U.S. Customs and Border Protection

PROPOSED REVOCATION OF TWO RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF DOUBLE-WALLED BEVERAGE BOTTLES

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

ACTION: Notice of Proposed Revocation of Two Ruling Letters and Proposed Revocation of Treatment Relating to the Tariff Classification of Stainless Steel, Double-Walled Beverage Bottles.

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 two ruling letters and to revoke treatment relating to the tariff classification of stainless steel, double-walled beverage bottles 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 January 22, 2016.

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 customs and related laws. In addition, both the trade community 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 two ruling letters pertaining to the tariff classification of stainless steel, double-walled beverage bottles. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) N254461, dated September 10, 2014 (Attachment A), and NY N264760, dated June 16, 2015 (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 ones 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 the aforementioned rulings, CBP determined that the subject stainless steel, double-walled beverage bottles were classified in heading 7323, HTSUS, which provides for table articles of steel. It is now CBP's position that the bottles are properly classified in heading 9617, HTSUS, which provides for vacuum flasks and other vacuum vessels.

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke NY N254461 and NY N264760, and to revoke or to modify any other ruling not specifically identified, in order to reflect the proper classification of such bottles according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H264199, 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: November 17, 2015

JACINTO JUAREZ
for
JOANNE ROMAN STUMP,
Acting Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N254461
September 10, 2014
CLA-2–73:OT:RR:NC:N4:422
CATEGORY: Classification
TARIFF NO.: 7323.93.0080

MS. DEBORAH B. STERN, ESQ.
SANDLER, TRAVIS, & ROSENBERG, P.A.
ATTORNEYS AT LAW
1000 NW 57TH COURT
SUITE 600
MIAMI, FL 33126–3281

RE: The tariff classification of an insulated stainless steel lidded beverage bottle from China

DEAR MS. STERN:

In your letter dated June 12, 2014, on behalf of Camelbak Products, LLC, you requested a tariff classification ruling. Samples were sent to our US Customs and Border Protection Laboratory for analysis. Laboratory analysis has now been completed.

Three sample were submitted to this office and two of those samples were, in turn, submitted to the Customs Laboratory. Each of the samples were identified as the CamelBak Forge 16 oz. Black Smoke, Style Number 57002. It consists of a black cylindrical stainless steel beverage bottle with a black, plastic screw-on lid. There is a lever on the side of the lid that, when depressed, exposes a sipping aperture on the top of the lid. The side of the lid is embossed with the raised letters "Camelbak." The bottom of the base of the item has the depressed letters "Camelbak Forge". The sample measures approximately 8½" in height, including the lid, 7¼" in height, not including the lid and 2¾" in diameter.

The bottle is a double walled container with a space separating the walls that provides a partial vacuum to serve as an insulating barrier to heat transfer. However, there is no protective outer casing around the double walled construction. You have suggested that this item is correctly classified in subheading 7323.93.0080 and we agree.

The applicable subheading for Style Number 57002 will be 7323.93.0080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for table-articles-of-steel-: other: of stainless steel-other. The rate of duty will be 2 percent ad valorem. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at http://www.usitc.gov/tata/hts/.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Gary Kalus at gary.kalus@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER
Director
National Commodity Specialist Division

[ATTACHMENT B]

N264760

June 26, 2015
CLA-2–73:OT:RR:NC:N4:422
CATEGORY: Classification
TARIFF NO.: 7323.93.0080

MR. DANIEL CANNISTRA
CROWELL & MORING LLP
1001 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20004

RE: The tariff classification of stainless steel beverage bottles from an undetermined country

DEAR MR. CANNISTRA:

In your letter dated May 15, 2015, on behalf of Ignite USA, LLC, you requested a tariff classification ruling.

The five submitted illustrations depict items that are described as beverage containers that are designed to carry hot or cold beverages. They feature bodies made of double-walled stainless steel with a partial vacuum between the layers and each item has a flat bottom that enables it to be placed on a flat surface such as a table. None of the items have a protective outer casing. Each item has a plastic lid with features designed to seal the container and keep the liquids inside from spilling. The items are further described as follows:

Autoseal Westloop Stainless Travel Mug – This item is imported in 16, 20, and 24 ounce capacity sizes.

Extreme Stainless Travel Mug – This item holds 16 fluid ounces of liquid, incorporates a carry-handle that is attached to one side of the body and features a band of rubber around the middle to serve as a grip.

Snapseal Byron Stainless Travel Mug – This item is imported in 16 and 20 ounce capacity sizes. It has a band of rubber around the middle which serves as a grip.

Astor Stainless Travel Mug – This item holds 16 fluid ounces of liquid.

Autoseal Scout Kids Stainless Bottle – This item holds 12 fluid ounces of liquid.

You have suggested that these items are all correctly classified in subheading 7323.93.0080 and we agree.

The applicable subheading for the Autoseal West Loop Stainless Travel Mug, the Extreme Stainless Travel Mug, the Snapseal Byron Stainless Travel Mug, the Astor Stainless Travel Mug and the Autoseal Scout Kids Stainless Bottle will be 7323.93.0080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for table-articles-of-steel-: other: of stainless steel-other. The rate of duty will be 2 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Gary Kalus at gary.kalus@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER
Director
National Commodity Specialist Division

[ATTACHMENT C]

HQ H264199
CLA-2 RR:CTF:TCM H264199 EGJ
CATEGORY: CLASSIFICATION
TARIFF NO.: 9617.00.10

DEBORAH B. STERN, ESQ.
SANDLER, TRAVIS & ROSENBERG, P.A.
1000 NW 57TH COURT, SUITE 600
MIAMI, FL 33126–3281

Re: Revocation of NY N254461 and NY N264760; Classification of Double-Walled, Stainless Steel Beverage Bottles

DEAR MS. STERN:

This is in reference to New York Ruling Letter (NY) N254461, dated September 10, 2014, which was issued to your client, Camelback Products, LLC. NY N254461 concerned the tariff classification of a double-walled stainless steel beverage bottle under the Harmonized Tariff Schedule of the United States (HTSUS). In NY N254461, U.S. Customs and Border Protection (CBP) classified the bottle under subheading 7323.93.00, HTSUS, as a stainless steel table article. We have reviewed NY N254461 and find it to be in error. For the reasons set forth below, we hereby revoke NY N254461 and one other ruling with substantially similar merchandise: NY N264760, dated June 16, 2015, issued to Ignite USA, LLC.[1]

FACTS:

In NY N254461, the subject merchandise is described as follows:

> [The] CamelBak Forge 16 oz. Black Smoke, Style Number 57002 [consists] of a black cylindrical stainless steel beverage bottle with a black, plastic screw-on lid. There is a lever on the side of the lid that, when depressed, exposes a sipping aperture on the top of the lid. The side of the lid is embossed with the raised letters "Camelbak." The bottom of the base of the item has the depressed letters "Camelbak Forge". The sample measures approximately 8½" in height, including the lid, 7¼" in height, not including the lid and 2¾" in diameter.
>
> The bottle is a double walled container with a space separating the walls that provides a partial vacuum to serve as an insulating barrier to heat transfer. However, there is no protective outer casing around the double walled construction.

ISSUE:

Is the double-walled, stainless steel beverage bottle classified under heading 7323, HTSUS, as a table article, or under heading 9617, HTSUS, as a vacuum flask?

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[1] In NY N264760, the relevant merchandise is described as follows: "The five submitted illustrations depict items that are described as beverage containers that are designed to carry hot or cold beverages. They feature bodies made of double-walled stainless steel with a partial vacuum between the layers and each item has a flat bottom that enables it to be placed on a flat surface such as a table. None of the items have a protective outer casing. Each item has a plastic lid with features designed to seal the container and keep the liquids inside from spilling."

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 HTSUS provisions at issue provide, in pertinent part, as follows:

7323	Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel:
	Other:
7323.93.00	Of stainless steel.
	* * *
9617:	Vacuum flasks and other vacuum vessels, complete with cases; parts thereof other than glass inners:
9617.00.10	Having a capacity not exceeding 1 liter.
	* * *

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 73.23 states, in pertinent part:

(A) TABLE, KITCHEN OR OTHER HOUSEHOLD ARTICLES AND PARTS THEREOF

This group comprises a wide range of iron or steel articles, **not more specifically covered** by other headings of the Nomenclature, used for table, kitchen or other household purposes; it includes the same goods for use in hotels, restaurants, boarding-houses, hospitals, canteens, barracks, etc.

These articles may be cast, or of iron or steel sheet, plate, hoop, strip, wire, wire grill, wire cloth, etc., and may be manufactured by any process (moulding, forging, punching, stamping, etc.). They may be fitted with lids, handles or other parts or accessories of other materials **provided** that they retain the character of iron or steel articles.

...

(2) **Articles for table use** such as trays, dishes ... cups, mugs, tumblers...

...

The heading **excludes**:

(m) [V]acuum flasks and other vacuum vessels of **heading 96.17**.

* * *

EN 96.17 states, in pertinent part:

This heading covers :

(1) **Vacuum flasks and other similar vacuum vessels, provided they are complete with the cases**. This group includes vacuum jars, jugs, carafes, etc., designed to keep liquids, food or other products at fairly constant temperature, for reasonable periods of time. These articles consist of a double-walled receptacle (the inner), generally of glass, with a vacuum created between the walls, and a protective outer casing of metal, plastics or other material, sometimes covered with paper, leather, leathercloth, etc. The space between the vacuum container and the outer casing may be packed with insulating material (glass fibre, cork or felt). In the case of vacuum flasks the lid can often be used as a cup.

* * *

In NY N254461, CBP classified the instant bottle under heading 7323, HTSUS, as a stainless steel table article. We agree that the instant bottle is a stainless steel travel cup used for table, kitchen or other household purposes. However, as stated in EN 73.23, the heading covers those goods which are not more specifically covered by other headings of the Nomenclature. Further, EN 73.23 states that vacuum flasks and vacuum vessels of heading 9617, HTSUS, are excluded from heading 7323, HTSUS. As such, we will first examine the terms of heading 9617, HTSUS, to determine whether the instant bottle is classifiable in that heading.

Heading 9617, HTSUS, provides for vacuum flasks and other vacuum vessels, complete with cases. EN 96.17 states that the heading covers goods such as "vacuum jars, jugs, carafes, etc., designed to keep liquids, food or other products at fairly constant temperature, for reasonable periods of time." The EN further describes such a good as "a double-walled receptacle ... with a vacuum created between the walls."

The instant bottle is a double-walled, stainless steel beverage bottle. A partial vacuum serves as an insulating barrier between the two walls. The purpose of the vacuum is to maintain the temperature of the beverage inside the bottle.

Based upon the physical characteristics of the instant bottle, we find that it is classified in heading 9617, HTSUS. As it is described by the terms of heading 9617, HTSUS, it cannot be classified under heading 7323, HTSUS. This decision is consistent with other CBP rulings classifying substantially similar merchandise in heading 9617, HTSUS. *See, e.g.* HQ 962648, dated November 9, 1999, and NY I83481, dated July 29, 2002. The same analysis also applies to the beverage bottles that CBP classified in NY N264760.

HOLDING:

By application of GRI 1 and GRI 6, the double-walled stainless steel beverage bottle is classified under subheading 9617.00.10, HTSUS, which provides, in pertinent part, for "Vacuum flasks and other vacuum vessels, complete with cases...: Vessels...: Having a capacity not exceeding 1 liter." The 2015 column one, general rate of duty is 7.2 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 www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY N254461, dated September 10, 2014, and NY N264760, dated June 16, 2015, are hereby revoked.

Sincerely,

JOANNE ROMAN STUMP,
Acting Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF A RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN PILLOWCASES

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

ACTION: Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to tariff classification of certain pillowcases.

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 Customs and Border Protection (CBP) proposes to revoke a ruling letter relating to the tariff classification of certain pillowcases 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 action.

DATES: Comments must be received on or before January 22, 2016.

ADDRESSES: Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and 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: Tatiana Salnik Matherne, Tariff Classification and Marking Branch: (202) 325–0351.

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. Tile 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 proposes to revoke a ruling letter pertaining to the tariff classification of certain pillowcases. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) N239270, dated March 26, 2013, 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 N239270, set forth as Attachment A to this document, CBP determined that certain pillowcases were classified under subheading 6302.31.90, Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for "Bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of cotton: Other: Not napped." It is now CBP's position that the subject merchandise is properly classified under subheading 6302.31.70, HTSUS, which provides for "Bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of cotton: Other: Napped."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N239270 and revoke or modify any other ruling not specifically identified, in order to reflect the proper tariff classification of the subject pillowcases according to the classification analysis contained in proposed HQ H242650, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes 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: November 17, 2015

JACINTO JUAREZ
for
JOANNE ROMAN STUMP,
Acting Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N239270
CLA-2–63:OT:RR:NC:N3:349
CATEGORY: Classification
TARIFF NO.: 6302.31.9010

MS. ANTOINETTE MCKNIGHT
THE AMERICAN COMPANIES
250 MOONACHIE RD., 5TH FLOOR
MOONACHIE, NJ 07074

RE: The tariff classification of pillowcases from India

DEAR MS. MCKNIGHT:

In your letter dated February 27, 2013 you requested a tariff classification ruling on behalf of Welspun USA Inc.

The submitted samples, identified as Item# 890104519603, are two pillowcases. They are made from 100 percent cotton woven fabric. The fabric is not printed. The open end of the pillowcase is finished with a 4-inch wide self-hem. It has multiple folds of fabric sewn with a single needle stitch. The folds create an effect that has the appearance of a row of piping. The pillowcases are packaged in a small self-fabric bag.

The applicable subheading for the pillowcases will be 6302.31.9010, Harmonized Tariff Schedule of the United States (HTSUS), which provides for bed linen, table linen, toilet linen and kitchen linen: other bed linen: of cotton: other: not napped... pillowcases, other than bolster cases. The duty rate will be 6.7 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist John Hansen at (646) 733–3043.

Sincerely,

THOMAS J. RUSSO
Director
National Commodity Specialist Division

[ATTACHMENT B]

HQ H242650
CLA-2 OT:RR:CTF:TCM H242650 TSM
CATEGORY: Classification
TARIFF NO.: 6302.31.70

MR. RALPH NATALE, CEO
AMERICAN SHIPPING CO INC.
250 MOONACHIE RD.
MOONACHIE, NJ 07074

RE: Revocation of NY N239270; Classification of pillowcases from India.

DEAR MR. NATALE:

This is in response to your request for reconsideration of New York Ruling Letter (NY) N239270, issued to Welspun USA Inc. on March 26, 2013, concerning the tariff classification of pillowcases from India. In that ruling, U.S. Customs and Border Protection ("CBP") classified the subject merchandise under subheading 6302.31.90, Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for "Bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of cotton: Other: Not napped." A sample of the subject merchandise was received and examined by this office and will be returned. We have reviewed NY N239270 and found it to be in error. For the reasons set forth below, we hereby revoke NY N239270.

FACTS:

NY N239270, issued to Welspun USA Inc. on March 26, 2013, describes the subject merchandise as follows:

> The submitted samples, identified as Item# 890104519603, are two pillowcases. They are made from 100 percent cotton woven fabric. The fabric is not printed. The open end of the pillowcase is finished with a 4-inch wide self-hem. It has multiple folds of fabric sewn with a single needle stitch. The folds create an effect that has the appearance of a row of piping. The pillowcases are packaged in a small self-fabric bag.

In your letter dated April 16, 2013, you argued that the subject pillowcases should be classified in subheading 6302.31.70, HTSUS, which provides for "Bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of cotton: Other: Napped." In support of this argument, you stated as follows: "The fabric is brushed to create extra softness. The brushing process is a mechanical process where a fine emery brush rubs the fabric to create fine fibers from the loosely spun yarns. The product is thus napped to achieve ultra-soft finish on the products. It gains its softness through the loosely spun yarn in its woven form." Additional information provided indicates that the fabric was processed on a Lafer machine.[1]

[1] See Lafer SPA website @ *www.laferspa.com/a_11_EN_14_1.html.*

ISSUE:

Whether the pillowcases should be classified under subheading 6302.31.70, HTSUS, as "Bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of cotton: Other: Napped," or subheading 6302.31.90, HTSUS, as "Bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of cotton: Other: Not Napped."

LAW AND ANALYSIS:

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

In addition, in interpreting 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. HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

6302	Bed linen, table linen, toilet linen and kitchen linen:		
	Other bed linen:		
6302.31	Of Cotton:		
	Other:		
6302.31.70		Napped	
6302.31.90		Not Napped	.....

The determinative issue in this case is whether the subject pillowcases are considered napped or not napped for tariff classification purposes.

> Statistical Note 1(k) to Chapter 52 of the HTSUS, which provides for cotton, states:
>
> The term "napped" means fabrics with a fuzzy, fibrous surface produced by scratching or pricking the surface so that some of the fibers are raised from the body of the yarn. Napped fabrics are not to be confused with pile fabrics. Outing and canton flannel, moleskin, etc. are typical fabrics with a nap.

Napped fabrics are processed so that they have either a slight or a dramatic nap on the face or both sides of the fabric. The napping process is accomplished by weaving loosely twisted yarns into the textile, which are then sheared and brushed to create the soft napped surface. Napped fabrics differ from PILE fabrics in that they do not have extra threads incorporated in the textile. Napping is considered a finishing process and is used on many fibers, including manufactured fibers, silk and wool, as well as specialty fibers such as camel hair and mohair. Occasionally the napped effect does not continuously cover the fabric but is executed in stripes or figures. *See Encyclopedia of Textiles*, Judith Jerde, 157 (1992).

"Napped fabrics" can be distinguished from "pile-fabrics." In *Tilton Textile Corp. v. United States*, 424 F. Supp. 1053, 77 Cust. Ct. 27, C.D. 4670 (1976) aff'd, 565 F.2d 140 (1977), the court stated: "[W]hat is termed a 'nap' or 'napped fabrics' is produced by the raising of some of the fibers of the threads which compose the basic fabric, whereas the 'pile' on 'pile fabrics' must be the raising at intervals, in the form of loops, the entire thickness of extra threads introduced into, but not essential to the basic fabric, which thus form an 'uncut pile.'" *See Tilton Textile Corp. v. United States*, 424 F. Supp. 1053, 1066 (1976).

The Customs Court acknowledged that only some of the fibers must be raised on the fabric to be considered "napped fabric." Furthermore, Statistical Note 1(k) to Chapter 52, HTSUS, which defines "napping" does not require that a specified amount of fibers must be raised in order to qualify as a napped good. Rather, the Note requires that "some of the fibers" are raised. While examination of the subject merchandise sample revealed that only some fibers were raised from the surface of the fabric, the level of napping is still visible to the eye and has been accomplished through the brushing process which is necessary for the formation of all napping. Therefore, the subject merchandise is considered napped for tariff classification purposes. *See* Headquarters Ruling Letter (HQ) 964822, dated April 24, 2001.

Based on the foregoing, we conclude that the subject pillowcases are classified in subheading 6302.31.70, HTSUS, which provides for "Bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of cotton: Other: Napped."

HOLDING:

By application of GRIs 1 and 6, the subject pillowcases are classified under subheading 6302.31.70, HTSUS, as "Bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of cotton: Other: Napped." The general, column one rate of duty is 3.8 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N239270, dated March 26, 2013, is hereby REVOKED.

Sincerely,

JOANNE ROMAN STUMP,
Acting Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF MEDICAL APPARATUS

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

ACTION: Notice of Proposed Revocation of One Ruling Letter and Treatment Relating to Tariff Classification of Medical Apparatus.

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 Customs and Border Protection (CBP) proposes to revoke one ruling letter relating to the tariff classification of medical apparatus, 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 January 22, 2016.

ADDRESSES: Written comments are to be addressed to 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: George Aduhene, Tariff Classification and Marking Branch: (202) 325–0184

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. Tile 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 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 one ruling letter relating to the tariff classification of medical apparatus. Although in this notice, CBP is specifically referring to the revocation of HQ 085366, dated December 4, 1989, (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 intends 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 HQ 085366, CBP classified a tube string subassembly of the Vital Vue Irrigation, Suction, and Illumination System Disposable Surgical Instrument ("Vital Vue"), in subheading 9018.90.60, HTSUS, which provides for, "Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: Other instruments and appliances and parts and accessories thereof: Other: Electro-medical instruments and appliances and parts and accessories thereof: Electro-surgical instru-

ments and appliances, other than extracorporeal shock wave lithotripters; all the foregoing and parts and accessories thereof."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke HQ 085366, and to revoke any other ruling not specifically identified, in order to reflect the proper classification of electro-surgical apparatus under the HTSUS, according to the analysis contained in proposed HQ H152456, 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: November 17, 2015

GREG CONNOR
for
JOANNE ROMAN STUMP,
Acting Director
Commercial and Trade Facilitation Division

Attachment

[ATTACHMENT A]

HQ 085366
December 4, 1989
CLA-2 CO:R:C:G 085366 AJS
CATEGORY: Classification
TARIFF NO: 9018.90.60; 9018.90.70

MS. ELAINE JACOBY
MANAGER
MILES, HASTINGS & JOFFROY INC.
CUSTOMHOUSE BROKERS
6403 AVENIDA COSTA NORTE
SUITE 3000
OTAY MESA, CALIFORNIA 92073

RE: Tube string subassembly

DEAR MS. JACOBY:

Your letter of August 9, 1989, requesting a tariff classification on behalf of your client Davis & Geck, has been referred to this office for reply.

FACTS:

The article in question is a tube string subassembly of the Vital Vue Irrigation, Suction, and Illumination System Disposable Surgical Instrument (Vital Vue). The subassembly consists of three lengths of plastic tubing bonded together to form separate channels for irrigation, suction, and electrical wires for the light power source. In addition, it contains a threaded suction adapter, a spike connector with protective cap, and a small telephone type electrical connector. The subassembly is also equipped with a small light bulb, which contains a thermistor designed to shut off the bulb when it becomes too hot.

ISSUE:

Whether the article in question is properly classifiable within subheading 9018.90.60, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for "[i]nstruments and appliances used in medical, surgical, dental or veterinary sciences . . . parts and accessories thereof: [o]ther instruments and appliances and parts and accessories thereof: [o]ther: [e]lectro-medical instruments and appliances and parts and accessories thereof: [e]lectro-surgical instruments and appliances . . . all the foregoing and parts and accessories thereof."; or within subheading 9018.90.70, HTSUSA, which provides for other electro-medical instruments and appliances

LAW AND ANALYSIS

Classification of merchandise under the HTSUSA is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification is determined first in accordance with the terms of the headings of the tariff and any relative section or chapter notes.

Heading 9018, HTSUSA, provides for instruments and appliances used in medical, surgical, and veterinary sciences. The submitted literature states that the Vital Vue is used in a wide variety of surgical situations. The article in question is clearly described by the terms of this heading.

Subheading 9018.19.40, HTSUSA, provides for "[e]lectro-diagnostic apparatus . . . parts and accessories thereof: [o]ther: [a]pparatus for functional exploratory examination, and parts and accessories thereof." Explanatory Note (EN) 90.18(IV)(1) describes the type of equipment included in the electro-diagnostic apparatus subheading. The Vital Vue is not described within this note. The submitted literature also does not claim that the article in question is used for diagnostic purposes. Therefore, the tube string assembly is excluded from coverage within this subheading.

Subheading 9018.90.60, HTSUSA, provides for electro-medical instruments and appliances. EN 90.18(IV)(6) lists electro- surgical apparatus as a type of electro-medical apparatus. Electro-surgical apparatus "utilize high frequency electric currents, the needle, probe, etc., forming one of the electrodes. They can be employed to cut tissues (electrocutting) with a lancet (electric lancet), or to coagulate the blood (electrocoagulation). Certain combined instruments may, by the use of control pedals, be made to act interchangeably as electrocutters or electrocoagulators." EN 90.18(IV)(6). This example identifies only one type of electro-surgical apparatus and should not be considered exclusive.

Customs has previously ruled that the provision for electro-cutting and electro-coagulation is not dispositive of Congressional intent regarding the scope of electro-surgical apparatus. HQ 054332 (1980). This ruling classified an electrical modular system designed to be used for life support in coronary surgery within the provision for electro-surgical apparatus. While this decision was issued under the Tariff Schedules of the United States (TSUS) and therefore is not binding, it can still be considered instructive in interpreting the HTSUSA. H. Rep. No. 100–576, 100th Cong., 2D Sess. 1580 (1988) at 1582.

In addition, Customs has previously classified parts of a surgical illumination system as parts of electro-surgical apparatus. CIE 2198/65. We find these previous rulings instructive in determining the scope of the term "electro- surgical apparatus".

You claim that the article as a whole does not satisfy the description of "electrical". This conclusion is predicated on the argument that although the illumination function is "electrical", the system as a whole is not "electrical" because neither the irrigation nor suction functions are "electrical". The Customs Court rejected this reasoning in Empire Findings Co., v United States (Empire), 44 Cust. Ct. 21, C.D. 2148 (1960).

Empire held a medical instrument electrical when the electrical element was an essential feature without which the article could not function for its intended purpose. The device at issue in Empire was used for illumination, drainage and the introduction of medication. These functions are almost exactly, if not identical to the illumination, irrigation and suction functions of the Vital Vue. Therefore, the article in question is "electrical" based on the fact that its illumination function is an essential feature without which the Vital Vue could not function for its intended purpose.

You also claim that the definition of the term "electrical" in Chapter 90, Additional U.S. Note 2 applies to the articles under consideration. The term "electrical" in this note only refers to apparatus which involve the measurement of electrical phenomenon. There are many other types of electrical apparatus, of which the Vital Vue is one, which do not involve the measurement of electrical phenomenon. To rule that an article cannot be considered

"electrical" because it does not measure an electrical phenomenon would also contradict rulings such as Empire. Thus, this note does not apply to the articles in question.

Tariff terms are to be construed in accordance with their common and commercial meaning. Nippon Kogaku (USA), Inc. v. United States, 69 CCPA 89, 673 F.2d 380 (1982). When determining the common meaning of a term, courts may consult dictionaries,lexicons, scientific authorities, and other reliable sources as an aid. C.J. Tower & Sons v. United States, 69 CCPA 128, 673 F.2d 1268 (1982). The term ″electro" is defined as "[a] combining form of electric or electricity . . . Also, esp[ecially] before a vowel, electr-." The Random House Dictionary of the English Language, at 459 (1983). The word "electric" is defined as "[p]ertaining to, derived from, produced by, or involving electricity" or "[p]roducing, transmitting, or operated by electric currents." Id. The article in question satisfies the above descriptions of "electro" and "electric".

The term "surgical" is defined as "of, pertaining to, or correctable by surgery". Dorland's Illustrated Medical Dictionary, 27th Ed., at 1617 (1988). The term "surgery" is defined as the treatment of disease by manual or operative. Id. The article in question is used in a wide variety surgical procedures, and is therefore "pertaining to" surgery. Based on the above definitions, the term "electro-surgical apparatus" commonly means a surgical device operated by or involving electricity.

Parts and accessories for the apparatus of Chapter 90 are classifiable in their respective heading or with the apparatus for which they are solely or principally used. Chapter 90, Notes 2(a) & (b). The tube string subassembly is used solely with the Vital Vue System. There is no respective heading for these subassemblies. Thus, the article in question is classifiable with the Vital Vue System as a part of an electro-surgical apparatus.

HOLDING:

The tube string subassembly in question is classifiable within subheading 9018.90.60, HTSUSA, which provides for parts and accessories of electro-surgical apparatus. These items are dutiable at 7.9 percent ad valorem.

Sincerely,

JOHN DURANT,
Director
Commercial Rulings Division

[ATTACHMENT B]

HQ H152456
CLA-2 OT:RR:CTF:TCM H152456 GA
CATEGORY: Classification
TARIFF NO.: 9018.90.75

MS. ELAINE JACOBY
MANAGER
MILES, HASTINGS & JOFFROY, INC.
6403 AVENIDA COSTA NORTE
SUITE 3000
OTAY MESA, CA 92073

RE: Revocation of HQ 085366, dated December 4, 1989; tariff classification of medical apparatus.

DEAR MS. JACOBY:

This letter concerns Headquarters Ruling (HQ) 085366, dated December 4, 1989, issued to you on behalf of your client Davis & Geck. That ruling involved the tariff classification of a Vital Vue Irrigation, Suction, and Illumination System Disposable Surgical Instrument ("Vital Vue"). In that ruling, U.S. Customs and Border Protection (CBP) classified the Vital Vue in subheading 9018.90.60, HTSUS, which provides for, "Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: Other Instruments and appliances and parts and accessories thereof: Other: Electro-medical instruments and appliances and parts and accessories thereof: Electro-surgical instruments and appliances, other than extracorporeal shock wave lithotripters; all the foregoing and parts and accessories thereof."

We have reviewed HQ 085366 and find it to be in error. For the reasons set forth below, we hereby revoke HQ 085366.

FACTS:

In HQ 085366, the merchandise was described as follows:

A a tube string subassembly of the Vital Vue Irrigation, Suction, and Illumination System Disposable Surgical Instrument ("Vital Vue"). The subassembly consists of three lengths of plastic tubing bonded together to form separate channels for irrigation, suction, and electrical wires for the light power source. In addition, it contains a threaded suction adapter, a spike connector with protective cap, and a small telephone type electrical connector. The subassembly is also equipped with a small light bulb, which contains a thermistor designed to shut off the bulb when it becomes too hot.

The above-described subassembly is part of a single instrument that is used by a doctor to irrigate and/or aspirate the surgical field during a procedure to remove debris or blood. Irrigation (washing out or flushing a wound or body opening with a stream of water or another liquid) and aspiration (removal, by suction, of a gas, fluid, or tissue from a body cavity or organ) augment a variety of medical or dental applications by reducing infection and/or providing the practitioner with a better view of the subject of the given procedure. The electrical connector and light bulb (with thermistor) contrib-

ute to the lighting function of the instrument, which allows the doctor to visualize the field without increasing the number of hands/instruments in the field.

ISSUE:

Whether the medical apparatus are electro-surgical instruments within the meaning of subheading 9018.90.60, HTSUS.

LAW AND ANALYSIS:

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

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

9018	Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof
9018.90	Other instruments and appliances and parts and accessories thereof
Other	
Electro-medical instruments and appliances and parts and accessories thereof	
9018.90.60	Electro-surgical instruments and appliances, other than extracorporeal shock wave lithotripters; all the foregoing and parts and accessories thereof
	Other
9018.90.75	Other
* * * * *	

There is no dispute that the products at issue are classified in heading 9018, HTSUS. Nor is there a question whether they are "electro-medical instruments or appliances of subheading 9018.90, HTSUS. The issue is whether the instant merchandise falls under the scope of the provision for "electro-surgical instruments and appliances" in subheading 9018.90.60, HTSUS.

In order to determine the proper classification at the subheading level, GRI 6 is applied. GRI 6 provides that for legal purposes, classification of goods in the subheading 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 subchapters notes also apply, unless the context otherwise requires.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs") constitute the official interpretation of the HTSUS. While not legally binding or dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper inter-

pretation of these headings. *See* T.D. 89–90, 54 Fed. Reg. 35127 (August 23, 1989).

Explanatory Note 90.18 provides, in relevant part, as follows:

(V) OTHER ELECTRO-MEDICAL APPARATUS

This heading also covers electro-medical apparatus for preventive, curative or diagnostic purposes, other than X-ray, etc., apparatus of heading 90.22. This group includes:

(7) Electro-surgical apparatus. These utilise high-frequency electric currents, the needle, probe, etc., forming one of the electrodes. **They can be employed to cut tissues (electrocutting) with a lancet (electric lancet), or to coagulate the blood (electrocoagulation).** Certain combined instruments may, by the use of control pedals, be made to act interchangeably as electrocutters or electrocoagulators. (Emphasis added)

The above explanatory note is consistent with the definition of electro-surgical in the *Merriam-Webster Dictionary*, which defines the term as "surgery by means of diathermy." (2011) available at wwww.merriam-webster.com. The *Merriam-Webster Dictionary* defines "diathermy" as "the generation of heat in tissue by electric currents for medical or surgical purposes." *Id.*

Based upon these definitions, the term "electro-surgical" means that electric currents are utilized in the surgery, whether for cutting tissue, coagulating blood or for other surgical applications. However, as described above, despite the fact that the instant products differ in the construction and function, the Vital Vue, the Hummer and E1, and the CASPER do not use electric currents to cut tissue or coagulate blood.

We note that we have classified other products that do not employ electrocutting or electrocoagulation in the strictest sense in subheading 9018.90.60, HTSUS. However, the instant products are distinguishable from those rulings. For instance, NY N006383, dated March 6, 2007, and HQ 951871, dated August 18, 1992 covered products that operated by laser or other light or photon beam processes. In NY N006383, CBP classified the Karl Storz Calculase (article number: 27750120–1), a Ho:Yak desktop laser used in lithotripsy surgery in subheading 9018.90.60, HTSUS. The laser energy generated by the machine enables the optimum lithotripsy of small to medium sized calculi in the urinary system. Similarly, in HQ 951871, CBP classified the "Pulsolith" Laser Lithotripter ("laser') in subheading 9018.90.60, HTSUS. Here, the laser is a pulsed dye laser used to fragment ureteral, gallstone and common bile duct stones using a photo acoustic effect. In both cases, access to a body cavity is gained through a body opening to perform a surgical procedure to destroy an internally-located calculus even though such surgery does not entail the cutting of tissue or coagulation of blood.[1] In addition, the procedures are performed in an operating room by a surgeon on a patient who is under some form of anesthesia.

[1] Moreover, the merchandise subject to HQ951871 and NY N006383 differ from extracorporeal shock wave lithotripters, which are expressly excluded from subheading 9018.90.60, HTSUS.

On the other hand, the apparatus subject to HQ 085366 does not serve to perform a surgical procedure by virtue of its electronic operation. Rather, the subject medical apparatus are properly classified under subheading 9018.90.75, HTSUS.

HOLDING:

By application of GRIs 1 and 6, the subject medical apparatus are classified in subheading 9018.90.75, HTSUS, which provides for, "Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: Other Instruments and appliances and parts and accessories thereof: Other: Electro-medical instruments and appliances and parts and accessories thereof: Other: Other." The rate of duty is "Free."

Duty rates are provided for convenience only 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*.

EFFECT ON OTHER RULINGS:

In accordance with the above analysis, HQ 085366, dated December 4, is hereby **REVOKED**.

Sincerely,

JOANNE ROMAN STUMP,
Acting Director
Commercial and Trade Facilitation Division

19 CFR PART 177

MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF FILLER PAPER, COMPOSITION NOTEBOOKS, SPIRAL NOTEBOOKS, AND WIRELESS NOTEBOOKS, AND TO THE ELIGIBILITY OF FILLER PAPER FOR PREFERENTIAL TARIFF TREATMENT UNDER NAFTA

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

ACTION: Notice of modification of one ruling letter and revocation of treatment relating to the tariff classification of filler paper, composition notebooks, spiral notebooks, and wireless notebooks, and to the eligibility of filler paper for preferential tariff treatment under the North American Free Trade Agreement (NAFTA).

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 Implementa-

tion Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling concerning the tariff classification of filler paper, composition notebooks, spiral notebooks, and wireless notebooks under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as well as the eligibility of filler paper for preferential treatment under NAFTA. Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 30, on July 29, 2015. One comment supporting the proposed modification was received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 22, 2016.

FOR FURTHER INFORMATION CONTACT: Nicholai C. Diamond, Tariff Classification and Marking Branch, at (202) 325–0292.

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 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, a notice was

published in the *Customs Bulletin*, Vol. 49, No. 30, on July 29, 2015, proposing to modify one ruling letter pertaining to the tariff classification of filler paper, composition notebooks, spiral notebooks, and wireless notebooks, as well as the eligibility of filler paper for preferential treatment under NAFTA. As stated in the proposed notice, this action will cover New York Ruling Letter ("NY") N057699, dated May 15, 2009, as well as 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 five identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment 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 the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In NY N057699, CBP classified filler paper under heading 4802, HTSUSA, specifically under subheading 4802.57.1000, HTSUSA, which provides for "Writing and cover paper," and determined that the filler paper was not eligible for preferential tariff treatment under NAFTA. In that ruling, CBP also classified composition notebooks, spiral notebooks, and wireless notebooks under heading 4820, specifically under subheading 4820.10.2020, HTSUSA, which provides for "Memorandum pads, letter pads and similar articles." It is now CBP's position that the filler paper at issue in NY N057699 is properly classified, by operation of GRI 1, under heading 4811, HTSUSA, specifically under subheading 4811.90.9080, HTSUS, which provides for ""Paper, paperboard, cellulose wadding and webs of cellulose fibers, coated, impregnated, covered, surface-colored, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in heading 4803, 4809 or 4810: Other paper, paperboard, cellulose wadding and webs of cellulose fibers: Other: Other." As such, the filler paper is NAFTA-originating under General Note 12, HTSUSA, and is eligible for preferential tariff treatment. By operation of GRIs 1 and 6, the

subject composition notebooks are properly classified under subheading 4820.10.2030, HTSUSA, which provides for "Sewn composition books with dimension of 152.4–381 mm (6″ - 15″) inclusive (smaller side) x 222.5–381 mm (8.75″ - 15″), inclusive (large side)," and the subject spiral notebooks and wireless notebooks are classified under subheading 4820.10.2040, HTSUSA, which provides for "Other note books with dimension of 152.4–381 mm (6″ - 15″) inclusive (smaller side) x 222.5–381 mm (8.75″ - 15″), inclusive (large side)."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY N057699 and revoking any other ruling not specifically identified to reflect the tariff classification and NAFTA eligibility determination of the subject merchandise according to the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H072375, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: November 10, 2015

ALLYSON MATTANAH
for
JOANNE ROMAN STUMP
Acting Director,
Commercial & Trade Facilitation Division

Attachment

HQ H072375
November 10, 2015
CLA–2 OT:RR:CTF:TCM H072375 NCD
CATEGORY: Classification
TARIFF NO.: 4811.90.9080; 4820.10.2030;
4820.10.2040

DAVID M. MURPHY
GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN & KLESTADT LLP
339 PARK AVENUE, 25TH FLOOR
NEW YORK, NY 10022–4877

RE: Modification of New York Ruling Letter N057699, dated May 15, 2009; classification of filler paper, composition notebooks, spiral notebooks, and wireless notebooks; eligibility of filler paper for preferential treatment under NAFTA

DEAR MR. MURPHY:

This is in response to your June 18, 2009 letter, on behalf of Staples, Inc., requesting reconsideration of New York Ruling Letters ("NY") N057699, dated May 15, 2009, and NY N063779, dated June 10, 2009. In NY N057699, U.S. Customs and Border Protection (CBP) classified filler paper, composition notebooks, spiral notebooks, and wireless notebooks under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), and determined whether this merchandise is eligible for preferential tariff treatment under the North American Free Trade Agreement (NAFTA). NY N063779 involved determination of the subject products' countries of origin for marking purposes pursuant to NAFTA. We have found NY N057699 to be in error with regard to the classification of all the subject merchandise and to the eligibility of the subject filler paper for NAFTA treatment, and, for the reasons set forth below, are modifying that ruling.

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 of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 30, on July 29, 2015. One comment supporting the proposed modification was received in response to that notice.

FACTS:

In NY N057699, CBP responded to your April 13, 2009 request for a ruling on "the status of filler paper, composition notebooks, spiral notebooks, and wireless notebooks from Mexico under NAFTA." CBP stated in that ruling letter as follows:

> You state in your original request that all of the items will be formed from jumbo paper rolls sourced in Taiwan and substantially transformed in Mexico into separate and distinct articles of commerce. You state in your supplemental letter dated May 6, 2009, the items being imported into Mexico would be paper in rolls, weighing 40 g/m2 or more but not more than 150 g/m2. The paper would be in rolls that measure 100 - 102 cm in width. The paper is uncoated, designated as writing paper in the industry, and doesn't contain fibers obtained by a mechanical or chemi-mechanical process. It is white in color, contains less than 3% ash, has a brightness

of 60% or more, and is bleached uniformly throughout the mass. The paper is not embossed, perforated, creped or crinkled at the time of importation into Mexico.

At the time of importation into Mexico, the paper would be classified in subheading 4802.55.1000, Harmonized Tariff Schedule of the United States. You state in your letter dated April 13, 2009, that once in Mexico the rolls will be transformed into filler paper, composition notebooks, spiral notebooks or wireless notebooks. The process for all the transformations begins with unwinding the rolls and processing the paper through a lining machine. The purpose of the lining machine is to print lines and margin rulings on the paper in a continuous manner. The lined paper is then jogged and cut into large sheets. The large sheets are cut and trimmed to the appropriate size of the item being formed.

The filler paper is cut to notebook size (20.3 cm x 26.7 cm and 21.6 cm x 27.9 cm), counted and sorted into the specified number of sheets for each package, and three hole punched. The finished sheets are matched with a cover sheet, shrink wrapped and placed in cartons and shipped to your client in the United States for retail sale.

The composition notebooks are cut from large sheets into medium sheets measuring 39 cm x 50 cm and counted and sorted into the specified number of sheets for each notebook. The lined and cut sheets are matched with the appropriate printed cover sheets. Two cover designs are printed on one cover sheet. One is on the top and the other is on the bottom. The covers and sheets of paper are sewn together to create the spine binding which is then folded over. Spine tape is applied to cover the binding. The composition books are cut and trimmed to their final size of 19 cm x 24 cm and placed in cartons and shipped to your client in the United States for retail sale.

The spiral notebooks are further processed by being simultaneously perforated as it is going through the lining machine. The paper is then jogged and cut into large sheets. The large sheets of lined, perforated paper are cut to the appropriate notebook size 20.3 cm x 26.7 cm, 21.6 cm x 27.9 cm or 22.9 cm x 27.9 cm, counted and sorted into the specified number of sheets for each notebook and are three hole punched. The lined sheets are matched with the printed covers and fly sheets (if applicable) and are bound with wire. Some of the notebooks may be matched with slip-sheets and shrink wrapped. All the finished notebooks are placed in cartons and shipped to your client in the United States for retail sale.

The wireless notebooks like the spiral notebooks are simultaneously perforated as they go through the lining machine. The lined paper is then jogged and cut into large sheets. The large sheets are then cut to medium sheets 21.6 cm x 84 cm and counted and sorted into the specified number of sheets for the notebook. The lined sheets are then matched with printed covers and glued together. A spine tape is applied to cover the binding. The assembled notebooks are then cut to a final size of 21.6 cm x 27.9 cm or 22.9 cm x 27.9 cm and three hole punched. The finished product is placed in cartons and shipped to your clients in the United States.

Based on these descriptions, in NY N057699 CBP classified the filler paper in subheading 4802.57.1000, HTSUSA, as "Writing and cover paper," and classified the three notebooks under subheading 4820.10.2020, HTSUSA, as "Memorandum pads, letter pads and similar articles." CBP further determined that the notebooks were eligible for preferential tariff treatment under NAFTA because they met the required tariff shift from heading 4802 to heading 4820 of General Note 12(t). However, CBP determined that the filler paper did not similarly meet the required tariff shift or satisfy any other General Note 12 provisions, and therefore did not qualify for preferential tariff treatment under NAFTA. In NY N063779, CBP ruled that each of the four subject products qualifies as "a good of a NAFTA country" for marking purposes.

In your June 18, 2009 letter, you assert that the filler paper was improperly classified in heading 4802, HTSUSA, and that it is properly classified in heading 4811, specifically in subheading 4811.90.90 as "[o]ther paper, paperboard, cellulose wadding and webs of cellulose fibers." You further assert that CBP's erroneous classification of the filler paper resulted in the improper denial of eligibility for preferential tariff treatment of the filler paper under NAFTA. You also contend that the three notebooks were improperly classified in subheading 4820.10.2020, and that their proper classification is subheading 4820.10.2050, HTSUSA. You do not contest CBP's determinations that the notebooks are eligible for preferential tariff treatment under NAFTA and that each of the four subject products is "a good of a NAFTA country" for marking purposes, although you request revocation of NY N063779 in which the latter determination was made.

ISSUE:

I. Whether the filler paper is properly classified in subheading 4802.57.1000, HTSUSA, as writing paper, or in subheading 4811.90.9080, HTSUSA, as other paper, and whether the notebooks are properly classified in subheading 4820.10.2020, HTSUSA, as memorandum pads, letter pads, or similar articles, in subheading 4820.10.2030, HTSUSA, as sewn composition books with dimensions of 152.4–381 mm x 222.5–381, in subheading 4820.10.2040, HTSUSA, as other notebooks with dimensions of 152.4–381 mm x 222.5–381, or in subheading 4820.10.2060, HTSUSA, as other notebooks.[1]

II. Whether the filler paper is eligible for preferential tariff treatment under NAFTA.

[1] We note that subheading 4811.90.9050 no longer exists, and that subheading 4811.90.9080 has covered goods formerly classifiable in subheading 4811.90.9050 since the latter's elimination from the HTSUSA in 2011. We therefore consider whether the filler paper is classifiable in subheading 4811.90.9080. Similarly, subheading 4820.10.2050 was replaced by subheading 4820.10.2060 in 2010, and we therefore consider whether the notebooks are classifiable in the latter provision. Also, as discussed more fully below, the other two subheadings under consideration for classification of the notebooks, subheadings 4820.10.2030 and 4820.10.2040, were added to the HTSUSA in 2010 after you requested this reconsideration.

LAW AND ANALYSIS:

To determine whether the filler paper is eligible for preferential tariff treatment under NAFTA, we must first ascertain the proper classifications of the filler paper at the time of its entry into Mexico and at the time of its subsequent entry into the U.S. Accordingly, we initially address classification of the filler paper and notebooks under the HTSUSA.

I. Classification

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. GRI 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 Harmonized Commodity Description and Coding System Explanatory Notes (ENs), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. It is CBP's practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUSA. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The 2015 HTSUSA provisions under consideration are as follows:

4802	Uncoated paper and paperboard, of a kind used for writing, printing or other graphic purposes, and non perforated punch-cards and punch tape paper, in rolls or rectangular (including square) sheets, of any size, other than paper of heading 4801 or 4803; hand-made paper and paperboard:
	Other paper and paperboard, not containing fibers obtained by a mechanical or chemi-mechanical process or of which not more than 10 percent by weight of the total fiber content consists of such fibers:
4802.57	Other, weighing 40 g/m2 or more but not more than 150 g/m2:
4802.57.1000	Writing and cover paper
4811	Paper, paperboard, cellulose wadding and webs of cellulose fibers, coated, impregnated, covered, surface-colored, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in heading 4803, 4809, or 4810:

4811.90	Other paper, paperboard, cellulose wadding and webs of cellulose fibers:
4811.90.90	Other:
4811.90.9080	Other
4820	Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles, exercise books, blotting pads, binders (looseleaf or other), folders, file covers, manifold business forms, interleaved carbon sets and other articles of stationery, of paper or paperboard; albums for samples or for collections and book covers (including cover boards and book jackets) of paper or paperboard:
4820.10	Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles:
4820.10.20	Diaries, notebooks and address books, bound; memorandum pads, letter pads, letter pads and similar articles:
4820.10.2020	Memorandum pads, letter pads and similar articles
4820.10.2030	Sewn composition books with dimensions of 152.4–381 mm (6" - 15"), inclusive (small side) X 222.5–381 mm (8.75" -15"), inclusive (large side)
4820.10.2040	Other note books with dimensions of 152.4–381 mm (6" - 15"), inclusive (small side) X 222.5–381 mm (8.75" -15"), inclusive (large side)
4820.10.2060	Other

As a preliminary matter, we agree with CBP's determination in NY N057699 that the subject products are classifiable in subheading 4802.55.1000, HTSUSA, at the time of their entry into Mexico. Subheading 4802.55.1000, HTSUSA, provides for "[u]ncoated paper and paperboard, of a kind used for writing...in rolls or rectangular (including square) sheets, of any size, other than paper of heading 4801 or 4803; hand-made paper and paperboard: Weighing 40 g/m2 or more but not more than 150 g/m2, in rolls: Other paper and paperboard, not containing fibers obtained by a mechanical or chemi-mechanical process or of which not more than 10 percent by weight of the total fiber content consists of such fibers: Of a width exceeding 15 cm: Writing and cover paper." Note 3 to Chapter 48 of the HTSUS states as follows:

> Subject to the provisions of note 7, headings 4801 to 4805 include paper and paperboard which have been subjected to calendering, supercalendering, glazing or similar finishing, false water-marking or surface sizing, and also paper, paperboard, cellulose wadding and webs of cellulose fibers, colored or marbled throughout the mass by any method. Except where heading 4803 otherwise requires, these headings do not apply to paper, paperboard, cellulose wadding or webs of cellulose fibers which have been otherwise processed.

Additionally, Note 5 to Chapter 48 of the HTSUSA states as follows:

> For the purposes of heading 4802, the expressions "paper and paperboard, of a kind used for writing, printing or other graphic purposes" and "nonperforated punch-cards and punch tape paper" mean paper and pa-

perboard made mainly from bleached pulp or from pulp obtained by a mechanical or chemi-mechanical process and satisfying any of the following criteria:

For paper or paperboard weighing not more than 150 g/m2:

...

(c) Containing more than 3 percent ash and having a brightness of 60 percent or more...

According to your submissions, all of the instant products remain incorporated in jumbo paper rolls at the time of their entry into Mexico. The jumbo rolls are uncoated, designated as writing paper, and contain no fibers obtained by a mechanical or chemi-mechanical process. They weigh between 40 g/m2 and 150 g/m2 and measure between 100 and 102 cm in width. In accordance with Note 5(c) to Chapter 48, they are white in color, contain less than 3 percent ash, and have a brightness of 60 percent or more. Thus, at the time of their arrival in Mexico, they are not excluded from heading 4802 by operation of Note 3 to Chapter 48. Accordingly, they are, at that time, classifiable under subheading 4802.55.1000.

While in Mexico, the paper rolls have been imprinted with lines and margin rulings and cut to size. In addition, the filler paper has been three-hole punched, the paper comprising the composition notebooks has been sewn and bound with spine tape, the paper comprising the spiral notebooks has been perforated, three-hole punched and bound with wire, and the paper comprising the wireless notebooks has been perforated, three-hole punched, and bound with glue. None of this additional processing is described by either heading 4802 or Note 3 to Chapter 48, the latter of which explicitly excludes from headings 4801 through 4805 products that have undergone processes beyond those enumerated in the note. Accordingly, all of the products are effectively excluded from heading 4802 and must be classified elsewhere. While this determination is not in dispute with regard to the three notebooks, which CBP classified under heading 4820 in NY N057699, it renders the classification of the filler paper under subheading 4802.57.10, HTSUSA, in that case incorrect.

As stated above, you assert in your June 18, 2009 letter that the filler paper is instead properly classified in heading 4811. This heading covers, among other things, paper in rectangular sheets. The General EN to Chapter 48 provides, in pertinent part, as follows:

This Chapter covers:

(I) Paper... of all kinds, in rolls or sheets:

...

(B) Headings 48.06 to 48.11 relate to...paper, paperboard or cellulose wadding and webs of cellulose fibres which have been subjected to various treatments, such as coating, design printing, *ruling*, impregnating, corrugation, creping, embossing, and *perforation*.

(Emphasis added). Additionally, EN 48.11 provides that "[p]aper and paperboard are classified in this heading only if they are in strips or rolls or in rectangular (including square sheets, of any size." Consistent with these

ENs, CBP has repeatedly classified rectangular filler paper that has been ruled, perforated, or three-hole punched in heading 4811, specifically in subheading 4811.90.90. *See* NY N248171, dated November 27, 2013; NY N233367, dated October 17, 2012; NY N113475, dated July 30, 2010; NY N021510, dated February 6, 2008; NY N021508, dated February 6, 2008; NY L82778, dated March 15, 2005; and NY J81599, dated March 10, 2003. As in these previous rulings, the instant filler paper is in rectangular form, measuring either 20.3 centimeters by 26.7 centimeters or 21.6 centimeters by 27.9 centimeters, and has been imprinted with lines and margin rulings and three-hole punched. Accordingly, we agree with your assertion that it is properly classified in subheading 4811.90.9080, HTSUSA.

You also assert in your letter that, within subheading 4820.10.20, the subject composition notebooks, spiral notebooks, and wireless notebooks qualify as "Diaries, notebooks and address books, bound; memorandum pads, letter pads and similar articles: Other," which, as of 2010, is described by subheading 4820.10.2060. As support for your contention, you cite several rulings in which CBP classified notepads and notebooks in subheading 4820.10.2050, the predecessor to subheading 4820.10.2060. *See* Headquarters Ruling Letter (HQ) 965595, dated August 5, 2002; NY N004628, dated January 18, 2007; NY M87370, dated November 14, 2006; and NY M83981, dated June 16, 2006. However, in 2010, following the filing of your letter, subheading 4820.10.20 was revised at the 10-digit level, resulting in the additions of subheading 4820.10.2030, which covers "Sewn composition books with dimensions of 152.4–381 mm (6″ - 15″), inclusive (small side) X 222.5–381 mm (8.75″ -15″), inclusive (large side)," and subheading 4820.10.2040, which covers "Other note books with dimensions of 152.4–381 mm (6″ - 15″), inclusive (small side) X 222.5–381 mm (8.75″ -15″), inclusive (large side)." In the wake of these revisions, CBP has consistently classified sewn composition journals in subheading 4820.10.2030 while classifying spiral and other non-sewn notebooks in subheading 4820.10.2040. *See* NY N255460, dated August 19, 2014; NY N254683, dated July 11, 2014; NY N252384, dated May 5, 2014; NY N246920, dated November 1, 2013; and NY N140787, dated February 2, 2011.

Consequently, while we agree that the notebooks qualified as "Diaries, notebooks and address books, bound; memorandum pads, letter pads and similar articles: Other" at the time your letter was filed, they are now described instead by the terms of subheadings 4820.10.2030 and 4820.10.2040. Specifically, the composition notebooks are properly classified in subheading 4820.10.2030, as they are sewn and boast dimensions of 240 millimeters by 190 millimeters. The spiral notebooks and wireless notebooks are properly classified in subheading 4820.10.2040 because they are not sewn and, similar to the composition notebooks, are of dimensions falling within the measurement ranges described by the subheading.

II. NAFTA Eligibility

General Note 12, HTSUSA, incorporates Article 401 of the NAFTA into the HTSUSA. GN 12(a)(ii), HTSUSA, provides, in pertinent part, that:

> Goods that originate in the territory of a NAFTA party under the terms of subdivision (b) of this note and that qualify to be marked as goods of

> Mexico under the terms of the marking rules set forth in regulations issued by the Secretary of the Treasury (without regard to whether the goods are marked), and goods enumerated in subdivision (u) of this note, when such goods are imported into the customs territory of the United States and are entered under a subheading for which a rate of duty appears in the "Special" subcolumn followed by the symbol "MX" in parentheses, are eligible for such duty rate, in accordance with section 201 of the North American Free Trade Agreement Implementation Act.

Accordingly, the subject goods will be eligible for the "Special" "MX" rate of duty provided that: (A) They qualify as NAFTA-originating under General Note 12(b), HTSUSA; and (B) they qualify for marking as goods of Mexico under the NAFTA Marking Rules set forth in Part 102 of the Code of Federal Regulations (19 C.F.R. § 102).

A. NAFTA-Originating under General Note 12(b)

GN 12(b), HTSUSA, provides, in pertinent part, as follows:

> For the purposes of this note, goods imported into the Customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as "*goods originating in the territory of a NAFTA party*" only if—
>
> (i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or
>
> (ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—
>
> (A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or
>
> (B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or
>
> (iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials.

Because the jumbo paper rolls from which the subject products were cut were produced in Taiwan, they cannot be considered "goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States," and consequently do not satisfy the requirements of General Note 12(b)(i). Therefore, we must determine whether the non-originating materials undergo an enumerated tariff shift or otherwise satisfy one of the definitions of "goods originating in the territory of a NAFTA party" provided by GN 12(b)(ii). GN 12(t) lists the following applicable changes in relation to heading 4811:

> *Chapter 48*
>
> 3A. (A) A change to paper or paperboard in strips or rolls of a width not exceeding 15 cm of heading 4811 from strips or rolls of a width

exceeding 15 cm of heading 4811, floor coverings on a base of paper or paperboard of heading 4811 or any other heading, except from headings 4817 through 4823.

(B) A change to paper or paperboard in rectangular (including square) sheets with the larger dimension not exceeding 36 cm or the other dimension not exceeding 15 cm in the unfolded state of heading 4811 from...any other heading, except headings 4817 through 4832.

...

6. A change to headings 4817 through 4822 from any heading outside that group, except from heading 4823.

As discussed above, the subject filler paper enters Mexico as a product of heading 4802, but leaves the country and subsequently enters the U.S. as a product of heading 4811. Accordingly, we agree with your assertion that the filler paper is covered by GN 12(b)(ii)(A), insofar as it undergoes a change in tariff classification enumerated in GN 12(t) while in the territory of Mexico. We also note that CBP correctly determined the subject notebooks to be within the scope of GN 12(b)(ii)(A) because they underwent a change from heading 4802 to goods of heading 4820 while in Mexico, although this determination is not under dispute.

B. Country of Origin Marking as Goods of Mexico

GN 12(a)(ii) also requires, as a condition for preferential tariff treatment, that the subject NAFTA-originating merchandise qualify for marking as goods of Mexico under the NAFTA Marking Rules. Marking of imports is governed by section 304 of the Tariff Act of 1930, as amended (19 U.S.C. §1304), which mandates 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 manner as to indicate to the ultimate purchaser the English name of the country of origin of the article.

Part 134, CBP Regulations (19 C.F.R. Part 134) implements the requirements of and exceptions to 19 U.S.C. §1304. 19 C.F.R. §134.1(b) defines "country of origin" as:

> The country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

Section 134.1(j) 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) 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, which are explicated in 19 C.F.R. Part 102. Section 102.11 sets forth the required hierarchy for determining country of origin for marking purposes:

> The following rules shall apply for purposes of determining the country of origin of imported goods other than textile and apparel products covered by § 102.21.

(a) The country of origin of a good is the country in which:

(1) The good is wholly obtained or produced

(2) The good is produced exclusively from domestic materials; or

(3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in § 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

As discussed above, the subject goods are neither wholly obtained or produced in Mexico nor produced solely from materials originating from Mexico. Consequently, to qualify for marking as goods of Mexico, they must undergo changes in classification enumerated in 19 C.F.R. §102.20. Similar to GN 12(t), 19 C.F.R. §102.20(j) describes shifts to heading 4811 from all headings other than headings 4817 to 4823 and shifts to heading 4820 from any other heading.[2] As previously established, all of the subject goods undergo such shifts while in Mexico, insofar as the filler paper shifts from heading 4802 to heading 4811 and the notebooks shift from heading 4802 to heading 4820. Therefore, Mexico is the country of origin for all of the subject goods and the goods must be marked accordingly.

In your June 18, 2009 letter requesting revocation of NY N063779, you correctly assert that the filler paper is a "product of Mexico" pursuant to 19 C.F.R. §102. Yet, this assertion is completely consistent with CBP's conclusion in NY N063779 that "the imported lined paper notebooks and filler paper are goods of Mexico for marking purposes." Therefore, we affirm NY N063779.

HOLDING:

By application of GRI 1, the subject filler paper is classified under heading 4811, HTSUSA, specifically under subheading 4811.90.9080, HTSUSA, which provides for "Paper, paperboard, cellulose wadding and webs of cellulose fibers, coated, impregnated, covered, surface-colored, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in heading 4803, 4809 or 4810: Other paper, paperboard, cellulose wadding and webs of cellulose fibers: Other: Other." The column one, general rate of duty is free.

By application of GRIs 1 and 6, the subject composition notebooks are classified under heading 4820, HTSUSA, specifically under subheading

[2] 19 C.F.R. 102.20(j) provides, in relevant part, as follows:

...

A change to paper or paperboard in strips or rolls of a width not exceeding 15 cm of heading 4811 from strips or rolls of a width exceeding 15 cm of heading 4811 or any other heading, except from heading 4817 through 4823;

A change to paper or paperboard in rectangular (including square) sheets with the larger dimension not exceeding 36 cm or the other dimension not exceeding 15 cm in the unfolded state of heading 4811 from strips or rolls of a width exceeding 15 cm of heading 4811, paper or paperboard in rectangular (including square) sheets with the larger dimension exceeding 36 cm and the other dimension exceeding 15 cm in the unfolded state of heading 4811 or any other heading, except from heading 4817 through 4823...

...

A change to heading 4817 through 4822 from any other heading, including another heading within that group, except for a change to heading 4818 from sanitary towels and tampons, napkin and napkin liners for babies, and similar sanitary articles, of paper pulp, paper, cellulose wadding, or webs of cellulose fibers, of heading 9619...

4820.10.2030, HTSUSA, which provides for "Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles, exercise books, blotting pads, binders (looseleaf or other), folders, file covers, manifold business forms, interleaved carbon set: Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles: Diaries, notebooks and address books, bound; memorandum pads, letter pads and similar articles: Sewn composition books with dimension of 152.4–381 mm (6″ - 15″) inclusive (smaller side) x 222.5–381 mm (8.75″ - 15″), inclusive (large side)." The column one, general rate of duty is free.

By application of GRIs 1 and 6, the subject spiral notebooks and wireless notebooks are classified under heading 4820, HTSUS, specifically under subheading 4820.10.2040, HTSUSA, which provides for "Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles, exercise books, blotting pads, binders (looseleaf or other), folders, file covers, manifold business forms, interleaved carbon set: Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles: Diaries, notebooks and address books, bound; memorandum pads, letter pads and similar articles: Other note books with dimension of 152.4–381 mm (6″ - 15″) inclusive (smaller side) x 222.5–381 mm (8.75″ - 15″), inclusive (large side)." The column one, general rate of duty is free.

Because they satisfy General Note 12, HTSUSA, and 19 C.F.R. Parts 134 and 102, the subject filler paper, composition notebooks, spiral notebooks, and wireless notebooks are eligible for preferential tariff treatment under NAFTA, and should be marked as goods of Mexico.

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

EFFECT ON OTHER RULINGS:

NY N057699, dated May 15, 2009, is MODIFIED in accordance with the above analysis.

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

Sincerely,

ALLYSON MATTANAH
for
JOANNE ROMAN STUMP
Acting Director,
Commercial & Trade Facilitation Division

REVOCATION OF A RULING LETTER AND MODIFICATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF TEXTILE AND PLASTIC NECKLACES

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

ACTION: Notice of revocation of a ruling letter, modification of a ruling letter, and revocation of treatment relating to the tariff classification of textile and plastic necklaces.

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 a ruling letter, is modifying a ruling letter, and is revoking treatment relating to the tariff classification of textile and plastic necklaces 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. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 30, on July 29, 2015. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 22, 2016.

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 commu-

nity'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 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Volume 49, No. 30, on July 29, 2015, proposing to revoke New York Ruling Letter (NY) N022480, dated February 13, 2008, and to modify NY N059109, dated May 29, 2009, in which CBP determined that the subject textile and plastic necklaces were classified as textile clothing accessories of heading 6217, HTSUS.

As stated in the proposed notice, this revocation and modification will cover any rulings 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 the ruling identified above. 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 have advised CBP during the comment 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.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking N022480, and is modifying NY N059109, in order to reflect the proper classification of the textile and plastic necklaces as imitation jewelry of heading 7117.90.75, HTSUS, according to the analysis contained in HQ H257790, 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.

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

Dated: November 16, 2015

ALLYSON MATTANAH
for
JOANNE ROMAN STUMP,
Acting Director
Commercial and Trade Facilitation Division

Attachment

HQ H257790
November 16, 2015
CLA-2 RR:CTF:TCM H257790 EGJ
CATEGORY: CLASSIFICATION
TARIFF NO.: 7117.90.75

FELICIA L. NOWELS, ESQ.
AKERMAN, LLP
106 EAST COLLEGE AVE., SUITE 1200
TALLAHASSEE, FL 323201

Re: Revocation of NY N022480 and Modification of NY N059109; Classification of Textile and Plastic Necklaces

DEAR MS. NOWELS:

This is in reference to New York Ruling Letter (NY) N022480, dated February 13, 2008, which was issued to your client, Eagles Wings, concerning the tariff classification of a plastic and textile necklace under the Harmonized Tariff Schedule of the United States (HTSUS).

We have reviewed NY N022480 and find it to be in error. For the reasons set forth below, we hereby revoke NY N022480 and modify NY N059109, dated May 29, 2009, which concerned the tariff classification of a substantially similar necklace.[1]

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published on July 29, 2015, in the *Customs Bulletin*, Vol. 49, No. 30. No comments were received in response to this notice.

FACTS:

In NY N022480, the subject necklace was described as follows:

> The submitted sample Style 6903 Georgia Titan Necklace is a textile necklace made of woven nylon fabric surrounding a silicone/plastic core with a plastic clasp and two silicone stations with the letter G. The necklace is used to show support of the Georgia Titans Team.

According to additional documentation which you provided under separate cover dated March 22, 2012, the plastic components weigh substantially more than the textile component. The plastic components also cost substantially more than the textile component. The plastic components are both decorative and functional, because the plastic forms the structure of the necklace and the two plastic Georgia Titans beads add to the visual appeal. The textile component, however, has a much greater visible surface area because it completely covers the plastic core. The textile component is also highly decorative because it is covered in Georgia Titans logos. A picture of the subject necklace is provided below:

[1] In NY N059109, the necklace is described as follows: "The silicon necklace, style number 1004153 is a 22 inch long silicon tube surrounded by a woven nylon fabric. This item has a plastic clip means of closure and contains 7% polyamide, 6% Germinium and trace mineral."

ISSUE:

Is the necklace classified under heading 6217, HTSUS, as a textile accessory, or under heading 7117, HTSUS, as imitation jewelry?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). 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 2 through 6 may then be applied in order. Under GRI 6, 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 GRIs 1 through 5.

The HTSUS provisions at issue are as follows:

6217	Other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212:
6217.10	Accessories:
	Other:
6217.10.95	Other:
	* * *
7117	Imitation jewelry:
7117.90	Other:
	Other:
	Valued over twenty cents per dozen pieces or parts:
	Other:
7117.90.75	Of plastics:
7117.90.90	Other:
	* * *

Note 1 to Chapter 62 states as follows:

> This chapter applies only to made up articles of any textile fabric other than wadding, excluding knitted or crocheted articles (other than those of heading 6212).
>
> * * *

Note 3(g) to Chapter 71 states as follows:

3. This Chapter does not cover:

(g) Goods of section XI (textiles and textile articles)

* * *

Note 9 to Chapter 71 states as follows:

9. For the purposes of heading 7113, the expression "articles of jewelry" means:

(a) Any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia); and

(b) Articles of personal use of a kind normally carried in the pocket, in the handbag or on the person (for example, cigar or cigarette cases, snuff boxes, cachou or pill boxes, powder boxes, chain purses or prayer beads).

These articles may be combined or set, for example, with natural or cultured pearls, precious or semiprecious stones, synthetic or reconstructed precious or semiprecious stones, tortoise shell, mother-of-pearl, ivory, natural or reconstituted amber, jet or coral.

* * *

Note 11 to Chapter 71 states as follows:

11. For the purposes of heading 7117, the expression "imitation jewelry" means articles of jewelry within the meaning of paragraph (a) of note 9 above (but not including buttons or other articles of heading 9606, or dress combs, hair slides or the like, or hairpins, of heading 9615), not incorporating natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed) nor (except as plating or as minor constituents) precious metal or metal clad with precious metal.

* * *

GRI 3 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.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall

be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

* * *

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).

The ENs to GRI 3(b) provide, in pertinent part, that:

(VII) In all these cases the goods are to be classified as if they consisted of the material or component **which gives them their essential character** , insofar as this criterion is applicable

(VIII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

* * *

EN 62.17 provides, in pertinent part, as follows:

This heading covers made up textile clothing accessories, **other than** knitted or crocheted, not specified or included in other headings of this Chapter or elsewhere in the Nomenclature. The heading also covers parts of garments or of clothing accessories, not knitted or crocheted, **other than** parts of articles of **heading 62.12**.

The heading covers, *inter alia*

(1) **Dress shields**, usually of rubberized fabric or of rubber covered with textile material. Dress shields wholly of plastics or of rubber are **excluded** (**headings 39.26** and **40.15** respectively).

(2) **Shoulder or other pads**. These are usually made of wadding, felt, or textile waste covered with textile fabric. Shoulder and other pads consisting of rubber (usually cellular rubber) not covered with textile material are **excluded** (**heading 40.15**).

(3) **Belts of all kinds (including bandoliers) and sashes (e.g., military or ecclesiastical**), of textile fabric, whether or not elastic or rubberized, or of woven metal thread. These articles are included here even if they incorporate buckles or other fittings of precious metal, or are decorated with pearls, precious or semi-precious stones (natural, synthetic or reconstructed).

(4) **Muffs**, including muffs with mere trimmings of furskin or artificial fur on the outside ...

* * *

Note 3(g) to Chapter 71 states that goods of Section XI (Chapters 50 – 63) are excluded from classification in Chapter 71. If the necklace is classifiable as a textile accessory of heading 6217, HTSUS, then it is excluded from classification as imitation jewelry of heading 7117, HTSUS. Therefore, we will first examine the subject necklace in the context of heading 6217, HTSUS.

Note 2 to Chapter 62 states that the Chapter only applies to articles made up of textile fabrics, other than knitted or crocheted fabrics. According to the ENs to heading 62.17, a textile accessory may still be classified in the heading if it has minor components of a different constituent material. For example, EN 62.17 states that if a belt has a clasp or fittings of metal, it remains classified in Chapter 62. As such, the necklace could still be classified in heading 6217, HTSUS, even if it has a clasp or fitting of a material other than textile.

While the necklace has a plastic clasp, it also has a plastic core underneath of the fabric, as well as two large plastic beads. The plastic core gives the necklace its shape. As opposed to a metal clasp or fitting for a textile belt, the plastic components play too great a role to be covered by a heading for articles made up of textiles. As such, the necklace is not classifiable in heading 6217, HTSUS.

Heading 7117, HTSUS, provides for imitation jewelry. Note 11 to Chapter 71 defines imitation jewelry as articles of jewelry which do not incorporate natural or cultured pearls, precious or semiprecious stones, precious metal, or metal clad with precious metal. Note 9(a) to Chapter 71 states that "articles of jewelry" means small objects of personal adornment, such as necklaces, bracelets and rings. As the instant merchandise is a necklace which does not incorporate pearls, precious stones or precious metal, it is classifiable as imitation jewelry of heading 7117, HTSUS.

The subheadings to heading 7117, HTSUS, are broken out according to the constituent material. We note that the instant necklace consists of both textile and plastics. As such, the necklace is a composite good, and we must apply GRI 3(b) to determine which subheading covers the necklace.

According to GRI 3(b), a composite good is classified according to the constituent material which imparts the good's essential character. In order to identify a composite good's essential character, the U.S. Court of International Trade (CIT) has applied the factors listed in EN VIII to GRI 3(b) which are "the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods." *The Home Depot v. United States*, 427 F. Supp. 2d 1278, 1293 (Ct. Int'l Trade 2006). With regard to the component which imparts the essential character, the CIT has stated it is "that which is indispensable to the structure, core or condition of the article, i.e. what it is." *Id. citing A.N. Deringer, Inc. v. United States,* 66 Cust. Ct. 378, 383 (1971).

Turning to the instant necklace, we note that the plastic components weigh more and cost more than the textile components. The plastic components provide shape and structure to the necklace. The plastic components are both decorative and functional, while the textile component is only decorative. However, the textile component covers more of the visible surface area than the plastic components.

Based upon all of these factors, we find that the plastic components impart the essential character to the instant necklace. As such, the instant necklace is classified under subheading 7117.90.75, HTSUS, as imitation jewelry of plastics.

HOLDING:

By application of GRI 1 (Note 9 and Note 11 to Chapter 71), GRI 3(b) and GRI 6, the necklace is classified under subheading 7117.90.75, HTSUS, as "Imitation jewelry: Other: Other: Valued over twenty cents per dozen pieces or parts: Other: Of plastics." The 2015 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 World Wide Web at www.usitc.gov

EFFECT ON OTHER RULINGS:

NY N022480, dated February 13, 2008, is hereby revoked.

NY N059109, dated May 29, 2009, is hereby modified with regard to the plastic and textile necklace.

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

Sincerely,

ALLYSON MATTANAH
for
JOANNE ROMAN STUMP,
Acting Director
Commercial and Trade Facilitation Division

19 CFR PART 177

PROPOSED REVOCATION OF THREE RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF FLOCKED HEAT TRANSFERS AND TEXTILE/PVC MATERIAL DESIGNED FOR TRANSFERRING IMAGES TO FABRIC OR OTHER SURFACES

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

ACTION: Notice of proposed revocation of three ruling letters and revocation of treatment relating to the classification of flocked heat transfers and textile/PVC material designed for transferring images.

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 inter-

ested parties that CPB proposes to revoke three ruling letters concerning the classification of flocked heat transfers and textile/PVC material designed for transferring images under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB intends to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before January 22, 2016.

ADDRESSES: Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and 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: Tatiana Salnik Matherne, Tariff Classification and Marking Branch: (202) 325–0351.

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 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 (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke three rulings pertaining to the classification of flocked heat transfers and textile/PVC material designed for transferring images. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) J81335, dated February 21, 2003 (Attachment A), NY J80560, dated February 13, 2003 (Attachment B) and NY E85712, dated August 19, 1999 (Attachment C), 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 data bases for rulings in addition to the ones identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. 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 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP intends 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 his agents for importations of merchandise subsequent to this notice.

In NY J81335 and NY J80560, CBP classified the subject plastic flocked heat transfers in subheading 5601.30.00, HTSUS, which provides for "Wadding of textile materials and articles thereof; textile fibers, not exceeding 5 mm in length (flock), textile dust and mill neps: Textile flock and mill neps." In NY E85712, CBP classified the subject textile/PVC material used to heat transfer images to fabric or other surfaces in subheading 5903.10.25, HTSUS, which provides for "Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902: With poly(vinyl chloride): Of manmade fibers: Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY J81335, NY J80560 and NY E85712, as well as any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters

Ruling Letter ("HQ") H265493 (*see* Attachment D to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes 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 21, 2015

GREG CONNOR
for
JOANNE ROMAN STUMP
Acting Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY J81335
February 21, 2003
CLA-2–53:RR:NC:N3:351 J81335
CATEGORY: Classification
TARIFF NO.: 5601.30.0000

MR. KEN SKILLMAN
VANITY FAIR INTIMATES, L.P.
3025 WINDWARD PLAZA, SUITE 600
ALPHARETTA, GA 30005

RE: The tariff classification of flocked heat transfers from Hong Kong.

DEAR MR. SKILLMAN:

This letter replaces the ruling letter we sent to you under file number J80560. The purpose of this replacement letter is to correct a clerical error in the tariff classification number. A corrected letter follows.

In your letter dated January 27, 2002, you requested a ruling on tariff classification.

You submitted samples of heat transfers. They consist of rayon flocking on carrier paper, with an adhesive, in the design of a bow. The bow design will be heat-transferred to a mesh fabric on the side panel of a brassiere. You also supplied a sample of a piece of fabric with the bow on it. In the heat transferring, both the paper and the adhesive are consumed, leaving only the flocked bow.

In your letter you state that the supplier has informed you that the applicable subheading for the tattoo will be 4908.90.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for transfers (decalcomanias), other than vitrifiable. However, while this tariff provision does provide for heat transfers, it would be those that are considered to be "printed matter." It is Customs position that the process of creating a design by flocking is not considered printing.

The item is, in essence, textile flock. The applicable subheading for this product will be 5601.30.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for textile flock and dust and mill neps. The general rate of duty will be 0.5 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177). We will retain your samples as part of our official file.

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 Mitchel Bayer at 646–733–3102.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

[ATTACHMENT B]

NY J80560
February 13, 2003
CLA-2–53:RR:NC:N3:351 J80560
CATEGORY: Classification
TARIFF NO.: 5301.30.0000

MR. KEN SKILLMAN
VANITY FAIR INTIMATES, L.P.
3025 WINDWARD PLAZA, SUITE 600
ALPHARETTA, GA 30005

RE: The tariff classification of flocked heat transfers from Hong Kong.

DEAR MR. SKILLMAN:

In your letter dated January 27, 2002, you requested a ruling on tariff classification.

You submitted samples of heat transfers. They consist of rayon flocking on carrier paper, with an adhesive, in the design of a bow. The bow design will be heat-transferred to a mesh fabric on the side panel of a brassiere. You also supplied a sample of a piece of fabric with the bow on it. In the heat transferring, both the paper and the adhesive are consumed, leaving only the flocked bow.

In your letter you state that the supplier has informed you that the applicable subheading for the tattoo will be 4908.90.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for transfers (decalcomanias), other than vitrifiable. However, while this tariff provision does provide for heat transfers, it would be those that are considered to be "printed matter." It is Customs position that the process of creating a design by flocking is not considered printing.

The item is, in essence, textile flock. The applicable subheading for this product will be 5301.30.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for textile flock and dust and mill neps. The general rate of duty will be 0.5 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177). We will retain your samples as part of our official file.

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 Mitchel Bayer at 646–733–3102.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

[ATTACHMENT C]

NY E85712

August 19, 1999
CLA-2–59:RR:NC:TA:350 E85712
CATEGORY: Classification
TARIFF NO.: 5903.10.2500

MR. MAX SOLOMON III
EXPLAN INTERNATIONAL TRADE INC.
1055 SHOTGUN ROAD
SUNRISE, FL 33326

RE: The tariff classification of Textile/PVC material used to heat transfer images to fabric or other surfaces, from Brazil.

DEAR MR. SOLOMON:

In your letter dated July 30, 1999, you requested a classification ruling.

The instant sample, consists of a woven fabric composed of 100% polyester man-made fibers which has been coated/laminated on one side with a compact polyvinyl chloride plastics material. This material is designed to transfer an image to a dark colored "T" shirt or other dark colored surface such as a book cover or photo album, etc. Your letter indicates that this material will be imported in cut sizes of 11″ x 17″ or, in the future of 8 ½″ x 11″, 11 11/16″ x 16 ½″ and 8 ¼″ x 11″.

You provided the following weight specifications for this material: Textile 2,850 g/m2 and PVC 137 g/m2, respectively. However, per a recent telephone conversation with your office, the weight given for the textile portion was a typo. The correct weights are as follows:

Wt. Of Textile:	285 g/m^2	(67.5%)
Wt. Of PVC:	*137 g/m^2*	(32.5%)
Total Wt.:	422 g/m^2	(100%)

While you suggest classification in tariff subheading 5903.10. "30," that subheading refers to a textile presence of other than cotton or man-made fibers. Since the composition of the textile portion of this fabric is polyester (a man-made fiber) classification is as indicated below.

The applicable subheading for the product will be 5903.10.2500, Harmonized Tariff Schedule of the United States (HTS), which provides for textile fabrics impregnated, coated, covered, or laminated, with plastics, with polyvinyl chloride, of man-made fibers, not over 70 percent by weight of rubber or plastics. The duty rate will be 8 percent ad Valorem.

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

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

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

[ATTACHMENT D]

HQ H265493
CLA-2 OT:RR:CTF:TCM H265493 TSM
CATEGORY: Classification
TARIFF NO.: 4908.90.00

MR. KEN SKILLMAN
VANITY FAIR INTIMATES, L.P.
3025 WINDWARD PLAZA
SUITE 600
ALPHARETTA, GA 30005

RE: Revocation of NY J81335, NY J80560 and NY E85712; Classification of Textile/PVC material used to heat transfer images to fabric or other surfaces; Classification of flocked heat transfers.

DEAR MR. SKILLMAN:

This is in reference to New York Ruling Letter (NY) J81335, issued to Vanity Fair Intimates, L.P. on February 21, 2003, and NY J80560, issued to Vanity Fair Intimates on February 13, 2003. NY J81335 and NY J80560 both concerned tariff classification of flocked heat transfers, classified by U.S. Customs and Border Protection ("CBP") in subheading 5601.30.00, HTSUS, which provides for "Wadding of textile materials and articles thereof; textile fibers, not exceeding 5 mm in length (flock), textile dust and mill neps: Textile flock and mill neps."

This is also in reference to NY E85712, issued to Explan International Trade Inc. on August 19, 1999, which concerned tariff classification of textile/PVC material used to heat transfer images to fabric or other surfaces, classified by CBP in subheading 5903.10.25, HTSUS, which provides for "Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902: With poly(vinyl chloride): Of man-made fibers: Other: Other."

Upon additional review, we have found the above-referenced classifications to be incorrect. For the reasons set forth below we hereby revoke NY J81335, NY J80560 and NY E85712.

FACTS:

NY J81335, issued to Vanity Fair Intimates, L.P. on February 21, 2003, describes the subject merchandise as follows:

> [The subject merchandise features] heat transfers. They consist of rayon flocking on carrier paper, with an adhesive, in the design of a bow. The bow design will be heat-transferred to a mesh fabric on the side panel of a brassiere. [The subject merchandise also features] a piece of fabric with the bow on it. In the heat transferring, both the paper and the adhesive are consumed, leaving only the flocked bow.

NY J80560, issued to Vanity Fair Intimates on February 13, 2003, describes the subject merchandise as follows:

> [The subject merchandise features] heat transfers. They consist of rayon flocking on carrier paper, with an adhesive, in the design of a bow. The bow design will be heat-transferred to a mesh fabric on the side panel of a brassiere. [The subject merchandise also features] a piece of fabric with

the bow on it. In the heat transferring, both the paper and the adhesive are consumed, leaving only the flocked bow.

NY E85712, issued to Explan International Trade Inc. on August 19, 1999, describes the subject merchandise as follows:

> The instant sample consists of a woven fabric composed of 100% polyester man-made fibers which has been coated/laminated on one side with a compact polyvinyl chloride plastics material. This material is designed to transfer an image to a dark colored "T" shirt or other dark colored surface such as a book cover or photo album, etc. [T]his material will be imported in cut sizes of 11″ x 17″ or, in the future of 8 ½″ x 11″, 11 11/16″ x 16 ½″ and 8 ¼″ x 11″. [The] weight specifications for this material [are the following]: Wt. Of Textile: 285 g/m^2 (67.5%) Wt. Of PVC: 137 g/m2 (32.5%) Total Wt.: 422 g/m2 (100%).

ISSUE:

What is the correct classification of the subject flocked heat transfers and textile/PVC material?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the table of contents, alphabetical index, and titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, 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 2 through 6 may then be applied in order.

In addition, in interpreting 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 HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

4908	Transfers (decalcomanias):
4908.90.00	Other
	* * *
5601	Wadding of textile materials and articles thereof; textile fibers, not exceeding 5 mm in length (flock), textile dust and mill neps:
5601.30.00	Textile flock and dust and mill neps
	* * *
5903	Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902:
5903.10	With poly(vinyl chloride):
	Of man-made fibers:
	Other:
5903.10.25	Other

NY J81335 and NY J80560 classified the subject flocked heat transfers under heading 5601, HTSUS, which provides for "Wadding of textile materials and articles thereof; textile fibers, not exceeding 5 mm in length (flock), textile dust and mill neps." NY E85712 classified the subject textile/PVC material used to heat transfer images to fabric or other surfaces under heading 5903, which provides for "Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902."

We note that the subject heat transfers could only be classified as textile materials of Chapters 56 or 59 of Section XI, HTSUS, by application of GRI 3(b), which provides, in pertinent part, that composite goods consisting of different materials or made up of different components shall be classified as if they consisted of the material or component which gives them their essential character. However, before a product can be classified as a composite good, we must determine if it is covered by a single heading per GRI 1.

We emphasize that, as noted above, the first sentence of GRI 1 explains that the table of contents, alphabetical index, and titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. Accordingly, the statement in NY J80560 that the subject merchandise is not considered "printed matter" and could thus not fall under heading 4908 is not based on the legal text. Even if the subject merchandise does not have to be considered "printed matter" to be classified under heading 4908, HTSUS, we note that heat transfers of flocking intended to decorate apparel, like the instant merchandise, are manufactured using similar machinery to that used in printing with ink and are used in the same manner as heat transfers made from other media (i.e. ink). Therefore, we consider the subject merchandise to be "printed matter." Moreover, in January of 2007, in an Informed Compliance Publication (ICP), CBP defined "decals" as "printed transfers," stating, in pertinent part, that "decals are specifically provided for, as printed transfers, in heading 4908 of the HTSUS." CBP further noted that "decals may be applied to a variety of objects (e.g., of metal, plastic, wood, paperboard, textile, fabric, etc.), which need not undergo any further processing after the image has been transferred" and that "aside from their carriers, [decals] are nothing more than printed images on extremely thin, nearly invisible coating-material substrates..."

General Explanatory Notes to Chapter 49, HTSUS, provide, in pertinent part, the following: "In addition to the more common forms of printed products (e.g., books, newspapers, pamphlets, pictures, advertising matter), this Chapter covers such articles as: printed transfers (decalcomanias)..." ENs to heading 4908, HTSUS, provide, in pertinent part, that "Transfers (decalcomanias) consist of pictures, designs or lettering in single or multiple colours, lithographed or otherwise printed on absorbent, lightweight paper (or sometimes thin transparent sheeting of plastics), coated with a preparation, such as of starch and gum, to receive the imprint which is itself coated with an adhesive. This paper is often backed with a supporting paper of heavier quality."

Based on the foregoing, upon review we find that the subject flocked heat transfers and textile/PVC material are specifically provided for in heading 4908, HTSUS, and are classified in subheading 4908.90.00, HTSUS, which

provides for "Transfers (decalcomanias): Other." *See* NY N246787, dated October 31, 2013; NY A86366, dated August 20, 1996; NY I88275, dated December 2, 2002; and NY 865307, dated September 5, 1991.

HOLDING:

By application of GRI 1, we find that the subject merchandise is classified under heading 4908, HTSUS. Specifically, it is classified in subheading 4908.90.00, HTSUS, which provides for "Transfers (decalcomanias): Other." The 2015 column one, general rate of duty is free.

EFFECT ON OTHER RULINGS:

NY J81335, NY J80560 and NY E85712, are hereby REVOKED.

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

Sincerely,

JOANNE ROMAN STUMP
Acting Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF THREE RULING LETTERS, MODIFICATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF BILBERRY AND BLUEBERRY EXTRACT POWDERS

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

ACTION: Notice of proposed revocation of three ruling letters, modification of two ruling letters, and revocation of treatment relating to the tariff classification of bilberry and blueberry extract powders

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

DATES: Comments must be received on or before January 22, 2016.

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 St., NE, 10th Floor, Washington, DC 20229–1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Nicholai C. Diamond, Tariff Classification and Marking Branch, at (202) 325–0292.

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 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, this notice advises interested parties that CBP is proposing to revoke three ruling letters and modify two ruling letters, all of which pertain to the tariff classification of various bilberry and blueberry extract powders. Although in this notice, CBP is specifically referring to Headquarters Ruling Letter ("HQ") 964139, dated April 19, 2002 (Attachment A), New York Ruling Letter ("NY") N219927, dated June 27, 2012 (Attachment B), NY N037866, dated October 3, 2008 (Attachment C),

HQ 967972, dated March 2, 2006 (Attachment D), and NY 814027, dated February 2, 1996 (Attachment E), 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 five identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the 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 proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this 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 decision on this notice.

In HQ 964139, U.S. Customs and Border Protection ("CBP") classified a bilberry extract powder in subheading 1302.19.40, HTSUS, which provides for "Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products: Other: Ginseng; substances having anesthetic, prophylactic or therapeutic properties: Other." In NY N219927, CBP classified a similar bilberry extract powder in subheading 1302.19.91, HTSUS, which provides for "Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products: Vegetable saps and extracts: Other: Other." In NY N037866, CBP classified a blueberry extract powder in subheading 1302.19.91, HTSUS. In NY N814027, which involved classification of four different extract powders, CBP classified the bilberry extract powder at issue in subheading 1302.19.40, HTSUS. In HQ 967972, we affirmed NY N814027 with regard to the latter's classification of the bilberry extract powder in subheading 1302.19.40, HTSUS. It is now CBP's position that the various bilberry and blueberry extract powders at issue in HQ 964139, NY N219927, NY N037866, NY N814027, and HQ 967972 are, by operation of GRI 1, classified in heading 3824, HTSUS, specifically in subheading 3824.90.92, HTSUS, which provides for "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those

consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke HQ 964139, NY N219927, and NY N037866, modify NY N814027 and HQ 967972, and revoke any other ruling not specifically identified to reflect the tariff classification of the subject merchandise according to the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H262217, set forth as Attachment F to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: October 21, 2015

ALLYSON MATTANAH
for
JOANNE ROMAN STUMP
Acting Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ 964139
April 19, 2002
CLA-2 RR:CR:GC 964139AM
CATEGORY: Classification
TARIFF NO.: 1302.19.40

PORT DIRECTOR
U.S. CUSTOMS SERVICE
9901 PACIFIC HIGHWAY
BLAINE, WA 98230

Re: Protest 3004–00–100090; Bilberry dry hydroal extract

DEAR PORT DIRECTOR:

This is our decision on Protest 3004–00–100090, timely filed by a customs broker on behalf of Baralex, Inc., on May 12, 2000, against your decision in the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of Bilberry dry hydroal extract powder 25% anthocyanide content.

FACTS:

Bilberry dry hydroal extract powder 25% anthocyanide content is extracted from Vaccinium myrtillus berries. The process by which the anthocyanides are obtained from the plant is as follows: Billberry fruits are extracted with ethanol. The eluate is concentrated under vacuum, purified by a process of column separation that removes much of the tannins and other plant material, then concentrated and standardized to 25% anthocyanide content. This liquid is dried and crushed into a powder. It is imported in bulk powder form packed in plastic bags inside 10 kilogram fiberboard boxes. Additional information received from the importer indicates that the merchandise is pure plant material on importation without added carriers. Maltodextrin and other excipients are added at the time of encapsulation after entry.

New York Ruling Letter (NY) 814027, dated February 2, 1996, classified standardized Bilberry extract imported in bulk-powder form in subheading 1302.19.40, HTSUS, the provision for "Vegetable saps and extracts: Other: Ginseng; substances having anesthetic, prophylactic or therapeutic properties: Other: Other." NY 814027 was based on a flow chart from the manufacturer outlining the solvent extraction process used for each product and Customs Laboratory Report 2–1996–20178, dated November 11, 1995, which states in pertinent part, the following:

> Bilberry, a mixture of organic compounds containing 25% anthocyanosides further processed into a food supplement; Bilberry extract is also natural coloring matter. Anthocyanidins are components which possess coloring properties and are aromatic heterocyclic chemicals. The anthocyanosides are glycosides of the anthocyanidins.

Protestant entered the merchandise on various dates in 1999, under subheading 1302.19.40, HTSUS, the provision for "[V]egetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products: [O]ther: [G]inseng; substances having anesthetic, prophylactic or therapeutic properties: [O]ther: [O]ther." The twelve entries that compose the subject of this protest were all liquidated on March 3, 2000, under subheading

3824.90.28, HTSUS, the provision for "[P]repared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included: [O]ther: [O]ther." The protest was timely filed on May 12, 2000.

ISSUE:

What is the classification of Bilberry dry hydroal extract powder 25% anthocyanide content?

LAW AND ANALYSIS:

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes 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 the GRIs.

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 HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The HTSUS headings under consideration are the following:

1302	Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products:
2106	Food preparations not elsewhere specified or included:
3824	Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included:

Protestant cites NY 814027 for the proposition that Bilberry dry hydroal extract powder 25% anthocyanide content is classified in heading 1302, HTSUS. After reviewing the file in that case, it appears that the product specified therein is also Bilberry dry hydroal extract powder 25% anthocyanide content extracted using the same processes in all material aspects as does the manufacturer of the instant merchandise. Hence, NY 814027 is dispositive of this issue. However, NY 814027 is being reviewed.

HOLDING:

Bilberry dry hydroal extract powder 25% anthocyanide content is classified in subheading 1302.19.40, HTSUS, the provision for "Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products: Other: Ginseng; substances having anesthetic, prophylactic or therapeutic properties: Other: Other. The protest should be ALLOWED.

In accordance with Section 3A(11)(b) of Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, you are to mail this decision, together with the Customs Form 19, to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry or entries in accordance with the decision must be accomplished prior to mailing the decision.

Sixty days from the date of the decision, the Office of Regulations and Rulings will make the decision available to Customs personnel, and to the public on the Customs Home Page on the World Wide Web at *www.customs .gov*, by means of the Freedom of Information Act, and other methods of public distribution.

Sincerely,

JOHN A. DURANT,
Director
Commercial Rulings Division

[ATTACHMENT B]

N219927

June 27, 2012
CLA-2–13:OT:RR:NC:N2:235
CATEGORY: Classification
TARIFF NO.: 1302.19.9140

MR. DENNIS AWANA
INTER-ORIENT SERVICES
1455 MONTEREY PASS ROAD
SUITE 205
MONTEREY PARK, CA 91754

RE: The tariff classification of Bilberry Extract Powder 25% from China

DEAR MR. AWANA:

In your letter dated May 23, 2012, you requested a tariff classification ruling.

The subject product, Bilberry Extract Powder 25% is a fine, ground powder of the Bilberry fruit. This ruling is based in part on the additional information requested by this office on April 5, 2012 on ruling N211239. In the flow chart you submitted, it is indicated that the Bilberry fruits are extracted with ethanol, filtered, and undergo absorption by resin. The extract undergoes various processing to remove the ethanol, dry, grind, mix, and filter the product prior to packaging. The extract is standardized to a phenol and flavanoid content of 70% and 38%, respectively. According to your submission, various non-phenolic plant compounds will remain in the finished extract. You indicate that 30 percent of the finished extract consists of non-phenolic plant compounds which remain from the extracted fruit. The powdered extract will be use as a raw material in the production of dietary supplements.

The applicable subheading for the Bilberry Extract Powder will be 1302.19.9140, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Vegetable saps and extracts: Other: Other: Other." The rate of duty will be free.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Paul Hodgkiss at (646) 733–3046.

Sincerely,

THOMAS J. RUSSO
Director
National Commodity Specialist Division

[ATTACHMENT C]

N037866

October 3, 2008
CLA-2–235:OT:RR:E:NC:N2:235
CATEGORY: Classification
TARIFF NO.: 1302.19.9140

MR. JONATHAN SELZER
HERBASWAY LABORATORIES
101 NORTH PLAINS INDUSTRIAL ROAD
WALLINGFORD, CONNECTICUT 06492

RE: The tariff classification of blueberry juice extract from China

DEAR MR. SELZER:

In your letter dated September 09, 2008, you requested a tariff classification ruling.

The subject product is an extract made from blueberries. Additional information was requested from you regarding the extraction process. In the supplementary documents submitted, you indicated that the extract is not a juice, but is an extract obtained from the blueberry fruit. The fruit is first pressed to obtain a juice and a residue portion. The residue is extracted using alcohol and then recombined with the liquid portion. The two fractions are eluted with grain alcohol and then dried, filtered and sterilized to produce the final powdered extract. Documentation provided indicates that the powdered extract contains approximately 20 percent anthocyanosides and 40 percent total polyphenols. The powdered extract will be used as a raw material in the production of dietary supplements.

The applicable subheading for the blueberry juice extract will be 1302.19.9140, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Vegetable saps and extracts: Other: Other: Other". The rate of duty will be Free.

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

This merchandise may be subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at 301–575–0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

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 Paul Hodgkiss at (646) 733–3046.

Sincerely,

ROBERT B. SWIERUPSKI
Director
National Commodity Specialist Division

[ATTACHMENT D]

HQ 967972

March 2, 2006
CLA-2 RR:CTF:TCM 967972 BtB
CATEGORY: CLASSIFICATION
TARIFF NO.: 3824.90.2800, 2932.99.6100

BRIAN S. GOLDSTEIN, ESQ.
TOMPKINS & DAVIDSON
ONE ASTOR PLAZA
1515 BROADWAY, 43RD FL.
NEW YORK, NY 10036–8901

RE: Modification of NY 814027; the tariff classification of Silymarin (milk thistle) and Leucoanthocyanin

DEAR MR. GOLDSTEIN:

This is in regard to New York Ruling Letter (NY) 814027, dated February 2, 1996, issued to you on behalf of your client, Indena USA Inc. (Indena), regarding the classification of silymarin (identified as "Milk thistle (Silybum Marianum)") and leucoanthocyanin (identified as "Leucoanthocyanins [(grape seed) Vitis Vinifera]") under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). That ruling held that four products, including silymarin and leucoanthocyanin, were classified in subheading 1302.19.4040, HTSUS, the provision for "Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products: Vegetable saps and extracts: Other: Ginseng; substances having anesthetic, prophylactic or therapeutic properties: Other, Other."

We have reviewed NY 814027 and, with respect to two of the four products classified, have found it to be in error. Therefore, this ruling modifies NY 814027.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by Title VI, a notice was published in the June 22, 2005, CUSTOMS BULLETIN, Volume 39, Number 26, proposing to modify NY 814027, and to revoke any treatment accorded to substantially identical transactions. We received one comment, from you, opposing modification of NY 814027. Your comment is addressed below.

FACTS:

The silymarin here in issue is a yellow powder that contains 80% mixture of isomers of silymarin (silybin, silicristin and silidianin). Silymarin 80% is produced from milk thistle seeds. The seeds are milled into a cake, subjected to percolation in a solvent, filtered, and concentrated by distillation under vacuum to remove as much solvent as possible. This concentrate is then washed, defatted, and dried.

The leucoanthocyanin here in issue is a brownish powder consisting of 90–95% oligomeric proanthocyanidin (OPC). OPC is a mixture of proanthocyanidin compounds in different degrees of polymerization. Some of the OPCs are catechins with a chemical formula of $C_{15}H_{14}O_6$ (*The Merck Index*, 11th ed.), dimers (two degrees), trimers (three degrees), etc. Due to these varying states of polymerization, the OPCs are not comprised of a single

chemical compound, although the main chemical structures are identical. Leucoanthocyanin can be produced from either pine bark or grape seed.

According to flow charts submitted by Indena, all of the products are obtained through extraction and refining processes that target a particular family of chemicals in the plant such as isomers of silymarin or OPCs.

In the comment that you submitted opposing modification of NY 814027, you stated that "while Indena maintains that the current classification of the two extracts under subheading 1302.19.40.40, HTSUS, is correct, the company also maintains that if Heading 1302, HTS does not apply, that the instant products qualify as "medicaments" under subheading 3003.90.00.00, HTSUS."

ISSUE:

What is the proper classification of the silymarin and leucoanthocyanin extracts under the HTSUS?

LAW AND ANALYSIS:

Merchandise imported into the U.S. 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 that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any related section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in 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 the GRIs. In interpreting 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 HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

Furthermore, "it is a well-established principle that classification of an imported article must rest upon its condition as imported." *E. T. Horn Company v. United States*, Slip Op. 2003–20, (CIT, 2003), (citing *Carrington Co. v. United States*, 61 CCPA 77, 497 F.2d 902, 905 (CCPA 1974), *United States v. Baker Perkins*, Inc., 46 CCPA 128, (1959)).

The HTSUS provisions under consideration are as follows:

1302	Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products:
	Vegetable saps and extracts:
1302.19	Other:
	Ginseng; substances having anesthetic, prophylactic or therapeutic properties:
1302.19.40	Other .....

* * * ** * * * * * *

2932 Heterocyclic compounds with oxygen hetero-atom(s) only:

Other:

2932.99 Other:

Aromatic:

Other:

2932.99.61 Products described in additional U.S. note 3 to section VI

* * * * * *

3824 3824 Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:

3824.90 3824.90
Other:

Other:

Mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances:

3824.90.28 Other

Chapter Note 1 to Chapter 29 states, in pertinent part, the following:

Except where the context otherwise requires, the headings of this chapter apply only to:

(a) Separate chemically defined organic compounds, whether or not containing impurities;

(b) Mixtures of two or more isomers of the same organic compound (whether or not containing impurities), except mixtures of acyclic hydrocarbon isomers (other than stereoisomers), whether or not saturated (chapter 27);

* * * * * *

EN 13.02 states, in pertinent part, the following:

(A) Vegetable saps and extracts.

The heading covers saps and extracts (vegetable products usually obtained by natural exudation or by incision, or extracted by solvents), **provided** that they are not specified or included in more specific headings of the Nomenclature (see list of exclusions at the end of Part (A) of this Explanatory Note).

These saps and extracts differ from the essential oils, resinoids and extracted oleoresins of heading 33.01, in that, apart from volatile odoriferous constituents, they contain a far higher proportion of other plant substances (e.g., chlorophyll, tannins, bitter principles, carbohydrates and other extractive matter).

The saps and extracts classified here include:

(1) **Opium**, the dried sap of the unripe capsules of the poppy (*Papaver somniferum*) obtained by incision of, or by extraction from, the stems or seed pods. It is generally in the form of balls or cakes of varying size and shape. However, concentrates of poppy straw containing not less than 50 % by weight of alkaloids are **excluded** from this heading (see Note 1 (f) to this Chapter).

* * * * *

(4) **Pyrethrum extract**, obtained mainly from the flowers of various pyrethrum varieties (e.g., *Chrysanthemum cinerariaefolium*) by extraction with an organic solvent such as normal hexane or "petroleum ether".

* * * * *

(11) **Quassia amara extract**, obtained from the wood of the shrub of the same name (*Simaroubaceae* family), which grows in South America. Quassin, the principal bitter extract of the wood of the *Quassia amara*, is a heterocyclic compound of **heading 29.32**.

* * * * *

(18) **Papaw juice**, whether or not dried, but not purified as papain enzyme. (The agglomerated latex globules can still be observed on microscopic examination.) Papain is **excluded (heading 35.07).**

* * * * *

(20) **Cashew nutshell extract**. The polymers of cashew nutshell liquid extract are, however, **excluded** (generally **heading 39.11**).

* * * * *

Examples of **excluded** preparations are: . . .

(iv) **Intermediate products for the manufacture of insecticides** , consisting of pyrethrum extracts diluted by addition of mineral oil in such quantities that the pyrethrins content is less than 2 %, or with other substances such as synergists (e.g., piperonyl butoxide) added (**heading 38.08**).

All four of the substances in NY 814027 are obtained by sophisticated means such as solvent-solvent extraction, distillation, dialysis, chromatographic procedures, electrophoresis, etc. These processes result in a substance containing a targeted chemical compound or compounds along with ubiquitous plant material that need not be further removed for the manufacturers' purpose.

Heading 1302, HTSUS, describes vegetable extracts. The ENs provide that vegetable products are usually obtained by natural exudation or by incision, or extracted by solvents. Furthermore, the EN distinguishes products of heading 1302, HTSUS, from products of heading 3301, HTSUS, by the amount of plant material they contain. Research into the extracts described by the ENs, however, reveals a variety of extraction and refining techniques. For instance, in HQ 963848, dated April 20, 2002, CBP took note of the EN

that allows pyrethrum products containing over 2% pyrethrum to remain classified in heading 1302, HTSUS, in classifying a 50% pyrethrum product in heading 1302, HTSUS. We did so even though the original extracted oleoresin had been further purified removing much of the variety of material in the pyrethrum plant and thereby concentrating the pyrethrum content.

However, there appears to be a limit on the degree and extent of purification that can occur for the product to remain in heading 1302. For instance, EN 13.02, explicitly excludes certain refined extracts of opium, quassia amare, papaw juice, and cashew nut shell liquid, once the refining process concentrates a certain group of chemical compounds to a particular point. Hence, poppy straw concentrates containing more than 50% alkaloids are excluded from heading 1302. Likewise, quassin, a chemical compound extracted and refined from the quassia amara shrub is classified in Chapter 29. Papain enzyme, once purified from the extraction process of papaw juice, is classified as an enzyme of Chapter 37. And polymers extracted and refined from cashew nut shell liquid are classified in Chapter 39 as polymers.

Following the reasoning in our prior rulings, and the tenet that we must classify goods as imported, we note that the leucoanthocyanin consists of over 90% mixtures of oligomeric proanthocyanidins (OPCs) and the silymarin consists of at least 80% of isomers of silymarin. Therefore, silymarin and leucoanthocyanin are relatively pure chemical products and cannot be classified simply as extracts.

In HQ 964338 and in HQ 966566, silymarin and leucocyanin were each respectively classified in subheading 3824.90.28, HTSUS, the provision for "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances: Other." We consider this the correct result for leucoanthocyanin, because it is purified from the plant matter well beyond that of an extract, yet it does not contain a separate chemically defined compound, or isomers of such a compound, as necessary for classification in Chapter 29, HTSUS.

However, in HQ 964338, we excluded classification of silymarin 80% in Chapter 29, HTSUS, because the product consists of more than isomers of a separate chemically defined compound under Chapter 29, note 1(b). The other 20% is remainder from the starting material and a small amount of solvent. As such, we now consider this remainder to constitute "impurities" within the terms of the chapter note.

Within Chapter 29, silymarin is undisputedly a heterocyclic compound of heading 2932, HTSUS, as it includes six-membered rings containing oxygen atoms in the ring. Hence, heading 3824, a basket provision, can no longer describe this merchandise, which is more specifically provided for elsewhere. Using GRI 6, subheading 2932.99.61, HTSUS, describes this product as an other aromatic heterocyclic compound for which the CAS registry number is not listed in the Chemical Appendix under the terms of U.S. note 3 to section VI.

In regard to your contention in your comment that silymarin and leucoanthocyanin qualify as "medicaments" under subheading 3003.90.00.00, HTSUS, we find that these products are not medicaments of heading 3003, HTSUS, because they are neither intended nor sold for the treatment or prevention of any medical condition. As stated in the Explanatory Notes to

Heading 3003, the heading covers "... medicinal preparations for use in the internal or external treatment or prevention of human or animal ailments." Silymarin and leucoanthocyanin, however, are marketed and sold as dietary supplements, not medicaments. For a more complete discussion on medicaments and dietary supplements, *see* HQ 964673, dated February 4, 2002 (on the classification of Joint Advantage® tablets) and/or HQ 966771, dated September 15, 2004 (on the classification of "Promensil," Red Clover).

HOLDING:

NY 814027, dated February 2, 1996,is modified as set forth above in regard to the classification of silymarin (identified as "Milk thistle (Silybum Marianum)") and leucoanthocyanin (identified as "Leucoanthocyanins [(grape seed) Vitis Vinifera]").

Silymarin is classified in subheading 2932.99.6100, HTSUSA (annotated), the provision for "Heterocyclic compounds with oxygen hetero-atom(s) only: Other: Other: Aromatic: Other: Products described in additional U.S. note 3 to section VI." The column 1, general rate of duty under the 2006 HTSUS is 6.5% *ad valorem*, with reference to headings in Chapter 99, HTSUS.

Leucoanthocyanin is classified in subheading 3824.90.2800, HTSUSA, the provision for "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances: Other." The column 1, general rate of duty under the 2006 HTSUS is 6.5% *ad valorem*, with reference to headings in Chapter 99, HTSUS.

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

EFFECT ON OTHER RULINGS:

NY 814027, dated February 2, 1996, is modified as set forth above in regard to the classification of silymarin (identified as "Milk thistle (Silybum Marianum)") and leucoanthocyanin (identified as "Leucoanthocyanins [(grape seed) Vitis Vinifera]"). The classifications set forth in NY 814027 for other products remain effective.

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

Sincerely,

MYLES B. HARMON,
Director
Commercial Trade and Facilitation Division

[ATTACHMENT E]

NY 814027
February 2, 1996
CLA-2–13:RR:NC:FC:238 814027
CATEGORY: Classification
TARIFF NO.: 1302.19.4040

BRIAN S. GOLDSTEIN, ESQ.
TOMPKINS & DAVIDSON
ONE ASTOR PLAZA
1515 BROADWAY, 43RD FLOOR
NEW YORK, NY 10036–8901

RE: The tariff classification of four vegetable extracts, imported in bulk form, from Italy

DEAR MR. GOLDSTEIN:

In your letter dated August 17, 1995, on behalf of your client, Indena USA Inc., you requested a tariff classification ruling.

The four subject products, which your client describes as ″standardized herbal extracts", consist of four plant extracts, namely: Gingko biloba dry extract; Milk thistle (Silybum marianum); Leucoanthocyanins [(grape seed) Vitis vinifera]; and Bilberry (Vaccinium myrtillus). You have submitted flow charts from the manufacturer outlining the solvent extraction process used for each product, and have indicated in your letter that these extracts will be imported in bulk-powder form. You further indicate that, subsequent to importation and sale by your client, the extracts are combined with other ingredients and further processed into capsules and other similar forms for retail sale.

The applicable subheading for the four subject products will be 1302.19.4040, Harmonized Tariff Schedule of the United States (HTS), which provides for: "Vegetable saps and extracts: Other: Ginseng; substances having anesthetic, prophylactic or therapeutic properties: Other: Other.″ The rate of duty will be 1.3 percent ad valorem.

This merchandise may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (301) 443–6553.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist C. Reilly at 212–466–5770.

Sincerely,

ROGER J. SILVESTRI
Director,
National Commodity
Specialist Division

[ATTACHMENT F]

HQ H262217
CLA–2 OT:RR:CTF:TCM H262217 NCD
CATEGORY: Classification
TARIFF NO.: 3824.90.9290

PORT DIRECTOR, PORT OF BLAINE
U.S. CUSTOMS AND BORDER PROTECTION
9901 PACIFIC HIGHWAY
BLAINE, WA 98230

RE: Revocation of HQ 964139, dated April 19, 2002, NY N219927, dated June 27, 2012, and NY N037866, dated October 3, 2008; modification of HQ 967972, dated March 2, 2006, and NY 814027, dated February 2, 1996; Bilberry and blueberry extract powders

DEAR PORT DIRECTOR:

This letter is to inform you that U.S. Customs and Border Protection ("CBP") has reconsidered Headquarters Ruling Letter (HQ) 964139, dated April 19, 2002, in which we granted a May 12, 2000 protest filed on behalf of Baralex, Inc. concerning classification of bilberry dry hydroal extract ("bilberry extract" or "subject merchandise") under the Harmonized Tariff Schedule of the United States (HTSUS). In HQ 964139, we classified the instant bilberry extract in subheading 1302.19.40, HTSUS, which provides for "Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products: Other: Ginseng; substances having anesthetic, prophylactic or therapeutic properties: Other." We have reviewed HQ 964139 and found it to be incorrect with respect to the classification of the subject bilberry extract. For the reasons set forth below, we are revoking this ruling.

In addition to HQ 964139, CBP is revoking revoke NY N219927, dated June 27, 2012, and to modify HQ 967972, dated March 2, 2006, and NY 814027, dated February 2, 1996, all of which involve classification of bilberry extracts under heading 1302, HTSUS. CBP is also revoking NY N037866, dated October 3, 2008, in which we classified a blueberry extract under heading 1302, HTSUS.

As an initial matter, we note that under *San Francisco Newspaper Printing Co. v. United States*, 620 F. Supp. 738 (Ct. Int'l Trade 1985), the decision on the merchandise which was the subject of Protest No. 3004–00–100090 was final and binding on both the protestant and CBP. Therefore, while we may review the law and analysis of HQ 964139, any decision taken herein would not impact the entries subject to that ruling.

FACTS:

In HQ 964139, we described the subject merchandise as follows:

> Bilberry dry hydroal extract powder 25% anthocyanide content is extracted from Vaccinium myrtillus berries. The process by which the anthocyanides are obtained from the plant is as follows: Billberry fruits are extracted with ethanol. The eluate is concentrated under vacuum, purified by a process of column separation that removes much of the tannins and other plant material, then concentrated and standardized to 25% anthocyanide content. This liquid is dried and crushed into a pow-

> der. It is imported in bulk powder form packed in plastic bags inside 10 kilogram fiberboard boxes. Additional information received from the importer indicates that the merchandise is pure plant material on importation without added carriers. Maltodextrin and other excipients are added at the time of encapsulation after entry.

We classified the subject merchandise in subheading 1302.19.40, HTSUS, upon finding that it was substantially similar to the merchandise in NY N814027 and concluding that NY N814027 was consequently "dispositive of this issue."

NY N814027 involved classification of a bilberry extract and three other extracts described as follows:

> The four subject products, which [the importer] describes as "standardized herbal extracts", consist of four plant extracts, namely: Gingko biloba dry extract; Milk thistle (Silybum marianum); Leucoanthocyanins [(grape seed) Vitis vinifera]; and Bilberry (Vaccinium myrtillus). [The importer has] submitted flow charts from the manufacturer outlining the solvent extraction process used for each product, and [has] indicated in [its] letter that these extracts will be imported in bulk-powder form. [The importer] further indicate[s] that, subsequent to importation and sale...the extracts are combined with other ingredients and further processed into capsules and other similar forms for retail sale.

CBP classified the bilberry extract powder at issue in that case in subheading 1302.19.40, HTSUS. Although not stated in the ruling letter, we noted in HQ 964139 that the bilberry extract powder of NY N814027 was comprised 25% of anthocyanoside content. Also, in HQ 967972, in which we affirmed the portion of N814027 concerning classification of the bilberry extract powder, we noted that "all four of the substances in NY 814027 are obtained by sophisticated means such as solvent-solvent extraction, distillation, dialysis, chromatographic procedures, electrophoresis, etc." and that "these processes result in a substance containing a targeted chemical compound or compounds along with ubiquitous plant material that need not be further removed for the manufacturers' purpose."

In NY N037866, we described the merchandise at issue as follows:

> The subject product is an extract made from blueberries. Additional information was requested from you regarding the extraction process. In the supplementary documents submitted, you indicated that the extract is not a juice, but is an extract obtained from the blueberry fruit. The fruit is first pressed to obtain a juice and a residue portion. The residue is extracted using alcohol and then recombined with the liquid portion. The two fractions are eluted with grain alcohol and then dried, filtered and sterilized to produce the final powdered extract. Documentation provided indicates that the powdered extract contains approximately 20 percent anthocyanosides and 40 percent total polyphenols. The powdered extract will be used as a raw material in the production of dietary supplements.

Based upon this description, CBP classified the merchandise in subheading 1302.19.91, HTSUS, which provides for "Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products: Vegetable saps and extracts: Other: Other."

Finally, in NY N219927, we described the merchandise at issue as follows:

> The subject product, Bilberry Extract Powder 25% is a fine, ground powder of the Bilberry fruit...In the flow chart you submitted, it is indicated that the Bilberry fruits are extracted with ethanol, filtered, and undergo absorption by resin. The extract undergoes various processing to remove the ethanol, dry, grind, mix, and filter the product prior to packaging. The extract is standardized to a phenol and flavanoid content of 70% and 38%, respectively. According to [the importer's] submission, various non-phenolic plant compounds will remain in the finished extract. [The importer] indicate[s] that 30 percent of the finished extract consists of non-phenolic plant compounds which remain from the extracted fruit. The powdered extract will be use[d] as a raw material in the production of dietary supplements.

CBP classified the merchandise in subheading 1302.19.91, HTSUS.

ISSUE:

Whether the instant merchandise is properly classified in heading 1302, HTSUS, as a vegetable extract, in heading 2907, HTSUS, as polyphenols, or in heading 3824, HTSUS, as a chemical product.

LAW AND ANALYSIS:

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

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

1302	Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products:
	Vegetable saps and extracts:
1302.19	Other:
	Ginseng; substances having anesthetic, prophylactic or therapeutic properties:

1302.19.91	Other
2907	Phenols; phenol-alcohols:
	Polyphenols; phenol-alcohols:
2907.29	Other:
2907.29.90	Other
3824	Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:
3824.90	Other:
	Other:
	Other:
	Other:
3824.90.92	Other

At the outset, we note that the subject merchandise can only be classified under 3824, HTSUS, if it is not more specifically classifiable elsewhere in the Nomenclature. *See Cargill, Inc. v. United States*, 318 F. Supp. 2d 1279, 1278–88 (Ct. Int'l. Trade 2004). Accordingly, we first consider whether the instant bergamot extract falls under the scope of heading 1302, HTSUS, or, alternatively, heading 2907, HTSUS.

Heading 1302, HTSUS, covers vegetable extracts. EN 13.02 provides, in relevant part, as follows:

> The heading covers saps and extracts (vegetable products usually obtained by natural exudation or by incision, or extracted by solvents)...
>
> The saps and extracts classified here include:
>
> (1) **Opium**, the dried sap of the unripe capsules of the poppy (*Papaver somniferum*) obtained by incision of, or by extraction from, the stems or seed pods. It is generally in the form of balls or cakes of varying size and shape. However, concentrates of poppy straw containing not less than 50% are **excluded** from this heading...
>
> (11) **Quassia amara** extract, obtained from the wood of the shrub of the same name (*Simaroubaceae* family), which grows in South America.
>
> Quassin, the principal bitter extract of the wood of the *Quassia amara*, is a heterocyclic compound of **heading 29.32** ...
>
> (18) **Papaw juice**, whether or not dried, but not purified as papain enzyme. (The agglomerated latex globules can still be observed on microscopic examination.). Papain is **excluded** (**heading 35.07**)...
>
> (20) **Cashew nutshell extract**. The polymers of cashew nutshell liquid extract are, however, **excluded** (generally **heading 39.11**)...

> The vegetable saps and extracts of this heading are generally raw materials for various manufactured products...

It is our long-standing position that, consistent with EN 13.02, heading 1302 applies to products that have been created through standard extraction methods, but not to those that have subsequently been enriched, purified, or otherwise refined so as to increase the contents of certain desirable compounds. *See* HQ H106785, dated October 14, 2010 ("CBP has determined that extensive processing can exclude a product from 1302."); HQ 959099, dated May 1, 1998 ("As pointed out in the ENs to heading 1302, what is covered in the heading are vegetable products obtained by natural exudation or by incision or by solvent extraction."). In HQ H195716, dated February 19, 2015, we provided the following justification for this position:

> CBP's position is supported by the text of EN 13.02. For example, opium is the dried sap of the unripe capsules of the poppy (*Papaver somniferum*), obtained by incision of or extraction from the stems or seed pods. Opium contains about 10% morphine. However, concentrate of poppy straw is a different product. A procedure for obtaining concentrate of poppy straw was first patented in 1935, and describes a process of drying the stems and pods of the poppy plant, treating them with sodium bisulphite, concentrating the aqueous solution into a paste by application of a vacuum, treating the paste with alcohol, and then precipitating the morphine base by treating the solution with ammonium sulphate and benzene, to yield a product with over 50% morphine. EN(1) to 13.02 (and Note 1(f) to Chapter 13, HTSUS) excludes concentrates of poppy straw containing not less than 50% by weight of alkaloids. In another example, quassia amara extract obtained from the bark of the *Quassia amara* shrub. The extract is used in herbal medicine, and contains numerous compounds including both beta-carbonile and cantin-6 alkaloids as well as, primarily, the bitter compounds known as quassinoids. Quassin (2,12-dimethoxypicrasa-2,12-diene-1,11,16-trione, CAS No. 76–78–8) however, is a specific chemical compound contained in the *Quassia amara* shrub. A patented procedure for obtaining quassin describes a process which percolates first the gum or residue of the wood chips of the *Quassia amara* shrub in ethanol and evaporates the solvent, then dissolves the residue in water and washes it with hexane. The hexane fraction is discarded, and sodium chloride is added to the aqueous fraction. A residue is extracted using ethyl acetate and the crystallized into quassin and neoquassin. This process yields a crystal composed of 39% quassin. This chemical is one of the most bitter substances found in nature, and is used mainly as a food additive. EN(11) to 13.02 excludes quassin from classification under the heading, and directs it to be classified under heading 29.32. In these examples, EN 13.02 excludes products extracted from plants which undergo extensive further processing. *See* EN(1), (11), (18), and (20) to 13.02.

See also HQ H061203, dated August 12, 2010 ("There appears to be a limit on the degree and extent of purification that can occur for the product to remain in heading 1302. For instance, EN 13.02, explicitly excludes certain refined

extracts of opium, quassia amare, papaw juice, and cashew nut shell liquid, once the refining process concentrates a certain group of chemical compounds to a particular point. Hence, poppy straw concentrates containing more than 50% alkaloids are excluded from heading 1302. Likewise, quassin, a chemical compound extracted and refined from the quassia amara shrub is classified in Chapter 29. Papain enzyme, once purified from the extraction process of papaw juice, is classified as an enzyme of Chapter [35]. And polymers extracted and refined from cashew nut shell liquid are classified in Chapter 39 as polymers."); HQ H237599, dated May 27, 2015; and HQ W968424, dated December 19, 2006.

Accordingly, we have consistently ruled that products in which certain chemical compounds have deliberately been targeted and enriched cannot be classified in heading 1302. *See* HQ H061203, dated August 12, 2010 ("It is thus the opinion of this office that phenolic compounds are targeted and further concentrated in the extraction and purification process, resulting in a relatively pure chemical product that can no longer be considered a simple extract of heading 1302, HTSUS."); *see also* HQ H195716; HQ W968424; HQ H023701, dated May 29, 2009; and HQ H056377, dated August 9, 2010. Among the procedures used to achieve chemical homogeneity. *See*, *e.g.*, HQ H061203, dated August 12, 2010 (excluding merchandise from heading 1302 due to use of chromatography and other purification methods during its manufacture); and HQ 966448 ("The use of this chromatographic procedure in the preparation of these products exclude them from classification as vegetable extracts in heading 1302, HTSUS."). Our recent research confirms that chromatography is used to separate organic material for the purpose of obtaining a high degree of purity in the final product. *See* Biopolymer Engineering in Food Processing 219–20 (Vania Regina Nicoletti Telis, ed., CRC Press 2012); Robert J. Hurtubise, Encyclopedia of Chromatography 21 (Jack Cazes, ed., Taylor & Francis Group 2d. ed. 2005). We have also surveyed comparable extraction processes and found that, while chromatography may have other applications within the chemical industry, its purpose within the post-extraction process is the purification of the extract at hand. *See*, *e.g.*, U.S. Patent No. 8,968,811 (describing hydroxytrosol containing extract obtained from olives and solids containing residues of olive oil extraction).

The instant powders have all undergone purification via the application of chromatography in some form. The bilberry powder at issue in HQ 964139 is "purified by a process of column separation," a form of chromatography, while the powder in NY 814027 is subjected to unspecified "chromatographic procedures." *See* Van Nostrand's Encyclopedia of Chemistry 379 (Glenn D. Considine, ed., John Wiley & Sons, Inc. 5th ed. 2005) (defining liquid-column chromatography). Similarly, the bilberry powder in NY N219927 and blueberry powder in NY N037866 undergo, respectively, absorption by resin and elution, both of which are common steps in chromatographic or other purification processes. *See id.* at 3–4, 329, 379 (explaining absorption chromatography and the use of resin in liquid-column chromatography); *see also* HQ 966448 (characterizing cation resin isolation as a chromatographic procedure); U.S. Patent No. 20100256079 (describing eriocitrin- containing material, method for production of the eriocitrin- containing material, and food,

beverage, pharmaceutical preparation and cosmetic each comprising the erocitrin-containing material); Peter Kumpalume & Siddhartha Ghose, Chromatography: The High-Resolution Technique for Protein Separation, Isolation and Purification of Proteins 44 (ed. Rajni Hatti-Kaul, Bo Mattiasson). In all cases, the application of these procedures enables the targeted engineering of products whose chemical compositions are standardized to contain 20 to 25 percent anthocyanosides. Having been purified following extraction, the instant powders are not described by the terms of heading 1302.

We accordingly consider whether the powders can be classified in heading 2907, HTSUS, as phenols. General Note 1 to Chapter 29 provides as follows:

> Except where the context otherwise requires, the headings of this chapter apply only to:
>
> (a) Separate chemically defined organic compounds, whether or not containing impurities;
>
> (b) Mixtures of two or more isomers of the same organic compound (whether or not containing impurities), except mixtures of acyclic hydrocarbon isomers (other than stereoisomers), whether or not saturated (chapter 27)...

With regard to "chemically defined" and "impurities" as referenced in Note 1(a) to Chapter 29, the EN to Chapter 29 states as follows:

> A separate chemically defined compound is a substance which consists of one molecular species (e.g., covalent or ionic) whose composition is defined by a constant ratio of elements and can be represented by a definitive structural diagram. In a crystal lattice, the molecular species corresponds to the repeating unit cell...
>
> The term "impurities" applies exclusively to substances whose presence in the single chemical compound results solely and directly from the manufacturing process (including purification). These substances may result from any of the factors involved in the process and are principally the following:
>
> (a) Unconverted starting materials.
>
> (b) Impurities present in the starting materials.
>
> (c) Reagents used in the manufacturing process (including purification).
>
> (d) By-products.

Per Note 1(a) and the EN to Chapter 29, a substance is classifiable within Chapter 29 where it is comprised almost entirely by a single molecular structure, so long as any structural deviations, i.e., impurities, are the result of processing. *See Degussa Corp. v. United States*, 508 F.3d 1044, 1047–48 (Fed. Cir. 2007) (discussing the scope of, and applying, identical language concerning chemical impurities in the EN to Chapter 28); Richard J. Lewis, Sr., HAWLEY'S CONDENSED CHEMICAL DICTIONARY 324 (15th ed. 2007) [hereinafter Hawley's] (similarly defining compound as "a homogeneous entity where the elements have definite proportions by weight and are represented by a chemical formula"). Per Note 1(b), Chapter 29 headings also cover mixtures of isomers of organic compounds, i.e., of organic compounds

that are represented by a single chemical formula in diverse structural arrangements, that may or may not contain impurities.

Notwithstanding this allowance for impurities, it is CBP's position that there do exist limits to the proportional weights of permissible impurities in a Chapter 29 product. Specifically, any impurities cannot be so prevalent so as to marginalize the product's chemical identity and render it a chemical mixture classifiable elsewhere. *Compare* HQ 967971, dated March 2, 2006 (classifying extract with 80 percent silymarin content in heading 2932 on the grounds that the remaining 20 percent content, comprised of starting material and solvent, constituted permissible impurities) *with* HQ 966448, dated July 9, 2004 (excluding extracts containing between 6 percent and 30 percent alkaloids as well as maltodextrin and ash from heading 2939); *see also* HQ W968424, dated December 19, 2006 (excluding from a product containing "proanthocyanidin, in concentrations of 76 percent or greater to the exclusion of other constituents" from Chapter 29); *see* Hawley's, *supra*, at 685 (defining impurity as "[t]he presence of one substance in another, often in such low concentration that it cannot be measured quantitatively by ordinary analytical methods...").

Here, the instant products all contain 20 percent to 25 percent anthocyanosides, a chemically unique polyphenol within the larger class of phenols, with the remaining non-overlapping content presumably made up of chemically distinguishable impurities. Even as the most ubiquitous singularly-defined chemical compounds in these products, these anthocyanosides are present at levels well below the 80 percent purity mark that we established as satisfactory of Chapter 29, Note 1 in HQ 967971. By relative molecular weight, they are much closer to the alkaloids that account for 6 to 30 percent of the product at issue in HQ 966448, and are therefore too minimal to bring the instant products within the scope of heading 2907. We do note that the products in NY N037866 and NY N219927 contain 40 percent total polyphenols and 70 percent total phenols respectively; however, it is unclear whether these contents include single chemically defined compounds, isomers of such, or mixtures of structurally diverse chemical compounds within the phenol and polyphenol families. In any case, given that these products boast chemical compositions made up at least 30 percent of impurities, they cannot be considered products of heading 2907 or of any other heading within Chapter 29.

We lastly consider whether the instant products are classified in heading 3824. Heading 3824 provides for, among other things, "chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included." General Note 1 to Chapter 38 provides, in relevant part, that "[t]his Chapter...does not cover chemically defined elements or compounds (usually classified in Chapter 28 or 29..." Additionally, EN 38.24 states, in pertinent part, as follows:

> (B) **CHEMICAL PRODUCTS AND CHEMICAL OR OTHER PREPARATIONS**
>
> With only three exceptions... this heading does not apply to separate chemically defined elements or compounds.

> The **chemical products** classified here are therefore products whose composition is not chemically defined, whether they are obtained as by-products of the manufacture of other substances (this applies, for example, to naphthenic acids) or prepared directly.

Consistent with General Note 1 to Chapter 38 and the EN 38.24, it is CBP's practice to classify products in heading 3824 where they lack the chemical homogeneity to qualify as a product of a Chapter 29 heading, yet have been so enriched or purified so as to fall outside the scope of heading 1302. *See* HQ H195716; HQ H061203; HQ 959099, dated May 1, 1998. The subject powders, as chemical products that have been purified but nevertheless lack the requisite chemical homogeneity for classification in heading 2907, are properly classified in heading 3824.

HOLDING:

By application of GRI 1, the bilberry and blueberry extracts are classified under heading 3824, HTSUS, specifically under subheading 3824.90.9290, HTSUSA (Annotated), which provides for "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other." The general column one rate of duty is 5.0% ad valorem.

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

EFFECT ON OTHER RULINGS:

HQ 964139, dated April 19, 2002, NY N219927, dated June 27, 2012, and NY N037866, dated October 3, 2008, are hereby REVOKED in accordance with the above analysis. HQ 967972, dated March 2, 2006, and NY 814027, dated February 2, 1996, are hereby MODIFIED as set forth above in regard to the classification of the bilberry extract powder, but not to the other products at issue in HQ 967972 and NY 814027.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

CC: Dennis Awana
Inter-Orient Services
1455 Monterey Pass Road, Suite 205
Monterey Park, CA 91754

Jonathan Selzer
HerbaSway Laboratories
101 North Plains Industrial Road
Wallingford, CT 0649

Brian S. Goldstein, Esq.
Tompkins & Davidson
One Astor Plaza
1515 Broadway, 43rd Floor
New York, NY 10036–8901

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE ORIGIN MARKING OF CERTAIN BOXES OF TISSUES

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

ACTION: Notice of modification of one ruling letter and revocation of any treatment relating to the origin marking of certain boxes of tissues.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter, New York Ruling Letter (NY) N261615, dated March 11, 2015, relating to the origin marking of certain boxes of tissues. Similarly, CBP is revoking any treatment previously accorded to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 37, on September 16, 2015. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 22, 2016.

FOR FURTHER INFORMATION CONTACT: Ross Cunningham, Valuation and Special Programs Branch, at (202) 325–0034.

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 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)), a notice was published in the *Customs Bulletin*, Vol. 49, No. 37, on September 16, 2015, proposing to modify New York Ruling Letter (NY) N261615, dated March 11, 2015, pertaining to the origin marking of certain boxes of tissues. No comments were received in response to this notice.

As stated in the proposed notice, this action will cover NY N261615 as well as any other rulings on this merchandise that may exist but have been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to 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 the comment period. An importer's failure to advise CBP of substantially identical transactions, or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY N261615 in order to reflect the proper origin marking of certain boxes of tissues according to the analysis contained in HQ H263571, 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.

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

Dated: November 5, 2015

JOANNE ROMAN STUMP
Acting Director,
Commercial and Trade Facilitation

Attachment

HQ H263571
November 5, 2015
OT:RR:CTF:VS H263571 RMC
CATEGORY: Classification

DONALD S. STEIN
GREENBERG TRAURIG, LLP
2101 L ST. NW, SUITE 1000
WASHINGTON, DC 20037

Re: Modification of New York Ruling Letter (NY) N261615, dated March 11, 2015; Country of Origin Marking of Boxes of Tissue Paper; NAFTA; UKFTA

DEAR MR. STEIN:

This is in reference to New York Ruling Letter (NY) N261615 issued to you on behalf of your client, Kimberly Clark LLC, on March 11, 2015. In your ruling request, you ask CBP to confirm the country of origin of facial tissues manufactured in Canada, Mexico, Korea, or China from U.S. origin jumbo rolls of tissue paper. However, for Canada, Mexico, and Korea, you only cite to the preferential rules for Canada, Mexico, and Korea of the North American Free Trade Agreement ("NAFTA") and the U.S.-Korea Free Trade Agreement ("UKFTA"), and for China you discuss the substantial-transformation test. Therefore, we will consider this as a request for preferential tariff treatment and country of origin marking for the goods imported from Canada, Mexico and Korea, and a request for marking for China.

NY N261615 held that the country of origin of the tissues in each of the three cases would be the country where the jumbo rolls are cut into facial tissues. It has come to our attention that several errors were made in NY N261615's analysis.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the *Customs Bulletin*, Vol. 49, No. 37, on September 16, 2015, proposing to modify NY N261615 and to revoke any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

FACTS:

As described in NY N261615, you asked us to confirm the country of origin of boxes of facial tissues under three scenarios:

1. U.S. origin jumbo rolls of tissue paper are sent to Canada or Mexico and are converted into boxes of tissues. These finished products are then re-imported to the United States.
2. U.S. origin jumbo rolls of tissue paper are sent to Korea and are converted into finished boxes of tissues. These finished products are then re-imported to the United States.
3. U.S. origin jumbo rolls of tissue paper are sent to China and are converted into finished boxes of tissues. These finished products are then re-imported to the United States.

You state that the U.S. origin jumbo rolls of tissue paper are classified under subheading 4803.00, Harmonized Tariff Schedule of the United States ("HTSUS"), and that the finished boxes of tissues are classified under subheading 4818.20.00, HTSUS. In your submission, you included photographs of the jumbo rolls of tissue paper and the finished products, a diagram of the manufacturing process, and a description of each step in the manufacturing process.

ISSUE:

I. Whether the boxes of facial tissues are eligible for preferential tariff treatment under NAFTA and UKFTA.

II. What are the country-of-origin marking requirements of the boxes of facial tissue?

LAW AND ANALYSIS:

I. Eligibility for NAFTA Preference and Country of Origin Marking Requirements of Boxes of Tissues Cut in Mexico or Canada

A. Eligibility for NAFTA

The NAFTA is implemented in General Note (GN) 12, HTSUS. GN 12(a) states that goods are eligible for the NAFTA rate of duty if they originate in the territory of a NAFTA party and qualify to be marked as goods of Mexico (or Canada). GN 12(b) sets forth the methods for determining whether a good originates in the territory of a NAFTA party and provides, in relevant part:

> For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as ″goods originating in the territory of a NAFTA party" only if—
>
> (i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or
>
> (ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—
>
> (A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or
>
> (B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or
>
> (iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials.

Here, counsel states that the jumbo rolls are made from U.S. originating materials. Provided that records and a certificate of origin are available to

show that the rolls are made from originating materials, the finished boxes of tissues will be eligible for NAFTA preferential treatment under GN 12(b)(iii) as "goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials." If the rolls are not produced from U.S.-originating materials, the finished boxes of tissues may still qualify for NAFTA preference because they will meet the tariff-shift requirement per GN 12(t)48.6, which requires "[a] change to headings 4817 through 4822 from any heading outside that group, except from heading 4823." A qualifying shift occurs here because the jumbo rolls are classified under heading 4803, while the finished product is classified under heading 4818.

B. Marking Requirements

We next have to determine whether the boxes of facial tissue qualify to be marked as a product of Mexico or Canada. The hierarchy set forth in 19 C.F.R. § 102.11 is applicable to determine the country of origin marking of goods produced in countries that are a party to the NAFTA. NY N261615's analysis of the country of origin of the tissues imported from Canada or Mexico was incorrect because it did not apply the rules in 19 C.F.R. § 102. While counsel cites the GN 12 rules, those rules apply only when an importer is requesting preferential treatment under NAFTA. Goods still must qualify to be marked, and the rules contained in 19 C.F.R. § 102 must be applied.

Under 19 C.F.R. § 102.11, the country of origin for non- textile goods is determined to be the country in which:

(1) The good is wholly obtained or produced;

(2) The good is produced exclusively from domestic materials; or

(3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in [section] 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

Section 102.1(g), CBP Regulations (19 C.F.R. 102.1(g)), defines a good wholly obtained or produced as "[a] good produced in that country exclusively from goods referred to in paragraphs (g)(1) through (g)(10) of this section or from their derivatives, at any stage of production." Here, because the tissues are cut from jumbo rolls from the United States, they cannot qualify as "a good wholly obtained or produced" in either Canada or Mexico. The country of origin of the tissues thus cannot be determined under 19 C.F.R. § 102.11(a)(1).

The next step in the hierarchy is to consider whether the country of origin may be determined under section 102.11(a)(2). Under this section, the origin of the good may be based on the origin of the materials used to produce the good, provided that the good is produced exclusively from domestic materials. Section 102.1(d), CBP Regulations (19 C.F.R. § 102.1(d)), defines domestic material as "a material whose country of origin as determined under these rules is the same country as the country in which the good is produced." Because the tissues are produced from raw materials from the United States, the country of origin cannot be determined under section 102.11(a)(2). The analysis must continue to 19 C.F.R. 102.11(a) (3).

Under 19 C.F.R. § 102.11(a)(3), the country of origin of a good is the country in which "each foreign material incorporated in that good undergoes an

applicable change in tariff classification set out in § 102.20 and satisfies any other applicable requirements of that section." Section 102.1(e), CBP Regulations (19 C.F.R. § 102.1 (e)) defines "Foreign material" as "a material whose country of origin as determined under these rules is not the same country as the country in which the good is produced." Here, the foreign materials are the jumbo rolls of tissue paper from the United States, which are classified under subheading 4803.00, HTSUS. The final product, made in either Mexico or Canada, is classified under subheading 4818.20.00, HTSUS.

For goods classified under HTSUS subheading 4818.20, 19 C.F.R. § 102.20 requires a shift "from any other heading, including another heading within that group, except for a change to heading 4818 from sanitary towels and tampons, napkin and napkin liners for babies, and similar sanitary articles, of paper pulp, paper, cellulose wadding, or webs of cellulose fibers, of heading 9619." A qualifying shift occurs here because the jumbo rolls are classified under heading 4803. Because the foreign material in the tissue boxes undergoes the required tariff shift, we continue to hold, as in NY N261615, that the country of origin of the finished product will be the country where the conversion from jumbo rolls to tissue occurs (either Canada or Mexico).

II. Eligibility for UKFTA Preference and Marking Requirements of Boxes of Tissues Cut in Korea

A. Eligibility for UKFTA Preference

The requirements for eligibility for preferential tariff treatment under the UKFTA are set forth in Note 33 to the General Notes to the Harmonized Tariff System ("HTSUS") (19 U.S.C. § 1202). This note provides in pertinent part:

> (b) For the purposes of this note subject to the provisions of subdivisions (c), (d), (n) and (o) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good of a UKFTA country under the terms of this note if-
>
> (i) The good is wholly obtained or produced entirely in the territory of Korea or of the United States, or both.
>
> (ii) The good is produced entirely in the territory of Korea or of the United States, or both, and-
>
> A. Each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (o) of this note; or
>
> B. The good otherwise satisfies any applicable regional value-content or other requirements set forth in such subdivision (o); and satisfies all other applicable requirements of this note and of applicable regulations; or
>
> (iii) The good is produced entirely in the territory of Korea or of the United States, or both, exclusively from materials described in subdivisions (i) or (ii), above.

Here, counsel states that the jumbo rolls are made from U.S. originating materials. Provided that supporting documents are available to show that the rolls are made from originating materials, the finished tissue boxes will be eligible for UKFTA preferential treatment under GN 33(b)(iii) as "goods

produced entirely in the territory of Korea or of the United States or both." If the rolls are not produced from U.S.-originating materials, the finished boxes of tissues may still qualify for UKFTA preference because they will meet the tariff shift requirement in GN 33(o)48.2, which requires "change to headings 4808 through 4823 from any other heading." A qualifying shift occurs because the jumbo rolls are classified under heading 4803, while the finished product is classified under heading 4818.

B. Marking Requirements

As noted above, the tissues cut in Korea qualify for preferential treatment under UKFTA. Unlike NAFTA, however, UKFTA does not have special marking rules. NY N261615 therefore erred in applying General Note 33, which applies only in the context of determining eligibility for preference under UKFTA. The standard marking rules apply, and the finished product will be considered a product of Korea only if the jumbo rolls undergo a "substantial transformation" when they are converted into facial tissue.

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

CBP has previously found that cutting rolls of tissue to size does not constitute "substantial transformation" under 19 C.F.R. § 134.1. In Headquarters Ruling HQ 563306, dated Sept. 20, 2005, for example, we held that jumbo tissue rolls that are cut to size, folded, and packaged into gift tissue paper did not undergo a substantial transformation. Instead, that processing was considered "mere finishing operations." *See also* HQ W967997, dated Oct. 5, 2006; HQ 956875, dated Feb. 6, 1995; HQ 557462, dated Sept. 13, 1994.

Here, as in the cases cited above, cutting rolls of tissues to size constitutes "mere finishing operations," not substantial transformation. We therefore find that the country of origin of the finished tissues remains the United States, the country where the jumbo tissue rolls were produced.

III. Country of Origin of Boxes of Tissues Cut in China

NY N261615 applied the substantial-transformation test and concluded that "the jumbo rolls from the United States were substantially transformed as a result of the processing in China" and that "China is considered to be the country of origin of the boxes of tissues." Based on the substantial-transformation analysis above, we disagree. Like the tissues cut in Korea, the tissues cut in China will remain a product of the United States because they will not be substantially transformed.

We note that marking the finished boxes of tissues as products of the United States is a matter under the jurisdiction of the Federal Trade Commission. If Kimberly Clark wants to mark the finished boxes of tissues with the phrase "Made in the USA" or a similar phrase, we recommend that you contact the agency at the following address: Federal Trade Commission, Division of Enforcement, 600 Pennsylvania Ave. NW, Washington DC 20580.

HOLDING:

We hold that the finished tissues imported from Canada (or Mexico) are eligible for preferential treatment under NAFTA, and should be marked as a product of Canada (or Mexico). The finished tissues imported from Korea are eligible for preferential treatment under UKFTA, but will remain a product of the United States for country of origin marking purposes as the jumbo rolls will not be substantially transformed in Korea. Similarly, the tissues imported from China will remain a product of the United States as the jumbo rolls will not be substantially transformed in China.

EFFECT ON OTHER RULINGS:

New York Ruling Letter (NY) N261615, dated Mar. 11, 2015, is hereby modified.

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

Sincerely,

JOANNE ROMAN STUMP
Acting Director,
Commercial and Trade Facilitation

19 CFR PART 177

PROPOSED REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICIATION OF "TAPEFFITI" DESIGN GUIDE BOOK, TAPE, AND CUTTER SET

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

ACTION: Notice of proposed revocation of one ruling letters and revocation of treatment concerning the tariff classification of "Tapeffiti" design guide set which includes twelve (12) rolls of tape, one cutter, and a cardboard backed book.

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 CBP intends to revoke one ruling letter pertaining to the tariff classification of "Tapeffiti" design guide, a cardboard backed book twelve (12) rolls of pressure sensitive plastic tape, and handheld cutter packaged together as a set, under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke

any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATES: Comments must be received on or before January 22, 2016.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Regulations and Rulings, Attn: Trade and Commercial Regulations Branch, 90 K Street NE., 10th Floor, Washington, DC 20229–1177. Submitted comments may be inspected at U.S. Customs and Border Protection, 90 K Street NE, 10th floor 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: Emily Beline, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, (202) 325- 7799.

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 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 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 one ruling letter pertaining to the classification of

"Tapeffiti" design guide, twelve (12) rolls of pressure sensitive plastic tape, and handheld cutter packaged together as a set. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) N248844, dated January 15, 2014, (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 ones 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 intends to revoke any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUS. 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 N248844, CBP classified Fashion Angels' "Tapeffiti Design Guide Book" under subheading 8479.89.9899, HTSUS, which provides for "Machines and mechanical appliances having individual functions, not specified or included elsewhere (in chapter 84): other machines and mechanical appliances: Other: Other: Other: Other." It is now CBP's position that the classification was in error, and the set should be classified as a toy, under subheading 9503.00.00, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke N248844 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling (HQ) H254152, (Attachment B). 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, we will give consideration to any written comments timely received.

Dated: November 9, 2015

ALLYSON MATTANAH
For
JOANNE ROMAN STUMP
Acting Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N248844

January 15, 2014
CLA-2–84:OT:RR:NC:1:104
CATEGORY: Classification
TARIFF NO.: 8479.89.9899

MR. JOSEPH D. PATERICK
FASHION ANGELS ENTERPRISES
306 NORTH MILWAUKEE STREET
MILWAUKEE, WI 53202

RE: The tariff classification of a decal decorating set from China

DEAR MR. PATERICK:

In your letter dated December 16, 2013, you requested a tariff classification ruling. Submitted sample will be returned as per your request.

The "Tapeffiti Design Guide Book", Item 11734, is designed for use by individuals ages 6 and older. The set is comprised of the following items: a spiral bound design guide book containing illustrated instructions and cut-out sheets, 15 rolls of fashion decal tape, and a manual tape cutting device referred to as a "tape dispenser". The tape roll is placed on the cutting device's spool so that the tape can be manually pulled over the cutting channel. By manually sliding the cutting edge through the cutting channel, the tape is cut to the desired length. The tape can then be affixed to the object that is to be decorated.

In your letter, you propose that the "Tapeffiti Design Guide Book", Item 11734, be classified in subheading 4903.00.0073, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Children's picture, drawing or coloring books". However, the "Tapeffiti Design Guide Book" is marketed as a "set". The articles are imported packaged together for retail sale. No components will be added subsequent to importation. In view of these facts, consideration was given to General Rule of Interpretation 3(b) ("GRI 3(b)"). Explanatory Note X to GRI 3(b) provides that for the purpose of this rule, the term "goods put up in sets for retail sale" shall be taken to mean goods which:

(a) consist of at least two different articles, which are, prima facie, classifiable in

(b) consist of products or articles put up together to meet a specific activity; and

(c) are put up in a manner suitable for sale directly to users without repackaging (e.g. in boxes or cases or on boards).

General Rule of Interpretation ("GRI") 1, HTSUS, states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes. Goods that are, prima facie, classifiable under two or more headings, are classifiable in accordance with GRI 3, HTSUS. GRI 3(a) states in part that when two or more headings each refer to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific, even if one heading gives a more precise description of the good.

The instant decorating set consists of at least two different articles that are, prima facie, classifiable in different subheadings. The set consists of articles put up together to carry out a specific activity (i.e., decal decorating). Finally, the articles are put up in a manner suitable for sale directly to users without repacking. Therefore, the set in question is within the term ″goods put up in sets for retail sale.″ GRI 3(b) states in part that goods put up in sets for retail sale, which cannot be classified by reference to 3(a), are to be classified as if they consisted of the component which gives them their essential character. Inasmuch as no essential character can be determined, GRI 3(b) does not apply. GRI 3(c) says that, if neither GRI 3(a) nor GRI 3(b) applies, merchandise shall be classified in the heading which occurs last in numerical order among those equally meriting consideration. After reviewing your submission, this office is of the opinion that subheading 4903.00.0000, HTSUS (the book), subheading 3919.10.2055, HTSUS (the rolls of tape) and subheading 8479.89.9899, HTSUS (the cutting device) merit equal consideration.

In accordance with GRI 3(c), the applicable subheading for the "Tapeffiti Design Guide Book", Item 11734, will be 8479.89.9899, HTSUS, which provides for "Machines and mechanical appliances having individual functions, not specified or included elsewhere (in chapter 84): Other machines and mechanical appliances: Other: Other: Other: Other". The rate of duty will be 2.5 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Patricia O'Donnell at (646) 733–3011.

Sincerely,

GWENN KLEIN KIRSCHNER
Acting Director
National Commodity Specialist Division

[ATTACHMENT B]

HQ H254152
CLA-2 OT: RR: CTF: TCM: H254152 ERB
CATEGORY: Classification
TARIFF NO.: 9503.00.0073

MR. JOSEPH D. PATERICK
FASHION ANGELS ENTERPRISES
3511 W. GREEN TREE ROAD
MILWAUKEE, WI 53209

RE: Revocation of NY N248844; Tariff Classification of the Fashion Angels "Tapeffiti Design Guide Book"

DEAR MR. PATERICK:

This is in response to your correspondence, dated May 6, 2014, on behalf of Fashion Angels Enterprises (Fashion Angels), requesting that U.S. Customs and Border Protection (CBP) reconsider New York Ruling Letter (NY) N248844, dated January 15, 2014. NY N248844 pertains to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of the "Tapefffiti Design Guide" kit. We have reviewed NY N248844 and find it to be incorrect. A sample was provided for inspection and was used in this analysis. It is being returned with this ruling. This ruling revokes NY N248844.

FACTS:

In NY N248844, CBP stated the following:

> The "Tapeffiti Design Guide Book", Item 11734, is designed for use by individuals ages 6 and older. The set is comprised of the following items: a spiral bound design guide book containing illustrated instructions and cut-out sheets, 15 rolls of fashion decal tape[1], and a manual tape cutting device referred to as a "tape dispenser". The tape roll is placed on the cutting device's spool so that the tape can be manually pulled over the cutting channel. By manually sliding the cutting edge through the cutting channel, the tape is cut to the desired length. The tape can then be affixed to the object that is to be decorated.
>
> In your letter, you propose that the "Tapeffiti Design Guide Book", Item 11734, be classified in subheading 4903.00.0073, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Children's picture, drawing or coloring books". However, the "Tapeffiti Design Guide Book" is marketed as a "set". The articles are imported packaged together for retail sale. No components will be added subsequent to importation. In view of these facts, consideration was given to General Rule of Interpretation 3(b) ("GRI 3(b)"). Explanatory Note X to GRI 3(b) provides that for the purpose of this rule, the term "goods put up in sets for retail sale" shall be taken to mean goods which:
>
> (a) consist of at least two different articles, which are, prima facie, classifiable in different headings.
> (b) consist of products or articles put up together to meet a specific activity; and

[1] There are 12 rolls of tape contained in the subject merchandise.

(c) are put up in a manner suitable for sale directly to users without repackaging (e.g. in boxes or cases or on boards).

General Rule of Interpretation ("GRI") 1, HTSUS, states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes. Goods that are, prima facie, classifiable under two or more headings, are classifiable in accordance with GRI 3, HTSUS. GRI 3(a) states in part that when two or more headings each refer to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific, even if one heading gives a more precise description of the good.

The instant decorating set consists of at least two different articles that are, prima facie, classifiable in different subheadings. The set consists of articles put up together to carry out a specific activity (i.e., decal decorating). Finally, the articles are put up in a manner suitable for sale directly to users without repacking. Therefore, the set in question is within the term ″goods put up in sets for retail sale.″ GRI 3(b) states in part that goods put up in sets for retail sale, which cannot be classified by reference to 3(a), are to be classified as if they consisted of the component which gives them their essential character. Inasmuch as no essential character can be determined, GRI 3(b) does not apply. GRI 3(c) says that, if neither GRI 3(a) nor GRI 3(b) applies, merchandise shall be classified in the heading which occurs last in numerical order among those equally meriting consideration. After reviewing your submission, this office is of the opinion that subheading 4903.00.0000, HTSUS (the book), subheading 3919.10.2055, HTSUS (the rolls of tape) and subheading 8479.89.9899, HTSUS (the cutting device) merit equal consideration.

In accordance with GRI 3(c), the applicable subheading for the "Tapeffiti Design Guide Book", Item 11734, will be 8479.89.9899, HTSUS, which provides for "Machines and mechanical appliances having individual functions, not specified or included elsewhere (in chapter 84): Other machines and mechanical appliances: Other: Other: Other: Other". The rate of duty will be 2.5 percent ad valorem.

As noted above, a sample was provided to this office with the request for reconsideration. As such, this office confirms that the subject merchandise is packaged containing three items: (1) a spiral bound design book, composed of cardboard and paper, (2) twelve (12) rolls of thin plastic adhesive tape, and (3) a plastic manual tape cutting device. The packaging of the sample provided to this office states that the product is recommended for ages 6 and up.

The design book features 35 pages and is attached to the heavy duty cardboard backing via a spiral binding. It has a snap feature which allows users to secure the design book closed to the cardboard back cover. The design book contains brightly illustrated instructions (there are few verbal instructions given for the crafts depicted therein, directions are nearly all pictorial), young girls modelling items created with the tape, inspiration ideas for the user, and interactive pages (templates) upon which the user may place the tape to fill out certain patterns and subsequently cut out and play with, use, or wear. A perusal of various online stores indicates that Fashion Angels Tapeffiti brand offers a variety of similar kits, each revolving around decorating objects with the tape, and children or young girls are the targeted audience.

Each of the twelve roles of adhesive tape are three-quarters of one inch (3/4 inch) in diameter, one half an inch (1/2 inch) in width, and has 9 feet of tape. Each roll also features a different design or pattern that can be used in the manner depicted in the design book, as well as on the design pages. Refills or replacements of the tape are available for sale by Fashion Angels.

The cutter is composed of plastic, and has a small spool upon which three rolls may be held simultaneously. The user will unspool or unwind the tape and pull it over the cutting channel, slide the cutting edge through the cutting channel so the tape is cut to the desired length. The cutter is 3 1/8 inches in length and 3 1/8 inches in width. It is very lightweight and insubstantial. The cutting blade is fully enclosed and safe for a child's use, but it does not cut cleanly or evenly given the safety blade. Children or adults could use a pair of scissors to cut the tape just as easily. Furthermore, to fulfill some of ideas on the inspiration pages, children would not use the cutter at all, but would have to use scissors or another cutting device.[2]

Fashion Angels asserts that the correct classification of the subject merchandise is under subheading 4903.00.00, HTSUS, which provides for "Children's picture, drawing or coloring books."

ISSUE:

What is the tariff classification of the subject "Tapeffiti Design Guide Book," Item number 11734, which is comprised of a spiral bound design guide book, twelve rolls of fashion tape, and a manual tape cutting device, under the HTSUS.

LAW AND ANALYSIS:

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

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

3919	Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls
***	
4903	Children's picture, drawing or coloring books
***	
8479	Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof:
***	
9503	Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls; other toys; reduced-size ("scale") models and similar recreational models working or not; puzzles of all kinds.

[2] For example, wrapping a pen or pencil with the tape requires a user to unspool the tape around the pen or pencil to adhere the tape to the pen. Users would then cut the tape with scissors once the desired amount was used.

Note 4 to Chapter 95 provides the following:

> Subject to the provisions of Note 1 above[3] , heading 9503 applies, *inter alia*, to articles of this heading combined with one or more items which cannot be considered as sets under the terms of General Interpretive Rule 3(b), and which, if presented separately would be classified in other headings, provided the articles are put up together for retail sale and the combinations have the essential character of toys.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized system. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are generally indicative of the proper interpretation of these headings. *See* IT.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The ENs to 95.03 (D) elaborated on the scope of "Other toys":

> This group covers toys intended essentially for the amusement of persons (children or adults).
>
> * * *
>
> These include:
>
> (xviii) Educational toys (e.g. toy chemistry, printing, sewing and knitting sets).
>
> * * *
>
> (xx) Books or sheets consisting essentially of pictures, toys or models, for cutting out and assembly; also books containing "stand-up" or movable figures provided they have the essential character of toys...
>
> * * *
>
> Collections of articles, the individual items of which if presented separately would be classified in other headings in the Nomenclature, are classified in this heading when they are put up in a form clearly indicating their use as toys (e.g., instructional toys such as chemistry, sewing, etc., sets).
>
> Also, as provided by Note 4 to this Chapter, subject to Note 1 to this Chapter, this heading includes articles of the heading combined with one or more items which would be classified in other headings if presented separately, provided that:
>
> (a) The combined items are put up together for retail sale, but the combination cannot be considered as a set under the terms of General Interpretative Rule 3(b); and
>
> (b) The combination has the essential character of toys. Such combinations generally consist of an article of this heading and one or more items of minor importance (e.g., small promotional articles or small amounts of confectionary.)

Heading 9503, HTSUS, is the provision for "other toys". The term "toy" is not defined in the tariff. As such, CBP is tasked with determining the scope of the term by relying upon its own understanding of the term, and by

[3] Note 1 to Chapter 95 enumerates exclusions not relevant here.

consulting dictionaries, lexicons, and other reliable sources. *Medline Indus. v. United States*, 62 F.3d 1407, 1409 (Fed. Cir. 1995). "[T]he meaning of a tariff term is presumed to be the same as its common or dictionary meaning." *Brookside Veneers, Ltd. v. United States*, 847 F.2d 786, 789 (Fed. Cir. 1988) (citations omitted), *cert. denied*, 488 U.S. 943, 109 S. Ct. 369, 102 L. Ed. 2d 358 (1988).*Webster's Third New International Dictionary of the English Language Unabridged* (1981) at 2419, provides, in relevant part that "toys" are:

> 3a: something designed for amusement or diversion rather than practical use b: an article for the playtime use of a child either representational (as persons, creatures, or implements) and intended esp. to stimulate imagination, mimetic activity, or manipulative skill or nonrepresentational (as balls, tops, jump ropes) and muscular dexterity and group integration. ...

Merriam Webster's Collegiate Dictionary (1998) at 41, defines "amusement," in relevant part," as: "3: a pleasurable diversion." This common meaning of toy—an object primarily designed and used for pleasurable diversion—is consistent with judicial interpretation. *See Processed Plastic Co. v. United States*, 473 F.3d 1164, 1170 (Fed. Cir. 2006) (noting that the principal use of a "toy" is amusement, diversion, or play value rather than practicality); *Minnetonka Brands, Inc. v. United States*, 24 CIT 645, 651, ¶37, 110 F. Supp. 2d 1020, 1026 (2000) (noting that for purposes of Chapter 95, HTSUS, "an object is a toy only if it is designed and used for amusement, diversion or play, rather than practicality").

Although neither heading 9503, HTSUS nor the relevant chapter notes explicitly state that an item's classification as a "toy" is dependent upon how it is used, the courts have found inherent in the above definitions the concept that an object is a toy only if it is designed and used for diversion, amusement, or play, rather than for practical purposes. The CIT specifically concluded that heading 9503, HTSUS, is a "principal use" provision as it pertains to "toys." *See Minnetonka Brands, Inc.*, 110 F. Supp. 2d at 1026, ¶ 37 (construing 9503 as a "principal use" provision).

Because heading 9503, HTSUS in relevant part, is a "principal use" provision, classification under this provision is controlled by the principal use of goods of that class or kind to which the imported goods belong in the United States at or immediately prior to the date of importation, and the controlling use is the principal use. *See* Additional US Rule of Interpretation 1(a). The CIT has stressed that it is the principal use of the "class or kind of goods to which the imports belong[ed]," at or immediately prior to the dates of importation, "and not the principal use of the specific imports[,] that is controlling under the Rules of Interpretation." *Grp. Italglass U.S.A., Inc. v. United States*, 17 CIT 1177, 1177, 839 F. Supp. 866, 867 (1993). "Principal use" is defined as the use "which exceeds any other single use of the article." Conversion of the Tariff Schedules of the United States Annotated Into the Nomenclature Structure of the Harmonized System: Submitting Report at 34-35 (USITC Pub. No. 1400) (June 1983). Ultimately, the "class or kind" of articles considered to be "toys" under heading 9503 are articles whose principal use is for amusement, diversion, or play of children or adults. This use must exceed any other single use of that class or kind of article, such as practicality or utility.

The subject merchandise is an educational toy in accordance with the CIT's decision in *Minnetonka Brands, Inc. v. United States,* 24 C.I.T. 645, *supra.,* and is progeny. Its principal use is as a toy and the value of the items individually is subservient to the play value of all of the items used together.

As noted, the book is largely pictorial and in cases where there are step-by-step instructions, they don't number more than a few steps and are accompanied by pictures. In circumstances where the child does not follow the book exactly, the opportunity to twist or manipulate the tape into shapes or onto objects provides an opportunity for play utilizing the child's imagination and creativity. If the child does follow the instructions this play will lead to learning basic skills: design of various objects, following step-by-step directions, and creating small crafts. The child derives amusement value from the creation of the products and the amusement exceeds the utilitarian function of any of the items decorated. Completed projects or assembled crafts utilizing the tape (for example, a mask template whereby the user places tape on the guide and cuts it out with scissors from the book), will be flimsy given the material and it is unlikely the child will keep the product for very long. An object, such as a phone case or a picture frame, decorated with the tape may last longer. Furthermore, the practicality of the finished product is secondary to the play value of creating that object. *See Spring Creative Prods. Group v. United States,* 35 Int'l Trade Rep. 1955 (Ct. Int'l Trade Aug. 16, 2013). The merchandise is sold in toy stores, or alongside other items that would be recognizable as toys. For example, one large online retailer sells the product, and other similar Fashion Angels products, under its "Toys and Games" section, specifically, it is available under "Kids Arts and Crafts."

In NY H86941, dated January 24, 2002, this office distinguished among multiple activity kits for children which contained books and supplies. The "Paper Punch Art" kit contained an idea book, plastic container that held four paper punches, and colored or patterned paper to be used with the punches. There, CBP determined that the activity kit did not provide play or amusement. Conversely, the "Paper Clip Jewelry Kit" was determined to be a classic educational toy which taught manipulative play. In comparing these kits to the instant Fashion Angels kit, the Tapeffiti Design Guide provides similar amusement value as the paper clip jewelry kit because it takes advantage of a child's natural curiosity and desire to role-play at design, art, crafting, or fashion.

HQ H154039, dated May 27, 2011 is also instructive here. In classifying the "Giant Art Jar" (consisting of 26 ABC felt shapes, 15 wooden craft sticks, 40 wiggly eyes, 15 wooden buttons, 7 spools, 30 buttons of assorted shapes, confetti, 10 colored sheets of paper, 6 colors of crepe paper, white craft glue, glitter glue, craft scissors, 3 paper plates, 3 paper bags, 15 feathers, 78 assorted pom-poms, 2 ricrac, 10 pipe cleaners, sequins and 6 foam shapes) this office noted that this kit was a collection of disparate items that could be used for various crafts. A menagerie of general craft supplies is distinguishable from a kit which contains a precise amount of materials to create a single or a finite number of items or toys. Ultimately, this office ultimately classified each item in the Giant Art Jar individually.

In the instant case, the printed fashion tape and its corresponding cutter and idea book, is exclusively focused on crafts that utilize the tape in creative designs and projects depicted in the book. It also contains about the amount of tape needed for the projects described and labelled in the book. Since the

cutter is particularly flimsy, it is likely that the child would have amused him/herself decorating or creating a few items over the course of a few sittings and would subsequently discard the cutter and possibly the book, and use up the tape. Like other Tapeffiti craft kits classified as toys, it is composed of several articles, all essentially designed for the amusement and creativity of children over a short duration of time. *See* EN 95.03(D) subsection (xviii) which includes educational toys, and subsection (xx) which provides for books made for cutting out and assembly. *And see Spring Creative Prods. Group v. United States,* 35 Int'l Trade Rep. 1955 *25 - 26 (Ct. Int'l Trade Aug. 16, 2013), (citing CBP rulings classifying craft kits designed for children to create, produce or assemble articles, NY N044840, dated December 5, 2008 ("My Super Knot-a-Quilt"); NY N004742, dated January 22, 2007 ("Begin to Crochet Kit" to make a stuffed pillow, and "Crochet Fun Kit" to make a handbag or scarf); and NY J89344, dated October 7, 2003 ("Make Your Own Fleece Pillow"). *See also* NY N244536, dated August 15, 2013 (classifying "Tapeffiti Fashion Design kit" in subheading 9503.00.00).

This Tapeffiti Design Guide kit is an educational toy, consistent with CBP's prior rulings addressing similar issues. It encourages self-learning, direction following as well as fostering imagination, and supporting manipulative play value. *See* HQ H195956, dated February 27, 2012 (classifying a child's "Science Kit"). CBP has also previously classified substantially similar merchandise, that is, kits including an idea book or a design book, assorted rolls of decorative Tapeffiti tape, a tape dispenser, and in some cases, an object to decorate, as a toy. *See* NY N246510, dated October 22, 2013 (classifying a "Tapeffiti" jewelry craft kit); NY N248809, dated January 15, 2014 (classifying "Tapeffiti Eyeglass Designer" craft kit); NY N244554, dated August 20, 2013 (classifying "Tapeffiti Models to the Runway kit"); NY N244719, dated August 20, 2013 (classifying "Tapeffiti" headband craft kit); NY N244725, dated August 20, 2013 (classifying a "Tapeffiti: bracelet craft kit); As the subject merchandise is classified pursuant to GRI 1, as a "toy", analysis pursuant to GRI 3 is unnecessary.

HOLDING:

By application of GRI 1, the subject merchandise is classified under heading 9503, HTSUS. Specifically, it is provided for under subheading 9503.00.0073, HTSUSA (Annotated), which provides for "Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced scale models, working or not; puzzles of all kinds; parts and accessories thereof: "Children's products" as defined in 15 U.S.C. § 2052: Other: Labeled or determined by importer as intended for use by persons: 3 to 12 years of age." The column one duty rate is free.

EFFECT ON OTHER RULINGS:

New York Ruling Letter N248844, dated January 15, 2014, is REVOKED.
Sincerely,

JOANNE ROMAN STUMP
Acting Director
Commercial and Trade Facilitation Division

TARIFF CLASSIFICATION OF CERTAIN FLAVORED BARBECUE WOOD CHIPS CONTAINING A MIXTURE OF WOOD SHAVINGS AND A MIXTURE OF HERBS AND SPICES IN A GELATIN BASE

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 Tariff Classification of Certain Flavored Barbecue Wood Chips Containing a Mixture of Wood Shavings and a Mixture of Herbs and Spices in a Gelatin Base.

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 Customs and Border Protection (CBP) is revoking a ruling letter relating to the tariff classification of certain flavored barbecue wood chips containing a mixture of wood shavings and a mixture of herbs and spices in a gelatin base under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Vol. 49, No. 39, on September 30, 2015.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 22, 2016.

FOR FURTHER INFORMATION CONTACT: Tatiana Salnik Matherne, Tariff Classification and Marking Branch: (202) 325–0351.

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. Tile 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)), a notice was published in the *Customs Bulletin*, Vol. 49, No. 39, on September 30, 2015, proposing to revoke Headquarters Ruling Letter (HQ) 951145, dated May 28, 1992, in which CBP determined that the subject merchandise was classified under subheading 4421.90.90, HTSUS, which provided for "Other articles of wood: Other: Other." It is now CBP's position that the subject merchandise is properly classified under subheading 4401.39.40, HTSUS, which provides for "Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms: Sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms: Other: Other."

As stated in the proposed notice, this action will cover any rulings 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 the ruling identified above. 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 have advised CBP during the comment period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ 951145 in order to reflect the proper tariff classification of the subject merchan-

dise under subheading 4401.39.40, HTSUS, which provides for "Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms: Sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms: Other: Other." This revocation is pursuant to the analysis set forth in HQ H261687, which is attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by it to substantially identical transactions.

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

Dated: November 9, 2015

GREG CONNOR
for
JOANNE ROMAN STUMP,
Acting Director
Commercial and Trade Facilitation Division

Attachment

HQ H261687
November 9, 2015
CLA-2 OT:RR:CTF:TCM H261687 TSM
CATEGORY: Classification
TARIFF NO.: 4401.39.40

MR. PENNFIELD SMITH
INTERNATIONAL BARBEQUE TIME LTD.
(107) 8811 RIVER RD.
RICHMOND, B.C., CANADA V6X 1Y6

RE: Revocation of HQ 951145; Classification of flavored barbecue wood chips containing a mixture of wood shavings and a mixture of herbs and spices in a gelatin base.

DEAR MR. SMITH:

This is in reference to Headquarters Ruling Letter (HQ) 951145, issued to International Barbeque Time Ltd. on May 28, 1992, concerning tariff classification of flavored barbecue wood chips containing a mixture of wood shavings and a mixture of herbs and spices in a gelatin base. In that ruling, U.S. Customs and Border Protection ("CBP") classified the subject merchandise under heading 4421, HTSUS, which provided for "Other articles of wood." Upon additional review, we have found this classification to be incorrect. For the reasons set forth below we hereby revoke HQ 951145.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the *Customs Bulletin*, Volume 49, No. 39, on September 30, 2015, proposing to revoke HQ 951145, and revoke any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

FACTS:

HQ 951145, issued to International Barbeque Time Ltd. on May 28, 1992, describes the subject merchandise as follows:

> The product under consideration is used to flavor foods when barbecuing them. The product is composed of wood chips and combinations of herbs and spices in a gelatinous base. The product is made in several flavorings. Each product unit contains a combination of a type of wood and a mixture of herbs and spices depending on the flavoring result desired. The gelatinous base, which when wet weighs 1/2 ounce and when dry weighs 1/4 ounce, is placed on a 3 ounce bed of wood shavings and packed in a 1 inch by 5 inch aluminum pan. The pan is covered with a

paper/aluminum combination lid which is held in place by the edges of the pan which fold over the edge of the lid. There are 9 holes in the lid, approximately 1/8 inch in diameter, which are covered by a label which identifies the company and the herb/spice contents in French and English. The product is used for backyard barbecues. In order to use the product the user peels off the label to expose the holes and places the aluminum pan with its contents on the hot coals or lava rocks where it is heated. When so heated the product smolders and smokes causing the herb and spice flavoring and the smoke flavoring of the wood to be carried through the exposed holes to the food on the grill.

ISSUE:

What is the correct classification of the subject flavored barbecue wood chips containing a mixture of wood shavings and a mixture of herbs and spices in a gelatin base?

LAW AND ANALYSIS:

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

In addition, in interpreting 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 HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

4401	Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms
* * *	
4421	Other articles of wood
* * *	

0910	Ginger, saffron, turmeric (curcuma), thyme, bay leaves, curry and other spices
* * *	
3503	Gelatin (including gelatin in rectangular (including square) sheets, whether or not surface worked or colored) and gelatin derivatives; isinglass; other glues of animal origin, excluding casein glues of heading 3501

HQ 951145 classified the wood chips at issue under heading 4421, as an article of wood. Upon review, we find that the wood chips are specifically provided for in heading 4401, HTSUS, which provides for "wood in chips or particles." Accordingly, it is our position that the subject wood chips are classified in heading 4401, HTSUS. *See* New York Ruling Letter (NY) N040959, dated November 5, 2008. *See also* NY H89925, dated April 11, 2002.

Upon review, we also find that the mixture of herbs and spices at issue is classified in heading 0910, HTSUS, which provides for "ginger, saffron, turmeric (curcuma), thyme, bay leaves, curry and other spices." This is consistent with Note 1(b) to Chapter 9, which provides that mixtures of the products of headings 0904 to 0910 are to be classified as follows: (b) mixtures of two or more of the products of different headings are to be classified in heading 0910.[1] Moreover, we also find that the gelatin base is classified in heading 3503, HTSUS, which provides for "gelatin (including gelatin in rectangular (including square) sheets, whether or not surface worked or colored) and gelatin derivatives; isinglass; other glues of animal origin, excluding casein glues of heading 3501."

As discussed above, the subject merchandise is composed of a mixture of wood shavings, herbs and spices in a gelatin base. In this regard, GRI 2(b) states, in pertinent part, that the classification of goods consisting of more than one material or substance shall be according to the principles of GRI 3.

GRI 3 states that, when goods are *prima facie* classifiable under two or more headings, classification shall be effected as follows:

> (a) ...when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods...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.

[1] Although HQ 951145 does not specify which spices are included in the subject mixture, we find that the mixture is classified in heading 0910, HTSUS, consistent with Note 1(b) to Chapter 9, discussed above.

(b) Mixtures, composite goods consisting of different materials or made up of different components,...which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

Inasmuch as the instant merchandise qualifies as a composite good with separable components (wood chips, mixture of herbs, spices and gelatin base), it must be classified accordingly. If imported alone, the wood chips would be classified under heading 4401, HTSUS. The mixture of herbs and spices, if imported separately, would be classified under heading 0910, HTSUS. Finally, the gelatin base, if imported separately, would be classified under heading 3503, HTSUS.

As the instant merchandise is a composite good, we must apply GRI 3(b). Under GRI 3(b), the merchandise must be classified as if it consisted of the component which gives the merchandise its essential character. The term "essential character" is not defined within the HTSUS, GRIs or ENs. However, EN VIII to GRI 3(b) gives guidance, stating that: "[T]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the good."

In the instant case, the role of the gelatin base in relation to the use of the subject merchandise is not significant. Without the gelatin, which would serve no essential function if used alone, the herbs and the spices, together with the wood chips, would serve the essential purpose of the subject merchandise. Since the herbs and the spices, as well as the wood chips, provide flavoring, which is the primary purpose, we cannot say which one of these products gives the subject merchandise its essential character. Therefore, we must next apply GRI 3(c), which provides as follows: "When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration." Since the wood chips are classified under heading 4401, HTSUS, which occurs last in numerical order, we find that the subject merchandise should also be classified under this heading.

HOLDING:

By application of GRI 3(c), we find that the subject merchandise is classified under heading 4401, HTSUS. Specifically, it is classified in subheading 4401.39.40, HTSUS, which provides for "Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms: Sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms: Other: Other." The 2015 column one, general rate of duty is free.

EFFECT ON OTHER RULINGS:

HQ 951145, dated May 28, 1992, is hereby REVOKED.

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

Sincerely,

GREG CONNOR
for
JOANNE ROMAN STUMP,
Acting Director
Commercial and Trade Facilitation Division

19 CFR PART 177

REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF FLY-TRAPPING GLUE BOARDS

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

ACTION: Notice of Revocation of One Ruling Letter and Revocation of Treatment Relating to the Tariff Classification of Fly-Trapping Glue Boards.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning tariff classification of fly-trapping glue boards under the Harmonized Tariff Schedule of the

United States (HTSUS). Similarly, CBP to revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 39, on September 30, 2015. No comments supporting the proposed revocation were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 22, 2016.

FOR FURTHER INFORMATION CONTACT: Nicholai C. Diamond, Tariff Classification and Marking Branch, at (202) 325–0292.

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 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, a notice was published in the *Customs Bulletin*, Vol. 49, No. 39, on September 30, 2015, proposing to revoke one ruling letter pertaining to the tariff classification of fly-trapping glue boards. As stated in the proposed notice, this action will cover New York Ruling Letter ("NY") N238867, dated March 11, 2013, as well as any rulings on this merchandise which may exist, but have not been specifically identified. CBP has

undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment 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 the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In NY N238867, CBP classified an adhesive-coated cardboard strip designed for the trapping of flies in heading 3808, HTSUS, specifically in sub-heading 3808.91.50, HTSUS, which provides for "Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers): Other: Insecticides: Other." CBP has reviewed NY N238867 and has determined the ruling letter to be in error. It is now CBP's position that the glue board described in NY N238867 is properly classified, by operation of GRIs 1 and 6, in heading 3808, HTSUS, specifically in subheading 3808.91.10, HTSUS, which provides for "Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers): Other: Insecticides: Fly ribbons (ribbon fly catchers)."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N238867 and revoking any other ruling not specifically identified to reflect the tariff classification of the subject merchandise according to the analysis contained in Headquarters Ruling Letter ("HQ") H261067, set forth as Attachment "A" to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: November 9, 2015

ALLYSON MATTANAH
for
JOANNE ROMAN STUMP
Acting Director,
Commercial & Trade Facilitation Division

Attachment

HQ H261067
November 9, 2015
CLA–2 OT:RR:CTF:TCM H261067 NCD
CATEGORY: Classification
TARIFF NO.: 3808.91.1000

LIZ GANT
SAMUEL SHAPIRO & CO.
100 NORTH CHARLES STREET SUITE 1200
BALTIMORE, MD 21201

Re: Revocation of NY N238867; Classification of Zap N Trap Glue Board Refills from China

DEAR MS. GANT:

This is in response to your letter of December 10, 2014, on behalf of Clark Associates, Inc. ("Clark Associates"), requesting reconsideration of New York Ruling Letter (NY) N238867, dated March 11, 2013. In NY N238867, U.S. Customs and Border Protection (CBP) classified a Zap N Trap Glue Board Refill ("glue board") in subheading 3808.91.50 of the Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers): Other: Insecticides: Other." We have determined that NY N238867 is incorrect and, for the reasons set forth below, are revoking that ruling. We are also enclosing with this letter samples of the subject glue board and similar items that you submitted for our inspection.

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 of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 39, on September 30, 2015. No comments were received in response to the notice.

FACTS:

In NY N238867, CBP stated, with regard to the subject glue boards, as follows:

"The subject product is called the Zap N Trap Glue Board Refill. The Refills are used in an 18 Watt insect trap. They are imported in packs containing 6 refills."

In your December 10, 2014 letter, you describe the subject merchandise as follows:

> "The subject products are Zap N Trap Glue Board Refills, items numbers 605GBV18 and 605GBV36.[1] 605GBV18 is a six pack of glue boards sized 11 3/8 inches by 5 inches and is a part of the 18 watt Zap N Trap Insect Trap/Bug Zapper Wall Sconce...

[1] Because NY N238867 classified only the 605GBV18, the scope of this ruling is limited to classification of that model of glue board, and does not extend to classification of the 605GBV36. However, we note that the two models are substantially similar in design and differ only in size.

> The Zap N Traps are for use in food operations. The sconce is mounted on a wall with a UV bulb behind it intended to attract insects. The glue board mounts behind the sconce cover. As insects are attracted to the light, they become trapped on the glue board. The user is able to open the sconce cover to remove the board and insert a replacement.
>
> The glue boards do not contain any chemicals or scent additives to lure insects to the trap. They are sheets of paperboard with an adhesive on one side. The boards come with a release sheet which is peeled off to expose the adhesive. The insects will stick to the adhesive when they fly to the light."

We have inspected the sample of the subject glue board and found that it consists of a 19.75 inch by 5.25 inch rectangular cardboard paper strip. It is slightly concaved in shape and is covered on the convex side, but not on the concave side, with adhesive material.[2]

ISSUE:

Whether the merchandise at issue is properly classified in subheading 3808.91.10, HTSUS, as a fly ribbon, in subheading 3808.91.50, HTSUS, as an "other insecticide," or in subheading 8543.90.88, HTSUS, as an "other part" of an electrical machine, having individual functions, not specified or included elsewhere in Chapter 85.

LAW AND ANALYSIS:

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. GRI 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 Harmonized Commodity Description and Coding System Explanatory Notes (ENs), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The 2015 HTSUS provisions under consideration are as follows:

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[2] We note that the glue board dimensions reported in your December 10, 2014 letter (11.375″ x 5″) differ from the dimensions of the glue board sample (19.75″ x 5.25″) you submitted. However, this discrepancy does not affect classification of the subject glue boards.

3808	Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers):
	Other:
3808.91	Insecticides:
3808.91.10	Fly ribbons (ribbon fly catchers).
3808.91.50	Other.

8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
8543.90	Parts:
	Other:
	Other:
8543.90.88	Other.

In your December 10, 2014 letter, you assert that because the subject glue boards are "a part of the Zap N Trap system," they are properly classified in heading 8543 as parts of electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85. When considering classification of a particular product in a "parts" provision of the HTSUS, we must apply AUSRI 1(c), which states as follows:

> In the absence of special language or context which otherwise requires—
>
> (c) a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for "parts" or "parts and accessories" shall not prevail over a specific provision for such part or accessory...

Pursuant to AUSRI 1(c), the subject glue boards are only classifiable as parts if it cannot be established that they are *prima facie* classifiable in a heading that specifically provides for them. *See* Headquarters Ruling Letter (HQ) 967233, dated February 18, 2005 (citing *Mitsubishi Int'l Corp. v. United States*, 182 F.3d 884 (Fed. Cir. 1999), *Sharp Microelectronics Tech., Inc. v. United States*, 122 F.3d 1446 (Fed. Cir. 1997), and *Nidec Corp. v. United States*, 861 F. Supp. 136 (Ct. Int'l Trade 1994), *aff'd* 68 F.3d 1333 (Fed. Cir. 1995)). We therefore initially consider whether the subject glue boards are specifically described by heading 3808, HTSUS.

Heading 3808 describes, *inter alia*, "Insecticides...and similar articles, put up in forms or packings for retail sale or as preparations or articles (for example, sulphur-treated bands, wicks and candles, and fly-papers)." EN 38.08 provides, in pertinent part, as follows:

> This heading covers a range of products...intended to destroy...insects...
>
> **These products are classified here in the following cases only:**
>
> ...

(3) When they are put up in the form of **articles** such as...fly-papers (including those coated with glue not containing poisonous matter)...

Heading 3808 specifically provides for "fly-paper," but this term is left undefined in the HTSUS.[3] When a tariff term is not defined in either the Nomenclature or its legislative history, "the term's correct meaning is its common meaning." *Mita Copystar America 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 America 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*, 69 C.C.P.A. 128, 673 F.2d 1268, 1271 (1982); *Simod* at 1576.

The Oxford Online Dictionary defines fly paper as "[s]ticky, poison-treated strips of paper that are hung indoors to catch and kill flies," and the Merriam-Webster Online Dictionary defines it as "a long piece of sticky paper that is used for catching and killing flies" and as "paper coated with a sticky often poisonous substance for killing flies." EN 38.08 is consistent with these definitions insofar as it suggests that fly paper may be covered with glue, but it counsels inclusion of fly paper in heading 3808 where it lacks poisonous matter. Moreover, we have previously classified fly-catching paper strips in heading 3808 where these strips were coated with non-poisonous adhesive. *See* HQ H563064, dated October 8, 2004 (classifying cardboard strips coated with non-poisonous, fly-trapping adhesive in heading 3808); and NY A82387, dated April 22, 1996 (determining that adhesive-coated paper designed to catch flies is properly classified in heading 3808). We accordingly conclude, in considering dictionary definitions of fly paper, the relevant EN, and CBP precedent *in toto*, that fly paper consists of adhesive-covered paper strips designed to catch or kill flies, irrespective of whether the strips contain poison.

The instant glue boards consist of cardboard paper strips that are coated on one side with adhesive. As you state in your December 10, 2014 letter, the glue boards are designed to trap and kill flies. We recognize that, as you point out in your letter, the glue boards do not contain any chemicals or scent additives. However, heading 3808 does not require that fly-papers contain

[3] As explained by EN 38.08, heading 3808 more specifically provides for fly paper put up in the form of an article. We have consistently ruled that, in its narrowest sense, the term "article" extends to any manufactured thing or product. *See* HQ H206081, dated October 11, 2012; HQ H236523, dated July 2, 2014; HQ H186959, dated May 10, 2012; HQ H173037, dated March 14, 2012; and HQ 967354, dated January 26, 2005; *see also Precision Specialty Metals v. U.S.*, 116 F. Supp. 2d 1350, 1362 (Ct. Intl. Trade 2000) ("In a tariff sense, the term 'articles' is sufficiently comprehensive to include...'almost every separate substance or material, whether as a member of a class, or as a particular substance or commodity,' except where the Congress has indicated that the term shall have a narrower signification."). Fly strips are clearly manufactured products, and can therefore be described as put up in the form of an article when imported. *See* HQ H563064 ("Relevant 38.08 ENs include within that heading goods put up in the form of articles such as...fly-papers (including those coated with glue not containing poisonous matter. The facts presented indicate that the glue board meets the EN description...").

such additives, and EN 38.08 suggests that fly-strips containing merely glue remain within the scope of heading 3808. Consequently, we find that the glue boards are "fly-strips" as described by heading 3808. Because they are in turn excluded, by operation of AUSRI 1(c), from classification as parts in heading 8543, HTSUS, the glue boards are properly classified in heading 3808.

In your December 10, 2014 letter, you cite NY 885109, dated April 21, 1993, as support for your contention that the glue boards are properly classified in heading 8543. NY 885109 involved classification of an entire trap and monitoring system that was comprised of a metal housing with a baked enamel finish, a U/V resistant board with a sticky glue surface, and multiple U/V tubes. Thus, unlike the instant glue boards, the product at issue in that case was comprised only in part of an adhesive strip. CBP classified that article in heading 8543 as an "other" machine or apparatus, rather than as a part thereof, and therefore was not obligated to consider AUSRI 1(c) in its ruling. In effect, NY 885109 does not conflict with CBP's determination in NY N238867 that the instant glue boards are classifiable in heading 3808.

However, we do find NY N238867 to be in error with regard to classification of the glue boards at the subheading level. Because the glue boards are a form of fly paper, a term that is interchangeable with fly ribbons, they are specifically described by subheading 3808.91.10, HTSUS, which provides for "Fly ribbons (ribbon fly catchers)." Consistent with CBP precedent, the glue boards are thus properly classified in that subheading, rather than as "other insecticides" in the basket subheading 3808.91.50, HTSUS. *See* HQ H563064 (concluding that a glue board is properly classified in subheading 3808.10.10); and NY A82387 (classifying paper coated with adhesive in subheading 3808.10.10).

HOLDING:

By application of GRIs 1 and 6, the instant glue boards are classified in heading 3808, HTSUS, specifically subheading 3808.91.1000, HTSUS (Annotated), which provides for "Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers): Other: Insecticides: Fly ribbons (ribbon fly catchers)." The column one, general rate of duty is 2.8% *ad valorem*.

This product may be subject to the requirements of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), which are administered by the U.S. Environmental Protection Agency, Office of Pesticide Programs. Information on the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) can be obtained by contacting the National Pesticide Information Center (NPIC) at 1–800–858–7378, or by visiting the EPA website at www.epa.gov.

Duty rates are provided for convenience only 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 www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY N238867, dated March 11, 2013, is hereby REVOKED in accordance with the above analysis.

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

Sincerely,

ALLYSON MATTANAH
for
JOANNE ROMAN STUMP
Acting Director,
Commercial & Trade Facilitation Division

WITHDRAWAL OF NOTICE OF PROPOSED REVOCATION OF A RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF WORKED GLASS BALLS FROM GERMANY

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

ACTION: Withdrawal of Notice of Proposed Revocation of a Ruling Letter and Proposed Revocation of Treatment Relating to the Classification of Worked Glass Balls.

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 CBP is withdrawing the notice of proposed revocation of a ruling letter concerning the tariff classification of worked glass balls under the Harmonized Tariff Schedule of the United States (HTSUS).

Notice of CBP's intent to revoke New York Ruling Letter ("NY") M87022 (Dec. 2, 2006) was first published in the Customs Bulletin and Decisions Vol. 49, November 4, 2015, No. 44 (this issue of the Customs Bulletin was incorrectly dated November 11, 2015). We are withdrawing this notice because the notice of proposed revocation of NY M87022 was erroneously published.

FOR FURTHER INFORMATION CONTACT: Dwayne S. Rawlings, Tariff Classification and Marking Branch: (202) 325–0092.

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 amends 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 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is withdrawing the notice of proposed revocation of a ruling letter pertaining to the tariff classification of worked glass balls. In this withdrawal, CBP is specifically referring to the notice of proposed revocation of NY M87022 published in the Customs Bulletin and Decisions Vol. 49, November 4, 2015, No. 44. The proposed notice was erroneously published. Therefore, we are withdrawing the notice of proposed revocation of NY M87022. It is also noted that the November 4 issue of the Customs Bulletin was incorrectly dated November 11, 2015.

Dated: November 10, 2015

IEVA K. O'ROURKE
for
JOANNE ROMAN STUMP
Acting Director
Commercial and Trade Facilitation Division

PROPOSED MODIFICATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF A CAST SOCK

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

ACTION: Notice of Proposed Modification of a Classification Ruling Letter and Revocation of Treatment Relating to the Classification of a Cast Sock.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is proposing to modify one ruling letter relating to the classification of a cast sock. CBP is also proposing to revoke any treatment previously accorded by it to substantially identical merchandise.

DATES: Comments must be received on or before January 22, 2016.

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 St., NE, 10th Floor, Washington, DC 20229–1179. 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: Michelle Garcia, Tariff Classification and Marking Branch, at (202) 325–1115.

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 CBP to provide the public with improved information concerning the trade commu-

nity'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, this notice advises interested parties that CBP is proposing to revoke a ruling letter pertaining to the tariff classification of a cast sock. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") NY N183637, dated October 4, 2011 (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 two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the 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 proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this 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 decision on this notice.

In NY N183637, CBP classified merchandise consisting of a cast cover under heading 6115, HTSUS, specifically under subheading 6115.96.9020, HTSUS, which provides for "Panty hose, tights, stockings, socks and other hosiery, including graduated compression hosiery (for example, stockings for varicose veins) and footwear without applied soles, knitted or crocheted: Other: Of synthetic fibers: Other."

It is now CBP's position that the merchandise described in NY N183637, is properly classified, by operation of GRI 1, under heading 9021, HTSUS, specifically under subheading 9021.10.00, HTSUS, which provides for "Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial

parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof: Orthopedic or fracture appliances, and parts and accessories thereof."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY N183637, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H194697, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: November 5, 2015

ALLYSON MATTANAH
for
JOANNE ROMAN STUMP
Acting Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N183637

October 4, 2011
CLA-2–61:OT:RR:NC:N3:348
CATEGORY: Classification
TARIFF NO.: 6115.96.9020; 6404.19.70

MR. JOHN NOURIJANIAN
ARMEN CARGO SERVICES
150–36 182ND STREET
SPRINGFIELD GARDENS, NY 11413

RE: The tariff classification of a cast sock and thermal heat slipper from Hong Kong

DEAR MR. NOURIJANIAN:

In your letter dated August 30, 2011, on behalf of your client, Now and New Comfort Inc., you requested a tariff classification ruling. The samples are being returned to you as requested.

The submitted sample is Style CAST SOCK #2556 constructed of knit 100% polyester fleece fabric. The CAST SOCK is an ankle length sock. It is used to cover the foot while wearing a cast. The ankle portion of the sock has a hook and loop closure that secures the item to the wearer's foot. The toe portion of the sock has a sewn in padded cushion.

The submitted sample is Therma Heat Slipper #2284 is an indoor slipper with an outer sole of rubber or plastics. The upper, which covers the ankle, is made of textile fleece and has a hook and loop closure above the ankle which secures the slipper to the wearer's foot.

The applicable subheading for Style CAST SOCK #2556 will be 6115.96.9020, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Other: Of synthetic fibers: Other: Other, Other." The rate of duty will be 14.6% ad valorem.

The applicable subheading for Therma Heat Slipper #2284 will be 6404.19 70, HTSUS, which provides for footwear with outer soles of rubber/plastics, leather or composition leather and uppers of textile materials: other: other: valued over $3 but not over $6.50/pair: other. The rate of duty will be 90 cents/pr + 37.5 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Rosemarie Hayward at (646) 733–3064.

Sincerely,

ROBERT B. SWIERUPSKI
Director
National Commodity Specialist Division

[ATTACHMENT B]

HQ H194697
CLA-2: OT:RR:CTF:TCM H194697 MG
CATEGORY: Classification
TARIFF NO.: 6404.19.79; 9021.10.00

DEBRA READING
NOW AND NEW COMFORT, INC.
294 MALLARD POINT UNIT C
BARRINGTON, IL 60010

RE: Proposed Modification of NY N183637, dated October 4, 2011; tariff classification of a cast sock

DEAR MS. READING:

This is in response to your letter, dated October 13, 2011, in which you have requested reconsideration on behalf of Now and New Comfort, Inc., of New York Ruling Letter (NY) N183637, dated October 4, 2011, as it pertains to the classification under the Harmonized Tariff Schedule of the United States ("HTSUS"), of the "BRRPAW FOOT CAST COVER" ("cast cover") and the "BRRPAW THERMA-HEAT SLIPPER" ("heat slipper"). Samples of these two items were submitted with your request and are being returned. We have reviewed N183637 and find it to be in error with respect to the "BRRPAW FOOT CAST COVER". Our decision is set forth below.

FACTS:

NY N183637 states the following:

> The submitted sample is Style CAST SOCK #2556 constructed of knit 100% polyester fleece fabric. The CAST SOCK is an ankle length sock. It is used to cover the foot while wearing a cast. The ankle portion of the sock has a hook and loop closure that secures the item to the wearer's foot. The toe portion of the sock has a sewn in padded cushion.
>
> The submitted sample is Therma Heat Slipper #2284 is an indoor slipper with an outer sole of rubber or plastics. The upper, which covers the ankle, is made of textile fleece and has a hook and loop closure above the ankle which secures the slipper to the wearer's foot.

NY N183637 classified the BRRPAW FOOT CAST COVER (identified in the ruling as the CAST SOCK #2556) in subheading 6115.96.90, HTSUS, which provides for "Panty hose, tights, stockings, socks and other hosiery, including graduated compression hosiery (for example, stockings for varicose veins) and footwear without applied soles, knitted or crocheted: Other: Of synthetic fibers: Other."

NY N183637 classified the BRRPAW THERMA-HEAT SLIPPER (identified in the ruling as the Therma Heat Slipper #2284) in 6404.19.70, HTSUS, which provides for "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: Footwear with outer soles of rubber or plastics: Other: Other: Valued over $3 but not over $6.50/pair: Other.[1] "

[1] Subheading 6404.19.70, HTSUS (2011) is now subheading 6404.19.79, HTSUS (2015). The rate of duty remains unchanged.

You request that we reconsider our classification of these items as orthopedic appliances, and parts and accessories thereof, under subheading 9021.10.00, HTSUS, as they are used for medical problems.

ISSUE:

Whether the cast cover is classified as socks and other hosiery, in heading 6115, HTSUS, or whether it is provided for as parts and accessories of orthopedic appliances, in heading 9021, HTSUS.

Whether the heat slipper is classified as other footwear with outer soles of rubber/plastics, in heading 6404, HTSUS, or whether it is provided for as parts and accessories of orthopedic appliances, in heading 9021, HTSUS.

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 GRI may then be applied.

In addition, in interpreting 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 HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

6404	Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials:
	Footwear with outer soles of rubber or plastics:
6404.19	Other:
	Other:
	Valued over $3 but not over $6.50/pair:
	Other:
6404.19.79	Other.
* * *	
6115	Panty hose, tights, stockings, socks and other hosiery, including graduated compression hosiery (for example, stockings for varicose veins) and footwear without applied soles, knitted or crocheted:
	Other:
6115.96	Of synthetic fibers:
6115.96.90	Other:
* * *	
9021	Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof:

9021.10.00	Orthopedic or fracture appliances, and parts and accessories thereof.

* * *

To determine whether the subject merchandise is classified in heading 9021, HTSUS, we first consider whether they are "orthopedic appliances" within the meaning of Note 6 to Chapter 90, which provides as follows:

For the purposes of heading 9021, the expression "*orthopedic appliances*" means appliances for:

(a) Preventing or correcting bodily deformities; or

(b) Supporting or holding parts of the body following an illness, operation or injury.

Orthopedic appliances include footwear and special insoles designed to correct orthopedic conditions, provided that they are either (1) made to measure or (2) mass-produced, entered singly and not in pairs and designed to fit either foot equally.

The ENs to heading 9021 state, in pertinent part, the following:

Orthopaedic appliances are defined in Note 6 to this Chapter. These are appliances for:

-Preventing or correcting bodily deformities; or

-Supporting or holding parts of the body following an illness, operation or injury.

They include:

(1) Appliances for hip diseases (coxalgia, etc.).

(2) Humerus splints (to enable use of an arm after resection), (extension splints).

(3) Appliances for the jaw.

(4) Traction, etc., appliances for the fingers.

(5) Appliances for treating Pott's disease (straightening head and spine).

(6) Orthopaedic footwear and special insoles designed to correct orthopaedic conditions, provided that they are either (1) made to measure or (2) mass-produced, presented singly and not in pairs and designed to fit either foot equally.

(7) Dental appliances for correcting deformities of the teeth (braces, rings, etc.).

(8) Orthopaedic foot appliances (talipes appliances, leg braces, with or without spring support for the foot, surgical boots, etc.).

(9) Trusses (inguinal, crural, umbilical, etc., trusses) and rupture appliances.

(10) Appliances for correcting scoliosis and curvature of the spine as well as all medical or surgical corsets and belts (including certain supporting belts) characterised by:

(a) Special pads, springs, etc., adjustable to fit the patient.

(b) The materials of which they are made (leather, metal, plastics, etc.); or

(c) The presence of reinforced parts, rigid pieces of fabric or bands of various widths.

The special design of these articles for a particular orthopaedic purpose distinguishes them from ordinary corsets and belts, whether or not the latter also serve to support or hold.

(11) Orthopaedic suspenders (other than simple suspenders of knitted, netted or crocheted materials, etc.).

* * *

Your letter states that the cast cover keeps the toes warm and protected while protecting the cast from dirt, grime and harmful objects. Upon examination of the sample, we find that the cast cover under consideration is designed to cover a wearer's foot while wearing a cast. The retail packaging described the item as follows:

> The BRRPAW FOOT CAST WRAP is a patented cast cover which keeps the toes and overall foot warm (silver lining technology) while having a cast in place. Foot casts are molded around the diameter of the break of the foot and will always have an opening for the toes. The BRRPaw Foot cast Wrap keeps the toes warm and protected as well as allowing the consumer the ability to keep the cast protected from dirt, grime and harmful objects.

Given its design, the cast cover at issue is only suitable to be worn with a cast, which meets the terms of Note 6 to Chapter 90, HTSUS, as an orthopedic appliance designed to support parts of the body following an injury. The instant merchandise is sold individually and not in pairs and is designed to fit either foot equally. Its construction is such that it would only be used over a casted leg to provide warmth to the foot. Therefore, it is suitable for use as an accessory solely or principally with the orthopedic appliances provided for in heading 9021, HTSUS[2] . *See*, NY K86171, dated May 27, 2004 and NY K87491, dated July 6, 2004.

Based on the foregoing, we find that the cast cover meets the terms of heading 9021, HTSUS, as an accessory used solely or principally with the

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[2] The courts have considered the scope of the term "accessories", and have found that although the HTSUS does not define the term "accessory", "the language of the HTSUS reflects the common understanding that accessories must be 'of' or 'to' another thing." *Rollerblade, Inc. v. United States* ("Rollerblade"), 116 F. Supp. 2d 1247 (CIT 2000), aff'd 282 F.3d 1349, 1351 (C.A.F.C. 2002). The Court of Appeals clarified that an accessory "must be 'of' or 'to' the article ... listed in the heading, not 'of' or 'to' the activity ... for which the article is used." *Rollerblade*, 282 F.3d 1349, 1351. In subsequent rulings, CBP has added that an accessory is generally an article that is not necessary to enable the goods with which it is used to fulfill their intended function. An accessory must be identifiable as being intended solely or principally for use with a specific article. Accessories are of secondary or subordinate importance, not essential in and of themselves. They must, however, somehow contribute to the effectiveness of the principal article (e.g., facilitate the use or handling of the principal article, widen the range of its uses, or improve its operation). See, e.g., HQ H244547, dated March 28, 2014; HQ H171296, dated November 2, 2011; HQ H068286, dated November 19, 2010; HQ 966736, dated November 17, 2003; HQ 966354, dated June 18, 2003.

orthopedic appliances provided for in the heading and is specifically provided for in subheading 9021.10.00, HTSUS, which provides for "Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof: Orthopedic or fracture appliances, and parts and accessories thereof."

With regard to the heat slipper, your letter states that it is a patented slipper designed to increase and sustain heat to consumers who have been diagnosed with diabetes and those who have inherent problems with poor circulation. The retail packaging describes this item as follows:

> The BRR Paw Therma-Heat Slipper is a patented slipper which has been designed to aid in increasing and sustaining heat to the feet of consumers who have been diagnosed with diabetes and/or for those who have inherent problems with poor circulation by providing a silver lining technology which accelerates and sustains heat to the lower foot extremities. Diabetes affects the body's blood circulation which in turn affects the feet which can become cold due to this lack of blood flow. The BRR Paw Therma-Heat Slipper's silver lining promotes accelerated and sustained heat to the feet as well as protects the feet from sores, cuts, abrasions, and infections. The BRR Paw Therma-Heat Slipper enables consumers who have been treated for diabetes, arthritis, bunions or other common foot ailments to become more active without sacrificing their health due to lack of protections.

We note that, unlike the cast cover, the heat slipper is sold in pairs. We further note that its design is not suitable for use as an accessory solely or principally with the orthopedic appliances provided for in heading 9021, HTSUS.

Furthermore, the heat slipper does not prevent or correct bodily deformities and does not support or hold parts of the body following an illness, operation or injury within the meaning of Note 6 to Chapter 90, HTSUS. Although you assert that the subject heat slipper is designed to provide heat and assist with circulation, we find that it is not "ejusdem generis" or "of the same kind" of merchandise as orthopedic appliances listed in heading 9021, HTSUS. In this regard, we note that the heat slipper at issue is not similar to any of the exemplars covered by the ENs to heading 9021, HTSUS.

In accordance with the foregoing, we find that since the subject heat slipper is not "ejusdem generis" with the orthopedic appliances provided for in heading 9021, HTSUS, it is not classified in this heading. It is provided for in heading 6404 and it is specifically provided for in subheading 6404.19.79, which provides for "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: Footwear with outer soles of rubber or plastics: Other: Other: Valued over $3 but not over $6.50/pair: Other." The rate of duty is 90 cents/pr + 37.5 percent, *ad valorem*.

HOLDING:

By application of GRI 1, the subject cast cover is provided for in heading 9021, HTSUS, which provides for "Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability;

parts and accessories thereof:. It is specifically provided for in subheading 9021.10.0000, HTSUSA (Annotated), which provides for "Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof: Orthopedic or fracture appliances, and parts and accessories thereof." The 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 World Wide Web, at *http://www.usitc.gov.tata/hts/*.

EFFECT ON OTHER RULINGS:

NY N183637, dated October 4, 2011, is hereby MODIFIED as set forth herein with respect to the classification analysis of the "BRRPAW FOOT CAST COVER" (identified in the ruling as the CAST SOCK #2556). The classification of the "BRRPAW THERMA-HEAT SLIPPER" (identified in the ruling as the Therma Heat Slipper #2284) is not affected by this modification.

Sincerely,

JOANNE ROMAN STUMP
Acting Director
Commercial and Trade Facilitation Division