

U.S. Customs and Border Protection



REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF DOLOMITE CERAMIC NOVELTY DRINKING VESSELS

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the tariff classification of dolomite ceramic novelty drinking vessels.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning the tariff classification of dolomite ceramic novelty drinking vessels. Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin and Decisions*, Vol. 48, No. 29, on July 23, 2014. No comments were received in response to this Notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 12, 2015.

FOR FURTHER INFORMATION CONTACT: Laurance W. Frierson, Tariff Classification and Marking Branch: (202) 325–0371.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (“Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are

“informed compliance” and **“shared responsibility.”** These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

Accordingly, the law imposes a greater obligation on U.S. Customs and Border Protection (CBP) to provide the public with improved 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 section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke New York Ruling Letter (“NY”) N131398, dated November 19, 2010, was published on July 23, 2014, in Volume 48, Number 29, of the *Customs Bulletin and Decisions*. No comments were received in response to this notice.

As stated in the proposed notice, this action will cover any ruling on the subject merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to those identified. 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 notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, 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 this notice 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 final decision.

In NY N131398, CBP determined that two dolomite ceramic novelty drinking vessels, identified as the “Med Times Knights Head Gold” and the “Paris Balloon”, were classified in heading 6912, Harmonized Tariff Schedule of the United States (HTSUS). Specifically, CBP classified the articles in subheading 6912.00.20, HTSUS, which pro-

vides for “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Hotel or restaurant ware and other ware not household ware.” It is now CBP’s position that the “Med Times Knights Head Gold” drinking vessel is classified in subheading 6912.00.44, HTSUS, which provides for “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Other: Other: Drinking Vessels and other steins,” and that the “Paris Balloon” is classified in subheading 6912.00.48, HTSUS, which provides for “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Other: Other: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N131398, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in Ruling Letter HQ H217616, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Ruling Letter HQ H217616 will become effective 60 days after publication in the *Customs Bulletin and Decisions*.

Dated: [DATE OF PUBLICATION]

JACINTO JUAREZ

FOR

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H217616

October 9, 2014

CLA-2 OT:RR:CTF:TCM H217616 LWF

CATEGORY: Classification

TARIFF NO.: 6912.00.44; 6912.00.48

EDMUND YAN

CLEARFREIGHT, INC.

880 APOLLO STREET, SUITE 101

EL SEGUNDO, CA 90245

RE: Revocation of NY N131398, dated November 19, 2010; classification of dolomite ceramic novelty drinking vessels from China

This letter pertains to New York Ruling Letter (“NY”) N131398, dated November 19, 2010, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of two dolomite ceramic novelty drinking vessels imported by your client, Progressive Specialty Glass Company, Inc. (“Progressive”). We have reviewed NY N131398 and find the ruling letter to be in error. In reaching our decision, we considered the arguments raised in Progressive’s submission, dated December 21, 2011, requesting reconsideration of NY N131398. For the reasons set forth below, we hereby revoke NY N131398.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke Ruling Letter NY N131398, dated November 19, 2010, was published on July 23, 2014, in Volume 48, Number 29, of the *Customs Bulletin and Decisions*. No comments were received in response to the Notice.

FACTS:

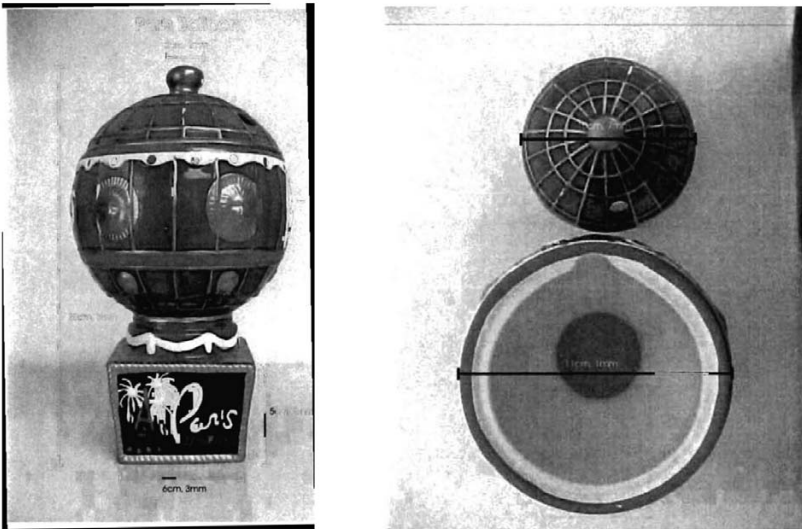
In NY N131398, CBP described the merchandise at issue (the “Drinking Vessels”), as follows:

[The Drinking Vessels] consist of two dolomite ceramic novelty drinking vessels. The first item is identified as the “Paris Balloon.” The item is in the shape of a hot air balloon. The upper portion of the item is spherical in shape, representing the balloon, and measures 4½ inches in diameter. It has a removable lid that incorporates a hole for placement of a straw (not included). The balloon is colored blue with the word “Paris” in raised white letters, which is repeated four times around the balloon. The balloon sits on a square-shaped base, representing the basket, which measures approximately 3 inches square by 2 inches in height. The base is colored black, with a raised depiction of the Eiffel Tower surrounded by fireworks, with the word “Paris” in raised, white letters, and the words, “LAS VEGAS” below it in raised, red letters. The depiction is repeated on all four sides of the base. The article measures approximately 8 inches in height overall.

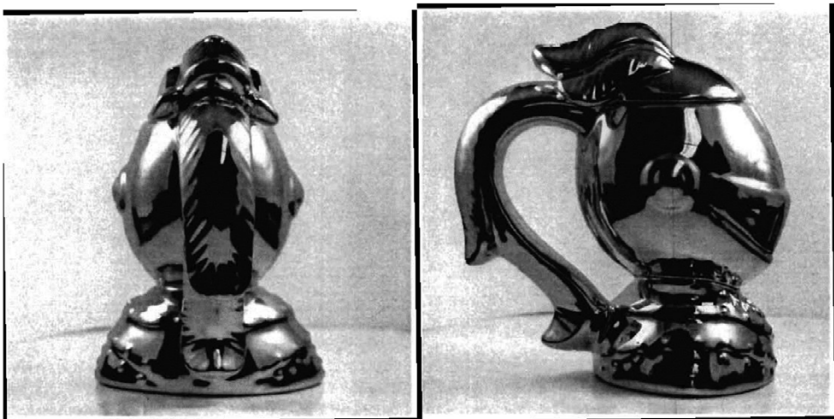
The second item is identified as the “Med Times Knights Head Gold” and is in the shape of an armored knight’s head, including the neck, chest and shoulders. The item is colored metallic gold and measures approximately 7 inches in height by 6½ inches across its widest width. It features a

handle and a removable lid that incorporates a hole for placement of a straw (not included). Across the knight's chest are the words "Medieval Times" in raised letters.

The Mug, identified as the "Paris Balloon," is pictured below:



The Mug, identified as the "Med Times Knights Head Gold," is pictured below:



ISSUE:

Are the Drinking Vessels classified as hotel or restaurant ware of subheading 6912.00.20, HTSUS, or as other tableware of subheadings 6912.00.44 or 6912.00.48, HTSUS?

LAW AND ANALYSIS:

The matter is protested as a decision on classification. 19 U.S.C. § 1514(a)(2). Protestant's AFR satisfies application criteria because Protestant alleges that CBP's classification of the Drinking Vessels involves questions of law or fact which have not been ruled upon by the Commissioner of CBP or his designee or by the Customs courts. 19 C.F.R. § 174.24(b). Specifically, Protestant claims that relevant information concerning the physical characteristics and principal use of the Drinking Vessels demonstrates that the merchandise is not suitable for use in hotel or restaurants and was not considered by CBP when reaching its decision in New York Rulings Letter ("NY") N131398, dated November 19, 2010. Thus, Protestant suggests that the merchandise is properly classified in subheading 6912.00.44, HTSUS, as Drinking Vessels and other steins.

Merchandise imported in the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context, which requires otherwise, by the Additional U.S. Rules of Interpretation. GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and, *mutatis mutandis*, to GRIs 1 through 5.

The following HTSUS provisions will be referenced:

6912.00 Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china:

Tableware and kitchenware:

Other:

6912.00.20 Hotel or restaurant ware and other ware not household ware.

Other:

Other:

6912.00.44 Drinking Vessels and other steins.

6912.00.48 Other.

* * *

Additional U.S. Rule of Interpretation 1(a), HTSUS, provides in relevant part, that:

In the absence of special language or context which otherwise requires:

...a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

* * *

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

There is no dispute that the merchandise is classifiable in heading 6912, HTSUS. As this dispute concerns the proper tariff classification of merchandise in the subheadings of heading 6912, HTSUS, GRI 6 applies.¹

In NY N131398, CBP classified the instant Drinking Vessels in subheading 6912.00.20, HTSUS, as hotel or restaurant ware and other ware not household ware, based on CBP's prior ruling in Headquarters Ruling Letter ("HQ") 082780, dated December 18, 1989. Upon review, however, we find that in NY N131398, CBP overly simplified the analysis set forth in HQ 082780, by stating that:

[I]n Headquarters Ruling 082780 Customs held that if a plate was emblazoned with a logo or crest of the hotel or restaurant, it was found to be hotel ware[,] regardless of the fact that without the logo, crest or symbol[,] the chinaware would be classified as household chinaware. In this case, both drinking vessels are emblazoned with the name of a hotel or restaurant and are therefore classifiable as hotel or restaurant ware.

Contrary to CBP's statement in NY N131398, the presence (or absence) of a mark on tableware bearing the logo or crest of a hotel or restaurant is not the controlling factor when determining whether an article is properly described as hotel or restaurant ware of heading 6912, HTSUS. Rather, an article's general physical characteristics, including any logo or crest markings, is merely one area of inquiry in a multi-factored analysis that CBP uses to determine the proper classification of the tableware.

In HQ 082780, for example, CBP classified a number of patterns of china dinnerware that were produced chiefly for household use, but were also marketed and sold to hotels and restaurants for use in their finer dining sections. After reviewing all of the evidence presented, CBP found that hotel china is often modified from household china in both physical and design characteristics because hotel china is heavier in weight and is stackable and chip resistant. Additionally, hotel china generally does not possess a center design. CBP also found that hotel china is typically less expensive than household china and is offered for sale by independent sales representatives to wholesalers or hotel chains, an industry that also has its own trade publications and trade shows. By contrast, household china was found to be generally lighter in weight, more expensive, and did not possess some of the characteristics of hotel ware. Furthermore, because the dinnerware at issue in HQ 082780 was also marked with the crest or initials of the establishment, this spoke in favor of it belonging to the class chiefly used in hotels or restaurants. Specifically, CBP commented that when household china has

¹ GRI 6 states:

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.

been modified so as to make it more suitable for restaurant and hotel use **and** to also include a hotel or restaurant logo, it is appropriately classified as hotel or restaurant ware:

[W]hen such modifications include the hotel or restaurant logo or name, it is obvious that such china is in a class chiefly for hotel purposes.

Thus, household china which has been special ordered and modified for hotel and restaurant use by incorporating the hotel/restaurant logo or name in the design, is no longer in the class of china for household use, but belongs to the class of china that is chiefly used for hotels and restaurants. (Emphasis added).

Consequently, in light of the multi-factor analysis described in HQ 082780, the mere presence or absence of a hotel or restaurant logo on an article of tableware is not controlling in determining the tariff classification of the merchandise.

Subheading 6912.00.20, HTSUS, is a “principal use” provision governed by Additional U.S. Rule of Interpretation 1(a), which the Federal Circuit has stated “calls for a determination as to the group of goods that are commercially fungible with the imported goods” so as to identify the “use which exceeds any other *single* use.” *Aromont USA, Inc. v. United States*, 671 F.3d 1310, 1312 (Fed. Cir. 2012) (quoting *Primal Lite, Inc. v. United States*, 182 F.3d 1362, 1365 (Fed. Cir. 1999); *Lenox Collections v. United States*, 20 Ct. Int’l Trade 194, 196 (1996)). As such, the fact that the Drinking Vessels may have multiple significant uses does not proscribe the classification of the merchandise according to the principal use of the class or kind to which it belongs. *Lenox Collections*, 20 Ct. Int’l Trade at 196.

In order to determine the class or kind of good to which an article belongs, the Courts have instructed that CBP must examine all pertinent factors. *Id.* (citing *United States v. Carborundum Co.*, 536 F.2d 373, 377 (Fed. Cir. 1976)). These factors, commonly referred to as the “*Carborundum* Factors” are used to determine which goods are “commercially fungible with the imported goods.” *Aromont*, 671 F.3d at 1312 (quoting *Primal Lite*, 182 F.3d at 1365) (internal quotation marks omitted). These factors may include:

[U]se in the same manner as merchandise which defines the class; the general physical characteristics of the merchandise; the economic practicality of so using the import; the expectation of the ultimate purchasers; the channels of trade in which the merchandise moves; the environment of the sale, such as accompanying accessories and the manner in which the merchandise is advertised and displayed; and the recognition in the trade of this use. *Id.* (citing *Carborundum*, 536 F.2d at 377).

CBP has codified this principle in subsequent rulings. *See, e.g.*, HQ W967570, *supra*; HQ H122957, dated October 9, 2012 (applying the *Carborundum* Factors to determine the principal use of tires for lawn and garden tractors). Consequently, CBP must determine whether pertinent factors indicate that the Drinking Vessels are of the class or kind of goods used principally as hotel or restaurant ware of subheading 6912.00.20, HTSUS, or whether they are classified as other tableware of subheadings 6912.00.44 or 6912.00.48, HTSUS.

CBP notes that the Court of International Trade (CIT) has previously addressed the principal use and commercial fungibility of ceramic steins that are decorated in detail with a brewer's name or brewery identification and imported to be sold by breweries to customers and collectors. See *G. Heilman Brewing Co. v. United States*, 14 Ct. Int'l Trade 614 (1990). In *G. Heilman Brewing*, the Court applied the *Carborundum* Factors to determine whether the steins were of a class or kind of goods principally used as "Drinking Vessels and other steins," under item 533.30 of the Tariff Schedule of the United States (TSUS) or as "art and ornamental articles," under item A534.87, TSUS.² There, however, the Court emphasized that because the steins were not well suited for serving beer, they were most appropriately classified as ornamental articles. *Id.*

Contrary to the facts presented in *G. Heilman Brewing*, there is no evidence in the instant the record to indicate that the Drinking Vessels are unsuitable for serving beverages. See *supra*. p. 4. Nonetheless, the CIT's analysis in *G. Heilman Brewing* is useful for highlighting the dispositive factors used to determine the principal use of drinking vessels. Here, it is important note that the Court focused its analysis on the decorative qualities of the steins, their durability during frequent use and washing, their suitability for serving beverages, the expectations of the ultimate purchaser, as well as the intent of breweries to use the steins as advertisements to their customers. *G. Heilman Brewing*, 14 Ct. Int'l Trade at 620–21. As such, our analysis of the instant Drinking Vessels will involve many of the same factual inquiries at issue in *G. Heilman Brewing*.

Application of the *Carborundum* Factors in the instant case demonstrates that the Drinking Vessels are commercially fungible with other tableware that is not of a kind primarily used in hotels or restaurants.

The General Physical Characteristics of the Merchandise

The first *Carborundum* Factor, "the general physical characteristics of the merchandise," presents evidence that the Drinking Vessels are not commercially fungible with tableware of kind that is primarily used in hotels or restaurants. The terms "hotel and restaurant ware" are not defined in the Nomenclature or the ENs; however, CBP has issued several rulings in which it has described the common characteristics of such merchandise.

In HQ 082780, CBP stated that "hotel china is heavier in weight, is stackable, and chip resistant." By contrast, CBP found that household china "is lighter in weight, is generally more expensive, and does not possess some of the characteristics of hotel ware." Similarly, in HQ W967570, dated January 31, 2008, CBP considered whether porcelain tableware and kitchenware imported from France was principally for household use or hotel and restaurant use. There, CBP cited prior rulings and various reference books to determine what physical characteristics are indicative of household use versus restaurant and hotel use. In American china, such characteristics included composition, translucency, degree of absorption, and a very high mechanical shock resistance. Thickness was also a significant factor, as one cited source divided American hotel china, which it described as "vitrified

² Item 533.30, TSUS, is the predecessor of subheading 6912.00.44, HTSUS.

ware of very high strength,” into three grades based on wall thickness: Grade (1), “Thick china,” which had 5/16 to 3/8 inch walls and is used in lunch counters and army messes; Grade (2), “Hotel China,” which contained 5/32 to ¼ inch walls and were used in hotels and restaurants; and Grade (3), “medium-weight China”, which had less than ¼ inch walls and was used in high-class eating places, home use, and also for numerous jars, trays, etc., in hospitals. See HQ W967570; HQ 959745, dated July 20, 1998; HQ 962208, dated April 19, 2000; Rexford Newcomb, Jr., *Ceramic Whitewares*, Pitman Publishing Corp., New York (1947) at pp. 222 and 227; Felix Singer & Sonja S. Singer, *Industrial Ceramics*, Chemical Publishing Co., Inc., New York (1963), at p. 1096. HQ W967570 also examined trade publications to determine the physical characteristics that are standard for restaurant and hotel ware, and quoted, “the single greatest thing a hotel demands and we produce are plain, white, round plates.” Consequently, it is CBP’s view that hotel and restaurant ware possess unique physical characteristics that render such articles heavier, stackable, and more resistant to chipping and breakage than other tableware.

In HQ 962208, dated April 19, 2000, CBP addressed the differences between chinaware marketed as household ware and that marketed as hotel ware, by comparing the descriptions of the china in the respective catalogs. The catalogs described the hotel ware as microwave and dishwasher proof, and addressed weight and stackability. The household ware was described as dishwasher proof, but was not advertised as microwave proof, and the weight and stackability was not addressed. Only the weight of one pattern was addressed. A 10 ½ inch plate sold as hotel/restaurant ware weighed approximately 1 pound and 9.5 oz. The same pattern plate sold as household ware weighed approximately 1 pound and 3 oz. Similarly, in *G. Heilman Brewing*, the CIT concluded that that testimony showing the ornamental beer steins to be susceptible to physical damage and unsuitable for frequent use or washing was persuasive in determining the proper tariff classification of the merchandise. *G. Heilman Brewing*, 14 Ct. Int’l Trade at 620. As such, evidence that an article of tableware is not stackable or is susceptible to chipping or breakage during repeated commercial use will weigh against a conclusion that such articles are properly described as hotel or restaurant ware.

The instant Drinking Vessels are irregularly shaped to resemble either a hot air balloon or a helmet of armor. They cannot be stacked, and the design of the Drinking Vessels is such that the articles are less chip resistant than typical drinking mugs. Moreover, although the Drinking Vessels feature a name or logo emblazoned on the outside of the article, the designs of the Drinking Vessels are unique to establishments in which they are sold, indicating that the merchandise is not suitable for sale to other hotels or restaurants and is therefore not commercially fungible with other hotel or restaurant ware. See *Dependable Packaging Solutions, Inc. v. United States*, No. 10–00330, slip op. 13–23 at 13 (Ct. Int’l Trade Feb. 20, 2013) (citing testimony that flower vase designs that are not new or unique to a particular company are evidence of commercial fungibility). As such, the general physical characteristics of the Drinking Vessels indicate that they are not designed to be principally used as hotel or restaurant ware.

The Expectation of the Ultimate Purchasers

The second *Carborundum* Factor, “the expectation of the ultimate purchasers,” also favors the conclusion that the Drinking Vessels are not primarily used for hotel or restaurant service. First, the record contains evidence that when the Drinking Vessels are sold in restaurants, the retail purchaser pays an added price for the pairing of a Mug with a beverage of his or her choosing and with the understanding that he or she may take the Mug home as a souvenir.³ Thus, the additional cost of a beverage sold in combination with a Mug indicates that consumers are willing to pay more for a beverage when they expect to keep the beverage container as a collectible souvenir or article for use at home. See *Lenox Collections*, 20 Ct. Int’l Trade at 197 (finding that a patron or purchaser’s willingness to pay an elevated price for a decorative spice container set was indicative of the consumer’s intent to primarily use the merchandise as a collectible set, as opposed to a utilitarian cooking container or accessory). Second, because the restaurant only presents the Drinking Vessels to those retail consumers who have ordered the higher-priced Mug and beverage combination, the expectations among ultimate purchasers are necessarily uniform that the Drinking Vessels are purchased as souvenirs to be taken home and away from the restaurant. See *G. Heilman Brewing*, 14 Ct. Int’l Trade at 620 (finding that purchasers’ intent to collect certain beer steins was relevant in determining whether the merchandise was classified as tableware or ornamental articles). Accordingly, we find that this information supports the conclusion that the Drinking Vessels are not principally used as hotel or restaurant ware.

The Channels of Trade in which the Merchandise Moves

The third Factor, “the channels of trade in which the merchandise moves,” supports a finding that the Drinking Vessels are not commercially fungible with hotel or restaurant ware. In HQ 082780, CBP found that hotel and restaurant ware is generally “offered for sale by independent sale representatives to wholesalers or hotel chains. By contrast, household ware is sold nationwide to department stores, gift stores, and directly to the consumer. See HQ 082780.

The record indicates that Progressive supplies the Drinking Vessels to hospitality and entertainment companies for subsequent sale to customers at hotels, restaurants, and related gift shops. Specifically, Progressive advertises the Drinking Vessels to the marketing departments of large resorts and restaurants, and the Drinking Vessels are not purchased by chefs or kitchen staffs in the normal course of food and food service supply orders. See *G. Heilman Brewing*, 14 Ct. Int’l Trade at 616, 621. Hotels and restaurants stock the Drinking Vessels on shelves in restaurants and gift shops, and the Drinking Vessels are sold directly to walk-in and dine-in customers. As such, we find that the channels in which this product is traded also indicate that the Drinking Vessels are not principally used as hotel or restaurant ware.

³ The CIT has ruled on several occasions that it is the “retail consumer” who is the “ultimate purchaser” when examining this *Carborundum* factor. *Dependable Packaging*, No. 10–00330, slip op. 13–23 at n. 13; See also *G. Heilman Brewing*, 14 Ct. Int’l Trade at 620.

The Environment of Sale

Fourth, “the environment of sale” of the Drinking Vessels is also probative of whether the instant merchandise is commercially fungible with hotel and restaurant ware. Here, we note that in addition to sales of Mug and beverage combinations transacted inside restaurant dining areas, empty Drinking Vessels are also displayed and offered for sale in resort and restaurant gift shops. Additionally, there is no evidence in the record to indicate that the Drinking Vessels are sold in restaurant supply catalogues or stores.

Use in the Same Manner Which Defines the Class

Fifth, the actual use or, “use in the same manner which defines the class,” does not favor classification of the Drinking Vessels as tableware primarily used for hotel and restaurant purposes. Although the environment of sale of the merchandise includes the marketing of Drinking Vessels filled with a beverage in hotel and restaurant dining areas, the record indicates that commercial kitchens do not wash the Drinking Vessels for re-use and the serving of other customers. It is also undisputed that the irregular shape and embellished decoration of the Drinking Vessels render the articles unsuitable for stacking and susceptible to breakage, two qualities undesirable in hotel and restaurant ware that must withstand repeated use, washing, and frequent handling. Moreover, “where the physical characteristics factor so strongly favors one principal use, the actual use of an imported article will frequently not be controlling.” *Dependable Packaging Solutions, Inc.*, No. 10–00330, slip op. 13–23 at 14 (internal quotation marks omitted) (citing *Primal Lite*, 182 F.3d at 1364 (1999) (“[A] classification covering vehicles principally used for automobile racing would cover a race car, even if the particular imported car was actually used solely in an advertising display.”)). Accordingly, this factor does not favor classification of the Drinking Vessels as hotel or restaurant ware of subheading 6912.00.20, HTSUS.

Economic Practicality of the Specified Use

The Drinking Vessels are not suited for repeated use in commercial dining rooms because they are not easily stacked and are susceptible to chipping and breakage. As such, if the Drinking Vessels were of a kind principally used as hotel or restaurant ware, economic practicality would require that the merchandise be modified so that is heavier in weight, more easily stored, and less prone to damage during frequent and repeated use. *See* HQ 082780. Consequently, the economic practicality

Recognition in the Trade of the Specified Use

Finally, the *Carborundum* Factor of “recognition in the trade of the specified use” is, in this instance, inconclusive. Evidence showing that the Drinking Vessels are not purchased by commercial kitchens and the fact that the Drinking Vessels are not re-used by hotel or restaurant dining rooms support a finding that the trade does not recognize the use of the instant merchandise as hotel or restaurant ware. However, we also note that the record does not

contain sufficient facts to conclusively determine the recognition in the trade of the use of the Drinking Vessels. Accordingly, this factor is not very probative.

When considered in total, the *Carborundum* Factors—in particular the physical characteristics of the merchandise and the ultimate expectations of the patrons who purchase such articles—indicate that the Drinking Vessels are not principally used as hotel or restaurant ware. Consequently, the Drinking Vessels are not classifiable under subheading 6912.00.20, HTSUS.

Subheading 6912.00.44, HTSUS, provides for “Ceramic tableware, kitchenware, other household articles and toilet articles, other than or porcelain or china: Tableware and kitchenware: Other: Other: Other: Drinking Vessels and other steins.” The term “mug” is not defined in the Nomenclature or the ENs. However, in *Ross Products, Inc. v. United States*, 40 Cust. Ct. 158 (1958), the United States Customs Court determined that a decorated earthenware, barrel-shaped drinking vessel, about 3” high and 2” in diameter, with a curved handle, on top of which was a figure of a bird through which one could blow to make a whistle sound, used by children for the purpose of drinking milk, and not used with a saucer was a “mug” within the common understanding of that term. The tariff term “mug” was defined as a straight-sided or barrel-shaped vessel measuring about the same across the top as across the bottom. It is usually heavier than a cup, with a heavier handle, has a flat bottom and is not used with a saucer. Furthermore, the court noted that the company itself referred to the article as a “mug.” *Id.*

CBP considers articles meeting the court definition of “mug,” which are taller than they are wide, to be drinking vessels classifiable under subheading 6912.00.44, HTSUS. *See* HQ 957696, dated July 18, 1995 (classifying a 3” high, cylindrically-shaped vessel with a handle as a mug); HQ 067098, dated April 14, 1981 (classifying a 3” high and 3” in diameter vessel as a drinking mug); *see also*, NY 886462, dated June 15, 1993, and NY 890028, dated September 20, 1993.

The item identified in the instant case as the “Med Times Knights Head Gold” is a barrel-shaped ceramic vessel that features a handle and flat bottom. It is not used with a saucer, and the height of the vessel is approximately equal to its width. Here, we note that although the vessel is presented in the shape of an armored knight’s head, it possesses the general appearance and proportions of a mug. Inasmuch as the “Med Times Knights Head Gold” vessel is described by the definition of the term “mug” in *Ross Products, Inc.*, we find that the article is classifiable under subheading 6912.00.44, HTSUS.

By contrast, the item identified as the “Paris Balloon” is a spherically-shaped vessel that sits atop a solid, square-shaped base. The “Paris Balloon” does not possess a handle, and the diameter of the vessel at its lip is substantially larger than the width of its base. Additionally, when the lid of the vessel is removed for drinking purposes, the vessel resembles the shape of a goblet. As such, the “Paris Balloon” does not meet the definition of the term “mug,” but is instead provided for under subheading 6912.00.48, HTSUS.

HOLDING:

By application of GRI 1, the “Med Times Knights Head Gold” drinking vessel is classified in heading 6912, HTSUS. Specifically, by application of

GRI 6, it is classifiable in subheading 6912.00.44, HTSUS, which provides for “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Other: Other: Drinking Vessels and other steins.” The column one, general rate of duty is 10% *ad valorem*.

By application of GRI 1, the “Paris Balloon” drinking vessel is classified in heading 6912, HTSUS. Specifically, by application of GRI 6, it is classifiable in subheading 6912.00.48, which provides for “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Other: Other: Other.” The column one, general rate of duty is 9.8% *ad valorem*.

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

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

EFFECT ON OTHER RULINGS:

In accordance with the above analysis, NY N131398, dated November 19, 2010, is hereby REVOKED.

This ruling will become effective 60 days after publication in the *Customs Bulletin and Decisions*.

Sincerely,

JACINTO JUAREZ

FOR

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED MODIFICATION OF TWO RULING LETTERS
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF BRASS
ESCUTCHEONS**

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

ACTION: Notice of proposed modification of two ruling letters relating to the tariff classification of brass escutcheons.

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) proposes to modify two ruling letters relating to the tariff classification of brass escutcheons under the Harmonized Tariff Schedule of

the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before December 12, 2014.

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

FOR FURTHER INFORMATION CONTACT: Beth Jenior, Tariff Classification and Marking Branch: (202) 325–0347.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade 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 section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), this notice advises interested parties that CBP intends to modify two ruling letters pertaining to the tariff classification of brass escutcheons. Although in this notice, CBP is specifi-

cally referring to the modification of New York Ruling Letter (NY) I86062, dated September 26, 2002 (Attachment A) and NY 803902, dated November 29, 1994 (Attachment B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(2)), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice 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 notice of this proposed action.

In NY I86062, CBP determined that the subject brass escutcheons were classified in subheading 8481.90.10, HTSUS, which provides for: "Taps, cocks, valves and similar appliances...parts thereof: Parts: Of hand operated and check appliances: Of copper" In NY 803902, CBP determined that the subject brass escutcheons were classified in subheading 7418.20.10, HTSUS, which provides for "[S]anitary ware and parts thereof, of copper: Sanitary ware and parts thereof: Of copper-zinc base alloys (brass)..." It is now CBP's position that the brass escutcheons are properly classified under subheading 7419.99.50, HTSUS, which provides for "Other articles of copper: Other: Other: Other: Other ..."

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to modify NY I86062 and NY 803902, and to revoke or to modify any other ruling not specifically identified, in order to reflect the proper classification of brass escutcheons according to the analysis contained in proposed HQ H201157, set forth as Attachment C to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: October 10, 2014

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

Attachments

[ATTACHMENT A]

NY I86062
September 26, 2002
CLA-2-84:RR:NC:1:102 I86062
CATEGORY: Classification
TARIFF NO.: 8302.50.0000, 8481.80.1020,
8481.90.1000

MR. FRANCISCO GOMEZ JR.
R.L. JONES
476 TECATE ROAD
POST OFFICE BOX 970
TECATE, CA 91980

RE: The tariff classification and status under the North American Free Trade Agreement (NAFTA), of brass valves, valve parts and other fittings from Mexico; country of origin marking; Article 509

DEAR MR. GOMEZ:

In your letter dated August 26, 2002 you requested a ruling on the status of brass valves, valve parts and other fittings from Mexico under the NAFTA.

The articles in question include tub and shower valve assemblies, one with a valve cartridge and one without a cartridge, a valve trim part, and a brass towel bar fitting. Descriptive information, technical drawings and samples were submitted.

The valve assemblies will be assembled in Mexico by joining more than five separate threaded brass parts of U.S. origin and applying a "lock-tite" adhesive. Some assemblies will form a valve body for a hand-operated valve, while other assemblies will incorporate a valve cartridge and form a complete valve. The valve trim part is a form of escutcheon that is a brass article machined in the U.S. and polished and chrome plated in Mexico. Upon completion in Mexico the trim part will be returned to the U.S. to be incorporated into a complete valve set. The brass towel bar fitting, which is a post used in pairs to support a towel bar, are articles machined in the U.S. and simply polished in Mexico. The polished fitting will then be returned to the U.S. to be incorporated into a towel bar set.

The applicable tariff provision for the brass towel bar fitting will be 8302.50.0000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for hat-racks, hat pegs, brackets and similar fixtures of base metal, and parts thereof. The rate of duty is free.

The applicable tariff provision for the brass valve assemblies, not incorporating a valve cartridge, and the valve trim part will be 8481.90.1000, HTSUSA, which provides for parts of hand operated and check appliances of copper. The general rate of duty will 3 percent ad valorem.

The applicable tariff provision for the brass valve assemblies incorporating a valve cartridge will be 8481.80.1020, HTSUSA, which provides for bath and shower faucets of copper. The general rate of duty will 4 percent ad valorem.

The tub and shower valve assembly, whether or not incorporating a valve cartridge, and the valve trim part, being wholly obtained or produced entirely in the territory of Mexico and the United States, will meet the requirements

of HTSUSA General Note 12(b)(i), and will therefore be entitled to a free rate of duty under the NAFTA upon compliance with all applicable laws, regulations, and agreements.

In your letter you also request a ruling on the country of origin marking requirements for the subject articles.

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134) implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

The country of origin marking requirements for a “good of a NAFTA country” are also determined in accordance with Annex 311 of the North American Free Trade Agreement (“NAFTA”), as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat 2057) (December 8, 1993) and the appropriate Customs Regulations. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, Customs Regulations. The marking requirements of these goods are set forth in Part 134, Customs Regulations.

Section 134.1(b) of the regulations, defines “country of origin” as the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin. (Emphasis added).

Section 134.1(j) of the regulations, provides that the “NAFTA Marking Rules” are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g) of the regulations, defines a “good of a NAFTA country” as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules. Section 134.45(a)(2) of the regulations, provides that a “good of a NAFTA country” may be marked with the name of the country of origin in English, French or Spanish.

The articles in question are all processed in Mexico and advanced in value and/or improved in condition prior to being imported into the U.S. Since Mexico is defined under 19 CFR 134.1(g), as a NAFTA country, we must first apply the NAFTA Marking Rules in order to determine whether each of the imported articles is a “good of a NAFTA country”, and thus subject to the NAFTA marking requirements.

Part 102 of the regulations, sets forth the “NAFTA Marking Rules” for purposes of determining whether a good is a good of a NAFTA country for marking purposes. Section 102.11 of the regulations, sets forth the required hierarchy for determining country of origin for marking purposes.

Applying the NAFTA Marking Rules set forth in Part 102 of the regulations to the facts of this case, we find that the imported tub and shower valve assemblies, whether or not incorporating a valve cartridge, valve trim part, and a brass towel bar fitting are all goods of Mexico for marking purposes.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 C.F.R. 181).

This ruling letter is binding only as to the party to whom it is issued and may be relied on only by that party.

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 Kenneth T. Brock at 646-733-3009.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

[ATTACHMENT B]

NY 803902

November 29, 1994

CLA-2-74:S:N:N3:113 803902

CATEGORY: Classification

TARIFF NO.: 7418.20.1000; 8481.90.9080;
8481.90.1000

MS. CONNIE GROAT
FREIGHT-BASE CUSTOM BROKERS, INC.
P.O. BOX 66479
CHICAGO AMF, IL 60666

RE: The tariff classification of plumbing goods from Taiwan

DEAR MS. GROAT:

In your letter of no date, received in this office on November 4, 1994, on behalf of Global OEM Corporation, you requested a tariff classification ruling.

The merchandise consists of various plumbing goods for bath tubs. Item 1 is a round dial escutcheon of brass (no. 800-183). It covers the hole made in the wall of the bathroom that allows access to the plumbing.

Item 2 is a chrome-plated zinc, lever handle (no. 900-070). It is the operating handle for an automatic pressure balancing shower valve.

Item 3 is a plastic plug button and insert (no. 900-140). It is used to cover the retaining screw on the acrylic handle of a valve.

Item 4 is a chrome-plated brass strainer body (no. B066401). According to the information you enclosed, this is the part of the strainer that remains visible after the sink has been installed.

Items 5 through 10 are brass tub spouts (nos. V1129, V11291, V1130, V11301, V1131, V11311).

The applicable subheading for the escutcheon and the strainer body will be 7418.20.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for sanitary ware and parts thereof, of copper-zinc based alloys (brass). The rate of duty will be 3.7 percent ad valorem.

The applicable subheading for the lever handle and the plug button and insert will be 8481.90.9080, Harmonized Tariff Schedule of the United States (HTS), which provides for other parts of valves. The rate of duty will be 3.7 percent ad valorem.

The applicable subheading for the brass tub spouts will be 8481.90.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for parts of hand-operated brass valves. The rate of duty will be 5.6 percent 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 this ruling 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,

JEAN F. MAGUIRE
Area Director
New York Seaport

[ATTACHMENT C]

HQ H201157
CLA-2 OT:RR:CTF:TCM H201157 EGJ
CATEGORY: Classification
TARIFF NO.: 7419.99.50

FRANCISCO GOMEZ JR.
484 *TECATE ROAD*
P.O. BOX 970
TECATE, CA 91980

RE: Modification of New York Ruling Letters I86062 and NY 803902; Classification of Brass Escutcheons

DEAR MR. GOMEZ:

This is in reference to New York Ruling Letters (NY) I86062, dated September 26, 2002, issued to you concerning the tariff classification of a brass escutcheon under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (CBP) classified the subject article in heading 8481, HTSUS, which provides for parts of valves. We have reviewed NY I86062 and find it to be in error. For the reasons set forth below, we hereby modify NY I86062 one other ruling with substantially similar merchandise: NY 803902, dated November 29, 1994.

FACTS:

The subject merchandise is a chrome-plated brass escutcheon. This is a trim component for use in bathtubs and showers. The brass escutcheon is not imported as part of a valve assembly set; it is incorporated into a valve set after importation into the United States. The escutcheon's function is to hide the hole in the wall around a shower arm or bathtub spout, and to contribute to the bathroom's décor.

In bathroom showers, the shower's system is used indoors to deliver water from outside water lines. The body of the shower system, consisting of a valve and other connecting parts, is generally installed behind a wall. In contrast, the shower's trim components are installed on the shower's surface. Certain trim components enable the user to control the flow of water from the valve and into the shower. Generally, the trim components tend to be ornamental so as to enhance the décor of the bathroom.

ISSUE:

What is the tariff classification of the brass shower escutcheon?

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The relevant HTSUS provisions are:

7418 Table, kitchen or other household articles and parts thereof, of copper; pot scourers and scouring or polishing pads, gloves and the like, of copper; sanitary ware and parts thereof, of copper:

* * *

7419 Other articles of copper ...

* * *

8302 Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal; and base metal parts thereof ...

* * *

8481 Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, Including pressure-reducing valves and thermostatically controlled valves; parts thereof:

* * *

Note 3 to Section XV (which includes Chapters 72–83) states that:

Throughout the schedule, the expression “base metals” means: iron and steel, copper, nickel, aluminum, lead, zinc, tin, tungsten (wolfram), molybdenum, tantalum, magnesium, cobalt, bismuth, cadmium, titanium, zirconium, antimony, manganese, beryllium, chromium, germanium, vanadium, gallium, hafnium, indium, niobium (columbium), rhenium and thallium.

* * *

Subheading Note 1(a) to Chapter 74 states that:

Subheading Note

1. In this chapter the following expressions have the meanings hereby assigned to them:

(a) Copper-zinc base alloys (brasses)

Alloys of copper and zinc, with or without other elements.

When other elements are present:

- zinc predominates by weight over each of such other elements;
- any nickel content by weight is less than 5 percent (see copper-nickel-zinc alloys (nickel silvers)); and
- any tin content by weight is less than 3 percent (see copper-tin alloys (bronzes))...

* * *

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 HTSUS and are thus useful in ascertaining the classification of merchandise under the Harmonized System. CBP believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN 74.18 provides, in pertinent part, that:

The Explanatory Notes to headings 73.21, 73.23 and 73.24 apply, *mutatis mutandis*, to this heading.

* * *

EN 73.24 provides, in pertinent part, that:

This heading comprises a wide range of iron or steel articles, **not more specifically covered** by other headings of the Nomenclature, used for sanitary purposes ...

The heading includes, baths, bidets, hip-baths, foot-baths, sinks, wash basins, toilet sets; soap dishes and sponge baskets; douche cans, sanitary pails, urinals, bedpans, chamber-pots, water closet pans and flushing cisterns whether or not equipped with their mechanisms, spittoons, toilet paper holders.

* * *

EN 74.19 provides, in pertinent part, that:

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

* * *

EN 83.02 provides, in pertinent part, that:

This heading covers general purpose classes of base metal accessory fittings and mountings, such as are used largely on furniture, doors, windows, coachwork, etc. Goods within such general classes remain in this heading even if they are designed for particular uses (e.g., door handles or hinges for automobiles). The heading **does not**, however, **extend** to goods forming an essential part of the structure of the article, such as window frames or swivel devices for revolving chairs.

The heading covers ...

(D) Mountings, fittings and similar articles suitable for buildings

This group includes:

- (1) Door guards fitted with chains, bars, etc.; espagnolette or casement bolts and fittings; casement fasteners and stays; fanlight or skylight openers, stays and fittings; cabin hooks and eyes; hooks and fittings for double windows; hooks, fasteners, stops, brackets and roller ends for shutters or blinds; letter-box plates; door knockers, spy holes, etc. (**other than** those fitted with optical elements).
- (2) Catches (including ball spring catches), bolts, fasteners, latches, etc., (**other than** key-operated bolts of **heading 83.01**), for doors.
- (3) Fittings for sliding doors or windows of shops, garages, sheds, hangars, etc. (e.g., grooves and tracks, runners and rollers).
- (4) Keyhole plates and finger-plates for doors of buildings.
- (5) Curtain, blind or portière fittings (e.g., rods, tubes, rosettes, brackets, bands, tassel hooks, clips, sliding or runner rings, stops); cleat hooks,

guides and knot holders for blind cords, etc.; staircase fittings, such as protectors for staircase treads; stair carpet clips, stair rods, banister knobs. Rods, tubes and bars, suitable for use as curtain or stair rods, etc., merely cut to length and drilled, remain classified according to the constituent metal.

(6) Corner braces, reinforcing plates, angles, etc., for doors, windows or shutters.

(7) Hasps and staples for doors; handles and knobs for doors, including those for locks or latches.

(8) Door stops and door closers (**other than** those of (H) below).

(E) **Mountings, fittings and similar articles suitable for furniture**

This group includes:

(1) Protective studs (with one or more points) for legs of furniture, etc.; metal decorative fittings; shelf adjusters for book-cases, etc.; fittings for cupboards, bedsteads, etc.; keyhole plates.

(2) Corner braces, reinforcing plates, angles, etc.

(3) Catches (including ball spring catches), bolts, fasteners, latches, etc. (**other than** key-operated bolts of **heading 83.01**).

(4) Hasps and staples for chests, etc.

(5) Handles and knobs, including those for locks or latches.

(F) (1) Fittings and similar articles for trunks, chests, suit-cases or similar travel goods, e.g., lid guides (but **not including** fasteners); handles; corner protectors; lid struts and runners; closing rods for basket-trunks; fittings for expanding cases; however, ornaments for handbags fall in **heading 71.17...**

(G) **Hat-racks, hat-pegs, brackets** (fixed, hinged or toothed, etc.) and **similar fixtures** such as coat racks, towel racks, dish-cloth racks, brush racks, key racks. Coat racks, etc., having the character of furniture, such as coat racks incorporating a shelf, are classified in **Chapter 94 ...**

* * *

According to Subheading Note 1(a) to Chapter 74, brass is a copper-zinc alloy. As such, brass articles are classifiable as copper articles in Chapter 74. Heading 7418, HTSUS, provides for copper sanitary ware and parts of sanitary ware. The term “sanitary ware” is not defined in the HTSUS.¹ The *Macmillan Dictionary*, available at www.macmillandictionary.com, defines “sanitary” as “relating to people’s health, especially to the system of supply water and dealing with human waste.” *Merriam-Webster’s Collegiate Dictio-*

¹ When, as in this case, a tariff term is not defined by the HTSUS or its legislative history, “the term’s correct meaning is its common meaning.” *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). 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.” *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (CCPA 1982); *Simod*, 872 F.2d at 1576.

nary, 1033 (10th Ed. 2001), defines sanitary ware as “ceramic plumbing fixtures (as sinks, lavatories or toilet bowls).” These definitions are consistent with EN 73.24, which states, *inter alia*, that “baths, bidets ..sinks, wash basins ... soap dishes and sponge baskets ... urinals, bedpans, chamber-pots, water closet pans and flushing cisterns ... spittoons, toilet paper holders” are all sanitary ware.

The subject brass escutcheon is a component of a shower or bathtub system. Baths and showers are types of sanitary ware. Thus, if the brass escutcheon constitutes a “part” within the meaning of the HTSUS, we could classify it as a part of sanitary ware under heading 7418, HTSUS.

In *Bauerhin Techs. Ltd. P’ship. United States*, 110 F. 3d 774 (Fed. Cir. 1997), the court identified two distinct lines of cases defining the word “part.” Consistent with *United States v. Willoughby Camera Stores, Inc.*, 21 C.C.P.A. 322, 324 (1933), one line of cases holds that a part of an article “is something necessary to the completion of that article without which the article to which it is to be joined, could not function as such article.” The other line of cases evolved from *United States v. Pompeo*, 43 C.C.P.A. 9, 14 (1955), which held that a device may be a part of an article even though its use is optional and the article will function without it, if the device is dedicated for use upon the article, and, once installed, the article will not operate without it. Under either line of cases, an imported item is not a part if it is “a separate and distinct commercial entity.” *ABB, Inc. v. United States*, 28 Ct. Int’l Trade 1444, 1452–53 (2004).

Applying the case law, the brass escutcheon is not a “part” under the HTSUS. This trim component is of a strictly decorative nature. The escutcheon does not contribute to the function of the shower or bath into which it is installed, nor does it mount any other necessary parts to the shower or bath system.² Accordingly, we cannot classify it as a “part” of sanitary ware under heading 7418, HTSUS.

Heading 8302 provides, in pertinent part, for “Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hat-pegs, brackets and similar fixtures ... automatic door closers of base metal.” The terms “and the like” and “similar fixtures” require that we apply the rule of *ejusdem generis* to determine the scope of heading 8302, HTSUS. Under the rule of *ejusdem generis*, where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is held to refer to things of the same kind as those specified. With respect to classification analysis, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms. See *Sports Graphics, Inc. v. United States*, 24 F.3d 1390, 1392 (Fed. Cir. 1994).

² CBP has found that an escutcheon which contributes to a faucet’s function by mounting the faucet valves and water spout is classifiable as a “part” of a valve under heading 8481, HTSUS. See NY N19120, dated December 2, 2011.

First, we note that all of the named articles in heading 8302, HTSUS, are of base metal. Note 3 to Section XV (which includes Chapter 83) states that base metal includes copper. Therefore, the brass escutcheon consists of a base metal.

Next, we find that the terms base metal “mountings” and “fittings” must be read in conjunction with the rest of the words of heading 8302. The words “suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like” qualify the meaning of “mountings” and “fittings.” EN 83.02 categorizes these articles into mountings suitable for buildings, mountings suitable for furniture, mountings suitable for trunks and other travel goods as well as hat-racks, hat-pegs and brackets.

The brass escutcheon is immediately distinguishable from mountings for furniture, trunks, chests and travel goods because it does not attach to such articles. Moreover, hat racks, hat pegs and brackets all mount on the wall and support hats or other articles, such as shelves. In contrast, the brass escutcheon attaches to a shower or bath and does not serve as a support. Thus, in order to be classified in heading 8302, HTSUS, the brass escutcheon must be a base metal mounting or fitting for a building.

The brass escutcheon attaches to a shower stall and hides the hole in the shower around the shower arm. Shower stalls are distinguishable from doors, staircases, and windows because they are not architectural elements of a building. In Headquarters Ruling Letter (HQ) 960428, dated December 15, 1997, we found that the grille cover for an air duct was not classified in heading 8302, HTSUS, because an air vent is distinguishable from the enumerated building components. Similarly, the brass escutcheon does not attach to an article similar to doors, staircases or windows. As such, heading 8302, HTSUS, does not cover the instant merchandise.

Heading 7419, HTSUS, provides for other articles of copper. EN 74.19 states that this heading covers articles of copper which are not classified elsewhere in the tariff schedule. Based upon the foregoing, the brass escutcheon is classified in heading 7419, HTSUS.

HOLDING:

By application of GRI 1, the brass escutcheon is classified in heading 7419, HTSUS. It is specifically classified under subheading 7419.99.50, which provides for “Other articles of copper: Other: Other: Other: Other ...” The 2014 column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY I86062, dated September 26, 2002 and NY 803902, dated November 29, 1994, are hereby modified.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF STEEL SHOWER
ESCUTCHEONS**

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

ACTION: Notice of proposed revocation of a ruling letter relating to the tariff classification of steel shower escutcheons.

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) proposes to revoke a ruling letter relating to the tariff classification of steel shower escutcheons under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before December 12, 2014.

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

FOR FURTHER INFORMATION CONTACT: Beth Jenior, Tariff Classification and Marking Branch: (202) 325–0347.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are

“informed compliance” and **“shared responsibility.”** These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade 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 section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the tariff classification of steel shower escutcheons. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) L89621, dated January 5, 2006 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(2)), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice 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 notice of this proposed action.

In NY L89621, CBP determined that the subject steel shower escutcheons were classified in subheading 7324.90.00, HTSUS, which provides for: “Sanitary ware and parts thereof, of iron or steel: Other, including parts ...” It is now CBP’s position that the subject steel

shower escutcheons are properly classified under subheading 7326.90.85, HTSUS, which provides for “Other articles of iron or steel: Other: Other: Other...”

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke NY L89621, and to revoke or to modify any other ruling not specifically identified, in order to reflect the proper classification of steel shower escutcheons according to the analysis contained in proposed HQ H201156, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: October 10, 2014

GREG CONNOR

FOR

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY L89621

January 5, 2006

CLA-2-73:RR:NC:N1:113 L89621

CATEGORY: Classification

TARIFF NO.: 7324.90.0000

MR. JAMIE L. DAVIS
INTERLINE BRANDS
3333 LENOX AVENUE
JACKSONVILLE, FL 32254

RE: The tariff classification of escutcheons from Taiwan

DEAR MR. DAVIS:

In your letter dated December 19, 2006, you requested a tariff classification ruling.

The sample you submitted is a plastic bag containing 25 escutcheons (item number ESC1) made of chrome-plated steel. The escutcheons, also known as shower arm flanges, will be used to cover the hole on the bathroom shower wall where the shower arm projects. The flange is 2.5 inches in diameter. You indicate that they will be sold to plumbers and contractors.

The applicable subheading for the shower arm flanges will be 7324.90.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for sanitary ware and parts thereof, of iron or steel, other, including parts. The rate of duty will be free percent ad valorem.

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

In your letter, you also ask whether country of origin marking of the individual pieces is required, or if marking with a label on the outer bag is sufficient. The marking of the flanges will vary depending upon the specific circumstances of each importation. Please request this marking advice from your local import specialist.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported.

If you have any questions regarding the ruling, contact National Import Specialist James Smyth at 646-733-3018.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

[ATTACHMENT B]

HQ H201156
CLA-2 OT:RR:CTF:TCM H201156 EGJ
CATEGORY: Classification
TARIFF NO.: 7326.90.85

JAMIE L. DAVIS
IMPORT COORDINATOR
INTERLINE BRANDS
3333 LENOX AVENUE
JACKSONVILLE, FL 32254

RE: Revocation of New York Ruling Letter L89621; Classification of Steel Escutcheons

DEAR MR. DAVIS:

This is in reference to New York Ruling Letter (NY) L89621, dated January 5, 2006, issued to you concerning the tariff classification of steel escutcheons under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (CBP) classified the subject article in heading 7324, HTSUS, which provides for steel sanitary ware and parts thereof. We have reviewed NY L89621 and find it to be in error. For the reasons set forth below, we hereby revoke NY L89621.

FACTS:

In bathroom showers, the shower's system is used indoors to deliver water from outside water lines. The body of the shower system, consisting of a valve and other connecting parts, is generally installed behind a wall. In contrast, the shower's trim components are installed on the shower's surface. Certain trim components enable the user to control the flow of water from the valve and into the shower. Generally, the trim components tend to be ornamental so as to enhance the décor of the bathroom.

The subject merchandise is a chrome-plated steel escutcheon, also known as a shower arm flange. It is designed to cover the hole on the bathroom shower wall where the shower arm projects. The escutcheon is 2.5 inches in diameter. It is not imported together with a shower faucet system or a shower. The escutcheon is imported in bulk and is sold to plumbers and contractors. The escutcheon does not contribute to the function of the shower system. The escutcheon's function is to hide the hole in the wall around the shower arm and to contribute to the bathroom's décor.

ISSUE:

What is the tariff classification of the steel shower escutcheon?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative

Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The relevant HTSUS provisions are:

7324 Sanitary ware and parts thereof, of iron or steel...

* * *

7326 Other articles of iron or steel ...

* * *

8302 Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal; and base metal parts thereof

* * *

Note 3 to Section XV (which includes Chapters 72–83) states that:

Throughout the schedule, the expression “base metals” means: iron and steel, copper, nickel, aluminum, lead, zinc, tin, tungsten (wolfram), molybdenum, tantalum, magnesium, cobalt, bismuth, cadmium, titanium, zirconium, antimony, manganese, beryllium, chromium, germanium, vanadium, gallium, hafnium, indium, niobium (columbium), rhenium and thallium.

* * *

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 HTSUS and are thus useful in ascertaining the classification of merchandise under the Harmonized System. CBP believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN 73.24 provides, in pertinent part, that:

This heading comprises a wide range of iron or steel articles, **not more specifically covered** by other headings of the Nomenclature, used for sanitary purposes ...

The heading includes, baths, bidets, hip-baths, foot-baths, sinks, wash basins, toilet sets; soap dishes and sponge baskets; douche cans, sanitary pails, urinals, bedpans, chamber-pots, water closet pans and flushing cisterns whether or not equipped with their mechanisms, spittoons, toilet paper holders.

* * *

EN 73.26 provides, in pertinent part, that:

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

* * *

EN 83.02 provides, in pertinent part, that:

This heading covers general purpose classes of base metal accessory fittings and mountings, such as are used largely on furniture, doors, windows, coachwork, etc. Goods within such general classes remain in this heading even if they are designed for particular uses (e.g., door handles or hinges for automobiles). The heading **does not**, however, **extend** to goods forming an essential part of the structure of the article, such as window frames or swivel devices for revolving chairs.

The heading covers ...

(D) Mountings, fittings and similar articles suitable for buildings

This group includes:

(1) Door guards fitted with chains, bars, etc.; espagnolette or casement bolts and fittings; casement fasteners and stays; fanlight or skylight openers, stays and fittings; cabin hooks and eyes; hooks and fittings for double windows; hooks, fasteners, stops, brackets and roller ends for shutters or blinds; letter-box plates; door knockers, spy holes, etc. (**other than** those fitted with optical elements).

(2) Catches (including ball spring catches), bolts, fasteners, latches, etc., (**other than** key-operated bolts of **heading 83.01**), for doors.

(3) Fittings for sliding doors or windows of shops, garages, sheds, hangars, etc. (e.g., grooves and tracks, runners and rollers).

(4) Keyhole plates and finger-plates for doors of buildings.

(5) Curtain, blind or portière fittings (e.g., rods, tubes, rosettes, brackets, bands, tassel hooks, clips, sliding or runner rings, stops); cleat hooks, guides and knot holders for blind cords, etc.; staircase fittings, such as protectors for staircase treads; stair carpet clips, stair rods, banister knobs. Rods, tubes and bars, suitable for use as curtain or stair rods, etc., merely cut to length and drilled, remain classified according to the constituent metal.

(6) Corner braces, reinforcing plates, angles, etc., for doors, windows or shutters.

(7) Hasps and staples for doors; handles and knobs for doors, including those for locks or latches.

(8) Door stops and door closers (**other than** those of (H) below).

(E) Mountings, fittings and similar articles suitable for furniture

This group includes:

(1) Protective studs (with one or more points) for legs of furniture, etc.; metal decorative fittings; shelf adjusters for book-cases, etc.; fittings for cupboards, bedsteads, etc.; keyhole plates.

(2) Corner braces, reinforcing plates, angles, etc.

(3) Catches (including ball spring catches), bolts, fasteners, latches, etc. (**other than** key-operated bolts of **heading 83.01**).

(4) Hasps and staples for chests, etc.

(5) Handles and knobs, including those for locks or latches.

(F) (1) Fittings and similar articles for trunks, chests, suit-cases or similar travel goods, e.g., lid guides (but **not including** fasteners); handles; corner protectors; lid struts and runners; closing rods for basket-trunks; fittings for expanding cases; however, ornaments for handbags fall in **heading 71.17...**

(G) **Hat-racks, hat-pegs, brackets** (fixed, hinged or toothed, etc.) and **similar fixtures** such as coat racks, towel racks, dish-cloth racks, brush racks, key racks. Coat racks, etc., having the character of furniture, such as coat racks incorporating a shelf, are classified in **Chapter 94...**

* * *

Heading 7324, HTSUS, provides for steel sanitary ware and parts of sanitary ware. The term “sanitary ware” is not defined in the HTSUS.¹ The *Macmillan Dictionary*, available at www.macmillandictionary.com, defines “sanitary” as “relating to people’s health, especially to the system of supply water and dealing with human waste.” *Merriam-Webster’s Collegiate Dictionary*, 1033 (10th Ed. 2001), defines sanitary ware as “ceramic plumbing fixtures (as sinks, lavatories or toilet bowls).” These definitions are consistent with EN 73.24, which states, *inter alia*, that “baths, bidets ..sinks, wash basins ... soap dishes and sponge baskets ...urinals, bedpans, chamber-pots, water closet pans and flushing cisterns ... spittoons, toilet paper holders” are all sanitary ware.

The subject steel escutcheon is a component of a shower system. Baths and showers are types of sanitary ware. Thus, if the steel escutcheon constitutes a “part” within the meaning of the HTSUS, we could classify it as a part of sanitary ware under heading 7324, HTSUS.

In *Bauerhin Techs. Ltd. P’ship. United States*, 110 F. 3d 774 (Fed. Cir. 1997), the court identified two distinct lines of cases defining the word “part.” Consistent with *United States v. Willoughby Camera Stores, Inc.*, 21 C.C.P.A. 322, 324 (1933), one line of cases holds that a part of an article “is something necessary to the completion of that article without which the article to which it is to be joined, could not function as such article.” The other line of cases evolved from *United States v. Pompeo*, 43 C.C.P.A. 9, 14 (1955), which held that a device may be a part of an article even though its use is optional and the article will function without it, if the device is dedicated for use upon the

¹ When, as in this case, a tariff term is not defined by the HTSUS or its legislative history, “the term’s correct meaning is its common meaning.” *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). 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.” *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (CCPA 1982); *Simod*, 872 F.2d at 1576.

article, and, once installed, the article will not operate without it. Under either line of cases, an imported item is not a part if it is “a separate and distinct commercial entity.” *ABB, Inc. v. United States*, 28 Ct. Int’l Trade 1444, 1452–53 (2004).

Applying the case law, the steel escutcheon is not a “part” under the HTSUS. This trim component is of a strictly decorative nature. The escutcheon does not contribute to the function of the shower into which it is installed, nor does it mount any other necessary parts to the shower system.² Accordingly, we cannot classify it as a “part” of sanitary ware under heading 7324, HTSUS.

Heading 8302 provides, in pertinent part, for “Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hat-pegs, brackets and similar fixtures . . . automatic door closers of base metal.” The terms “and the like” and “similar fixtures” require that we apply the rule of *ejusdem generis* to determine the scope of heading 8302, HTSUS. Under the rule of *ejusdem generis*, where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is held to refer to things of the same kind as those specified. With respect to classification analysis, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms. See *Sports Graphics, Inc. v. United States*, 24 F.3d 1390, 1392 (Fed. Cir. 1994).

First, we note that all of the named articles in heading 8302, HTSUS, are of base metal. Note 3 to Section XV (which includes Chapter 83) states that base metal includes steel. Therefore, the steel escutcheon consists of a base metal.

Next, we find that the terms base metal “mountings” and “fittings” must be read in conjunction with the rest of the words of heading 8302. The words “suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like” qualify the meaning of “mountings” and “fittings.” EN 83.02 categorizes these articles into mountings suitable for buildings, mountings suitable for furniture, mountings suitable for trunks and other travel goods as well as hat-racks, hat-pegs and brackets.

The steel escutcheon is immediately distinguishable from mountings suitable for furniture, trunks, chests and travel goods because it does not attach to such articles. Moreover, hat racks, hat pegs and brackets all mount on the wall and support hats or other articles, such as shelves. In contrast, the steel escutcheon attaches to a shower and does not serve as a support. Thus, in order to be classified in heading 8302, HTSUS, the steel escutcheon must be a base metal mounting or fitting for a building.

The steel escutcheon attaches to a shower stall and hides the hole in the shower around the shower arm. Shower stalls are distinguishable from doors, staircases, and windows because they are not architectural elements of a building. In Headquarters Ruling Letter (HQ) 960428, dated December 15, 1997, we found that the grille cover for an air duct was not classified in heading 8302, HTSUS, because an air vent is distinguishable from the enu-

² CBP has found that an escutcheon which contributes to a faucet’s function by mounting the faucet valves and water spout is classifiable as a “part” of a valve under heading 8481, HTSUS. See NY N19120, dated December 2, 2011.

merated building components. Similarly, the steel escutcheon does not attach to an article similar to doors, staircases or windows. As a result, the scope of heading 8302, HTSUS, is too narrow to cover all of the escutcheons at importation.

Heading 7326, HTSUS, provides for other articles of iron or steel. EN 73.26 states that this heading covers articles of steel which are not classified elsewhere in the tariff schedule. Based upon the foregoing, the steel shower escutcheon is classified in heading 7326, HTSUS.

HOLDING:

By application of GRI 1, the steel shower escutcheon is classified in heading 7326, HTSUS. It is specifically classified under subheading 7326.90.85, HTSUS, which provides for “Other articles of iron or steel: Other: Other: Other...” The 2014 column one, general rate of duty is 2.9 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY L89621, dated January 5, 2006, is hereby revoked.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED MODIFICATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF PARTS OF A PAINT
MIXING UNIT**

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

ACTION: Notice of proposed revocation of a ruling letter and proposed modification of a ruling letter and proposed revocation of treatment relating to the tariff classification of certain parts of a paint mixing unit.

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) proposes to revoke a ruling letter and to modify a ruling letter relating to the tariff classification of parts of a paint mixing unit under the

Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before December 12, 2014.

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

FOR FURTHER INFORMATION CONTACT: Beth Jenior, Tariff Classification and Marking Branch: (202) 325–0347.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade 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 section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), this Notice advises interested parties that CBP intends to revoke a ruling letter and modify a ruling letter pertaining to the tariff classification of parts of a paint mixing unit. Although in this Notice, CBP is specifically referring to the revocation of New York

Ruling Letter (NY) I89639, dated January 21, 2003 (Attachment A), and the modification of NY R01329, dated January 24, 2005 (Attachment B), this Notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this Notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. §1625(c)(2)), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice 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 notice of this proposed action.

In NY I89639 and NY R01329 (foot and gusset support only), CBP determined that the subject parts of a paint mixing unit were classified in heading 9403, HTSUS, as "other furniture and parts thereof." It is now CBP's position that the subject parts are properly classified in heading 8479, HTSUS, as "machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof."

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke NY I89639 and to modify NY R01329 with regard to the classification of the foot and gusset supports, and to revoke or to modify any other ruling not specifically identified, in order to reflect the proper classification of the parts of the paint mixing unit according to the analysis contained in proposed HQ H250136, set forth as Attachment C to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially similar transactions.

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

Dated: October 21, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY I89639

January 21, 2003

CLA-2-94:RR:NC:SP:233 I89639

CATEGORY: Classification

TARIFF NO.: 9403.20.0020

MR. PETE MENTO
EXPEDITORS TRADEWIN, LLC
1015 THIRD AVENUE, 12TH FLOOR
SEATTLE, WA 98104

RE: The tariff classification of paint mixing machine shelving units from Hong Kong and Shanghai

DEAR MR. MENTO:

In your letters dated November 7 and December 12, 2002, on behalf of Dedoes Industries, Inc., you requested a tariff classification ruling.

The Dedoes Alliance 1.7 and Alliance 2.4 machines are paint mixing machines utilized in the automotive refinishing industry. The machines consist of a series of multi-position, floor standing sealed metal shelves on which paint cans of various sizes (1 liter/quart, 2.5–4.0 liter/gallon) are mounted and connected to an electric motor powered direct drive system by means of separately imported specialized lids attached to each can in place of its normal lid. Depending on the size of the paint cans on any one shelf, and allowing for positions lost to the drive system components, each shelf offers from 7 to 12 mixing positions in the case of the Alliance 1.7 and from 11 to 18 mixing positions on the Alliance 2.4 machine. The mixing action occurs when the direct drive system turns the paddle assembly attached to each lid. The machines are modular in design and function – the number of shelves being variable up to a maximum of seven. In your letter dated December 12, 2002, you indicate that the paint mixing machines are imported without the motors, which are sourced separately.

The applicable subheading for the paint mixing machine shelving units will be 9403.20.0020, Harmonized Tariff Schedule of the United States (HTS), which provides for “Other furniture and parts thereof: Other metal furniture, Other: Counters, lockers, racks, display cases, shelves, partitions and similar fixtures.” The rate of duty will be free.

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

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

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

NY R01329

January 24, 2005

CLA-2-94:RR:NC:SP:233 R01329

CATEGORY: Classification

TARIFF NO.: 9403.20.0030; 9403.90.8040

MR. RICHARD INGRAO
EXPEDITORS TRADEWIN, LLC
11101 METRO AIRPORT CENTER DRIVE
SUITE 110
ROMULUS, MI 48174

RE: The tariff classification of a blending table and a foot and gusset support from China

DEAR MR. INGRAO:

In your letter dated January 17, 2005, on behalf of Dedoes Industries Inc., you requested a tariff classification ruling.

The articles to be imported are a blending table and a foot and gusset support. The table is used to store articles used in the preparation of mixing paint, or items used in an automobile body shop. The table consists of two shelves and one drawer. The table and drawer are made of metal. The foot and gusset support is metal, and supports the Dedoes Alliance Paint Mixing Machine Shelving Unit when the machine is fully assembled. You have submitted images of the items with your request.

The applicable subheading for the blending table will be 9403.20.0030, Harmonized Tariff Schedule of the United States (HTS), which provides for "Other furniture and parts thereof: Other metal furniture, Other: Other." The rate of duty will be Free.

The applicable subheading for the foot and gusset support will be 9403.90.8040, HTS, which provides for "Other furniture and parts thereof: Parts: Other: Other." The rate of duty will be Free.

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

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

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT C]

HQ H250136
CLA-2 OT:RR:CTF:TCM H250136 EGJ
CATEGORY: Classification
TARIFF NO.: 8479.90.94

PETE MENTO
EXPEDITORS TRADEWIN, LLC
1015 THIRD AVENUE, 12TH FLOOR
SEATTLE, WA 98104

RE: Revocation of NY I89639 and Modification of NY R01329: Classification of Parts of a Paint Mixing Unit

DEAR MR. MENTO:

This is in reference to New York Ruling Letter (NY) I89639, dated January 21, 2003, issued to you concerning the tariff classification of metal shelving for the Dedoes Alliance 1.7 and Alliance 2.4 paint mixing units. In NY I89639, U.S. Customs and Border Protection (CBP) classified the metal shelves in heading 9403 of the Harmonized Tariff Schedule of the United States (HTSUS), which provides for furniture and parts thereof.

We have reviewed NY I89639 and find it to be in error. For the reasons set forth below, we hereby revoke NY I89639 and modify one other ruling with substantially similar merchandise: NY R01329, dated January 24, 2005, which was also issued to Expeditors Tradewin, LLC. In NY R01329, CBP classified a blending table, as well the foot and gusset supports (feet) for the Dedoes Alliance Paint Mixing unit.¹ This modification only applies to the feet, which CBP classified in heading 9403, HTSUS.

FACTS:

The Dedoes Alliance Paint mixer is a floor-standing unit of metal shelves. An electric motor sits on the bottom shelf and powers gear drives on the shelves. The gear drives rotate paddles on paint can lids specifically designed for the Dedoes Alliance Paint mixer. A picture of the paint mixing unit is provided below:

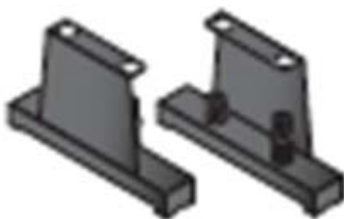


¹ While the ruling request letter and the ruling refer to these components as “foot and gusset supports,” the schematics refer to these components as the left foot and the right foot. As such, this ruling will refer to the instant merchandise as “the feet.”

Each metal shelving unit comes equipped with a gear drive on the top of the shelf and safety guards on the bottom of the shelf. The safety guards lock the paint cans into place and secure them during mixing. A mixing shelf cover is also included to cover the gear drive and set additional paint cans on top of the shelving unit. A picture of the metal shelving unit and its components is provided below:



The feet attach to the bottom of the paint mixing unit and stabilize the unit. A picture of the feet is provided below:



ISSUE:

Are the metal shelving units and the feet classified in heading 9403, HTSUS, as parts of metal furniture, or in heading 8479, HTSUS, as parts of machines which perform individual functions?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI's). 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's 2 through 6 may then be applied in order.

The HTSUS provisions at issue are as follows:

8479 Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof:

Other machines and mechanical appliances:

8479.82.00	Mixing, kneading, crushing, grinding, screening, sifting, homogenizing, emulsifying or stirring machines	* * *
8479.90	Parts:	
8479.90.94	Other:	* * *
9403	Other furniture and parts thereof:	
9403.90	Parts:	
	Other:	
9403.90.80	Other	* * *

Note 2(a) – (b) to Section XVI (Chapters 84–85) states that:

Subject to note 1 to this section, note 1 to chapter 84 and note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

- (a) Parts which are goods included in any of the headings of chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;
- (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517 ...

* * *

Note 5 to Section XVI (Chapters 84 – 85) provides as follows:

- 5. For the purposes of these notes, the expression “machine” means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of chapter 84 or 85.

* * *

Note 2 to Chapter 94 provides as follows:

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

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

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

* * *

GRI 3(a) provides as follows:

When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

* * *

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff 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 at the international level. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 84.79 provides, in pertinent part, as follows:

For this purpose the following are to be regarded as having “individual functions”:

(I) MACHINERY OF GENERAL USE

This group includes, for example:

- ...
- (2) Presses, crushers, grinders, mixers, etc., not designed for particular goods or industries.

* * *

Applying GRI 1, the first issue is whether the complete paint mixing unit is classified as a machine of heading 8479, HTSUS, or as shelved furniture of heading 9403, HTSUS. In NY I89639 and NY R01329, CBP classified the unit’s metal shelves and feet as parts of furniture under heading 9403, HTSUS. This means that in those rulings, CBP considered the complete paint mixing unit to be classifiable as shelved furniture of heading 9403, HTSUS.

However, in NY I86036, dated October 2, 2002, CBP examined the Alliance Elite paint can lids for the paint mixing unit. Each paint can lid is equipped with a paddle assembly. The operator will attach the Alliance Elite lid to the top of a paint can, and then place the paint can on one of the unit's shelves. The lid's paddle assembly attaches to the gear drive inside the shelf. When the operator turns on the unit's motor, the gear shaft turns the paddle assembly inside of the lid and mixes the paint. CBP classified the Alliance Elite lids under subheading 8479.82, HTSUS, as mixing machines in themselves.

Heading 8479 provides for machines and mechanical appliances having individual functions.² In *United States v. Guth Stern & Co., Inc.*, 21 C.C.P.A. 246 (1933) (*Guth Stern*), the U.S. Court of Customs and Patent Appeals (CCPA) (predecessor to the U.S. Court of Appeals for the Federal Circuit) defined the term "machine" as follows:

Popularly and in the wider mechanical sense, a machine is a more or less complex combination of mechanical parts, as levers, cog and sprocket wheels, pulleys, shafts, and spindles, ropes, chains, and bands, cams and other turning and sliding pieces, springs, confined fluids, etc., together with the framework and fastenings supporting and connecting them, as when it is designed to operate upon material to change it in some pre-conceived and definite manner, to lift or transport loads, etc. *Id.* at 248 citing *Webster's New International Dictionary* [citation omitted in original].

While the CCPA was interpreting the tariff term "machine" under the Tariff Schedule of the United States (TSUS), predecessor to the HTSUS, this definition is still helpful. As noted in House Conference Report No. 100-576, dated April 20, 1998, on the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418), decisions by the Customs Service and the courts interpreting nomenclature under the TSUS are not to be deemed dispositive in interpreting the HTSUS. Nevertheless, on a case-by-case basis, prior decisions should be considered instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS.

Moreover, the CCPA's definition is consistent with current dictionary definitions of the term "machine." The *Merriam-Webster Online Dictionary* (11th ed. 2014), available at www.merriam-webster.com, defines "machine" as "a piece of equipment with moving parts that does work when it is given power from electricity, gasoline, etc." The *Macmillan Dictionary* (Macmillan Pub-

² Note 5 to Section XVI states that a machine, for the purposes of the Section Notes, is any machine classified in the headings to Chapters 84 or 85. This definition only applies to the use of the term "machine" in the Notes to Section XVI; it does not apply to the term "machine" as it appears in the headings of the HTSUS. When a tariff term is not defined by the HTSUS or its legislative history, "the term's correct meaning is its common meaning." *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). 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." *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (CCPA 1982); *Simod*, 872 F.2d at 1576.

lisher Ltd. 2009 – 2014) *available at* www.macmillandictionary.com, defines machine as “a piece of equipment that does a particular job by using electricity, steam, gas, etc.”

The paint mixing unit has an electric motor that powers the gear drive shafts inside of each shelf. The drive shafts connect to the paint can lids, which are equipped with mixing paddles. The drive shafts turn the mixing paddles to mix up the paint. Thus, the paint mixing unit satisfies the CCPA’s definition of a machine because it consists of shafts, pulleys and other simple machines. These simple machines are combined together on a framework to mix paint. Also, the paint mixing unit is powered by an electric motor, which satisfies the current dictionary definitions. Therefore, the paint mixing unit is a machine. Moreover, EN 84.79 states that mixing machines are classifiable as machines with individual functions. For these reasons, the entire paint mixing unit is classifiable as a machine performing an individual function under heading 8479, HTSUS.

Heading 9403, HTSUS, provides for furniture. Note 2 to Chapter 94 describes the merchandise covered by the term “furniture.” Note 2 states that “the articles ... referred to in headings 9401 to 9403 are to be classified in those headings only if they are designed for placing on the floor or ground.” Further, Note 2 states that “cupboards, bookcases, other shelved furniture...seats and beds” are classifiable as furniture even if they are “designed to be hung, to be fixed to the wall or to stand one on the other.”

The paint mixing unit is designed for placing on the floor or the ground. Moreover, it consists of shelved furniture similar to bookcases and cupboards. As such, the paint mixing unit satisfies the definition of furniture set forth in Note 2 to Chapter 94. Therefore, it is classifiable as furniture under heading 9403, HTSUS.

GRI 3(a) provides that when goods are, *prima facie*, classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. Heading 9403, HTSUS, provides for “other furniture.” Heading 8479, HTSUS, provides for “machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter.” While heading 9403, HTSUS, appropriately describes the paint mixing unit as a shelving unit, heading 8479, HTSUS, more specifically describes the paint mixing unit as a machine performing an individual function. As mentioned above, a machine can be powered by electricity, can consist of smaller, simpler machines and can perform a specific job. The paint mixing unit does all of these things. By application of GRI 3(a), we find that the paint mixing unit is properly classified in heading 8479, HTSUS, because it more specific than heading 9403, HTSUS.

Turning next to the classification of the shelving units and the feet, Note 2(a) to Section XVI provides that parts which are goods included in any of the headings of Chapter 84 or 85 are in all cases to be classified in their respective headings. As the feet and shelving units are not goods included in a heading of Section XVI, we must proceed to Note 2(b).

Note 2(b) states that parts which are suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind. In their condition as imported, the instant

shelving units contain gear drives that only function with the complete paint mixing unit. The gear drives are powered by the unit's motor and turn the paddle assemblies in the paint can lids. The unit's feet are designed for use solely with the complete paint mixing unit. As such, both the shelves and feet are solely used with a machine having an individual function of heading 8479, HTSUS. For all of the aforementioned reasons, the shelving units and the feet are properly classified as parts of machines which have an individual function under subheading 8479.90, HTSUS.

HOLDING:

By application of GRI 1 (Note 2(b) to Section XVI) and GRI 3(a), the shelving units and the feet for the Dedoes Alliance Paint Mixing unit are classified under heading 8479, HTSUS. Specifically, they are classified under subheading 8479.90.94, HTSUS, which provides, in pertinent part, for "Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Parts: Other." The 2014 column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY I89639, dated January 21, 2003, is hereby revoked.

NY R01329, dated January 24, 2005, is hereby modified with regard to the tariff classification of the foot and gusset support (feet).

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

AGENCY INFORMATION COLLECTION ACTIVITIES:

Crewman's Landing Permit

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

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

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security 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: Crewman's Landing Permit (CBP Form I-95). CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before December 26, 2014

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, at 202-325-0265.

SUPPLEMENTARY INFORMATION:

CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Crewman's Landing Permit.

OMB Number: OMB Number: 1651-0114.

Form Number: Form Number: Form I-95.

Abstract: CBP Form I-95, *Crewman's Landing Permit*, is prepared and presented to CBP by the master or agent of vessels and aircraft arriving in the United States for alien crewmen applying for landing privileges. This form is provided for by 8 CFR 251.1(c) which states that, with certain exceptions, the master, captain, or agent shall present this form to CBP for each nonimmigrant alien crewman on board. In addition, pursuant to 8 CFR 252.1(c), CBP Form I-95 serves as the physical evidence that an alien crew member has been granted a conditional permit

to land temporarily, and it is also a prescribed registration form under 8 CFR 264.1 for crewmen arriving by vessel or air. CBP Form I-95 is authorized by Section 252 of the Immigration and Nationality Act (8 U.S.C. 1282) and is accessible at www.cbp.gov/sites/default/files/documents/CBP%20Form%20I-95.pdf.

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours or to this collection of information.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 433,000.

Total Number of Estimated Annual Responses: 433,000.

Estimated time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 35,939.

Dated: October 22, 2014.

TRACEY DENNING,
Agency Clearance Officer,
U.S. Customs and Border Protection.

[Published in the Federal Register, October 27, 2014 (79 FR 63934)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Lien Notice

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

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

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security 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: Lien Notice (Form 3485). CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before December 29, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION:

CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Lien Notice

OMB Number: 1651–0012.

Form Number: 3485.

Abstract: Section 564, Tariff Act of 19, as amended (19 U.S.C. 1564) provides that the claimant of a lien for freight can notify CBP in writing of the existence of a lien, and CBP shall not permit delivery of the merchandise from a public store or a bonded warehouse until the lien is satisfied or discharged. The claimant shall file the notification of a lien on CBP Form 3485, Lien Notice. This form is usually prepared and submitted to CBP by carriers, cartmen and similar persons or firms. The data collected on this form is used by CBP to ensure that liens have been satisfied or discharged before delivery of the freight from public stores or bonded warehouses, and to ensure that proceeds from public auction sales are distributed to the lienholder. CBP Form 3485 is provided for by 19 CFR 141.112, and is accessible

at http://forms.cbp.gov/pdf/CBP_Form_3485.pdf

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours. There are no changes to the information collected or to Form 3485.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 112,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 28,000.

Dated: October 22, 2014,

TRACEY DENNING,
Agency Clearance Officer,
U.S. Customs and Border Protection.

[Published in the Federal Register, October 28, 2014 (79 FR 64209)]