


U.S. Customs and Border Protection



NOTICE ANNOUNCING THE AUTOMATED COMMERCIAL ENVIRONMENT (ACE) AS THE SOLE CBP-AUTHORIZED ELECTRONIC DATA INTERCHANGE (EDI) SYSTEM FOR PROCESSING CERTAIN ELECTRONIC ENTRY AND ENTRY SUMMARY FILINGS ACCOMPANIED BY FOOD AND DRUG ADMINISTRATION (FDA) DATA

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

ACTION: General notice.

SUMMARY: This document announces that the Automated Commercial Environment (ACE) will be the sole electronic data interchange (EDI) system authorized by the Commissioner of U.S. Customs and Border Protection (CBP) for processing electronic entries and entry summaries associated with the entry types specified in this notice, for merchandise that is subject to the import requirements of the Food and Drug Administration (FDA). This document also announces that the Automated Commercial System (ACS) will no longer be a CBP-authorized EDI system for purposes of processing these electronic filings.

EFFECTIVE DATE: *June 15, 2016:* ACE will be the sole CBP-authorized EDI system for electronic entry and entry summary filings for merchandise subject to the import requirements of the FDA, associated with the following entry types: 01 (consumption), 03 (consumption — antidumping/ countervailing duty), 06 (consumption — Foreign Trade Zone (FTZ)), 11 (informal), 23 (temporary importation under bond), 51 (Defense Contract Administration Service Region), and 52 (government — dutiable).

FOR FURTHER INFORMATION CONTACT: Questions related to this notice may be emailed to ASKACE@cbp.dhs.gov with the subject line identifier reading “ACS to ACE—FDA transition”.

SUPPLEMENTARY INFORMATION:**Background***Statutory Authority*

Section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), establishes the requirement for importers of record to make entry for merchandise to be imported into the customs territory of the United States. Customs entry information is used by U.S. Customs and Border Protection (CBP) and Partner Government Agencies (PGAs) to determine whether merchandise may be released from CBP custody. Importers of record are also obligated to complete the entry by filing an entry summary declaring the value, classification, rate of duty applicable to the merchandise and such other information as is necessary for CBP to properly assess duties, collect accurate statistics and determine whether any other applicable requirement of law is met.

The customs entry requirements were amended by Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, December 8, 1993), commonly known as the Customs Modernization Act, or Mod Act. In particular, section 637 of the Mod Act amended section 484(a)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1484(a)(1)(A)) by revising the requirement to make and complete customs entry by submitting documentation to CBP to allow, in the alternative, the electronic transmission of such entry information pursuant to a CBP-authorized electronic data interchange (EDI) system. CBP created the Automated Commercial System (ACS) to track, control, and process all commercial goods imported into the United States. CBP established the specific requirements and procedures for the electronic filing of entry and entry summary data for imported merchandise through the Automated Broker Interface (ABI) to ACS.

Transition From ACS to ACE

In an effort to modernize the business processes essential to securing U.S. borders, facilitating the flow of legitimate shipments, and targeting illicit goods pursuant to the Mod Act and the Security and Accountability for Every (SAFE) Port Act of 2006 (Pub. L. 109–347, 120 Stat. 1884), CBP developed the Automated Commercial Environment (ACE) to eventually replace ACS as the CBP-authorized EDI system. Over the last several years, CBP has tested ACE and provided significant public outreach to ensure that the trade community is fully aware of the transition from ACS to ACE.

On February 19, 2014, President Obama issued Executive Order (E.O.) 13659, *Streamlining the Export/Import Process for America's Businesses*, in order to reduce supply chain barriers to commerce while continuing to protect our national security, public health and safety, the environment, and natural resources. See 79 FR 10657 (February 25, 2014). Pursuant to E.O. 13659, a deadline of December 31, 2016, was established for participating Federal agencies to have capabilities, agreements, and other requirements in place to utilize the International Trade Data System (ITDS) and supporting systems, such as ACE, as the primary means of receiving from users the standard set of data and other relevant documentation (exclusive of applications for permits, licenses, or certifications) required for the release of imported cargo and clearance of cargo for export.

On October 13, 2015, CBP published an Interim Final Rule in the **Federal Register** (80 FR 61278) that designated ACE as a CBP-authorized EDI system. The designation of ACE as a CBP-authorized EDI system was effective November 1, 2015. In the Interim Final Rule, CBP stated that ACS would be phased out and anticipated that ACS would no longer be supported for entry and entry summary filing by the end of February 2016. Filers were encouraged to adjust their business practices so that they would be prepared when ACS was decommissioned.

CBP has developed a staggered transition strategy for decommissioning ACS. The first two phases of the transition were announced in a **Federal Register** notice on February 29, 2016. (81 FR 10264). This notice announces the third phase of the transition. CBP will continue to monitor the FDA filing rates in ACE. Should there be a need to avoid a substantial adverse impact on trade, CBP will reassess the transition completion date for FDA filings.

ACE as the Sole CBP-Authorized EDI System for the Processing of Certain Electronic Entry and Entry Summary Filings Accompanied by FDA Data

This notice announces that, effective June 15, 2016, ACE will be the sole CBP-authorized EDI system for electronic entries and entry summaries for merchandise that is subject to import requirements of the Food and Drug Administration (FDA), associated with the following entry types:

- 01—Consumption—Free and Dutiable
- 03—Consumption—Antidumping/ Countervailing Duty
- 06—Consumption—Foreign Trade Zone (FTZ)
- 11—Informal—Free and Dutiable

- 23—Temporary Importation Bond (TIB)
- 51—Defense Contract Administration Service Region (DCASR)
- 52—Government—Dutiable

ACS as the Sole CBP-Authorized EDI System for the Processing of Certain Electronic Entry and Entry Summary Filings

- Electronic entry and entry summary filings for the following entry types must continue to be filed only in ACS:
- 02—Consumption—Quota/Visa
- 07—Consumption—Antidumping/Countervailing Duty and Quota/Visa Combination
- 08—NAFTA Duty Deferral
- 09—Reconciliation Summary
- 12—Informal—Quota/Visa (other than textiles)
- 21—Warehouse
- 22—Re-Warehouse
- 31—Warehouse Withdrawal— Consumption
- 32—Warehouse Withdrawal—Quota
- 34—Warehouse Withdrawal—Antidumping/Countervailing Duty
- 38—Warehouse Withdrawal—Antidumping/Countervailing Duty & Quota/Visa Combination
- 41—Direct Identification Manufacturing Drawback
- 42—Direct Identification Unused Merchandise Drawback
- 43—Rejected Merchandise Drawback
- 44—Substitution Manufacturer Drawback
- 45—Substitution Unused Merchandise Drawback
- 46—Other Drawback
- 61—Immediate Transportation
- 61—Immediate Transportation
- 62—Transportation and Exportation

- 63—Immediate Exportation
- 69—Transit (Rail only)
- 70—Multi-Transit (Rail only)

CBP will publish a subsequent **Federal Register** Notice in the near future when these entry and entry summary filings will be transitioned in ACE.

Due to Low Shipment Volume, Filings for the Following Entry Types Will Not Be Automated in Either ACS or ACE

- 04—Appraisalment
- 05—Vessel—Repair
- 24—Trade Fair
- 25—Permanent Exhibition
- 26—Warehouse—Foreign Trade Zone (FTZ) (Admission)
- 33—Aircraft and Vessel Supply (For Immediate Exportation)
- 64—Barge Movement
- 65—Permit to Proceed
- 66—Baggage

Dated: May 11, 2016.

R. GIL KERLIKOWSKE,
Commissioner,
U.S. Customs and Border Protection.

[Published in the Federal Register, May 16, 2016 (81 FR 30320)]



NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING CERTAIN EXERCISE EQUIPMENT

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of two pieces of exercise equipment known as the Matrix® G3–S60 Selectorized Dip/Chin Assist and the Matrix® G3–FW52 Back Extension Bench. Based upon the facts presented,

CBP has concluded that the country of origin of the exercise equipment is the United States under Scenario One and China under Scenario 2.

DATES: The final determination was issued on May 10, 2016. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination no later than June 15, 2016.

FOR FURTHER INFORMATION CONTACT: Ross Cunningham, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade (202) 325-0034.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on May 10, 2016, pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of two pieces of exercise equipment known as the Matrix® G3-S60 Selectorized Dip/Chin Assist and the Matrix® G3-FW52 Back Extension Bench, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H270580, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511-18). In the final determination, CBP concluded that under Scenario One, the processing in the United States results in a substantial transformation, whereas under Scenario Two, the processing in the United States does not result in a substantial transformation. Therefore, the country of origin of the exercise equipment for purposes of U.S. Government procurement is the United States under Scenario One and China under Scenario Two.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: May 10, 2016.

MYLES B. HARMON,
Acting Executive Director,
Regulations and Rulings, Office of Trade.

HQ H270580

May 10, 2016

OT:RR:CTF:VS H270580 RMC

CATEGORY: Country of Origin

JOHN A. KNAB
GARVEY SHUBERT BARER PC
1000 POTOMAC STREET NW
SUITE 200
WASHINGTON, DC 20007

Re: U.S. Government Procurement; Country of Origin of Exercise Equipment; Substantial Transformation

DEAR MR. KNAB:

This is in response to your letter dated November 3, 2015, requesting a final determination on behalf of Johnson Health Tech North America (“Johnson”) pursuant to Subpart B of Part 177 of the U.S. Customs and Border Protection (“CBP”) Regulations (19 CFR part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (“TAA”), as amended (19 U.S.C. 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or for products offered for sale to the U.S. Government. This final determination concerns the country of origin of two pieces of exercise equipment. As a U.S. importer, Johnson is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination.

FACTS:

Johnson is an exercise equipment manufacturer based in Cottage Grove, Wisconsin. It is a wholly-owned subsidiary of the Taiwanese entity Johnson Health Tech. Co., Ltd. (“JHT”). JHT, through its subsidiaries, operates in Taiwan, China, and the United States.

The two pieces of equipment at issue are the Matrix® G3–S60 Selectorized Dip/Chin Assist (“G3 Dip”) and the Matrix® G3–FW52 Back Extension Bench (“G3 Back Extension”). The G3 Dip machine is designed to be used for pull-ups and triceps dips. The user kneels on a counterweighted lever that supports some of the user’s body weight during pull-up or triceps-dip exercises. This upward pressure helps the user develop strength before transitioning to unassisted pull-ups or triceps dips. The G3 Back Extension is an adjustable bench, angled at 45 degrees, designed to be used for lower-back exercises such as hyperextensions.

In its submission, Johnson described two scenarios for assembling the exercise equipment in the United States. The first scenario would apply to both the G3 Dip and the G3 Back Extension and involves importing all component parts for the equipment from China and welding, painting, and assembling them in the United States. The second scenario would apply only to the G3 Dip and is similar to the first scenario except that some of the sub-assemblies would be welded together in China. The specifics of each scenario are described in greater detail below.

1. Scenario One—Design, Weldments, and Assembly in the United States

a. Design in the United States

Johnson states that the G3 Dip and G3 Back Extension will be derived from previous industrial designs that were completed in the United States, although some additional U.S. industrial design may be needed to refresh the look of the equipment. In the design process, U.S.-based engineers will use SolidWorks software to create 3D models and 2D drawings from computer models. Each unit will generally require between 100 and 200 2D computer drawings representing between 300 and 500 separate components and sub-assemblies. These 2D drawings will then be used as the blueprints in the manufacturing process.

b. Component Parts and Materials Come From China

The G3 Dip will consist of approximately 500 parts all produced in China from Chinese materials except for the cable that connects the weights to the counterweight. This cable will be procured from a U.S. supplier but is of unknown origin. The G3 Back Extension will consist of approximately 200 parts all produced in China from Chinese materials.

c. Description of Manufacturing Process

i. Description of Weldments/Major Subassemblies

Johnson states that the equipment will consist of a number of major subassemblies referred to as “weldments.” Each weldment consists of a number of metal parts that are welded together to create a major component. These weldments are subsequently either welded or bolted together to form the finished product.

Nine weldments will comprise the G3 Dip: (1) The weight tower frame; (2) the base frame with steps; (3) the kneel pad support; (4) the left-hand chin-up bars; (5) the right-hand chin-up bars; (6) the head plate; (7) the add-a-weight frame support; (8) the add-a-weight weight stack support; and (9) the belt termination. The G3 Back Extension will have three weldments: (1) the base exercise frame; (2) the telescopic adjustment tube; and (3) the thigh pad support.

Johnson notes that none of the parts as imported from China or the weldments as assembled in the United States will be able to function on their own until they are assembled, welded, or bolted together in the United States.

ii. Chinese Operations

In China, Johnson will purchase steel tubing that becomes the basis for the equipment’s frame. The tubes will be cut to length, punched or drilled, and bent into the required shape before being packaged with individual parts and sent to the United States.

iii. Assembly in the United States

In the United States, Johnson will first clean the steel tubes in a steam booth and then clamp them into various weld fixtures for welding into weldments.

With respect to the G3 Dip, each weldment will require the following number of welding seams to fuse the various metal components together:

- (1) Weight Tower Frame—18 seams;
- (2) Base Frame With Steps—12 seams;
- (3) Kneel Pad Support—6 seams;
- (4) Left-Hand Chin-Up Bar—4 seams;
- (5) Right-Hand Chin-Up Bar—4 seams;
- (6) Head Plate—1 seam;
- (7) Add-A-Weight Frame Support—1 seam;
- (8) Add-A-Weight Weight Stack Support—1 seam;
- (9) Belt Termination—2 seams.

With respect to the G3 Back Extension each weldment will need the following number of welding seams to fuse the various metal components together:

- (1) Base Exercise Frame—16 seams;
- (2) Telescopic Adjustment Tube—4 seams;
- (3) Thigh Pad Support—2 seams.

After welding the metal components, workers will grind down some of the welds to ensure a proper fit for the final product. Next, metal components will be painted with powder-coat paint and placed into a paint oven to cure the paint. Some of the painted components will then be painted a second time with clear coat to protect the finish. At this point, all components and sub-assemblies will be ready for assembly into the final product, which will involve bolting together weldments; fastening hardware; adding rubber grips; capping off tube ends; positioning pulleys; adding weights, cables, or belts; and placing warning placards.

For the G3 Dip, Johnson states that it will take approximately 255 steps to assemble the 500 parts that make up the final product. As for the G3 Back Extension, it will take workers 148 steps to assemble the 200 parts that comprise the finished bench.

iv. Post-Assembly Inspection and Testing

Johnson states that significant inspection and testing will be required for each piece of G3 equipment. The inspection will generally consist of a geometric measurement and analysis of the incoming components, a visual inspection of defects in workmanship and materials, functional testing of assembled units, inspection of paint, and cable tensile testing.

v. Labor & Investment in the United States

Johnson states that in order to assemble equipment in the United States using Scenario 1, it will need to hire at least 16 additional employees in the United States. Further investments will also need to be made in designing and building at least two new weld features, expanding into or acquiring new factory space, and updating IT infrastructure.

2. Scenario Two—Design, Some Weldments, and Assembly in the United States

As noted above, Scenario Two would apply only to the G3 Dip machine. It is similar to Scenario One except that three of the nine weldments will be welded together in China and sent to the United States as pre-welded components: (1) the add-a-weight frame support; (2) the add-a-weight weight stack support; and (3) the belt termination. Workers in the United States will then conduct a pre-cleaning and degreasing, an incoming inspection, painting and curing, and assembly on the Chinese-produced weldments. As a result of the additional welding in China, four fewer welding seams would be needed in the United States under Scenario 2. Otherwise, the steps required under Scenario 2 are the same as those described above under “Description of the Manufacturing Process” for Scenario 1. Johnson states that it will take 210 steps to assemble the G3 Dip under Scenario Two and will require 17 additional employees in the United States (one employee more than under Scenario One due to the additional inspections required).

ISSUE:

What is the country of origin of the G3 Back Extension and the G3 Dip for purposes of U.S. government procurement?

LAW AND ANALYSIS:

Pursuant to subpart B of part 177, 19 CFR 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. *See also* 19 CFR 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of part 177 consistent with Federal Acquisition Regulations. *See* 19 CFR 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government’s purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR 25.403(c)(1). The Federal Acquisition Regulations define “U.S.-made end product” as:

. . . an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

48 CFR 25.003.

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. See *Belcrest Linens v. United States*, 6 CIT 204 (1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, extent and nature of post-assembly inspection and testing procedures, and the degree of skill required during the actual manufacturing process may be relevant when determining whether a substantial transformation has occurred. No one factor is determinative.

CBP has consistently held that complex and meaningful assembly operations in the United States can result in a substantial transformation. See, e.g., HQ H156919, dated July 26, 2011. By contrast, assembly operations that are minimal or simple will generally not result in a substantial transformation. For example, in HQ 733188, dated July 5, 1990, CBP held that no substantial transformation occurred when Venezuelan exercise benches and boards were assembled in the United States. The metal frames as imported from Venezuela were essentially complete, and the U.S. assembly consisted primarily of attaching the cushions and minor parts. Further, no machining was done in the United States and no specialized training, skill, or equipment was required to assemble the exercise equipment. CBP thus held that no substantial transformation occurred in the United States.

Similarly, the Court of International Trade has applied the "essence test" to determine whether the identity of an article is changed through assembly or processing. For example, in *Uniroyal, Inc. v. United States*, 3 CIT 220, 225, 542 F. Supp. 1026, 1030 (1982), *aff'd* 702 F.2d 1022 (Fed. Cir. 1983), the court held that imported shoe uppers added to an outer sole in the United States were the "very essence of the finished shoe" and thus were not substantially transformed into a product of the United States. Similarly, in *National Juice Products Association v. United States*, 10 CIT 48, 61, 628 F. Supp. 978, 991 (1986), the court held that imported orange juice concentrate "imparts the essential character" to the completed orange juice and thus was not substantially transformed into a product of the United States.

Here, with respect to Scenario One, although all or nearly all the parts will be of Chinese origin, the extent of U.S. assembly operations is sufficiently complex and meaningful to result in a substantial transformation. Unlike the exercise equipment at issue in HQ 733188, the G3 Dip and G3 Back Extension under Scenario One will not be essentially complete when their component parts are imported. To the contrary, they will require substantial additional work to create a functional article of commerce. Under Scenario 1 for the G3 Dip, U.S. workers will need to produce nine separate weldments and weld 49 seams to create the major components that comprise the finished equipment. Likewise, with respect to the G3 Back Extension, U.S. workers will need to produce three separate weldments and weld 22 seams to create the major components that comprise the finished equipment.

In addition to the extensive welding operations that U.S. workers will undertake in Wisconsin, the parts that make up the frame will need to be cleaned and degreased, ground down, and sprayed with paint and clear coat in the United States. Next, workers will assemble 200 to 500 individual parts that go into the final product in an assembly process that will involve 148 to 255 individual steps. The assembly process will involve fastening hardware; adding rubber grips; capping off tube ends; positioning pulleys; adding weights, cables, or belts; and placing warning placards. Together with the U.S. welding operations, this assembly will cause the individual parts to lose their separate identities and to become integral components of a product with a new name, character, and use.

In addition to the extent and complexity of the U.S. assembly operations, several additional factors weigh in favor of finding that a substantial transformation will occur in the United States. As noted above, CBP also considers the resources expended on product design and development in the United States and the degree of skill required during the actual manufacturing process. Here, Johnson will expend significant resources in the United States on product development when its U.S.-based engineers create 3D CAD models and 2D drawings for use as blueprints during the manufacturing process. Furthermore, these engineers and the workers who will weld the subassemblies together require significant education, skill, and attention to detail.

With respect to Scenario Two, however, three of the G3 Dip's weldments will be imported from China as pre-assembled components (the add-a-weight frame support, the add-a-weight weight stack support, and the belt termination). Under *Uniroyal*, 3 CIT 220, these critical components together impart the "very essence" of the finished product. The processing in the United States thus will not result in a substantial transformation. *See also National Juice Prods. Ass'n*, 10 CIT 48.

Based on the facts presented, the country of origin of the exercise equipment is the United States under Scenario One and China under Scenario Two.

HOLDING:

The country of origin of the finished exercise equipment under Scenario One is the United States for purposes of government procurement and China under Scenario Two.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

MYLES B. HARMON,
Acting Executive Director
Regulations & Rulings Office of Trade.

**QUARTERLY IRS INTEREST RATES USED IN
CALCULATING INTEREST ON OVERDUE ACCOUNTS AND
REFUNDS ON CUSTOMS DUTIES**

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

ACTION: General notice.

SUMMARY: This notice advises the public that the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties will increase 1 percent from the previous quarter. For the calendar quarter beginning April 1, 2016, the interest rates for overpayments will be 3 percent for corporations and 4 percent for non-corporations, and the interest rate for underpayments will be 4 percent for both corporations and non-corporations. This notice is published for the convenience of the importing public and U.S. Customs and Border Protection personnel.

EFFECTIVE DATE: April 1, 2016.

FOR FURTHER INFORMATION CONTACT: Michael P. Dean, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614-4882.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 provides different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2016-06, the IRS determined the rates of interest for the calendar quarter beginning April 1, 2016, and ending on June 30, 2016. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%) for both corporations and

non-corporations. For corporate overpayments, the rate is the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%). For overpayments made by non-corporations, the rate is the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%). These interest rates are subject to change for the calendar quarter beginning July 1, 2016, and ending September 30, 2016.

For the convenience of the importing public and U.S. Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate overpayments (eff. 1-1-99) (percent)
070174	063075	6	6	.....
070175	013176	9	9	.....
020176	013178	7	7	.....
020178	013180	6	6	.....
020180	013182	12	12	.....
020182	123182	20	20	.....
010183	063083	16	16	.....
070183	123184	11	11	.....
010185	063085	13	13	.....
070185	123185	11	11	.....
010186	063086	10	10	.....
070186	123186	9	9	.....
010187	093087	9	8	.....
100187	123187	10	9	.....
010188	033188	11	10	.....
040188	093088	10	9	.....
100188	033189	11	10	.....
040189	093089	12	11	.....
100189	033191	11	10	.....
040191	123191	10	9	.....
010192	033192	9	8	.....
040192	093092	8	7	.....
100192	063094	7	6	.....
070194	093094	8	7	.....
100194	033195	9	8	.....

Beginning date	Ending date	Under- payments (percent)	Over- payments (percent)	Corporate overpayments (eff. 1-1-99) (percent)
040195	063095	10	9	.....
070195	033196	9	8	.....
040196	063096	8	7	.....
070196	033198	9	8	.....
040198	123198	8	7	.....
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6
070106	123107	8	8	7
010108	033108	7	7	6
040108	063008	6	6	5
070108	093008	5	5	4
100108	123108	6	6	5
010109	033109	5	5	4
040109	123110	4	4	3
010111	033111	3	3	2
040111	093011	4	4	3
100111	033116	3	3	2
040116	063016	4	4	3

Dated: May 10, 2016.

R. GIL KERLIKOWSKE,
Commissioner

[Published in the Federal Register, May 13, 2016 (81 FR 29879)]

**PROPOSED REVOCATION OF 1 RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A GEMSCRIPTOR**

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

ACTION: Notice of proposed revocation of one ruling letter and revocation of treatment relating to the tariff classification of a Gemscriptor.

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 one ruling letter concerning tariff classification of a Gemscriptor under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATES: Comments must be received on or before July 1, 2016.

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

FOR FURTHER INFORMATION CONTACT: Peter Martin, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, at (202) 325–0048.

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 1 ruling letter pertaining to the tariff classification of a Gemscriptor. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N210384, dated April 19, 2012 (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., 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 modify 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 N210384, CBP classified a Gemscriptor in heading 8464, HTSUS, specifically in subheading 8464.90.01, HTSUS, which provides for "Machine tools for working stone, ceramics, concrete, asbestos-cement or like mineral materials or for cold working glass: Other, Other." CBP has reviewed N210384 and has determined the ruling letter to be in error. It is now CBP's position that the Gemscriptor is properly classified, by operation of GRI 1, in heading 8456, HTSUS, specifically in subheading 8456.10.80, HTSUS, which provides for

“Machine tools for working any material by removal of material, by laser or other light or photon beam, ultrasonic, electro-discharge, electro-chemical, electron-beam, ionic-beam or plasma arc processes; water-jet cutting machines: Operated by laser or other light or photon beam processes: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke N210384 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H253888, 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: May 3, 2016

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N210384

April 19, 2012

CLA-2-84:OT:RR:NC:1:104

CATEGORY: Classification

TARIFF NO.: 8464.90.0120

MS. TEENA MATHIS
 ZALE CORPORATION
 901 W. WALNUT HILL LANE
 IRVING, TX 75038

RE: The tariff classification of a Gemscripator PS-300--R from Germany

DEAR MS. MATHIS:

In your letter dated March 21, 2012 you requested a tariff classification ruling.

The Gemscripator Model #PS-300-R ("Gemscripator") is a cold laser marker. This diamond marking/inscription machine is a floor type unit mounted on castors. It runs on 240 volts, 50 – 60 Hz. The Gemscripator is used to mark any type of gem on any side. It is also used for gem authentication and identification. This versatile unit allows the user to choose any letter or logo height (<25 microns to >2mm). The Gemscripator comes equipped with a special table marking holder, a ring holder and a diamond holder. These holders are mounted internally during use.

At time of importation, the Gemscripator is configured to incorporate a BLS Excimer UV laser unit, a positioning system and computer software. The cold UV laser technology is harmless for diamonds and no coatings or protection are needed. The positioning system of the Gemscripator PS-300-R contains OWIS optical grade, high precision co-ordinate (X-Y-Z) tables. The X-Y-Z axes travel at 25mm and contain high precision stepper motors. The maximum working speed is 1mm/sec and the repeatability works on Z axis, 10µm (vertical) and the X – Y axis at 2µm (horizontal).

The applicable subheading for the Gemscripator Model #PS-300-R will be 8464.90.0120, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Machine tools for working stone, ceramics, concrete, asbestos-cement or like mineral materials or for cold working glass: Other...Other." The rate of duty will be 2% 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,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H253888
CLA-2 OT:RR:CTF:TCM H253888 PTM
CATEGORY: CLASSIFICATION
TARIFF NO: 8456.10.8000

Ms. TEENA MATHIS
ZALE CORPORATION
901 W. WALNUT HILL LANE
IRVING, TX 75038

DEAR Ms. MATHIS,

On April 19, 2012 we issued New York Ruling Letter (“NY”) N210384 in response to your ruling request concerning the tariff classification of a Gemscripator. In N210384, we determined that the proper tariff classification of the Gemscripator under the Harmonized Tariff Schedule of the United States (“HTSUS”) was under subheading 8464.90.0120, which provides for “Machine tools for working stone, ceramics, concrete, asbestos-cement or like mineral materials or for cold working glass: Other...Other.” We have reviewed N210384 and find it to be in error. For the reasons set forth below, we hereby revoke N210384.

FACTS:

In N210384, we described the merchandise as follows:

The Gemscripator Model #PS-300-R (“Gemscripator”) is a cold laser marker. This diamond marking/inscription machine is a floor type unit mounted on castors. It runs on 240 volts, 50 – 60 Hz. The Gemscripator is used to mark any type of gem on any side. It is also used for gem authentication and identification. This versatile unit allows the user to choose any letter or logo height (<25 microns to >2mm). The Gemscripator comes equipped with a special table marking holder, a ring holder and a diamond holder. These holders are mounted internally during use.

At time of importation, the Gemscripator is configured to incorporate a BLS Excimer UV laser unit, a positioning system and computer software. The cold UV laser technology is harmless for diamonds and no coatings or protection are needed. The positioning system of the Gemscripator PS-300-R contains OWIS optical grade, high precision co-ordinate (X-Y-Z) tables. The X-Y-Z axes travel at 25mm and contain high precision stepper motors. The maximum working speed is 1mm/sec and the repeatability works on Z axis, 10µm (vertical) and the X – Y axis at 2µm (horizontal).

Thus, the Gemscripator consists of a cold laser marker, work holders and positioning tables. The classification request for N210384 provided additional details:

The system is mounted on castors...The frame is isolated and the laser-marking unit vibration free... [the system performs]

- Gem authentication and identification
- Mark any type of gem, pears, etc. on any side
- Mark: Rounds, Fancies, Marquise, Emeralds, Princes of any size

...

- Inscribe on any type of gem
- Easy access to the working area, easy mount of the stones on a quick release magnetic holder.

The following is an image of the Gemscriptor:



ISSUE:

What is the proper tariff classification of the Gemscriptor?

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, GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

8456 Machine tools for working any material by removal of material, by laser or other light or photon beam, ultrasonic, electro-discharge, electro-chemical, electron-beam, ionic-beam or plasma arc processes; water-jet cutting machines:

* * *

8464 Machine tools for working stone, ceramics, concrete, asbestos-cement or like mineral materials or for cold working glass:

Note 3 to Chapter 84, HTSUS provides:

A machine tool for working any material which answers to a description in heading 8456 and at the same time to a description in heading 8457, 8458, 8459, 8460, 8461, 8464 or 8465 is to be classified in heading 8456.

Therefore, if the subject merchandise is *prima facie* classifiable under heading 8456, HTSUS, it is classified under that heading regardless of whether it might be described by heading 8464, HTSUS.

The EN to heading 8456, HTSUS, provides, in pertinent part, the following:

The machine-tools of this heading are machines used for the shaping or surface-working of any material. They must meet three essential requirements:

- (i) They must work by removing material;
- (ii) They must carry out operations of the kind performed by machine-tools equipped with conventional tools;
- (iii) They must use one of the following seven processes: laser or other light or photon beam, ultrasonic, electro-discharge, electro-chemical, electron beam, ionic-beam or plasma arc.

The plain text of heading 8456 covers machine tools that remove material by laser. The Gemscriptor at issue here is a cold laser marker. It incorporates a BLXS Excimer UV laser unit, positioning system and operating software. It comes equipped with a table marking table, ring holder and diamond holder that are mounted internally. The Gemscriptor is used to engrave gemstones. It operates by using a laser to remove trace amounts of material from the gem.

In order to meet the description of the EN for heading 84.56, the three afore-mentioned criteria must be satisfied. The Gemscriptor meets the first criteria inasmuch as it removes trace amounts of surface material from the gemstone by laser to mark the gems. It carries out operations, marking and engraving, that can be performed by machine-tools equipped with conventional tools. Finally, the Gemscriptor uses a cold-marking laser to perform its function. Because the three criteria are met, we find that the Gemscriptor is described by the EN for heading 84.56.

The EN to heading 84.67 is consistent with Note 3 to Chapter 84, *supra*, and states:

This heading also **excludes**:

* * *

- (c) Machine-tools for working any material by removal of material, *by laser or other light or photon beam*, ultrasonic or plasma arc processes and other machines of **heading 84.56**

(Emphasis added)

Thus, heading 84.67 covers machining tools, but excludes those machining tools that work by removing material with a laser or other light or photon beams. The Gemscriptor removes material with a cold-marking laser. Consequently, it is excluded from heading 84.67.

Prior CBP rulings have classified machines incorporating lasers with ancillary equipment in heading 8456 HTSUS. For example, in NY R00499 (July 9, 2004), CBP classified bench top and floor-standing laser marking machines in heading 8456 HTSUS. In HQ 087513 (Nov. 5, 1990), the legacy Customs Service classified an industrial laser in a fully enclosed machining station

under heading 8456 HTSUS.¹ Based on the foregoing, we find that the Gemscripator is properly classified in heading 8456 HTSUS.

HOLDING:

By application of GRI 1, the Gemscripator is classified in heading 8456 HTSUS. Specifically, it is classified in subheading 8456.10.8000, which provides for “Machine tools for working any material by removal of material, by laser or other light or photon beam, ultrasonic, electro-discharge, electro-chemical, electron-beam, ionic-beam or plasma arc processes; water-jet cutting machines: Operated by laser or other light or photon beam processes: Other.” The column one, general rate of duty is 2.4% *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 N210384 is hereby **REVOKED**

Sincerely,

MYLES B. HARMON,

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 ANTENNA SHIELDS**

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 antenna shields.

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-

¹ We note that laser devices that do not include ancillary equipment of machining tools are classified under heading 9013 HTSUS. *See, e.g.* H237607 (Apr. 1, 2004) (classifying a laser marker “imported without the ancillary equipment necessary to create a machine tool” under heading 9013 HTSUS). The EN to heading 90.13 states that “the heading excludes lasers which have been adapted to perform quite specific functions by adding ancillary equipment consisting of special devices (e.g., work-tables, work-holders, means of feeding and positioning workpieces, means of observing and checking the progress of the operation, etc.) and which, therefore, are identifiable as working machines, medical apparatus, control apparatus, measuring apparatus, etc. Machines and appliances incorporating lasers are also excluded from the heading.”

ested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter concerning tariff classification of the Impulse, arcVISION 312, and Ecoscope models of antenna shields 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. 50, No. 10, on March 9, 2016. No comments regarding the proposed action 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 August 1, 2016.

FOR FURTHER INFORMATION CONTACT: Emily Beline, Tariff Classification and Marking Branch, Regulations and Rulings, at (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 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. 50, No. 10, on March 9, 2016, proposing to modify one ruling letters pertaining to the tariff classi-

fication of three models of antenna shields, the Imupulse, arcVISION 312, and Ecoscope, imported by Schlumberger Technology Corporation. As stated in the proposed Notice, this action will cover Headquarters Ruling Letter (“HQ”) H164415, dated June 1, 2015, 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 the analysis section of HQ H164415, CBP classified all three models of antenna shields in heading 9015, HTSUS, which provides for “Surveying, (including photogrammetrical surveying), hydrographic, oceanographic, hydrological, meteorological or geophysical instruments and appliances, excluding compasses; rangefinders; parts and accessories thereof.” This was correctly noted on the first page of the ruling. This analysis remains correct. However in the Holding section of HQ H164415, CBP erroneously stated that the goods were classified in subheading 9015.80.80, HTSUS. Pursuant to the analysis, they are correctly classified in subheading 9015.90.0060, HTSUSA (Annotated), as, “Surveying, (including photogrammetrical surveying), hydrographic, oceanographic, hydrological, meteorological or geophysical instruments and appliances, excluding compasses; rangefinders; parts and accessories thereof: Parts and accessories: Of other geophysical instruments and appliances,” because the goods are parts of geophysical instruments, they are not themselves geophysical instruments.

Further, the column one rate of duty for goods classified under subheading 9015.90.0060, HTSUSA is “equal to the rate applicable to the article of which it is a part or accessory”. In the instant case, that is as geophysical instruments and appliances, which are classified in subheading 9015.80.8040, HTSUSA, which is duty free.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying HQ H164415 and revoking any other ruling not specifically identified to reflect the tariff classification of the subject merchandise according to the analysis contained in HQ H267349, 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: May 2, 2016

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H267349

May 2, 2016

CLA-2 OT: RR: CTF: TCM: H267349ERB

CATEGORY: Classification

TARIFF NO.: 9015.90.0060

MR. JAMES PRINCE

SENIOR LEGAL COUNSEL, TRADE AND CUSTOMS COMPLIANCE

SCHLUMBERGER

5599 SAN FELIPE STREET

HOUSTON, TX 77056

RE: Modification of HQ H164415; Tariff Classification of antenna shields

DEAR MR. PRINCE:

U.S. Customs and Border Protection (CBP) issued Schlumberger Technology Corporation (STC or Protestant) Headquarters Ruling Letter (HQ) H164415 on June 1, 2015. HQ H164415 pertains to the tariff classification under the Harmonized Tariff Schedule of the United States, (HTSUS) of three models of antenna shields, the Impulse, arcVISION 312, and Ecoscope. HQ H164415 is correct as regards the legal analysis, however there was an error in the Holding regarding the tariff classification at the six-digit sub-heading level. It is corrected herein.

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 Number 5309-11-100212 was final on both the Protestant and CBP. Therefore, while we may review the law and analysis of HQ H164415, any decision taken herein would not impact the entries subject to that ruling.

Pursuant to section 615(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 to modify the aforementioned ruling was published in the *Customs Bulletin*, Vol. 50, No. 10, on March 9, 2016. No comments were received in response to the proposed notice of action.

FACTS:

A drill string is a term loosely applied to the assembled collection of the drill pipe, drill collar, drill bit, and other bottom hole assemblies (BHA) used to make the drill bit turn at the bottom of a wellbore. A drill collar is a heavy pipe above the drill bit in a drill string. It is “dumb” metal, in that it is a heavy piece of metal that provides weight on the bit to assist gravity in the drilling. The bit and the collar are integral parts of a drill string because the bit breaks the earth’s crust, and the collar allows the drilling mud to flow through it and not clog the bit.

BHA refers to other components of the lower portion of the drill string, such as the directional drilling and measuring platform, referred to as Logging-While-Drilling (LWD), and Measurement-While-Drilling (MWDs) tools. MWD tools evaluate the physical properties of the borehole in three-dimensional space.¹ MWDs that also measure formation parameters (resis-

¹ See <http://www.glossary.oilfield.slb.com/en/Terms.aspx?LookIn=term%20name&filter=BHA>

tivity, porosity, sonic velocity, acoustic waveform, hole direction, and weight on the bit) are referred to as LWD tools.² The antenna and antenna shields are part of the LWD and MWD measuring platform. Antenna shields provide physical protection for antenna components. Neither the antenna, nor the antenna shield are used to physically break the earth's crust, but without it an operator would essentially be drilling blind. S/he would not know where to position the drill or whether or not to slow down.

The subject merchandise has dual functions, as it is a specially configured antenna shield which incorporates characteristics of the drill collar. First, it performs the function of a drill collar in that it serves as a weight which assists gravity by driving the bit downwards into the borehole, and allows the drilling mud to flow through specially configured slots. Second, it serves as an antenna shield by providing sufficient mechanical protection for the antenna, while at the same time being substantially transparent to both z-mode and x-mode electromagnetic waves. Put another way, given the harsh conditions in which the drill must operate, the antenna shields are constructed to physically protect the antenna without distorting or over-attenuating the transmitted and/or received electromagnetic waves which are responsible for communicating the data to the drill operator at the surface.³

ISSUE:

Whether the subject antenna shields are classified as an article of iron or steel under subheading 7326.90.85, HTSUS, or as a part of machinery under subheading 8431.43.40, HTSUS, or as a part of geophysical instruments under subheading 9015.90.00, 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 GRI may then be applied in order.

The HTSUS headings and subheadings under consideration are the following:

7326	Other articles of iron or steel:

8431	Parts suitable for use solely or principally with the machinery of headings 8425 to 8430:
8431.43	Of machinery of heading 8426, 8429 or 8430: Parts for boring or sinking machinery of subheading 8430.41 or 8430.49:

² Resistivity is a fundamental material property which represents how strongly a material opposes the flow of electric current and in this context, it characterizes the rock or sediment in a borehole by measuring its electrical resistivity. Along with formation porosity measurements, it is often used to indicate the presence of hydrocarbons in the formation. A high electrical resistivity often contains hydrocarbons such as crude oil, while porous formations having a low electrical resistivity are often water saturated.

³ U.S. Patent No. 8,497,673 (Filed September 28, 2009).

8431.43.80 Other

9015 Surveying (including photogrammetrical surveying), hydro-graphic, oceanographic, hydrological, meteorological or geophysical instruments and appliances, excluding compasses; rangefinders; parts and accessories thereof:

9015.90 Parts and Accessories:

Section XV (Base metals), which covers Chapter 73, Note 1(h) states the following:

This section does not cover:

(h) Instruments or apparatus of Section XVIII, including clock or watch springs;

Section XVIII covers Chapter 90. Therefore, if the subject merchandise is classified in Chapter 90, it is excluded from classification in Chapter 73.

Section XVI, Note 1(m) states:

1. This section does not cover:

(m) Articles of chapter 90;

Therefore, again, if the subject merchandise is classified in Chapter 90, it is excluded from classification in Section XVI, which includes Chapter 84.

Note 2(b) to Chapter 90 provides the following:

2. Subject to note 1 above, parts and accessories for machines, apparatus, instruments or articles of this chapter are to be classified according to the following rules:

(b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus ... are to be classified with the machines, instruments or apparatus of that kind.

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the HTSUS at the international level, may be utilized. The ENs although not dispositive or legally binding, provides 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, 35128 (August 23, 1989).

The EN 84.30 provides, in relevant part, the following:

This heading covers machinery..., for “attacking” the earth’s crust (e.g. for cutting and breaking down rock, earth, coal, etc.; earth excavation, digging, drilling, etc.), or for preparing or compacting the terrain (e.g., scraping, levelling, grading, tamping or rolling).

This heading includes:

(III) EXTRACTING, CUTTING OR DRILLING MACHINERY

This is mainly used in mining, well-drilling, tunneling, quarrying, clay cutting, etc.

(D) Well sinking or boring machines for the extraction of petroleum, natural gases, ...

The EN 84.30 continues:

PARTS

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), parts of the machines of this heading are classified in heading 84.31.

Given the above, the EN 84.31 provides, in relevant part:

This heading includes:

(4) Rotary tables, swivels, kellys, kelly drive bushings, tool-joints, drill collars, ...

The EN 90.15 provides, in relevant part:

(VI) GEOPHYSICAL INSTRUMENTS

(2) Magnetic or gravimetric geophysical instruments used in prospecting for ores, oil, etc. These highly sensitive instruments include magnetic balances, magnetometers, magnetic theodolites and gravimeters, torsion balances.

(5) Apparatus for measuring the inclination of a borehole.

EN 90.15 continues:

PARTS AND ACCESSORIES

Subject to the provisions of Notes 1 and 2 to this Chapter (see the General Explanatory Note) this heading also covers parts and accessories of the goods of this heading. Such parts and accessories include: tripods specially designed for instruments used in geodesy, topography, etc.; supporting rods for optical squares; tripods for staves; arrows for land chains.

If the subject merchandise is classified in Chapter 90, then it is excluded from classification in Chapter 73, by operation of Note 1(h) to Section XV, and it is excluded from classification in Chapter 84, by operation of Note 1(m) to Section XVI. Thus, the first issue is whether or not the merchandise qualifies as a part of machinery of Section XVIII, which includes Chapter 90.

In *Bauerhin Technologies Limited v. United States*, 19 CIT 1441, 914 F. Supp. 554 (1995), aff'd 110 F.3d 774 (Fed. Cir. 1997), the Court pointed out that there are two distinct lines of cases defining the word "part" in the tariff. Starting with *U.S. v. Willoughby Camera Stores, Inc.* 21 CCPA 322, 324 (1933), T.D. 46075 (1933), cert. denied, 292 U.S. 640 (1934), this line of cases holds that a part of an article "is something necessary to the completion of that article without which the article to which it is to be joined, could not function as such article." Another line of cases evolved from *United States v. Pompeo*, 43 CCPA 9, C.D. 1669 (2955), which held that a device may be a part

of an article even though its use is optional and the article will function without it, if the device is dedicated for use upon the article, and, once installed the article will not operate without it.

The definition of “parts” was also discussed more recently, in *Rollerblade, Inc. v. United States*, 116 F. Supp. 2d 1247 (CIT 2000), aff’d 282 F.3d 1349 (CAFC 2002). In that case, the United States Court of Appeals for the Federal Circuit defined parts as “an essential element or constituent; integral portion which can be separated, replaced, etc.” *Id.* at 1353 (citing *Webster’s New World Dictionary* 984 (3d College Ed. 1988)). The Court also noted that a “part” must also bear a direct relationship to the primary article.

Drill collars are classified as “parts of machinery of headings 8425 to 8430”, in subheading 8431.43.40, HTSUS. See New York Ruling Letter (NY) N025539, dated April 4, 2008; NY R01962, dated June 3, 2005. If this merchandise were part of the drill collar, which is itself a part of the drill string, it would not be considered a part of boring or sinking machinery of heading 8431, HTSUS. See *Mitsubishi Elecs. Am. v. United States*, 19 C.I.T. 378, 383 n.3 (Ct. Int’l Trade 1995), “This is because a subpart of a particular part of an article is more specifically provided for as a part of that part than as a part of the whole.” Citing *C.F. Liebert v. United States*, 60 Cust. Ct. 677, 686–87, 287 F. Supp. 1008, 1014 (1968) (holding that parts of clutches which are parts of winches are more specifically provided for as parts of clutches than as parts of winches). As such, in that it adds weight to the bit and allows mud to flow through its apertures, it is not a drill collar *per se*. Rather, its function is described by the text of heading 9015, HTSUS, as a geophysical instrument which is integral, necessary, and solely used with the LWD/MWD.

The subject antenna shields satisfy the Court’s requirements as a “part” under heading 9015, HTSUS, because the shields are necessary for the geophysical measuring equipment to operate as it is intended. They are an essential component, one which is integral, though it can be separated and replaced as a component of the LWD/MWD platform of directional resistivity tools. Heading 9015, HTSUS, provides for “Geophysical instruments.” The term “geophysical” is not defined in the HTSUS. In determining the proper meaning of a tariff provision, the Courts have held that where the HTSUS does not expressly define a term, “the correct meaning of the term is its common commercial meaning.” *Arko Foods Int’l, Inc. v. United States*, 654 F.3d 1361, 1364 (Fed. Cir. 2011). To determine the common commercial meaning, the Courts have directed that CBP may rely upon its own understanding of terms, and may consult lexicographic and scientific authorities. See *Airflow Tech., Inc. v. United States*, 524 F.3d 1287, 1291 (Fed. Cir. 2008).

In HQ H024751, dated August 24, 2010, this office sought to define this same tariff term at issue here. There, in citing to Schlumberger’s Oilfield Glossary, the term “geophysics” is defined as the, “[s]tudy of the physics of the earth, especially its electrical, gravitational and magnetic fields and propagation of elastic (seismic) waves within it.”⁴ The subject antenna shields are an integral part of the integrated LWD/MWD platform which provides con-

⁴ Schlumberger Oilfield Glossary. “1.n. geophysics,” available at <http://glossary.oilfield.slb.com/en/Terms.aspx?LookIn=term%20name&filter=geophysics> Accessed 26 March 2015.

tinuous direction and inclination data while drilling. Insofar as this is a series of interconnected machines which work together to transmit all necessary data between the operator at the surface and the drill string, the subject antenna shields are parts of “geophysical” instruments. Pursuant to Note 2(b) to Chapter 90, parts suitable for use solely or principally with an instrument of that chapter is to be classified with that instrument. Our conclusion is also in keeping with the EN 90.15(IV) which indicates that “apparatus for measuring the inclination of a borehole” and “magnetic geophysical instruments used in prospecting for oil” are classified under heading 9015, HTSUS, as geophysical instruments. See EN 90.15(IV)(2), (5). See also HQ W968458, dated May 8, 2009 (sonic imaging tool used to examine the condition of subsurface geological formations for purposes of oil exploration classified under heading 9015, HTSUS, as a geophysical instrument).

Thus, as the subject merchandise is described by the tariff terms of Chapter 90, they are excluded from Chapter 73 by operation of Note 1(h) to Section XV, and excluded from Chapter 84, by operation of Note 1(m) to Section XVI. Pursuant to Note 2(b) to Chapter 90, the subject antenna shields are parts of geophysical instruments of heading 9015, HTSUS.

The merchandise in question may be subject to antidumping or countervailing duties (AD/CVD). Written decisions regarding the scope of AD/CVD orders are issued by the Enforcement and Compliance office in the International Trade Administration of the U.S. Department of Commerce, and are separate from tariff classification and original rulings issued by U.S. Customs and Border Protection. You can contact them at <http://trade.gov/enforcement> (click on “Contact Us”). For your information, you can view a list of current AD/CVD cases at the United States International Trade Commission website at <http://www.usitc.gov> (click on “Antidumping and Countervailing Duty” under “Popular Topics” at the top of the screen), and you can search AD/CVD deposit and liquidation messages using CBP’s AD/CVD Search tool at <http://addcvd.cbp.gov>

HOLDING:

For the reasons set forth above, by application of GRI 1, the subject Impulse, arcVISION, and Ecoscope antenna shields are all classified under heading 9015, HTSUS. They are specifically provided for in subheading 9015.90.0060, HTSUSA (Annotated) as “Surveying (including photogrammetrical surveying), hydrographic, oceanographic, hydrological, meteorological or geophysical instruments and appliances, excluding compasses; rangefinders; parts and accessories thereof. Parts and accessories: Of other geophysical instruments and appliances.” The column one rate of duty is applicable to the article of which it is a part or accessory. In this case, that is as a part of geophysical instruments and appliances, and the rate of duty there is *free*.

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

EFFECT ON OTHER RULINGS:

HQ H164415, dated June 1, 2015 is hereby MODIFIED, however, the liquidation of which was the subject of protest 5309–11–100212 was final on CBP and the Protestant. 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

MYLES B. HARMON

Director

Commercial and Trade Facilitation Division


19 CFR PART 177**MODIFICATION AND REVOCATION OF SIX RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN PATIENT LIFTING DEVICES**

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

ACTION: Notice of modification and revocation of six ruling letters and revocation of treatment relating to the tariff classification of certain patient lifting devices.

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 five ruling letters and revoking one ruling letter concerning tariff classification of certain patient lifting devices under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 50, No. 10, on March 9, 2016. No comments were received in response to that Notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 1, 2016.

FOR FURTHER INFORMATION CONTACT: Emily Beline, Tariff Classification and Marking Branch, Regulations and Rulings, at (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 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. 50, No. 10, on March 9, 2016, proposing to modify five ruling letters, and revoke one ruling letter pertaining to the tariff classification of certain patient lifting devices. As stated in the proposed Notice, this action will cover NY 868691, dated December 10, 1991, NY 871935, dated March 25, 1992, NY B87708, dated July 30, 1997, NY C81648, dated November 24, 1997, NY D83377, dated November 6, 1998, and revocation of NY N092699, dated February 25, 2010, 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 six 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 transac-

tions 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 868691, CBP determined that the patient lifts at issue were classified under heading 9402, HTSUS, specifically under subheading 9402.90.00, HTSUS, which provides for, medical surgical, dental or veterinary furniture, and that they were eligible for secondary classification under subheading 9817.00.96, HTSUS, which provides for "Articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons; parts and accessories (except parts and accessories of braces and artificial limb prosthetics) that are specially designed or adapted for use in the foregoing articles: Other". It is now CBP's position that the subject merchandise is properly classified under heading 8428, HTSUS, specifically under 8428.90.02, HTSUS, which provides for, lifting machinery, by application of GRI 1. However, it is CBP's position that the instant articles remain eligible for secondary classification under subheading 9817.00.96, HTSUS.

In NY 871935, CBP determined that the "Liko MasterLift System" was classified under heading 9402, HTSUS. It is now CBP's position that the subject merchandise is properly classified under heading 8428, HTSUS, by application of GRI 1. The remainder of the ruling which classified various other goods is not impacted by this modification.

In NY B87708, CBP determined that the Albatros and Ergotrac ceiling lift systems, the Ergolift floor lifts, and the extra Eroglift slings were classified under heading 9402, HTSUS, and that they were eligible for secondary classification under subheading 9817.00.96, HTSUS. It is now CBP's position that the subject merchandise is properly classified under heading 8428, HTSUS, by application of GRI 1. The extra Ergolift slings are properly classified in subheading 8431.90.00, HTSUS, which provides for, "Parts suitable for use solely or principally with the machinery of headings 8425 to 8430: Of machinery of heading 8428: Other." However, it is CBP's position that the instant articles remain eligible for secondary classification under subheading 9817.00.96, HTSUS.

In NY C81648, CBP determined that the "Pro-Med Patient Lifting System" in multiple models, was classified under heading 9402, HTSUS, and that it was eligible for secondary classification under subheading 9817.00.96, HTSUS. It is now CBP's position that the subject merchandise is properly classified under heading 8428,

HTSUS, by application of GRI 1. However, it is CBP's position that the instant articles remain eligible for secondary classification under subheading 9817.00.96, HTSUS.

In NY D83377, CBP determined that the bath lifts at issue were classified under heading 9402, HTSUS, and that they were eligible for secondary classification under subheading 9817.00.96, HTSUS. It is now CBP's position that the subject merchandise is properly classified under heading 8428, HTSUS, by application of GRI 1. However, it is CBP's position that the instant articles remain eligible for secondary classification under subheading 9817.00.96, HTSUS.

In NY N092699, CBP classified the Proxi-Motion patient lift, a mobile device designed to be used by caregivers to assist in moving a patient or disabled person from a bed or a chair in subheading 8428.90.0190, HTSUS. The classification of this subject merchandise is correct. However, this ruling was not issued pursuant to 19 U.S.C. § 1625 and Customs Regulations regarding modification or revocation of interpretive rulings, found in 19 CFR § 177.12. Therefore, CBP is proposing to revoke NY N092699.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY 868691, NY 871935, NY B87708, NY C81648, NY D83377, and revoking NY N092699, and any other ruling not specifically identified to reflect the tariff classification of the subject merchandise according to the analysis contained in HQ H235507, 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: May 2, 2016

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial & Trade Facilitation Division

Attachment

HQ H235507

May 2, 2016

CLA-2 OT:RR:CTF:TCM H235507 ERB

CATEGORY: Classification

TARIFF NO.: 8428.90.0290; 9817.00.96

MR. DAN BEAUREGARD

A.N. DERINGER, INC.

P.O. BOX 284

HIGHGATE SPRINGS, VT 05460

RE: Modification of NY 868691, Modification of NY 871935, Modification of NY B87708, Modification of NY C81648, Modification of NY D83377, Revocation of NY N092699; Tariff Classification of various patient lifts

DEAR MR. BEAUREGARD:

This is in reference to the above referenced New York Ruling Letters, which each regard the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a product identified as a patient or person lifting device. The rulings were either issued to you, or issued to you on behalf of a client, by U.S. Customs and Border Protection (CBP).

In the above referenced rulings, CBP classified the subject patient lifting devices under heading 9402, HTSUS, which provides for medical furniture. We have since reviewed these rulings and found them to be incorrect. For the reasons set forth below, we intend to modify the following rulings which classify substantially similar products under heading 9402, HTSUS: NY 868691, dated December 10, 1991 (three types of patient lifters, a hydraulic mobile machine, an electric mobile machine, and a ceiling mounted system); NY 871935, dated March 25, 1992 (three styles of the Liko Master-Lift System¹); NY B87708, dated July 30, 1997 (Albatros and Ergotrac ceiling lift systems, and Ergolift floor lift); NY C81648, dated November 24, 1997 (four models of the Pro-Med Patient Lifting System); and NY D83377, dated November 6, 1998 (the Invacare bath lift).

We also intend to revoke NY N092699, dated February 25, 2010, (classifying the Proxi-Motion patient lift). Pursuant to 19 U.S.C. § 1625(c) and 19 C.F.R. § 177.12(b), Customs is to follow a notice and comment procedure if conflicting or inconsistent rulings exist. We have reviewed NY N092699, and while the classification itself is correct, it was issued in conflict with the aforementioned rulings NY 868691, NY 871935, NY B87708, NY C81648, and NY D83377.

For ease, this ruling will only discuss the facts of NY B87708. However, as the goods of each of the aforementioned rulings are identical or substantially similar with regards to the patient lifts, the analysis contained herein will apply to all named rulings.

¹ NY 871935 also classified four models of the Whirlpool Bathing System (Kramer Bathing Systems) in subheading 9019.10.20, HTSUS, which provides for mechano-therapy appliance and massage apparatus; one model (S-206) of the Getinge Flusher/Disinfectant in subheading 8419.20.00, HTSUS, which provides for machinery, plant or laboratory equipment, for the treatment of materials by a process involving a change of temperature such as heating, ..., sterilizing: Medical, surgical or laboratory sterilizers; and one article called the Merivaara's Rose Geriatric Chair, in subheading 9401.90.00, HTSUS, which provides for medical furniture. These classifications remain intact and are not altered by the instant modification.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 23 of Title VI, Notice of the proposed action to modify or revoke the aforementioned rulings was published in the *Customs Bulletin*, Vol. 50, No. 10, on March 9, 2016. No comments were received in response to the proposed notice of action.

FACTS:

In NY B87708, CBP described the Albatros and Ergotracc Ceiling Lift Systems, and the Ergolift Floor Lift, in the following manner:

The Albatros Ceiling lift System is a patient-lifting system which operates on two motorized axes. It features an automatic return-to-charge function, a lifting capacity of 250 kgs (550 lbs.), a battery supply unit, an emergency stop pull cord and an emergency lowering device.

The Ergotracc Ceiling Lift System is a patient-transfer system on a fixed rail with two axes, permitting easy manual lateral displacement. It is electrically powered and features a lifting capacity of 190 kgs (418 lbs.), a padded universal carry bar which accepts all types of slings, an automatic back-up battery supply nit and emergency Up/Down buttons.

The Ergolift is an ergonomic floor lift. It features multi-positioned handles near the care giver, motorized opening of the legs, an easily accessible emergency stop button, patient rotation capability of 360 degrees, a directional blockage system, luminous dials for battery and charging function, and a padded swivel carry bar adaptable to all types of slings. The patient can be hoisted from the floor without lifting the shoulders. The standardized motorized opening of the legs of the Ergolift and the optimal distribution of the patient's weight, allows the caregiver to easily maneuver the unit without risk.

The applicable subheading for the Albatros and Ergotracc Ceiling Lift Systems, the Ergo lift Floor Lift and Ergofit Slings will be 9402.90.0020, Harmonized Tariff Schedule of the United States (HTS), which provides for Medical, surgical, dental or veterinary furniture: ... parts of the foregoing articles: Other, other. The rate of duty will be 2.1% ad valorem.

The Albatros and Ergotracc Ceiling Lift Systems, the Ergolift Floor Lift ... appear to be intended for the use of individuals with a chronic ailment which substantially limits their ability to care for themselves. The devices are therefore eligible for a free rate of duty as articles specially designed or adapted for the use or benefit of physically or mentally handicapped persons in subheading 9817.00.9600, HTS.

ISSUE:

Whether the instant products are properly classified under heading 8428, HTSUS, which provides for "Other lifting ... machinery", or under heading 9402, HTSUS, which provides for "Medical ... furniture".

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are:

- | | |
|------|--|
| 8428 | Other lifting, handling, loading or unloading machinery (for example, elevators, escalators, conveyors, teleferics): |
| 9402 | Medical, surgical, dental or veterinary furniture (for example, operating tables, examination tables, hospital beds with mechanical fittings, dentists' chairs); barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements; parts of the foregoing articles: |

Note 2 to Chapter 94, HTSUS, states, in pertinent part:

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

The 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. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 84.28 states, in pertinent part:

[T]his heading covers a wide range of machinery for the mechanical handling of materials, goods, etc. (lifting, conveying, loading, unloading, etc.). They remain here even if specialised for a particular industry, for agriculture, metallurgy, etc.

The heading covers lifting or handling machines usually based on pulley, winch or jacking systems, and often including large proportions of static structural steelwork, etc. These static structural elements (e.g., pylons specialised for teleferics, etc.) are classified in this heading when they are presented as parts of a more or less complete handling machine.

These more complex machines include:

(III) OTHER SPECIAL LIFTING OR HANDLING MACHINERY

- (L) Patient lifts. These are devices with a supporting structure and a seat for the raising and lowering of seated persons, e.g., in a bathroom or onto a bed. The mobile seat is fixed to the supporting structure by means of ropes or chains.

The General EN to Chapter 94 states, in pertinent part:

For the purposes of this Chapter, the term "furniture" means:

- (A) Any "movable" articles (not included under other more specific headings of the Nomenclature), which have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafés, res-

taurants, laboratories, hospitals, dentists' surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport.

EN 94.02 states, in pertinent part:

(A) MEDICAL, SURGICAL, DENTAL OR VETERINARY FURNITURE

It should be noted that this group is restricted to furniture of a type specially designed for medical, surgical, dental or veterinary use; furniture for general use not having such characteristics is therefore excluded.

Heading 9402, HTSUS, provides in pertinent part for medical furniture. To satisfy the heading text, however, the goods must be both specially designed for medical, surgical, dental or veterinary use, and they must be "furniture." See EN to Chapter 94, and EN 94.02.

The General EN (A) to Chapter 94 defines furniture as: "[a]ny 'movable' articles ... which have the essential characteristic that they are constructed, in some cases, for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings and other places." CBP has previously considered the meaning of the term "equip" as well as the phrase "to equip". In HQ 964352, dated September 11, 2000 CBP cited *The Random House Dictionary of the English Language*, (1973), which defines the word "equip" as meaning: "To furnish or provide with whatever is needed for service or for any undertaking". There, CBP ultimately determined that waste receptacles were not designed to equip a building, office, or room, but instead were temporary repositories of waste. See also HQ 964053, dated July 27, 2000; and HQ 962658, dated July 18, 2000. By including the words "not included under other more specific headings" in the definition of furniture, the drafters of the ENs intended that Chapter 94 would not cover all "moveable" articles constructed for placing on the floor. A more specific heading which better describes the article is preferable to the more general heading of furniture. While the instant lifts are constructed, in some cases, for placing on the ground, they are not used to equip private dwellings or other places. They do not have a utilitarian purpose of equipping a room. Rather, they are used to transfer a patient to and from a bath or bed. As such, the instant lifts are not "furniture," and are not properly classified as such under chapter 94, specifically, heading 9402, HTSUS.

Heading 8428, HTSUS, provides, in pertinent part, for other lifting machinery. See NY N160936, dated May 2, 2011 (classifying a power lift gate assembly); NY N057959, dated April 27, 2009 (classifying a motorcycle lift). The heading covers specialized lifting machines based on pulley, winch or jacking systems, which often included large proportions of static structural elements. See EN 84.28.

In November 2003, Subsection (III)(L) was added to the EN 84.28, by corrigendum. See Annex D/1 to Doc. NC0796B2 (HSC/32/Nov. 2003), para. 100; Annex L/14 to Doc. NC0796B2. This addition provides specifically for "patient lifts," described as supporting structure and a seat for the raising and lowering of seated persons, e.g., in a bathroom or onto a bed. See EN(III)(L) to 84.28.

The instant lifts are comprised of moveable metal structures that stand on the floor, or are ceiling or wall mounted. A fabric sling hangs down from the

arm of the structure by ropes. The sling is designed such that a patient may be seated in it and transferred to and from a bed or a bath². Therefore, as the subject patient lifts meet the text of heading 8428, HTSUS, and are described by EN (III)(L) to 84.28, the lifts are classifiable under heading 8428, HTSUS. Specifically, the instant lifts are classified under subheading 8428.90.00, HTSUS, which provides for “Other lifting, handling, loading or unloading machinery (for example, elevators, escalators, conveyors, teleferics): Other machinery”³.

Heading 9817

Section 1121 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. No. 100–418, 102 Stat. 1107) and Presidential Proclamation 5978 implemented the Nairobi Protocol by inserting permanent provisions—specifically, subheadings 9817.00.92, 9817.00.94, and 9817.00.96—into the HTSUS. These tariff provisions specifically provide that “[a]rticles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons” are eligible for duty-free treatment.

Notes in subchapter XVII of Chapter 98 of the HTSUS define the terms “blind or other physically or mentally handicapped persons” and limit the classification of certain products under subheadings 9817.00.92, 9817.00.94, and 9817.00.96. U.S. Note 4(a), subchapter XVII, Chapter 98, HTSUS, defines the term “blind or other physically or mentally handicapped persons” as “any person suffering from a permanent or chronic physical or mental im-

² The term “seat” is not defined in the tariff or in the ENs. When a tariff term is not defined by the HTSUS or its legislative history, “the term’s correct meaning is its common meaning.” *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, CBP may consult “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials.” *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (C.C.P.A. 1982); *Simod*, 872 F.2d at 1576. THE OXFORD ENGLISH DICTIONARY defines “seat” as “7.a. Something adapted or used for sitting upon, as a chair, stool, sofa, etc. ... b. In narrower sense: That part (of a chair, saddle, etc.) upon which its occupant sits.” See <www.oed.com> (last checked January 16, 2013). See also *Various Underwriters at Interest, Lloyd’s London v. Cascade Helicopters, Inc.*, 1993 U.S. Dist. LEXIS 13227, *7 (N.D. IL 1993) (quoting *The American Heritage Dictionary* 1107 (2d ed. 1982)).

³ NY B87708 also classifies the Ergolift slings alone, which are described as, “100% polyester soft mesh net, a lined seat made from polyester and foam, a lifting capacity of 250 kgs (550 lbs.) and a nylon strap with choice of positioning. The slings are water resistant and machine washable.” See NY B87708. At the time, since the slings were considered a part of medical furniture, they were classified alongside the lifts themselves in heading 9402, HTSUS, which provides for furniture and parts thereof. Here, however, so long as no other Chapter or Section exclusionary notes apply, parts of lifting devices of heading 8428, HTSUS, are classified in heading 8431, HTSUS, pursuant to Note 2 to Section XVI, which covers chapter 84. Specific information, including the Ergolift sling’s warp and weft, and any applicable surface treatments, is no longer available. Therefore, for purposes of this ruling and without the benefit of additional information, as the Ergolift slings were considered parts in NY B87708, these particular slings will still be considered a part, specifically a part of lifting machinery here, and will be classified in subheading 8431.39.00, HTSUS, which provides for, “Parts suitable for use solely or principally with the machinery of headings 8425 to 8430: Of machinery of heading 8428: Other.”

pairment which substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working." U.S. Note 4(b), subchapter XVII, Chapter 98, HTSUS excludes four categories of goods from subheadings 9817.00.92, 9817.00.94, and 9817.00.96: (1) articles for acute or transient disability; (2) spectacles, dentures, and cosmetic articles for individuals not substantially disabled; (3) therapeutic and diagnostic articles; and (4) medicine or drugs.

CBP decides whether a product is "specially designed or adapted for the use or benefit" of the handicapped on a case-by-case basis, balancing five factors set forth in Headquarter Ruling Letter ("HQ") HQ556449, dated May 5, 1992. Here, persons who are unable to lift or move themselves into or out of a bath or bed, specifically those with severe, chronic mobility issues qualify as "handicapped people" under U.S. Note 4 and the specific exclusions contained in U.S. Note 4(b) do not apply.

The physical properties of the subject patient lifting devices clearly distinguish them as those used in hospitals or clinics for patients unable to move themselves, or in some cases, are installed in a user's home in circumstances where the user is unable to move themselves. Use of these patient lifts by the general public is improbable, and there is little evidence such use would be fugitive. The importers of the subject rulings here are recognized manufacturers or distributors of goods for the handicapped, specifically lifting and mobility devices, and the channels of commerce these goods are sold in is highly specialized to serve hospitals or clinics with handicapped patients. Finally, the condition of the articles at the time of importation indicate that these articles are for the handicapped. Therefore, pursuant to the factors stipulated in HQ 556449, the goods which qualified for duty-free treatment under subheading 9817.00.96, HTSUS, in its original ruling (e.g., NY 868691, NY B87708, NY C81648, and NY D83377) will maintain its qualification for duty-free treatment pursuant to the analysis herein. However, all applicable entry requirements must still be met.

HOLDING:

By application of GRI 1, the patient lifting devices described in NY 868691, NY 871935, NY B87708, NY C81648, NY D83377, and NY N092699 are classified under heading 8428, HTSUS, specifically under subheading 8428.90.0290, HTSUSA, which provides for "Other lifting, handling, loading or unloading machinery (for example, elevators, escalators, conveyors, teleferics): Other machinery".

The column one, general 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 www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY 868691, dated December 10, 1991; NY 871935, dated March 25, 1992; NY B87708, dated July 30, 1997; NY C81648, dated November 24, 1997; NY D83377, dated November 6, 1998 are hereby **MODIFIED** in accordance with the above analysis.

NY N092699, dated February 25, 2010 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,

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

CC:

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19 CFR PART 177

MODIFICATION OF A RULING LETTER RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN WOVEN FABRIC

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

ACTION: Notice of modification of one ruling letter relating to the tariff classification of Sefar Tetex Mono V-17-2030-W 50 Rayl Woven Fabric (woven fabric).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter concerning the tariff classification of certain woven fabric under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed action was published in the *Customs Bulletin*, Vol. 50, No. 10, on March 9, 2016. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 1, 2016.

FOR FURTHER INFORMATION CONTACT: Beth Jenior, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (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) (“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. 50, No. 10, on March 9, 2016, proposing to modify one ruling letter pertaining to the tariff classification of certain woven fabric. As stated in that notice, this action covers Headquarters Ruling Letter (“HQ”) H063618, dated March 27, 2015.

On page six of HQ H063618, the ruling contained the following misstatement of the Explanatory Notes (EN) to heading 59.11 of the international Harmonized System: “Furthermore, the instant fabric is not a square shape.” The ENs to heading 59.11 state that bolting cloths “are porous fabrics (for example, with a gauze, leno or plain weave), geometrically accurate as to size and shape (usually square) of the meshes.” The ENs do not reference the shape of the cloth; rather, they reference the shape of the cloth’s meshes. As such, the above reference to the cloth’s shape is a misstatement of the ENs.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying HQ H063618, in order to correctly reflect EN 59.11. The modifications are reflected in Headquarters Ruling Letter (HQ) H266215, set forth as an attachment to this document.

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

Dated: May 2, 2016

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H266215

May 2, 2016

CLA-2 OT:RR:CTF:TCM H266215 EGJ

CATEGORY: Classification

TARIFF NO.: 5806.32.20

C.J. ERICKSON, Esq.

COWAN, LIEBOWITZ & LATMAN, P.C.

1133 AVENUE OF THE AMERICAS

NEW YORK, NY 10036-6799

RE: Modification of HQ H063618; Classification of Sefar Tetex Mono V-17-2030-W 50 Rayl Woven Fabric

DEAR MR. ERICKSON:

Headquarters Ruling Letter (HQ) H063618, dated March 27, 2015, was a reconsideration of New York Ruling Letter (NY) N042709, dated November 25, 2008. This modification reflects a corrected application of the Explanatory Notes for heading 59.11 of the international Harmonized System. The rest of the decision remains the same.

This is in reply to your letter dated April 13, 2009, in which you requested reconsideration of New York Ruling Letter (NY) N042709, dated November 25, 2008, which pertains to the tariff classification of Sefar Tetex Mono V-17-2030-W 50 Rayl woven fabric (the woven fabric) under the Harmonized Tariff Schedule of the United States (HTSUS). You submitted the reconsideration request on behalf of your client, Sefar Filtration, Inc. (Sefar). Although we responded to your request for a meeting by email on February 5, 2015, and on February 18, 2015, we did not receive any further comments from you on the matter. Therefore, our reconsideration of NY N042709 follows.

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 of proposed modification was published on March 9, 2016, in the *Customs Bulletin*, Vol. 50, No. 10. No comments were received in response to this notice.

FACTS:

In NY N042709, CBP described the woven fabric as follows:

In various correspondences with this office concerning the classification of this product, you have described the item as follows; "...the slit bolting cloth consists of a polyetheretherketone (PEEK)...woven fabric in 3-300 meter lengths, and can be made in various widths. It is geometrically accurate as to size and shape of meshes...The slit bolting cloth is used in sound filtration applications. It is sold in the sound suppression/sound attenuation market"...The samples submitted were all approximately 5/8th inch wide. The samples have selvages on both sides which your letter indicated were formed when the fabric was cut with heated knives ... The use of this product, as stated in your October 13, 2008 request letter, was in the sound suppression/sound attenuation market. This particular product will be used as a component of a noise reduction panel in the inlet cowl of a jet engine. You indicated there was no other use for this material in the U.S.

While your ruling request stated that the woven fabric came in various widths, all of the submitted samples were 5/8th inch wide. As such, CBP only classified the submitted samples. Likewise, this ruling letter only addresses the 5/8th inch wide samples. We note that 5/8th inch is equivalent to approximately 1.5 centimeters.

Based upon the aforementioned facts, CBP classified the woven fabric in heading 5806, HTSUS, as a narrow woven fabric. However, you assert that it is properly classified in heading 5911, HTSUS, as a textile product for technical uses. For support, you state that the original requester did not list all the uses for the woven fabric. Your letter includes the following list of uses: as a rectangular patch for space suits, as part of an automotive filter pump, as part of a gasket, as part of a panel used during the manufacture of fiberboard liner for industrial transformers, as part of a strainer bag that filters high temperature oil for re-use in food applications, as part of a panel used to produce cellulose triacetate and as part of a panel used to produce purified terephthalic acid.

ISSUE:

Is the woven fabric classified as a narrow woven fabric of subheading 5806.32, HTSUS, or as bolting cloth of subheading 5911.20, 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 GRIs may then be applied.

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

5806	Narrow woven fabrics, other than goods of heading 5807...: Other woven fabrics:
5806.32	Of man-made fibers: * * *
5911	Textile products and articles, for technical uses, specified in note 7 to this chapter:
5911.20	Bolting cloth, whether or not made up: * * *

Note 5(a) to Chapter 58 provides as follows:

For the purposes of heading 5806, the expression “*narrow woven fabrics*” means:

- (a) Woven fabrics of a width not exceeding 30 cm, whether woven as such or cut from wider pieces, provided with selvages (woven, gummed or otherwise made) on both edges;

* * *

Note 7 to Chapter 59 provides as follows:

- (a) Textile products in the piece, cut to length or simply cut to rectangular (including square) shape (other than those having the character of the products of headings 5908 to 5910), the following only:
 - (i) Textile fabrics, felt and felt-lined woven fabrics, coated, covered or laminated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes;
 - (ii) Bolting cloth;
 - (iii) Straining cloth of a kind used in oil presses or the like, of textile material or of human hair;
 - (iv) Flat woven textile fabric with multiple warp or weft, whether or not felted, impregnated or coated, of a kind used in machinery or for other technical purposes;
 - (v) Textile fabric reinforced with metal, of a kind used for technical purposes;
 - (vi) Cords, braids and the like, whether or not coated, impregnated or reinforced with metal, of a kind used in industry as packing or lubricating metals;
- (b) Textile articles (other than those of headings 5908 to 5910) of a kind used for technical purposes (for example, textile fabrics and felts, endless or fitted with linking devices, of a kind used in papermaking or similar machines (for example, for pulp or asbestos-cement), gaskets, washers, polishing discs and other machinery parts).

* * *

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. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 58.06(A)(2) describes narrow woven fabric as follows:

Strips of a width not exceeding 30 cm, cut (or slit) from wider pieces of warp and weft fabric (whether cut (or slit) longitudinally or on the cross) and provided with false selvages on both edges, or a normal woven selvedge on one edge and a false selvedge on the other. False selvages are designed to prevent unravelling of a piece of cut (or slit) fabric and may, for example, consist of a row of gauze stitches woven into the wider fabric before cutting (or slitting), of a simple hem, or they may be produced by gumming the edges of strips, or by fusing the edges in the case of certain ribbons of man-made fibres. They may also be created when a fabric is treated before it is cut into strips in a manner that prevents the edges of those strips from unravelling. No demarcation between the narrow fabric and its false selvages need be evident in that case. Strips cut (or slit) from fabric but not provided with a selvedge, either real or false, on each edge, are **excluded** from this heading and classified with ordinary woven fabrics.

* * *

EN 59.11(A)(2) describes bolting cloth as follows:

Bolting cloths. These are porous fabrics (for example, with a gauze, leno or plain weave), geometrically accurate as to size and shape (usually square) of the meshes, which must not be deformed by use. They are mainly used for sifting (e.g., flour, abrasive powders, powdered plastics, cattle food), filtering or for screen printing. Bolting cloths are generally made of hard twisted undischarged silk yarn or of synthetic filament yarn.

* * *

Heading 5911, HTSUS, covers textile products and articles for technical uses which are specified in Note 7 to Chapter 59.¹ Only those textile products described in Note 7 are classifiable in Heading 5911, HTSUS. You assert that the instant woven fabric is bolting cloth, which is listed in Note 7(a)(2). For support, you cite to EN 59.11, which states that bolting cloth must be porous, geometrically accurate as to size and shape of the meshes, and that bolting cloth cannot be deformed by use. Further, you state that the instant woven fabric is uncoated and consists of synthetic filament yarn. You state that the instant woven fabric is physically identical to Sefar item 3B17-0850-158-00, which was classified in subheading 5911.20, HTSUS, in NY N025649, dated May 2, 2008. For all of these reasons, you assert that the instant woven fabric is classifiable as bolting cloth of subheading 5911.20, HTSUS.

In Headquarters Ruling Letter (HQ) HQ 950733, dated December 28, 1993, we set forth the following dictionary definitions of the terms “bolt” and “bolting cloth”² :

The Century Dictionary and Cyclopedia, The Century Company (1911): bolt1 vt 1: To sift or pass through a sieve or bolter so as to separate the coarser from the finer particles, as bran from flour; sift out: as, to bolt meal; to bolt out the bran; bolt2 n. 1.: A sieve; a machine for sifting flour; bolting-cloth n.: A cloth for bolting or sifting; a linen, silk, or hair cloth, of which bolters are made for sifting meal, etc. The finest and most expensive silk fabric made is bolting-cloth, for the use of millers, woven almost altogether in Switzerland.

¹ We note that a recent court case discussed the tariff classification of textile articles for technical uses under heading 5911, HTSUS. *Airflow Technology, Inc. v. United States*, 524 F.3d 1287 (Fed. Cir. 2008)(Airflow). In *Airflow*, however, the Federal Circuit examined the definition of “straining cloth” of Note 7(a)(iii), and not “bolting cloth” of Note 7(a)(ii). As the instant ruling only pertains to bolting cloth, we will not apply the analysis therein to the instant merchandise.

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

Funk & Wagnalls New Standard Dictionary of the English Language, (1928): bolting, n. 1: The act or process of sifting, usually in a mill or machine; b. cloth 1: A fabric, usually of unsized silk, for separating the various products of a flouring mill.

The Wellington Sears Handbook of Industrial Textiles, Ernest R. Kaswell (1963): bolting cloth: Light weight, finely woven silk and nylon bolting cloths made in precise mesh sizes are extensively used industrially for sifting and screening purposes. These extremely uniform filament yarn constructions in leno weaves are manufactured principally in Switzerland on special looms, requiring a high degree of skill on the part of the operator to achieve weaving perfection.

Bolting cloths are designated by the number of interstices or openings per linear inch, in the same manner as fine wire screening. For example, a 200 mesh bolting cloth has 200 openings per inch in both the warp and filling directions. The size of the openings must also be specified, as yarns of different deniers provide different size interstices for a given mesh cloth...

Silk bolting cloths are generally used for dry sifting processes, with the filament nylon cloths preferred for wet screening operations such as those employed in starch and flour manufacturing. Both types of fabrics are also widely used by the textile industry in screen printing.

Webster's Third New International Dictionary, Merriam-Webster (1986): bolt 1: to sift (as meal or flour) usu. through fine-meshed cloth; also: to refine and purify (as meal or flour) through any process; bolting cloth: a firm fabric now usu. of silk woven in various mesh sizes for bolting (as flour) or for use in screen printing, needlework, or photographic enlargements.

Fairchild's Dictionary of Textiles: bolting cloth: A plain weave fabric originally of silk with a fine, uniform mesh; the fabric is woven in the gum and has a high number of threads per inch. The standard width is 40 inches. Fine mesh cotton muslin is also employed. For a time, filament yarn of Vinyon, a copolymer of vinyl acetate and vinyl chloride was used, but when production of this yarn ceased, other synthetic yarns were used. Uses: sifting flour in flour mills and screen printing. Sometimes called banderoles.

Hence, by definition, the bolting cloth of Note 7(a)(ii) to Chapter 59 is not just a porous material. It is an article that, although made only of textile fabric, has a mesh that is geometrically accurate as to size and shape, and is used in certain limited ways. According to the ENs, bolting cloth usually has a square mesh. Even if the instant woven fabric has some of the characteristics of bolting cloth, we note that it does not have the same uses as bolting cloth.

CBP has only issued four rulings which classify merchandise under sub-heading 5911.20, HTSUS, as bolting cloth. In all of those cases, the merchandise was used for sifting, sieving or screen-printing. See HQ 950733 (filtration medium for blood purification), NY 896117, dated April 7, 1994 (screen-printing), NY 815642, dated October 10, 1995 (screen-printing), and

NY N025649, dated May 2, 2008 (sifting/filtering/screening). In NY N025649, the size and shape of the cloth is not stated, but unlike the fabric in NY N025649, your ruling request did not mention any use of the instant woven fabric for sifting, sieving or screen-printing.

In HQ 961537, dated November 21, 2000, CBP examined mesh woven fabric used on test strips for a portable blood glucose monitoring system. That requester also asserted that its woven fabric was classifiable as bolting cloth because it shared many of the same physical characteristics of bolting cloth. Like bolting cloth, the mesh woven fabric was made up of synthetic filament yarn, it was porous, and it was designed to prevent deformation by use. However, as the mesh woven fabric was not used for sifting, sieving, or screen printing, CBP determined that it could not be classified as bolting cloth. Similarly, the instant woven fabric is not used for sifting, sieving or screen-printing. As such, it cannot be classified as bolting cloth under heading 5911, HTSUS.

In NY N042709, CBP classified the instant woven fabric as narrow woven fabric of heading 5806, HTSUS. Note 5(a) to Chapter 58 states that narrow woven fabrics cover woven fabrics of a width not exceeding 30 cm, which have selvages (woven, gummed or otherwise made) on both edges. The instant woven fabric is less than 30 cm wide, and it has selvages formed by cutting with a hot knife to prevent it from unraveling. As it meets the definition of a narrow woven fabric, we find that the instant merchandise is properly classified under heading 5806, HTSUS.

HOLDING:

By application of GRIs 1 (Note 7(a)(ii) to Chapter 59 and Note 5(a) to Chapter 58) and 6, Sefar Tetex Mono V-17-2030-W 50 Rayl woven fabric, in a width not exceeding 30 cm and having selvages on both sides, is classified under subheading 5806.32.20, HTSUS, which provides, in pertinent part, for “Narrow woven fabrics, other than goods of heading 5807...: Other woven fabrics: Of man-made fibers: Other.” The 2015 column one, general rate of duty is 6.2 percent *ad valorem*.

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 N042709, dated November 25, 2008, is hereby affirmed.

HQ H063618, dated March 27, 2015, is hereby modified.

Sincerely,

IEVA K. O'ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177**PROPOSED REVOCATION OF A RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A SPARE PARTS REPAIR KIT**

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

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to the tariff classification of a spare parts kit for a mold or a mold machine.

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 one ruling letter concerning tariff classification of spare parts kit used to repair or maintain a mold or mold machine under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATES: Comments must be received on or before July 1, 2016.

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

FOR FURTHER INFORMATION CONTACT: Nerissa Hamilton-vom Baur, Tariff Classification & Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0104.

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 on 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 one ruling letter pertaining to the tariff classification of a spare parts repair kit for a mold or a mold machine. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) N050746, dated March 4, 2009 (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 those 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 N050746, CBP previously classified the articles as a retail set under General Rule of Interpretation (GRI) 3(b) in heading 8477, HTSUS, which provides for “Machinery for working rubber or plastics

or for the manufacture of products from these materials, not specified or included elsewhere in this chapter; parts thereof". CBP has reviewed NY N050746 and has determined the ruling letter to be in error. Specifically, CBP has determined that the articles that were classified in NY N050746 do not constitute a retail set for purposes of GRI 3(b). It is now CBP's position that the articles identified in NY N050746 are classified separately according to GRI 1.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke NY N050746, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H249811, 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: May 3, 2016

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N050746

March 4, 2009

CLA-2-84:OT:RR:NC:1:104

CATEGORY: Classification

TARIFF NO.: 8477.90.8501

MR. MARC A. ROMANO
HUSKY INJECTION MOLDING SYSTEMS, INC.
55 AMHERST VILLA ROAD
BUFFALO, NY 14225-1432

RE: The tariff classification of a repair kit from Canada

DEAR MR. ROMANO:

In your letter dated January 27, 2009 you requested a tariff classification ruling.

Each Husky spare part/repair kit is unique and bears a unique identifying number, i.e., the Husky Part Number (“HPN”). Each component within the kit also bears a unique HPN. The kit is assembled with the specific components required to repair the mold/machine for which it was designed. Any one kit can only repair a mold or a machine, not both, as the two assemblies (mold and machine) differ and require different components for repair and maintenance. Each kit consists of the most common wear and replacement components for a specific mold/machine. Components are not interchangeable with other repair kits.

In view of the fact that components vary according to the specific kit ordered, this ruling will be limited to the specific set of facts presented in your inquiry. It will only address the one kit for which you have submitted detailed information. You have submitted a breakdown by description and value of the components contained in Repair Kit #4111974. This kit is designed for the repair of a mold only. The components included in this kit are not sufficient to form a complete mold. The submitted disc will be returned to you as per your request.

General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relevant section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. Goods that are, prima facie, classifiable under two or more headings, are classifiable in accordance with GRI 3, HTS. GRI 3(a) states in part that when two or more headings each refer to a 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 goods.

Sets which cannot be classified by reference to GRI 3(a) are to be classified as if they consisted of the component which gives them their essential character. The factor or factors which determine essential character varies with the goods presented in the set. Explanatory Note GRI 3(b)(VIII) lists the following as factors to be considered: the nature of the material or component, their bulk, quantity, weight or value, and the role of a constituent material in relation to the use of the goods.

There is no provision for parts or accessories of molds under heading 8480, HTSUS, even if the part is designed and dedicated for use solely with a

particular mold. The language of heading 8480, HTSUS, is clear on this point, i.e., "... molds for metal (other than ingot molds), metal carbides, glass, mineral materials, rubber or plastics:". Parts of molds are classified in accordance with Note 2 to Section XVI. Any component that is (1) part of a mold for use in an injection-molding machine for plastics and (2) not more specifically provided for elsewhere in the HTSUS is classifiable in subheading 8477.90.8501, HTSUS, which provides for Machinery for working rubber or plastics or for the manufacture of products from these materials, not specified or included elsewhere in this chapter; parts thereof: Parts: Other ... Of injection-molding machines. There is no one single component that imparts the essential character to Repair Kit #4111974. In this case, the factors of bulk, quantity, and role of constituent material indicate that the essential character of this kit is given by the goods classified under subheading 8477.90.8501, HTSUS.

It is the opinion of this office that Repair Kit #4111974 is comprised of goods put up in sets for retail sale. In its imported condition, the instant kit consists of at least two different articles that are, prima facie, classifiable in different headings. It consists of articles put up together to carry out a specific activity (i.e., repair/maintenance of a mold). Finally, the articles are put up in a manner suitable for sale directly to users without repacking. By virtue of General Rule of Interpretation 3(b), Repair Kit #4111974 is classified as a set.

The applicable subheading for the Repair Kit #4111974 will be 8477.90.8501, HTSUS, which provides for Machinery for working rubber or plastics or for the manufacture of products from these materials, not specified or include elsewhere in this chapter; parts thereof: Parts: Other ... Of injection-molding machines. The rate of duty will be 3.1 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,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H249811
CLA-2 OT:RR:CTF:TCM H249811 HvB
CATEGORY: Classification
TARIFF NO.: 4016.93.50, 7318.21.00, 7320.90.50,
8477.90.85, and 9025.19.80

MARK ROMANO
HUSKY INJECTION MOLDING SYSTEMS, INC.
55 AMHERST VILLA ROAD
BUFFALO, NY 14225-1432

RE: Revocation of NY N050746; Tariff classification of spare parts/repair kit

DEAR MR. ROMANO:

This letter is in reference to New York Ruling Letter (“NY”) N050746, issued to you on March 4, 2009, concerning the tariff classification of a spare parts repair kit required to repair a mold or a mold machine under the Harmonized Tariff Schedule of the United States (“HTSUS”). In that ruling, U.S. Customs and Border Protection (“CBP”) classified the kit in subheading 8477.90.85, HTSUS, which provides for “Machinery for working rubber or plastics or for the manufacture of products of products from these materials, not elsewhere specified in this chapter; parts thereof.”

We have learned new information concerning NY N050746, and found it to be incorrect. For the reasons that follow, we hereby revoke NY N050746.

FACTS:

In NY N050746, we wrote:

Each Husky spare part/repair kit is unique and bears a unique identifying number, i.e., the Husky Part Number (“HPN”). Each component within the kit also bears a unique HPN. The kit is assembled with the specific components required to repair the mold/machine for which it was designed. Any one kit can only repair a mold or a machine, not both, as the two assemblies (mold and machine) differ and require different components for repair and maintenance. Each kit consists of the most common wear and replacement components for a specific mold/machine. Components are not interchangeable with other repair kits.

The kit includes approximately 50 components and typically consists of washers, springs, a cam follower, various seals, thermocouples, O-rings, and screws.

Upon reviewing a separate request by Husky involving a substantially similar scenario, we learned that in order to accommodate its customers, Husky may not necessarily ship all parts listed in the Bill of Materials for a particular kit to the customer, because the customer might already have the necessary part on hand. The assortment of components used in any one spare part/repair kit may therefore vary from customer to customer.

ISSUE:

Whether the subject spare part/repair kit is classifiable pursuant to GRI 1 or GRI 3(b) as a retail set?

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. 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 HTSUS provisions under consideration are as follows:

4016	Other articles of vulcanized rubber other than hard rubber
7318	Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter-pins, washers (including spring washers) and similar articles, of iron or steel
7320	Springs and leaves for springs, of iron or steel
8477	Machinery for working rubber or plastics or for the manufacture of products from these materials, not specified or included elsewhere in this Chapter
9025	Hydrometers and similar floating instruments, thermometers, pyrometers, barometers, hygrometers and psychrometers, recording or not, and any combination of these instruments.

* * *

In NY N050746, dated March 4, 2009, we classified the articles as a retail set, pursuant to GRI 3(b). In order to meet the requirements of a GRI 3(b) retail set, the collection of articles must meet certain factors. These factors are outlined in the EN to GRI 3(b). EN (X) to GRI 3 states, in pertinent part:

For the purposes 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. Therefore, for example, six fondue forks cannot be regarded as a set within the meaning of this Rule;
- (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
- (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

The courts have also examined what constitutes a retail set, for purposes of GRI 3(b). *See Dell Products LP v. United States*, 714 F. Supp 2d. 1252 (Ct. Int’l Trade 2010) (Dell Products I) *aff’d Dell Products LP v. United States*, 642 F.3d 1055 (Fed. Cir. 2011) (Dell Products II); *See also Estee Lauder, Inc. v. United States*, 815 F. Supp. 2d 1287 (Ct. Int’l Trade 2012). At issue in the Dell Products cases was whether secondary batteries for laptop computers, sold as optional accessories to Dell’s retail customers and then packaged with the computer, constituted a “retail set” for purposes of GRI 3(b). The case stems from CBP’s decision in HQ 967364, dated December 23, 2004, in which we wrote: “Even in those cases where the listed price includes an additional battery, if the customer does not want to purchase the additional battery, it can be deleted from the order and the price is adjusted accordingly, and the

customer can choose other features of the advertised laptop.” In HQ 967364, we found that the laptop battery packaged with the laptop did not constitute a retail set because the goods did not satisfy the third requirement of EN (X) to GRI 3(b), above. As we stated, “the offer for retail sale took place before prior to the goods being put up.” *Ibid.* In *Dell Products I*, The Court of International Trade (CIT) agreed, finding that the contents of a customized order are determined by an individual customer and that the grouping of the goods was not “fixed” when offered for sale. *Dell Products I*, 714 F. Supp. 2d. 1252 (Ct. Int’l Trade 2010) at 1262. Furthermore, the CIT also determined that the articles did not meet the second requirement of a retail set, as the battery and laptop were not offered or displayed together. *Supra* at 1261.

We are presented with similar facts with respect to the instant spare parts/repair kit. In the present case, a customer orders a spare parts/repair kit from Husky, which then consults with the customer as to which parts in the kit are actually needed—creating a different and customized Bill of Materials for each kit. Depending on the customer’s needs, the parts actually shipped therefore varies from kit to kit. Thus, no two kits are alike, as each kit is customized to the repair needs of a particular mold or a mold machine.

In *Dell Products II*, the U.S. Court of Appeals for the Federal Circuit (CAFC) stated that the term “goods put up for retail sale” for purposes of GRI 3(b) “most naturally refers to goods that are offered to customers as a set for purchase rather than to a collection of goods that are assembled into a set after the customer has purchased them.” *Dell Products II*, 642 F. 3d. 1055 at 1058. The CAFC therefore concluded that the secondary battery and laptop packaged together did not constitute a retail set, stating “set determinations for purposes of GRI 3(b) turn on the seller’s arrangement of good prior to their purchase, not on the seller’s arrangement of goods after the purchase is made.” *Dell Products II*, *supra* at 1060. Relevant to the instant kit, the CIT stated: “[t]he contents of a customized order are designated by an individual customer; Dell did not designate which merchandise constituted a set for retail sale.” *Dell Products*, 714 F. Supp 2d. 1252 at 1262. Similarly, Husky customizes each kit according to the customer’s needs such that no two kits will be the same. As such, GRI 3(b) does not apply. Accordingly, we find that the spare part kit that was classified pursuant to GRI 3(b) in NY N050746 does not qualify as a retail set. Therefore, the components must be classified separately pursuant to GRI 1.

HOLDING:

Under the authority of GRI 1, the individual parts are classified as follows:

The cam follower is classified in subheading 8477.90.85, HTSUS, which provides for “Machinery for working rubber or plastics or for the manufacture of products from these materials, not specified or included elsewhere in this chapter; parts thereof: Parts: Other.” The column one, general rate of duty is 3.1%.

The lock washer is classified in subheading 7318.21.00, HTSUS, which provides for: Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel (con.): Non-threaded articles: Spring washers and other lock washers.” The column one, general rate of duty is 5.8%.

The springs are classified in subheading 7320.90.50, HTSUS, which provides for: “Springs and leaves for springs, of iron or steel: Other: Other.” The column one, general rate of duty is 2.9%.

The seals are classified in subheading 4016.93.50, HTSUS, which provides for: “Other articles of vulcanized rubber other than hard rubber: Gaskets, washers and other seals: Other”. The column one, general rate of duty is 2.5%.

The thermocouple J-Type is classified in subheading 9025.19.80, HTSUS, which provides for: “Hydrometers and similar floating instruments, thermometers, pyrometers, barometers, hygrometers and psychrometers, recording or not, and any combination of these instruments; parts and accessories thereof: Thermometers and pyrometers, not combined with other instruments: Other: Other.” The column one, general rate of duty is 1.8%.

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 N050746, dated March 4, 2009, is hereby REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



PROPOSED MODIFICATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERAMIC DINNERWARE

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

ACTION: Notice of proposed modification of two ruling letters, and revocation of treatment relating to the tariff classification of ceramic dinnerware.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify Headquarters Ruling Letter (HQ) H169055 and HQ H226264, both dated January 3, 2014, concerning the tariff classification of ceramic dinnerware under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATES: Comments must be received on or before July 1, 2016.

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

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0024.

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 modify two rulings pertaining to the tariff classification of ceramic dinnerware. Although in this notice, CBP is specifically referring to HQ H169055 (Attachment A) and HQ H226264 (Attachment B), dated January 3, 2014, 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 rulings identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the 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 H169055, CBP classified item numbers DO-16, DO-120, GR-2, GR-2C, GR-11, RO-8, SY-12, VE-9 and VE-11 in heading 6911, HTSUS, specifically subheading 6911.10.10, HTSUS, which provides for "Tableware, kitchenware, other household articles and toilet articles, of porcelain or china: Tableware and kitchenware: Hotel or restaurant ware and other ware not household ware." Item numbers WRO-8-AW, GR-9, GR-12, VE-34, and Y-10 were classified in heading 6912, HTSUS, specifically in subheading 6912.00.20, HTSUS, which provides for "Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Hotel or restaurant ware and other ware not household ware."

In HQ H226264, CBP classified item numbers BR-5, BR-6, BR-8, BR-9, TBR-16, DO-2, DO-4, DO-5, DO-7, DO-8, DO-10, DO-11, DO-24, DO-31, DO-34, BR-7, BR-13, RO-5, RO-10, WRO-15, and VA-7 in heading 6911, HTSUS, specifically in subheading 6911.10.10, HTSUS, which provides for "Tableware, kitchenware, other household articles and toilet articles, of porcelain or china: Tableware and kitchenware: Hotel or restaurant ware and other ware not household ware." Items RO-3, RO-11, and RO-12 were classified in heading 6912, HTSUS, specifically in subheading 6912.00.20, HTSUS, which provides for "Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Hotel or restaurant ware and other ware not household ware."

CBP has reviewed HQ H169055 and HQ H226264 and has determined the ruling letters to be in error with respect to the classification of items VE-9, RO-5 and RO-12. It is now CBP's position that items VE-9 and RO-5 are properly classified, by operation of GRI 1 and GRI 6, in heading 6912, HTSUS, specifically subheading 6912.00.20, HTSUS, which provides for "Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Hotel or restaurant ware and other ware not household ware." Item RO-12 is classified in heading 6911, HTSUS, specifically in subheading 6911.10.10, HTSUS, which provides for "Tableware, kitchenware, other household articles and toilet articles, of porcelain or china: Tableware and kitchenware: Hotel or restaurant ware and other ware not household ware."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify HQ H169055 and HQ H226264 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H252124, set forth as Attachment C to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: May 4, 2016

JACINTO JUAREZ
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

HQ H169055

January 3, 2014

CLA-2 OT:RR:CTF:TCM HQ H169055 TNA

CATEGORY: Classification

TARIFF NO.: 6911.10.10; 6912.00.20

PORT DIRECTOR, DETROIT METROPOLITAN AIRPORT

U.S. CUSTOMS AND BORDER PROTECTION

*EDWARD H. MCNAMARA TERMINAL**2596 WORLD GATEWAY PLACE**DETROIT, MI 48242*

Attn: Beverly Quentin, Import Specialist

RE: Internal Advice Request; classification of dinnerware

DEAR PORT DIRECTOR:

This is in response to your request for internal advice, dated May 20, 2011, concerning the classification of tableware imported by Marck & Associates (“Marck” or “the importer”) under the Harmonized Tariff Schedule of the United States (“HTSUS”). In reaching our decision, we have taken into consideration additional arguments made during conferences between members of my staff and Marck’s counsel on August 11, 2011 and November 15, 2012, as well as supplemental submissions made on July 7, 2011, November 7, 2011, September 24, 2012, and April 30, 2013. We regret the delay in responding.

FACTS:

The subject merchandise consists of six styles of tableware: Granada, Verona, Sydney, York, Dover and Roma. CBP’s National Commodity Specialist Division (“NCSDD”) sent a sample of each style of the subject merchandise to a U.S. Customs and Border Protection (“CBP”) laboratory for testing. Separate laboratory reports were issued for each item. In addition, a second set of samples was sent to the laboratory for analysis following CBP’s November 15, 2012 meeting with Marck’s counsel. This second set consisted of a sample from the Verona style and a sample from the Granada style.

The Dover style items at issue here are a bowl¹ and a plate². They are both plain, white, and round. After testing³, CBP’s laboratory found these items to be translucent with an elemental composition of a clay based product that absorbs less than 0.5% of its weight in water. The laboratory concluded that these items conform to the definition of porcelain found in Additional U.S. Note 5(a) to Chapter 69, HTSUS.

¹ Item number DO-120, the Dover Pasta Bowl, measures approximately 12 inches in diameter. It has a shallow indentation in the middle that measures approximately eight inches in diameter and one inch in depth.

² Item number DO-16 measures approximately 10.5 inches in diameter, weighs 822.63 grams and has an average rim thickness of 6.39 millimeters.

³ Laboratory Report # NY 20120315, dated April 20, 2012, tested Item Number DO-120. Laboratory Report # NY20120314, dated May 25, 2012, tested Item Number DO-16.

The Granada style items at issue here are a plate⁴, a platter⁵, two saucers⁶ and a bowl⁷. They are glazed and beige with brown spots and have a dark brown trimming. Following testing⁸, the CBP laboratory found that the Granada plate was white, and that the rest these items are off-white or beige, not translucent in a thickness of several millimeters, and absorb less than 0.5% of their weight in water. The laboratory concluded that the Granada bowl and two saucers met the definition of porcelain within the meaning of Note 5(a) to Chapter 69, HTSUS.

In addition to the laboratory reports issued by CBP's New York laboratory, the Port sent a sample of the Granada plate to CBP's laboratory in Chicago for analysis. The resulting laboratory report, Report Number CH20100869, dated September 28, 2010, determined that the plate was of porcelain ceramic and had a water absorption value of 0.08 percent by weight. Furthermore, the laboratory determined that the article met the requirements of a ceramic article detailed in Additional U.S. Note 5(a) to Chapter 69, HTSUS.

Two items from the Roma style are at issue here: a serving dish⁹ and a plate¹⁰. They are both plain and white. Following testing¹¹, the CBP laboratory determined that the serving plate is not translucent and absorbs 4.1% percent of its weight in water. The laboratory concluded that it meets the definition of earthenware of Additional U.S. Note 5(c) to Chapter 69, HTSUS. The laboratory found that the plate is translucent in several millimeters, and absorbs approximately 0.46% of its weight in water. The laboratory concluded that it meets the definition of porcelain of Additional U.S. Note 5(a) Chapter 69, HTSUS.

One platter from the Sydney style is at issue here.¹² It is a plain white platter with shallow scalloped edges. The rim is edged in black. Following testing¹³, the laboratory found that this platter is a glazed clay ceramic that

⁴ Item Number GR-9 is glazed and weighs 712 grams. It has a diameter of approximately 8 millimeters.

⁵ Item Number GR-12 "C" measures 9.75 inches long by 8.5 inches wide. It has a clear glaze, weighs 666.80 grams, and has an average rim thickness of 7.46 millimeters.

⁶ Item numbers GR-2 and GR-2 "C" both measure approximately 6 inches in diameter with an indentation in the center that measures 2.5 inches in diameter and is suitable for containing a cup.

⁷ Item Number GR-11 measures approximately 4.63 inches in diameter, 3.2 centimeters in height, and the rim is approximately 4.1 millimeters thick. It weighs approximately 177.6 grams.

⁸ Laboratory Report #NY 201201310, dated April 26, 2012, tested Item Number GR-9. Laboratory Report #NY 20120313, dated May 25, 2012, tested Item Number GR-12 "C." Laboratory Report #NY20120307, tested item Number GR-11. The second round of testing on GR-11 resulted in Laboratory Report #NY20122214, dated January 23, 2013. Laboratory Report #NY20120309, dated June 22, 2012, tested GR-2 and GR-2 "C."

⁹ Item Number WRO-8-AW is the Roma Welsh Rarebit Plate. It measures approximately 8.5 inches long by 4.25 inches wide, has small handles on each side to facilitate handling, and weighs 425 grams.

¹⁰ Laboratory Report #NY20120311, dated April 20, 2012, tested Item Number WRO-8-AW. Laboratory Report #NY20120318, dated April 3, 2012, tested Item Number RO-8.

¹¹ Item number RO-8 is glazed and measures approximately nine inches in diameter.

¹² Item Number SY-12 measures approximately 9.88 inches long by 7.25 inches wide. Its rim is approximately 7.7 millimeters thick. The platter and it weighs approximately 696.5 grams.

¹³ Laboratory Report #NY20120317, dated April 2, 2012, tested Item Number SY-12.

has a white body and is translucent in a thickness of several millimeters. It absorbs 0.20% of its weight in water. The laboratory concluded that it meets the definition of porcelain of Additional U.S. Note 5(a) to Chapter 69, HTSUS.

Three items of the Verona style are at issue here: a fruit bowl¹⁴, a plate¹⁵, and a platter¹⁶. They are ivory-colored with green trim. The bottom of the plate is inscribed with the “ITI” logo on it; “ITI” stands for “International Tableware Incorporated.” Following testing¹⁷, the CBP laboratory found that it absorbed 0.04% of its weight in water and concluded that it meets the definition of porcelain of Additional U.S. Note 5(a) to Chapter 69, HTSUS. The CBP laboratory¹⁸ retested the fruit bowl, and the laboratory confirmed its findings that it meets Note 5(a)’s definition of porcelain. The laboratory found that the Verona plate has a white body, is a glazed clay ceramic, is translucent and absorbs approximately 0.55% of its weight in water. The laboratory found that the platter has an off-white body, is not translucent, and absorbs 0.14% of its weight in water. The laboratory noted that it does not contain phosphorus, and is therefore not bone china. Furthermore, the elemental analysis conducted by the laboratory indicates that it is consistent with clay material.

One item of the York Style, a grapefruit bowl, is at issue here.¹⁹ It is a white bowl with shallow ridges around the rim. It is stamped with the phrase “ITI China 7-1.” Following testing²⁰, the laboratory found that it is not translucent and that it absorbs 0.29% of its weight in water. Its elemental composition is consistent with a clay-based product.

Following the November 15, 2012 meeting with CBP, Marck sent samples of its merchandise to an independent expert for testing. The resulting report, issued on April 30, 2013 by William D. Carty, Ph.D., of Ceramic Engineering & Materials Consulting and Testing Services, tested the Granada Fruit Bowl (Product Number GR-11) and the Roma Oval Welsh Rarebit, (item number WRO-8-AW). This report concluded that the GR-11 had a thickness of 3.94 millimeters, an average light transmission of 0.4%, and was opaque, not translucent, and not porcelain. This report concluded that the WRO-8-AW had a thickness of 4.00 millimeters, an average light transmission of 0.4%, was opaque, not translucent, and not porcelain.

Marck has been entering the merchandise of the Granada, Verona, Sydney, York, and Roma styles under subheading 6912.00.39, HTSUS, which provides for “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Other: Available in specified sets: In any pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of this chapter is over \$38.” The items of the Dover style have been entered under subheading 6911.10.37, HTSUS, which provides for “Tableware, kitchenware, other

¹⁴ Item Number VE-11 measures approximately 4.75 inches in diameter.

¹⁵ Item Number VE-9 measures 9.75 inches in diameter

¹⁶ Item number VE-34 measures approximately 9.25 inches long by 6.38 inches wide.

¹⁷ Laboratory Report #NY20120308, dated June 21, 2012, tested Item Number VE-11. Laboratory Report #NY20120306, dated March 20, 2012, tested Item Number VE-9. Laboratory Report #NY20120312, dated May 25, 2012, tested Item Number VE-34.

¹⁸ Laboratory Report NY20122213, dated January 23, 2013.

¹⁹ Item Number Y-10 measures approximately 6.25 inches in diameter.

²⁰ Laboratory Report #NY 20120316, dated April 26, 2012, tested Item Number Y-10.

household articles and toilet articles, of porcelain or china: Tableware and kitchenware: Other: Other: Available in specified sets: In any pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of this chapter is over \$56: Aggregate value not over \$200.” Marck also claims that 60–65% of the subject merchandise is sold for household use, and that the remaining 35–40% is sold for restaurant or hotel use.

ISSUE:

1. Whether the subject merchandise is classified in heading 6911, HTSUS, as porcelain tableware, or under heading 6912, HTSUS, as ceramic tableware?

2. Whether the subject merchandise is classified as for hotel or restaurant use, or for other (household) tableware?

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, 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 the GRIs.

The HTSUS provisions under consideration are as follows:

6911	Tableware, kitchenware, other household articles and toilet articles, of porcelain or china:
6911.10	Tableware and kitchenware:
6911.10.10	Hotel or restaurant ware and other ware not household ware
	Other:
	Other:
	Available in specified sets:
	In any pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of this chapter is over \$56:
6911.10.37	Aggregate value not over \$200
* * *	
6912.00	Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china:
	Tableware and kitchenware:
	Other:
6912.00.20	Hotel or restaurant ware and other ware not household ware
	Other:
	Available in specified sets:

6912.00.39

In any pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of this chapter is over \$38

Additional U.S. Note 5 to Chapter 69, HTSUS, states, in pertinent part, the following:

For the purposes of headings 6909 through 6914:

(a) The terms “porcelain,” “china” and “chinaware” embrace ceramic ware (other than stoneware), whether or not glazed or decorated, having a fired white body (unless artificially colored) which will not absorb more than 0.5 percent of its weight of water and is translucent in thicknesses of several millimeters. The term “stoneware” as used in this note, embraces ceramic ware which contains clay as an essential ingredient, is not commonly white, will absorb not more than 3 percent of its weight of water, and is naturally opaque (except in very thin pieces) even when absorption is less than 0.1 percent...

(c) The term “earthenware” embraces ceramic ware, whether or not glazed or decorated, having a fired body which contains clay as an essential ingredient, and will absorb more than 3 percent of its weight of water.

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While not legally binding 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 (Aug. 23, 1989).

The EN to heading 6911, HTSUS, provides, in pertinent part:

See the Explanatory Note to heading 69.12.

The EN to heading 6912, HTSUS, provides, in pertinent part:

Tableware, kitchenware, other household articles and toilet articles are classified **in heading 69.11 if of porcelain or china, and in heading 69.12 if of other ceramics** such as stoneware, earthenware, imitation porcelain (see General Explanatory Note to sub-Chapter II).

The General Explanatory Note to sub-Chapter II of heading 6912, HTSUS, provides, in pertinent part:

(I) PORCELAIN OR CHINA

Porcelain or china means hard porcelain, soft porcelain, biscuit porcelain (including parian) and bone china. All these ceramics are almost completely vitrified, hard, and are essentially impermeable (even if they are not glazed). They are white or artificially colored, translucent (except when of considerable thickness), and resonant.

Hard porcelain is made from a body composed of kaolin (or kaolinic clays), quartz, feldspar (or feldspthoids), and sometimes calcium carbonate. It is covered with a colorless transparent glaze fired at the same time as the body and thus fused together.

Soft porcelain contains less alumina but more silica and fluxes (e.g., feldspar). Bone china, which contains less alumina, contains calcium

phosphate (e.g., in the form of bone ash); a translucent body is thus obtained at a lower firing temperature than with hard porcelain. The glaze is normally applied by further firing at a lower temperature, thus permitting a greater range of underglaze decoration...

The subject merchandise has undergone laboratory testing on numerous occasions to determine whether it is porcelain of heading 6911, HTSUS, or ceramic of heading 6912, HTSUS. Not only were certain items of the subject merchandise tested twice by CBP laboratories, Marck also submitted samples to an independent laboratory. This independent laboratory's result conflicted with those of the CBP laboratory, and Marck asserts that CBP should accept the findings of the independent laboratory over the results of the CBP laboratory.

In response, we note that pursuant to 28 U.S.C. § 2639 (a) (1) (1994), CBP enjoys a statutory presumption of correctness. Thus, an importer has the burden to prove by a preponderance of the evidence that a Customs decision was incorrect. *Ford Motor Company v. United States*, 157 F.3d 849, 855 (Fed. Cir. 1998); *American Sporting Goods v. United States*, 27 C.I.T. 450; 259 F. Supp. 2d 1302; 25 Int'l Trade Rep. (BNA) 1345; 2003 Ct. Intl. Trade LEXIS 45. Furthermore, it is "well settled that the methods of weighing, measuring, and testing merchandise used by customs officers and the results obtained are presumed to be correct." *Aluminum Company of America v. United States*, 60 C.C.P.A. 148, 151, 477 F.2d 1396, 1398 (1973) ("*Alcoa*"). Absent a conclusive showing that the testing method used by the CBP laboratory is in error, or that the Customs' laboratory results are erroneous, there is a presumption that the results are correct. See *Exxon Corp. v. United States*, 462 F. Supp. 378, 81 Cust. Ct. 87, C.D. 4772 (1978). "If a *prima facie* case is made out, the presumption is destroyed, and the Government has the burden of going forward with the evidence." *Alcoa*, 477 F.2d at 1399; *American Sporting Goods*, 27 C.I.T. 450.

In the present case, Marck has neither argued that CBP's laboratory used incorrect testing methods, nor presented evidence that would call these methods into question. Simply presenting one set of laboratory results that is inconsistent with CBP's conclusions is not enough to rebut CBP's presumption of correctness. Furthermore, we note that the independent laboratory simply notes that the merchandise is opaque rather than translucent and concludes that the merchandise is not porcelain. The findings do not address the merchandise's water absorption or color, the other two factors that Note 5(a) to Chapter 69, HTSUS, requires for porcelain. As a result, we find the results of the independent laboratory to be inconclusive, and we adhere to CBP's laboratory results. This is consistent with prior CBP rulings. See HQ 965177, dated August 29, 2002; HQ 957282, dated March 28, 1995; HQ 958346, dated February 6, 1996; HQ 963748, dated November 20, 2000.

Hence, both items in the Dover style, the Granada Fruit Bowl (GR-11), Granada Saucers (GR-2 and GR-2C), the Roma Plate (item number RO-8), the Sydney Platter (item number SY-12), and the Verona Bowl (item number VE-11) are made of porcelain within the meaning of Additional U.S. Note 5(a) to Chapter 69, HTSUS, and cannot be classified in heading 6912, HTSUS. To the contrary, they are described by heading 6911, HTSUS, which provides for "Tableware, kitchenware, other household articles and toilet articles, of porcelain or china."

With respect to the Roma Bowl (item number WRO-8-AW), the CBP laboratory concluded that it met the definition of ceramic articles and of earthenware within the meaning of Additional U.S. Note 5(a) to Chapter 69, HTSUS. As a result, it is described by the terms of heading 6912, HTSUS, which provides for “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china.”

With respect to the remaining items of the subject merchandise, the CBP laboratory did not make a specific finding as to whether these items were porcelain within the meaning of Additional U.S. Note 5(a) to Chapter 69, HTSUS, because these items did not meet all three factors as required by the Note. Nonetheless, the laboratory made a finding with respect to each of the factors that determine whether an item is porcelain under Note 5(a). All three factors are required for an item to be considered porcelain within the meaning of Note 5(a). *See* Additional U.S. Note 5(a) to Chapter 69, HTSUS; *see also* HQ 958647, dated June 16, 1997. As a result, we now examine the remaining items in light of these factors to determine whether they are porcelain.

With respect to the Granada Plate, item number GR-9, Laboratory Report #NY 201201310 concluded that it absorbs 0.45 percent of its weight in water, is white but not translucent in a thickness of several millimeters, and contains an elemental composition consistent with a clay-based product. Thus, the Granada Plate contains only two of the three elements necessary to be porcelain. Furthermore, it is a clay-based product, which is an essential element of a stoneware product as defined in Note 5(a); under the terms of the Note, stoneware excludes porcelain. As a result, we find that item number GR-9 is precluded from being classified as a porcelain product of heading 6911, HTSUS. It is therefore classified in heading 6912, HTSUS, as “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china.”

With respect to the Granada Platter, item number GR-12, Laboratory Report #NY 20120313, concluded that it is off-white, is not translucent, and absorbs 0.39% of its weight in water. Furthermore, the laboratory concluded that its elemental analysis is consistent with clay material. Thus, the Granada Platter lacks two of the three characteristics of porcelain, and has an essential element of stoneware. As a result, item number GR-12 is precluded from being classified as porcelain of heading 6911, HTSUS, and is instead described by the terms of heading 6912, HTSUS.

With respect to the Verona Plate, item number VE-9, Laboratory Report #NY20120306 found that it has a white body, is translucent and absorbs approximately 0.55% of its weight in water. Thus, the Verona Plate meets two of the three criteria to be considered porcelain but does not meet the third requirement. As a result, we find that the Verona Plate is described by the terms of heading 6912, HTSUS.

With respect to the Verona Platter, item number VE-34, Laboratory Report #NY20120312, found that the Verona Platter has an off-white body, is not translucent, and absorbs 0.14% if its weight in water. The laboratory noted that it does not contain phosphorus, and is therefore not bone china. Furthermore, the laboratory concluded that the Verona Platter has an essential element of clay. Thus, the Verona Platter lacks two of the three characteristics of porcelain and has an essential characteristic of stoneware. As such, it is described by the terms of heading 6912, HTSUS.

With respect to the York Bowl, item number Y-10, Laboratory Report #NY 20120316, found that it is white but not translucent. Furthermore, the labo-

ratory found that it absorbs 0.29% of its weight in water, and that its elemental composition is consistent with a clay-based product. Thus, the York Bowl lacks one of the criteria of porcelain set out in Note 5(a), and it is a clay-based product. As such, it is precluded from being classified as porcelain of heading 6911, HTSUS; instead, it is described by the terms of heading 6912, HTSUS.

There is no dispute that the instant merchandise is tableware and kitchenware within the meaning of the six-digit level of both headings at issue under GRI 6. Rather, the issue is whether the instant merchandise belongs to the class or kind of goods described as “hotel or restaurant ware and other ware not household ware.” This provision has been found to be a use provision. See HQ 960552, dated March 2, 1999; HQ W967535, dated July 1, 2005; HQ 959745, dated July 20, 1998. To determine principal use, CBP has consistently applied the factors that the court established in *United States v. Carborundum Company*. See *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), cert. denied, 429 U.S. 979. These factors include: 1) general physical characteristics; 2) expectation of the ultimate purchaser; 3) channels of trade; 4) environment of sale (accompanying accessories, manner of advertisement and display); 5) usage of the merchandise; 6) economic practicality of so using the import; and 7) recognition in trade of this use. See *United States v. Carborundum Company*, 63 CCPA 98. See also *United States v. The Baltimore & Ohio R.R. Co.*, 47 C.C.P.A. 1; C.A.D. 719 (C.C.P.A. 1959). See also *Lenox Collections v. United States*, 20 C.I.T. 194; 18 Int’l Trade Rep. (BNA) 1181; 1996 Ct. Intl. Trade LEXIS 38; SLIP OP. 96–30 (Ct. Int’l Trade 1996). CBP has applied this principle in subsequent rulings. See, e.g., HQ 082780, dated December 18, 1989. Courts have also stated that principal use is defined as the use which “exceeds all other uses.” See *Lenox Collections*, 20 C.I.T. 194, 196. See also NY C88291, dated December 11, 1998.

In HQ 082780, dated December 18, 1989, CBP classified a number of patterns of china dinnerware that were produced chiefly for household use, but were also marketed and sold to hotels and restaurants for use in their finer dining sections. After reviewing the evidence presented, CBP found that household china is different from hotel china in both physical and design characteristics because hotel china is heavier in weight and is stackable and chip resistant. The plates of hotel china also generally do not have a center design. CBP also found that hotel china is generally less expensive than household china and is offered for sale by independent sales representatives to wholesalers or hotel chains, an industry that also has its own trade publications and trade shows. Furthermore, if the dinnerware were marked with the crest or initials of the establishment, this spoke in favor of it belonging to the class chiefly used in hotels or restaurants. By contrast, household china was found to be generally lighter in weight, more expensive, and did not possess some of the characteristics of hotel ware. See HQ 082780.

Furthermore, in HQ W967570, dated January 31, 2008, CBP considered whether Pillivuyt’s porcelain tableware and kitchenware was principally for household use or hotel and restaurant use. In an analysis similar to the one undertaken in HQ 082780, CBP cited prior rulings and various reference books to determine what physical characteristics are indicative of household use versus restaurant and hotel use. In American china, such characteristics

included composition, translucency, degree of absorption, and a very high mechanical shock resistance. Thickness was also a significant factor, as one cited source divided American hotel china, which it described as “vitrified ware of very high strength,” into three grades based on wall thickness: Grade (1), “Thick china,” which had 5/16 to 3/8 inch walls and is used in lunch counters and army messes; Grade (2), “Hotel China,” which contained 5/32 to 1/4 inch walls and were used in hotels and restaurants; and Grade (3), “medium-weight China”, which had less than 1/4 inch walls and was used in high-class eating places, home use, and also for numerous jars, trays, etc., in hospitals. See HQ W967570; HQ 959745, dated July 20, 1998; HQ 962208, dated April 19, 2000; Rexford Newcomb, Jr., *Ceramic Whitewares*, Pitman Publishing Corp., New York (1947) at pp. 222 and 227; Felix Singer & Sonja S. Singer, *Industrial Ceramics*, Chemical Publishing Co., Inc., New York (1963), at p. 1096. We note that dishes’ thickness has long been considered a relevant factor in determining the use of the merchandise. See, e.g., HQ 959745, dated July 20, 1998; HQ W967570.

HQ W967570 also examined trade publications to determine the physical characteristics that are standard for restaurant and hotel ware, and stated, “the single greatest thing a hotel demands and we produce are plain, white, round plates.” See HQ W967570, citing an article by Villeroy & Boch, USA at http://findarticles.com/p/articles/mi_m3072/is_7_219/ai_n6028235.

HQ W967570 then examined the rest of the *Carborundum* factors. Three out of the seven factors conclusively indicated household use, while the remaining four were inconclusive. As a result, HQ W967570 found that Pillivuyt’s French porcelain was for household use. We acknowledge that the standards in the rulings that we have cited here have been developed for merchandise of heading 6912, HTSUS. However, because the terms of the subheadings of headings 6911 and 6912, HTSUS, are identical, these standards are also instructive for products of 6911, HTSUS.

In the present case, we apply the *Carborundum* factors, first to the merchandise that we have classified in heading 6911, HTSUS, as follows: (1) *physical characteristics*. While items of the Dover, Roma and Sydney styles are white and plain, items of the Verona style have green trim and items of the Granada style are beige or off-white and have brown speckles on them. Each of these pieces is round and stackable. Furthermore, many are not translucent, and the ones that are translucent are not delicate dishes; to the contrary, many of the styles at issue have been glazed and all of them are heavy dishes that are durable and able to withstand heavy use. In addition, samples that CBP obtained of each of these styles contain the logo of International Tableware Incorporated. International Tableware Incorporated (“ITI”) is Marck’s restaurant supply line. These characteristics are indicative of restaurant or hotel use. We note that while most restaurant or hotel dishes are plain white, the styling of the Verona and Granada styles is not enough, by itself, to indicate that these dishes are for household use.

In its April 30 submission, Marck disputes CBP’s characterization of ITI as its restaurant supply line, calling this description “inaccurate on its face.” In response, we note that a copy of the ITI catalogue that Marck publishes was submitted among the various documents that CBP has received in this case. The last page of this catalogue offers guidance in “estimating dinnerware

needs.” This section states, “to figure out your exact needs... multiply the number of seats in your restaurant by the ordering factor, then divide by 12.” The table included there splits its bowls, plates, etc in to the groups of “fine dining,” “casual,” and “institutional.” The same catalogue page contains a table that can be used to estimate flatware needs whose columns are labeled “amount in service times seats” and “reserve times seats.” These factors clearly indicate restaurant use, and we find Marck’s objection to this characterization to be unfounded. Moreover, the embossed logo on the merchandise as entered further implicates restaurant use.

In addition, one characteristic of commercial china is that it is vitrified. *Restaurant China, Volume 1: Identification and Value Guide for Restaurant, Airline, Ship, and Railroad Dinnerware* states that “during vitrification the body components fuse together, making the china: (1) non-porous, thus resisting penetration of liquids even when glaze is worn or chipped and (2) more durable, resisting breakage caused by heat and handling.” See Barbara J. Conroy, *Restaurant China, Volume 1: Identification and Value Guide for Restaurant, Airline, Ship, and Railroad Dinnerware. Collector Books*, Paducah (1998) at p. 7. In the present case, Marck’s website states that the subject merchandise has been vitrified. See www.internationaltableware.com/aboutus.aspx. The subject merchandise’s low water absorption rate also indicates that it has been vitrified.

Vitrified china is defined as “fired at a higher temperature and vitrified during the first (bisque) firing, then fired at a lower temperature (glaze or gloss firing).” See Barbara J. Conroy, *Restaurant China, Volume 1: Identification and Value Guide for Restaurant, Airline, Ship, and Railroad Dinnerware, Collector Books*, at page 7 (Paducah 1998). In short, vitrification makes dinnerware more durable and resistant to chipping, factors which indicate restaurant or hotel use. See, e.g., HQ W967570; HQ 957520, dated June 16, 1997. Marck misunderstands the importance of vitrification in the tariff analysis, claiming that their vitrified product is commercial china. However, “commercial china” is not the tariff term we are analyzing here. Rather, the hardness of the dishware is what is indicative of restaurant use.

Marck has also submitted data showing that the thickness of the rims of item numbers DO-16, DO-120, and SY-12 is $\frac{1}{4}$ ” or less. This measurement is indicative of medium weight China, used in “high-class eating places, home use, and in hospitals.” See HQ W967570, citing an article by Villeroy & Boch, USA at http://findarticles.com/p/articles/mi_m3072/is_7_219/ai_n6028235.

At the August 11 conference and in its November 7 submission, Marck argued the thickness standards espoused by HQ W967570 are no longer as relevant as they were when the sources cited were first published several decades ago. Marck argues that in the intervening years, the distinction between dishes for hotels and restaurants and those used in the home have blurred as consumers buy restaurant ware for household use precisely for its clean looks and sturdiness. Nevertheless, medium-weight vitrified dishes, such as the ones at issue here, still favor the class or kind of dishes used in restaurants or hotels.

The same is true of the subject merchandise that we have classified in heading 6912, HTSUS. While items of the Roma and York styles are white and plain, items of the Verona style have green trim and items of the Granada style are beige or off-white and have brown speckles on them. Each of these

pieces is round and stackable with a one-quarter inch rim. Furthermore, many are not translucent, and the ones that are translucent are not delicate dishes; to the contrary, many of the styles at issue have been glazed and all of them are heavy dishes that are durable and able to withstand heavy use. In addition, samples that CBP obtained of each of these styles contain the ITI logo. Furthermore, Marck's website states that the subject merchandise has been vitrified, and that it has a low water absorption rate. See www.internationaltableware.com/aboutus.aspx. These characteristics are indicative of restaurant or hotel use. We note that while most restaurant or hotel dishes are plain white, the styling of the Verona and Granada styles is not enough, by itself, to indicate that these dishes are for household use.

(2) *Environment of sale* and (3) *channels of trade*: Marck, in its November 7 submission, presented data in support of its claim that 60–65% of its merchandise is for household use for both the porcelain and the ceramic articles at issue. In examining this data and the list of companies to which Marck sells, we found that Marck sells a significant percentage of its merchandise to companies that emboss logos on it and resell it. Marck attributes these sales to household use. We disagree with this assessment, as a logo is one factor in favor of commercial use. Merchandise with these types of logos are sold for commercial purposes, such as support of a university or other institution. Furthermore, we note that the fact that the merchandise is often used for this type of embossing speaks to its thickness, resistance, and ability to withstand the embossing process— all characteristics of the class or kind of merchandise that would be used more in restaurants and hotels than in the home.

Furthermore, the ITI catalogue that Marck submitted shows the subject merchandise arranged in the same manner as one would expect in a restaurant or hotel, with food arranged on it in the manner one would expect to receive it in a restaurant. Furthermore, the merchandise advertised in this catalogue is sold in high quantities. All of the items of the Dover style, for example, are sold in quantities of at least one dozen, and most of the items of this style are sold in quantities of at least three dozen. These are large quantities that speak to this merchandise being for restaurant or hotel use.

In its April 30 submission, Marck argues that it is a wholesaler that sells in quantities of a dozen or more to stores such as Crate and Barrel for their open stock, rather than directly to consumers for household use in such high quantities. As such, Marck argues that this factor indicates household use rather than restaurant or hotel use. In response, we note that these high quantities, when coupled with the higher prices of these items and inclusion of items such as Welsh rarebit dishes and other items that are less likely to be used in the home, all indicate restaurant or hotel use as a whole, even if a percentage of Marck's sales are for open stock.

In addition, Marck claims that its merchandise is sold through stores such as Sam's Club and The Market Collections.com. In examining how the subject merchandise is displayed on these websites, we note that Sam's Club calls pieces of the Granada line "easily used as serving dishes in any restaurant." Other pieces "add high end experience to any culinary establishment." See www.samsclub.com. Taken together, these factors favor hotel or restaurant use. As a result, the vast majority of Marck's sales are for commercial use for both the ceramic and the porcelain items at issue here.

(4) *Expectation of ultimate consumer*: many of Marck's ultimate consumers are in the foodservice industry, expect to use the subject merchandise in hotels, restaurants, etc., and expect the high durability and appearance that characterizes the dishes that are used in restaurants and hotels. The ultimate consumer expects the same of restaurant-quality dishes. Thus, even when consumers purchase these products for home use, they expect their dishes to look like and last as long as the dishes used in the foodservice industry. Thus, this factor speaks in favor of hotel and restaurant use for both the porcelain and the ceramic articles at issue here.

(5) *Usage of the merchandise*: based on Marck's submitted sales data, it is clear that the subject merchandise is bought both by the foodservice industry and retail stores. However, the discussion of factors (2) and (3) concluded that the majority of Marck's sales were to commercial entities. Based on the evidence discussed there, we find that the majority of the subject merchandise's usage is in restaurants and hotels.

(6) *Recognition of use in the trade*: The subject merchandise is also recognized in the trade as being bought and sold for both the household and in restaurants and hotels. Thus, this factor also supports both uses for both the porcelain and the ceramic articles at issue here.

(7) *Economic practicality of using the merchandise*: with respect to the porcelain items at issue, CBP examined prices for the subject styles in ITI's catalogue and on ITI's website. For example, the Dover Pasta Bowl, item number DO-120, sells in quantities of one dozen for \$270.50. As a last example, the Dover Plate, item number DO-16, sells in quantities of one dozen for \$142.25. In W967570, the fact that French porcelain at issue was significantly more expensive than similar porcelain from China and Thailand was a factor in favor of household use because restaurants and hotels would be less likely to purchase expensive materials because of the amount of breakage involved. In the present case, however, the higher prices are warranted by the size and quality of the items. For example, a family is unlikely to purchase one dozen pasta bowls that sell for \$270.50 for household use. It is just as unlikely that a family would purchase two dozen platters, especially when these platters sell for \$128.75 a dozen. A restaurant, however, would likely purchase pasta bowls by the dozen, and platters in quantities of two dozen. Hence, this factor supports classification as being for restaurant or hotel use.

With respect to the ceramic articles at issue, CBP examined prices for the subject styles in ITI's catalogue and on ITI's website. The prices for the York Grapefruit Bowl, for example is \$106.25 for one dozen bowls. As another example, the Granada Plate, item number GR-9, sells in quantities of two dozen for \$89.50. The Granada Platter, item number GR-12, sells in quantities of two dozen for \$120.75. Here, sales in this quantity and price result in a low price per item. Given the quantity and low price at which these items are sold, it is more likely that a hotel or restaurant would purchase them. A family is unlikely to purchase two dozen platters for household use. Hence, this factor supports classification as being for restaurant or hotel use.

In sum, the *Carborundum* factors indicate that item numbers DO-120, DO-16, GR-11, GR-2, GR-2C, RO-8, SY-12, VE-11 are for restaurant/hotel use.

Six of the seven factors are indicative of hotel or restaurant use. We acknowledge that the other factor supports both uses. However, when some or all of the factors applied here have been analyzed in the courts, a determination of principal use has been based on all or most of the factors addressed being determinative. *See, e.g., Essex Manufacturing, Inc. v. United States*, 30 C.I.T. 1 (Ct. Intl. Trade 2006–1); *St. Eve International v. United States*, 267 F.Supp.2d 1371 (Ct. Int'l Trade, 2003), *G. Heileman Brewing Co. v. United States*, 14 CIT 614, 620 (1990); *Lenox Collections v. United States*, 20 C.I.T. 194; *United States v. Carborundum Co.*, 63 CCPA 98. Furthermore, in W967570, CBP found in favor of household use even though only three factors spoke in favor of household use and the other four were inconclusive. As a result, in the present case, having six of the *Carborundum* factors point in favor of restaurant/hotel use is enough to find that Marck's merchandise belongs to the class or kind of goods principally for commercial use.

The Carborundum factors indicate that items WRO-8-AW, GR-9, GR-12, VE-9, VE-34, and Y-10 are for restaurant/hotel use. Six of the seven factors are indicative of hotel or restaurant use. As a result, we find that these items belong to the class or kind of goods principally for commercial use. As such, they are described by the terms of subheading 6912.00.20, which provides for "Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Hotel or restaurant ware and other ware not household ware."

In its April 30 submission, Marck argues that its dinnerware has been rejected by restaurant chains and has failed testing for restaurant use, in part because the rims of the dishes were less chip resistant than other competition samples. In response, we note that we are examining the merchandise to determine whether it belongs to a certain class or kind. Marck's dinnerware contains the same characteristics as hotel or restaurant ware. The fact that certain restaurant chains have rejected it as compared to a competitor's merchandise has little bearing on these characteristics, especially without an analysis of the competitor's merchandise.

Lastly, we note that the subject merchandise was entered in subheadings 6911.10.37 and 6912.00.39, HTSUS, subheadings that require that the subject merchandise be imported in sets. The term "sets" is defined in Additional U.S. Note 6 to Chapter 69, HTSUS. However, we note that Marck has filed multiple lawsuits in the Court of International Trade regarding the importation of their ceramic cups and mugs. *See, e.g., C.I.T. Court Number 08–00306*, among others. The issue in each of these cases is whether the merchandise is available in specified sets. Thus, because this litigation is currently ongoing we could not respond to the question of specified sets even if it were pertinent to the classification.

HOLDING:

Under the authority of GRI 1, the Dover Pasta Bowl (item number DO-120), the Dover Plate (item number DO-16), the Granada Fruit Bowl (GR-11), Granada Saucers (GR-2 and GR-2C), the Roma Plate (item number RO-8), the Sydney Platter (item number SY-12), the Verona Bowl (item number VE-11), and the Verona Plate (item number VE-9) are classified in heading 6911, HTSUS. They are specifically provided for in subheading 6911.10.10, HTSUS, which provides for "Tableware, kitchenware, other household ar-

ticles and toilet articles, of porcelain or china: Tableware and kitchenware: Hotel or restaurant ware and other ware not household ware.” The applicable duty rate is 25% *ad valorem*.

Under the authority of GRI 1, the Roma Bowl (item number WRO-8-AW), the Granada Plate (item number GR-9), the Granada Platter (item number GR-12), the Verona Platter (item number VE-34), and the York Bowl (item number Y-10) are classified in heading 6912, HTSUS. They are specifically provided for in subheading 6912.00.20, HTSUS, which provides for “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Hotel or restaurant ware and other ware not household ware.” The applicable duty rate is 28% *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/.

You are to mail this decision to the Internal Advice requester no later than 60 days from the date of the decision. At that time, the Office of International Trade, Regulations and Rulings, will make the decision available to CBP personnel and to the public on CBP’s website, located at www.cbp.gov by means of the Freedom of Information Act and other methods of public distribution.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

HQ H226264

January 3, 2014

CLA-2 OT:RR:CTF:TCM HQ H226264 TNA

CATEGORY: Classification

TARIFF NO.: 6911.10.10; 6912.00.20

PORT DIRECTOR, SERVICE PORT-NEW YORK/NEWARK

U.S. CUSTOMS AND BORDER PROTECTION

1100 RAYMOND BOULEVARD

NEWARK, NJ 07102

Attn: Miriam Destra, Import Specialist

RE: Internal Advice Request; classification of dinnerware

DEAR PORT DIRECTOR:

This is in response to your request for internal advice, dated June 11, 2012, concerning the classification of tableware imported by Marck & Associates (“Marck” or “the importer”) under the Harmonized Tariff Schedule of the United States (“HTSUS”). In reaching our decision, we have taken into consideration additional arguments made during a conference between members of my staff and Marck’s counsel on August 11, 2011 and November 15, 2012, as well as supplemental submissions made on July 7, 2011, November 7, 2011, September 24, 2012, and April 30, 2013.

FACTS:

The subject merchandise consists of items from the Brighton, Dover, Roma, and Valencia styles of Marck’s dinnerware. Samples of each item were sent to a U.S. Customs and Border Protection (“CBP”) laboratory for testing. Separate laboratory reports were issued for each item.

The Brighton Style items at issue consist of six plates¹, and one platter.² All have a finished white body, are translucent and absorb less than 0.5% of their weight in water. CBP’s laboratory³ found that these items do not contain phosphorous, and all meet the definition of porcelain found in Additional U.S. Note 5(a) to Chapter 69, HTSUS. Furthermore, they all contain a logo identifying them as “ITI, China, 5–1.”

¹ Item Number BR-5 has a diameter of approximately 13.9 centimeters and a thickness of approximately 5.4 millimeters. It is glazed with a raised, round, unglazed ridge on the bottom. Item Number TBR-16 measures 26.18 centimeters in diameter, 0.65 centimeters in thickness, and has a clear glaze. Item Number BR-6 measures 22.78 centimeters in diameter, 0.58 centimeters in thickness, and has a clear glaze. Style Number BR-8 measures approximately 22.9 centimeters in diameter and has a thickness of approximately 4.9 millimeters. It is a glazed plate with a raised, round, unglazed ridge on the bottom. Style Number BR-9 has a diameter of approximately 21.4 centimeters and is approximately 6.2 millimeters in thickness. It is a glazed plate with a raised, round, unglazed ridge on the bottom. Item Number BR-7 measures 18.27 centimeters in diameter and 0.59 centimeters in thickness. It has a clear glaze.

² Item Number BR-13 measures 11 ½ inches by nine inches and contains a clear glaze.

³ Laboratory Report NY20111477, dated September 21, 2011, tested Item Number BR-5; Laboratory Report NY20111479, dated September 16, 2011, tested Item Number TBR-16. Laboratory Report NY20111483, dated September 28, 2011, tested Item Number BR-6. Laboratory Report NY20111484, dated September 16, 2011, tested Item Number BR-8. Laboratory Report NY20111485, dated September 13, 2011, tested Item Number BR-9. Laboratory Report NY20111486, dated October 4, 2011, tested Item Number BR-7.

Several items of the Dover style are at issue here: one saucer⁴, four bowls⁵, four plates⁶, and a platter⁷. These items all contain a logo identifying them as “ITI, China, 5-1.” CBP’s laboratory⁸ found that the items of the Dover line meet the definition of porcelain within the meaning of Additional U.S. Note 5(a) to Chapter 69, HTSUS, contain no phosphorous, and absorb less than 0.5% of their weight in water. In addition, many of the samples obtained by the CBP laboratory contained an adhesive label affixed to the back of the plate that read “International Tableware, Inc.,” and identified the item by item number, style, and item type. At the November 15, 2012 meeting with CBP, counsel conceded that the Dover line of Marck’s merchandise is made of porcelain.

Several items of the Roma style are at issue here: three bowls⁹, two plates¹⁰, and a platter¹¹. The samples received by the CBP laboratory all contained a logo in black lettering which reads “ITI China.” After testing these items, the laboratory found that they had off-white bodies, were translucent, absorbed less than 0.5% of their weight in water, and contained no

⁴ Item Number DO-2 is a double well saucer with a clear glaze. It measures 15.35 centimeters in diameter and 0.64 centimeters in thickness.

⁵ Item Number DO-24 is a glazed bowl with a raised, round, unglazed ridge at the bottom. It has a diameter of approximately 12.5 centimeters and a thickness of approximately 6.5 millimeters. Style Number DO-11 is a glazed bowl with a raised, round, unglazed ridge on the bottom. It has a diameter of approximately 4.9 centimeters and a thickness of approximately 5.1 millimeters. Style Number DO-10, is a glazed bowl that measures 16.0 centimeters in diameter. Item Number DO-4 has a diameter of approximately 10.0 centimeters and a thickness of approximately 6.6 millimeters.

⁶ Item Number DO-8 measures 22.78 centimeters in diameter and 0.58 centimeters in thickness.

⁷ Style Number DO-34 is a white oval plate with a clear glaze. It measures 24.38 centimeters in length, 19.08 centimeters in width, and has a thickness of 0.66 centimeters. Item Number DO-31 measures 16.09 centimeters in diameter and 0.58 millimeters in thickness. Item Number DO-5 measures 13.96 centimeters in diameter and 0.57 millimeters in thickness. Style Number DO-7 is a glazed plate with a raised, round, unglazed, ridge on the bottom. It measures approximately 17.7 centimeters in diameter and has a thickness of approximately 5.2 millimeters.

⁸ Laboratory Report NY20111480, dated September 16, 2011, tested Item Number DO-2. Laboratory Report NY20111482, dated September 21, 2011, tested Item Number DO-24. Laboratory Report NY20111488, dated September 21, 2011, tested Style Number DO-11. Laboratory Report NY20111489, dated October 7, 2011, tested Style Number DO-10. Laboratory Report NY20111485, dated September 23, 2011, tested Item Number DO-4. Laboratory Report NY20111483, dated September 28, 2011, tested Item Number DO-8. Laboratory Report NY20111481, dated September 16, 2011, tested Item Number DO-31. Laboratory Report NY20111487, dated September 28, 2011, tested Item Number DO-5. Laboratory Report NY20111486, dated September 13, 2011, tested Item Number DO-7. Laboratory Report NY20111474, dated September 16, 2011, tested Item Number DO-34.

⁹ Item Number WRO-15 has a clear glaze. It measures 14.12 centimeters in thickness and 6.45 centimeters in depth and its lip is 0.50 centimeters in thickness. Item Number RO-10 has a clear glaze. It measures 16.66 centimeters in diameter and 6.25 centimeters in depth and has a lip that measures 0.60 centimeters in thickness. Item Number RO-11 is glazed bowl, with a raised, round, unglazed ridge on the bottom. It has a diameter of approximately 12.0 centimeters and a thickness of approximately 4.5 millimeters.

¹⁰ Style Number RO-5 has a clear glaze. Style Number RO-3, is plate and has a raised, round, unglazed ridge on the bottom. It has a diameter of approximately 22.2 centimeters and a thickness of approximately 5.7 millimeters.

¹¹ Style Number RO-12, is glazed and measures 18.6 centimeters by 26.9 centimeters.

phosphorous. The laboratory concluded that these items are porcelain within the meaning of Note 5(a) to chapter 69, HTSUS.¹²

One item of the Valencia style, a plate, is at issue here.¹³ The sample received by the CBP laboratory contains a logo on the back of the plate, whose black lettering read “TI China 6–2.” After testing, the lab found that the plate is white in color and absorbs 0.18% of its weight in water and conforms to the definition of porcelain of Note 5(a) to Chapter 69, HTSUS.¹⁴

Marck has been entering the merchandise of the Roma and Valencia styles under subheading 6912.00.39, HTSUS, which provides for “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Other: Available in specified sets: In any pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of this chapter is over \$38.” Marck has been entering items of the Brighton and Dover styles under subheading 6911.10.37, HTSUS, which provides for “Tableware, kitchenware, other household articles and toilet articles, of porcelain or china: Tableware and kitchenware: Other: Other: Available in specified sets: In any pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of this chapter is over \$56: Aggregate value not over \$200.” Marck also claims that 60–65% of the subject merchandise is sold for household use, and that the remaining 35–40% is sold for restaurant or hotel use.

ISSUES:

1. Whether the subject merchandise is classified in heading 6911, HTSUS, as porcelain tableware, or under heading 6912, HTSUS, as ceramic tableware?
2. Whether the subject merchandise is classified as for hotel or restaurant use, or for other (household) tableware?

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, 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 the GRIs.

The HTSUS provisions under consideration are as follows:

6911 Tableware, kitchenware, other household articles and toilet articles, of porcelain or china:

¹² Laboratory Report NY20111525, dated October 5, 2011, tested Item Number WRO-15. Laboratory Report NY20111495, dated October 5, 2011, tested Item Number RO-10. Laboratory Report NY20111494, dated September 27, 2011, tested Item Number RO-11. Laboratory Report NY20111491, dated October 5, 2011, tested Item Number RO-5. Laboratory Report NY20111492, dated September 27, 2011, tested Item Number RO-3. Laboratory Report NY20111493, dated October 7, 2011, tested Item Number RO-12.

¹³ Style Number VA-7 is glazed and measures 18.4 centimeters in diameter.

¹⁴ Laboratory Report NY20111490, dated October 14, 2011, tested Style Number VA-7.

See the Explanatory Note to heading 69.12.

The EN to heading 6912, HTSUS, provides, in pertinent part:

Tableware, kitchenware, other household articles and toilet articles are classified in heading 69.11 if of porcelain or china, and in heading 69.12 if of other ceramics such as stoneware, earthenware, imitation porcelain (see General Explanatory Note to sub-Chapter II).

The General Explanatory Note to sub-Chapter II of heading 6912, HTSUS, provides, in pertinent part:

(I) PORCELAIN OR CHINA

Porcelain or china means hard porcelain, soft porcelain, biscuit porcelain (including parian) and bone china. All these ceramics are almost completely vitrified, hard, and are essentially impermeable (even if they are not glazed). They are white or artificially colored, translucent (except when of considerable thickness), and resonant.

Hard porcelain is made from a body composed of kaolin (or kaolinic clays), quartz, feldspar (or feldspthoids), and sometimes calcium carbonate. It is covered with a colorless transparent glaze fired at the same time as the body and thus fused together.

Soft porcelain contains less alumina but more silica and fluxes (e.g., feldspar). Bone china, which contains less alumina, contains calcium phosphate (e.g., in the form of bone ash); a translucent body is thus obtained at a lower firing temperature than with hard porcelain. The glaze is normally applied by further firing at a lower temperature, thus permitting a greater range of underglaze decoration...

We first address classification at the heading level as between headings 6911, HTSUS, and 6912, HTSUS. We note that the CBP laboratory concluded that Style Numbers BR-5, TBR-16, BR-6, BR-8, BR-9, DO-2, DO-24, DO-11, DO-10, DO-4, DO-8, DO-31, DO-5, DO-7, DO-34, BR-13, BR-7, WRO-15, RO-10, RO-5, VA-7 are made of porcelain within the meaning of Additional U.S. Note 5(a) to Chapter 69, HTSUS. Furthermore, counsel conceded that Marck's Dover line is made of porcelain. Hence, these items cannot be classified in heading 6912, HTSUS. To the contrary, they are described by heading 6911, HTSUS, which provides for "Tableware, kitchenware, other household articles and toilet articles, of porcelain or china."

The CBP laboratory concluded that Item Number RO-12 met the definition of ceramic articles and of earthenware within the meaning of Additional U.S. Note 5(a) to Chapter 69, HTSUS. As a result, it is described by the terms of heading 6912, HTSUS, which provides for "Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china."

The CBP laboratory did not make a specific finding as to the composition of Item Numbers RO-11 and RO-3 within the meaning of Additional U.S. Note 5(a) to Chapter 69, HTSUS. Nonetheless, it made a finding with respect to each of the factors in determining whether an item is porcelain under Note 5(a). All three factors are required for an item to be considered porcelain within the meaning of Note 5(a). *See* Additional U.S. Note 5(a) to Chapter 69, HTSUS; *see also* HQ 958647, dated June 16, 1997. As a result, we now examine the remaining items in light of these factors to determine whether they are porcelain.

With respect to the Roma bowl, item number RO-11, Laboratory Report NY20111494 concluded that it has a white fired body, is not translucent in a thickness of several millimeters, and absorbs 0.17% of its weight in water. Thus, while RO-11 contains two of the three characteristics of porcelain, it is lacking the third and therefore cannot be classified as porcelain on heading 6911, HTSUS. As a result, RO-11 is described by the terms of heading 6912, which provides for “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china.”

With respect to the Roma plate, Style Number RO-3, Laboratory Report NY20111492 concluded that it has a white fired body, is not translucent in a thickness of several millimeters, and absorbs 0.53% of its weight in water. Thus, RO-3 lacks two of the three factors of porcelain and cannot be classified as such. As a result, it is described by the terms of heading 6912, which provides for “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china.”

There is no dispute that the instant merchandise is tableware and kitchenware within the meaning of the six-digit level of both headings at issue under GRI 6. Rather, the issue is whether the instant merchandise belongs to the class or kind of goods described as “hotel or restaurant ware and other ware not household ware.” This provision has been found to be a use provision. See HQ 960552, dated March 2, 1999; HQ W967535, dated July 1, 2005; HQ 959745, dated July 20, 1998. To determine principal use, CBP has consistently applied the factors that the court established in *United States v. Carborundum Company*. See *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), cert. denied, 429 U.S. 979. These factors include: 1) general physical characteristics; 2) expectation of the ultimate purchaser; 3) channels of trade; 4) environment of sale (accompanying accessories, manner of advertisement and display); 5) usage of the merchandise; 6) economic practicality of so using the import; and 7) recognition in trade of this use. See *United States v. Carborundum Company*, 63 CCPA 98. See also *United States v. The Baltimore & Ohio R.R. Co.*, 47 C.C.P.A. 1; C.A.D. 719 (C.C.P.A. 1959). See also *Lenox Collections v. United States*, 20 C.I.T. 194; 18 Int’l Trade Rep. (BNA) 1181; 1996 Ct. Intl. Trade LEXIS 38; SLIP OP. 96–30 (Ct. Int’l Trade 1996). CBP has also applied this principle in subsequent rulings. See, e.g., HQ 082780, dated December 18, 1989. Courts have also stated that principal use is defined as the use which “exceeds all other uses.” See *Lenox Collections*, 20 C.I.T. 194, 196. See also NY C88291, dated December 11, 1998.

In HQ 082780, dated December 18, 1989, CBP classified a number of patterns of china dinnerware that were produced chiefly for household use, but were also marketed and sold to hotels and restaurants for use in their finer dining sections. After reviewing the evidence presented, CBP found that household china is different from hotel china in both physical and design characteristics because hotel china is heavier in weight and is stackable and chip resistant. The restaurant plates also generally do not have a center design. CBP also found that hotel china is generally less expensive than household china and is offered for sale by independent sales representatives to wholesalers or hotel chains, an industry that also has its own trade publications and trade shows. Furthermore, if the dinnerware were marked with the crest or initials of the establishment, this spoke in favor of it

belonging to the class chiefly used in hotels or restaurants. By contrast, household china was found to be generally lighter in weight, more expensive, and did not possess some of the characteristics of hotel ware. See HQ 082780.

Furthermore, in HQ W967570, dated January 31, 2008, CBP considered whether Pillivuyt's porcelain tableware and kitchenware was principally for household use or hotel and restaurant use. In an analysis similar to the one undertaken in HQ 082780, CBP cited prior rulings and various reference books to determine what physical characteristics are indicative of household use versus restaurant and hotel use. In American china, such characteristics included composition, translucency, degree of absorption, and a very high mechanical shock resistance. Thickness was also a significant factor, as one cited source divided American hotel china, which it described as "vitrified ware of very high strength," into three grades based on wall thickness: Grade (1), "Thick china," which had 5/16 to 3/8 inch walls and is used in lunch counters and army messes; Grade (2), "Hotel China," which contained 5/32 to 1/4 inch walls and were used in hotels and restaurants; and Grade (3), "medium-weight China", which had less than 1/4 inch walls and was used in high-class eating places, home use, and also for numerous jars, trays, etc., in hospitals. See HQ W967570; HQ 959745, dated July 20, 1998; HQ 962208, dated April 19, 2000; Rexford Newcomb, Jr., *Ceramic Whitewares*, Pitman Publishing Corp., New York (1947) at pp. 222 and 227; Felix Singer & Sonja S. Singer, *Industrial Ceramics*, Chemical Publishing Co., Inc., New York (1963), at p. 1096. We note that dishes' thickness has long been considered a relevant factor in determining the use of the merchandise. See, e.g., HQ 959745; HQ W967570.

HQ W967570 also examined trade publications to determine the physical characteristics that are standard for restaurant and hotel ware, and stated, "the single greatest thing a hotel demands and we produce are plain, white, round plates." See HQ W967570, citing an article by Villeroy & Boch, USA at http://findarticles.com/p/articles/mi_m3072/is_7_219/ai_n6028235.

HQ W967570 then examined the rest of the *Carborundum* factors. Three out of the seven factors conclusively indicated household use, while the remaining four were inconclusive. As a result, HQ W967570 found that Pillivuyt's French porcelain was for household use. We acknowledge that the standards in the rulings that we have cited here have been developed for merchandise of heading 6912, HTSUS. However, because the terms of the subheadings of headings 6911 and 6912, HTSUS, are identical, these standards are also instructive for products of 6911, HTSUS.

In the present case, we apply the *Carborundum* factors, first to the merchandise that we have classified in heading 6911, HTSUS, as follows: (1) physical characteristics. The styles at issue are white and plain. Each piece is round and stackable. Furthermore, a number are not translucent, and the ones that are translucent are not delicate dishes; to the contrary, many of the styles at issue have been glazed and all of them are heavy dishes that are durable and able to withstand heavy use. In addition, samples that CBP obtained of each of these styles contain the logo of International Tableware Incorporated. International Tableware Incorporated ("ITI") is Marck's restaurant supply line. These characteristics are indicative of restaurant or hotel use.

Furthermore, one characteristic of commercial china is that it is vitrified. *Restaurant China, Volume 1: Identification and Value Guide for Restaurant, Airline, Ship, and Railroad Dinnerware* states that “during vitrification the body components fuse together, making the china: (1) non-porous, thus resisting penetration of liquids even when glaze is worn or chipped and (2) more durable, resisting breakage caused by heat and handling.” See Barbara J. Conroy, *Restaurant China, Volume 1: Identification and Value Guide for Restaurant, Airline, Ship, and Railroad Dinnerware*, Collector Books, Paducah (1998) at p. 7. In the present case, Marck’s website states that the subject merchandise has been vitrified and that it has a low water absorption rate. See www.internationaltableware.com/aboutus.aspx.

Vitrified china is defined as “fired at a higher temperature and vitrified during the first (bisque) firing, then fired at a lower temperature (glaze or gloss firing).” See Barbara J. Conroy, *Restaurant China, Volume 1: Identification and Value Guide for Restaurant, Airline, Ship, and Railroad Dinnerware*, Collector Books, at page 7 (Paducah 1998). In short, vitrification makes dinnerware more durable and resistant to chipping, factors which indicate restaurant or hotel use. See, e.g., HQ W967570; HQ 957520, dated June 16, 1997. Marck misunderstands the importance of vitrification in the tariff analysis, claiming that their vitrified product is commercial china. However, “commercial china” is not the tariff term we are analyzing here. Rather, the hardness of the dishware is what is indicative of restaurant use.

The same is true for the items of the subject merchandise that we have classified in heading 6912, HTSUS. Items of the Roma style are white and plain, round and stackable with a one-quarter inch rim. Furthermore, not all are translucent, and the ones that are translucent are not delicate dishes; to the contrary, many of the styles at issue have been glazed and all of them are heavy dishes that are durable and able to withstand heavy use. In addition, samples that CBP obtained of each of these styles contain the ITI logo. These characteristics are indicative of restaurant or hotel use. We note that while most restaurant or hotel dishes are plain white, the styling of the Verona style is not enough, by itself, to indicate that these dishes are for household use. These items have also been vitrified, which is further evidence that it is intended for hotel or restaurant use.

In its April 30 submission, Marck argues that the fact that a logo may be embossed on their merchandise is an inaccurate assessment of class or kind, because the assessment of class or kind must be made at the time of importation, and the subject merchandise is never decorated at the time of importation. In response, we note that merchandise with these types of logos are sold for commercial purposes, such as support of a university or other institution. Furthermore, we note that the fact that the merchandise is often used for this type of embossing speaks to its thickness, resistance, and ability to withstand the embossing process— all characteristics of the class or kind of merchandise that would be used in restaurants and hotels.

In its April 30 submission, Marck also disputed CBP’s characterization of ITI as its restaurant supply line, calling this description “inaccurate on its face.” In response, we note that a copy of the ITI catalogue that Marck publishes was submitted among the various documents that CBP has received in this case. The last page of this catalogue offers guidance in “estimating dinnerware needs.” This section states, “to figure out your exact

needs... multiply the number of seats in your restaurant by the ordering factor, then divide by 12.” The table included there splits its bowls, plates, etc. in to the groups of “fine dining,” “casual,” and “institutional.” The same catalogue page contains a table that can be used to estimate flatware needs whose columns are labeled “amount in service times seats” and “reserve times seats.” These factors clearly indicate hotel or restaurant use, and we find Marck’s objection to this characterization to be unfounded.

At the August 11 conference and in its November 7 submission, Marck argued the thickness standards espoused by HQ W967570 are no longer as relevant as they were when the sources cited were first published several decades ago. Marck argues that in the intervening years, the distinction between dishes for hotels and restaurants and those used in the home have blurred as consumers buy restaurant ware for household use precisely for its clean looks and sturdiness. Nevertheless, medium-weight vitrified dishes, such as the ones at issue here, still favor the class or kind of dishes used in restaurants or hotels.

(2) Environment of sale and (3) channels of trade: In HQ 082780, CBP examined sales data in the context of the multiple factors that, as a whole, determined whether the merchandise was for household or industrial use. The percentage of total sales to hotels and restaurants varied according to the pattern of chinaware and year of the sales. For example, in 1985, 49% of the sales of the pattern *Petite Fleur* was to hotels and restaurants, while in 1986, the percentage was 17.44%. Furthermore, certain patterns had sales to hotels and restaurants varying from 70% to 100% in 1983. In 1986, “the total sales to hotel and restaurants was 11.16% for household dinnerware, and 11.35% for household bone china,” but these percentages were based on sales of all patterns, rather than on specific patterns. The actual percentage of sales for each of the specific patterns ranged from zero to 45.05%, depending on the pattern. In addition to sales data and the general physical characteristics of the merchandise, HQ 082780 examined other factors such as the importer’s catalogue advertising of these chinaware patterns. There, we found that merchandise’s chief use was the use that exceeded all other uses. Thus, in HQ 082780, factors such as sales percentages and the amount that restaurants and hotels used household china neither established nor constituted chief use. Therefore, CBP held that the china at issue belonged to the class of china chiefly used as household china. *See* HQ 082780.

Furthermore, in NY C88291, the merchandise at issue was white porcelain tableware that was marketed and sold for hotel, restaurant and household use. There, the importer submitted information to indicate that approximately 60 percent of the “Acapulco” patterned dinnerware was sold to hotel and restaurant users; the remaining 40 percent was sold to retailers. CBP found that the percentage of sales indicated that hotel and restaurant use exceeded all other uses. *See* NY C88291.

In the present case, Marck, in its November 7 submission, presented data in support of its claim that 60–65% of its merchandise is for household use. In examining this data and the list of companies to which Marck sells, we found that Marck sells a significant percentage of its merchandise to companies that emboss logos on it and resell it. Marck attributes these sales to household use. We disagree with this assessment, as a logo is one factor in favor of commercial use. Furthermore, the merchandise at issue is marketed under the ITI dinnerware line.

Marck submitted a catalogue for ITI, the line to which the imported special order is similar. Its catalogue shows the merchandise arranged in the same manner as one would expect in a restaurant or hotel, with food arranged on it in the manner one would expect to receive it in a restaurant. Furthermore, the merchandise advertised in this catalogue is sold in quantities of at least one dozen, and many items are sold in quantities of two or three dozen, large quantities that speak to it being for restaurant or hotel use. Taken together, these factors favor hotel or restaurant use. As a result, the vast majority of Marck's sales are for commercial use. This is in contrast to HQ W967570, where 75% of the merchandise was sold for household use. As a result, we find that Marck has not shown that the 60–65% of its merchandise is for household use.

In its April 30 submission, Marck argues that it is a wholesaler that sells in quantities of a dozen or more to stores such as Crate and Barrel for their open stock, rather than directly to consumers for household use in such high quantities. As such, Marck argues that this factor indicates household use rather than restaurant or hotel use. In response, we note that these high quantities, when coupled with the higher prices of these items and inclusion of items such as Welsh rarebit dishes and other items that are less likely to be used in the home, all indicate restaurant or hotel use as a whole, even if a percentage of Marck's sales are for open stock. As a result, the vast majority of Marck's sales are for commercial use.

The same is true for the items of the subject merchandise that we have classified in heading 6912, HTSUS. Here as well, the ITI catalogue shows the merchandise arranged in the same manner as one would expect in a restaurant or hotel, with food arranged on it in the manner one would expect to receive it in a restaurant. Furthermore, the merchandise advertised in this catalogue is sold in high quantities. The Roma fruit bowl, for example, is sold in quantities of three dozen, and the Roma platter is sold in quantities of two dozen. These are large quantities that speak to this merchandise being for restaurant or hotel use.

In addition, Marck claims that its merchandise is sold through stores such as Sam's Club and The Market Collections.com. In examining how the subject merchandise is displayed on these websites, we note that Sam's Club calls pieces of the Granada line "easily used as serving dishes in any restaurant;" other pieces "add high end experience to any culinary establishment." See www.samsclub.com. Items of the Roma style are described as "Dishwasher safe, heavy duty, chip resistant, fully vitrified ceramic, thermal shock and impact resistant," and "good for a variety of uses." See <http://www.samsclub.com/sams/7-1-4-oz-roma-bouillon-cup-american-white-36/127497.ip?navAction=push>. Taken together, these factors favor hotel or restaurant use. As a result, the vast majority of Marck's sales are for commercial use.

(4) Expectation of ultimate consumer: many of Marck's ultimate consumers are in the foodservice industry, expect to use the subject merchandise in hotels, restaurants, etc., and expect the high durability and appearance that characterizes the dishes that are used in restaurants and hotels. The ultimate consumer expects the same of restaurant-quality dishes. Thus, even when consumers purchase these products for home use, they expect their dishes to look like and last as long as the dishes used in the foodservice

industry. Thus, this factor speaks in favor of hotel and restaurant use for both the merchandise classified in heading 6911, HTSUS, and that classified in heading 6912, HTSUS.

(5) Usage of the merchandise: based on Marck's submitted sales data, it is clear that the subject merchandise is bought both by the foodservice industry and retail stores. However, the discussion of factors (2) and (3) concluded that the majority of Marck's sales were to commercial entities. Based on the evidence discussed there, we find that the majority of the subject merchandise's usage is in restaurants and hotel uses.

(6) Recognition of use in the trade: The subject merchandise is also recognized in the trade as being bought and sold for both the household and in restaurants and hotels. Thus, this factor supports both uses for all items at issue here.

(7) Economic practicality of using the merchandise: CBP examined prices for the subject styles in ITT's catalogue and on ITT's website. The Dover oatmeal bowl, item number DO-11, sells in quantities of three dozen for \$66.25. As another example, the Dover Plate, item number DO-8, sells in quantities of two dozen for \$94.50. In W967570, the fact that French porcelain at issue was significantly more expensive than similar porcelain from China and Thailand was a factor in favor of household use because restaurants and hotels would be less likely to purchase expensive materials because of the amount of breakage involved. In the present case, by contrast, sales in this quantity and price result in a low price per plate; for example, the prices quoted above for Item Number DO-8 is equivalent to less than \$4 a plate. Given the quantity and low price at which these items are sold, it is more likely that a hotel or restaurant would purchase them. It is just as unlikely that a family would purchase two dozen plates for use in the home. Hence, this factor supports classification as being for restaurant or hotel use for both the items we have classified in heading 6911, HTSUS, and those classified in heading 6912, HTSUS.

In sum, the *Carborundum* factors indicate that item BR-5, TBR-16, BR-6, BR-8, BR-9, DO-2, DO-24, DO-11, DO-10, DO-4, DO-8, DO-31, DO-5, DO-7, DO-34, BR-13, BR-7, WRO-15, RO-10, RO-5, VA-7 are for restaurant/hotel use. Six of the seven factors speak in favor of hotel or restaurant use. We acknowledge that the other factor supports both uses. However, when some or all of the factors applied here have been analyzed in the courts, a determination of principal use has been based on all or most of the factors addressed being determinative. See, e.g., *Essex Manufacturing, Inc. v. United States*, 30 C.I.T. 1 (Ct. Intl. Trade 2006); *St. Eve International v. United States*, 267 F.Supp.2d 1371 (Ct. Int'l Trade, 2003), G. *Heileman Brewing Co. v. United States*, 14 CIT 614, 620 (1990); *Lenox Collections v. United States*, 20 C.I.T. 194; *United States v. Carborundum Co.*, 63 CCPA 98. Furthermore, in W967570, CBP found in favor of household use even though only three factors spoke in favor of household use and the other four were inconclusive. Lastly, in HQ 082780, after reviewing the *Carborundum* factors, CBP concluded that "the mere fact that the subject [household] china may possess some characteristics which permits its use in hotels and restaurants does not establish that it is chiefly used in hotels and restaurants." As a result, in the

present case, having six of the *Carborundum* factors point to restaurant/hotel use is enough to find that Marck's merchandise belongs to the class or kind of goods principally for commercial use.

The *Carborundum* factors indicate that items RO-3, RO-11 and RO-12 are for restaurant/hotel use. Six of the seven factors are indicative of hotel or restaurant use. As a result, we find that these items belong to the class or kind of goods principally for commercial use. As such, they are described by the terms of subheading 6912.00.20, which provides for "Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Hotel or restaurant ware and other ware not household ware."

In its April 30 submission, Marck argues that its dinnerware has been rejected by restaurant chains and has failed testing for restaurant use, in part because the rims of the dishes were less chip resistant than other competition samples. In response, we note that we are examining the merchandise to determine whether it belongs to a certain class or kind. Marck's dinnerware contains the same characteristics as hotel or restaurant ware. The fact that certain restaurant chains have rejected it as compared to a competitor's merchandise has little bearing on these characteristics, especially without an analysis of the competition's merchandise.

With respect to your question of whether, in the alternative, CBP should consider only sales of the particular style at issue to determine principal use, we note that class or kind is defined more broadly than the single shipment at issue. However, sales data for the particular style at issue is relevant to the factors CBP considers in determining principal use. *See, e.g., United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), *cert. denied*, 429 U.S. 979. As a result, while sales of a particular style at issue is one factor that should be considered in a principal use determination, this one factor cannot, by itself, determine principal use.

Lastly, we note that the subject merchandise was entered in subheadings 6911.10.37 and 6912.00.39, HTSUS, subheadings that require that the subject merchandise be imported in sets. The term "sets" is defined in Additional U.S. Note 6 to Chapter 69, HTSUS. However, we note that Marck has filed multiple lawsuits in the Court of International Trade regarding the importation of their ceramic cups and mugs. *See, e.g., C.I.T. Court Number 08-00306*, among others. The issue in each of these cases is whether the merchandise is available in specified sets. Thus, because this litigation is currently ongoing we could not respond to the question of specified sets even if it were pertinent to the classification.

HOLDING:

Principal use is determined by the use of an entire class or kind rather than the use of a specific import or shipment; as a result, a company's overall sales can be considered to determine classification, but sales of a specific import could also be used as one factor in the *Carborundum* analysis.

Following such an analysis, under the authority of GRI 1, BR-5, TBR-16, BR-6, BR-8, BR-9, DO-2, DO-24, DO-11, DO-10, DO-4, DO-8, DO-31, DO-5, DO-7, DO-34, BR-13, BR-7, WRO-15, RO-10, RO-5, and VA-7 are classified in heading 6911, HTSUS. They are specifically provided for in subheading 6911.10.10, HTSUS, which provides for "Tableware, kitchenware, other

household articles and toilet articles, of porcelain or china: Tableware and kitchenware: Hotel or restaurant ware and other ware not household ware.” The applicable duty rate is 25% ad valorem.

Under the authority of GRI 1, RO-3, RO-11, and RO-12 are classified in heading 6912, HTSUS. They are specifically provided for in subheading 6912.00.20, HTSUS, which provides for “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Hotel or restaurant ware and other ware not household ware.” The applicable duty rate is 28% 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/.

You are to mail this decision to the Internal Advice requester no later than 60 days from the date of the decision. At that time, the Office of International Trade, Regulations and Rulings, will make the decision available to CBP personnel and to the public on CBP’s website, located at www.cbp.gov by means of the Freedom of Information Act and other methods of public distribution.

Sincerely,

MYLES B. HARMON, DIRECTOR
Commercial and Trade Facilitation Division

[ATTACHMENT C]

HQ H252124

CLA-2 OT:RR:CTF:TCM HQ H252124 CKG

CATEGORY: Classification

TARIFF NO.: 6911.10.10; 6912.00.20

EDMUND MACIOROWSKI
101 WEST LONG LAKE ROAD
BLOOMFIELD HILLS, MICHIGAN 48304

Re: Modification of HQ H169055 and HQ H226264; classification of ceramic dinnerware

DEAR MR. MACIOROWSKI:

This is in response to your letter of February 28, 2014, requesting the reconsideration of Headquarters Ruling Letters (HQ) H169055 and H226264, both dated January 3, 2014, filed on behalf of Marck & Associates, Inc., contesting Customs and Border Protection's (CBP) classification of ceramic dinnerware in subheadings 6911.10.10, HTSUS, and 6912.00.20, HTSUS. Specifically, you contest the classification of all of the items pertaining to the Granada, Roma, Sydney, Valencia, Verona and York styles in heading 6911, HTSUS, as porcelain ceramic tableware, and you contest the classification of all items pertaining to the Brighton, Dover, Granada, Roma, Sydney, Valencia, Verona and York styles in subheadings 6911.10.10, HTSUS, and subheading 6912.00.20, HTSUS, as ceramic tableware for hotel or restaurant use.

We have reconsidered both rulings, and for the reasons set forth below we are modifying HQ H169055 with respect to the classification of item number VE-9 (Verona plate), and H226264 with respect to the classification of item numbers RO-5 (Roma plate) and RO-12 (Roma platter).

FACTS:

The subject merchandise consists of eight styles of ceramic dinnerware: Brighton, Dover, Granada, Roma, Sydney, Valencia, Verona, and York. Various samples of each style were sent to the U.S. Customs and Border Protection ("CBP") laboratory for testing. Separate laboratory reports were issued for each item. The Brighton style items at issue consist of six plates (Item #s BR-5, BR-6, BR-7, BR-8, BR-9, and BR-16)¹, and one platter (BR-13)². All have a finished white body, are translucent and absorb less than 0.5% of their weight in water. CBP's laboratory found that these items do not contain phosphorous, and all meet the definition of porcelain found in Additional U.S. Note 5(a) to Chapter 69, HTSUS. Furthermore, they all contain a logo on the

¹ Item Number BR-5 has a diameter of approximately 13.9 centimeters and a thickness of approximately 5.4 millimeters. It is glazed with a raised, round, unglazed ridge on the bottom. Item Number BR-6 measures 22.78 centimeters in diameter, 0.58 centimeters in thickness, and has a clear glaze. Item Number BR-7 measures 18.27 centimeters in diameter and 0.59 centimeters in thickness. It has a clear glaze. Style Number BR-8 measures approximately 22.9 centimeters in diameter and has a thickness of approximately 4.9 millimeters. It is a glazed plate with a raised, round, unglazed ridge on the bottom. Style Number BR-9 has a diameter of approximately 21.4 centimeters and is approximately 6.2 millimeters in thickness. It is a glazed plate with a raised, round, unglazed ridge on the bottom. Item Number TBR-16 measures 26.18 centimeters in diameter, 0.65 centimeters in thickness, and has a clear glaze.

² Item Number BR-13 measures 11 ½ inches by nine inches and contains a clear glaze.

back identifying them as “ITI, China, 5–1.” You acknowledge that the Brighton line of Marck’s merchandise is made of porcelain, and do not contest their classification at the 4-digit heading level in heading 6911, HTSUS.

The Dover style items at issue here are: one saucer (DO-2)³, five bowls (DO-4, DO-10, DO-11, DO-24, and DO-120)⁴, five plates (DO-5, DO-7, DO-8, DO-16, DO-31)⁵, and a platter (DO-34)⁶. These items all contain a logo on the back identifying them as “ITI, China, 5–1.” In addition, many of the samples obtained by the CBP laboratory contained an adhesive label affixed to the back of the plate that read “International Tableware, Inc.,” and identified the item by item number, style, and item type. CBP’s laboratory found that the items of the Dover line meet the definition of porcelain within the meaning of Additional U.S. Note 5(a) to Chapter 69, HTSUS. You acknowledge that the Dover line of Marck’s merchandise is made of porcelain, and do not contest their classification at the heading level in heading 6911, HTSUS.

The Granada style items at issue here are a plate (GR-9)⁷, a platter (GR-12)⁸, two saucers (GR-2, GR-2”C”)⁹ and a bowl (GR-11)¹⁰. They are glazed and beige with brown spots and have a dark brown trimming. The laboratory concluded that the Granada bowl and two saucers met the definition of porcelain within the meaning of Note 5(a) to Chapter 69, HTSUS, but that the Granada plate and the Grenada platter were not translucent.

In addition to the laboratory reports issued by CBP’s New York laboratory, the Port sent a sample of the Granada plate to CBP’s laboratory in Chicago

³ Item Number DO-2 is a double well saucer with a clear glaze. It measures 15.35 centimeters in diameter and 0.64 centimeters in thickness.

⁴ Item Number DO-24 is a glazed bowl with a raised, round, unglazed ridge at the bottom. It has a diameter of approximately 12.5 centimeters and a thickness of approximately 6.5 millimeters. Style Number DO-11 is a glazed bowl with a raised, round, unglazed ridge on the bottom. It has a diameter of approximately 4.9 centimeters and a thickness of approximately 5.1 millimeters. Style Number DO-10, is a glazed bowl that measures 16.0 centimeters in diameter. Item Number DO-4 has a diameter of approximately 10.0 centimeters and a thickness of approximately 6.6 millimeters. Item number DO-120, the Dover Pasta Bowl, measures approximately 12 inches in diameter. It has a shallow indentation in the middle that measures approximately eight inches in diameter and one inch in depth.

⁵ Item Number DO-5 measures 13.96 centimeters in diameter and 0.57 millimeters in thickness. Style Number DO-7 is a glazed plate with a raised, round, unglazed, ridge on the bottom. It measures approximately 17.7 centimeters in diameter and has a thickness of approximately 5.2 millimeters. Item Number DO-8 measures 22.78 centimeters in diameter and 0.58 centimeters in thickness. Item number DO-16 measures approximately 10.5 inches in diameter, weighs 822.63 grams and has an average rim thickness of 6.39 millimeters.

⁶ Style Number DO-34 is a white oval plate with a clear glaze. It measures 24.38 centimeters in length, 19.08 centimeters in width, and has a thickness of 0.66 centimeters.

⁷ Item Number GR-9 is glazed and weighs 712 grams. It has a diameter of approximately 8 millimeters.

⁸ Item Number GR-12 “C” measures 9.75 inches long by 8.5 inches wide. It has a clear glaze, weighs 666.80 grams, and has an average rim thickness of 7.46 millimeters.

⁹ Item numbers GR-2 and GR-2 “C” both measure approximately 6 inches in diameter with an indentation in the center that measures 2.5 inches in diameter and is suitable for containing a cup.

¹⁰ Item Number GR-11 measures approximately 4.63 inches in diameter, 3.2 centimeters in height, and the rim is approximately 4.1 millimeters thick. It weighs approximately 177.6 grams.

for analysis. The resulting laboratory report determined that the plate was “composed of porcelain ceramic” and had a water absorption value of 0.08 percent by weight.

The items from the Roma style at issue here are: a serving dish (WRO-8-AW)¹¹, three plates (RO-3, RO-5, RO-8)¹², three bowls (RO-10, RO-11, WRO-15)¹³, and a platter (RO-12)¹⁴. They are all plain and white. Following testing, the CBP laboratory determined that item WRO-8-AW was not translucent and absorbs 4.1% percent of its weight in water. The laboratory concluded that it meets the definition of earthenware of Additional U.S. Note 5(c) to Chapter 69, HTSUS. The laboratory found that item RO-8 was translucent in several millimeters, and absorbs approximately 0.46% of its weight in water. The laboratory concluded that it meets the definition of porcelain of Additional U.S. Note 5(a) to Chapter 69, HTSUS. The laboratory found that items RO-3 and RO-5 were not translucent and absorbed more than .5% of their weight in water, and thus conformed to the definition of stoneware put forth in Additional U.S. Note 5(a) to Chapter 69, HTSUS.

One platter from the Sydney style is at issue here (SY-12).¹⁵ It is a plain white platter with shallow scalloped edges. The rim is edged in black. Following testing, the laboratory found that this platter is a glazed clay ceramic that has a white body and is translucent in a thickness of several millimeters. It absorbs 0.20% of its weight in water. The laboratory concluded that it meets the definition of porcelain of Additional U.S. Note 5(a) to Chapter 69, HTSUS.

One item of the Valencia style, a plate (VA-7), is at issue here.¹⁶ The sample received by the CBP laboratory contains a logo on the back of the plate, whose black lettering read “ITI China 6-2.” After testing, the lab found that the plate is white in color and absorbs 0.18% of its weight in water and conforms to the definition of porcelain of Note 5(a) to Chapter 69, HTSUS.

¹¹ Item Number WRO-8-AW is the Roma Welsh Rarebit Plate. It measures approximately 8.5 inches long by 4.25 inches wide, has small handles on each side to facilitate handling, and weighs 425 grams.

¹² Style Number RO-3, is plate and has a raised, round, unglazed ridge on the bottom. It has a diameter of approximately 22.2 centimeters and a thickness of approximately 5.7 millimeters. Style Number RO-5 has a clear glaze. Item number RO-8 is a glazed plate and measures approximately nine inches in diameter.

¹³ Item Number RO-10 is a bowl with a clear glaze. It measures 16.66 centimeters in diameter and 6.25 centimeters in depth and has a lip that measures 0.60 centimeters in thickness. Item Number RO-11 is glazed bowl, with a raised, round, unglazed ridge on the bottom. Item Number WRO-15 is a bowl and has a clear glaze. It measures 14.12 centimeters in thickness and 6.45 centimeters in depth and its lip is 0.50 centimeters in thickness. It has a diameter of approximately 12.0 centimeters and a thickness of approximately 4.5 millimeters.

¹⁴ Style Number RO-12 is a glazed platter and measures 18.6 centimeters by 26.9 centimeters.

¹⁵ Item Number SY-12 measures approximately 9.88 inches long by 7.25 inches wide. Its rim is approximately 7.7 millimeters thick. The platter and it weighs approximately 696.5 grams.

¹⁶ Style Number VA-7 is glazed and measures 18.4 centimeters in diameter.

Three items of the Verona style are at issue here: a fruit bowl (VE-11)¹⁷, a plate (VE-9)¹⁸, and a platter (VE-34)¹⁹. They are ivory-colored with green trim. Following testing, the CBP laboratory found that item VE-11 (fruit bowl) absorbed 0.04% of its weight in water and concluded that it meets the definition of porcelain of Additional U.S. Note 5(a) to Chapter 69, HTSUS. The CBP laboratory retested the bowl, and the laboratory confirmed its findings that it meets the definition of porcelain set forth in Note 5(a). The laboratory found that item VE-9 has a white body, is a glazed clay ceramic, is translucent and absorbs approximately 0.55% of its weight in water. The laboratory found that the platter (VE-34) has an off-white body, is not translucent, and absorbs 0.14% of its weight in water.

One item of the York Style, a grapefruit bowl (Y-10), is at issue here.²⁰ It is a white bowl with shallow ridges around the rim. It is stamped on the back with the phrase "ITI China 7-1." Following testing, the laboratory found that it is not translucent and that it absorbs 0.29% of its weight in water. Its elemental composition is consistent with a clay-based product.

Marck also sent samples of the Granada Bowl (item GR-11) and the Roma Oval Welsh Rarebit (item number WRO-8-AW), to an independent expert for testing. The resulting report, issued on April 30, 2013 by William D. Carty, Ph.D., of Ceramic Engineering & Materials Consulting and Testing Services, concluded that the GR-11 had a thickness of 3.94 millimeters, an average light transmission of 0.4%, and was opaque, not translucent, and not porcelain. This report concluded that the WRO-8-AW had a thickness of 4.00 millimeters, an average light transmission of 0.4%, was opaque, not translucent, and not porcelain.

In HQ H169055, CBP classified the Dover Bowl (item number DO-120), the Dover Plate (item number DO-16), the Granada Bowl (GR-11), Granada Saucers (GR-2 and GR-2C), the Roma Plate (item number RO-8), the Sydney Platter (item number SY-12), the Verona Bowl (item number VE-11), and the Verona Plate (item number VE-9) in heading 6911, HTSUS, specifically subheading 6911.10.10, HTSUS, which provides for "Tableware, kitchenware, other household articles and toilet articles, of porcelain or china: Tableware and kitchenware: Hotel or restaurant ware and other ware not household ware." The Roma Bowl (item number WRO-8-AW), the Granada Plate (item number GR-9), the Granada Platter (item number GR-12), the Verona Platter (item number VE-34), and the York Bowl (item number Y-10) were classified in heading 6912, HTSUS. They are specifically provided for in subheading 6912.00.20, HTSUS, which provides for "Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Hotel or restaurant ware and other ware not household ware."

In HQ H226264, CBP classified five Brighton Plates (items BR-5, TBR-16, BR-6, BR-8, BR-9), the Dover Saucer (DO-2), four Dover Bowls (items DO-24, DO-11, DO-10, and DO-4), four Dover Plates (items DO-8, DO-31, DO-5, and DO-7), the Dover Platter (DO-34), The Brighton Platter (BR-13), a Brighton Plate (BR-7), two Roma Bowls (WRO-15 and RO-10), a Roma Plate (RO-5), and a Valencia Plate (VA-7) in heading 6911, HTSUS, specifically in subhead-

¹⁷ Item Number VE-11 measures approximately 4.75 inches in diameter.

¹⁸ Item Number VE-9 measures 9.75 inches in diameter

¹⁹ Item number VE-34 measures approximately 9.25 inches long by 6.38 inches wide.

²⁰ Item Number Y-10 measures approximately 6.25 inches in diameter.

ing 6911.10.10, HTSUS, which provides for “Tableware, kitchenware, other household articles and toilet articles, of porcelain or china: Tableware and kitchenware: Hotel or restaurant ware and other ware not household ware.” A Roma Plate, Bowl and Platter (items RO-3, RO-11, and RO-12) were classified in heading 6912, HTSUS, specifically in subheading 6912.00.20, HTSUS, which provides for “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Hotel or restaurant ware and other ware not household ware.”

ISSUE:

1. Whether the subject merchandise is classified in heading 6911, HTSUS, as porcelain tableware, or under heading 6912, HTSUS, as other ceramic tableware.
2. Whether the subject merchandise is classified in subheadings 6911.10.10, HTSUS, and 6912.00.20, HTSUS, as hotel or restaurant ware, and not as household ware.

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, 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 the GRIs.

The HTSUS provisions under consideration are as follows:

6911	Tableware, kitchenware, other household articles and toilet articles, of porcelain or china:
6911.10	Tableware and kitchenware:
6911.10.10	Hotel or restaurant ware and other ware not household ware:
	Other:
	Other:
	Available in specified sets:
	In any pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of this chapter is over \$56:
6911.10.37	Aggregate value not over \$200
	* * *
6912.00	Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china:
	Tableware and kitchenware:

Other:

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

Other:

Available in specified sets:

6912.00.39 In any pattern for which the
aggregate value of the articles
listed in additional U.S. note
6(b) of this chapter is over \$38

* * * * *

Additional U.S. Note 5 to Chapter 69, HTSUS, states, in pertinent part, the following:

For the purposes of headings 6909 through 6914:

- (a) The terms “*porcelain*,” “*china*” and “*chinaware*” embrace ceramic ware (other than stoneware), whether or not glazed or decorated, having a fired white body (unless artificially colored) which will not absorb more than 0.5 percent of its weight of water and is translucent in thicknesses of several millimeters. The term “*stoneware*” as used in this note, embraces ceramic ware which contains clay as an essential ingredient, is not commonly white, will absorb not more than 3 percent of its weight of water, and is naturally opaque (except in very thin pieces) even when absorption is less than 0.1 percent...
- (c) The term “*earthenware*” embraces ceramic ware, whether or not glazed or decorated, having a fired body which contains clay as an essential ingredient, and will absorb more than 3 percent of its weight of water.

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While not legally binding 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 (Aug. 23, 1989).

The EN to heading 6911, HTSUS, provides as follows:

See the Explanatory Note to heading 69.12.

The EN to heading 6912, HTSUS, provides, in pertinent part:

Tableware, kitchenware, other household articles and toilet articles are classified in heading 69.11 if of porcelain or china, and in heading 69.12 if of other ceramics such as stoneware, earthenware, imitation porcelain (see General Explanatory Note to sub-Chapter II).

The General Explanatory Note to sub-Chapter II of heading 6912, HTSUS, provides, in pertinent part:

(I) PORCELAIN OR CHINA

Porcelain or china means hard porcelain, soft porcelain, biscuit porcelain (including parian) and bone china. All these ceramics are almost completely vitrified, hard, and are essentially impermeable (even if they are

not glazed). They are white or artificially colored, translucent (except when of considerable thickness), and resonant.

Hard porcelain is made from a body composed of kaolin (or kaolinic clays), quartz, feldspar (or feldspthoids), and sometimes calcium carbonate. It is covered with a colorless transparent glaze fired at the same time as the body and thus fused together.

Soft porcelain contains less alumina but more silica and fluxes (e.g., feldspar). Bone china, which contains less alumina, contains calcium phosphate (e.g., in the form of bone ash); a translucent body is thus obtained at a lower firing temperature than with hard porcelain. The glaze is normally applied by further firing at a lower temperature, thus permitting a greater range of underglaze decoration...

* * * *

We first address classification at the heading level as between headings 6911, HTSUS, and 6912, HTSUS. In the Internal Advice Rulings at issue, CBP classified the following styles in heading 6911, HTSUS, as porcelain tableware: BR-5, BR-6, BR-7, BR-8, BR-9, BR-13, BR-16, DO-2, DO-4, DO-5, DO-7, DO-8, DO-10, DO-11, DO-16, DO-24, DO-31, DO-34, DO-120, GR-2, GR-2C, GR-11, RO-5, RO-8, RO-10, WRO-15, SY-12, VA-7, VE-9, and VE-11. The following styles were classified in heading 6912, HTSUS, as non-porcelain tableware: RO-3, RO-11, RO-12, WRO-8-AW, GR-9, GR-12, VE-34, and Y-10.

The CBP Laboratory found that all of the Brighton and Dover styles at issue as well as styles GR-2, GR-2C, GR-11, RO-8, RO-10, RO-12, WRO-15, SY-12, VA-7, and VE-11, met the definition of porcelain as set out in Additional U.S. Note 5(a) to Chapter 69. Styles GR-12, RO-3, RO-5, WRO-8-AW, RO-11, VE-9, VE-34, and Y-10 were found by the CBP Laboratory to lack one or more of the criteria for porcelain required in Additional U.S. Note 5(a) to Chapter 69. Style GR-9 was tested by two different laboratories; the CBP NY lab found that the Granada plate was not porcelain because it was not translucent, and the CBP Chicago lab concluded that the plate was “composed of porcelain ceramic” and had a water absorption value of 0.08 percent by weight. As these reports differ in their conclusions regarding whether the Granada plate was porcelain or not, in HQ H169055, CBP set aside the findings of the Chicago lab and found in favor of the importer—i.e., that the plate was not made of porcelain and therefore not classified in heading 6911, HTSUS.

You claim that styles GR-2, GR-2C, GR-11, RO-8, RO-10, RO-12, WRO-15, SY-12, VA-7, and VE-11 are not porcelain and that the CBP Laboratory results were in error. Our position on applying the results of CBP Laboratory tests on the exact merchandise at issue in a classification dispute is made clear in HQ H226264, HQ H169055, and numerous other cases. Pursuant to 28 U.S.C. § 2639(a)(1) (1994), CBP enjoys a statutory presumption of correctness. Thus, an importer has the burden to prove by a preponderance of the evidence that a Customs decision was incorrect. *Ford Motor Company v. United States*, 157 F.3d 849, 855 (Fed. Cir. 1998); *American Sporting Goods v. United States*, 27 C.I.T. 450; 259 F. Supp. 2d 1302; 25 Int’l Trade Rep. (BNA) 1345; 2003 Ct. Intl. Trade LEXIS 45. Furthermore, it is “well settled that the methods of weighing, measuring, and testing merchandise used by

customs officers and the results obtained are presumed to be correct.” *Aluminum Company of America v. United States*, 60 C.C.P.A. 148, 151, 477 F.2d 1396, 1398 (1973) (“Alcoa”). Absent a conclusive showing that the testing method used by the CBP laboratory is in error, or that the Customs’ laboratory results are erroneous, there is a presumption that the results are correct. *See Exxon Corp. v. United States*, 462 F. Supp. 378, 81 Cust. Ct. 87, C.D. 4772 (1978). “If a prima facie case is made out, the presumption is destroyed, and the Government has the burden of going forward with the evidence.” *Alcoa*, 477 F.2d at 1399; *American Sporting Goods*, 27 C.I.T. 450. Furthermore, in HQ 955711, dated July 21, 1994, CBP held that “where there is a conflict between results obtained by a Customs laboratory and those obtained by private or independent laboratories, Customs will, in the absence of evidence that the testing procedure or methodology used by the Customs laboratory was flawed, accept the Customs laboratory report.” *See e.g.*, HQ H233587, dated March 30, 2014, and HQ 955711. *See also* HQ 953769, dated July 22, 1993.

You allege the following errors in the methodology of the CBP Laboratory: First, you contend that, the CBP Laboratory erred in testing less than five samples of each style for water absorption/porosity, contrary to the requirements of ASTM C373²¹. However, we first note that what ASTM C373 actually requires is that 5 specimens of 3” by 3” be tested. The CBP Laboratory of New York, for each style, tested five pieces taken from the samples provided by Marck (“five broken pieces were ground on one surface, dried at 148° C, cooled, weighed, boiled in distilled water for five hours, and soaked”). Second, you claim that the CBP Laboratory did not report the average water absorption value of five samples, as required by ASTM C373 (as opposed to simply taking the value of a single sample). While we acknowledge that it is not made clear in the Laboratory Reports, we have confirmed that the water absorption/porosity value reported by the CBP Laboratory in each Laboratory Report was in fact the average absorption value of all five pieces of each sample, as required by ASTM C373. Thus, the CBP Laboratory followed the correct procedure pursuant to ASTM C373 with regard to the number of pieces tested and the reported value of water absorption.

You further argue that outdated ASTM methods were used to determine porosity and color: specifically, you contend that the CBP Lab should have used the more recent ASTM C373–88 instead of ASTM C373–00, and ASTM D1535–12 instead of D-1535²². Again, we have confirmed that the CBP Laboratory used the latest ASTM method applicable at the time of testing—in this case, ASTM C373–88 (the standard in effect from 2006 to 2014), ASTM D1535–12 or ASTM D1535–12a for those tests conducted in 2012, and ASTM D1535–08e1 for those tests conducted in 2011.

²¹ ASTM C373 is the standard test method for determining water absorption, bulk density, apparent porosity, and apparent specific gravity of fired unglazed whiteware products, glazed or unglazed ceramic tiles, and glass tiles. This method generally involves heating, drying, boiling, then soaking broken or cut pieces of ceramic to determine the mass gained by the sample from any water it absorbed during this process.

²² ASTM D1535 is the standard test method for specifying color by the Munsell System. This system is based on the color-perception attributes hue, lightness, and chroma, and involves observing the color of an object under certain daylight or simulated daylight conditions and comparing it to Munsell chips in hue, chroma and value charts.

You further contest the findings of the CBP Laboratory that the Grenada items were white in color. We note that when the CBP Laboratory refers to the tested styles as having a “white” body, that is simply in the context of Additional U.S. Note 5 to Chapter 69, which requires that “porcelain” have “a fired white body (unless artificially colored)”. Thus, the reference to the color does not take into account any glaze or coloring added to the clay body. The CBP Laboratory used ASTM method D1535 on a piece of each style at issue to determine the color of the body, using “simulated daylight illumination” to determine where on the Munsell Color Chart the sample fell.

As noted above, the CBP Laboratory followed all the proper procedures and test methods when testing the instant merchandise. However, you insist that the results of the CBP Laboratory cannot be correct, because all of the merchandise of each style are produced in the same batch, with the same materials and method, and with the same equipment. You conclude that the findings of the CBP Laboratory that some of the items in each style are porcelain while others are not (e.g., GR-9 and GRI-12 v. GR-11, RO-8, R-10, RO-12 and WRO-15 v. RO-3, RO-5, and RO-11) must therefore be incorrect. However, we note that even if all of the merchandise of each style are produced in the same batch, this does not rule out all possibility of manufacturing defects or inconsistencies due to mechanical or human error. In addition, we note that the Verona fruit bowl (VE-11) was tested twice by the CBP Laboratory, and both tests confirmed that the item is made of porcelain. Finally, as noted in HQ H226264 and HQ H169055, the independent laboratory tests do not state which test was used to confirm that the two tested styles were not porcelain, nor do they address the water absorption or color of the two tested styles. As the water absorption is particularly important for a determination of whether an article is porcelain or not (*see e.g.*, Tile Council of North America “What are the Differences Between Porcelain Tiles and Non-Porcelain Tiles?”²³), we find the results of the independent laboratory reports to be unpersuasive.

There also appears to be a fundamental misunderstanding over the meaning of “porcelain” for the purposes of the HTSUS. The tariff defines “porcelain” in Note 5(a) to Chapter 69, HTSUS, as follows: “(a) The terms “porcelain,” “china” and “chinaware” embrace ceramic ware (other than stoneware), whether or not glazed or decorated, having a fired white body (unless artificially colored) which will not absorb more than 0.5 percent of its weight of water and is translucent in thicknesses of several millimeters.” You argue that because the subject merchandise is not fired twice, it is not porcelain. We find no support for this claim anywhere in the HTSUS, and note that common definitions of the term “porcelain” do not require that it be fired twice. *See e.g.*, <http://www.merriam-webster.com/dictionary/porcelain> (“porcelain: a hard, fine-grained, sonorous, nonporous, and usually translucent and white ceramic ware that consists essentially of kaolin, quartz, and a feldspathic rock and is fired at a high temperature”; http://www.oxforddictionaries.com/us/definition/american_english/porcelain (“A white *vitrified translucent ceramic china*);). *See also* Tile Council of North America (“Porcelain tile is defined as an impervious tile with a water absorption of 0.5% or less as measured by the ASTM C373 test method.”)²⁴ In any case, regardless of

²³ <http://www.tcnatile.com/faqs/59-porcelain.html>

²⁴ <http://www.tcnatile.com/products-and-services/porcelain-certification-program.html>

whether a ceramic article is fired once or twice or ten times, if it meets the definition of porcelain set out in Note 5(a) to Chapter 69, it is porcelain for the purposes of tariff classification.

Finally, we note that Marck has already conceded that all items of the Brighton and Dover lines are indeed porcelain, which was confirmed by the CBP Lab. These styles thus serve as a useful control group—if the CBP Lab’s methodology was flawed, it is likely it would have yielded inconsistent results for those styles.

In summary, we find that you have not overcome the presumption of correctness afforded to the CBP Laboratory. We thus continue to uphold the findings of the CBP Laboratory with respect to the styles at issue, with the exception of style GR-9, which we agree is not porcelain pursuant to the findings of the first test conducted by the CBP New York Laboratory.

However, you observe, and we agree, that there are inconsistencies in the rulings themselves with respect to the classification of three of the styles at issue. In HQ H169055, item VE-9 was classified in heading 6911, HTSUS, despite the finding of the CBP Laboratory that this style absorbed more than 0.5% of its weight on water. Similarly, in HQ H226264 styles RO-5 and RO-12 were erroneously classified in headings 6911 and 6912, respectively, contrary to the findings of the CBP Laboratory (which found that RO-5 absorbed more than .5% of its weight in water and therefore met the definition of stoneware and not porcelain, and that style RO-12 met all the criteria for classification as porcelain under Additional U.S. Note 5(a) to Chapter 69. We therefore modify HQ H169055 and HQ H226264 with respect to items VE-9, RO-5 and RO-12, in order to reflect their correct classification, as follows: Item VE-9 is correctly classified in heading 6912, HTSUS, item RO-5 is classified in heading 6912, HTSUS, and item RO-12 is classified in heading 6911, HTSUS.

With respect to the issue of whether the subject merchandise is classified as tableware for hotel/restaurant or as tableware for “other” (i.e., household) use, we reiterate our findings from HQ H169055 and HQ H226264. In both rulings, we found that the *Carborundum* factors weighed in favor of classification of the instant articles as hotel or restaurant ware. We noted that the physical characteristics, specifically the fact that most of the styles at issue were white or off-white and plain, round, stackable, glazed, heavy and durable dishes which had been vitrified, were indicative of high-volume, commercial use. We agree that in particular the heaviness, durability and thickness of the instant merchandise makes it particularly suitable for restaurant or hotel use. *See also* HQ H155796, dated August 15, 2012, which concluded that similar Marck Dinnerware products were classified in subheading 6911.10.10, HTSUS, as porcelain dinnerware for hotel or restaurant use.

As noted in HQ H169055 and HQ H226264 and as confirmed by additional research, we find significant evidence that the specific items at issue, the general styles at issue, and the goods supplied by ITI in general, are overwhelmingly advertised and sold for restaurant/commercial use, with very little to no evidence supporting Marck’s position that they are principally used in the household. First, the International Tableware, Inc. line is clearly geared primarily towards commercial use, in the “foodservice marketplace”. As noted in the ITI catalog: “From the trendy eatery, to universities, to casinos, to your favorite breakfast spot -- ITI is there.” In addition, the ITI catalog features a “foodservice information” page for restaurants to estimate

their dinnerware needs (“To figure your exact needs (i.e. dozen for your initial order quantity), multiply the number of seats in your restaurant by the ordering factor, then divide by 12.”)

In addition to the characterization of ITI products in the ITI catalog as geared for commercial use, we observe that ITI products are recognized as restaurant ware by the foodservice industry, and run in the same channels of trade as other commercial dinnerware. For example, internet searches for “International Tableware” as well as for the specific styles at issue—e.g., “Dover dinnerware”, “Valencia dinnerware”, “Brighton dinnerware”, “Roma dinnerware”, etc., all yield several pages of links to restaurant supply stores. Such general searches yield effectively no results for home kitchen/dining ware sites. Similarly, searching specifically for these styles on the sites of restaurant supply stores and warehouses reveal that all or most of these styles can be found on all such sites, whereas these styles are not sold on home kitchen/dining-ware retail sites or home-kitchen departments of major retailers, such as Sam’s Club²⁵, Target, JC Penney, Walmart, Sears, Bed, Bath & Beyond, Crate & Barrel, Macy’s, Williams-Sonoma, or Bloomingdales. Restaurant supply companies which carry all or most of the specific ITI styles and merchandise at issue include, for example: *Redds* Restaurant Equipment Discounters, which sells all the styles at issue (Brighton, Dover, Granada, Roma, Sydney, Valenica, Verona, and York) as “Restaurant China and Dinnerware”²⁶; *Instawares* (“Restaurant Supply Superstore”)²⁷; *Restaurant Supply Pro* (describes all styles as “porcelain”)²⁸; *Food Service Warehouse* (“Restaurant Equipment At Your Fingertips”): the first results for Food Service Warehouse under the category “restaurant china” (sorting by “most popular”) are International Tableware products – Dover, Granada, Verona, Roma styles. “Brighton” is available under “basic china dinnerware”, “Sydney” is available under “formal china dinnerware” and “York” under “embossed china dinnerware”²⁹; *Burkett* Restaurant equipment and supplies (lists ITI under “restaurant equipment manufacturers”).³⁰ These styles are all sold by the above restaurant supply vendors by the case—(3 dozen). We further note that all styles are described as being “microwave and dishwasher safe”, as well as “dent, break and chip resistant.” The only direct-to-consumer point of sale appears to be *amazon.com*³¹, where all the ITI styles at issue are also sold in bulk—starting at a dozen of each item up to three dozen each. As noted in HQ H169055 and HQ H226264, bulk sales are

²⁵ Although in HQ H226264 we observed that some items of the Granada line were available at Sam’s Club, these items are no longer available for sale on that site.

²⁶ See <http://www.reddsequip.com/vendor.cfm/6850,ITI%20%20International%20Tableware%20Dinnerware,XX>

²⁷ See <http://www.instawares.com/international-tableware-inc.0.2181.0.0.htm?No=361&Rpp=72&af=manufacturer:2181&view=list>

²⁸ See http://www.restaurantsupplypro.com/prod_detail_list/international-tableware

²⁹ See <http://www.foodservicewarehouse.com/dining/restaurant-china/c3234.aspx>

³⁰ See <http://www.basequipment.com/International-Tableware-Inc-s/1458.htm>

³¹ See http://www.amazon.com/s/ref=nb_sb_noss_2?url=node%3D367155011&field-keywords=ITI&rh=n%3A1055398%2Cn%3A284507%2Cn%3A13162311%2Cn%3A367147011%2Cn%3A367155011%2Ck%3AITI

indicative of commercial use. At the lower range of bulk sales—e.g., a dozen—there may be some fungibility between household and commercial use. This overlap decreases significantly when each item is sold in cases of three dozen each, as a typical household is rather unlikely to purchase two or three dozen of each plate, cup, saucer, bowl, platter, etc. Marck further acknowledged in its original submissions for the Internal Advice Requests that the purchaser of the specific shipment at issue was a restaurant supply company.

In your request for reconsideration, you repeat the claim that 60–65% of the total merchandise sold by Marck is for household use. You further argue that we should not limit our *Carborundum* analysis only to the specific styles at issue, but rather that it is the principal use of all Marck products that should be determinative of the classification of the instant items. We addressed this claim in HQ H169055 and HQ H226264, and we do not intend to revisit that argument here: “In the present case, Marck, in its November 7 submission, presented data in support of its claim that 60–65% of its merchandise is for household use. In examining this data and the list of companies to which Marck sells, we found that Marck sells a significant percentage of its merchandise to companies that emboss logos on it and resell it. Marck attributes these sales to household use. We disagree with this assessment, as a logo is one factor in favor of commercial use.” Thus, even assuming, *arguendo*, that we were persuaded by the argument that we should consider only the principal use of all Marck products in total, it is not clear that this data even supports the claim that most of Marck’s products are for household use. In any case, absent a clear showing that Marck is overwhelmingly dedicated to either the household or the commercial market, the most general class of merchandise we would use for an analysis based on *United States. v. Carborundum Co.*, is the ITI line of merchandise, to which the instant merchandise clearly belongs, but which also encompasses a great many styles which are not currently at issue. As our research indicates that ITI products are overwhelmingly marketed and sold for commercial use, the class or kind of merchandise to which the instant products belong is principally used in commercial applications such as restaurants and hotels.

You further claim that Marck’s dinnerware had been rejected for restaurant use by the Bob Evans restaurant chain because it was not considered sufficiently strong to withstand the rigors of repeated, high volume use. However, there was no indication of which specific style was evaluated by Bob Evans, or what exactly the Marck products were being compared to. In any case, we note that the merchandise at issue is advertised as “dent, break and chip resistant”, and “chip and scratch resistant”, and that it is marketed and sold for restaurant/commercial use. Indeed, the ITI catalog notes that all ITI stoneware and porcelain is “oven proof, microwave safe, and “manufactured to withstand the rigors of repeated commercial dish machines.” We can only assume, despite your self-effacing claims to the contrary, that the instant merchandise is generally considered suitable for commercial use by the restaurant supply vendors selling it for such use, and by the customers ultimately purchasing it for such use. Furthermore, we note that porcelain in general is more brittle and breakable than other types of dinnerware such as bone china or melamine—the latter of which is more likely to be favored by

casual, high-volume chains such as Bob Evans, whereas higher end establishments are more likely to favor porcelain or bone china for a more elegant solution. So the choice by Bob Evans not to purchase Marck dinnerware, even assuming, as you claim, that the goods in question were rejected because of their lack of durability, is not persuasive.

We thus affirm the findings of HQ H169055 and HQ H226264 that the instant merchandise is hotel or restaurant ware.

HOLDING:

By application of GRI 1, items BR-5, BR-6, BR-7, BR-8, BR-9, BR-13, TBR-16, DO-2, DO-4, DO-5, DO-7, DO-8, DO-10, DO-11, DO-16, DO-24, DO-31, DO-34, DO-120, GR-2, GR-2C, GR-11, RO-8, RO-10, RO-12, SY-12, WRO-15, VA-7 and VE-11 are classified in heading 6911, HTSUS, are classified in heading 6911, HTSUS. They are specifically provided for in subheading 6911.10.10, HTSUS, which provides for “Tableware, kitchenware, other household articles and toilet articles, of porcelain or china: Tableware and kitchenware: Hotel or restaurant ware and other ware not household ware.” The applicable duty rate is 25% *ad valorem*.

By application of GRI 1, items GR-9, GR-12, RO-3, RO-5, RO-11, WRO-8-AW, VE-9, VE-34, and Y-10 are classified in heading 6912, HTSUS. They are specifically provided for in subheading 6912.00.20, HTSUS, which provides for “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Hotel or restaurant ware and other ware not household ware.” The applicable duty rate is 28% *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 online at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

HQ H169055, dated January 3, 2014, is modified with respect to the classification of item VE-9. HQ H226264, dated January 3, 2014, is modified with respect to the classification of items RO-5 and RO-12.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

AGENCY INFORMATION COLLECTION ACTIVITIES:

Application to Establish a Centralized Examination Station

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

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

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application to Establish a Centralized Examination Station. 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 or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before June 13, 2016 to be assured of consideration.

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 ira_submission@omb.eop.gov or faxed to (202) 395-5806.

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

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (81 FR 7365) on February 11, 2016, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3507). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of

information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Application to Establish a Centralized Examination Station.

OMB Number: 1651-0061.

Abstract: A Customs and Border Protection (CBP) port director decides when his or her port needs one or more Centralized Examination Stations (CES). A CES is a facility where imported merchandise is made available to CBP officers for physical examination. If it is decided that a CES is needed, the port director solicits applications to operate a CES. The information contained in the application will be used to determine the suitability of the applicant's facility; the fairness of fee structure; and the knowledge of cargo handling operations and of CBP procedures. The names of all corporate officers and all employees who will come in contact with uncleared cargo will also be provided so that CBP may perform background investigations. The CES application is provided for by 19 CFR 118.11 and is authorized by 19 U.S.C. 1499, Tariff Act of 1930.

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

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 50.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 100.

Dated: May 9, 2016.

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

AGENCY INFORMATION COLLECTION ACTIVITIES:**Declaration of Owner and Declaration of Consignee When Entry Is Made by an Agent**

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

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

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Declaration of Owner and Declaration of Consignee When Entry is made by an Agent (Forms 3347 and 3347A). CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before July 8, 2016 to be assured of consideration.

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost

burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Declaration of Owner and Declaration of Consignee When Entry is made by an Agent.

OMB Number: 1651-0093.

Form Number: CBP Forms 3347 and 3347A.

Abstract: CBP Form 3347, *Declaration of Owner*, is a declaration from the owner of imported merchandise stating that he/she agrees to pay additional or increased duties, therefore releasing the importer of record from paying such duties. This form must be filed within 90 days from the date of entry. CBP Form 3347 is provided for by 19 CFR 24.11 and 141.20.

When entry is made in a consignee's name by an agent who has knowledge of the facts and who is authorized under a proper power of attorney by that consignee, a declaration from the consignee on CBP Form 3347A, *Declaration of Consignee When Entry is Made by an Agent*, shall be filed with the entry summary. If this declaration is filed, then no bond to produce a declaration of the consignee is required. CBP Form 3347A is provided for by 19 CFR 141.19(b)(2).

CBP Forms 3347 and 3347A are authorized by 19 U.S.C. 1485 and are accessible at <http://www.cbp.gov/xp/cgov/toolbox/forms/>.

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

Type of Review: Extension (without change).

Affected Public: Businesses.

CBP Form 3347:

Estimated Number of Respondents: 900.

Estimated Number of Responses per Respondent: 6.

Estimated Total Annual Responses: 5,400.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 540.

CBP Form 3347A:

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 6.

Estimated Total Annual Responses: 300.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 30.

Dated: May 4, 2016.

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

[Published in the Federal Register, May 9, 2016 (81 FR 28095)]