

U.S. Customs and Border Protection



RECEIPT OF APPLICATION FOR “LEVER-RULE” PROTECTION

AGENCY: Customs & Border Protection, Department of Homeland Security.

ACTION: Notice of receipt of application for “Lever-rule” protection.

SUMMARY: Pursuant to 19 CFR §133.2(f), this notice advises interested parties that Customs & Border Protection (CBP) has received an application from Arla Foods amba seeking “Lever-rule” protection for a federally registered and recorded trademark.

FOR FURTHER INFORMATION CONTACT: Alaina van Horn, Intellectual Property Rights & Restricted Merchandise Branch, Regulations & Rulings, Office of International Trade (202) 325–0083.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 CFR §133.2(f), this notice advises interested parties that CBP has received an application from Arla Foods amba seeking “Lever-rule” protection. Protection is sought against the importation of cream and processed cheese products not authorized for sale in the United States that bear the Arla Foods amba “PUCK” trademark, (U.S. Trademark Registration No. 1,940,389; CBP Recordation No. TMK 10–00169). In the event that CBP determines the cream and processed cheese products under consideration are physically and materially different from the Arla Foods amba cream and processed cheese products authorized for sale in the United States, CBP will publish notice in the *Customs Bulletin*, pursuant to 19 CFR §133.2(f), indicating that the above-referenced trademark is entitled to “Lever-rule” protection with respect to those physically and materially different Arla Foods amba cream and processed cheese products.

Dated: July 6, 2010

CHARLES R. STEUART, CHIEF
Intellectual Property Rights & Restricted Mer-
chandise Branch
Regulations & Rulings
Office of International Trade

**ACCREDITATION AND APPROVAL OF INTERTEK USA,
INC., AS A COMMERCIAL GAUGER AND LABORATORY**

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

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 109 Sutherland Drive, Chickasaw, AL 36611, has been approved to gauge and accredited to test petroleum and petroleum products in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

*[http://cbp.gov/xp/cgov/irnpportoperations_support/
labs_scientific_svcs/commercial_gaugers/](http://cbp.gov/xp/cgov/irnpportoperations_support/labs_scientific_svcs/commercial_gaugers/)*

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on April 07, 2010. The next triennial inspection date will be scheduled for April 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: June 29, 2010

LRA S. REESE
Executive Director
Laboratories and Scientific Services

[Published in the Federal Register, July 9, 2010 (75 FR 39551)]

**ACCREDITATION AND APPROVAL OF INTERTEK USA,
INC., AS A COMMERCIAL GAUGER AND LABORATORY**

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

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 1000 Port Carteret Drive Building C, Carteret, NJ 07008, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

*[http://cbp.gov/xp/cgov/importoperations_support/
labs_scientific_svcs/commercial_gaugers/](http://cbp.gov/xp/cgov/importoperations_support/labs_scientific_svcs/commercial_gaugers/)*

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on April 16, 2010. The next triennial inspection date will be scheduled for April 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: June 29, 2010

IRA S. REESE
Executive Director
Laboratories and Scientific Services

[Published in the Federal Register, July 9, 2010 (75 FR 39549)]

**ACCREDITATION AND APPROVAL OF INSPECTORATE
AMERICA CORPORATION, AS A COMMERCIAL GAUGER
AND LABORATORY**

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

ACTION: Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Inspectorate America Corporation, 6175 Hwy 347, Beaumont, TX 77705, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

*[http://cbp.gov/xp/cgov/import/operations_support/
labs_scientific_svcs/commercial_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)*

DATES: The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on March 10, 2010. The next triennial inspection date will be scheduled for March 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: June 29, 2010

IRA S. REESE
Executive Director
Laboratories and Scientific Services

[Published in the Federal Register, July 9, 2010 (75 FR 39550)]

APPROVAL OF INTERTEK USA, INC., AS A COMMERCIAL GAUGER

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

ACTION: Notice of approval of Intertek USA, Inc., as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Intertek USA, Inc., 214 N. Gulf Blvd., Freeport, TX 77541, has been approved to gauge petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The approval of Intertek USA, Inc., as commercial gauger became effective on February 17, 2010. The next triennial inspection date will be scheduled for February 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: June 29, 2010

IRA S. REESE
Executive Director
Laboratories and Scientific Services

ACCREDITATION AND APPROVAL OF INTERTEK USA, INC., AS A COMMERCIAL GAUGER AND LABORATORY

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

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 116 Bryan Road Suite 101, Wilmington, NC 28412, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on April 15, 2010. The next triennial inspection date will be scheduled for April 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: June 29, 2010

IRA S. REESE
Executive Director
Laboratories and Scientific Services

[Published in the Federal Register, July 9, 2010 (75 FR 39550)]

ACCREDITATION AND APPROVAL OF INTERTEK USA, INC., AS A COMMERCIAL GAUGER AND LABORATORY

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

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 152 Blades Lane, Suite C, Glen Burnie, MD 21061, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/importoperations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on April 01, 2010. The next triennial inspection date will be scheduled for April 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: June 29, 2010

IRA S. REESE
Executive Director
Laboratories and Scientific Services

[Published in the Federal Register, July 9, 2010 (75 FR 39550)]

REVOCAION OF A RULING LETTER AND REVOCAION OF TREATMENT RELATING TO THE CLASSIFICATION OF PET TRAINING PADS

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

ACTION: Revocation of a classification ruling letter and revocation of treatment relating to the classification of pet training pads.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)), this notice advises interested parties that Customs and Border Protection (CPB) is revoking one ruling letter relating to the classification of pet training pads. CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on June 9, 2010, in Volume 44, Number 24, of the *Customs Bulletin*. CBP received no comments.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 27, 2010.

FOR FURTHER INFORMATION CONTACT: Albena Peters, Regulations and Rulings: (202) 325-0321.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information

necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke one ruling letter pertaining to the tariff classification of pet training pads was published in the June 9, 2010, *Customs Bulletin*, Volume 44, Number 24. No comments were received.

As stated in the proposed notice, this revocation 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., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N027137, CBP determined in relevant part that pet training pads are classified under subheading 6307.90.9889, of the Harmonized tariff Schedule of the United States ("HTSUS"), which provides for: "Other made up articles" of textile. Since the issuance of that ruling, CBP has reviewed the classification of the pet training pads and has determined that the cited ruling is in error.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N027137 and is revoking or modifying any other ruling not specifically identified, to reflect the tariff classification of the pet training pads according to the analysis contained in Headquarters Ruling Letter (HQ) H044555, 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: July 13, 2010

KELLY HERMAN
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H044555

July 13, 2010

CLA-2 OT:RR:CTF:TCM H044555 AP

CATEGORY: Classification

TARIFF NO.: 4818.90.0000

GEOFFREY M. GOODALE, ESQ.
FOLEY & LARDNER L.L.P.
WASHINGTON HARBOUR
3000 K STREET, N.W., SUITE 500
WASHINGTON, D.C. 20007-5143

RE: Classification of pet training pads from China; Revocation of NY N027137

DEAR MR. GOODALE:

This is in response to your request, dated July 18, 2008, made on behalf of IRIS U.S.A., Inc., for reconsideration of New York Ruling Letter (“NY”) N027137, issued by U.S. Customs and Border Protection (“CBP”) on May 20, 2008. In NY N027137, we classified pet training pads from China under subheading 6307.90.9889, Harmonized Tariff Schedule of the United States (“HTSUS”). CBP has determined that NY N027137 is incorrect as it applies to the classification of the pet training pads. Therefore, this ruling revokes NY N027137.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N027137 was published on June 9, 2010, in Volume 44, Number 24, of the *Customs Bulletin*. CBP received no comments in response to this notice.

FACTS:

The items at issue are identified as pet training pads, which are composed of four layers. In NY N027137, relying on information provided by the requestor, CBP described the merchandise as follows:

[The pet pad is] intended to be used to absorb the excretions of animals, such as dogs, while they are being trained. It measures approximately 17 ^{1/2}” x 23 ^{1/2}” and is described as the “Wide” size. You indicate that your client also plans to import a “Square” size (17 ^{1/2}” x 17 ^{1/2}”) and an “Ultra Wide” size (23 ^{1/2}” x 35 ^{1/2}”) . . . You state that the paper pulp and the textile fibers are the materials that provide the absorptive capacity for the pet pads, and that they are equally important in the absorption process. According to the values you have provided, the pulp outweighs the textile fibers in this sheet, but not in the finished product; the textile components are more costly than the pulp.

In response to CBP’s classification of the pet pads in NY N027137 under heading 6307, HTSUS, the requestor provided additional information regarding the construction of the pads and resubmitted a sample.

The pads were analyzed by a CBP laboratory and the lab report issued on September 26, 2008, described the pads as follows:

The white first layer is composed of a nonwoven textile material.

The blue second layer is composed of wood pulp fibers.

The white third layer is composed of fluff wood pulp fibers blended with an absorbent polymer (polyacrylamide) in powder form.

The white fourth layer is a polyethylene film.

The fluff pulp in the pad is composed of chemical wood pulp fibers.

No binder was found.

According to the information provided by the requestor and CBP analysis, the purpose of the first layer is to keep the surface dry and the purpose of the second layer is to slow down the liquid waste. The third layer, which is composed of the paper pulp, soaks up the liquid waste until the polymers can catch and retain it. The polyethylene film keeps the liquid waste from soaking into the floor.

ISSUE:

Whether the subject pet training pads are classifiable under heading 6307, HTSUS, as “Other made up articles” of textile, under subheading 4818.90.0000, HTSUS, as household, sanitary or hospital articles “of paper pulp,” or under subheading 4823.90.1000, HTSUS, as “other articles of paper pulp.”

LAW AND ANALYSIS:

Classification under the HTSUS is governed by the General Rules of Interpretation (“GRIs”), which need to be applied in numerical order. 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, and, provided such headings or notes do not otherwise require, according to the remaining GRIs taken in order. In other words classification is governed first by the terms of the headings of the tariff schedule and any relative section or chapter notes. The provisions at issue are the following:

4818		Toilet paper and similar paper, cellulose wadding or webs of cellulose fibers, of a kind used for household or sanitary purposes, in rolls of a width not exceeding 36 cm, or cut to size or shape; handkerchiefs, cleansing tissues, towels, tablecloths, table napkins, diapers, tampons, bed sheets and similar household, sanitary or hospital articles, articles of apparel and clothing accessories, of paper pulp, paper, cellulose wadding or webs of cellulose fibers:
4818.90.00		Other
*	*	*
4823		Other paper, paperboard, cellulose wadding and webs of cellulose fibers, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibers:
4823.90		Other:
4823.90.10		Of paper pulp
*	*	*
6307		Other made up articles, including dress patterns:
6307.90		Other:
		* * *
6307.90.98		Other
6307.90.9889		Other

Because the pads are composed of different materials that are *prima facie* classifiable in different headings (paper materials under headings 4818 and

4823, HTSUS and textile materials under heading 6307, HTSUS), GRI 3 is implicated. Its relevant portions read as follows:

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

The GRIs do not define “essential character” but the ENs suggest a list of factors to consider. In understanding the language of the HTSUS, the Explanatory Notes (“ENs”) may be used. The ENs, even though not dispositive or legally binding, may provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the harmonized system at the international level. CBP believes that ENs should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Explanatory Note VIII to GRI 3(b), page 4, states:

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.

Chapter 63, HTSUS, includes textile articles and Chapter 48, HTSUS, includes paper articles. The subject merchandise is a composite good made of non woven textile material, wood pulp fibers, absorbent polymer, and polyethylene film. The paper pulp, by its nature and role, provides the essential material because it captures the liquid waste and keeps it from spreading until the polymer absorbs the fluid. Although the absorbent polymer has more absorbent capacity and is more expensive, it only supplements the absorbent capacity of a pad, it cannot function without the paper pulp. See HQ 965890 dated November 6, 2002, and HQ 965891 dated November 6, 2002. Fluids are initially captured by the paper pulp and are then absorbed by the polymer. The fluffed pulp is the component that gives the pads their essential character. See HQ 083160 dated April 3, 1989. Accordingly, the pet training pads are classified in Chapter 48, HTSUS, which provides, in pertinent part, for articles of paper pulp, and not in Chapter 63, HTSUS.

Within Chapter 48, the pet pads could be arguably classified under headings 4818, HTSUS or 4823, HTSUS. Heading 4823, HTSUS provides for classification of articles of paper pulp. Heading 4818, HTSUS, in the same chapter, provides, in pertinent part, for diapers and similar household, sanitary or hospital articles of paper pulp.¹ Heading 4818, HTSUS is the *eo nomine* (e.g., refers to a commodity by a specific name, usually one well-known in commerce) tariff provision for diapers and similar household, sanitary or hospital articles of paper pulp. It is a fundamental rule of tariff

¹ “Toilet paper and similar paper . . . in rolls of a width not exceeding 36 cm, or cut to size or shape” is separated by a semicolon from the phrase “handkerchiefs . . . diapers, tampons, bed sheets and similar household, sanitary or hospital articles.” Items separated by semi-colon in the headings of the HTSUS need to be considered separately for the purposes of classification. See HQ 956924, dated August 25, 1994. The semicolon signals the end of an article description and the beginning of another article description. See HQ 087835, dated January 8, 1991. Accordingly, your argument that the pet pads at issue exceed the 36 cm limitation in heading 4818, HTSUS is inapplicable.

classification that an *eo nomine* tariff provision for an article, such as subheading 4818.90.00, HTSUS, takes precedence over a general or basket type provision such as subheading 4823.90.10, HTSUS. See *Clairol, Inc. v. United States*, 7 CIT 377, 383 (1984). Heading 4818, HTSUS, in providing for diapers and similar household, sanitary or hospital articles of paper pulp, is a more specific heading than heading 4823, HTSUS, which provides for a more general description as other articles of paper pulp not elsewhere specified or included. We have previously determined that pet pads are classified in subheading 4818.90.0000, HTSUS. See NY G87966 dated March 20, 2001 and NY L80975 dated December 1, 2004. Accordingly, we conclude that the pet training pads are correctly classified under heading 4818, HTSUS.

HOLDING:

Pursuant to GRIs 1 and 3(b), the pet training pads are classified in heading 4818, HTSUS. Specifically, they are classified in subheading 4818.90.0000, HTSUS, which provides for “Toilet paper and similar paper, cellulose wadding or webs of cellulose fibers, of a kind used for household or sanitary purposes, in rolls of a width not exceeding 36 cm, or cut to size or shape; handkerchiefs, cleansing tissues, towels, tablecloths, table napkins, diapers, tampons, bed sheets and similar household, sanitary or hospital articles, articles of apparel and clothing accessories, of paper pulp, paper, cellulose wadding or webs of cellulose fibers: Other.” The general, column one applicable rate of duty is 0 percent *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N027137, dated May 20, 2008, is 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,

KELLY HERMAN

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

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**MODIFICATION OF A RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
CLASSIFICATION OF CERTAIN TENTS**

AGENCY: United States Customs and Border Protection; Department of Homeland Security.

ACTION: Modification of a classification ruling letter and revocation of treatment relating to the classification of tents.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is modifying one ruling

letter relating to the classification of tents. CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on June 9, 2010, in Volume 44, Number 24, of the *Customs Bulletin*. CBP received no comments.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 27, 2010.

FOR FURTHER INFORMATION CONTACT: Albena Peters, Regulations and Rulings: (202) 325-0321.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify one ruling letter pertaining to the tariff classification of tents was published in the June 9, 2010, *Customs Bulletin*, Volume 44, Number 24. No comments were received.

As stated in the proposed notice, this modification 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., a ruling letter, internal advice memorandum or

decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the 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 N035900, tents, made of 50% cotton and 50% polyester, were classified under subheading 6306.22.9030, of the Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for: "Tarpaulins, awnings and sunblinds; tents; sails for boats, sailboards or landcraft; camping goods: Tents: Of synthetic fibers: Other: Other." Since the issuance of that ruling, CBP has reviewed the classification of the tents and has determined that the cited ruling is in error.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY N035900 and revoking any other ruling not specifically identified, to reflect the classification of the tents according to the analysis contained in Headquarters Ruling Letter (HQ) H043009, 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: July 13, 2010

KELLY HERMAN

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H043009

July 13, 2010

CLA-2 OT:RR:CTF:TCM H043009 AP

CATEGORY: Classification

TARIFF NO.: 6306.29.1100

MS. LISA MCGOWAN
 SENIOR LICENSED CUSTOMS BROKER
 47 LAMBECK DRIVE, TULLAMARINE
 VICTORIA 3043 AUSTRALIA

RE: Modification of NY N035900; Classification of tents

DEAR MS. MCGOWAN:

This is in response to your letter dated October 7, 2008, in which you requested that U.S. Customs and Border Protection (“CBP”) reconsider New York Ruling Letter (“NY”) N035900, issued to you on August 20, 2008, with respect to the classification of tents under the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”).¹ In NY N035900, we determined, in relevant part, that tents made of 50% polyester and 50% cotton were classified under subheading 6306.22.9030, HTSUSA, as tents of synthetic fibers. CBP has determined that NY N035900 is incorrect as it applies to the classification of the tents. Therefore, this ruling modifies NY N035900.

FACTS:

The items at issue are identified as canvas tents, which are constructed of a blend of 50% cotton and 50% polyester fibers.

ISSUE:

Whether tents constructed of a 50/50 blend of cotton/polyester are classifiable under subheading 6306.22.9030, HTSUSA, as “Tents: Of synthetic fibers: Other: Other” or under subheading 6306.29.1100, HTSUSA, as “Tents: Of other textile materials: Of cotton.”

LAW AND ANALYSIS:

Classification under the HTSUSA is governed by the General Rules of Interpretation (“GRIs”), which need to be applied in numerical order. 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. The provisions at issue are the following:

6306	Tarpaulins, awnings and sunblinds; tents; sails for boats, sailboards or landcraft; camping goods:
	* * *
	Tents:
	* * *
6306.22	Of synthetic fibers:
	* * *
6306.22.90	Other

¹ The classification of the canvas screens is not at issue herein.

	* * *
6306.22.9030	Other
6306.29	Of other textile materials:
6306.29.1100	Of cotton

There is no dispute that the tents are classified in heading 6306, HTSUSA. At issue is the proper 6-digit subheading. GRI 6 states:

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

Subheading Note 2 to Section XI provides, in relevant part, as follows:

- (A) Products of Chapters 56 to 63 containing two or more textile materials are to be regarded as consisting wholly of that textile material which would be selected under note 2² to this section for the classification of a product of chapters 50 to 55 or of heading 5809 consisting of the same textile materials.
- (B) For the application of this rule:
 - (a) Where appropriate, only the part which determines the classification under general interpretative rule 3 shall be taken into account.

* * *

In the instant case, you state the tents are construed of a 50/50 blend of polyester/cotton fibers. The subheading, which occurs last in numerical order among those which equally merit consideration, is subheading 6306.29.1100, HTSUSA. Please note that even a slight change in the fiber content may result in a change of classification, which could affect the duty rate. Further, the 50/50 blend may be subject to CBP laboratory analysis at the time of importation, and if the fabric is other than a 50/50 blend, the tents may be reclassified by CBP at that time.

HOLDING:

Pursuant to GRI 6 and Subheading Note 2(A) to Section XI, HTSUSA, the tents are classified in heading 6306, HTSUSA. Specifically, they are classified in subheading 6306.29.1100, HTSUSA, which provides for “Tents: Of other textile materials: Of cotton.” The general, column one applicable rate of duty is 8 percent *ad valorem*.

² Note 2(A) to Section XI (which includes Chapter 63), HTSUSA, states: Goods classifiable in chapters 50 to 55 or in heading 5809 or 5902 and of a mixture of two or more textile materials are to be classified as if consisting wholly of that one textile material which predominates by weight over each other single textile material. When no one textile material predominates by weight, the goods are to be classified as if consisting wholly of that one textile material which is covered by the heading which occurs last in numerical order among those which equally merit consideration.

EFFECT ON OTHER RULINGS:

NY N035900, dated August 20, 2008, is 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,

KELLY HERMAN

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division


REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF AN AQUADOODLE WALL MAT

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

ACTION: Revocation of a classification ruling letter and revocation of treatment relating to the classification of an aquadoodle wall mat.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)), this notice advises interested parties that Customs and Border Protection (CPB) is revoking one ruling letter relating to the classification of an aquadoodle wall mat. CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on June 9, 2010, in Volume 44, Number 24, of the *Customs Bulletin*. CBP received no comments.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 27, 2010.

FOR FURTHER INFORMATION CONTACT: Albena Peters, Regulations and Rulings: (202) 325-0321.

SUPPLEMENTARY INFORMATION:**Background**

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

“informed compliance” and **“shared responsibility.”** These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke one ruling letter pertaining to the tariff classification of an aquadoodle wall mat was published in the June 9, 2010, *Customs Bulletin*, Volume 44, Number 24. No comments were received.

As stated in the proposed notice, this revocation 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., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N014467, CBP determined in relevant part that an aquadoodle wall mat is classified under subheading 9503.00.0080, of the Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for: “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys: reduced scale (“scale”) models, working or not; puzzles of all kinds; parts and accessories thereof: Other.” Since the issuance of that ruling, CBP has reviewed the classification of the aquadoodle wall mat and has determined that the cited ruling is in error.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N014467 and is revoking or modifying any other ruling not specifically identified, to reflect the tariff classification of the aquadoodle wall mat according to the analysis contained in Headquarters Ruling Letter (HQ) H050118, 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: July 13, 2010

KELLY HERMAN

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H050118

July 13, 2010

CLA-2 OT:RR:CTF:TCM H050118 AP

CATEGORY: Classification

TARIFF NO.: 6307.90.9889

MARCUS LYNN BRUMLEY
N.A. IMPORT MANAGER
AMAZON.COM.KYDC
C/O AMAZON.COM INT'L TRADE
605 5TH AVENUE SOUTH
SEATTLE, WA 98104

RE: Classification of an Aquadoodle Wall Mat from China; Revocation of NY N014467

DEAR MR. BRUMLEY:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York Ruling Letter (NY) N014467, issued to you on July 24, 2007. In NY N014467, we determined that an Aquadoodle Wall Mat from China was classified under subheading 9503.00.0080, Harmonized Tariff Schedule of the United States (“HTSUS”). CBP has determined that NY N014467 is incorrect. Therefore, this ruling revokes NY N014467.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N014467 was published on June 9, 2010, in Volume 44, Number 24, of the *Customs Bulletin*. CBP received no comments in response to this notice.

FACTS:

The item at issue is identified as an Aquadoodle Wall Mat, which is composed of a textile fabric mat and a marker pen intended to be filled with water before use. In NY N014467, relying on information provided by the requester, CBP described the merchandise as follows:

The mat can be placed on any hard surface by means of adhesive stickers. Between the pad and the plastic sheeting is a water-activated ink pad. The child, using the accompanying water pen, can apply water to the pad to make ink colors appear. The child can either draw free-lance or use plastic stencils provided in the set to apply specific shapes to the mat.

When the water-filled pen touches the mat, the water causes the mat to change color and the child can write or draw on the mat without making a mess. When the water dries, the marks on the mat disappear and the child can draw on a clean mat again. The Aquadoodle Wall Mat is intended to be hung on a wall instead of being used on a floor.

In Headquarters Ruling Letter HQ W968020, dated May 31, 2006, we concluded that Aquadoodle Draw and Doodle floor mats are classified under subheading 6307.90.9889, HTSUS, as an “other textile made-up article” and not under subheading 9503.00.0080, HTSUS. The Aquadoodle Wall Mat is identical to the Aquadoodle Draw and Doodle floor mat. On the importer’s website, Spin Master states “The New Wall Mat is the same great doodling fun, but now on the wall.”

ISSUE:

Whether the subject Aquadoodle Wall Mat is classifiable as a textile article in heading 6307, HTSUS, or as a toy in heading 9503, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS is governed by the General Rules of Interpretation (“GRIs”), which need to be applied in numerical order. 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, and, provided such headings or notes do not otherwise require, according to the remaining GRIs taken in order. In other words classification is governed first by the terms of the headings of the tariff schedule and any relative section or chapter notes.

In understanding the language of the HTSUS, the Explanatory Notes (“ENs”) may be used. The ENs, even though not dispositive or legally binding, may provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the harmonized system at the international level. CBP believes that ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Since the Aquadoodle Wall Mat consists of a mat and a pen, which are *prima facie* classifiable in different headings in the HTSUS (i.e., the marking pen in heading 9608 and the wall mat conceivably in 6307), GRI 3 is implicated. Its relevant portions read as follows:

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

The GRIs do not define the terms “retail sale” and “essential character” but the ENs suggest a list of factors to consider. EN X to GRI 3(b) defines “goods put up in sets for retail sale” as goods which consist of: (1) at least two different articles which are, *prima facie*, classifiable in different headings; (2) products or articles put up together to meet a particular need or carry out a specific activity; and (3) products put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

EN VIII to GRI 3(b) states:

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.

The Aquadoodle Wall Mat qualifies as a set for retail sale under GRI 3(b). The mat and the water pen are put up together to carry out the specific activity of drawing and in a manner suitable for sale directly to users without repacking. The wall mat gives the set its essential character because it cannot function without the mat. The mat performs the primary function, which is to provide a surface that allows for coloring or drawing. The water-activated ink pad is part of the wall mat. The marker pen merely facilitates that activity and is designed to be used in conjunction with the

mat. Since the essential character is conveyed by the wall mat, the merchandise is therefore properly classified in accordance with that component.

The provisions at issue are the following:

6307	Other made up articles, including dress patterns:
6307.90	Other:
	Other:
6307.90.98	Other
	Other:
6307.90.9889	Other
*	* *
9503.00.00	Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys: reduced-scale ("scale") models, working or not; puzzles of all kinds; parts and accessories thereof:
9503.00.0080	Other

In NY N014467, CBP classified the subject merchandise in Chapter 95, HTSUS, which covers toys of all kind designed for amusement of children or adults. The tariff schedule does not define the term "toy." A tariff term that is not defined in the HTSUS is construed in accordance with its common and commercial meaning. See *Intercontinental Marble Corp. v. United States*, 27 CIT 654, 657 (2003). Common and commercial meaning may be determined by consulting dictionaries. See *Minnetonka Brands v. United States*, 24 CIT 645, 649 (2000).

The Compact Oxford English Dictionary defines "toy" as an "object for a child to play with" or as a "gadget or machine regarded as providing amusement for an adult." Courts have concluded that an object is a "toy" of heading 9503, HTSUS, if it is designed and used for amusement, diversion or play, rather than practicality. See *Minnetonka Brands, Inc.*, 24 CIT at 651 (citing to *Orlando Food Corp. v. United States*, 140 F.3d 1437, 1441 (Fed. Cir. 1998)).

The determinative issue is whether the principal use of the article is to amuse. See *United States v. Topps Chewing Gum, Inc.*, 58 C.C.P.A. 157, 158, C.A.D. 1022 (1971). CBP has interpreted the amusement requirement to mean that toys should be designed and used principally for amusement. See HQ H037544, dated September 3, 2009.

"Principal use" is defined as the use "which exceeds any other single use of the article." *Minnetonka Brands, Inc.*, 24 CIT at 651. Factors, which have been considered to make this determination include the general physical characteristics of the merchandise, the expectations of the ultimate purchasers, the design and marketing of the merchandise as an item of amusement, the expectations of the ultimate purchasers that the object will be used for play, and the regular use of the merchandise by children for amusement purposes. See *id.* When articles are both amusing and functional, we need to determine whether amusement is incidental to the utilitarian purpose and vice versa. See *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 32, Cust. Dec. 4688 (1977).

The Aquadoodle is designed to be a drawing instrument. Drawing and coloring are activities capable of providing amusement. However, the ENs

exclude from heading 9503, HTSUS, many articles that are used in drawing, coloring and other art activities. EN 95.03 states, in part, that heading 9503 excludes:

- (a) Paints put up for children's use (**heading 32.13**).
- (b) Modelling pastes put up for children's amusement (**heading 34.07**).
- (c) Children's picture, drawing or coloring books of **heading 49.03**.
- (d) Transfers (**heading 49.08**).
- (e) Bells, gongs or the like, of **heading 83.06**.
- (f) Card games (**heading 95.04**).
- (g) Paper hats, "blow-outs", masks, false noses and the like (**heading 95.05**).
- (h) Crayons and pastels for children's use of **heading 96.09**.
- (i) Slates and blackboards, of **heading 96.10**.

In HQ W968020, dated May 31, 2006, in applying the ENs, we found that the Aquadoodle Mat was designed to be colored with the included water markers and it was not a toy because it was designed for purposes of drawing. We concluded that the amusement from art-related activities is secondary to utility, because sets used for drawing and coloring are not "essentially playthings." *Id.* Children's play may include drawing or painting. However, materials for drawing or painting are not classified in heading 9503, HTSUS. See HQ 966724 dated May 24, 2004. Therefore, the Aquadoodle Mat is provided for, *eo nomine* (e.g., refers to a commodity by a specific name, usually one well-known in commerce), in headings other than heading 9503, HTSUS.

Heading 6307, HTSUS provides for classification of "other textile made-up articles." The wall mat is a textile fabric mat. We have previously determined that an Aquadoodle floor mat is classified in subheading 6307.90.9889, HTSUS. See HQW968020 dated May 31, 2006. The Aquadoodle Wall Mat is identical to the floor mat. The only difference is that the wall mat is intended to be hung on a wall instead of being used on a floor. Accordingly, the Aquadoodle Wall Mat is classified in heading 6307, HTSUS.

HOLDING:

Pursuant to GRIs 1 and 3(b), the subject merchandise, identified as Aquadoodle Wall Mat, is classified in heading 6307, HTSUS. Specifically, it is classified in subheading 6307.90.9889, HTSUS, which provides for "Other made up articles, including dress patterns: other: other: other: other: other. The general, column one applicable rate of duty is 7 percent *ad valorem*."

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

EFFECT ON OTHER RULINGS:

NY N014467, dated July 24, 2007, is 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,
KELLY HERMAN
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

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**REVOCATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE CLASSIFICATION OF
A LOTION OR SOAP DISPENSER HAND PUMP**

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

ACTION: Revocation of a classification ruling letter and revocation of treatment relating to the classification of a soap dispenser hand pump.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)), this notice advises interested parties that Customs and Border Protection (CPB) is revoking one ruling letter relating to the classification of a lotion or soap dispenser hand pump. CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on June 9, 2010, in Volume 44, Number 24, of the *Customs Bulletin*. CBP received no comments.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 27, 2010.

FOR FURTHER INFORMATION CONTACT: Albena Peters, Regulations and Rulings: (202) 325-0321.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility.**" These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke one ruling letter pertaining to the tariff classification of a lotion or soap dispenser hand pump was published in the June 9, 2010, *Customs Bulletin*, Volume 44, Number 24. No comments were received.

As stated in the proposed notice, this revocation 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., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N047916, CBP determined in relevant part that a lotion or soap dispenser hand pump is classified under subheading 8424.20.1000, of the Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for: "Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids . . . : Spray guns and similar appliances: Simple piston pump sprays and powder bellows." Since the issuance of that ruling, CBP has reviewed the classification of the lotion or soap dispenser hand pump and has determined that the cited ruling is in error.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N047916 and is revoking or modifying any other ruling not specifically identified, to reflect the tariff classification of the lotion or soap dispenser

hand pump according to the analysis contained in Headquarters Ruling Letter (HQ) H070635, 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: July 13, 2010

KELLY HERMAN

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H070635

July 13, 2010

CLA-2 OT:RR:CTF:TCM H070635 AP

CATEGORY: Classification

TARIFF NO.: 8424.89.00

DAVID M. MURPHY, ESQ.

GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN & KLESTADT L.L.P.

399 PARK AVENUE, 25TH FLOOR

NEW YORK, NY 10022-4877

RE: Reconsideration of NY N047916, dated January 22, 2009; Classification of a lotion or soap dispenser hand pump from China

DEAR MR. MURPHY:

This is in response to your request, dated July 28, 2009, made on behalf of The TJX Companies, Inc., for reconsideration of New York Ruling Letter (“NY”) N047916, issued by U.S. Customs and Border Protection (“CBP”) on January 22, 2009.

In NY N047916, CBP classified a lotion or soap dispenser hand pump under subheading 8424.20.1000, of the Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids . . . : Spray guns and similar appliances: Simple piston pump sprays and powder bellows.” We have reviewed that ruling and have found it to be in error. Therefore, this ruling revokes NY N047916.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N047916 was published on June 9, 2010, in Volume 44, Number 24, of the *Customs Bulletin*. CBP received no comments in response to this notice.

FACTS:

In NY N047916, the merchandise is described as follows:

The item is a dispenser for lotion or soap, style 569-A. The lotion is dispensed by hand activation of a simple piston pump mechanism which is attached to the top of, and inserted into, the solid glass reservoir which holds the liquid soap or lotion.

The soap dispenser consists of a glass reservoir for soap or lotion and a simple piston pump, which is composed of plastic tubing with minor components of metal such as a small ball and spring. When the user depresses the top of the simple piston pump, a quantity of the soap or lotion enters the tube. Repeated pressing of the top of the dispenser results in the tube filling and liquid being issued from the opening for the user.

ISSUE:

Whether hand pump soap dispensers are classifiable as other mechanical appliances for projecting, dispersing or spraying liquids under subheading 8424.89, HTSUS, or as spray guns and similar appliances under subheading 8424.20, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS is governed by 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. The HTSUS provisions under consideration in this case are as follows:

8424	Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; . . .
	* * *
8424.20	Spray guns and similar appliances:
8424.20.10	Simple piston pump sprays and powder bellows . . .
	* * *
	Other appliances:
	* * *
8424.89.00	Other . . .

There is no dispute that the lotion or soap dispenser hand pump is classified in heading 8424, HTSUS. At issue is the proper 6-digit subheading. GRI 6 states:

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

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized Tariff System. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The subheading ENs state that subheading 8424.20 covers the appliances described in Part (B) of the EN to heading 84.24. The EN 84.24(B) provides:

Spray guns and similar hand controlled appliances are usually designed for attaching to compressed air or steam lines, and are also connected, either directly or through a conduit, with a reservoir of the material to be projected. They are fitted with triggers or other valves for controlling the flow through the nozzle, which is usually adjustable to give a jet or more or less divergent spray. They are used for spraying paint or distemper, varnishes, oils, plastics, cement, metallic powders, textile dust . . . projecting a powerful jet of compressed air or steam for cleaning stonework in buildings, statuary, etc.. They may also be used for projecting a powerful jet of compressed air or steam for cleaning stonework in buildings, statuary, etc.

This group also includes separately presented hand controlled “anti-smudge” spraying devices for fitting to printing machines, and hand

controlled metal spraying pistols operating either on the principle of a blow pipe, or by the combined effect of an electric heating device and a jet of compressed air.

Hand controlled spray guns with self-contained electric motor, incorporating a pump and a container for the material to be sprayed (paint, varnish, etc.), are also covered by the heading.

You state that the lotion or soap dispenser hand pump does not fall within the description of subheading 8424.20.20, HTSUS, because it is not a spray gun or a similar appliance. The common meaning of a term is generally afforded deference when determining its proper interpretation for tariff purposes. See *Toyota Motor Sales (U.S.A.), Inc. v. United States*, 7 CIT 178, 182, 585 F. Supp. 649, 653 (1984), *aff'd*, 753 F.2d 1061 (Fed. Cir. 1985); *Nippon Kogaku (USA), Inc. v. United States*, 69 CCPA 89, 92, 673 F.2d 380, 382 (1982). Dictionaries and other lexicographic authorities may be utilized to determine a term's common meaning. See *Mast Indus., Inc. v. United States*, 9 CIT 549 (1985), *aff'd*, 786 F.2d 1144 (Fed. Cir. 1986). The compact Oxford English Dictionary defines spray gun as "a device resembling a gun which is used to spray a liquid such as paint under pressure." As described in the ENs, spray guns are usually designed for attaching to compressed air or steam lines, are connected with a reservoir with the material to be projected, and are fitted with a trigger or valve to control the flow through the nozzle. The instant lotion or soap dispenser is designed to dispense a small amount of liquid soap in the user's hand by means of a piston pump and not by pressure. There is no means to control the amount of liquid dispensed. Therefore, the lotion or soap dispenser hand pump at issue is not a spray gun or a similar appliance, and does not fall within the description of subheading 8424.20, HTSUS.

Subheading 8424.89, HTSUS provides for other mechanical appliances for projecting or dispersing liquids. We have previously determined that hand-operated soap dispensers are classified in subheading 8424.89, HTSUS. See HQ H012731 dated March 27, 2008; HQ 956522 dated August 29, 1994; HQ 956530 dated August 29, 1994. In HQ088500, dated April 4, 1991, CBP determined that cosmetic pumps, which did not spray fluid but projected or dispersed fluid from inside their container were classified in subheading 8424.89, HTSUS. Accordingly, we conclude that the lotion or soap dispenser hand pump is classified in subheading 8424.89, HTSUS.

HOLDING:

Pursuant to GRI 6, the lotion or soap dispenser hand pump is classifiable under subheading 8424.89.00, HTSUS, which covers "Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids . . . : Other appliances: Other." The column one, general rate of duty is 1.8% *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.

EFFECT ON OTHER RULINGS:

NY N047916, dated January 22, 2009, is 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,


KELLY HERMAN

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



**MODIFICATION AND REVOCATION OF TWO RULING
LETTERS AND REVOCATION OF TREATMENT RELATING
TO THE TARIFF CLASSIFICATION OF MASONRY
ANCHORS**

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

ACTION: Notice of modification and revocation of two tariff classification ruling letters and revocation of treatment relating to the classification of masonry anchors.

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 and revoking two ruling letters relating to the tariff classification of masonry anchors under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by the agency to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 44, No. 24, on June 9, 2010. 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 September 27, 2010.

FOR FURTHER INFORMATION CONTACT: Janelle L. Gordon, Regulations and Rulings: (202) 325–0087.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 44, No. 24, (June 9, 2010), proposing to modify New York Ruling Letter (NY) I83699, dated June 25, 2002, and revoke NY I80641, dated April 15, 2002, concerning the tariff classification of masonry anchors. No comments were received in response to the notice.

As stated in the proposed notice, the action will cover 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 rulings identified above. 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 notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved with substantially identical transactions should have advised CBP during the notice period. An importer’s failure to advise CBP of substantially identical trans-

actions 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 I83699, CBP determined in part that masonry anchors, consisting of a steel nail and lead anchor, were classified under heading 7317, HTSUS, as an article of iron or steel. It is now CBP's position that the masonry anchors are classified under heading 7806, HTSUS, as other articles of lead.

In NY I80641, CBP determined that masonry anchors, consisting of a zamac # 3 zinc anchor and a 1022 carbon steel nail, was classified under heading 7317, HTSUS, as an article of iron or steel. It is now CBP's position that the masonry anchors are classified under heading 7907, HTSUS, as other articles of zinc.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY I83699 and revoking NY I80641 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper factual basis and tariff classification of the subject merchandise according to the analysis contained in Headquarters Ruling Letters (HQ) H030415 and H030416, which are attached. 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 action will become effective 60 days after publication in the *Customs Bulletin*.

Dated: July 13, 2010

KELLY HERMAN

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

HQ H030415

July 13, 2010

CLA-2 OT:RR:CTF:TCM H030415 JLG

CATEGORY: Classification

TARIFF NO.: 7907.00.6000

MR. PETER K. SCHLESINGER
ATLANTIC CUSTOMS BROKERS, INC.
1975 LINDEN BOULEVARD
ELMONT, NY 11003

RE: Revocation of NY I80641; Classification of steel nail and zinc masonry anchors

DEAR MR. SCHLESINGER:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) I80641, issued to you on April 15, 2002, on behalf of your client Olympic Manufacturing, Agawam (hereinafter "Olympic"). In NY I80641, CBP determined that masonry anchors consisting of zamac #3 zinc anchors and 1022 carbon steel nails were classified under heading 7317, HTSUS, as an article of iron or steel. CBP has reviewed the tariff classification of the subject masonry anchor and determined that NY I80641 is in error. Therefore, this ruling revokes NY I80641.

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, 2186 (1993), notice of the proposed action was published on June 9, 2010, in the *Customs Bulletin*, Vol. 44, No.24. No comments were received in response to this notice.

FACTS:

The product under consideration is a masonry anchor that is approximately 2 inches long and consists of two pieces: a cylindrical zinc alloy sleeve — the anchor, and a steel nail, which fit together to form one integral unit. Specifically, the masonry anchor at issue is comprised of a zamac # 3 zinc anchor that weighs approximately 5 ¾ grams, and a 1022 carbon steel nail that weighs approximately 2 ¾ grams. It is used for fastening articles in concrete, block, or brick by inserting the masonry anchor into a predrilled hole and driving the nail down with a hammer.¹ The anchor sleeve expands against the sides of the hole as the nail is installed; thereby securely bolting the masonry anchor in place.

ISSUE:

Whether masonry anchors consisting of a steel nail and zinc anchor are classified under heading 7317, HTSUS, as an "article of iron or steel," or under heading 7907, HTSUS, as "other articles of zinc."

¹ See <http://www.acehardware.com/info/index.jsp?categoryId=1283458> (last visited March 22, 2010).

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 may then be applied.

The HTSUS provisions under consideration are as follows:

7317	Nails, tacks, drawing pins, corrugated nails, staples (other than those of Heading 8305) and similar articles, of iron or steel, whether or not with heads of other material, but excluding such articles with heads of copper:
	Other:
7317.00.75	Of two or more pieces
	* * *
7907	Other articles of zinc:
	* * *
7907.00.60	Other.

Note 3 to Section XV (which includes Chapter 73 and 79), HTSUS, states, in relevant part:

Throughout the schedule, the expression “*base metals*” means: iron and steel, copper, nickel, aluminum, lead, zinc

Note 5 to Section XV, HTSUS, states, in relevant part:

Classification of alloys (other than ferroalloys and master alloys as defined in chapters 72 and 74):

- (a) An alloy of base metals is to be classified as an alloy of the metal which predominates by weight over each of the other metals.
- * * *

Note 7 to Section XV, HTSUS, states, in relevant part:

7. Classification of composite articles:

Except where the headings otherwise require, articles of base metal (including articles of mixed materials treated as articles of base metal under the General Rules of Interpretation) containing two or more base metals are to be treated as articles of the base metal predominating by weight over each of the other metals.

Explanatory Note IX to GRI 3(b), states in part that a “composite good” is a good that is “made up of different components . . . attached to each other to form a practically inseparable whole . . .” and “with separable components provided these components are adapted one to the other [,] and are mutually complementary and that together . . . form a whole which would not normally be offered for sale in separate parts.” See *Explanatory Notes*, at GRI 3(b)(IX).²

² In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. The ENs, though not

As stated previously, the masonry anchors under consideration consist of a zamac #3 anchor and a steel nail fitted together to form one integral unit. The anchor weighs approximately 5 $\frac{3}{4}$ grams and the nail 2 $\frac{3}{4}$ grams. Accordingly, the subject masonry anchor is classified as an article of zinc under heading 7909, HTSUS, as “other articles of zinc.”

HOLDING:

Pursuant to GRI 1 and Note 7 to Section XV, HTSUS, the steel nail and zinc masonry anchors are classified in heading 7907, HTSUS. Specifically, they are classified in subheading 7907.00.6000, HTSUS, which provides for “Other articles of zinc: Other.” The 2010 column one general rate of duty is 3% *ad valorem*.

Duty rates 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/tata/hts/>.

EFFECT ON OTHER RULINGS:

NY I80641, dated April 15, 2002, 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,

KELLY HERMAN

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. CBP believes the ENs should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

HQ H030416

July 13, 2010

CLA-2 OT:RR:CTF:TCM H030416 JLG

CATEGORY: Classification

TARIFF NO.: 7806.00.8000

MR. JEFF GREEN

M. GREEN CO.

P.O. BOX 3728

PHILADELPHIA, PA 19125

RE: Modification of NY I83699; Classification of mushroom head lead nail-ins

DEAR MR. GREEN:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) I83699, issued to you on June 25, 2002. In NY I83699, CBP determined in part that mushroom head lead nail-ins consisting of lead anchors and steel nails were classified under heading 7317, HTSUS, as an article of iron or steel. CBP has reviewed the tariff classification of the subject article and determined that the cited ruling is in error with respect to the "1/4" x 1" mushroom head lead nail-ins." NY I83699 remains correct with respect to the other items subject to ruling NY I83699. Accordingly, this ruling modifies NY I83699.

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, 2186 (1993), notice of the proposed action was published on June 9, 2010, in the *Customs Bulletin*, Vol. 44, No.24. No comments were received in response to this notice.

FACTS:

The product under consideration is a 1/4" x 1" mushroom head lead nail-in that is comprised of a cylindrical lead sleeve — the anchor, and a steel nail, which fit together to form one integral unit. The lead anchor weighs approximately 5 1/2 grams, and the nail weighs approximately 3 grams. It is used for fastening articles in concrete, block, or brick by inserting the lead anchor into a predrilled hole and driving the nail down with a hammer.¹ As the nail is installed, the anchor sleeve expands against the sides of the hole; thereby securely bolting the mushroom head lead nail-in into place.

ISSUE:

Whether mushroom head lead nail-ins consisting of a lead anchor and steel nail are classified under heading 7317, HTSUS, as an "article of iron or steel," or under heading 7806, HTSUS, as "other articles of lead."

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

¹ See <http://www.acehardware.com/info/index.jsp?categoryId=1283458> (last visited March 22, 2010).

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 under consideration are as follows:

7318	Nails, tacks, drawing pins, corrugated nails, staples (other than those of Heading 8305) and similar articles, of iron or steel, whether or not with heads of other material, but excluding such articles with heads of copper:
	Other:
7317.00.75	Of two or more pieces * * *
7806	Other articles of lead: * * *
7806.00.80	Other.

Note 3 to Section XV (which includes Chapter 73 and 78), HTSUS, states, in relevant part:

Throughout the schedule, the expression “*base metals*” means: iron and steel, copper, nickel, aluminum, lead

* * *

Note 5 to Section XV, HTSUS, states, in relevant part:

Classification of alloys (other than ferroalloys and master alloys as defined in chapters 72 and 74):

(b) An alloy of base metals is to be classified as an alloy of the metal which predominates by weight over each of the other metals.

Note 7 to Section XV, HTSUS, states, in relevant part:

7. Classification of composite articles:

Except where the headings otherwise require, articles of base metal (including articles of mixed materials treated as articles of base metal under the General Rules of Interpretation) containing two or more base metals are to be treated as articles of the base metal predominating by weight over each of the other metals.

Explanatory Note IX to GRI 3(b), states in part that a “composite good” is a good that is “made up of different components . . . attached to each other to form a practically inseparable whole . . .” and “with separable components provided these components are adapted one to the other[,] and are mutually complementary and that together . . . form a whole which would not normally be offered for sale in separate parts.” See *Explanatory Notes*, at GRI 3(b)(IX).²

² In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. The ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. CBP believes the ENs should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

In the instant case, the mushroom head lead nail-in consists of a lead anchor and a steel nail fitted together to form one integral unit. The lead anchor weighs 5 1/2 grams, and the steel nail weighs 3 grams. Therefore, we conclude that the mushroom head lead nail-in is classified as “other articles of lead” under heading 7806, HTSUS.

HOLDING:

Pursuant to GRI 1 and Note 7 to Section XV, HTSUS, the mushroom head lead nail-ins are classified in heading 7806, HTSUS. Specifically, they are classified in subheading 7806.00.8000, HTSUS, which provides for “Other articles of lead: Other.” The 2010 column one general rate of duty is 3% *ad valorem*.

Duty rates 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/tata/hts/>.

EFFECT ON OTHER RULINGS:

NY I83699, dated June 25, 2002, 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,

KELLY HERMAN

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

AGENCY INFORMATION COLLECTION ACTIVITIES:

Regulations Relating to Recordation and Enforcement of Trademarks and Copyrights

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

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0123.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Regulations Relating to Recordation and Enforcement of Trademarks and Copyrights (Part 133 of the Customs Regulations). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This

document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (75 FR 24731) on May 5, 2010, allowing for a 60-day comment period. One comment was received. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before August 11, 2010.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Regulations Relating to Recordation and Enforcement of Trademark and Copyrights (Part 133 of the Customs Regulations)

OMB Number: 1651-0123

Form Number: None

Abstract: In accordance with 19 CFR Part 133, trademark and trade name owners and those claiming copyright protection may submit information to CBP to enable CBP officers to identify violating articles at the borders. In addition, parties seeking to have merchandise excluded from entry must provide proof to CBP of the validity of the rights they seek to protect. The information collected by CBP is used to identify infringing goods at the borders and determine if such goods infringe on intellectual property rights for which federal law provides import protection. Respondents may submit their information to CBP electronically at <https://apps.cbp.gov/e-recordations/> , or they may submit their information on paper in accordance with 19 CFR 133.2 and 133.3 for trademarks, or 19 CFR 133.32 and 133.33 for copyrights.

Current Actions: This submission is being made to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses and Individuals

Estimated Number of Respondents: 2,000

Estimated Time Per Respondent: 2 hours

Estimated Total Annual Burden Hours: 4,000

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW, 7th Floor, Washington, DC. 20229-1177, at 202-325-0265.

Dated: July 6, 2010

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

[Published in the Federal Register, July 12, 2010 (75 FR 39701)]