and transmitter and a few buttons. It is used by people when they travel to remote, rugged locations without cellular phone service. The primary feature of the GEN3 is automatic, motion-activated tracking which can be monitored by contacts. The GEN3 has various other location-related functions: it can send a pre-written check in message with GPS location to contacts; if the SOS button is pushed, it will send an emergency distress signal and GPS information to local response teams; and the user can push the help button to send a non-emergency assistance signal to contacts along with GPS information if the user needs assistance.

The SPOT X is rectangular handheld device that has the same functions as the GEN 3, with the addition of a screen and QWERTY keyboard and additional features. Like the GEN 3, the SPOT X is intended for use by people travelling in rugged, remote locations. The SPOT X tracks the user's GPS location and sends the GPS location data to contacts or local authorities accompanied by different preset messages, depending on the option selected by the user. In addition to motion-activated automatic tracking and SOS and non-emergency alert buttons, the SPOT X can send and receive SMS messages, update social media pages, and contains an electronic compass and altimeter.

ISSUE:

Whether the SPOT TRACE, STINGR, SmartOne, GEN3 and SPOT X, are classified as other apparatus for the transmission or reception of voice, images or other data in heading 8517, HTSUS, or as other radio navigational aid apparatus in heading 8526, HTSUS.

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the GRIs. GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes.

The HTSUS headings under consideration are as follows:

8517 Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528; parts thereof.

8526 Radar apparatus, radio navigational aid apparatus and radio remote control apparatus.

Note 3 to Section XVI of the HTSUS states:

> Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

In HQ H300872 and HQ H300873, we considered the subject merchandise to be composite goods and classified them pursuant to GRI 3(b) according to the component that imparts the goods with their essential character. However, GRI 1 states that (before classifying per GRI 3) classification shall be determined according to the terms of... any relative section or chapter notes. Therefore, the subject merchandise should be classified per GRI and Note 3 to Section XVI rather than GRI 3.

CBP has consistently classified GPS receivers in subheading 8526.91, HTSUS, which provides for radio navigational aid apparatus. *See, e.g.,* HQ H014564 (Dec. 6, 2017) (Holux GPS Receiver Set), N26635 (July 16, 2015) (LugTrack GPS tracking device for luggage), N267981 (Sep. 21, 2015) (Crane Bluetooth GPS watch), and HQ 955510 (Sep. 15, 1994) (GPS cards for PC).

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).

By contrast, the SPOT TRACE, STINGR, and SmartOne are theft alert and tracking devices that have a GPS receiver and are capable of transmitting their GPS location data to Globalstar's network and the end user. Similarly, the GEN3 and SPOT X determine their GPS location using the internal GPS receiver and then transmit GPS location data to contacts who are tracking the user's location. GPS location data can be accompanied by a preset message, and in the case of the SPOT X, satellite network text messages can be sent to and received from contacts using the screen and keyboard. These five devices perform two or more alternating and complementary functions and therefore, in accordance with Note 3 to Section XVI, HTSUS, they are classified as if consisting only of that component which performs the devices' principal function.

The SPOT TRACE, STINGR, and SmartOne are tracking devices intended to assist a user with monitoring and tracking property such as cargo con-

tainers, automobiles, boats, etc. In order for the devices to perform their intended function, they must be able to discern their location via a GPS receiver in order to transmit the GPS location data to Globalstar's satellite network, which forwards the information to end users. Without the ability to determine their location via GPS receiver, the devices do not have any location data to transmit. We therefore conclude that the GPS receiver performs the principal function of the SPOT TRACE, STINGR, and SmartOne. This is consistent with our decision in New York Ruling Letter (NY) N266335 (Jul. 16, 2015), which classified a similar GPS tracking device for luggage under heading 8526, HTSUS.

Similarly, the GEN3 is a satellite device which allows users to send their GPS location and preset messages to contacts. It can send location automatically, or if the check-in button is selected, it will send location data accompanied by a preset message, such as, "I am fine," to contacts. It also has an emergency response button which, when pushed, sends an alert to local authorities and the user's GPS location. The principal function of the device is to track the user's GPS location when in remote locations that do not have cellular data service. In order to perform its intended function, the GEN3 must be able to discern its location via a GPS receiver and transmit the GPS location data to contacts. Without the ability to determine its location via GPS receiver, the GEN3 does not have any GPS coordinates to transmit. This renders the motion-activated tracking, emergency signal, and non-emergency signal function useless as contacts and local authorities will be unable to track or locate the user or provide assistance or rescue if requested.

The above analysis also applies to the SPOT X, which similarly functions as a GPS location tracking device. The SPOT X must be able to discern its location via GPS receiver in order to transmit that location via transmitter. Without the GPS receiver, the motion-activated tracking, emergency signal, and non-emergency signal cannot function as intended. While the SPOT X is capable of receiving and sending text messages from contacts or local authorities, the presence of a custom messaging feature does not outweigh the principal GPS tracking function of the SPOT X. Indeed, the service plans offered by Globalstar support this position. All service plans currently offered for the SPOT X include unlimited SOS requests, check in messages, predefined messages, and unlimited tracking, all of which are forms of GPS location tracking. By contrast, custom messages are limited in the majority of the plans offered and the user is charged for every message sent or received beyond the preset limit.[2]

In light of the foregoing, we find that the principal function of the SPOT TRACE, STINGR, SmartOne, GEN3 and SPOT X is that of a GPS receiver. Thus, the devices are classified under heading 8526, HTSUS, which provides for "radar apparatus, radio navigational aid apparatus and radio remote control apparatus."

HOLDING:

By application of GRIs 1 (Note 3 to Section XVI) and 6, the SPOT TRACE, STINGR, SmartOne, GEN3 and SPOT X are classified in heading 8526.91.00, HTSUS which provides for " Radar apparatus, radio navigational aid appa-

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[2] Compare the Basic, Advanced, Flex Basic, and Flex Advanced service plans with the more expensive Unlimited and Flex Unlimited plans. *https://www.globalstar.com/en-us/products/spot/SPOTX* last visited March 12, 2024.

ratus and radio remote control apparatus: Other: Radio navigational aid apparatus." The column one, general rate of duty for merchandise of subheading 8526.91.00, HTSUS is free.

Pursuant to U.S. Note 20 to Subchapter III, Chapter 99, HTSUS, products of China classified under 8526.91.00, 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.,* 9903.88.01, in addition to subheading 8526.91.00, HTSUS, listed above.

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.hts.usitc.gov*.

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 CBP officer handling the transaction.

EFFECT ON OTHER RULINGS:

HQ H300872, dated September 30, 2019, and HQ H300873, dated September 30, 2019, are hereby MODIFIED.

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

Sincerely,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

AGENCY INFORMATION COLLECTION ACTIVITIES

Revision; Biometric Identity

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

ACTION: 60-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) 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 May 24, 2024) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0138 in the subject line and the agency name. Please submit written comments and/or suggestions in English. Please use the following method to submit comments:

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This 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: Biometric Identity.

OMB Number: 1651–0138.

Form Number: N/A.

Current Actions: Revision.

Type of Review: Revision.

Affected Public: Individuals.

Abstract: In order to enhance national security, the Department of Homeland Security is developing a biometric based entry and exit system capable of improving the information resources available to immigration and border management decision-makers. These biometrics may include: digital fingerprint scans, facial images, iris images or other biometrics. Biometrics may be collected from travelers entering or exiting the United States, including the collection of biometrics from vehicles upon entry. CBP continues to test and evaluate different technological and operational changes to improve the accuracy and speed of biometric collection.

The federal statutes that mandate DHS to create a biometric entry and exit system include: Section 2(a) of the Immigration and Naturalization Service Data Management Improvement Act of 2000 (DMIA), Public Law 106–215, 114 Stat. 337 (2000); Section 205 of the Visa Waiver Permanent Program Act of 2000, Public Law 106–396, 114 Stat. 1637, 1641 (2000); Section 414 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56, 115 Stat. 272, 353 (2001); Section 302 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Border Security Act), Public Law 107–173, 116 Stat. 543, 552, (2002); Section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108–458, 118 Stat. 3638, 3817 (2004); Section 711 of the

Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53, 121 Stat. 266 (2007), Consolidated Appropriations Act, 2016, Public Law 114–113, 129 Stat. 2242, 2493 (2016), Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, 110 Stat. 3009–546 (1997), Section 802 of the Trade Facilitation and Trade Enforcement Act of 2015, Public Law 114–125, 130 Stat. 122, 199 (2015), and Sections 214, 215(a), 235(a), 262(a), 263(a) and 264(c) of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1184, 1185(a), 1225(a), 1302(a)(1303(a), 1304(c) and 1365b.

New Change

This revision submission will increase the number of respondents whose biometrics are collected in vehicles, and to seek an exemption from PRA citation requirements on biometric/ privacy signage. CBP ports of entry and external partners such as airports and seaports post biometric entry-exit privacy signage at those locations where facial comparison technology is in use by or on behalf of CBP. Due to operation costs to main signage to be complaint with PRA requirements, CBP requests that in lieu of placing the OMB number's expiration date on the privacy signage, CBP will link/reference the OMB number, expiration date, and PRA language on CBP's biometric website: *www.cbp.gov/travel/biometrics.* In lieu of displaying the PRA language on the signage, it will be listed on the website along with the current expiration date. This exception reduces the reprint cost to the U.S. government and the external stakeholders and allows the current privacy signage to remain 508 compliant and PBRB approved.

Type of Information Collection: Biometric Data, Fingerprint Modality.

Estimated Number of Respondents: 58,657,882.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 58,657,882.

Estimated Time per Response: .0097 hours.

Estimated Total Annual Burden Hours: 568,981.

Type of Information Collection: Facial/Iris Modality.

Estimated Number of Respondents: 54,542,118.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 54,542,118.

Estimated Time per Response: .0025 hours.

Estimated Total Annual Burden Hours: 136,355.

Type of Information Collection: Facial Scan/Vehicle Modality.

Estimated Number of Respondents: 20,000,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 20,000,000.

Estimated Time per Response: 0.

Estimated Total Annual Burden Hours: 0.

Dated: March 20, 2024.

Seth D. Renkema,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

AGENCY INFORMATION COLLECTION ACTIVITIES

Revision; Entry Summary (CBP Form 7501)

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

ACTION: 30-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) 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 April 24, 2024) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Please write comments and/or suggestions in English. 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** (88 FR 24203) on April 19, 2023, 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: Entry Summary.

OMB Number: 1651–0022.

Form Number: 7501.

Current Actions: Revision.

Type of Review: Revision.

Affected Public: Importer, importer's agent for each import transaction.

Abstract: CBP Form 7501, *Entry Summary,* is used to identify merchandise entering the commerce of the United States, and to document the amount of duty and/or tax paid. CBP Form 7501 is submitted by the importer, or the importer's agent, for each import transaction. The data on this form is used by CBP as a record of the import transaction; to collect the proper duty, taxes, certifications, and enforcement information; and to provide data to the U.S. Census Bureau for statistical purposes. CBP Form 7501 must be filed within 10 working days from the time of entry of merchandise into the United States. Collection of the data on this form is authorized by 19 U.S.C. 1484 and provided for by 19 CFR 141.61 and 19 CFR 142.11. CBP Form 7501 and accompanying instructions can be found at: *https://www.cbp.gov/newsroom/publications/forms?title_1=7501.*

New Change

CBP is proposing to add the following required data fields to Form 7501:

■ For certain Harmonized Tariff Schedule (HTS) classifications of steel imports, the country where the steel used in the manufacture of the product was melted and poured; the country where the steel used in the manufacture of the product was melted and poured applies to the original location where the raw steel is first produced in a steel-making furnace in a liquid state; and then poured into its first solid shape.

■ For certain HTS classifications of aluminum imports, the countries where the largest and second largest volume of primary aluminum used in the manufacture of the imported aluminum product was smelted; and the country where the aluminum used in the imported aluminum product was most recently cast. The fields requiring identification of the countries where the largest volume of primary aluminum used in the manufacture of the product was smelted applies to the country where the largest volume of new aluminum metal is produced from alumina (or aluminum oxide) by the electrolytic Hall-Héroult process. Importers may be required to report if primary aluminum from specific countries is used in the imported aluminum product, if required by law and/or Presidential Proclamation.[1]

■ Importers will be required to report on the Form 7501 the steel country of melt and pour and aluminum countries of smelt and cast for imports under those steel and aluminum HTS classifications subject to the Commerce Department's steel and aluminum import license applications, and where applicable, the section 232 steel and aluminum measures.

These data fields will substantially align the Form 7501 reporting requirements with the Commerce Department's existing reporting requirements for steel melt and pour and aluminum smelt and cast countries for steel and aluminum import license applications under 19 CFR 360.103(c)(1) and 19 CFR 361.103(c)(1). The aluminum and steel license application information is used by the Commerce Department for monitoring of anticipated imports of certain aluminum and steel products into the United States. The Form 7501 data is used

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[1] The February 24, 2023 Presidential Proclamation on Adjusting Imports of Aluminum Into the United States requires importers to provide to CBP information necessary to identify the countries where the primary aluminum used in the manufacture of certain imports of aluminum articles are smelted and information necessary to identify the countries where such aluminum articles imports are cast. This notice proposes to add the aluminum smelt and cast data field to Form 7501 independently from the February 24, 2023 Proclamation.

by CBP to determine, when imports are entered for consumption, the proper amount of duties, applicable fees, taxes, and imports subject to quota.

These data fields are also required to enforce the tariff rate quotas for imported steel and aluminum established by the following Presidential Proclamations under section 232 of the Trade Expansion Act of 1962, as amended: for products of the European Union, Proclamation 10327 of December 27, 2021 (87 FR 1, January 3, 2022) and Proclamation 10328 of December 27, 2021 (87 FR 11, January 3, 2022); for products of Japan (steel-only), Proclamation 10356 of March 31, 2022 (87 FR 19351, April 1, 2022); and for products of the United Kingdom, Proclamation 10405 of May 31, 2022 (87 FR 33583, June 3, 2022) and Proclamation 10406 of May 31, 2022 (87 FR 33591, June 3, 2022).

Type of Information Collection: 7501 Formal Entry (Electronic submission).

Estimated Number of Respondents: 2,336.

Estimated Number of Annual Responses per Respondent: 9,903.

Estimated Number of Total Annual Responses: 23,133,408.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 1,920,073.

Type of Information Collection: 7501 Formal Entry (Paper Submission).

Estimated Number of Respondents: 28.

Estimated Number of Annual Responses per Respondent: 9,903.

Estimated Number of Total Annual Responses: 277,284.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 92,336.

Type of Information Collection: 7501 Formal Entry w/Softwood Lumber Act of 2008 (Paper Only).

Estimated Number of Respondents: 210.

Estimated Number of Annual Responses per Respondent: 1,905.

Estimated Number of Total Annual Responses: 400,050.

Estimated Time per Response: 40 minutes.

Estimated Total Annual Burden Hours: 266,433.

Type of Information Collection: 7501 Informal Entry (Electronic Submission).

Estimated Number of Respondents: 1,883.

Estimated Number of Annual Responses per Respondent: 2,582.

Estimated Number of Total Annual Responses: 4,861,906.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 403,538.

Type of Information Collection: 7501 Informal Entry (Paper Submission).

Estimated Number of Respondents: 19.

Estimated Number of Annual Responses per Respondent: 2,582.

Estimated Number of Total Annual Responses: 49,058.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 12,265.

Type of Information Collection: 7501A Document/Payment Transmittal (Paper Only).

Estimated Number of Respondents: 20.

Estimated Number of Annual Responses per Respondent: 60.

Estimated Number of Total Annual Responses: 1,200.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 300.

Type of Information Collection: Exclusion Approval Information Letter.

Estimated Number of Respondents: 5,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 5,000.

Estimated Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 250.

Dated: March 20, 2024.

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

U.S. Court of International Trade

Slip Op. 24–31

TENARIS BAY CITY, INC. et al., Plaintiff, v. UNITED STATES, Defendant, and UNITED STATES STEEL CORPORATION, et al. Defendant-Intervenors.

Before: Claire R. Kelly, Judge
Court No. 22–00343
PUBLIC VERSION

[Granting in part and denying in part Plaintiffs' motion for judgment on the agency record.]

Dated: March 14, 2024

Gregory J. Spak, *Frank J. Schweitzer*, and *Matthew W. Solomon*, White & Case LLP, of Washington D.C., argued for plaintiffs Tenaris Bay City, Inc., Maverick Tube Corporation, IPSCO Tubulars Inc., Tenaris Global Services (U.S.A.) Inc., and Siderca S.A.I.C. On the brief were *Kristina Zissis* and *Colin Alejandro Dilley*.

Hardeep K. Josan, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., argued for defendant United States. On the brief were *Patricia M. McCarthy*, Director, *Claudia Burke*, Deputy Director, and *Brian M. Boynton*, Principal Deputy Assistant Attorney General. Of counsel was *Ian Andrew McInerney*, Attorney, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce, of Washington, D.C.

James E. Ransdell, Cassidy Levy Kent (USA) LLP, of Washington D.C., argued for defendant-intervenor United States Steel Corporation. On the brief were *Thomas M. Beline* and *Myles S. Getlan*.

Christopher T. Cloutier and *Saad Younus Chalchal*, Schagrin Associates, of Washington D.C., argued for defendant-intervenors Borusan Mannesmann Pipe U.S. Inc., PTC Liberty Tubulars LLC, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC, and Welded Tube USA Inc. On the brief were *Roger B. Schagrin*, and *Luke A. Meisner*.

OPINION AND ORDER

Kelly, Judge:

Before the Court is Plaintiffs Tenaris Bay City, Inc., Maverick Tube Corporation, IPSCO Tubulars Inc., Tenaris Global Services (U.S.A.) Corporation, and Siderca S.A.I.C.'s ("Plaintiffs") motion for judgment on the agency record challenging the U.S. Department of Commerce's ("Commerce") final determination in its 2020–2021 less-than-fair-value investigation of oil country tubular goods ("OCTG") from Argentina. Plaintiffs argue that: (1) Commerce's initiation of the antidumping duty ("AD") investigation and determination that the AD petition was filed "by or on behalf of the industry" is contrary to law and unsupported by substantial evidence; and (2) Commerce's deci-

sion not to poll the domestic industry and seek actual production data for the twelve months immediately preceding the filing of the petition to determine industry support is contrary to law, unsupported by substantial evidence, and an abuse of discretion. For the following reasons, the Court sustains Commerce's determination in part, and remands in part for further explanation or reconsideration.

BACKGROUND

Plaintiffs contest the initiation of the OCTG from Argentina AD investigation. [Pls.'] R. 56.2 Mot. J. Agency R. at 1, June 26, 2023, ECF No. 40 ("Pls. Mot."); Def.'s Resp. Opp'n [Pls. Mot.] at 1–2, Sept. 22, 2023, ECF No. 46 ("Def. Resp."). On October 6, 2021, Petitioners Borusan Mannesmann Pipe U.S. Inc, PTC Liberty Tubulars LLC, U.S. Steel Tubular Products, Inc., the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC ("USW"), and Welded Tube USA Inc. ("Petitioners") filed a petition for an imposition of AD and countervailing duties ("CVD") on OCTG from Argentina (AD), Mexico (AD), Korea (CVD), and Russia (AD/CVD). Pls. Mot. at 4; Def. Resp. at 2–3; *see also* Letters Schagrin Assoc. to Sec. Commerce Pertaining Borusan Mannesmann Pipe U.S., Inc. et al. Request for Admin Review, PDs 1–6, CDs 1–6, bar codes 4167998–01–06 (Oct. 5, 2021).[1] Pls. Mot. at 4;[2] Def. Resp. at 2–3. On October 7, 2021, Commerce issued its first questionnaire requesting additional information and for Petitioners to address a "methodological error with respect to the calculation of total shipments for the U.S. industry."[3] Pls. Mot. at 5; Def. Resp. at 4.

On October 8, 2021, Plaintiffs submitted comments to Commerce alleging (1) Petitioners misrepresented which production plants were represented by USW, causing production figures to be improperly deducted from the industry support calculation; (2) the industry support calculation was unreliable because it was based on anomalous

[1] On February 22, 2023, Defendant filed indices to the public and confidential administrative records underlying Commerce's final determination. *See* ECF No. 35 4–5. Citations to administrative record documents in this opinion are to the numbers Commerce assigned to such documents in the indices, and all references to such documents are preceded by "PD" or "CD" to denote public or confidential documents.

[2] Plaintiffs note that "[s]everal U.S. OCTG producers did not join in the filing of the petition," including Plaintiffs and their production companies—comprising the "largest U.S. producer of OCTG"—and [[
]]. Pls. Mot. at 4–5.

[3] Defendant asserts that Petitioners established the universe of domestic OCTG producers, consisting of 20 producers including the petitioning companies, based on the International Trade Commission's ("ITC") most recent full sunset review and knowledge of the OCTG industry. Commerce's Initiation Checklist: Attach. II at 4, PD 26, CD 40, bar code 4176344–01 (Oct. 26, 2021) ("Attach. II"); Def. Resp. at 3.

2020 production data;[4] and (3) the Petitioner's reliance on shipment data, instead of production data, was not in accordance with 19 U.S.C. § 1673a(c)(4)(A)(ii). Pls. Mot. at 6. Plaintiffs asked Commerce to reject the petition or delay determination by twenty days to poll the industry and determine petition support per 19 U.S.C. § 1673a(c)(1)(B). *Id.*

On October 12, 2021, Petitioners submitted a modified calculation of industry support. *Id.* at 7; Def.-Ints.' Resp. Opp'n [Pls. Mot.] at 5, Sept. 22, 2023, ECF No. 44 ("Def.-Ints. Resp.").[5] On October 15, 2023, Plaintiffs submitted comments to Petitioners' modified industry support calculations, again identifying flaws and requesting Commerce to poll the industry and extend its determination by 20 days. Pls. Mot. at 7; Def. Resp. at 5. On October 18, 2021, Petitioners responded to Plaintiffs' comments with a second revised industry support calculation. Pls. Mot. at 7–8; Def. Resp. at 6.

On October 19, Commerce issued its second questionnaire to Petitioners, requesting information concerning domestic OCTG production facilities represented by USW. Pls. Mot. at 8; Def. Resp. at 3. On October 20, 2021, Plaintiffs commented on Petitioners' October 18 submission, reasserting the alleged flaws in industry support calculations as identified in Plaintiffs' previous comments and that the domestic industry should be polled. Pls. Mot. at 8; Def. Resp. at 6. Plaintiffs also argued "Petitioners bear the burden of demonstrating industry support for the petition," and that "Petitioner's strategy to cobble together the requisite support based on data for a group that also included processors and finishers of OCTG had implications for the accuracy of the industry support calculations." Pls. Mot. at 8.

On October 21, 2021, Petitioners responded to Commerce's second questionnaire, and provided "updated declarations and information on domestic mills represented by USW" and revised calculations.[6] Def.-Ints. Resp. at 8; Pls. Mot. at 9; Def. Resp. at 4–5. That same day, counsel for Plaintiffs met with Commerce to "reiterate [Plaintiffs'] concerns stated in its three sets of comments, including that Commerce poll the domestic industry to determine whether the petition has the statutorily-required level of domestic industry support." Pls.

[4] Plaintiffs allege that the 2020 production data is anomalous because of the "oversupply of oil by [the Organization of the Petroleum Exporting Countries ('OPEC')], combined with the global COVID-19 pandemic." Pls. Mot. at 6.

[5] Petitioners' revised industry support calculations had multiple bases, including: Petitioners' own 2020 production data and domestic shipment data for 2020 [[ ]]; data from the ITC's 2020 final sunset review; adjustments based on ratios of domestic and export shipments using 2020 data; and estimates of non-petitioning companies' production. Pls. Resp. at 7; Def.-Ints. Resp. at 5.

[6] Petitioners also provided "a [[ ]]" in the questionnaire response. Def.-Ints. Resp. at 8.

Mot. at 9; Def.-Ints. Resp. at 8. On October 22, 2021, Plaintiffs submitted a fourth set of comments, contesting Petitioners' October 21, 2021, response to Commerce's second questionnaire on the same grounds as Plaintiffs' previous objections.[7] Pls. Mot. at 10; Def. Resp. at 7.

On October 26, 2021, Commerce initiated the AD investigation in accordance with the 20-day statutory deadline provided by 19 U.S.C. § 1673a(c)(1)(A). *See Oil Country Tubular Goods from Argentina, Mexico, and the Russian Federation: Initiation of Less-Than-Fair-Value Investigations*, 86 Fed. Reg. 60,205 (Dep't Commerce Nov. 1, 2021) (initiation notice). In its initiation checklist for the AD investigation ("Initiation Checklist"), Commerce identified reliance upon "industry support data contained in the [p]etitions" and explained that the petition satisfied statutory requirements. *See* Attach. II at 4; Def. Resp. at 7; Def.-Ints. Resp. at 9; *see also* Pls. Mot. at 10. Commerce accepted Petitioners' October 21 revised calculations and also conducted its own calculations with "a conservative, alternative methodology."[8] Attach. II at 5; Def.-Ints. Resp. at 8. Under both methodologies, Commerce found that the petition satisfied 19 U.S.C. § 1673a(c)(4)(A)(i) by exhibiting support from domestic producers or workers accounting for "at least 25 percent of the total production of the domestic like product."[9] Attach. II at 6; Pls. Mot. at 10; Def. Resp. at 7. However, neither methodology demonstrated that the domestic producers supporting the petition accounted for over 50 percent of the production of the domestic like product, as required by 19 U.S.C. § 1673a(c)(4)(A)(ii). Attach II. at 6–7; Pls. Mot. at 10; Def.-Ints. Resp. at 9.

Consequently, Commerce chose to "rely on other information," and determined the petition was adequately supported by declarations

[7] Defendant notes that Plaintiffs' fourth response was filed "16 days after the date of the Petition and four days before Commerce's statutory deadline for determination on initiation of the investigation." Def. Resp. at 7.

[8] In the alternative calculation, Commerce

> calculated 2020 production estimates using the information available on the record on domestic shipments of OCTG for the entire industry in 2020, as reported in [[ ]], and the publicly available information on U.S. producers' production and domestic shipments reported in the ITC's India et al OCTG 2020 Review.

Attach. II at 5; *see also* Def.-Ints. Resp. at 8.

[9] Specifically, Commerce found that domestic industry support accounted for [[ ]] percent of total production of the domestic like product in 2020 under Petitioners' calculations, and [[ ]] percent under the alternative methodology. Attach. II at 6.

from domestic producers contained in the agency record.[10] Attach. II at 6–7; Def.-Ints. Resp. at 9; *see* Pls. Mot. at 10–11. Moreover, Commerce concluded that the October 1, 2020, through September 30, 2021, period of investigation ("POI") was proper under 19 C.F.R. § 351.204, despite Plaintiffs' characterization that it was anomalous, as it represented "the four most recently completed fiscal quarters since the month preceding the filing date." Def. Resp. at 8; Def.-Ints. Resp. at 10. Commerce also rejected Plaintiffs' concern that finishing operations were improperly included twice when Petitioners calculated industry support, stating that "[t]he scope and domestic like product of [AD] investigations includes OCTG 'whether finished . . . or unfinished.'" Attach. II at 14; Def.-Ints. Resp. at 9–10.

On May 11, 2022, Commerce published the preliminary results for the OCTG AD investigation from Argentina, determining that OCTG is being, or likely to be, sold in the United States at less than fair value. *See Oil Country Tubular Goods From Argentina*, 87 Fed. Reg. 28,801 (Dep't Commerce May 11, 2022) (preliminary determination of sales at less than fair value) and accompanying preliminary issues and decision memorandum. On September 29, 2022, Commerce published the final results determining that OCTG from Argentina is being, or likely to be, sold in the United States at less than fair value. *See Oil Country Tubular Goods From Argentina*, 87 Fed. Reg. 50,054 (Dep't Commerce Sept. 29, 2022) (final determination) and accompanying issues and decision memorandum.

On January 13, 2023, Plaintiffs filed the instant action. *See generally* Compl., Jan. 13, 2023, ECF No. 16. On June 26, 2023, Plaintiffs moved the Court for judgment on the agency record. *See generally* Pls. Mot. Defendant and Defendant-Intervenors filed response briefs on September 22, 2023. *See generally* Def. Resp.; Def.-Ints. Resp. Oral argument on the issues presented in Plaintiffs' motion was heard by the Court on January 10, 2024. *See* Dig. Audio File Re. Oral Arg. Proc. [ECF No. 57] Held On Jan. 10, 2024, Jan. 11, 2023, ECF No. 58 ("Oral Arg.").

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[10] Commerce used declarations of support from non-petitioning domestic producers and [[ ]]. Attach. II at 6; Def.-Ints. Resp. at 9. Furthermore, Commerce noted that despite Plaintiffs' opposition to the petition,

> [Plaintiff] has not provided any production data for Commerce to include in the industry support calculation. Accordingly, because [[ ]] Petitions, [Commerce] find[s] that the supporters of the Petitions account for [[ ]] percent of the total U.S. production of those parties expressing an opinion on the Petitions for which we have production data.

Attach II. at 6–7 (footnotes omitted).

JURISDICTION AND STANDARD OF REVIEW

The Court has jurisdiction pursuant to Section 516A of the Tariff Act of 1930,[11] as amended, 19 U.S.C. § 1516a(a)(2)(B)(i) and 28 U.S.C. § 1581(c) (2018),[12] which grants the Court authority to review actions contesting the final determination in an antidumping duty order. The Court will uphold Commerce's determination unless it is "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B)(i).

DISCUSSION

Plaintiffs argue Commerce's decisions to (1) rely on "other information" including "anomalous" data from the 2020 OCTG market period, rather than poll the domestic industry, and (2) assume that OCTG counted for finishing operations were not counted twice in the industry support calculations, were unsupported by substantial evidence, an abuse of discretion, and otherwise contrary to law. Pls. Mot. at 14–45. Defendant and Defendant-Intervenors argue that Commerce was not required to poll the industry, and that its industry support determination is reasonable, supported by substantial evidence, and in accordance with law. Def. Resp. at 9–21; Def.-Ints. Resp. at 13–32. Commerce's decision to rely on other information rather than poll the domestic industry is supported by substantial evidence. However, Commerce must either reconsider or further explain its use of data from the 2020 market period, and specifically to ensure that finishing operations data were not double counted.

I. Polling the Industry

Plaintiffs claim that Commerce's reliance on other information rather than polling the domestic industry to calculate industry support based on the most recent twelve-month period prior to filing the AD petition is contrary to law and unsupported by substantial evidence. Pls. Mot. at 35. Specifically, Plaintiffs argue (1) 19 U.S.C. § 1673a(c)(4)(D) mandates that Commerce poll the domestic industry if the petition does not establish the statutory 50 percent level of support; (2) Commerce's failure to poll the industry and request data "indicative of production levels" was unreasonable; and (3) Commerce abused its discretion by failing to poll the domestic producers to establish industry support. *Id.* at 35–41. Defendant and Defendant-intervenors counter that Commerce's reliance on other information is

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[11] Further citations to the Tariff Act of 1930, as amended, are to the relevant provisions of Title 19 of the U.S. Code, 2018 edition.

[12] Further citations to Title 28 of the U.S. Code and Code of Federal Regulations are to the 2018 edition.

in accordance with law and supported by substantial evidence. Def. Resp. at 20–22; Def.-Ints. Resp. at 25–29. Because Commerce has statutory discretion to poll the industry or "rely on other information" under 19 U.S.C. § 1673a(c)(4)(D) when calculating industry support of an AD petition, the Court sustains Commerce's determination on this issue.

Initiation of an AD investigation pursuant to 19 U.S.C. § 1673a(a)(1) requires Commerce to determine, based upon available information, "that a formal investigation is warranted into the question of whether the elements necessary for the imposition of [AD] under [the statute] exist." 19 U.S.C. § 1673a(a)(1). An interested party[13] may initiate an AD investigation by filing a petition on behalf of the industry requesting Commerce investigate possible dumping. 19 U.S.C. § 1673a(b)(1). Before Commerce launches an investigation, it generally has 20 days after the date a petition was filed to determine whether the petition: (1) alleges the necessary elements for AD imposition and contains "information reasonably available to the petitioner" after examining available sources and information to Commerce and the strength of the evidence submitted by the petitioners; and (2) was filed "by or on behalf of the industry." 19 U.S.C. § 1673a(c)(1)(A).

Commerce considers a petition to be filed "by or on behalf of the industry" if

> (i) the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and
>
> (ii) the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition.

[13] An "interested party," for the purposes of initiating an AD investigation by petition, includes:

> (C) a manufacturer, producer, or wholesaler in the United States of a domestic like product,
> (D) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product,
> (E) a trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States,
> (F) an association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E) with respect to a domestic like product[.]

19 U.S.C. § 1677(9)(C)–(F).

19 U.S.C. § 1673a(c)(4)(A).[14] Where the petition satisfies the 25 percent domestic industry support requirement, but does not establish the latter 50 percent requirement, the statute mandates that Commerce "shall[] poll the industry or rely on other information in order to determine if there is support for the petition" before proceeding with formal initiation of the AD investigation.[15] 19 U.S.C. § 1673a(c)(4)(D)(i). In such a case, and if warranted by "exceptional circumstances" at its discretion,[16] Commerce can extend the 20-day initial determination timeline for a maximum of 40 days. 19 U.S.C. § 1673a(c)(4)(D). When determining industry support for an AD petition, Commerce is instructed to "normally" measure production, based on either value or volume, "over a twelve-month period, as specified by the Secretary." 19 C.F.R. § 351.203(e)(1). However, if an interested party demonstrates the unavailability of production data for the specified period, then Commerce may establish production levels "by reference to alternative data that [Commerce] determines to be indicative of production levels." *Id.*

Here, Commerce's decision not to poll the industry and instead rely on other information to determine industry support for the AD petition is in accordance with law and within its discretion. It is undisputed that both Petitioners' calculations and Commerce's alternative methodology satisfied the 25 percent industry support requirement of Section 1673a(c)(4)(A)(i) but failed to demonstrate over 50 percent support for the petition required under Section 1673a(c)(4)(A)(ii). *See* Attach. II at 6; Pls. Mot. at 10–11; Def. Resp. at 7–8; Def.-Ints. Resp. at 9. Thus, Section 1673a(c)(4)(D) guides Commerce's course of action for how to proceed with the AD investigation.

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[14] In Commerce's determination, it (1) "shall disregard the position of domestic producers who oppose the petition," if they are related to foreign producers, unless they can show their interests "would be adversely affected by the imposition of an antidumping duty order;" and (2) "may disregard the position of domestic producers of a domestic like product who are importers of the subject merchandise." 19 U.S.C.§ 1673a(c)(4)(B).

[15] If Commerce decides to poll the industry, consisting of a large number of producers, Commerce can "determine industry support for the petition by using any statistically valid sampling method[.]" 19 U.S.C. § 1673a(c)(4)(D)(ii).

[16] The legislative history of the 19 U.S.C. § 1673a expounds upon Congress' grant of discretion to Commerce to extend the deadline under exceptional circumstances. *See* Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103–316, vol. 1, at 835 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4193–94 ("SAA"). The SAA notes that "exceptional circumstances may arise where the petition provides insufficient information on support, the domestic industry is fragmented, or there is a large number of producers in the industry." *Id.* at 4193. Congress drafted the exception despite its recognition that "in the vast majority of cases, the determination of industry support will be made within the initial [20]-day period." *Id.* Nonetheless, Congress instructs that "Commerce will use this extension authority only in exceptional circumstances where the industry support issue cannot be decided in [20] days, and the initiation determination will be extended only for the additional time necessary to make a determination regarding industry support." *Id.*

As Commerce explains, it conformed with its statutory directive under 19 U.S.C. § 1673a(c)(4)(D) by choosing to "rely on other information" as specifically provided by Section 1673a(c)(4)(D)(i). *See* Attach. II at 6, 19; Def. Resp. at 21. Congress gave Commerce the choice for how to proceed when faced with a petition that does not meet the requirements of 19 U.S.C. § 1673a(c)(4)(A)(ii), in that it can "poll the industry or rely on other information" to evaluate whether industry support for the petition exists. 19 U.S.C. § 1673a(c)(4)(D)(i).[17] Commerce chose one of the avenues expressly provided for by statute.

Tenaris avers Commerce was required to establish industry support by using "actual production data for the most recent twelve months prior to the filing of the petition" rather than shipment data provided by Petitioners. *See* Pls. Mot. at 35. Commerce evaluates industry support of a petition to satisfy 19 U.S.C. § 1673a(c)(4)(A) and (c)(4)(D), it "normally will measure production over a twelve month period," as specified by Commerce, based on value or volume. 19 C.F.R. § 351.203(e)(1).[18] However, Commerce may establish production levels by reference to an alternative data period that Commerce finds "indicative of production levels" if a party to the proceeding establishes the unavailability of production data for the relevant period. *Id.*

Here, Petitioners submitted their own production data, as well as declarations of support from non-petitioning producers. *See* Attach. II at 4, 15. Commerce recognized that such production data did not account for the entire domestic industry and that a fully populated data set for 2020 was unavailable. *See id.* at 10, 15; Def.-Ints. Resp. at 29. That Commerce did not use the most recent preceding twelve-month period to the date the petition was filed does not render Commerce's decision unreasonable. Rather, consistent with 19 C.F.R. § 351.203(e)(1), Commerce resorted to an alternative data which included 2018 and 2019 shipment data as well as incomplete production data from 2020 to approximate production levels for the purpose of industry support calculations for the petition. *See* Attach. II at 14–15 (citing 19 C.F.R. § 351.203(e)(1)); Def. Resp. at 12–13. Com-

[17] The statute's use of the conjunction "or" indicates introduction of a choice or alternative. *See Or*, The Britannica Dictionary, https://www.britannica.com/dictionary/or (last visited Feb. 27, 2024) ("1 – used to introduce another choice or possibility"); *Or*, Oxford English Dictionary, https://www.oed.com/search/dictionary/?scope=Entries&q=or (last visited Feb. 27, 2024) ("used to coordinate two (or more) sentence elements between which there is an alternative).

[18] Although the statute is silent as to the precise point in time Commerce must use to calculate industry support, *see* 19 U.S.C. § 1673a(c)(4)(A)(ii); 19 C.F.R. § 351.203(e)(1), Commerce's past practice is to use the most recently completed calendar year prior to filing of the petition. *See* Attach. II at 16; *see also* 19 C.F.R.§ 351.204(b)(1) ("In an antidumping investigation, [Commerce] normally will examine merchandise sold during the four most recently completed fiscal quarters . . . as of the month preceding the month in which the petition was filed").

merce considered Petitioners' 2018 and 2019 shipment data[19] as well as its own estimates of the entire industry's actual 2020 production data by relying on a similar, but more conservative methodology."[20] *See* Attach. II at 15; Def. Resp. at 12–13. Moreover, Plaintiffs did not offer their own production data to undermine Commerce's reliance on shipment data, nor did they challenge the authoritative basis from which the selected shipment data was derived.[21] Attach. II at 15. Thus, Commerce's decision to rely on other information provided by

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[19] Commerce explains Petitioners' estimated actual production calculation in the Initiation Checklist:

> To estimate the total 2020 production of the domestic like product for the entire domestic industry, the petitioners relied on shipment data for [[ ]] domestic OCTG shipments in 2020 as reported in [[ ]], which the petitioners note is the recognized authority on the U.S. pipe and tube market, [[ ]]. The petitioners contend that the [[ ]] data are the best available information regarding the volume of domestic OCTG shipments in 2020. The petitioners further contend that they do not have access to 2020 industry production data and that industry shipment data are a reasonable proxy for production of OCTG, noting that the difference between their production levels and shipments [[ ]]. The petitioners adjusted the domestic shipment data for 2020 reported in [[ ]] by the ratio of the petitioners' export shipments to total shipments in order to estimate total shipments (i.e., domestic and export shipments) in 2020. The petitioners then deducted their own 2020 shipments from the estimated total shipments to derive non-petitioning companies' shipments in 2020. To approximate non-petitioning companies' production from the available shipment data, the petitioners first calculated the historical ratio (2018–2019) of non-petitioning companies' production to shipments derived from data reported in the ITC's India et al OCTG 2020 Review and applied the resulting ratio to the estimated non-petitioning companies' shipments in 2020. The petitioners then added this estimated production to their own 2020 production to estimate total production for the entire U.S. OCTG industry. Using this methodology, the petitioners estimated total 2020 production of [[ ]] short tons for the entire domestic industry.

Attach. II at 4–5 (internal citations omitted).

[20] Commerce explains its alternative, conservative methodology in the Initiation Checklist:

> As a conservative, alternative methodology, we calculated 2020 production estimates using the information available on the record on domestic shipments of OCTG for the entire industry in 2020, as reported in [[ ]], and the publicly available information on U.S. producers' production and domestic shipments reported in the ITC's India et al OCTG 2020 Review. Specifically, based on the available information on the record from the ITC publication and the [[ ]], we calculated the ratio of the U.S. industry's reported production to domestic shipments using data from the ITC publication and applied this ratio to the domestic shipment data from [[ ]] to approximate total 2020 production for the U.S. OCTG industry. Using this methodology, we estimated total 2020 production of [[ ]] short tons for the entire domestic industry.

Attach. II at 5 (internal citations omitted).

[21] As noted, both Petitioners and Commerce used shipment data from [[ ]] as a factor in estimating total domestic industry production for 2020. Attach. II at 15; Def. Resp. at 12–13.

Petitioners and its selection of an alternative time-period in light of record evidence and reasonably available information in this case was in accordance with law.

Plaintiffs further allege Commerce was required to extend the initiation deadline of the investigation pursuant to 19 U.S.C. § 1673a(c)(1)(B). Pls. Mot. at 41–42. Plaintiffs assert that Commerce's past practice is to extend the investigation initiation deadline by 20 days "where the petition did not clearly establish industry support." *Id.* at 42. As discussed, Commerce is required to poll the domestic industry or rely on other information when a filed petition fails to establish the 50 percent requirement of Section 1673a(c)(1)(A)(ii). 19 U.S.C. § 1673a(c)(1)(D)(i). When operating under Section 1673a(c)(1)(D), Commerce may extend by "a maximum of 20 days" the deadline to determine whether the elements for AD imposition are present and whether the petition has sufficient industry support. 19 U.S.C. § 1673a(c)(1)(B). However, Commerce must first be presented with "exceptional circumstances" before determining if an extension is warranted. *See id.* Moreover, a decision to extend the deadline is within Commerce's discretion. *See Pokarna Engineered Stone Ltd. v. United States*, 547 F. Supp. 3d 1300, 1310 (Ct. Int'l Trade 2021), *aff'd*, 56 F.4th 1345 (Fed. Cir. 2023) (citing the Supreme Court in *United States v. Rodgers*, 461 U.S. 677, 706 (1983), for the proposition that the word "may" implies discretion in the context of Section 1673a(c)(1)(B)).

Here, Commerce's decision to leave the deadline unaltered is supported by substantial evidence. First, Commerce's decision not to extend the deadline was reasonable in light of what it thought was sufficient evidence of industry support based upon Petitioner's and its own calculations. The SAA explains that "Commerce will use [Section 1673a(c)(1)(B)] only in exceptional circumstances where the industry support issue cannot be decided in twenty days." SAA at 4193. Commerce's findings—on which it based its decision not to extend the deadline—and determination that the petition was adequately supported were made without polling the industry, thus eliminating the need to consider extending the deadline in the first place.[22] *See*

[22] Plaintiffs claim that past agency practice supports their contention that Commerce was required to extend the initiation deadline and poll the industry. Pls. Mot. at 42. However, the determination extensions that Plaintiffs cite are inapposite because the underlying petition in each of those cases were determined by Commerce to be insufficient for industry support, unlike Commerce's calculations here. *See, e.g., Utility Scale Wind Towers From India, Malaysia, and Spain*, 85 Fed. Reg. 65,028 (Dep't Commerce Oct. 14, 2020) (notice of extension of time) ("Petitions have not established that the domestic producers or workers accounting for more than 50 percent of total production support the Petitions"); *Passenger Vehicle and Light Truck Tires From Korea, Taiwan, Thailand, and Vietnam*, 85 Fed. Reg.

Attach. II at 17 (noting that polling was unnecessary because Commerce relied on other information to determine industry support). The legislative history of the statute supports Commerce's decision. *See* SAA at 4192–94.

Second, it is within Commerce's discretion to extend the initiation deadline. *See* 19 U.S.C. § 1673a(c)(1)(B) ("the administering authority may, in exceptional circumstances, apply subparagraph [Section 1673a(c)(1)(A)] by substituting 'a maximum of 40 days' for '20 days'"). Plaintiffs' efforts to characterize the factual circumstances here as "exceptional"—and thus requiring an extension—fails to undermine the reasonableness of Commerce's decision to the contrary. Although Plaintiffs invoke the phrase "exceptional circumstances,"[23] multiple times in a conclusory fashion, they fail to present persuasive evidence that any fact at issue actually fits into the purpose of the section. Rather, Plaintiffs merely highlight Commerce's disagreement with their characterization that the circumstances here were exceptional, effectively requesting the Court to reweigh the evidence. *See, e.g.* Pls. Mot. at 3 ("The record before Commerce demonstrated 'exceptional circumstances' warranting an extension . . ."); *id.* at 15 ("Given the 'exceptional circumstances' demonstrated by the record evidence . . ."); *id.* at 33 ("Commerce ignored the exceptional circumstances and [Plaintiffs'] repeated requests to extend the time for making a determination and poll the industry"). Plaintiffs' submissions that exceptional circumstances exist amount to factual disputes amongst the

32,013 (Dep't Commerce May 28, 2020 (notice of extension of time) ("Because it is not clear from the Petitions whether the industry support criteria have been met, Commerce has determined it should extend the time period for determining whether to initiate investigations in order to further examine the issue of industry support"); *Polyethylene Terephthalate Sheet From the Republic of Korea, Mexico, and the Sultanate of Oman*, 84 Fed. Reg. 39,801 (Dep't Commerce Aug. 12, 2019) (notice of extension of time) ("Because it is not clear from the Petitions whether the industry support criteria have been met, Commerce has determined it should extend the time for initiating investigations in order to further examine the issue of industry support").

[23] Plaintiffs also list a handful of bullet-pointed considerations in their motion that they believe constitutes "exceptional circumstances" warranting time extension under the statute, including:

- Petitioners' numerous revisions to the petition;
- Commerce's reliance on anomalous 2020 data from an unrepresentative OCTG market;
- Petitioners were below the 50 percent statutory level in the absence of using other information;
- Petitioners' treatment of OCTG processors/finishers in the calculation of domestic production and industry support;
- Repeated requests of Tenaris USA, the largest U.S. OCTG producer, to poll the industry; and
- Commerce's past practice to poll the domestic industry in similar situations in which industry support was unclear.

Pls. Mot. at 41. Plaintiffs fail to offer more analysis of how these considerations warrant an extension of time as "exceptional circumstances" contemplated by 19 U.S.C. § 1673a(c)(1)B).

involved parties. Without more, such allegations fail to demonstrate that Commerce's refusal to extend the deadline was unreasonable requiring remand, as the Court will not reweigh the evidence in the record.[24] *See Downhole Pipe & Equipment, L.P. v. United States*, 776 F.3d 1369, 1376 (Fed. Cir. 2015). Accordingly, Commerce's decision to maintain its initial 20-day deadline for its initiation determination was reasonable. Therefore, Commerce's decision to rely on other information to calculate industry support for the purposes of initiating the OCTG AD investigation at issue is supported by substantial evidence, in accordance with law, and thus sustained.

II. 2020 OCTG Market Period Data

Plaintiffs challenge the sufficiency of the data Petitioners and Commerce relied upon to calculate industry support for the initiation of the AD investigation. Pls. Mot. at 14; Reply In Supp'n [Pls. Mot.] at 3, Oct. 10, 2023, ECF No. 48 ("Pls. Reply"). In addition to their previously discussed allegations that the data at issue presented exceptional circumstances undermining its reliability, Plaintiffs also contend that Commerce's and Petitioners' domestic production and industry support calculations failed to ensure that finishing operations were not counted twice and thus potentially distorting the data on which the initiation was based. Pls. Mot. at 27–28; Pls. Reply at 9–10. Defendant and Defendant-Intervenors counter that initiation of the investigation is supported by substantial evidence and that Plaintiffs' double counting concerns are meritless. Def. Resp. at 18, 23–24; Def.-Ints. Resp. at 14–15. Because Commerce did not adequately address Plaintiffs' concerns and record evidence that finishing operations were not counted twice, the Court remands this issue for further explanation or reconsideration.

Commerce must determine domestic industry support by evaluating the total "production of the domestic like product." 19 U.S.C. § 1673a(c)(4)(A)(ii). Although Commerce is afforded discretion in some respects to its choices in determining industry support, such as its choice to poll the industry or extend the initiation deadline as discussed above, its determination must nonetheless be supported by

[24] Plaintiffs argue that by rejecting their requests to poll the industry and consider record evidence allegedly showing "exceptional circumstances," Commerce failed to support its determination with substantial evidence because it did not address Plaintiffs' submissions supporting an alternative conclusion. Pls. Mot. at 33–34; *id.* at 34, 36 (citing *Allegheny Ludlum Corp. v. United States*, 112 F. Supp. 2d 1141, 1165 (Ct. Int'l Trade 2000)). Plaintiffs' argument is unpersuasive. As noted in the Initiation Checklist, Commerce acknowledged and addressed Plaintiffs submissions and ultimately found them unconvincing, *see* Attach. II at 9–21 (discussing and rejecting Plaintiffs' submissions), thus underscoring the Court's conclusion that Plaintiffs' claims of exceptional circumstances amount to factual disagreements.

substantial evidence. *See* 19 U.S.C. § 1516a(b)(1)(B)(i). To meet this threshold, the Court must assess whether Commerce's action is reasonable in light of the entire record, *see Nippon Steel Corp. v. United States*, 458 F.3d 1345, 1350–51 (Fed. Cir. 2006), and whatever "fairly detracts from its weight." *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951). The reasonableness of Commerce's methodology must factor considerations that run counter to its decision. *See Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Substantial evidence has been described as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *See DuPont Teijin Films USA v. United States*, 407 F.3d 1211, 1215 (Fed. Cir. 2005) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)).

Here, Commerce fails to address record evidence indicating that certain domestic companies both produce and finish OCTG, leading to the inference that some domestic pipe may have been double counted in the industry support calculations. Plaintiffs point to record evidence, specifically Petitioners Borusan Mannesmann and PTC Liberty Tubular's website, explaining that "it is unclear what portion . . . of operations involves actual pipe production, as opposed to finishing operations." *See* [Pls.'] Cmts. On Pets. Standing at 10, C.D. 12–18, P.D. 22–28 (Oct. 15, 2023) ("Pls. Oct. 15 Cmts.") (citing and explaining Borusan Mannesmann's and PTC Liberty Tubular's OCTG production information on their websites). Additionally, Plaintiffs point to record evidence that PTC Liberty Tubular was not identified as a producer in ITC's sunset review that was relied upon by both Petitioners and Commerce to calculate industry support. *Id.* ; *see* Pls. Mot. at 27; Pls. Reply at 9–10; *see also* Attach. II at 4–6; Def. Resp. at 12–13. Based upon the sunset review, it would appear that PTC Liberty finished, but did not produce pipe, in which case it is unclear whether the pipe PTC Liberty finished had already been counted in the industry support calculations. Thus, the record evidence leads to the reasonable inference, argued by Plaintiffs to Commerce, that there may be pipe that was counted for the purposes of industry support when it was produced and again when it was finished. *See* Pls. Oct. 15 Cmts. at 10 (explaining that further processed production may have been "included when calculating [P]etitioners' production in the [industry support] calculation").[25] Commerce may have rea-

[25] To illustrate their double counting concern, Plaintiffs offer the following hypothetical: "[b]lindly accepting data that treats processed pipe as 'production' runs the clear risk of double counting: one ton of green tube produced by an OCTG producer could very well have been counted as two tons when the 'production' was reported by a processor." Pls. Mot. at 27; *see also* Pls. Reply at 10. .

sons to reject this inference; however, it must acknowledge consideration of such evidence and explain why it nonetheless rejects the inference.

Commerce does not address this record evidence and the double counting inference at all, other than to claim it is meritless. Commerce and Defendant only argue that finishing operations are included in the scope of the investigation. *See* Attach. II at 14 (explaining "the scope and domestic like product of OCTG AD investigations includes OCTG whether finished or unfinished" gives Commerce "no reason to believe that these finishing operations should not be included as production of the domestic like product").[26] Commerce's explanation suggests that it did not understand Plaintiffs' argument and therefore the Court must remand to allow Commerce opportunity to respond. Defendant's post hoc rationalizations are irrelevant, as it concedes Commerce did not address the record evidence that suggest double counting was possible. Oral Arg. at 53:00.

Defendant-Intervenors contend that Plaintiffs' concern was a "transparent delaying tactic" having "no factual basis." Def.-Ints. Resp. at 23. Defendant-Intervenors also argue that Petitioners certified their production data, in accordance with governing regulations, "as accurate by both company officials and their counsel," allowing Commerce to rely on them "as it always does with the volumes of information submitted pursuant to such certifications." *Id.* at 23 (citing 19 C.F.R. §§ 351.303(g);[27] 207.3(a)).[28] Defendant-Intervenors' assertion that Plaintiffs arguments were made only to delay is con-

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[26] In its response brief, Defendant reiterates Commerce's conclusion, referencing a 2014 investigation to argue "the proposed scope definition covered both finished and unfinished OCTG, and that the [International Trade Commission] has consistently counted OCTG finishing operations as domestic production." Def. Resp. at 18 (citing *Certain [OCTG] From India, Korea, The Philippines, Taiwan, Thailand, Turkey, Ukraine, and Vietnam*, USITC Pub. 4489, Invs. Nos. 701-TA-499–500, 731-TA-1215–1217–1219–1223 (Sept. 14, 2014)).

[27] The relevant portion of 19 C.F.R. § 351.303(g) reads as follows:

> (g) Certifications. Each submission containing factual information must include the following certification from the person identified in paragraph (g)(1) of this section and, in addition, if the person has legal counsel or another representative, the certification in paragraph (g)(2) of this section. The certifying party must maintain the original signed certification for a period of five years from the date of filing the submission to which the certification pertains. The original signed certification must be available for inspection by U.S. Department of Commerce officials. Copies of the certifications must be included in the submission filed at the Department.

19 C.F.R. § 351.303(g).

[28] The relevant portion of 19 C.F.R. § 207.3(a) reads as follows:

> (a) Certification. Any person submitting factual information on behalf of the petitioner or any other interested party for inclusion in the record, and any person submitting a response to a Commission questionnaire, must certify that such information is accurate and complete to the best of the submitter's knowledge.

19 C.F.R. § 207.3(a).

clusory. Further, mere reference to the Petitioners' certifications fail to address the argument made by Plaintiff.

Commerce fails to respond to record evidence suggesting the possibility of double counting within the industry support calculations, and therefore the Court cannot conclude that Commerce's determination is supported by substantial evidence. *See Universal Camera Corp.*, 340 U.S. at 488 ("The substantiality of evidence must take into account whatever in the record fairly detracts from its weight"). Accordingly, the Court remands determination on the double counting issue to Commerce for further explanation or reconsideration.

CONCLUSION

For the foregoing reasons, the Court sustains Commerce's determination to rely on other information rather than poll the industry to calculate industry support for the AD investigation petition for OCTG from Argentina. Commerce's determination that the data relied upon accurately reflected industry support, including whether finishing operations were counted twice, is remanded for further explanation or reconsideration. In accordance with the foregoing, it is

ORDERED that the final results, *see* ECF No. 35–2, are remanded for further explanation or reconsideration consistent with this opinion; and it is further

ORDERED that Commerce shall file its remand redetermination with the Court within 90 days of this date; and it is further

ORDERED that the parties shall have 30 days to file comments on the remand redetermination; and it is further

ORDERED that the parties shall have 30 days to file their replies to the comments on the remand redetermination; and it is further

ORDERED that the parties shall file the joint appendix within 14 days after the filing of replies to the comments on the remand redetermination; and it is further

ORDERED that commerce shall file the administrative record within 14 days of the date of filing its remand redetermination.

Dated: March 14, 2024
New York, New York

/s/ Claire R. Kelly
CLAIRE R. KELLY, JUDGE

Slip Op. 24–36

TRINA SOLAR (CHANGZHOU) SCIENCE & TECHNOLOGY CO., LTD., et al., Plaintiffs, v. UNITED STATES, Defendant, and AMERICAN ALLIANCE FOR SOLAR MANUFACTURING, Defendant-Intervenor.

Before: Jane A. Restani, Judge
Court No. 23–00219

JUDGMENT

This matter is before the court following the filing of the results of the first remand order. *See* Final Results of Redetermination Pursuant to Court Remand, ECF No. 29 (Feb. 22, 2024) ("*Remand Results*"); *see also Trina Solar (Changzhou) Sci. & Tech. Co., Ltd. v. United States*, Slip Op. 23–174, 2023 WL 8600801 (CIT Dec. 12, 2023) ("*Remand Order*"). The court remanded to the United States Department of Commerce ("Commerce") after Commerce requested remand in order to allow it to either reconsider or further explain its ocean freight calculation in this case. *See* Defendant's Affirmative Motion for Remand, ECF No. 23 (Dec. 11, 2023); *see also Remand Order*.

In the *Remand Results*, Commerce changed the way it calculated ocean freight, and no party now objects to the new calculation. *See Remand Results* at 5; *see also* Defendant's Notice Regarding Comments to Remand Results, ECF No. 31 (Mar. 14, 2024). The *Remand Results* comply with the court's order. Accordingly, it is

ORDERED, **ADJUDGED**, and **DECREED** that the *Remand Results* by the United States Department of Commerce are **SUSTAINED**.

Dated: March 21, 2024
New York, New York

/s/ Jane A. Restani
JANE A. RESTANI, JUDGE

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