

U.S. Customs and Border Protection



19 CFR PART 177

MODIFICATION OF ONE RULING LETTER AND REVOCAION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF AN AIRCRAFT ENGINE

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 an aircraft engine.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter concerning tariff classification of an aircraft engine 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. 34, on August 24, 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EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 30, 2017.

FOR FURTHER INFORMATION CONTACT: Parisa J. Ghazi, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0272.

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. 34, on August 24, 2016, proposing to modify one ruling letter pertaining to the tariff classification of an aircraft engine. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) N264006, dated April 29, 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 NY N264006, CBP classified several models of engines. In relevant part, CBP classified the Rolls Royce M250-C20B model engine in heading 8411, HTSUS, specifically in subheading 8411.81.8000,

HTSUSA, which provides for “Turbojets, turbopropellers and other gas turbines, and parts thereof: Other gas turbines: Of a power not exceeding 5,000 kW: Other.” CBP has reviewed NY N264006 and has determined the ruling letter to be in error with respect to the Rolls Royce M250-C20B model engine. It is now CBP’s position that the engine is properly classified, by operation of GRIs 1 and 6, in heading 8411, HTSUS, specifically in subheading 8411.81.40, HTSUS, which provides for “Turbojets, turbopropellers and other gas turbines, and parts thereof: Other gas turbines: Of a power not exceeding 5,000 kW: Aircraft turbines.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY N264006 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H266007, set forth as an Attachment to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: September 29, 2016

JACINTO JUAREZ

For

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H266007

September 29, 2016

CLA-2 OT:RR:CTF:TCM H266007 PJG

CATEGORY: Classification

TARIFF NO.: 8411.81.40

DONALD S. STEIN

GREENBERG TRAUIG, LLP

2101 L STREET, N.W., SUITE 1000

WASHINGTON, DC 20037

RE: Modification of NY N264006; tariff classification of an aircraft engine

DEAR MR. STEIN:

This is in response to your request for reconsideration dated May 19, 2015, of New York (NY) ruling letter N264006, dated April 29, 2015, issued to your client, StandardAero (San Antonio) Inc. (“StandardAero”). In NY N264006, U.S. Customs and Border Protection (“CBP”) classified several models of engines. In relevant part, CBP classified the Model 250-C20B (“M250-C20B” or “C20B”)¹ engine in heading 8411, HTSUS, specifically, in subheading 8411.81.8000, HTSUS, which provides for “Turbojets, turbopropellers and other gas turbines, and parts thereof: Other gas turbines: Of a power not exceeding 5,000 kW: Other.” The subject request for reconsideration concerns only the tariff classification of the Rolls Royce (“RR”) M250-C20B model engine. We have reconsidered NY N264006, and based upon the additional information that you have submitted with your request, we have determined that the holding in NY N264006 is in error with respect to the Rolls Royce M250-C20B model engine. Accordingly, NY N264006 is modified.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. No. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed action was published on August 24, 2016, in Volume 50, Number 34, of the Customs Bulletin. No comments were received in response to this notice.

FACTS:

In NY N264006, the C20B model was described as one of six engine models in the Rolls Royce M250-C20 model series. In NY N264006, CBP classified the C20B model engine in 8411.81.8000, HTSUSA, which provides for “Turbojets, turbopropellers and other gas turbines, and parts thereof: Other gas turbines: Of a power not exceeding 5,000 kW: Other.” This decision was based on statements made to CBP by StandardAero that the C20B model engine is used on a helicopter and as a base for the Rolls Royce KS4 engine, which is an industrial use engine that is used on U.S. Navy ships. Based on this

¹ In NY N264006, CBP refers to the “Rolls Royce Series A250/C20 Engines” and the “M250-C20” model series. We note that Rolls Royce began to refer to the Allison 250 (“A250”) model series as the Model 250 (“M250”) model series after it acquired the Allison Engine Company. Therefore, any references to the engines of the “A250/C20” model series, the “A250-C20” model series, or the “M250-C20” model series in that ruling are referring to the same merchandise. The Rolls Royce M250-C20 model series of engines includes the following engine model numbers: C20, C20B, C20F, C20J, C20S, and C20W. The merchandise at issue in this ruling is the Rolls Royce M250-C20B engine, which is an engine model within the Rolls Royce M250-C20 model series of engines.

information, CBP determined in NY N264006 that the Rolls Royce C20B model engine has a dual use, and therefore could not be classified as an "Aircraft turbine."

In the reconsideration request, you have submitted additional information about the C20B model engine in the form of: a Federal Register Notice of Proposed Rulemaking showing that the C20B model engine is subject to the regulations of the Federal Aviation Administration, U.S. Department of Transportation; a series of documents showing the "evolution" of the Rolls Royce Model 250 series engine; and a Wikipedia entry describing the C20B model engine. In addition you have clarified previous statements made to CBP about the M250-C20B model engine, specifically, you state that "[i]t is solely used in a helicopter aircraft. It is not a dual use engine." Moreover, you state that the Rolls Royce KS4 engine and the Rolls Royce M250-C20B engine "are unique and will never be commissioned to work each other's end use."

You have also supplemented your request for reconsideration with an excerpt from the RR M250-C20B Operation and Maintenance Manual 10W2 concerning the design of the M250-C20B engine and a depiction of the M250-C20B engine from the same manual (Figure 1). The excerpt provides, in pertinent part, the following:

A. Compressor

The compressor assembly consists of a compressor front support assembly, compressor rotor assembly, compressor case assembly, and compressor diffuser assembly. Air enters the engine through the compressor inlet and is compressed by six axial compressor stages and one centrifugal stage. The compressed air is discharged through the scroll type diffuser into two ducts which convey the air to the combustion section. (See Figure 2).

B. Combustion Section

The combustion section consists of the outer combustion case and the combustion liner. A spark igniter and a fuel nozzle are mounted in the aft end of the outer combustion case. Air enters the single combustion liner at the aft end, through holes in the liner dome and skin. The air is mixed with fuel sprayed from the fuel nozzle and combustion takes place. Combustion gases move forward out of the combustion liner to the first-stage gas producer turbine nozzle.

C. Turbine

The turbine consists of a gas producer turbine support, a power turbine support, a turbine and exhaust collector support, a gas producer turbine rotor and a power turbine rotor. The turbine is mounted between the combustion section and the power and accessory gearbox. The two-stage power turbine furnishes the output power of the engine. The expanded gas discharges in an upward direction through the twin ducts of the turbine and the exhaust collector support.

D. Power and Accessory Gearbox

The main power and accessory drive gear trains are enclosed in a single gear case. The gear case serves as the structural support of the engine. All engine components including the engine mounted accessory are attached to the case. A two-stage helical and spur gear set is used to reduce rotation speed from 33,290 rpm at the power turbine to 6016 rpm at the output drive spline. Accessories driven by the power turbine gear train are the

airframe furnished power turbine tachometer-generator and the power turbine governor. The gas producer gear train drives the compressor, fuel pump, an airframe furnished gas producer tachometer-generator, and gas producer fuel control. The starter drive and spare drive are in this gear train.

ISSUE:

What is the proper classification of the Rolls Royce M250-C20B model engine under the 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 2016 HTSUS provisions under consideration are as follows:

8411	Turbojets, turbopropellers and other gas turbines, and parts thereof:
	Turbojets:
8411.11	Of a thrust not exceeding 25kN:
8411.11.40	Aircraft turbines
	* * *
	Other gas turbines:
8411.81	Of a power not exceeding 5,000 kW:
8411.81.40	Aircraft turbines
8411.81.80	Other

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN to 84.11 states, in pertinent part:

The heading covers **turbo-jets, turbo-propellers and other gas turbines.**

The turbines of this heading are, in general, internal combustion engines which do not usually require any external source of heat as does, for example, a steam turbine.

...

(A) **TURBO-JETS**

A turbo-jet consists of a compressor, a combustion system, a turbine and a nozzle, which is a convergent duct placed in the exhaust pipe. The hot pressurised gas exiting from the turbine is converted to a high velocity

gas stream by the nozzle. The reaction of this gas stream acting on the engine provides the motive force which may be used to power aircraft. In its simplest form the compressor and turbine are accommodated on a single shaft. In more complex designs the compressor is made in two parts (a two spool compressor) in which the spool of each part is driven by its own turbine through concentric shafting. Another variation is to add a ducted fan usually at the inlet to the compressor and drive this either by a third turbine or connect it to the first compressor spool. The fan acts in the nature of a ducted propeller, most of its output bypassing the compressor and turbine and joining the exhaust jet to provide extra thrust. This version is sometimes called a "bypass fan jet".

So-called "after-burning" appliances are auxiliary units for mounting in series with certain turbo-jet engines in order to boost their power output for short periods. These appliances have their own fuel supply and utilise the excess oxygen in the gases issuing from the turbo-jet.

* * *

(C) OTHER GAS TURBINES

This group includes industrial gas-turbine units which are either specifically designed for industrial use or adapt turbo-jets or turbo-propeller units for uses other than providing motive power for aircraft.

There are two types of cycles:

- (1) The simple cycle, in which air is ingested and compressed by the compressor, heated in the combustion system and passed through the turbine, finally exhausting to the atmosphere.
- (2) The regenerative cycle, in which air is ingested, compressed and passed through the air pipes of a regenerator. The air is pre-heated by the turbine exhaust and is then passed to the combustion system where it is further heated by the addition of fuel. The air/gas mixture passes through the turbine and is exhausted through the hot gas side of the regenerator and finally to the atmosphere.

There are two types of designs:

- (a) The single-shaft gas turbine unit, in which the compressor and turbine are built on a single shaft, the turbine providing power to rotate the compressor and to drive rotating machinery through a coupling. This type of drive is most effective for constant speed applications such as electrical power generation.
- (b) The two-shaft gas turbine unit, in which the compressor, combustion system and compressor turbine are accommodated in one unit generally called a gas generator, whilst a second turbine on a separate shaft receives the heated and pressurised gas from the exhaust of the gas generator. This second turbine known as the power turbine is coupled to a driven unit, such as a compressor or pump. Two-shaft gas turbines are normally applied where load demand variations require a range of power and rotational speed from the gas turbine.

These gas turbines are used for marine craft and locomotives, for electrical power generation, and for mechanical drives in the oil and gas, pipeline and petrochemical industries.

This group also includes other gas turbines without a combustion chamber, comprising simply a stator and rotor and which use energy from gases provided by other machines or appliances (e.g., gas generators, diesel engines, free-piston generators) and compressed air or other compressed gas turbines.

* * *

You argue that the Rolls Royce M250-C20B model engine should be classified in subheading 8411.11.4000, HTSUSA, as “Turbojets, turbopropellers and other gas turbines, and parts thereof: Turbojets: Of a thrust not exceeding 25kN: Aircraft turbines,” because the merchandise is an aircraft engine and does not share the same end application and use as the KS4 Engine, which is an industrial use engine. Therefore, you indicate that the C20B model engine “is not a dual use engine.”

We agree that heading 8411, HTSUS is the appropriate heading for the tariff classification of the Rolls Royce M250-C20B model engine. We also note that each type of engine designated under heading 8411, HTSUS, is considered to be a “gas turbine,” but it is the specific construction and use of the gas turbine that determines whether that model is classified as a “Turbojet,” “Turbopropeller,” or “Other Gas Turbine.” *See* HQ H966934 (dated May 6, 2004).

We note that the power rating of “Turbojets” is measured in thrust, the units of which are given in pound thrust or Newtons, whereas the power rating of “Other gas turbine[],” such as a turboshaft, is measured in Watts. *See* subheading 8411.11, HTSUS, and subheading 8411.81, HTSUS. The subject merchandise has a power rating that is measured in shaft horsepower (“shp”), which can be converted into Watts. Therefore, given its power rating, the subject merchandise cannot be classified in subheading 8411.11, HTSUS, as a turbojet engine.

Based upon the design of the subject merchandise, we find that the Rolls Royce M250-C20B model engine is a turboshaft engine. The description of the design of the merchandise that was provided as a supplement to the request for reconsideration is consistent with the simple cycle engine description provided in EN 84.11(C)(1) and the two-shaft gas turbine unit design described by EN 84.11(C)(b). According to its design and power rating of 313 kW, we find that it is classified under subheading 8411.81, HTSUS, which provides for “Turbojets, turbopropellers and other gas turbines, and parts thereof: Other gas turbines: Of a power not exceeding 5,000 kW.” Based on the documentation that you provided in your request for reconsideration, we agree that the Rolls Royce M250-C20B model engine is only used as an aircraft engine for helicopters in its condition as imported, rather than as a dual-use engine designed for aircraft use and industrial use, as indicated in NY N264006. Therefore, the subject merchandise is not classified in subheading 8411.81.80, HTSUS, which would be appropriate for dual-use engines, rather, it is classified under subheading 8411.81.40, HTSUS, which provides for “Turbojets, turbopropellers and other gas turbines, and parts thereof: Other gas turbines: Of a power not exceeding 5,000 kW: Aircraft turbines.”

HOLDING:

Under the authority of GRIs 1 and 6, the Rolls Royce M250-C20B engine is classified in heading 8411, HTSUS, specifically in subheading 8411.81.40, HTSUS, which provides for “Turbojets, turbopropellers and other gas tur-

bines, and parts thereof: Other gas turbines: Of a power not exceeding 5,000 kW: Aircraft turbines.” The 2016 column one, general rate of duty is Free.

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

EFFECT ON OTHER RULINGS:

NY N264006, dated April 29, 2015, is hereby MODIFIED.

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

Sincerely,

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



19 CFR PART 177

**REVOCAION OF ONE RULING LETTER AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF CERTAIN PLASTIC SHEETS
FROM CHINA**

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

ACTION: Notice of revocation of one ruling letter, and revocation of treatment relating to the tariff classification of certain plastic sheets from China.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning tariff classification of certain plastic sheets 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. 34, on August 24, 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 January 30, 2017.

FOR FURTHER INFORMATION CONTACT: Parisa J. Ghazi, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325-0272.

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. 34, on August 24, 2016, proposing to revoke one ruling letter pertaining to the tariff classification of certain plastic sheets from China. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) N262339, dated March 10, 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 NY N262339, CBP classified the "CoverFab" product in heading 3921, HTSUS, specifically in subheading 3921.12.1950, HTSUSA, which provides for "Other plates, sheets, film, foil and strip, of plastics: Cellular: Of polymers of vinyl chloride: Combined with textile materials: Other: Other." In that ruling letter, CBP also classified the "Safety Pool Fabric" product in heading 3921, HTSUS, specifically in subheading 3921.90.1950, HTSUSA, which provides for "Other plates, sheets, film, foil and strip, of plastics: Other: Combined with textile material sand weighing not more than 1.492 kg/m²: Other: Other." CBP has reviewed NY N262339 and has determined the ruling letter to be in error. It is now CBP's position that the "CoverFab" product is properly classified, by operation of GRIs 1 and 6, in heading 3921, HTSUS, specifically in subheading 3921.12.1100, HTSUSA, which provides for "Other plates, sheets, film, foil and strip, of plastics: Cellular: Of polymers of vinyl chloride: Combined with textile materials: Products with textile components in which man-made fibers predominate by weight over any other single textile fiber: Over 70 percent by weight of plastics," and the "Safety Pool Fabric" product is classified in heading 3921, HTSUS, specifically in subheading 3921.90.1100, HTSUSA, which provides for "Other plates, sheets, film, foil and strip, of plastics: Other: Combined with textile materials and weighing not more than 1.492 kg/m²: Products with textile components in which man-made fibers predominate by weight over any other single textile fiber: Over 70 percent by weight of plastics."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N262339 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H264986, set forth as an Attachment to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: September 29, 2016

JACINTO JUAREZ
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H264986

September 29, 2016

CLA-2 OT:RR:CTF:TCM H264986 PJG

CATEGORY: Classification

TARIFF NO.: 3921.12.1100, 3921.90.1100,
3919.90.5060, 3919.10.2055, 3920.62.0090

JANE L. TAEGER

SAMUEL SHAPIRO & COMPANY, INC.

ONE CHARLES CENTER

100 NORTH CHARLES STREET, SUITE 1200

BALTIMORE, MD 21201

RE: Revocation of NY N262339; tariff classification of plastic sheets from China

DEAR Ms. TAEGER:

On March 10, 2015, U.S. Customs and Border Protection (“CBP”) issued Samuel Shapiro & Company New York Ruling Letter (“NY”) N262339. The ruling was issued as a correction to a previously issued ruling letter, NY N261080, dated February 20, 2015, which pertained to the tariff classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of five types of plastic sheeting from China that were identified as “CoverFab”, “Safety Pool Fabric”, “DAF Escape”, “Double Sided Tape”, and “Backlit Polyester Film.” We have since reviewed NY N262339 and determined it to be in error with respect to the “CoverFab” and the “Safety Pool Fabric.” Accordingly, NY N262339 is revoked¹.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. No. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed action was published on August 24, 2016, in Volume 50, Number 34, of the Customs Bulletin. No comments were received in response to this notice.

FACTS:

On February 20, 2015, CBP issued NY N261080, a ruling pertaining to the tariff classification under the HTSUS of five types of plastic sheeting from China. They were identified as “CoverFab”, “Safety Pool Fabric”, “DAF Escape”, “Double Sided Tape”, and “Backlit Polyester Film.”

In NY N261080, the “CoverFab” was described as follows:

The ... CoverFab, is constructed of cellular polyvinyl chloride (PVC) reinforced with polyester textile. You indicate that the product is 75 percent PVC and 25 percent polyester by weight. The product is used for shower and privacy curtains and is treated with an anti-bacterial agent. The sheet has a plastic coating on both sides of the product that can be easily seen with the naked eye. You do not indicate the size in which the product will be imported, but the sample appears to be a sheet of rectangular shape.

¹ In NY 261080, dated February 20, 2015, the “DAF Escape” was correctly classified in subheading 3919.90.5060, HTSUSA; the “Double Sided Tape” was correctly classified in subheading 3919.10.2055, HTSUSA; and the “Backlit Polyester Film” was correctly classified in subheading 3920.62.0090, HTSUSA.

In NY N261080, the “Safety Pool Fabric” was described as follows:

The product is constructed of black interwoven strips of plastic measuring less than 5 mm in width; this constitutes a textile. The textile has been coated on both sides with a colored plastic material that can be seen with the naked eye. You indicate that the product is imported in rolls with a length of 300 yards and a width of 73 inches, and has a weight of 237 grams per square meter.

NY N261080 also indicated that each of these products “has a continuous surface and is imported in rectangular shapes.” We further note that the “Safety Pool Fabric” is constructed of non-cellular, high density polyethylene (“HDPE”).

In NY N261080, CBP classified the “CoverFab” under subheading 3921.12.1100, HTSUSA, which provides for “Other plates, sheets, film, foil and strip, of plastics: Cellular: Of polymers of vinyl chloride: Combined with textile materials: Products with textile components in which man-made fibers predominate by weight over any other single textile fiber: Over 70 percent by weight of plastics,” and classified the “Safety Pool Fabric” under subheading 3921.90.1100, HTSUSA, which provides for “Other plates, sheets, film, foil and strip, of plastics: Other: Combined with textile materials and weighing not more than 1.492 kg/m²: Products with textile components in which man-made fibers predominate by weight over any other single textile fiber: Over 70 percent by weight of plastics.”

After issuing NY N261080, CBP determined that the tariff classification of the “CoverFab” and the “Safety Pool Fabric” was impacted by the U.S. Court of International Trade’s decision in *Semperit Industrial Products v. United States*, 18 Ct. Int’l Trade 578, 586 (1994), in which the court determined that the term “predominate” in subheading 4010.91.15, HTSUS, which provides for “Conveyor or transmission belts or belting, of vulcanized rubber: Other: Of a width exceeding 20 cm: Combined with textile materials: With textile components in which man-made fibers predominate by weight over any other single textile fiber”, means two or more elements need to be the subject of comparison. As a result, CBP concluded that a product comprised of only polyester cannot be classified under subheading 3921.12.1100, HTSUSA. Therefore, CBP issued NY N262339, dated March 10, 2015, to correct the tariff classification for the “CoverFab” by classifying it under subheading 3921.12.1950, HTSUSA, which provides for “Other plates, sheets, film, foil and strip, of plastics: Cellular: Of polymers of vinyl chloride: Combined with textile materials: Other: Other.” CBP also corrected the tariff classification of the “Safety Pool Fabric” by classifying it under subheading 3921.90.1950, HTSUSA, which provides for “Other plates, sheets, film, foil and strip, of plastics: Other: Combined with textile material and weighing not more than 1.492 kg/m²: Other: Other.”

ISSUE:

What is the proper classification of the “CoverFab” and “Safety Pool Fabric” products under the 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 2016 HTSUS provisions under consideration are as follows:

- 3921 Other plates, sheets, film, foil and strip, of plastics:
 - Cellular:
 - 3921.12 Of polymers of vinyl chloride:
 - Combined with textile materials:
 - Products with textile components in which man-made fibers predominate by weight over any other single textile fiber:
 - 3921.12.1100 Over 70 percent by weight of plastics
 - * * *
 - 3921.12.19 Other
 - * * *
 - 3921.12.1950 Other
 - 3921.90 Other:
 - Combined with textile materials and weighing not more than 1.492 kg/m²:
 - Products with textile components in which man-made fibers predominate by weight over any other single textile fiber:
 - 3921.90.1100 Over 70 percent by weight of plastics
 - * * *
 - 3921.90.19 Other
 - * * *
 - 3921.90.1950 Other

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

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

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System 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).

The EN to Chapter 39, HTSUS, provides, in pertinent part, the following:

The following products are also covered by this Chapter:

* * *

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

material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change in color.

* * *

The EN to 39.21 states, in pertinent part, as follows:

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

According to Note 10 to this Chapter, the expression “plates, sheets, film, foil and strip” applies only to plates, sheets, film, foil and strip and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked (for example, polished, embossed, coloured, merely curved or corrugated), uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use).

Plates, sheets, etc., whether or not surface-worked (including squares and other rectangles cut therefrom), with ground edges, drilled, milled, hemmed, twisted, framed or otherwise worked or cut into shapes other than rectangular (including square) are generally classified as articles of headings 39.18, 39.19 or 39.22 to 39.26.

This relates to the classification of the “CoverFab” and “Safety Pool Fabric” products in heading 3921, HTSUS, at the eight digit level. In *Value Vinyls, Inc. v. United States*, 568 F.3d 1374, 1380 (Fed. Cir. 2009), the United States Court of Appeals for the Federal Circuit affirmed the finding of the Court of International Trade in *Value Vinyls, Inc. v. United States*, 31 Ct. Int’l Trade 1209 (2007), which held that “the definition and application of ‘predominate’” in *Semperit Industrial Products* does not apply to the goods of Chapter 39, HTSUS. Specifically, the United States Court of Appeals for the Federal Circuit found as follows:

The Court of International Trade did not err in holding that the definition and application of “predominate” in *Semperit* does not apply to these different goods and different HTSUS section. The complexity of the tariff schedule, the great variety of products in trade, and the constant barrage of new products, all support the obligation of the Court of International Trade to reach the “correct result” in the case at hand. *Jarvis Clark Co.*, 733 F.2d at 878. We conclude that the court correctly ruled that subheading 3921.90.11 embraces products whose textile component is made wholly of man-made fibers, and therefore applies to Value Vinyls’ goods.

Value Vinyls, Inc., 568 F.3d at 1380.

We note that in *Value Vinyls, Inc.*, 568 F.3d 1374 (Fed. Cir. 2009), the tariff language “Products with textile components in which man-made fibers predominate by weight over any other single textile fiber” for goods of Chapter 39, HTSUS, was at issue. Therefore, we believe that *Value Vinyls, Inc.* controls for purposes of classification in heading 3921, HTSUS, and specifically, in subheadings 3921.12.1100, HTSUSA, and 3921.90.1100, HTSUSA. The court held that the term “predominate,” as it relates to goods of Chapter 39, HTSUS, applies to circumstances wherein a single man-made fiber predominates by weight over any other single textile fiber. See *Value Vinyls, Inc.*, 568 F.3d at 1380. We find that both of the articles subject to this ruling are

constructed predominately of man-made fibers. Specifically, the “CoverFab” is constructed of 75 percent cellular PVC and 25 percent polyester by weight, and the “Safety Pool Fabric” is constructed entirely of non-cellular HDPE.

In light of the court’s decision in *Value Vinyls, Inc.* and the material construction of the subject merchandise, we find that the “CoverFab” is appropriately classified in subheading 3921.12.1100, HTSUSA, which provides for “Other plates, sheets, film, foil and strip, of plastics: Cellular: Of polymers of vinyl chloride: Combined with textile materials: Products with textile components in which man-made fibers predominate by weight over any other single textile fiber: Over 70 percent by weight of plastics.”

Similarly, in light of the court’s decision in *Value Vinyls, Inc.*, the material construction, and the weight of the subject merchandise, which is .237 kg/m², we find that the “Safety Pool Fabric” is appropriately classified in subheading 3921.90.1100, HTSUSA, which provides for “Other plates, sheets, film, foil and strip, of plastics: Other: Combined with textile materials and weighing not more than 1.492 kg/m²: Products with textile components in which man-made fibers predominate by weight over any other single textile fiber: Over 70 percent by weight of plastics.”

Our conclusion is consistent with HQ H260252, dated January 22, 2016, wherein this office classified a conveyor belt comprised of textile covered with a non-cellular polyurethane coating and imported in rectangular rolls in subheading 3921.90.25, HTSUS, which provides for “Other plates, sheets, film, foil and strip, of plastics: Other: Combined with textile materials and weighing more than 1,492 kg/m²: Products with textile components in which man-made fibers predominate by weight over any other single textile fiber.”

HOLDING:

Under the authority of GRIs 1 and 6 the “CoverFab” product is classified in heading 3921, HTSUS, specifically in subheading 3921.12.1100, HTSUSA, which provides for “Other plates, sheets, film, foil and strip, of plastics: Cellular: Of polymers of vinyl chloride: Combined with textile materials: Products with textile components in which man-made fibers predominate by weight over any other single textile fiber: Over 70 percent by weight of plastics,” and the “Safety Pool Fabric” product is classified in heading 3921, HTSUS, specifically in subheading 3921.90.1100, HTSUSA, which provides for “Other plates, sheets, film, foil and strip, of plastics: Other: Combined with textile materials and weighing not more than 1.492 kg/m²: Products with textile components in which man-made fibers predominate by weight over any other single textile fiber: Over 70 percent by weight of plastics.” The 2016 column one, general rate of duty for each of these tariff classifications is 4.2 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N262339, dated March 10, 2015, is REVOKED.

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

Sincerely,
JACINTO JUAREZ
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division



19 CFR PART 177

**REVOCAION OF ONE RULING LETTER AND
MODIFICATION TWO RULING LETTERS, AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF FLAVORED TEAS**

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

ACTION: Notice of revocation of one ruling letter, modification of two ruling letters, and revocation of treatment relating to the tariff classification of flavored tea.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter and modifying two ruling letters concerning tariff classification of flavored teas 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. 34, on August 24, 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 January 30, 2017.

FOR FURTHER INFORMATION CONTACT: Tatiana Salnik Matherne, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0351.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (“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. 34, on August 24, 2016, proposing to revoke one ruling letter and modify two ruling letters pertaining to the tariff classification of flavored teas. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) N004103, dated December 28, 2006, NY N041686, dated November 14, 2008, and NY G87506, dated March 20, 2001, 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 three 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 im-

porter'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 N004103, NY N041686 and NY G87506, CBP classified the subject flavored teas in heading 2101, HTSUS, specifically in subheading 2101.20.90, HTSUS, which provides for "Extracts, essences and concentrates, of coffee, tea or maté and preparations with a basis of these products or with a basis of coffee, tea or maté; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof: Extracts, essences and concentrates, of tea or maté, and preparations with a basis of these extracts, essences or concentrates or with a basis of tea or maté: Other: Other: Other." CBP has reviewed NY N004103, NY N041686 and NY G87506, and has determined the ruling letters to be in error. It is now CBP's position that the subject flavored teas are properly classified, by operation of GRIs 1 and 6, in heading 0902, HTSUS, specifically in subheading 0902.10.10, HTSUS, which provides for "Tea, whether or not flavored: Green tea (not fermented) in immediate packings of a content not exceeding 3 kg: Flavored."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY G87506, modifying NY N004103 and NY N041686, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H260569, set forth as an Attachment to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: October 05, 2016

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H260569

October 05, 2016

CLA-2 OT:RR:CTF:TCM H260569 TSM

CATEGORY: Classification

TARIFF NO.: 0902.10.10

Ms. TAMMIE G. KRAUSKOPF

LAW OFFICES OF TAMMIE KRAUSKOPF, LLC

821 HUNTLEIGH DR.

NAPERVILLE, IL 60540

RE: Modification of NY N004103 and NY N041686; Revocation of NY G87506; Classification of Zen Tea, Green Tea and Lemongrass, and Cucumber White Tea.

DEAR Ms. KRAUSKOPF:

This is in response to your November 19, 2014, request for reconsideration of New York Ruling Letter (NY) N004103, dated December 28, 2006 and NY N041686, dated November 14, 2008.¹ In those rulings, the National Commodity Specialist Division found that Zen Tea and Cucumber White Tea, imported into the United States by your client, Starbucks Corporation, were classified under subheading 2101.20.90, Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “Extracts, essences and concentrates, of coffee, tea or maté and preparations with a basis of these products or with a basis of coffee, tea or maté; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof: Extracts, essences and concentrates, of tea or maté, and preparations with a basis of these extracts, essences or concentrates or with a basis of tea or maté: Other: Other.” For the reasons set forth below we hereby modify NY N004103 and NY N041686.² In addition, we hereby revoke NY G87506, dated March 20, 2001, which classified a Green Tea and Lemongrass under subheading 2101.20.90, HTSUS.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the *Customs Bulletin*, Volume 50, No. 34, on August 24, 2016, proposing to modify NY N004103 and NY N041686, revoke NY G87506, and revoke any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

FACTS:

NY N004103, issued to Starbucks Coffee Company on December 28, 2006, describes the Zen Tea as follows:

Green tea is imported into the United States and blended with lemon verbena, spearmint, lemongrass and natural lemon essence. The resulting product is a bulk tea blend called Zen Tea.

¹ You also requested reconsideration of NY N004104, dated December 26, 2006, which will be addressed in HQ H275766.

² We note that NY N004103 and NY N041686 also concerned eligibility of the subject merchandise for entry under subheading 9801.00.10, HTSUS, as “Products of the United States returned after having been exported, without having been advanced in value or improved in condition while abroad,” which is not at issue in this modification.

NY N041686, issued to Starbucks Coffee Company on November 14, 2008, describes the Cucumber White Tea as follows:

White tea grown in China is imported into the United States and blended with lime peel, dandelion leaf, black Darjeeling tea, cucumber, peppermint, lemon myrtle, natural flavors and lime essence oil. The resulting product is a bulk tea blend called Cucumber White Tea.

NY G87506, issued to Liberty Richter Inc. on March 20, 2001, describes the Green Tea and Lemongrass as follows:

The merchandise in question is “green tea and lemongrass” in tea bags, packed 50 to a box for retail sale. This product is said to contain 53 percent green tea, 30 percent lemon peel, 16 percent lemongrass, and 1 percent jasmine flowers.

In your request, you explain that the Zen Tea consists of green tea which accounts for a very high proportion of the blend, and is flavored by the addition of various aromatic plants (such as lemon verbena, spearmint and lemongrass) and natural lemon essence. You explain that the Cucumber White Tea consists of white tea, which amounts to a high proportion of the blend, flavored by the addition of aromatic plants and fruits such as lime peel, lime essence and peppermint, as well as natural flavors which are sprayed on the tea during the blending operation. The teas are packaged into filter bags and retail cartons. The content of the immediate packings does not exceed 3 kg.

ISSUE:

Whether the Zen Tea, Green Tea and Lemongrass, and Cucumber White Tea are classified in heading 0902, HTSUS, as tea, or in heading 2101, HTSUS, as preparations with a basis of tea.

LAW AND ANALYSIS:

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

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

The HTSUS provisions under consideration are as follows:

0902	Tea, whether or not flavored:
0902.10	Green tea (not fermented) in immediate packings of a content not exceeding 3 kg:
0902.10.10	Flavored

* * *

- 2101 Extracts, essences and concentrates, of coffee, tea or maté and preparations with a basis of these products or with a basis of coffee, tea or maté; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof:
- 2101.20 Extracts, essences and concentrates, of tea or maté, and preparations with a basis of these extracts, essences or concentrates or with a basis of tea or maté:
- Other:
- Other:
- 2101.20.90 Other
- * * *

Note 1(c) to Chapter 21, HTSUS, states:

- 1. This Chapter does not cover:
 - (c) Flavored tea (heading 0902);

The ENs to heading 09.02, provide, in relevant part, as follows:

The heading covers the different varieties of tea derived from the plants of the botanical genus *Thea* (*Camellia*).

* * *

Tea which has been flavoured by a steaming process (during fermentation, for example) or by the addition of essential oils (e.g., lemon or bergamot oil), artificial flavourings (which may be in crystalline or powder form) or parts of various other aromatic plants or fruits (such as jasmine flowers, dried orange peel or cloves) is also classified in this heading.

* * *

The heading further **excludes** products **not** derived from the plants of the botanical genus *Thea* but sometimes called “teas,” e.g.:

- (a) Maté (Paraguay tea) (**heading 09.03**).
- (b) Products for making herbal infusions or herbal “teas.” These are classified, for example, in **heading 08.13, 09.09, 12.11** or **21.06**.
- (c) Ginseng “tea” (a mixture of ginseng extract with lactose or glucose) (**heading 21.06**).

In your request, you argue that the Zen Tea at issue in NY N004103, and the Cucumber White Tea, at issue in NY N041686, are described by heading 0902, HTSUS, and should be classified in subheading 0902.10.10, HTSUS, which provides for “Tea, whether or not flavored: Green tea (not fermented) in immediate packings of a content not exceeding 3 kg: Flavored.” You argue that both the Zen Tea and the Cucumber White Tea are teas which have been flavored as described in the ENs of heading 0902, HTSUS, and that as such, they are excluded from heading 2101, HTSUS, by Note 1(c) to Chapter 21, which excludes flavored tea from that heading. In addition, you argue that the Zen Tea and the Cucumber White Tea are not preparations of heading 2101, HTSUS.

Note 1(c) to Chapter 21 excludes flavored tea, and directs classification in heading 0902, HTSUS. Therefore, our analysis begins with whether the Zen Tea, Cucumber White Tea, and Green Tea and Lemongrass are products of heading 0902, HTSUS.

Heading 0902, HTSUS, provides for “Tea, whether or not flavored.” According to the EN 09.02, heading 0902, HTSUS, covers the different varieties of tea derived from the plants of the botanical genus *Thea* (*Camellia*). The EN 09.02 also states that the heading further excludes products not derived from the plants of the botanical genus *Thea* but sometimes called “teas”, and at paragraph (b) includes, in relevant part, “products for making. . . herbal “teas”.” The Zen Tea at issue in NY N004103 contains green tea; the Cucumber White Tea at issue in NY N042686 contains white tea and black Darjeeling tea; and the Green Tea with Lemongrass at issue in NY G87506 contains green tea. Green tea, black Darjeeling tea, and white tea (not fermented) are derived from the plants of the botanical genus *Thea* (*Camellia*).³ Therefore, they are not herbal “teas” as described by the EN 09.02.

The teas have also been flavored. In the Zen Tea at issue in NY N004103, various aromatic plants such as lemon verbena, spearmint, and lemongrass have been added to the green tea for flavoring. Natural lemon essence oil is also sprayed on the green tea and botanicals during the blending operation for added flavoring. In the Cucumber White Tea at issue in NY N042686, white and black Darjeeling tea has been blended with lime peel, dandelion leaf, cucumber, peppermint, lemon myrtle, natural flavors and lime essence oil for flavoring. In the Green Tea and Lemongrass at issue in NY G87506, green tea has been blended with lemon peel, lemongrass and jasmine flowers for flavoring. The ENs to heading 0902, HTSUS, state, in relevant part, that tea that has been flavored by the addition of essential oils, artificial flavorings, or parts of various other aromatic plants or fruits is also classified in heading 0902, HTSUS.

Accordingly, we conclude that the Zen Tea, Cucumber White Tea, and Green Tea with Lemongrass are classified in heading 0902, HTSUS, as “Tea, whether or not flavored.” They are excluded from classification in Chapter 21, HTSUS, by Note 1(c) to Chapter 21. See NY N250849, dated March 24, 2014; See also NY H84094, dated August 13, 2001.

HOLDING:

By application of GRIs 1 and 6, the Zen Tea, Cucumber White Tea, and Green Tea with Lemongrass are classified in heading 0902, HTSUS, and subheading 0902.10.10, HTSUS, which provides for “Tea, whether or not flavored: Green tea (not fermented) in immediate packings of a content not exceeding 3 kg: Flavored.” The 2016 column one, general rate of duty is 6.4% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N004103, dated December 28, 2006 and NY N041686, dated November 14, 2008, are MODIFIED. NY G87506, dated March 20, 2001, is REVOKED.

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

³ See <http://www.tealeafjournal.com/types-of-tea.html>.

Sincerely,

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF HQ 955639 RULING LETTER
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF REUSABLE BAGS OF
WOVEN POLYPROPYLENE STRIPS USED FOR YARD
WASTE AND RECYCLING**

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

ACTION: Notice of proposed revocation of HQ 955639 ruling letter and revocation of treatment relating to the tariff classification of reusable bags of woven polypropylene strips used for yard waste and recycling.

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 HQ 955639 ruling letter concerning tariff classification of reusable bags of woven polypropylene strips used for yard waste and recycling 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 December 30, 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: Michele A. Boyd, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325-0136.

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 HQ 955639 ruling letter pertaining to the tariff classification of reusable bags of woven polypropylene strips used for yard waste and recycling. Although in this notice, CBP is specifically referring to Headquarters Ruling Letter (“HQ”) 955639, dated April 5, 1994, 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 ruling identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the 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 955639, reusable bags of woven polypropylene strips used for yard waste and recycling were classified in heading 6307, HTSUS, specifically in subheading 6307.90.9986, HTSUSA, which provides for "other made up articles, other, other, other, other, other." CBP has reviewed HQ 955639 and has determined the ruling letter to be in error. It is now CBP's position that reusable bags of woven polypropylene strips used for yard waste and recycling are properly classified, by operation of GRI 1, in heading 6305, HTSUS, specifically in subheading 6305.32.0010, HTSUSA, which provides for "Sacks and bags, of a kind used for the packing of goods: Of man-made textile fibers: Flexible intermediate bulk containers, weighing more than one kg or more."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke HQ 955639 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H275824, 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: August 30, 2016

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

April 5, 1994

CLA-2 CO:R:C:T 955639 CC

CATEGORY: Classification

TARIFF NO.: 6307.90.9986

MICHAEL P. MAXWELL, ESQ.
 10100 SANTA MONICA BOULEVARD, SUITE 300
 LOS ANGELES, CA 90067

DEAR MR. MAXWELL:

This letter is in response to your inquiry, on behalf of The Bag Connection, requesting the tariff classification of a polypropylene strip bag from Taiwan. A sample was submitted for examination.

FACTS:

The submitted sample is a reusable yard waste bag of woven polypropylene strips which are less than 5 mm in width; the bag measures approximately 41 inches by 14.75 inches by 13.5 inches when fully expanded. The bag is open at the top with snaps as closures which are placed in a position to permit the top to expand to its fullest width. Located near the bottom of the bag at both sides are pockets with hook and loop closures, which will be filled with approximately one pound of ballast (such as sand) to prevent the bags from being blown away after they have been emptied. To facilitate carrying the bag, two web strap handles are sewn to the top of the bag and two web strap handles are attached to each bottom pocket. The bags will be used initially by the City of Seattle to hold yard waste or other articles which will be recycled. Eventually the bags will be distributed to the public and used by homeowners to store yard waste and left at curbside for pickup by the city recycling trucks.

ISSUE:

Whether the bag at issue is classified in Heading 4202 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), Heading 6305, HTSUSA, or Heading 6307, HTSUSA?

LAW AND ANALYSIS:

Classification of merchandise under the HTSUSA is in accordance with the General Rules of Interpretation (GRI's), taken in order. GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes.

Note 1(g) to Section XI, provides that Section XI does not cover the following:

Monofilament of which any cross-sectional dimension exceeds 1 mm or strip or the like (for example, artificial straw) of an apparent width exceeding 5 mm, of plastics (chapter 39), or plaits or fabrics or other basketware or wickerwork of such monofilament or strip (chapter 46).

Thus, an article made of polypropylene strips 5 millimeters or less in width would be considered made of textile materials. Since the bag at issue is made of strips not exceeding 5 millimeters in width, it is considered made of textile materials. Heading 4202, HTSUSA, provides for traveling bags, sporting bags and similar containers, among other articles. Subheading 4202.92, HT-

SUSA, includes travel, sports and similar bags with an outer surface of textile materials. Additional U.S. Note 1 to Chapter 42 states the following:

For the purposes of heading 4202, the expression “travel, sports and similar bags” means goods, other than those falling in subheadings 4202.11 through 4202.39, of a kind designed for carrying clothing and other personal effects during travel, including backpacks and shopping bags of this heading, but does not include binocular cases, camera cases, musical instrument cases, bottle cases and similar containers.

Heading 6305, HTSUSA, provides for sacks and bags, of a kind used for the packing of goods. According to the Harmonized Commodity Description and Coding System, Explanatory Notes, the official interpretation of the HTSUSA at the international level, at page 865, Heading 6305 covers the following:

...textile sacks and bags of a kind normally used for the packing of goods for transport, storage or sale. These articles, which vary in size and shape, include in particular flexible intermediate bulk containers, coal, grain, flour, potato, coffee or similar sacks, mail bags, and small bags of the kind used for sending samples of merchandise by post. The heading also includes such articles as tea sachets.

Heading 6307, HTSUSA, provides for other made up articles. The Explanatory Notes state at page 867 that Heading 6307 covers made up articles of any textile material which are not included more specifically in other headings of Section XI or elsewhere in the Nomenclature.

You contend that the merchandise at issue is classifiable under subheading 4202.92, HTSUSA, which provides for travel, sports and similar bags, with outer surface of textile materials. In the alternative, you suggest that the bag is classifiable in subheading 6307.90, HTSUSA, as other made up articles of textile material.

The bag at issue is clearly not designed for carrying personal effects during travel. Consequently, it is not classifiable as a travel, sports or similar bag of Heading 4202.

In addition, we do not believe that the subject bag is classifiable in Heading 6305. In Headquarters Ruling Letter (HRL) 951539, dated July 9, 1992, we stated the following:

It is clear that the articles listed under this heading [Heading 6305] are of the type used for commercial merchandise being transported or stored for sale, usually in bulk (See also, HQ 088453, dated May 2, 1991, discussing classification of bulk bags, and HQ 089444, dated September 3, 1991, discussing the classification of polypropylene bags used for the conveyance of goods).

The bag at issue is not used for commercial merchandise and is not for merchandise being transported or stored for sale. It cannot be considered a sack or bag, for the packing of goods, and is therefore not classifiable in Heading 6305.

With respect to classification in Heading 6307, the submitted bag is a made up article of textile materials not more specifically provided for in another heading. Consequently, it is classifiable in Heading 6307.

HOLDING:

The subject bag is classified under subheading 6307.90.9986, HTSUSA, which provides for other made up articles, other, other, other, other, other. The rate of duty is 7 percent ad valorem.

No textile category is currently assigned to merchandise classified under this subheading.

Sincerely,
JOHN DURANT,
Director
Commercial Rulings Division

ATTACHMENT B

HQ H275824
CLA-2 OT:RR:CTF:TCM H275824 MAB
CATEGORY: Classification
TARIFF NO: 6305.32.0010

PORT DIRECTOR
U.S CUSTOMS AND BORDER PROTECTION
423 CANAL STREET
ROOM 260
NEW ORLEANS, LA 70130

Attn: Anola Hartzog, Import Specialist

RE: Revocation of HQ 955639; tariff classification of reusable bags of woven polypropylene strips used for yard waste and recycling

DEAR PORT DIRECTOR:

On April 5, 1994, U.S. Customs and Border Protection (CBP) issued HQ 955639. This ruling pertains to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of reusable bags of woven polypropylene strips used for yard waste and recycling. We have reviewed additional information and have found HQ 955639 to be in error with respect to the tariff classification.

FACTS:

In HQ 955639, CBP stated in pertinent part, the following:

You submitted a sample of a reusable yard waste bag of woven polypropylene strips which are less than 5 mm in width; the bag measures approximately 41 inches by 14.75 inches by 13.5 inches when fully expanded. The bag is open at the top with snaps as closures which are placed in a position to permit the top to expand to its fullest width. Located near the bottom of the bag at both sides are pockets with hook and loop closures, which will be filled approximately one pound of ballast (such as sand) to prevent the bags from being blown away after they have been emptied. To facilitate carrying the bag, two web strap handles are sewn to the top of the bag and two web strap handles are attached to each bottom pocket. The bags will be used initially by the City of Seattle to hold yard waste or other articles which will be recycled. Eventually the bags will be distributed to the public and used by homeowners to store yard waste and left at curbside for pickup by the city recycling trucks.

In addition, we do not believe that the subject bag is classifiable in heading 6305....[t]he bag at issue is not used for commercial merchandise and is not for merchandise being transported or stored for sale. It cannot be considered a sack or bag, for the packing of goods, and is therefore not classifiable in Heading 6305.

ISSUE:

Whether the reusable bags of woven polypropylene strips used for yard waste and recycling are considered bags under heading 6305, HTSUS, or as other made-up articles of heading 6307, HTSUS?

LAW AND ANALYSIS:

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

The HTSUS provisions at issue are as follows:

Sacks and bags, of a kind used for the packing of goods:

* * *

6307 Other made up articles, including dress patterns:

* * *

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

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

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

* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System at the international level 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 63.05 provides, in pertinent part, as follows:

This heading covers textile sacks and bags of a kind normally used for the packing of goods for transport, storage or sale.

These articles, which vary in size and shape, include in particular flexible intermediate bulk containers, coal, grain, flour, potato, coffee or similar sacks, mail bags, and small bags of the kind used for sending samples of merchandise by post. The heading also includes such articles as tea sachets.

Subheading 6305.32

Flexible intermediate bulk containers are usually made of polypropylene or polyethylene woven fabrics and generally have a capacity ranging from 250 kg to 3,000 kg. They may have lifting straps at the four top corners and may be fitted with openings at the top and bottom to facilitate loading and unloading. They are generally used for packing, storage, transport and handling of dry, flowable materials.

* * *

EN 63.07 provides, in pertinent part, as follows:

This heading covers made up articles of any textile material which are **not included** more specifically in other headings of Section XI or elsewhere in the Nomenclature.

* * *

Heading 6305, HTSUS, covers sacks and bags of a kind used for the packing of goods. In *The Pomeroy Collection, Ltd. v. United States*, 559 F.Supp. 2d 1374, 1394 n. 23 (Ct. Int'l Trade 2008), the Court of International Trade (CIT) described different types of HTSUS provisions as follows:

A “use” provision is “a provision describing articles by the manner in which they are used as opposed to by name,” while an *eo nomine* provision is one “in which an item is identified by name.” *Len-Ron Mfg. Co. v. United States*, 334 F.3d 1304, 1308 (Fed. Cir. 2003). And there are two types of “use” provisions -- “actual use” and “principal (formerly known as “chief”) use.” An “actual use” provision is satisfied only if “such use is intended at the time of importation, the goods are so used and proof thereof is furnished within 3 years after the date the goods are entered.” See Additional U.S Rule of Interpretation (“ARI”) 1(b) (*quoted in Clarendon Mktg., Inc. v. United States*, 144 F.3d 1464, 1467 (Fed. Cir. 1998)). In contrast, a “principal use” provision functions essentially “as a controlling legal label, in the sense, that even if a particular import is proven to be actually used inconsistently with its principal use, the import is nevertheless classified according to its principal use.” *Clarendon Mktg.*, 144 F.3d at 1467.

In *Primal Lite, Inc. v. United States*, 22 C.I.T. 697, 700 (1998), the CIT described one method to identify principal use provisions as follows:

The use of the term “of a kind” is nothing more than a statement of the traditional standard for classifying importation[s] by their use, namely, that it need not necessarily be the actual use of the importation but is the use of the kind of merchandise to which the importation belongs.

Heading 6305, HTSUS, includes the tariff term “of a kind,” which means that it is a principal use provision. Under Additional U.S. Rule of Interpretation 1(a) (AUSR 1(a)), tariff classification under a principal use provision must be determined in accordance with the use in the United States of that class or kind to which the imported goods belong.

Thus, in order to be classified as a sack or bag of a kind used for packing, the reusable bags of woven polypropylene strips used for yard waste and recycling must belong to the same kind or class of goods as those used for packing. In *United States v. Carborundum Co.*, 536 F.2d 373, 377 (CCPA 1976) (*Carborundum*), the U.S. Court of Customs and Patent Appeals stated that in order to determine whether an article is included in a particular class or kind of merchandise, the court must consider a variety of factors, including: (1) the general physical characteristics of the merchandise; (2) the channels, class or kind of trade in which the merchandise moves (where the merchandise is sold); (3) the expectation of the ultimate purchasers; (4) the environment of the sale (i.e., accompanying accessories and marketing); (5) usage, if any, in the same manner as merchandise which defines the class; (6) the economic practicality of so using the import; and (7) the recognition in the

trade of this use. *Id.* While these factors were developed under the Tariff Schedule of the United States (predecessor to the HTSUS), the courts have also applied them under the HTSUS. *See, e.g. Aromont USA, Inc. v. United States*, 671 F.3d 1310 (Fed. Cir. 2012), *Essex Manufacturing, Inc. v. United States*, 30 C.I.T.1 (2006).

In regard to the physical characteristics of the reusable waste bags of woven polypropylene strips used for yard waste and recycling, they have the same characteristics of a flexible intermediate bulk container (FIBC) in that they consist of woven polypropylene and polyethylene fabric strips which are less than 5 mm in width. They are said to measure 41 inches by 14.75 inches by 13.5 inches when fully expanded. The bags are open at the top with snaps as closures which are placed in a position to permit the top to expand to its fullest width. Located near the bottom of the bags on both sides are pickets with hook and loop closures, which will be filled with approximately one pound of ballast (such as sand) to prevent the bags from being blown away after they have been emptied. To facilitate carrying the bags, two web strap handles are sewn to the top of the bags and two web straps handles are attached to each bottom pocket. In terms of channels of trade, the City of Seattle would initially use the bags to hold yard waste or other article which will be recycled. Eventually the bags were to be distributed to the public. As such, the ultimate users of the bags will use them to store yard waste and left at curbside for pickup by the city recycling trucks. The bags are environmentally practical for use to pack and transport this recycled material and are recognizable for this use.

CBP has issued numerous rulings which describe and classify FIBCs and similar types of bags used for the packing of goods. In New York Ruling N267169, dated August 25, 2015, CBP examined a woven sleeve composed of polypropylene strips. The sleeve is glued on each side and left open on each end. CBP determined its essential character was an unfinished FIBC bag and classified it under subheading 6305, HTSUS. In New York Ruling N257467, dated September 19, 2014, CBP ruled on an FIBC constructed from woven polypropylene strips. It contains a separate but sewn-in liner of plastic sheeting specifically made and shaped to fit inside. The fitted plastic liner would be considered a composite good for tariff purposes with the essential character imparted by the FIBC, wherein CBP noted GRI 3(b), HTSUS, and classified it under heading 6305, HTSUS. *See also* N255320, dated August 4, 2014 (woven polypropylene strips bag measuring 60" x 48" with an opening at one end for filling and the other end is folded over and sewn closed classified under 6305, HTSUS); N216187, dated May 25, 2012 (an FIBC composed of woven polypropylene strips with looped straps at each top corner weighing more than one kilogram classified under heading 6305, HTSUS); N199020, dated January 25, 2012 (laminated polypropylene woven sack with a hemmed bottom measuring 34.5" x 15" and printed with the company's name and butterflies classified under heading 6305, HTSUS).

At the Headquarters level, there are several rulings on FIBCs and similar articles. In HQ 963508, dated December 21, 2000, this office considered an FIBC woven polypropylene bag that is circular in shape and used to transport sand, classifying it under heading 6305, HTSUS. In HQ 961938, dated June 11, 1999, we examined an FIBC woven from polypropylene fabric with a lining also used to transport sand, classifying it under heading 6305, HTSUS. In ruling HQ H238478, dated September 4, 2014, we applied the *Carborundum* factors to an AQUI-Pak which is made of absorbent nonwoven textile

fabric which is then folded on itself and heat sealed, creating partitions between each pouch for the safe transport of laboratory specimen tubes. Finding that the Aquipak is of the same class or kind as bags used for packing goods, CBP classified it under heading 6305, HTSUS.

Hence, there is no requirement that sacks or bags of heading 6305, HTSUS, must transport or store only commercial merchandise for sale. This proposition is not supported by the text of heading 6305, the EN thereto, or our rulings.

For all of the aforementioned reasons, we find that the instant reusable bags of woven polypropylene strips used for yard waste and recycling are of the same class or kind as bags used for packing goods. Therefore, the instant merchandise is classified under heading 6305, HTSUS. As heading 6307, HTSUS, only provides for “other” made up articles which are not classified elsewhere, the reusable bags of woven polypropylene strips used for yard waste and recycling are not classifiable under heading 6307, HTSUS. *See also* EN 63.07.

HOLDING:

By application of GRI 1, the reusable bags of woven polypropylene strips used for yard waste and recycling are classified under heading 6305, HTSUS. They are specifically classified under subheading 6305.32.0010, HTSUSA, which provides, in pertinent part, for “Sacks and bags, of a kind used for the packing of goods: Of man-made textile fibers: Flexible intermediate bulk containers, weighing more than one kg or more.” The duty rate is 8.5 percent *ad valorem*.

Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the U.S. International Trade Commission’s website at www.usitc.gov.

EFFECT ON OTHER RULINGS:

HQ 955639, dated April 5, 1994, is REVOKED.

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

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

19 CFR PART 177**REVOCAION OF TWO RULING LETTERS AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF HOSPITAL BED AND CHAIR
MATTRESSES**

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

ACTION: Notice of revocation of two ruling letters, and revocation of treatment relating to the tariff classification of hospital bed and chair mattresses.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking two ruling letters concerning tariff classification of hospital bed and chair mattresses 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. 34, on August 24, 2016. No comments concerning the proposed revocation were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 30, 2017.

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

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 50, No. 34, on August 24, 2016, proposing to revoke two ruling letters pertaining to the tariff classification of mattresses designed for placement upon hospital beds and chairs. As stated in the proposed notice, this action will cover New York Ruling Letter ("NY") H87018, dated January 9, 2002, and NY E84866, dated July 27, 1999, 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 two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY H87018 and NY E84866, CBP classified various mattresses designed for placement upon hospital beds and chairs in heading 9402, HTSUS, specifically in subheading 9402.90.00, HTSUS, which provides for "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: Other." CBP has reviewed NY

H87018 and NY E84866 and has determined the ruling letters to be in error. It is now CBP's position that the hospital bed and chair mattresses are properly classified, by operation of GRI 1, in heading 9404, HTSUS, specifically in subheading 9404.21.00, HTSUS, which provides for "Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: Mattresses: Of cellular rubber or plastics, whether or not covered."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY H87018 and NY E84866 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H276631, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: October 12, 2016

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H276631

October 12, 2016
CLA-2 OT:RR:CTF:TCM H276631 NCD
CATEGORY: Classification
TARIFF NO.: 9404.21.0095

LESLIE FITZPATRICK
VIRTUS LIMITED
ADAMSTOWN, LUCAN
Co. DUBLIN, IRELAND

RE: Revocation of NY H87018 and NY E84866; Classification of hospital bed and chair mattresses

DEAR MR. FITZPATRICK:

This is in reference to New York Ruling Letter (NY) H87018, issued to you by U.S. Customs and Border Protection (CBP) January 9, 2002. We have reviewed NY H87018, which involved classification of the Primeaire Therapy Mattress Surface under the Harmonized Tariff Schedule of the United States (HTSUS), and determined that it is incorrect. For the reasons set forth below, we are revoking that ruling.

We have additionally reviewed NY E84866, issued to you July 27, 1999, which similarly involved classification of two hospital bed and chair mattresses under the HTSUS. As with NY H87018, we have determined that NY E84866 is incorrect and, for the reasons set forth below, are revoking it.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published in the *Customs Bulletin*, Vol. 50, No. 34, on August 24, 2016. No comments were received in response to the notice.

FACTS:

In NY H87018, CBP described the Primeaire Therapy Mattress Surface at issue as follows:

The mattress mainly consists of a cover, zoned foam inner sections and air cushions. The foam comprises approximately 80% of the total weight of the complete mattress. The cover material is a polyurethane-coated nylon fabric with a zipper and straps attached. The straps hold the therapy mattress to the Hill-Rom bed frame. The zoned foam sections give different pressure care therapy and significantly reduce the risk of developing bedsores. The air cushions are also made from polyurethane material and are attached to the foam sections. The cushions have air supply fittings fitted to them. The mattresses and covers/foam cushions sections can only be used to make up a complete Hill-Rom hospital bed and have no other use. They are an integral part of the complete hospital bed.

In NY E84866, CBP stated as follows with respect to the subject mattresses:

The submitted literature depicts the following items to be imported:

1. A mattress for the Affinity Bed, a birthing bed that has been designed to meet the challenges of changing perinatal needs in the hospital.

2. A mattress for the TotalCare hospital bed and “chair,” a system which has been designed for critical elderly patients to help them through the hospital faster with improved outcomes.

You will be manufacturing and selling the complete mattress for both beds (and parts of it) to Hill-Rom Inc.

In both NY H87018 and NY E84866, CBP classified the subject mattresses in subheading 9402.90.00, HTSUS, which provides for: “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: Other.”

ISSUE:

Whether the subject mattresses are properly classified as medical furniture or parts thereof in heading 9402, HTSUS, or as articles of bedding in heading 9404, HTSUS.

LAW AND ANALYSIS:

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

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:
9402.90.00	Other
9404	Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered:
	Mattresses:

9404.21.00 Of cellular rubber or plastics, whether or not covered

Heading 9402, HTSUS, provides, *inter alia*, for medical furniture and parts thereof. Note 2 to Chapter 94 states as follows:

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

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

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

Note 3(b) to Chapter 94 states as follows:

- (b) Goods described in heading 9404, entered separately, are not to be classified in heading 9401, 9402 or 9403 as parts of goods.

With reference to Note 2 to Chapter 94, the General EN to Chapter 94 states, in pertinent part, as follows:

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, restaurants, laboratories, hospitals, dentists’ surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be “movable” furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.
- (B) The following:
 - (i) Cupboards, bookcases, other shelved furniture (including single shelves presented with supports for fixing them to the wall) and unit furniture, designed to be hung, to be fixed to the wall or to stand one on the other or side by side, for holding various objects or articles (books, crockery, kitchen utensils, glassware, linen, medicaments, toilet articles, radio or television receivers, ornaments, etc.) and separately presented elements of unit furniture.
 - (ii) Seats or beds designed to be hung or to be fixed to the wall.

Pursuant to Note 2 to Chapter 94, as explained by the General EN to the chapter, the tariff term “furniture” applies to the following: Movable articles that are designed for placement on the floor; shelved articles and “unit

furniture” designed to be hung, fixed to a wall, or placed adjacent or sub/superjacent to each other; separately-presented “unit furniture”; and seats or beds designed to be hung or fixed to a wall. The term “unit furniture” is not defined in the HTSUS, but the courts have held that it denotes “an item (a) fitted with other pieces to form a larger system or which is itself composed of smaller complementary items, (b) designed to be hung, to be fixed to the wall, or to stand one on the other or side by side, and (c) assembled together in various ways to suit the consumer’s individual needs to hold various objects or articles, but (d) excludes other wall fixtures such as coat, hat and similar racks, key racks, clothes brush hangers, and newspaper racks.” *See Container Store v. United States*, 800 F. Supp. 2d 1329, 1337 (Ct. Int’l Trade 2011); *see also StoreWALL, LLC v. United States*, 644 F.3d 1358, 1363 (Fed. Cir. 2011) (endorsing definition of “unit furniture” adopted by Court of International Trade).

Here, the subject mattresses, while movable, are designed strictly for placement atop hospital beds and chairs rather than upon the floor. Moreover, because the mattresses are not designed for hanging, fixture to walls, or placement adjacent to each other, and are not designed to hold other articles, they do not qualify as “unit furniture” within the meaning of Note 2 to Chapter 94. Nor can they be described as seats or beds designed for hanging or fixing to a wall. While they are designed for superjacent placement upon beds and chairs, which are furniture, they are not “shelved” articles. Accordingly, the mattresses do not meet any of the definitions of “furniture” set forth in Note 2 to Chapter 94, and cannot be classified as such in heading 9202, HTSUS.

As to whether the subject mattresses can be classified as parts of furniture within heading 9402, HTSUS, Note 3(b) to Chapter 94 precludes classification as such where classification in heading 9404, HTSUS, is possible. Heading 9404, HTSUS, provides, *inter alia*, for “articles of bedding...internally fitted with any material,” and explicitly lists mattresses as an exemplar of such articles. EN 94.04 states, in pertinent part, as follows:

This heading covers:

- B. Articles of bedding and similar furnishing which are sprung or stuffed or internally fitted with any material (cotton, wool, horsehair, down, synthetic fibres, etc.), or are of cellular rubber or plastics (whether or not covered with woven fabric, plastics, etc.). For example:

- (1) Mattresses, including mattresses with a metal frame.

According to the plain language of heading 9404, HTSUS, as explained in EN 94.04, the heading applies to mattresses that are internally fitted with any material. Here, it is beyond dispute that the subject products are mattresses within the meaning of heading 9404. NY H87018 states that the Primeaire Therapy Mattress Surface consists of a fabric cover, air cushions, and foam inner sections, the last of which account for 80 percent of the total weight of the mattress. Moreover, our research indicates that both mattresses at issue in NY E84866 consist of polyurethane foam padding covered by fabric exteriors. All the subject mattresses are thus “internally fitted” for purposes of classification of heading 9404, and are consequently described by the heading. Therefore, by operation of Note 3(b) to Chapter 94, the subject mattresses are properly classified as articles of that heading rather than as

parts of heading 9402, HTSUS. We note that this determination is consistent with various CBP rulings classifying mattresses and other articles of bedding in heading 9404, HTSUS, where they, like the subject merchandise, are designed for placement upon hospital beds. *See* NY N235215 and NY N235249, dated December 3, 2012; NY N217518, dated June 12, 2012; and NY 808052, dated March 24, 1995.

HOLDING:

By application of GRI 1, the subject mattresses are properly classified in heading 9404, HTSUS. They are specifically classified in subheading 9404.21.0095, HTSUSA (Annotated), which provides for: “Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: Mattresses: Of cellular rubber or plastics, whether or not covered: Other.” The 2016 column one general rate of duty is 3.0% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

New York Ruling Letters H87018, dated January 9, 2002, and NY E84866, dated July 27, 1999, are hereby REVOKED in accordance with the above analysis.

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

Sincerely,

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177

**MODIFICATION OF ONE RULING LETTER AND
MODIFICATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF HOLE SAW KITS FOR DOOR
LOCKSET INSTALLATION**

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

ACTION: Notice of modification of one ruling letter and of modification of treatment relating to the tariff classification of hole saw kits for door lockset installation.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter concerning tariff classification of hole saw kits for door lockset installation under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is modifying any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 50, No. 33, on August 17, 2016. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 30, 2017.

FOR FURTHER INFORMATION CONTACT: Laurance W. Frierson, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0371.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Accordingly, the law imposes a greater obligation on 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. 33, on August 17, 2016, proposing to modify one ruling letter pertaining to the tariff classification of hole saw kits for door lockset installation. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) J82340, dated March 25, 2003, 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 modifying 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 ruling letter NY J82340, CBP classified two hole saw kits for door lockset installation under heading 8207, HTSUS, which provides for “Interchangeable tools for handtools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screwdriving), including dies for drawing or extruding metal, and rock drilling or earth boring tools; base metal parts thereof.” CBP has reviewed ruling letter NY J82340 and has determined the ruling letter to be in error. It is now CBP’s position that the hole saw kits for door lockset installation described in the attached ruling letter are properly classified, by operation of GRIs 1 and 3(b), in heading 8202, HTSUS, specifically in subheading 8202.99.00, HTSUS, which provides for “Handsaws, and metal parts thereof; blades for saws of all kinds (including slitting, slotting or toothless saw blades), and base metal parts thereof: Other saw blades, and parts thereof: Other (including parts).”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying ruling letter NY J82340 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H251432, set forth as an attachment to this

notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is modifying 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: October 20, 2016

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H251432

October 20, 2016
CLA-2 OT:RR:CTF:TCM H251432 LWF
CATEGORY: Classification
TARIFF NO.: 8202.99.00

JOHN HIGINBOTHOM
SR. MANAGER, CUSTOMS & BROKERAGE
IRWIN INDUSTRIAL TOOLS DIVISION
NEWELL RUBBERMAID
3 GLENLAKE PARKWAY
ATLANTA, GA 30328

Re: Modification of New York Ruling Letter (NY) J82340, dated March 25, 2003; tariff classification of hole saw kits for door lockset installation

DEAR MR. HIGINBOTHOM:

This letter is in response to your request, dated March 6, 2014, that U.S. Customs and Border Protection (CBP) reconsider New York Ruling Letter (NY) J82340, issued to Irwin Industrial Tool Co. (now doing business as Newell Rubbermaid) on March 25, 2003, concerning the tariff classification of certain hole saw kits for door lockset installation under the Harmonized Tariff Schedule of the United States (HTSUS).

Specifically, you assert that in ruling letter NY J82340, CBP incorrectly classified the hole saw kits under heading 8207, HTSUS, which provides for “Interchangeable tools for handtools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screwdriving), including dies for drawing or extruding metal, and rock drilling or earth boring tools; base metal parts thereof.” Your request for reconsideration contains new information concerning the value and material role of the component pieces of the lock installation kits, and you ask that CBP classify the kits, by application of GRI 3(b), under heading 8202, which provides for “Handsaws, and metal parts thereof; blades for saws of all kinds (including slitting, slotting or toothless saw blades), and base metal parts thereof.”

Based on the information contained in your request, CBP has reviewed ruling letter NY J82340 and finds the ruling to be incorrect. Accordingly, for the reasons set forth below, CBP is hereby modifying ruling letter NY J82340 with respect to the classification of hole saw kits for door lockset installation.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published in the *Customs Bulletin*, Vol. 50, No. 33, on August 17, 2016. No comments were received in response to the notice.

FACTS:

In ruling letter NY J82340, CBP described the merchandise at issue as two styles of lock installation kits: the “Metal/Wood Door Lock Installation Kit, Part #17104” and the “Wood Door Lock Installation Kit, Part #17105” (the “Metal/Wood Door Kit” and “Wood Door Kit,” respectively). The Metal/Wood Door Kit consists of 2 bi-metal hole saws, 1 mandrel, 1 router bit, 1 double-sided jig, and 3 plastic templates. Similarly, the “Wood Door Kit” consists of 2 carbon steel hole saws, 1 mandrel, 1 router bit, 1 double-sided jig, and 3

plastic templates. Each Kit is designed to enable a user to cut holes in a wood or metal door, to facilitate the installation of door locksets into the door. The component articles of each Kit are packaged together in a plastic clamshell, and in their condition as imported, the Kits are suitable for sale directly to users without repacking.

In its reconsideration request letter, dated March 6, 2014, Newell Rubbermaid provides additional information concerning the material role and cost of the component pieces of the Metal/Wood Door Kit and the Wood Door Kit. Specifically, Newell Rubbermaid states that among the component pieces of the Metal/Wood Door Kit, the 2 bi-metal hole saws represent approximately 46% of the weight and 57% of the cost of the Kit, while each of the remaining component articles (mandrel, router bit, jig, and templates) individually account for less than 23% of the weight and 24% of the cost of the Kit. Similarly, among the component pieces of the Wood Door Kit, the 2 carbon hole saws represent approximately 34% of the weight and 32% of cost of the Kit, while the remaining component articles (mandrel, router bit, jig, and templates) individually account for less than 28% of the weight and 23% of the cost of the Kit.

ISSUE:

Whether the Metal/Wood Door Kit and the Wood Door Kit are classifiable, by application of GRI 3(b), under heading 8202, HTSUS, as parts of saws, or by application of GRI 3(c), under heading 8207, HTSUS, as tools for power-operated handtools.

LAW AND ANALYSIS:

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

The 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, the ENs provide a commentary on the scope of each heading of the HS and are thus useful in ascertaining the proper classification of merchandise. It is CBP's practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

In this case, CBP will reference the following HTSUS headings to determine the proper classification of Newell Rubbermaid's Metal/Wood Door Kit and Wood Door Kit:

8202	Handsaws, and metal parts thereof; blades for saws of all kinds (including slitting, slotting or toothless saw blades), and base metal parts thereof:
------	---

8207 Interchangeable tools for handtools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screwdriving), including dies for drawing or extruding metal, and rock drilling or earth boring tools; base metal parts thereof:

* * * * *

As an initial matter, CBP observes that the Metal/Wood Door Kit and Wood Door Kit each consist of a variety of individual component articles that are, *prima facie*, classifiable in two or more headings. Specifically, the Metal/Wood Door Kit consists, in relevant part, of 2 bi-metal hole saws of heading 8202, HTSUS, and a mandrel of heading 8207, HTSUS. Similarly, the Wood Door Kit includes 2 carbon steel hole saws of heading 8202, HTSUS, as well as a mandrel described by heading 8207, HTSUS. Consequently, because the Kits consist of component articles classifiable under two or more headings, CBP finds that the Kits cannot be classified solely on the basis of GRI 1 and that the remaining GRIs must be applied.

GRI 3(b) states, in pertinent part, as follows:

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

[...]

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

* * * * *

For purposes of tariff classification under GRI 3(b), the term “goods put up in sets for retail sale” carries a specific meaning that is defined in detail by EN (X) to GRI 3(b). Specifically, EN (X) to GRI 3(b) states:

- (X) For the purpose of this Rule, the term ‘goods put up in sets for retail sale’ shall be taken to mean goods which:
 - (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings . . . ;
 - (b) consist of products or articles put up together to meet a 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).

* * * * *

In accord with the definition of “goods put up in sets for retail sale” provided in the ENs, CBP finds that the Metal/Wood Door Kit and Wood Door Kit are properly classifiable as retail sets by application of GRI 3(b), because the Kits satisfy the criteria described by EN (X) to GRI 3(b). First, as described above, each of the Kits consist of at least two different articles

which are, *prima facie*, classifiable in different headings. Second, there is no dispute that the Kits are “put up together” to enable a user to carry out the specific activity of cutting holes in wood and metal doors so that a door locksets can be installed into the door. Third, as described in ruling letter NY J82340, the component articles of each Kit are packaged together in a plastic clamshell, and in their condition as imported, the Kits are suitable for sale directly to users without repacking. As such, the Kits are classifiable by application of GRI 3(b) as “goods put up in sets for retail sale,” and shall be classified as if they consisted of the material or component which gives each Kit its essential character.

Pursuant to the text of GRI 3(b), goods put up in sets for retail sale must be classified as if they consisted of the material or component which “gives them their essential character.”¹ The phrase “essential character” carries specific meaning in the context of tariff classification, and the courts have defined “essential character” as, “that which is indispensable to the structure, core or condition of the article, i.e., what it is.” *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (Ct. Int’l Trade 2005).

Moreover, Explanatory Note VIII to GRI 3(b) states that, “[t]he factor which determines essential character will vary as between different kinds of goods,” and may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods. See EN VIII to GRI 3(b). However, among those factors identified in EN VIII to GRI 3(b), recent court decisions concerning “essential character” analysis under GRI 3(b) have primarily focused on the role of the constituent material in relation to the use of the goods. See *Estee Lauder*, 815 F. Supp. 2d at 1296; see also *Structural Industries*, 360 F. Supp. 2d 1330; *Conair Corp. v. United States*, 29 C.I.T. 888 (2005); *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d 1278 (Ct. Int’l Trade 2006), *aff’d* 491 F.3d 1334 (Fed. Cir. 2007).

Consistent with the guidance provided by the courts and the ENs to GRI 3, CBP observes that the essential character of a retail set is informed by the use or role of those component articles that are integral to the overall function of the set. Relevant to the classification of the instant Kits, for example, CBP has previously concluded that among the component articles of a bi-metal hole saw kit (consisting of 6 steel holes saws, 2 mandrels, and 1 mandrel adapter), the steel hole saws imparted the retail set with its “essential character,” based on findings by CBP that the hole saws were integral to the activity of cutting holes for door locksets and predominated the hole saw kit by quantity, value, and bulk. See Headquarters Ruling Letter (“HQ”) H097658, dated December 31, 2013. Accordingly, CBP classified the bi-metal hole saw kit as if it consisted of the 6 steel hole saws and ruled, by application of GRI 3(b), that the kit was properly classified under heading 8202, HTSUS, specifically subheading 8202.99.00.

Similar to the analysis set forth in ruling letter HQ H097658, this office finds that the instant Newell Rubbermaid Metal/Wood Door Kit and Wood Door Kit, each contain separately classifiable articles consisting of 2 hole saws, 1 mandrel, 1 router bit, 1 double-sided jig, and 3 plastic templates. Moreover, inasmuch as the Newell Rubbermaid Kits are “put up together” to

¹ EN VIII to GRI 3(b) explains that “[t]he factor which determines essential character will vary as between different kinds of goods,” and may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods. See EN VIII to GRI 3(b).

carry out the same activity as the hole saw kits at issue in HQ H097658—namely, the activity of cutting holes in wood and metal doors so that a door locksets can be installed into the door, CBP observes that the 2 hole saws included in each of the Newell Rubbermaid Kits are integral to the function of the retail sets. Specifically, it is the hole saws that cut material away from doors so that door locksets can be installed therein; each of the remaining component articles—the mandrel, router bit, jig, and template—function in supporting roles that facilitate the cutting operation of the hole saw upon the target door. Accordingly, CBP finds that the role of the hole saws in relation to the use of Kits supports a determination that the hole saws impart the Kits with their essential character. *See* EN VIII to GRI 3(b).

Additionally, Newell Rubbermaid has provided information showing that the hole saws predominate the other component articles of the Metal/Wood Door Kit and Wood Door Kit by both weight and cost. Among the component pieces of the Metal/Wood Door Kit, the 2 bi-metal hole saws represent approximately 46% of the weight and 57% of the cost of the Kit, while each of the remaining component articles (mandrel, router bit, jig, and templates) individually account for less than 23% of the weight and 24% of the cost of the Kit. Similarly, among the component pieces of the Wood Door Kit, the 2 carbon hole saws represent approximately 34% of the weight and 32% of cost of the Kit, while the remaining component articles (mandrel, router bit, jig, and templates) individually account for less than 28% of the weight and 23% of the cost of the Kit. Based upon an analysis of the weight and cost of the component pieces in relations to the Kits as a whole, CBP finds that the hole saws impart the Kits with their essential character, because the hole saws are the heaviest and most valuable component articles included in the Kits.

Inasmuch as the component article bi-metal and carbon steel hole saws are integral to the function of the Metal/Wood Door Kit and Wood Door Kit and predominate both Kits by both weight and cost, CBP finds that the hole saws impart the Kits with their essential character. Accordingly, by application of GRI 3(b), the Kits are classifiable as if they consisted of the hole saws, which are described under the terms of heading 8202, HTSUS, as saw blades.

In classifying the instant Newell Rubbermaid Kits under heading 8202, HTSUS, by application of GRI 3(b), CBP observes that this decision is distinguishable from several previously published CBP ruling letters in which CBP applied GRI 3(c) to classify a variety of lock installation kits because it did not possess sufficient information to determine the essential character of the kits by application of GRI 3(b). For example, in ruling letter HQ 963775, dated November 21, 2000, CBP classified a lock installation kit consisting of a hole saw for cutting a hole for the lock mechanism, a wood spade bit for cutting a hole for the latch mechanism, and a mandrel pilot drill bit—under heading 8207, HTSUS, the heading which comes last in numerical order amongst those headings that merit equal consideration, because CBP was unable to determine whether the hole saw, wood spade bit, or mandrel imparted the lock installation kit with its essential character. Similarly, in ruling letters NY H80305, dated May 23, 2001, and NY J87960, dated August 26, 2003, CBP classified hole saw kits for door lockset installation under 8207, HTSUS, by application of GRI 3(c), because the importer did not provide sufficient information for CBP to make a determination as to which of component articles imparted the sets with their essential characters. Here, by contrast, importer Newell Rubbermaid has provided CBP with a detailed description of the instant Kits and their component articles, thereby enabling

CBP to determine that the hole saw component articles impart each Kit with their essential character under a GRI 3(b) analysis.

CBP additionally notes that it is declining to revoke ruling letter NY E84551, dated July 28, 1999, because the ruling does not involve merchandise that is substantially similar to the instant Newell Rubbermaid Kits at issue in ruling letter NY J82340. Unlike the Newell Rubbermaid Kits, the lock installation kit identified in ruling letter NY E84551 consisted of a single bit, hole saw, and mandrel. Moreover, as NY E84551 does not contain a material or value breakdown description of the component articles, CBP does not possess sufficient information to determine the essential character of the merchandise under a GRI 3(b) analysis. Consequently, CBP finds that the facts presented in ruling letter NY E84551 substantially differ from those contained in NY J82340. Accordingly, CBP observes that the conclusions reached in ruling letter NY E84551 do not conflict with the analysis set forth in this decision, and CBP therefore declines to revoke ruling letter NY E84551.

HOLDING:

By application of GRI 1 and 3(b), the Newell Rubbermaid Metal/Wood Door Kit and Wood Door Kit are classified under heading 8202, HTSUS, specifically subheading 8202.99.00, which provides for “Handsaws, and metal parts thereof; blades for saws of all kinds (including slitting, slotting or toothless saw blades), and base metal parts thereof: Other saw blades, and parts thereof: Other (including parts).” The 2016 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 <http://www.usitc.gov>.

EFFECT ON OTHER RULINGS:

In accordance with the above analysis, ruling letter NY J82340, dated March 25, 2003, is hereby **MODIFIED**.

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

Sincerely,

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial Trade and Facilitation Division

19 CFR PART 177

**REVOCATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF RENEWABLE DIESEL**

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

ACTION: Notice of revocation of one ruling letter and of revocation of treatment relating to the tariff classification of renewable diesel.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning tariff classification of renewable diesel 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. 34, on August 24, 2016. Three comments regarding the proposed revocation were received in response to that notice. The comments supported CBP’s proposed revocation of New York Ruling Letter N250961 and classifying the subject merchandise in heading 2710, HTSUS.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 30, 2017.

FOR FURTHER INFORMATION CONTACT: Peter Martin, Tariff Classification and Marking Branch, Regulations and Rulings, Office of 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, a notice was published in the *Customs Bulletin*, Vol. 50, No. 34, on August 24, 2016, proposing to revoke one ruling letter pertaining to the tariff classification of renewable diesel. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) N250961, dated March 18, 2014, 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 N250961, CBP classified renewable diesel in heading 3824, HTSUS, specifically in subheading 3824.90.9290, HTSUS, which provides for “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other.” CBP has reviewed N250961 and has determined the ruling letter to be in error. It is now CBP’s position that renewable diesel is properly classified, by operation of GRI 1, in heading 2710, HTSUS, specifically in subheading 2710.19.45, which provides for “Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70 percent or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils: Other:

Mixtures of hydrocarbons not elsewhere specified or included, which contain by weight not over 50 percent of any single hydrocarbon compound.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking N250961 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H258443, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: October 20, 2016

GREG CONNOR
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H258443

October 20, 2016

CLA-2

OT:RR:CTF:TCM H258443 PTM

CATEGORY: Classification

Tariff No: 2710.19.45

JACOB DWECK

SUTHERLAND, ASBILL & BRENNAN LLP

700 SIXTH ST. NW SUITE 700

WASHINGTON, DC 20001

RE: Revocation of NY N250961; Tariff Classification of Renewable Diesel

DEAR MR. DWECK,

We are writing in response to your correspondence, dated September 26, 2014, in which you request reconsideration of a ruling issued by U.S. Customs and Border Protection (“CBP”) of a ruling on behalf of your client, Neste Oil US, Inc. (“Neste”). Specifically, you request reconsideration of New York (“NY”) Ruling N250961, dated March 18, 2014 concerning the tariff classification of NEXBTL renewable diesel under the Harmonized Tariff Schedule of the United States (“HTSUS”). In NY N250961, we classified renewable diesel in subheading 3824.90.9290, HTSUS, which provides for “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other.” We have reviewed N250961 and find it to be in error. For the reasons set forth below, we hereby revoke N250961.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the *Customs Bulletin*, Vol. 50, No. 34, on August 24, 2016, proposing to revoke N250961 and any treatment accorded to substantially identical transactions. Three comments were received in response to this notice. The comments supported the proposed revocation of N250961.

FACTS:

NEXBTL is referred to as “renewable diesel” or “R100.”¹ NEXBTL is produced from vegetable oils and animal fats and is used to power diesel engines.

In N250961, we stated the following:

The instant product is called NEXBTL. NEXBTL consists of various paraffinic hydrocarbons.

Product literature states in part that:

Unlike traditional biofuels, NEXBTL is a ‘dropin’ fuel and is fully compatible with existing fuel infrastructure, distribution systems, and engines. Proprietary hydrotreating technology converts vegetable oil and

¹ “R100” denotes that the product is not blended with petroleum diesel and is in its “neat” form. The 100 denotes the percentage of renewable diesel, in this case 100%.

waste fats into premium-quality fuel. Therefore, NEXBTL renewable diesel is a pure hydrocarbon with significant performance and emission benefit”.

It is further stated that:

Hydrotreated Vegetable Oil (HVO) is a mixture of straight chain and branched paraffins – the simplest type of hydrocarbon molecules from the point of view of clean and complete combustion. Typical carbon numbers are C15 ... C18....HVO is also called Renewable diesel or HDRD (Hydrogenation Derived Renewable Diesel)”.

You suggest classification in heading 2710, HTSUS. However, NEXBTL 100% Hydrotreated Vegetable Oil does not meet the requirement in heading 2710 which provides for: “Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70 percent or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations.” Therefore, the product must be classified elsewhere in the tariff.

The applicable subheading for the NEXBTL Non-Ester Renewable Diesel will be 3824.90.9290, Harmonized Tariff Schedule of the United States (HTSUS)

Traditional diesel fuels are petroleum distillates rich in paraffinic hydrocarbons.² In the United States, the American Society for Testing and Materials (“ASTM”) Standard D975 establishes the standards for diesel fuel according to various criteria. These criteria include boiling range, cetane number, lubricity, cloud point, flash point, viscosity, aniline point, sulfur content, water content, ash content and carbon residue.³ Historically, diesel fuel has been derived from petroleum hydrocarbons. As a result, the D975 specification has evolved to define performance requirements for diesel engine fuels composed of conventional hydrocarbon oils refined from petroleum. However, the D975 standard does not require that fuels be derived from petroleum.⁴ The definition of a hydrocarbon oil in the ASTM D975 specification states it is a homogeneous mixture with elemental composition primarily of carbon and hydrogen, but that it may be manufactured from a variety of raw materials including petroleum, oil sands, natural gas, coal, and biomass.⁵ Additionally, the standard permits the inclusion of additives to hydrocarbon oils to enhance performance to meet the requirements of the D975 standard.⁶

The U.S. Department of Energy Alternative Fuels Data Center provides the following information concerning renewable diesel⁷:

² *Biodiesel and Other Renewable Diesel Fuels*, National Renewable Energy Laboratory, U.S. Department of Energy. Available at <http://www.nrel.gov/docs/fy07osti/40419.pdf>.

³ ASTM Designation D975, Standard Specification for Diesel Fuel Oils.

⁴ *Id.* Appendices §X7.4.

⁵ *Id.* § 3.1.3.

⁶ *Id.* §7.1.

⁷ *Hydrogenation-Derived Renewable Diesel*, Department of Energy – Energy Efficiency and Renewable Energy, Alternative Fuels Data Center, available at http://www.afdc.energy.gov/fuels/emerging_green.html.

Use: Renewable diesel is designed to substitute directly for petroleum diesel without modifying vehicle engines or fueling infrastructure. It may also be blended with conventional diesel.

Production: Renewable diesel can be produced from soybean, palm, canola or rapeseed oil; animal tallow; vegetable oil waste or brown trap grease; and other fats and vegetable oils. Producing renewable diesel involves hydrogenating triglycerides to remove metals and compounds with oxygen and nitrogen using existing refinery infrastructure that is used for conventional petroleum.⁸ Dedicated hydrotreating facilities that do not produce conventional petroleum can also produce renewable diesel.

Distribution: Renewable diesel is compatible with existing fuel distribution systems. It can be distributed through modern infrastructure and transported through existing pipelines to dispense at fueling stations.

Benefits: Among other benefits, renewable diesel reduces carbon monoxide and hydrocarbons in the environment. Renewable diesel is flexible inasmuch as it is compatible with existing diesel distribution infrastructure (not requiring new pipelines, storage tanks or retail station pumps), can be produced using existing oil refinery capacity and does not require extensive new production facilities. Renewable diesel's high combustion quality results in similar or better vehicle performance compared to conventional diesel.⁹

The California Air Resources Board ("CARB") commissioned a report on the compatibility of renewable diesel with existing motor vehicle fuel specifications as set forth in the California Code of Regulations.¹⁰ The report concluded that renewable diesel met all applicable motor vehicle fuel specifications for diesel fuel. The State Water Resources Control Board of California and CARB issued a joint statement that stated that "renewable diesel should be treated the same as conventional CARB diesel for all purposes."¹¹

In connection with the request for reconsideration, Neste provided additional information. Neste states that NEXBTL consists of aliphatic hydrocarbon chains and is a mixture of hydrocarbons. No single hydrocarbon compound constitutes more than fifty percent by weight of NEXBTL. NEXBTL may be used in its pure "neat" form and can serve as a direct substitute for petroleum diesel. That is, it can be used in diesel engines without blending and without modification to the engine itself.

Several automobile manufacturers have examined renewable diesel and approved of its use in their vehicles. For example, Volvo Trucks North America issued a press release stating that it "after concluding truck and engine lab testing, approved the use of renewable diesel fuel for all its proprietary Volvo engines, offering environmental and cost-savings benefits

⁸ *Id.*

⁹ *Id.*

¹⁰ Staff Report: Multimedia Evaluation of Renewable Diesel (May 2015), Available at http://www.arb.ca.gov/fuels/diesel/altdiesel/20150521RD_StaffReport.pdf.

¹¹ Joint Statement: Renewable Diesel Should Be Treated the Same as Conventional Diesel, Available at http://www.arb.ca.gov/fuels/diesel/altdiesel/07312013_RDjointstatement.pdf

to its consumers.” Similarly, Mercedes-Benz trucks granted approval for the use of hydrotreated vegetable oil (“HVO”)¹² fuel in its medium and heavy duty trucks.

NEXBTL renewable diesel is a distinct product from biodiesel, although they are both derived from renewable feedstocks. The technical definition of biodiesel is “a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, and meeting the requirements of ASTM D 6751.”¹³ Biodiesel is produced by through the process of transesterification, and contains esters. By contrast, NEXBTL is produced through hydrotreatment. The resulting renewable diesel contains solely hydrocarbons and no esters. Thus, biodiesel is produced using a different process, has different chemical properties and is subject to a different standard than renewable diesel.

In connection with this request for reconsideration, NESTE submitted four samples of NEXBTL “R100” renewable diesel to the CBP Laboratory and Scientific Services Directorate (“LSSD”). LSSD determined that the samples were comprised of aliphatic hydrocarbons with no aromatics. LSSD did note several differences between the samples of NEXBTL and petroleum diesel. For example, the R100 has a higher cetane number (92.85) than petroleum diesel, the sample has no sulfur present compared to petroleum diesel, the R100 has no aromatics compared to petroleum diesel, and the R100 has little or no fossil carbon present compared to petroleum diesel.

ISSUE:

What is the tariff classification of NEXBTL renewable diesel?

LAW AND ANALYSIS:

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

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The HTSUS provisions at issue are as follows:

¹² Renewable Diesel is treated as “Hydrotreated Vegetable Oil” in Europe for use in diesel engines. *See* Neste Renewable Diesel Handbook, available at https://www.neste.com/sites/default/files/attachments/neste_renewable_diesel_handbook.pdf.

¹³ ASTM 975 §3.1.1.

2710	Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70 percent or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils:
2710.19	Other:
2710.19.45	Mixtures of hydrocarbons not elsewhere specified or included, which contain by weight not over 50 percent of any single hydrocarbon compound
	* * *
3824	Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:
3824.90	Other:
3824.90.92	Other:

Because heading 3824, HTSUS covers only merchandise that is “not elsewhere specified or included,” the subject merchandise can be classified there by application of GRI 1 only if it is not *prima facie* classifiable in heading 2710, HTSUS. *See R.T. Foods, Inc. v. United States*, 757 F.3d 1349, 1354 (Fed. Cir. 2014) (stating that a provision that contains the terms “not elsewhere specified or included” is a basket provision, in which classification of a given product “is only appropriate if there is no tariff category that covers the merchandise more specifically”). Accordingly, we initially consider whether the subject merchandise is classifiable in heading 2710 HTSUS.

Heading 2710 covers oils obtained from geological sources. Note 2 to Chapter 27, HTSUS, states that:

References in heading 2710 to “petroleum oils and oils obtained from bituminous minerals” include not only petroleum oils and oils obtained from bituminous minerals, *but also similar oils*, as well as those consisting mainly of mixed unsaturated hydrocarbons, obtained by any process, provided that the weight of the nonaromatic constituents exceeds that of the aromatic constituents.

(Emphasis added).

This heading contains three distinct categories of merchandise: 1) “petroleum oils and oils obtained from bituminous minerals, other than crude;” 2) “preparations not elsewhere specified or included, containing by weight 70 percent or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations;” and 3) “waste oils.” *See BP Products North America Inc. v. United States*, 716 F. Supp. 2d 1291, at 1294–1295 (Ct. Int’l Trade 2010). Petroleum is defined as “an oily flammable bituminous liquid that may vary from almost colorless to black, occurs in many places in the upper strata of the earth, is a complex mixture of hydrocarbons with small amounts of other substances, and is prepared for use as gasoline, naphtha, or other products by various refining processes.”¹⁴ NEXBTL is not a petroleum oil or an oil obtained from bituminous minerals as it is a hydrocarbon oil derived from the hydrotreatment of vegetable oils

¹⁴ Merriam Webster Dictionary, available at <http://www.merriam-webster.com/dictionary/petroleum>.

and animal fats, rather than from geological sources. Furthermore, it cannot be characterized as a waste oil. However, Note 2 to Chapter 27 provides that the first two categories of the heading also covers “similar oils.” Consequently, the classification of R100 NEXBTL in heading 2710 HTSUS depends on whether the product is a “similar oil” to petroleum oils and oils obtained from bituminous minerals.

The term “similar oils” is not defined in the nomenclature. In *BP Products North America Inc. v. United States*, *supra*, the Court of Appeals for the Federal Circuit discussed the term “similar oils” when it addressed an argument regarding the aromatic constituency limitation contained in Note 2 to Chapter 27, HTSUS. The court stated:

Statutory Chapter Note 2 provides that:

References in heading 2710 to ‘*petroleum oils and oils obtained from bituminous minerals*’ include not only petroleum oils and oils obtained from bituminous minerals, but also similar oils, as well as those consisting mainly of mixed unsaturated hydrocarbons, obtained by any process, provided that the weight of the nonaromatic constituents exceeds that of the aromatic constituents.

Note 2 of Chapter 27, HTSUS. This aromatic constituency limitation, therefore, has no application to petroleum oils because the exclusion applies only to the last antecedent, “similar oils.” See *Finisar Corp. v. DirecTV Group, Inc.*, 523 F.3d 1323, 1336 (Fed Cir. 2008) (stating that the doctrine of the last antecedent provides that “[r]eferential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent, which consists of the last word, phrase, or clause that can be made an antecedent without impairing the meaning of the sentence” (internal quotation marks and citation omitted)).

Thus, the court relied on the grammatical construction of Note 2 to Chapter 27 to conclude that “similar oils” may not contain more aromatic than non-aromatic content by weight. There was no further discussion as to what qualifies as a “similar oil.” However, by this construction there is a limiting factor based on aromatic content. Because R100 contains no aromatic content, it is not precluded from qualifying as a “similar oil” within the meaning of Note 2 to Chapter 27.

In *Victoria’s Direct LLC, v. United States*, the Court of Appeals for the Federal Circuit stated that “[a]pplying the phrase ‘and similar articles’ to the merchandise at issue, then, requires determining whether the merchandise, considering all of its features, shares the unifying characteristics of the particular heading.”¹⁵ Thus, to be considered as “similar,” merchandise must have “unifying characteristics” to the enumerated product. Furthermore, 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

¹⁵ 769 F.3d 1102, 1110 (Fed. Cir. 2014)

authorities. *See Airflow Tech., Inc. v. United States*, 524 F.3d 1287, 1291 (Fed. Cir. 2008). The Meriam-Webster Dictionary defines the word “similar” as follows:¹⁶

Full Definition of *similar*

1. having characteristics in common: strictly comparable
2. alike in substance or essentials

In context, the term “similar oils” must mean oils that have characteristics in common with or are alike in substance or essentials to petroleum oils and oils of bituminous minerals. NEXBTL R100 renewable diesel is similar chemically to petroleum diesel inasmuch as both products are hydrocarbons.¹⁷ NEXBTL is so similar to petroleum diesel that it can be substituted directly for petroleum diesel without modification to a vehicle’s engine, which is evidenced by the fact that auto manufacturers such as Volvo have approved of its use in their engines. Furthermore, NEXBTL can be produced using existing refinery infrastructure that is used for conventional petroleum. NEXBTL may be transported and distributed in existing infrastructure such as pipelines and fuel dispensaries. Additional evidence of the similarity of renewable diesel and conventional diesel lies in the State Water Resources Control Board of California and CARB’s joint statement that “renewable diesel should be treated the same as conventional CARB diesel for all purposes.” Both products must meet the ASTM D975 standard for diesel at the retail level in order for them to be used. Consequently, we find that NEXBTL R100 has unifying characteristics with petroleum diesel and is alike in substance. Therefore, we find that NEXBTL is a “similar oil” to conventional petroleum diesel.

We note that NEXBTL R100, in its imported condition, may not meet the ASTM D975 criteria for lubricity. However, in this respect NEXBTL is similar to petroleum diesel. Petroleum diesel does not typically satisfy the lubricity requirement for the ASTM D975 standard at the point of manufacture because the lubricity additive is not added to petroleum diesel until just before it is delivered at the retail level. This is standard industry practice because diesel is transported using the same pipeline infrastructure that also carries jet fuel. The lubricity additive is a contaminant for jet fuel, therefore, it is not added to diesel until after it has been withdrawn from the pipeline. Consequently, ASTM D975 testing occurs at the retail level rather than prior to its importation. Similarly, NEXBTL R100 is mixed with an appropriate quantity of lubricity additive at the retail level. Both petroleum diesel and NEXBTL must meet the ASTM D975 standard in order for it to be used in the United States. ASTM D975 permits the inclusion of additives to hydrocarbon oils to enhance performance to meet the requirements, including lubricity, of the D975 standard. Consequently, the fact that NEXBTL requires the addition of lubricity additive post-importation in order to meet the ASTM D975 standard does not disqualify it from being defined as a “similar oil” to petroleum diesel classified under heading 2710 HTSUS.

LSSD noted several differences between petroleum diesel and the samples of R100. However, these differences do not change the fact that NEXBTL is interchangeable with petroleum diesel. For example, the cetane level of

¹⁶ Meriam-Webster Dictionary, available at <http://www.merriam-webster.com/dictionary/similar>.

¹⁷ As compared to biodiesel, which contains esters.

NEXBTL is higher than what is customary for petroleum diesel. However, the ASTM D975 specification only provides for a minimum cetane level (40) that the samples of NEXBTL exceeded (92.5). There was no fossil content or aromatic detected in the samples of NEXBTL. However, these differences are the result of the fact that the NEXBTL is derived from a different feedstock, vegetable and animal oils, than petroleum diesel. With respect to aromatic content, the ASTM D975 requires that product not exceed a maximum of 35% aromatic content by volume. NEXBTL contains no aromatic content, so the product is in compliance with the ASTM D975 specification for aromatic content. Note 2 to Chapter 27 does not require oils to be identical in order to be classified therein, they need only be “similar.” Because the differences identified do not affect the ability for NEXBTL to be used as a substitute for petroleum diesel, we find that they do not disqualify them from classification under heading 2710 HTSUS as “similar oils.”

The Explanatory Note to Chapter 38.26 provides further support for classification in heading 2710 HTSUS. EN 38.26, which covers biodiesel, states:

38.26 - Biodiesel and mixtures thereof, not containing or containing less than 70 % by weight of petroleum oils or oils obtained from bituminous minerals.

Biodiesel consists of mono-alkyl esters of fatty acids of various chain lengths, immiscible with water, with a high boiling point, low vapour pressure and a viscosity similar to that of diesel oil produced from petroleum. Biodiesel is typically made by a chemical process called transesterification, whereby the fatty acids in oils or fats react with an alcohol (usually methanol or ethanol) in the presence of a catalyst to form the desired esters.

* * *

This heading **excludes**:

(a) Mixtures containing, by weight, 70 % or more of petroleum oils or of oils obtained from bituminous minerals (heading 27.10).

(b) *Products derived from vegetable oils which have been fully deoxygenated and consist only of aliphatic hydrocarbon chains (heading 27.10).*

(Emphasis added).

NEXBTL is not biodiesel as biodiesel contains a different chemical structure, is produced via a different process and is subject to its own ASTM specification. However, the EN provides that products derived from vegetable oils which have been fully deoxygenated and consist only of aliphatic hydrocarbon chains are excluded from classification under heading 38.26, and that these products should be classified in heading 27.10. NEXBTL is fully deoxygenated and consists only of aliphatic hydrocarbon chains, and may be produced either from vegetable or animal oils. The exclusion of the EN states that products meeting this description should be classified in heading 27.10. Because NEXBTL meets the definition of the product described in the exclusion, the EN suggests that it should be classified in heading 27.10.

Based on the foregoing, we find that NEXBTL R100 is a “similar oil” within the meaning of Note 2 to Chapter 27 HTSUS and is *prima facie* classifiable in heading 2710. Consequently, classification in heading 3824 HTSUS is precluded.

HOLDING:

By application of GRI 1, NEXBTL is classified in heading 2710 HTSUS, and specifically in subheading 2710.19.45, which provides for “Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70 percent or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils: Other: Mixtures of hydrocarbons not elsewhere specified or included, which contain by weight not over 50 percent of any single hydrocarbon compound.” The column one, general rate of duty is 10.5¢/bbl.

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 N250961 is hereby **REVOKED**

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

Sincerely,

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



19 CFR PART 177

**REVOCATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A CAM FASTENER AND
DOWEL COMPOSED OF ZINC**

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

ACTION: Notice of revocation of one ruling letter, and of revocation of treatment relating to the tariff classification of a cam fastener and dowel composed of zinc.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning tariff classification of a cam fastener and dowel composed of zinc 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. 34, on August 24, 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 January 30, 2017.

FOR FURTHER INFORMATION CONTACT: Reema G. Radwan, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325-7703.

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. 34, on August 24, 2016, proposing to revoke one ruling letter pertaining to the tariff classification of a cam fastener and dowel composed of zinc. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) N259010, dated December 3, 2014, as well as any rulings on this merchandise which may exist, but have not been specifically

identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY N259010, CBP classified a cam fastener and dowel composed of zinc in heading 9403, HTSUS, specifically in subheading 9403.90.80, HTSUS, which provides for "Other furniture and parts thereof." CBP has reviewed NY N259010 and has determined the ruling letter to be in error. It is now CBP's position that the cam fastener and dowel composed of zinc are properly classified, by operation of GRIs 1 and 6, in heading 7907, HTSUS, specifically in subheading 7907.00.60, HTSUS, which provides for "Other articles of zinc."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N259010 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H263900, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: October 19, 2016

GREG CONNOR
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H263900

October 19, 2016

CLA-2 OT:RR:CTF:TCM H263900 RGR

CATEGORY: Classification

TARIFF NO.: 7907.00.60

MR. CHRISTOPHE BEAUREGARD
CUSTOMS COMPLIANCE DEPARTMENT
RICHELIEU HARDWARE LTD.
7900 HENRI-BOURASSA BLVD. WEST
ST-LAURENT, QC H4S 1V4 CANADA

RE: Request for reconsideration of NY N259010; Tariff classification of a cam fastener and a dowel composed of zinc

DEAR MR. BEAUREGARD:

This is in response to your letter, on behalf of Richelieu Hardware Ltd. (Richelieu), dated January 5, 2015, in which you request reconsideration of New York Ruling Letter (NY) N259010, dated December 3, 2014. Specifically, you request reconsideration on the tariff classification of a cam fastener and dowel made of zinc.

In NY N259010, the National Commodity Specialist Division of U.S. Customs and Border Protection (CBP) classified the cam fastener and dowel under subheading 9403.90.8041, Harmonized Tariff Schedule of the United States (HTSUS), which provides for, in pertinent part: “Other furniture and parts thereof: Parts: Other: Other: Other. Other.” Pursuant to your reconsideration request, dated January 5, 2015, we have reviewed NY N259010 and find it to be in error.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the CUSTOMS BULLETIN, Volume 50, No. 34, on August 24, 2016, proposing to revoke NY N259010, and any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

FACTS:

In NY N259010, based on a sample submitted by Richelieu, CBP described the cam fastener and dowel as entirely made of zinc, with the shaft of the dowel encased in plastic. The ruling states that the cam fits into a hole, usually in a wooden piece of furniture, and that the dowel also fits into a hole in a second piece of unassembled furniture that is placed perpendicular to the first piece. The dowel locks into place by the cam when the cam is tightened through a screwing action. The cam and dowel are used to fasten or bind parts of furniture together and may also be used to fasten other items such as wall shelving units.

ISSUE:

Whether the instant cam fastener and dowel are classified under subheading 9403.90.80 as “[o]ther furniture and parts thereof: [p]arts: [o]ther,” or under subheading 7907.00.60 as “[o]ther articles of zinc: [o]ther.”

LAW AND ANALYSIS:

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

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. 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 HTSUS headings under consideration are as follows:

9403: Other furniture and parts thereof:

7907: Other articles of zinc:

Chapter 94, Note 1(d) states that this chapter does not cover “[p]arts of general use as defined in Note 2 to Section XV, of base metal (section XV).” Section XV, Note 2(a) states that “[t]hroughout the tariff schedule, the expression ‘parts of general use’ means: [a]rticles of heading 7307, 7312, 7315, 7317 or 7318 and similar articles of other base metals.” Section XV, Note 3 also states that throughout the tariff schedule, the expression “base metals” includes zinc.

Accordingly, we must determine whether the instant cam fastener and dowel are classifiable in **Section XV** as “parts of **general use**” before we may address whether the instant articles are classifiable in Chapter 94, HTSUS, as other furniture and parts thereof. In relevant part, **Section XV**, Note 2, defines “parts of **general use**” to mean those articles classifiable in heading 7307, 7312, 7317, 7318 and similar articles of base metals. Heading 7318, HTSUS, includes screws, bolts and other fasteners, and similar articles of iron or steel. The subject cam fastener and dowel are made from zinc, which is a base metal pursuant to Section XV, Note 3. Thus, reading these Notes together, if we determine that the cam fastener and dowel are articles similar to fasteners of heading 7318, HTSUS, it cannot be classified as a “part” under heading 9403, HTSUS.

Heading 7318, HTSUS, covers screws, bolts, nuts, coach screws, screw hooks, rivets, coffers, coffer pins, washers (including spring washers) and similar articles, of iron or steel. In *Rocknel Fasteners v. the United States*, the Court of International Trade set forth the common and commercial meaning of bolts and screws: A bolt as “an externally threaded fastener designed for insertion through holes in assembled parts, and is normally intended to be tightened or released by torquing a nut. [A] screw [is defined] as “an externally threaded fastener capable of being inserted into holes in assembled parts, of mating with a preformed internal thread or forming its own thread, and of being tightened or released by torquing the head.” *See Rocknel Fastener v. United States*, 24 C.I.T. 900 (Ct. Int’l Trade 2000). We also note that in our past rulings, we have classified steel cam fasteners under heading 7318. For example, in Headquarters Rulings Letter (HQ) 950862, dated May

1, 1992, legacy Customs determined that a steel cam fastener, tightened and released by torque, had the primary design characteristics of a screw and is provided for in heading 7318. *See also*, NY I82967 (June 19, 2002); NY H86193 (Dec. 19, 2001); NY E84425 (July 13, 1990); NY D83927 (Nov. 12, 1998); NY D83177 (Oct. 14, 1998).

Heading 7318, HTSUS, covers screws, bolts, nuts, coach screws, screw hooks, rivets, coffer, coffer pins, washers (including spring washers) and similar articles, of iron or steel. In *Fasteners v. the United States*, the Court of International Trade set forth the common and commercial meaning of bolts and screws: A bolt as “an externally threaded fastener designed for insertion through holes in assembled parts, and is normally intended to be tightened or released by torquing a nut. [A] screw [is defined] as “an externally threaded fastener capable of being inserted into holes in assembled parts, of mating with a preformed internal thread or forming its own thread, and of being tightened or released by torquing the head.” *See Rocknel Fastener v. United States*, 24 C.I.T. 900 (Ct. Int’l Trade 2000). We also note that in our past rulings, we have classified steel cam fasteners under heading 7318. For example, in Headquarters Rulings Letter (HQ) 950862, dated May 1, 1992, legacy Customs determined that a steel cam fastener, tightened and released by torque, had the primary design characteristics of a screw and is provided for in heading 7318. *See also*, NY I82967 (June 19, 2002); NY H86193 (Dec. 19, 2001); NY E84425 (July 13, 1990); NY D83927 (Nov. 12, 1998); NY D83177 (Oct. 14, 1998).

The cam fastener at issue fits into a hole, usually in a wooden piece of furniture, while the dowel also fits into a hole of a second piece of unassembled furniture that is placed perpendicular to the first piece. By tightening the cam through a screwing action while placing the unassembled parts of furniture perpendicular to each other, the dowel is locked into place, thereby fastening the two parts together. In addition to fastening parts of furniture together, the subject cam fastener and dowel can be used to fasten other items, such as well shelving units. The subject cam fastener and dowel are similar to steel cam fasteners that we have classified as “parts of general use” under heading 7318, HTSUS, in that they perform like steel cam fasteners, except that they are made of zinc instead of steel. We further note that in addition to fastening parts of furniture together, the cam fastener and dowel may be used to fasten other items such as wall shelving units. Thus, the subject merchandise is not designed for a specific article and meets the definition of a “part of general use” as described in General Note 2(a) to Section XV, HTSUS. According to General Explanatory Note (C), Section XV, HTSUS:

[P]arts of general use (as defined in Note 2 to this section) presented separately are not considered as parts of articles, but are classified in the headings of this Section as appropriate to them. This would apply, for example, in the case of bolts specialized for central heating radiators or springs specialized for motor cars. The bolts would be classified in heading 73.18 (as bolts) and not in heading 73.22 (as parts of central heating radiators). The springs would be classified in heading 73.20 (as springs) and not in heading 87.08 (as parts of motor vehicles).

Reading the above General EN together with General Note 1(d) to Chapter 94, HTSUS, which states that Chapter 94 does not cover “parts of general use, as defined in Note 2 to Section XV, of base metal. . . ,” we find that the cam fastener and dowel are excluded from classification under heading 9403,

HTSUS, which covers parts of furniture. Further, Section XV requires that parts of general use made of base metals are classified according to their constituent materials. Thus, the proper classification for the cam fastener and dowel made of zinc is heading 7907, HTSUS, as “[o]ther articles of zinc.”

Therefore, upon reconsideration, CBP has determined that the classification in NY N259010 of the subject cam fastener and dowel is revoked.

HOLDING:

Pursuant to GRIs 1 and 6, the cam fastener and dowel made of zinc is classified under heading 7907, HTSUS, and specifically provided for under subheading 7907.00.60, HTSUS, as “[o]ther articles of zinc: [o]ther.” The general, column one, rate of duty is 3% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N259010, dated December 3, 2014, is REVOKED.

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

Sincerely,

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177

**REVOCATION OF FOUR RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF PHOTOMASK PELLICLES**

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

ACTION: Notice of revocation of four ruling letters and revocation of treatment relating to the tariff classification of photomask pellicles.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking four ruling letters concerning tariff classification of photomask pellicles 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. 33, on August 17, 2016. One comment opposing the proposed revocation was received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 30, 2017.

FOR FURTHER INFORMATION CONTACT: Nicholai C. Diamond, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325-0292.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 50, No. 33, on August 17, 2016, proposing to revoke four ruling letters pertaining to the tariff classification of photomask pellicles. As stated in the proposed notice, this action will cover Headquarters Ruling Letter (“HQ”) H055635, dated November 23, 2009, HQ H055636, dated November 23, 2009, HQ H031396, dated January 5, 2010, and New York Ruling (“NY”) N121378, dated September 30, 2010, as well as any rulings on this merchandise which may exist, but have not been specifically identi-

fied. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the four 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 HQ H055635, HQ H055636, HQ H031396, and NY N121378, CBP classified photomask pellicles in heading 8486, HTSUS, specifically in subheading 8486.90.00, HTSUS, which provides for "Machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; machines and apparatus specified in Note 9 (C) to this chapter; parts and accessories: Parts and accessories." CBP has reviewed HQ H055635, HQ H055636, HQ H031396, and NY N121378, and has determined the ruling letters to be in error. It is now CBP's position that photomask pellicles are properly classified, by operation of GRIs 1 and 3(b), in heading 3926, HTSUS, specifically in subheading 3926.90.99, HTSUS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking HQ H055635, HQ H055636, HQ H031396, and NY N121378, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H266971, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: October 26, 2016

ALLYSON MATTANAH
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H266871

October 26, 2016

CLA-2 OT:RR:CTF:TCM H266971 NCD

CATEGORY: Classification

TARIFF NO.: 3926.90.9995

DEMETRIUS D. JONES
YUSEN GLOBAL LOGISTICS
691 AIRPORT S. PARKWAY
COLLEGE PARK, GA 30349

Re: Revocation of HQ H055635, dated November 23, 2009, HQ H055636, dated November 23, 2009, HQ H031396, dated January 5, 2010, and NY N121378, dated September 30, 2010; Classification of photomask pellicles

DEAR MS. JONES:

This is in reference Headquarters Ruling Letter (HQ) H055635, issued to you on November 23, 2009, involving classification of photomask pellicles under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed HQ H055635, determined that it is incorrect, and, for the reasons set forth below, are revoking that ruling.

We have also reviewed HQ H055636, dated November 23, 2009, HQ H031396, dated January 5, 2010, and New York Ruling Letter (NY) N121378, dated September 30, 2010, all of which similarly involve classification of photomask pellicles under the HTSUS. As with HQ H055635, we have determined that those rulings are incorrect and are accordingly revoking them.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published in the *Customs Bulletin*, Vol. 50, No. 33, on August 17, 2016. One comment opposing the proposed action, submitted by Intel Corp. (“Intel”), was received. Intel’s comment will be addressed in this decision.

FACTS:

At issue in HQ H055635, HQ H055636, HQ H031396, and NY N121378 alike are photomask pellicles, which consist of ultra-thin plastic films mounted to frames of various materials. See SEMICONDUCTOR EQUIP. AND MATERIALS INT’L, SEMI INTERNATIONAL STANDARDS: COMPILATION OF TERMS 172 (2008) (defining “pellicle”). The frames of the pellicles at issue in HQ H055635 and NY N121378 are of aluminum alloy, and the frames of the pellicles at issue in HQ H055636 are of plastic. The material of the pellicle frames in HQ H031396 is not identified in the ruling, but our research indicates that this material is aluminum alloy. See U.S. Patent No. 5,834,143 (issued Nov. 10, 1998).

Pellicles function as protective covers for photomasks, which are quartz substrates onto which unique circuitry patterns have been etched. When placed in a photolithography device such as a stepper or aligner, a photomask filters ultraviolet light projected by the device onto an underlying wafer, to the effect that the patterns displayed on the wafer correspond to those etched onto the photomask. These patterns are subsequently etched into the wafer, which is then incorporated into an integrated circuit.

A photomask pellicle is effectively joined with a photomask by the adhesion of its frame to the photomask substrate (see Figure 1 below). When so attached, a pellicle seals out dust and other contaminants from the photo-

mask, thereby preventing potential distortion of the patterns projected upon the underlying wafers. Its optical properties are such that most of the ultra-violet light projected by the photolithography device passes through evenly, and only a minimal portion of this light is reflected. Notably, the pellicle attaches only to the photomask, and is not joined with the photolithography equipment with which the photomask is used.

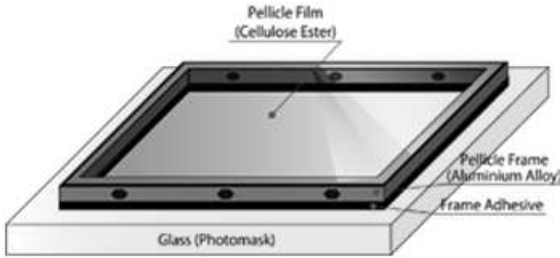


Figure 1¹

The photomask pellicles at issue in HQ H055635, HQ H055636, HQ H031396, and NY N121378 were classified by U.S. Customs and Border Protection (CBP) in heading 8486, HTSUS. They were specifically classified in subheading 8486.90.00, HTSUS, which provides for: “Machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; machines and apparatus specified in Note 9 (C) to this chapter; parts and accessories: Parts and accessories.”

ISSUE:

Whether the subject photomask pellicles are classified as “other articles of plastic” in heading 3926, HTSUS, as “other articles of aluminum” in heading 7616, HTSUS, or as “parts of machines and apparatus of a kind used solely for the manufacture of electronic integrated circuits” in heading 8486, HTSUS.

LAW AND ANALYSIS:

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order. GRI 3 governs the classification of goods that are *prima facie* classifiable in two or more headings, including, *inter alia*, composite goods. GRI 3(b) provides, in relevant part, that “composite goods consisting of different materials or made up of different compo-

¹ Finex Co, Ltd., Pellicle Remount, <http://www.finex-tech.com.tw/english/service/service01.htm> (last visited May 17, 2016).

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

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

The 2016 HTSUS provisions under consideration are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.99	Other
<hr/>	
7616	Other articles of aluminum:
	Other:
7616.99	Other:
7616.99.50	Other
<hr/>	
8486	Machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; machines and apparatus specified in Note 9 (C) to this chapter; parts and accessories:
8486.90.00	Parts and accessories

As stated above, the subject photomask pellicles in the rulings at issue were classified in heading 8486, HTSUS, which provides, *inter alia*, for parts of machines and apparatus of a kind used solely for the manufacture of electronic integrated circuits. EN 84.86 provides, in relevant part, as follows:

(B) **MACHINES AND APPARATUS FOR THE MANUFACTURE OF SEMICONDUCTOR DEVICES OR OF ELECTRONIC INTEGRATED CIRCUITS**

This group covers machines and apparatus for the manufacture of semiconductor devices or of electronic integrated circuits such as:

(4) **Lithography equipment**, which transfer the circuit designs to the photoresist-coated surface of the semiconductor wafer such as:

(b) **Equipment for exposing the photoresist coated wafer with circuit design** (or a part thereof):

(i) **Using a mask or reticle and exposing the photoresist to light** (generally ultraviolet) or, in some instances, X-rays:

- (c) **Scanning aligners**, which use projection techniques to expose a continuously moving slit across the mask and wafer.
- (d) **Step and repeat aligners**, which use projection techniques to expose the wafer a portion at a time. Exposure can be by reduction from the mask to the wafer or 1:1. Enhancements include the use of an excimer laser.

(E) PARTS AND ACCESSORIES

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), the heading includes parts and accessories for the machines and apparatus of this heading. Parts and accessories falling in this heading thus include, *inter alia*, work or tool holders and other special attachments which are solely or principally used for the machines and apparatus of this heading.

Additionally, Statistical Note 1 to Section XVI states, in pertinent part: “Provisions for semiconductor manufacturing and testing machines and apparatus cover products for...the processing of such materials into semiconductor devices...” It describes “Lithography equipment” as articles “used to transfer the circuit designs to the photoresist coated surface of the semiconductor wafer,” and lists examples of this equipment that are identical to those included in EN 84.86.

The term “part” is not defined in the HTSUS. In the absence of a statutory definition, the courts have fashioned two distinct but reconcilable tests for determining whether a particular item qualifies as a “part” for tariff classification purposes. *Bauerhin Techs. Ltd. Pshp. v. United States*, 110 F.3d 774, 779 (Fed. Cir. 1997). Under the test initially promulgated in *United States v. Willoughby Camera Stores, Inc. (“Willoughby”)*, 21 C.C.P.A. 322, 324 (1933), an imported item qualifies as a part only if can be described as an “integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article.” *Bauerhin*, 110 F.3d at 779. Pursuant to the test set forth in *United States v. Pompeo*, 43 C.C.P.A. 9, 14 (1955), a good is a “part” if it is “dedicated solely for use” with a particular article and, “when applied to that use...meets the Willoughby test.” *Bauerhin*, 110 F.3d at 779 (citing *Pompeo*, 43 C.C.P.A. at 14); *Ludvig Svensson, Inc. v. United States*, 63 F. Supp. 2d 1171, 1178 (Ct. Int’l Trade 1999) (holding that a purported part must satisfy both the *Willoughby* and *Pompeo* tests).

Under both of the above-described tests, a part must be “joined” to an article, in some way or another, and “integral” to that article’s continued use. See *Rollerblade, Inc. v. United States*, 282 F.3d 1349, 1354 (Fed. Cir. 2002) (noting, in concluding that inline skating pads are not parts, that “the roller skates work in the same manner whether the skater wears the protective gear or not”). Thus, the pellicles can only be described as parts of heading 8486, HTSUS, if they attach to, and enable the operation of, machines and apparatus of a kind used solely for the manufacture of electronic integrated circuits. See EN 84.86 (“Parts and accessories falling in this heading thus include, *inter alia*, work or tool holders and other special *attachments*.” (emphasis added)). EN 84.86 states that such machines or apparatus include lithography equipment, such as scanners and steppers, used to transfer circuit designs from a photomask to an underlying wafer. However, the EN

does not indicate that photomasks or other articles which are incapable of actively performing a particular function, and are instead passively manipulated, can be described as such machines or apparatus. For this reason and several others, we determined in HQ H264336, dated March 15, 2016, that photomasks themselves cannot be described as machines or apparatus of heading 8486. *See also* HQ H264769, dated June 28, 2016 (affirming and adopting the rationale set forth in HQ H264336 in classifying photomask blanks in heading 3701, HTSUS, rather than heading 8486, HTSUS).

Here, the subject photomask pellicles are not actually “joined” with scanners, steppers, or any other kind of equipment enumerated in EN 84.86. Rather, they are attached to photomasks, which, as we held in HQ H264336, *supra*, are not machines or apparatus of heading 8486. Moreover, the pellicles certainly are not “integral” to the operation of photolithography equipment, insofar as their removal from this equipment, along with the photomasks to which they are attached, does not inhibit or cease the equipment’s functioning. As we noted in HQ H264336, *supra*, these machines continue to project light after a given photomask is removed, and replacement of photomasks may in fact constitute a necessary step in the production cycle for a multi-layered integrated circuit. As such, the subject photomask pellicles cannot be described as parts of machines and apparatus of a kind used solely for the manufacture of electronic integrated circuits. They consequently fall outside the scope of heading 8486, HTSUS.

In its comment, Intel asserts that the instant photomask pellicles are in fact classifiable in heading 8486 as parts of machines of the heading. For support, Intel cites HQ H267349, dated May 2, 2016, in which CBP classified antenna shields in heading 9017, HTSUS, as parts of geophysical instruments. However, because photomask pellicles are not substantially similar to antenna shields, HQ H267349 is not binding for purposes of the instant decision. Moreover, contrary to Intel’s assertions, the antenna shields at issue in HQ H267349 cannot be analogized to photomask pellicles. Whereas the former are physically integrated into geophysical instruments, and are indispensable to the continual transmission of data among the instruments’ components, the latter are not actually joined to any photolithography equipment. As discussed above, they are instead joined only to photomasks, whose removal from scanners or steppers does not inhibit the capacity of these machines to project light onto other photomasks in the course of a single integrated circuit production cycle.

Intel also contends that CBP, in determining that the photomask pellicles are excluded from heading 8486, HTSUS, has adopted an impermissibly narrow interpretation of the heading. Citing *Midwest of Cannon Falls, Inc. v. United States*, 122 F.3d 1423 (Fed. Cir. 1997), and *Otter Products LLC v. United States*, No. 15–1866 (Fed. Cir. August 24, 2016), Intel states that “it is improper to limit the scope of a tariff item to the examples listed in the Explanatory Notes.” However, we do not in fact construe heading 8486 as restricted in scope to the articles identified by name in EN 84.86. It is instead our position, as explained in HQ H267349, *supra*, that the heading applies not only to the named exemplars, but also to articles which similarly perform active functions in the production of electronic integrated circuits and other materials. This interpretation is supported by the heading’s drafting history, EN 84.86, and Statistical Note 1 to Section XVI, all of which indicate that articles of the heading share the underlying characteristic of active function-

ality. *See id.* As the U.S. Court of Appeals for the Federal Circuit (CAFC) has held, the application of ENs in this manner, i.e., to identify requisite characteristics of articles classifiable in a particular heading, is entirely appropriate. *See LeMans Corp. v. United States*, 660 F.3d 1320–21 (Fed. Cir. 2011). As such, because photomasks lack the active functionality required for classification in heading 8486, HTSUS, the instant pellicles cannot be described as parts of articles classified in the heading.

Intel asserts that even if the photomask pellicles do not constitute a “part” for purposes of heading 8486, HTSUS, they can alternatively be described as an “accessory” classifiable in the heading. However, in *Rollerblade, Inc. v. United States*, which Intel itself cites for support, the CAFC held that an accessory “must bear a direct relationship to the primary article that it accessorizes,” insofar as the former directly affects the operation of the latter. 282 F.3d at 1352–53; *see also* HQ H068286, dated November 19, 2010 (“Accessories...must...somehow contribute to the effectiveness of the principal article (e.g., facilitate the use or handling of the principal article, widen the range of its uses, or improve its operation).”). While the instant pellicles ensure the surface integrity of the photomasks to which they are attached, they do not improve the capacity of scanners or steppers to project light onto photomasks. Nor do they enhance or otherwise affect the operation of any other article that qualifies as a machine or apparatus of heading 8486. Accordingly, we remain unconvinced that the instant pellicles are classifiable in heading 8486.

We therefore consider heading 3926, which provides, *inter alia*, for “other articles of plastic.” The General EN to Chapter 39 states, in pertinent part, as follows:

Plates, sheets, film, foil and strip of heading 39.20 or 39.21

The expression “plates, sheets, film, foil and strip”, used in headings 39.20 and 39.21 is defined in Note 10 to the Chapter.

Such plates, sheets, etc., whether or not surface-worked (including squares and other rectangles cut therefrom), with ground edges, drilled, milled, hemmed, twisted, framed or otherwise worked or cut into shapes other than rectangular (including square), are generally classified in **headings 39.18, 39.19 or 39.22 to 39.26.**

EN 39.26 states, in pertinent part, as follows:

This heading covers articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter) or of other materials of headings 39.01 to 39.14.

According to the above-cited ENs, plastic articles, including plastic frames and plastic film that has been “worked” by virtue of having been framed, are classified in heading 3926 if not described elsewhere in the HTSUS. *Cf.* HQ 964780, dated January 31, 2002 (classifying plastic sheets with diagonal cuts in heading 3926); NY N106616, dated June 7, 2010 (classifying protective plastic iPad frame in heading 3926); and NY 802111, dated October 3, 1994 (classifying plastic overhead transparencies with single rounded edges in heading 3926). As stated above, the photomask pellicles at issue consist of thin plastic films mounted to plastic or aluminum frames. The plastic film and plastic frames cannot be classified anywhere but in heading 3926,

HTSUS, and are therefore articles of that heading. In effect, the pellicles at issue in HQ H055636, the frames of which are plastic, are articles of plastic that are *prima facie* classified in heading 3926, HTSUS. However, because the pellicles of HQ H055635, HQ H031396, and NY N121378 contain non-plastic materials, in the form of the aluminum frames, they are described only in part by heading 3926, HTSUS, and are therefore not classifiable there solely by reference to GRI 1.

We accordingly consider heading 7616, HTSUS, which provides for “other articles of aluminum.” EN 76.16 provides, in pertinent part, as follows:

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

Similar to heading 3926, HTSUS, heading 7616 covers aluminum articles, including frames, that do not fall within more specific headings of the HTSUS. *See* NY N186281, dated October 12, 2011; NY N139353, dated January 13, 2011; and NY N044024, dated November 20, 2008 (all classifying aluminum frames in heading 7616). In HQ H055636, HQ H031396, and NY N121378, the pellicles at issue consist of plastic films mounted to aluminum frames. These frames are not described elsewhere within Chapter 73 or the HTSUS, and are consequently articles of heading 7616, HTSUS. However, because the pellicles in those rulings also contain non-aluminum material, in the form of the plastic films, they are described only in part by heading 7616. They therefore cannot be classified there solely by application of GRI 1.

As such, the pellicles of HQ H055636, HQ H031396, and NY N121378 are classified, pursuant to GRI 3(b), “as if they consisted of the material...which gives them their essential character.” *See Home Depot USA, Inc. v. United States*, 491 F.3d 1334, 1336 (Fed. Cir. 2007). With respect to “essential character” for purposes of GRI 3(b), EN (VIII) to GRI 3(b) states as follows:

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

While application of the “essential character test” requires a fact-intensive analysis, courts have consistently applied some or all of the factors listed in the above-cited EN in identifying various articles’ essential characters. *See Alcan Food Packaging (Shelbyville) v. United States*, 771 F.3d 1364, 1367 (Fed. Cir. 2014); *Home Depot USA, Inc. v. United States*, 491 F.3d 1334, 1337 (Fed. Cir. 2007). More recent court decisions have emphasized the importance of the last of these listed factors, i.e., the role of the constituent materials or components in relation to the use of the goods, in determining essential character. *See Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1337–1338 (Ct. Int’l Trade 2005); *Conair Corp. v. United States*, 29 C.I.T. 888 (2005); *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d 1278, 1295–1356 (Ct. Int’l Trade 2006), *aff’d* 491 F.3d 1334 (Fed. Cir. 2007). Consistent with this, CBP has previously ruled, with all other factors being equal, that a composite good’s essential character is imparted by the material that most directly enables the good’s promoted use, rather than any materials that serve structural or support functions. *See, e.g.*, HQ H250830, dated February 22, 2015 (finding that a camping tent’s essential character was imparted by its textile canopy, rather than its steel frame, because only the former could

“provide temporary shade and minimal cover for users in fair weather”); and HQ H056243, dated September 2, 2009 (ruling that the steel wire, rather than the plastic frame, of a clothing hanger imparted the article’s essential character because the former “performs the principal function of the device”).

Here, the relative bulks, weights, and values of the plastic films and aluminum frames in HQ H055636, HQ H031396, and NY N121378 are unknown. In the absence of such information, and in view of the courts’ recent treatment of GRI 3(b), the pellicles’ “essential character” is imparted by the material that plays the greatest role in relation to the pellicles’ use. As stated above, the pellicles’ sole use is as protective sealants for photomasks that prevent distortion of the circuitry patterns projected onto the underlying photomasks. The plastic film functions as the actual sealant for this end, repelling dust and other contaminants from the photomask’s surface. In contrast, the aluminum frame secures the plastic film to the photomask but contributes only minimally, if at all, to the protection of the photomask. Therefore, consistent with our analyses in HQ H250830 and HQ H056243, we conclude that the plastic film imparts the essential character of the pellicles. As a result, the pellicles at issue in HQ H055636, HQ H031396, and NY N121378 are classified in heading 3926, HTSUS.²

Intel asserts that application of GRI 3(b) is inappropriate in this case because classification of the instant pellicles can be resolved by reference to GRI 3(a), pursuant to which “[t]he heading which provides the most specific description shall be preferred to headings providing a more general description.” Intel specifically contends that because heading 8486, HTSUS, contains a more specific description than does heading 3926, HTSUS, classification in the former is appropriate. However, the pellicles cannot be classified in heading 8486, as explained above, and are not described in whole by any other heading of the HTSUS. As such, GRI 3(a) does not have application in the instant case, and reliance on GRI 3(b) to determine the pellicles’ classification is both appropriate and necessary.

HOLDING:

By application of GRIs 1 and 3(b), the instant photomask pellicles are classified in heading 3926, HTSUS, specifically in subheading 3926.90.9995, HTSUS (Annotated), which provides for: “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other: Other.” The column one, general rate of duty is 5.3% *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:

HQ H055635, dated November 23, 2009, HQ H055636, dated November 23, 2009, HQ H031396, dated January 5, 2010, and NY N121378, dated September 30, 2010 are hereby REVOKED in accordance with the above analysis.

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

² We note, however, that if entered unframed, the plastic film may be classified by application of GRI 1 in headings of Chapter 39 other than heading 3926, such as, for example, headings 3920 or 3921, HTSUS.

Sincerely,

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

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Cramer Hegeman
KM ACT Corp.
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**COPYRIGHT, TRADEMARK, AND TRADE NAME
RECORDATIONS**

(No. 10 2016)

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

SUMMARY: The following copyrights, trademarks, and trade names were recorded with U.S. Customs and Border Protection in October 2016. The last notice was published in the CUSTOMS BULLETIN on October 19, 2016.

Corrections or updates may be sent to: Intellectual Property Rights Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street, NE., 10th Floor, Washington, D.C. 20229–1177, or via email at iprrquestions@cbp.dhs.gov.

FOR FURTHER INFORMATION CONTACT: LaVerne Watkins, Paralegal Specialist, Intellectual Property Rights Branch, Regulations and Rulings, Office of Trade, at (202) 325–0095.

CHARLES R. STEUART
*Chief, Intellectual Property Rights Branch
Regulations and Rulings
Office of Trade*

CBP IPR RECORDATION — OCTOBER 2016

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
COP 16-00155	10/05/2016	10/05/2036	Govino 4-Pack Tbte	govino, LLC	No
COP 16-00156	10/05/2016	10/05/2036	GOVINO Squeeze	govino, LLC	No
COP 16-00157	10/12/2016	10/12/2036	SAMUS	Nintendo of America Inc.	No
COP 16-00158	10/12/2016	10/12/2036	Army Man Bottle Opener	One Hundred 80 degrees design LLC.	No
COP 16-00159	10/12/2016	10/12/2036	ZERO SUIT SAMUS amiibo Figure and Commercial Packaging.	Nintendo of America Inc.	No
COP 16-00160	10/13/2016	10/13/2036	Angry Birds Movie Red Character	Rovio Animation Oy	No
COP 16-00161	10/13/2016	10/13/2036	Angry Birds Movie Chuck Character	Rovio Animation Oy	No
COP 16-00162	10/13/2016	10/13/2036	Angry Birds Movie Bomb Character	Rovio Animation Oy	No
COP 16-00163	10/13/2016	10/13/2036	Angry Birds Movie Terence Character	Rovio Animation Oy	No
COP 16-00164	10/13/2016	10/13/2036	Angry Birds Movie Matilda Character	Rovio Animation Oy	No
COP 16-00165	10/13/2016	10/13/2036	Angry Birds Movie Mighty Eagle Character	Rovio Animation Oy	No
COP 16-00166	10/13/2016	10/13/2036	Angry Birds Movie Pig Character	Rovio Animation Oy	No
COP 16-00167	10/14/2016	10/14/2036	Angry Birds Movie Purple Hatchlings Character.	Rovio Animation Oy.	No
COP 16-00168	10/14/2016	10/14/2036	Angry Birds Movie Stella Character.	Rovio Animation Oy.	No
COP 16-00169	10/14/2016	10/14/2036	Angry Birds Movie Bubbles Character.	Rovio Animation Oy.	No
COP 16-00170	10/14/2016	10/14/2036	Angry Birds Movie Hal Character.	Rovio Animation Oy.	No
COP 16-00171	10/14/2016	10/14/2036	Angry Birds Movie Blues Character.	Rovio Animation Oy.	No
COP 16-00172	10/14/2016	10/14/2036	Angry Birds Movie Coral Hatchlings Character.	Rovio Animation Oy.	No
COP 16-00173	10/14/2016	10/14/2036	Angry Birds Movie Green Hatchlings Character.	Rovio Animation Oy.	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tm/Tm	Owner Name	GM Restricted
COP 16-00174	10/14/2016	10/14/2036	Angry Birds Movie Peach Hatchlings Character.	Rovio Animation Oy.	No
COP 16-00175	10/20/2016	07/19/2017	MISTI	My Sweet Petunita, Inc.	No
COP 16-00176	10/31/2016	10/31/2036	Rite Lite JRN-100.	Rite Lite Ltd.	No
COP 16-00177	10/31/2016	10/31/2036	Acroiris	Annu Radha Sharma	No
TMK 00-00112	10/04/2016	01/08/2027	DESIGN ONLY (Chinese Characters)	MULTI ACCESS LIMITED	No
TMK 00-00112	10/04/2016	01/08/2027	DESIGN ONLY (Chinese Characters)	MULTI ACCESS LIMITED	No
TMK 00-00296	10/31/2016	05/20/2026	DESIGN ONLY (Spider Design)	Spyderco, Inc.	No
TMK 00-00296	10/31/2016	05/20/2026	DESIGN ONLY (Spider Design)	Spyderco, Inc.	No
TMK 00-00297	10/31/2016	07/02/2026	SPYDERCO	SPYDERCO, INC.	No
TMK 00-00297	10/31/2016	07/02/2026	SPYDERCO	SPYDERCO, INC.	No
TMK 02-00298	10/31/2016	01/08/2027	S and Design	THE BASEBALL CLUB OF SEATTLE, LLLP	No
TMK 02-00298	10/31/2016	01/08/2027	S and Design	THE BASEBALL CLUB OF SEATTLE, LLLP	No
TMK 02-00533	10/12/2016	11/13/2026	MAGIC	UNIVERSAL SEWING SUPPLY, INC.	No
TMK 02-00533	10/12/2016	11/13/2026	MAGIC	UNIVERSAL SEWING SUPPLY, INC.	No
TMK 02-01019	10/31/2016	04/06/2027	FIBERCON	WYETH HOLDINGS LLC	No
TMK 02-01019	10/31/2016	04/06/2027	FIBERCON	WYETH HOLDINGS LLC	No
TMK 04-00382	10/19/2016	12/22/2023	CHRISTIAN DIOR	CHRISTIAN DIOR COUTURE, S.A.	No
TMK 04-00382	10/19/2016	12/22/2023	CHRISTIAN DIOR	CHRISTIAN DIOR COUTURE, S.A.	No
TMK 04-00402	10/24/2016	10/30/2026	BEE DESIGN	PATRON SPIRITS INTERNATIONAL AG	No
TMK 04-00402	10/24/2016	10/30/2026	BEE DESIGN	PATRON SPIRITS INTERNATIONAL AG	No
TMK 06-00262	10/19/2016	12/16/2026	CAROLINA HERRERA	CAROLINA HERRERA, LTD.	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 06-00262	10/19/2016	12/16/2026	CAROLINA HERRERA	CAROLINA HERRERA, LTD.	No
TMK 06-00781	10/12/2016	07/24/2026	PITTSBURGH STEELERS	PITTSBURGH STEELERS LLC	No
TMK 06-00781	10/12/2016	07/24/2026	PITTSBURGH STEELERS	PITTSBURGH STEELERS LLC	No
TMK 06-00803	10/12/2016	07/24/2026	STEELERS & Three Diamond Design	PITTSBURGH STEELERS LLC	No
TMK 06-00803	10/12/2016	07/24/2026	STEELERS & Three Diamond Design	PITTSBURGH STEELERS LLC	No
TMK 06-00808	10/27/2016	12/26/2019	WRANGLER	FCA US LLC	No
TMK 06-00808	10/27/2016	12/26/2019	WRANGLER	FCA US LLC	No
TMK 06-00810	10/26/2016	04/20/2023	DODGE	FCA US LLC	No
TMK 06-00810	10/26/2016	04/20/2023	DODGE	FCA US LLC	No
TMK 06-00817	10/13/2016	04/30/2026	Ram Head Design (Stylized)	THE LOS ANGELES RAMS, LLC	No
TMK 06-00817	10/13/2016	04/30/2026	Ram Head Design (Stylized)	THE LOS ANGELES RAMS, LLC	No
TMK 06-00831	10/26/2016	12/20/2025	Dodge Ram's Head Logo	FCA US LLC	No
TMK 06-00831	10/26/2016	12/20/2025	Dodge Ram's Head Logo	FCA US LLC	No
TMK 06-00836	10/26/2016	05/09/2022	DODGE	FCA US LLC	No
TMK 06-00836	10/26/2016	05/09/2022	DODGE	FCA US LLC	No
TMK 06-00844	10/26/2016	07/06/2023	Dodge Ram's Head Logo	FCA US LLC	No
TMK 06-00844	10/26/2016	07/06/2023	Dodge Ram's Head Logo	FCA US LLC	No
TMK 06-00872	10/27/2016	04/18/2025	M Mopar (Stylized)	FCA US LLC	No
TMK 06-00872	10/27/2016	04/18/2025	M Mopar (Stylized)	FCA US LLC	No
TMK 06-00875	10/13/2016	04/24/2026	STEELERS & Three Diamond Design	PITTSBURGH STEELERS LLC	No
TMK 06-00875	10/13/2016	04/24/2026	STEELERS & Three Diamond Design	PITTSBURGH STEELERS LLC	No
TMK 06-01000	10/27/2016	01/24/2027	PALMOLIVE	COLGATE-PALMOLIVE COMPANY	No
TMK 06-01000	10/27/2016	01/24/2027	PALMOLIVE	COLGATE-PALMOLIVE COMPANY	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 06-01186	10/31/2016	11/01/2026	City of New York Parks and Recreation & Leaf Design	City of New York, by and through its Department of Parks & Recreation	No
TMK 06-01186	10/31/2016	11/01/2026	City of New York Parks and Recreation & Leaf Design	City of New York, by and through its Department of Parks & Recreation	No
TMK 06-01244	10/03/2016	10/25/2026	HDMD	TAGTRENDS, INC.	No
TMK 06-01244	10/03/2016	10/25/2026	HDMD	TAGTRENDS, INC.	No
TMK 07-00119	10/03/2016	09/13/2026	LINEAR EXPRESS	Linear Technology Corporation	No
TMK 07-00119	10/03/2016	09/13/2026	LINEAR EXPRESS	Linear Technology Corporation	No
TMK 07-00130	10/12/2016	12/19/2026	JUICY COUTURE	ABG JUICY COUTURE, INC.	No
TMK 07-00130	10/12/2016	12/19/2026	JUICY COUTURE	ABG JUICY COUTURE, INC.	No
TMK 07-00142	10/31/2016	11/01/2026	LTM	Linear Technology Corporation	No
TMK 07-00142	10/31/2016	11/01/2026	LTM	Linear Technology Corporation	No
TMK 07-00340	10/25/2016	10/18/2026	RICHARD MILLE	Turlen Holding SA	No
TMK 07-00340	10/25/2016	10/18/2026	RICHARD MILLE	Turlen Holding SA	No
TMK 07-00378	10/04/2016	01/11/2026	SUNSHINE BABY	BDSRCO, Inc.	No
TMK 07-00378	10/04/2016	01/11/2026	SUNSHINE BABY	BDSRCO, Inc.	No
TMK 07-00650	10/04/2016	10/11/2026	ATTITUDE	POWERTEQ, LLC	No
TMK 07-00650	10/04/2016	10/11/2026	ATTITUDE	POWERTEQ, LLC	No
TMK 07-00721	10/25/2016	11/01/2026	MSD POWERSPORTS	MSD, LLC	No
TMK 07-00721	10/25/2016	11/01/2026	MSD POWERSPORTS	MSD, LLC	No
TMK 07-00731	10/03/2016	11/08/2026	EDGE PRODUCTS DESIGN	POWERTEQ, LLC	No
TMK 07-00731	10/03/2016	11/08/2026	EDGE PRODUCTS DESIGN	POWERTEQ, LLC	No
TMK 07-00735	10/12/2016	10/18/2026	JUICE	POWERTEQ, LLC	No
TMK 07-00735	10/12/2016	10/18/2026	JUICE	POWERTEQ, LLC	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 07-00766	10/21/2016	12/05/2026	NFL & Design	NFL PROPERTIES LLC	No
TMK 07-00766	10/21/2016	12/05/2026	NFL & Design	NFL PROPERTIES LLC	No
TMK 07-00768	10/20/2016	12/05/2026	SUPER BOWL	NFL PROPERTIES LLC	No
TMK 07-00768	10/20/2016	12/05/2026	SUPER BOWL	NFL PROPERTIES LLC	No
TMK 07-00890	10/06/2016	04/02/2027	Design Only	TRLJCON, INC.	No
TMK 07-00890	10/06/2016	04/02/2027	Design Only	TRLJCON, INC.	No
TMK 07-01255	10/06/2016	11/15/2026	INSOLENCE	Guerlain S.A.	No
TMK 07-01255	10/06/2016	11/15/2026	INSOLENCE	Guerlain S.A.	No
TMK 07-01335	10/05/2016	01/01/2027	BOCA CLASSICS	BDSRCO	No
TMK 07-01335	10/05/2016	01/01/2027	BOCA CLASSICS	BDSRCO	No
TMK 07-01382	10/19/2016	01/17/2027	MANZANITA SOL	THE CONCENTRATE MANUFACTURING COMPANY OF IRELAND, TRADING AS SEVEN-UP INTERNATIONAL	No
TMK 07-01382	10/19/2016	01/17/2027	MANZANITA SOL	THE CONCENTRATE MANUFACTURING COMPANY OF IRELAND, TRADING AS SEVEN-UP INTERNATIONAL	No
TMK 07-01386	10/06/2016	07/09/2026	MARC JACOBS	MARC JACOBS TRADEMARKS, L.L.C.	No
TMK 07-01386	10/06/2016	07/09/2026	MARC JACOBS	MARC JACOBS TRADEMARKS, L.L.C.	No
TMK 08-00359	10/20/2016	01/29/2027	SEROSTIM	MERCK KGAA KOMMANDITGESELLSCHAFT AUF AKTIEN	No
TMK 08-00359	10/20/2016	01/29/2027	SEROSTIM	MERCK KGAA KOMMANDITGESELLSCHAFT AUF AKTIEN	No
TMK 08-00490	10/31/2016	01/05/2027	CONFIGURATION OF A SAFETY HOOK	THE CROSBY GROUP LLC	No
TMK 08-00490	10/31/2016	01/05/2027	CONFIGURATION OF A SAFETY HOOK	THE CROSBY GROUP LLC	No

CBP IPR RECORDATION — OCTOBER 2016

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 08-00500	10/19/2016	10/18/2026	ZORB'TIVE & Design	MERCK KGAA kommanditgesellschaft auf aktien	No
TMK 08-00500	10/19/2016	10/18/2026	ZORB'TIVE & Design	MERCK KGAA kommanditgesellschaft auf aktien	No
TMK 08-00707	10/19/2016	08/07/2026	OVIDREL	MERCK KGAA KOMMANDITGESELLSCHAFT AUF AKTIEN	No
TMK 08-00707	10/19/2016	08/07/2026	OVIDREL	MERCK KGAA KOMMANDITGESELLSCHAFT AUF AKTIEN	No
TMK 08-00822	10/11/2016	02/18/2027	DESIGN ONLY	OEM CONTROLS, INC.	No
TMK 08-00822	10/11/2016	02/18/2027	DESIGN ONLY	OEM CONTROLS, INC.	No
TMK 08-00876	10/11/2016	11/06/2026	AGATA & VALENTINA	J.A.V. Food Corp.	No
TMK 08-00876	10/11/2016	11/06/2026	AGATA & VALENTINA	J.A.V. Food Corp.	No
TMK 08-00904	10/26/2016	11/08/2026	PFIZER AND DESIGN	Pfizer Inc.	No
TMK 08-00904	10/26/2016	11/08/2026	PFIZER AND DESIGN	Pfizer Inc.	No
TMK 09-00241	10/31/2016	07/18/2026	Toy Configuration (Design Only)	DOSKOCIL MANUFACTURING COMPANY, INC.	No
TMK 09-00241	10/31/2016	07/18/2026	Toy Configuration (Design Only)	DOSKOCIL MANUFACTURING COMPANY, INC.	No
TMK 09-00248	10/19/2016	08/06/2027	3-Stripes (Design)	ADIDAS AG	No
TMK 09-00248	10/19/2016	08/06/2027	3-Stripes (Design)	ADIDAS AG	No
TMK 09-00298	10/26/2016	11/22/2025	RALPH LAUREN	PRL USA HOLDINGS, INC.	No
TMK 09-00298	10/26/2016	11/22/2025	RALPH LAUREN	PRL USA HOLDINGS, INC.	No
TMK 09-00340	10/12/2016	01/19/2027	adidas (Stylized)	ADIDAS AG	No
TMK 09-00340	10/12/2016	01/19/2027	adidas (Stylized)	ADIDAS AG	No
TMK 09-00736	10/06/2016	03/05/2020	JUDITH LEIBER	JUDITH LEIBER IP LLC	No

CBP IPR RECORDATION — OCTOBER 2016

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 09-00736	10/06/2016	03/05/2020	JUDITH LEIBER	JUDITH LEIBER IP LLC	No
TMK 10-00628	10/31/2016	11/08/2026	FIVEFINGERS	VIBRAM S.P.A.	No
TMK 10-00628	10/31/2016	11/08/2026	FIVEFINGERS	VIBRAM S.P.A.	No
TMK 11-00379	10/26/2016	08/28/2026	RALPH LAUREN	PRL USA HOLDINGS, INC.	No
TMK 11-00379	10/26/2016	08/28/2026	RALPH LAUREN	PRL USA HOLDINGS, INC.	No
TMK 11-00816	10/14/2016	11/06/2022	Element Tree Device	ROCKET TRADEMARKS PTY. LTD	No
TMK 11-00816	10/14/2016	11/06/2022	Element Tree Device	ROCKET TRADEMARKS PTY. LTD	No
TMK 11-01179	10/12/2016	03/12/2027	DESIGN: THREE STRIPES MARK ON HEADWEAR	ADIDAS AG	No
TMK 11-01179	10/12/2016	03/12/2027	DESIGN: THREE STRIPES MARK ON HEADWEAR	ADIDAS AG	No
TMK 12-00057	10/19/2016	08/16/2026	EPSON	SEIKO EPSON KABUSHIKI KAISHA TA SEIKO EPSON CORPORATION	No
TMK 12-00057	10/19/2016	08/16/2026	EPSON	SEIKO EPSON KABUSHIKI KAISHA TA SEIKO EPSON CORPORATION	No
TMK 12-00497	10/04/2016	03/20/2026	SPOTBOT	BISSELL Homecare, Inc.	No
TMK 12-00497	10/04/2016	03/20/2026	SPOTBOT	BISSELL Homecare, Inc.	No
TMK 12-00662	10/25/2016	08/29/2024	MS CONTIN	PURDUE PHARMA L.P.	No
TMK 12-00662	10/25/2016	08/29/2024	MS CONTIN	PURDUE PHARMA L.P.	No
TMK 12-01161	10/13/2016	12/20/2025	FSI NORTH AMERICA	Fire Safety International, Inc.	No
TMK 12-01161	10/13/2016	12/20/2025	FSI NORTH AMERICA	Fire Safety International, Inc.	No
TMK 13-00452	10/14/2016	01/24/2027	CREWCUTS	J. Crew International, Inc.	No
TMK 13-00452	10/14/2016	01/24/2027	CREWCUTS	J. Crew International, Inc.	No

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TMK 13-00496	10/11/2016	02/18/2024	SUPERNOVA	ADIDAS INTERNATIONAL MARKET- ING B.V.	No
TMK 13-00496	10/11/2016	02/18/2024	SUPERNOVA	ADIDAS INTERNATIONAL MARKET- ING B.V.	No
TMK 13-00538	10/26/2016	10/25/2026	RL	PRL USA Holdings, Inc.	No
TMK 13-00538	10/26/2016	10/25/2026	RL	PRL USA Holdings, Inc.	No
TMK 13-00854	10/19/2016	11/15/2026	WD and Design	Western Digital Technologies, Inc.	No
TMK 13-00854	10/19/2016	11/15/2026	WD and Design	Western Digital Technologies, Inc.	No
TMK 14-00425	10/26/2016	08/30/2026	SRT	FCA US LLC	No
TMK 14-00425	10/26/2016	08/30/2026	SRT	FCA US LLC	No
TMK 14-01244	10/04/2016	06/21/2026	MARC JACOBS	Marc Jacobs Trademarks, L.L.C.	No
TMK 15-00734	10/20/2016	11/30/2025	DESIGN ONLY (THERA CANE)	Pro Massage, Inc. DBA Thera Cane Com- pany	No
TMK 15-00734	10/20/2016	11/30/2025	DESIGN ONLY (THERA CANE)	Pro Massage, Inc. DBA Thera Cane Com- pany	No
TMK 15-00799	10/11/2016	06/28/2026	RBK	REEBOK INTERNATIONAL LIMITED	No
TMK 15-00799	10/11/2016	06/28/2026	RBK	REEBOK INTERNATIONAL LIMITED	No
TMK 16-01114	10/02/2016	06/30/2025	WILD WATER	Wild Water Fly Fishing, LLC	No
TMK 16-01115	10/03/2016	06/10/2019	GOVINO	Govino, LLC	No
TMK 16-01116	10/03/2016	11/16/2026	RED APPLE	1.4G HOLDINGS, LLC	No
TMK 16-01117	10/03/2016	12/20/2026	hangtag (Design)	Coach Services, Inc.	No
TMK 16-01118	10/04/2016	11/29/2026	BULLETT ANT	REVISION MILITARY INC.	No
TMK 16-01119	10/04/2016	09/13/2026	MISSION CRITICAL EYEWEAR	REVISION MILITARY INC.	No
TMK 16-01120	10/04/2016	09/14/2026	U and Design	University of Miami	No

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TMK 16-01121	10/04/2016	06/30/2025	GO ANYWHERE	govino, LLC	No
TMK 16-01122	10/05/2016	12/27/2026	EFS and Design	EFS Industries USA LLC	No
TMK 16-01123	10/05/2016	12/18/2022	ATLAS	B-5, Inc.	No
TMK 16-01124	10/05/2016	09/28/2026	BRANIFF INTERNATIONAL	Braniff Airways, Incorporated DBA Braniff International	No
TMK 16-01125	10/11/2016	04/28/2023	WELLS FARGO and Design	Wells Fargo & Company	No
TMK 16-01126	10/11/2016	06/25/2024	SPRITAM	Apricia Pharmaceuticals Company	No
TMK 16-01127	10/11/2016	08/24/2026	SPRITAM and Design	Apricia Pharmaceuticals Company	No
TMK 16-01128	10/11/2016	08/26/2025	WELLS FARGO plus Design	Wells Fargo & Company	No
TMK 16-01129	10/11/2016	05/25/2023	WELLS FARGO and Design	Wells Fargo & Company	No
TMK 16-01130	10/11/2016	05/26/2018	BRAUN (Stylized)	Braun GmBH	No
TMK 16-01131	10/11/2016	05/17/2025	COURT OF THE DEAD	Sideshow Inc.	No
TMK 16-01132	10/11/2016	09/23/2025	S and Design (Stylized)	Sideshow Inc.	No
TMK 16-01133	10/12/2016	10/15/2023	AGATA & VALENTINA	J.A.V. Food Corp.	No
TMK 16-01134	10/12/2016	12/16/2024	MATIERE	Modevi Inc.	No
TMK 16-01135	10/12/2016	12/19/2026	DURACELL	DURACELL U.S. OPERATIONS, INC.	No
TMK 16-01136	10/12/2016	07/24/2022	MATIERE	MODEVI, INC.	No
TMK 16-01137	10/12/2016	12/27/2026	ZERHOLD	Lightforce U.S.A., Inc. DBA Nightforce Optics, Inc.	No
TMK 16-01138	10/12/2016	12/24/2023	M12	Milwaukee Electric Tool Corporation	No
TMK 16-01139	10/13/2016	07/28/2025	REDLITHIUM	Milwaukee Electric Tool Corporation	No
TMK 16-01140	10/13/2016	12/04/2022	M18	Milwaukee Electric Tool Corporation	No
TMK 16-01141	10/13/2016	12/13/2026	CALEXOTICS	California Exotic Novelties, LLC	No

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TMK 16-01142	10/13/2016	12/27/2026	COLT	COLT'S MANUFACTURING IP HOLDING COMPANY LLC	No
TMK 16-01143	10/13/2016	12/27/2026	U Design (Stylized)	Texas Instruments Incorporated	No
TMK 16-01144	10/14/2016	05/13/2022	DESIGN ONLY	COLT INDUSTRIES OPERATING CORP.	No
TMK 16-01145	10/14/2016	07/05/2026	FOXLGLOVE CORSETRY & FINE AP-PAREL	Foxglove Fashions Amy Clements, USA	No
TMK 16-01146	10/14/2016	04/30/2026	TOP RAMEN (Stylized)	NISSIN FOODS HOLDINGS CO., LTD.	No
TMK 16-01147	10/14/2016	01/04/2022	G.O. FRESH	G.O. CORPORATION 1 DBA G.O. FRESH	No
TMK 16-01148	10/14/2016	06/24/2025	Acoustical Solutions plus Design	Acoustical Solutions, LLC	No
TMK 16-01149	10/14/2016	12/06/2026	COPPER CHEF	Tristar Products, Inc.	No
TMK 16-01150	10/14/2016	07/09/2023	DOMTY	Alhodia Inc	No
TMK 16-01151	10/18/2016	12/27/2026	DESIGN ONLY (Artistic Tile)	Epstone, Inc. DBA Artistic Tile	No
TMK 16-01152	10/19/2016	08/24/2026	JERMUK	Andreasyan, Andreas	No
TMK 16-01153	10/20/2016	02/06/2025	BOLIVAR	GENERAL CIGAR CO., INC.	No
TMK 16-01154	10/20/2016	07/03/2018	Ramon Allones (Stylized)	General Cigar Co. Inc.	No
TMK 16-01155	10/20/2016	01/17/2018	HOYO DE MONTERREY	General Cigar Co., Inc.	No
TMK 16-01156	10/20/2016	01/11/2027	NOBLE VINES	Delicato Vineyards	No
TMK 16-01157	10/20/2016	06/29/2021	PARLEE	Parlee Cycles, Inc.	No
TMK 16-01158	10/20/2016	11/15/2017	PUNCH	GENERAL CIGAR CO., INC.	No
TMK 16-01159	10/21/2016	10/26/2026	JEFFREE STAR COSMETICS	Jeffree Star Cosmetics LLC	No
TMK 16-01160	10/24/2016	10/12/2021	LUVVITT	LUVVITT LLC	No
TMK 16-01161	10/24/2016	10/01/2018	PLEXIDOR	Pet Doors U.S.A. Inc.	No
TMK 16-01162	10/25/2016	10/01/2018	PlexiDor Pet Doors and Design	Pet Doors U.S.A. Inc.	No
TMK 16-01163	10/25/2016	03/04/2023	PLAGRON	Bertels B.V.	No

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TMK 16-01164	10/26/2016	06/06/2022	CHAPS	PRL USA Holdings, Inc.	No
TMK 16-01165	10/26/2016	09/21/2026	RAINGLOBES	RAINGLOBES, LLC	No
TMK 16-01166	10/27/2016	10/21/2018	RALPH	PRL USA HOLDINGS, INC.	No
TMK 16-01167	10/27/2016	02/27/2023	KEEPCUP	KeepCup Pty Ltd	No
TMK 16-01168	10/27/2016	03/24/2023	RUBICON	FCA US LLC	No
TMK 16-01169	10/27/2016	08/14/2023	FORBIDDEN CITY	Genghis Productions, Ltd.	No
TMK 16-01170	10/27/2016	01/23/2018	FORBIDDEN CITY	GENGHIS PRODUCTIONS LIMITED	No
TMK 16-01171	10/27/2016	05/02/2020	FORBIDDEN CITY	GENGHIS PRODUCTIONS LIMITED	No
TMK 16-01172	10/27/2016	02/18/2019	DESIGN ONLY	GREENFIELD WORLD TRADE, INC.	No
TMK 16-01173	10/31/2016	02/13/2024	LA GLORIA CUBANA	SCANDINAVIAN TOBACCO GROUP	No
TMK 16-01174	10/31/2016	02/10/2022	Sancho Panza (stylized)	GENERAL CIGAR CO., INC.	No
TMK 16-01175	10/31/2016	04/23/2018	REY DEL MUNDO	GENERAL CIGAR CO., INC.	No
TMK 16-01176	10/31/2016	08/10/2018	PARTAGAS	General Cigar Co., Inc.	No
TMK 16-01177	10/31/2016	07/19/2026	POPCLIP	Popockets LLC	No
TMK 16-01178	10/31/2016	09/22/2020	RAM	FCA US LLC	No
TMK 16-01179	10/31/2016	07/26/2026	REBEL	FCA US LLC	No
TMK 16-01180	10/31/2016	11/10/2024	TRAIL RATED	FCA US LLC	No
TMK 16-01181	10/31/2016	10/15/2024	DESIGN ONLY (Harpoon Headstock)	PEAVEY ELECTRONICS CORPORATION	No
TMK 16-01182	10/31/2016	12/24/2025	FRENCH TOAST	LOLLY TOGS, LTD.	No
TMK 16-01183	10/31/2016	08/03/2021	HORSERAIL	John Wall, Inc.	No
TMK 87-00173	10/04/2016	02/05/2026	PANDA BRAND	LEE KUM KEE COMPANY LIMITED	No
TMK 87-00173	10/04/2016	02/05/2026	PANDA BRAND	LEE KUM KEE COMPANY LIMITED	No

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TMK 91-00338	10/11/2016	12/06/2026	PLAYTEX	PLAYTEX MARKETING CORPORATION	No
TMK 91-00338	10/11/2016	12/06/2026	PLAYTEX	PLAYTEX MARKETING CORPORATION	No
TMK 94-00412	10/14/2016	01/15/2017	V8 & DESIGN	CSC BRANDS LP	No
TMK 94-00412	10/14/2016	01/15/2017	V8 & DESIGN	CSC BRANDS LP	No
TMK 96-00711	10/20/2016	10/30/2026	PHILLIPS SQUARE-DRIV	PHILLIPS SCREW COMPANY	No
TMK 96-00711	10/20/2016	10/30/2026	PHILLIPS SQUARE-DRIV	PHILLIPS SCREW COMPANY	No
TMK 97-00043	10/31/2016	10/27/2026	CIVIC	HONDA GIKEN KOGYO KABUSHIKI KAISHA (HONDA MOTOR CO., LTD.)	No
TMK 97-00043	10/31/2016	10/27/2026	CIVIC	HONDA GIKEN KOGYO KABUSHIKI KAISHA (HONDA MOTOR CO., LTD.)	No
TMK 97-00891	10/24/2016	04/20/2026	FERRAGAMO	SALVATORE FERRAGAMO S.P.A.	No
TMK 97-00891	10/24/2016	04/20/2026	FERRAGAMO	SALVATORE FERRAGAMO S.P.A.	No
TMK 98-00040	10/27/2016	04/23/2026	POLO SPORT	PRL USA HOLDINGS, INC.	No
TMK 98-00040	10/27/2016	04/23/2026	POLO SPORT	PRL USA HOLDINGS, INC.	No