

U.S. Customs and Border Protection



PROPOSED REVOCATION OF THREE RULING LETTERS, PROPOSED MODIFICATION OF ONE RULING LETTER, AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF RIGID MOLDED PLASTIC WATERPROOF CAMERA HOUSING

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

ACTION: Notice of proposed revocation of three ruling letters, proposed modification of one ruling letter, and revocation of treatment relating to the tariff classification of rigid molded plastic waterproof camera housings.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke three ruling letters, and modify one ruling letter, concerning the tariff classification of rigid molded plastic waterproof camera housings 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.

DATE: Comments must be received on or before August 6, 2018.

ADDRESS: Written comments are to be addressed to 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: Suzanne Kingsbury, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325-0113.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with 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 19 U.S.C. §1625(c)(1), this notice advises interested parties that CBP is proposing to revoke three ruling letters, and modify one ruling letter, pertaining to the tariff classification of rigid molded plastic waterproof camera housings. Although in this notice CBP is specifically referring to New York Ruling Letters (NYs) N240464, dated May 3, 2013 (Attachment A), L83830, dated April 11, 2005 (Attachment B), I84647, dated August 7, 2002 (Attachment C), and N222075 (with respect to the rigid molded plastic waterproof camera housing identified as item number 45824), dated July 9, 2012 (Attachment D), this notice also 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 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 advise CBP during the comment period.

Similarly, pursuant to 19 U.S.C. §1625(c)(2), 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 comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NYs N240464, L83830, I84647 and N222075 CBP classified rigid molded plastic waterproof camera housings in heading 4202, HTSUS,

specifically in subheading 4202.99.90, HTSUS, which provides for “trunks, suitcases, camera cases and similar containers, other, other, other.”

CBP has reviewed NYs N240464, L83830, I84647 and N222075 and has determined the ruling letters to be in error. It is now CBP’s position that the rigid molded plastic waterproof camera housing at issue in NY N240464 is classified in heading 8529, HTSUS, specifically in subheading 8529.90.86, HTSUS, which provides for “[P]arts suitable for use solely or principally with the apparatus of headings 8525 to 8528: Other parts of articles of headings 8525 to 8527, except parts of cellular telephones: Other.” It is now CBP’s position that the rigid molded plastic waterproof camera housings at issue in NYs N222075, L83830 and I84647 are classified in heading 3926, HTSUS, specifically in subheading 3926.90.99, HTSUS, which provides for “[O]ther articles of plastics and articles of other materials of headings 3902 to 3914: Other.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke NYs N240464, L83830, and I84647, and to modify N222075 (with respect to the rigid molded plastic waterproof camera housing identified as item number 45824), and to revoke or modify any other ruling not specifically identified, to reflect the analysis contained in the proposed HQ H287090, set forth as Attachment E to this notice. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: May 24, 2018

GREG CONNOR
For

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N240464

May 3, 2013

CLA-2-42:OT:RR:NC:N4:441

CATEGORY: Classification

TARIFF NO.: 4202.99.9000

MICHAEL J. HORTON
LAW OFFICE
156 S. SPRUCE AVENUE, SUITE 213
SOUTH SAN FRANCISCO, CA 94080

RE: The tariff classification of a waterproof camera case from China

DEAR MR. HORTON:

In your letter dated April 2, 2013, you requested a tariff classification ruling on behalf of your client, Woodman Labs, Inc.

The sample you have submitted is a molded plastic camera case designed to protect and contain one Go Pro Hero 3 camera. The case is specially molded, shaped, and fitted to the specifications of the Go Pro Hero 3 camera. In your letter, you refer to the article as a housing for the camera. For tariff purposes, the word “case” and the word “housing” are synonymous in relation to the camera. In fact, you have submitted a dictionary definition of the word “housing” which defines it as “something that covers or protects,” and “a case or enclosure.”

You have submitted a sample of the case with the camera. However, you state in your letter that the importer intends to begin importing the case on its own. This ruling is applicable only to the case when imported on its own. The sample is being returned to you.

You have suggested classification of the camera case in subheading 3926.90.9980, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of plastics, other. Heading 3926, HTSUS, is a residual or “basket” provision and such provisions are intended as “broad catch-alls to encompass the classification of articles for which there is not a more specifically applicable subheading.” *EM Indus. v. United States*, 22 C.I.T. 156, 999 F. Supp. 1473, 1480 n.9 (1998). Moreover, legal note 2(m) to chapter 39, HTSUS, excludes goods described in heading 4202, HTSUS, from classification in any of the subheadings of chapter 39, HTSUS. As such, in order for the merchandise to be classified as “other articles” under heading 3926, HTSUS, it must first be excluded from classification within heading 4202, HTSUS. Camera cases are provided *eo nomine* in heading 4202, HTSUS and shall be classified therein. Please see New York Ruling *N208488*, dated April 3, 2012.

The applicable subheading for the waterproof camera case will be 4202.99.9000, HTSUS, which provides, in part, for other bags and containers, other, other, other. The rate of duty will be 20 percent *ad valorem*.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Vikki Lazaro at (646) 733-3041.

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

ATTACHMENT B

NY L83830

April 11, 2005

CLA-2-42:RR:NC:TA:341 L83830

CATEGORY: Classification

TARIFF NO.: 4202.99.9000

MR. DAVID S. LEVY
GRUNFELD, DESIDERIO, LEBOWITZ,
SILVERMAN & KLESTADT LLP
COUNSELORS AT LAW
399 PARK AVENUE, 25TH FLOOR
NEW YORK, NY 10022-4877

RE: The tariff classification of Waterproof Camera Case from China.

DEAR MR. LEVY:

In your letter dated March 30, 2005, on behalf of Casio, Inc., you requested a tariff classification ruling for a Waterproof Camera Case.

The sample submitted is identified as style EWC-40, "Exilim Waterproof Case". It consists of a rigid plastic underwater camera case and various accessories. The article is presented put up for retail sale as a set and will not be repacked in the United States. The case is specially shaped and fitted to fit specific Casio digital cameras. It measures approximately 5"(H) x 3 ½"(W) x 1 ¾"(D). Your sample is being returned as requested.

The applicable subheading for the Waterproof Camera Case will be 4202.99.9000, Harmonized Tariff Schedule of the United States (HTS), which provides in part, for other bags and containers, other, other, other. The rate of duty will be 20 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kevin Gorman at 646-733-3041.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT C

NY I84647

August 7, 2002

CLA-2-42:RR:NC:TA:341 I84647

CATEGORY: Classification

TARIFF NO.: 4202.99.9000

MS. KERRY MALONE
CANON USA, INC.
ONE CANON PLAZA
LAKE SUCCESS, NY 11042

RE: The tariff classification of a waterproof camera case from Japan

DEAR MS. MALONE:

In your letter dated July 9, 2002, you requested a tariff classification ruling for a waterproof camera case.

The submitted sample is identified as item code 7642A001AA, style WP-DC400 Waterproof Case. It is a camera case specially shaped and designed for use with the Canon "Power Shot" digital camera, styles 100 or 200. The digital camera is fully functional with or without the underwater case therefore the case is not considered to be a part of the camera. Your sample is being returned as requested.

The case is manufactured of hard molded plastics and is waterproof up to a depth of 100 feet. The case is imported and sold as an option separate from the camera.

The applicable subheading for the camera case, style WP-DC400, will be 4202.99.9000, Harmonized Tariff Schedule of the United States (HTS), which provides for trunks, suitcases, camera cases and similar containers, other, other. The rate of duty will be 20 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kevin Gorman at 646-733-3041.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

*National Commodity
Specialist Division*

ATTACHMENT D

N222075

July 9, 2012

CLA-2-85:OT:RR:NC:N1:108

CATEGORY: Classification

TARIFF NO.: 4202.99.9000; 3926.90.9980

MR. GIOVANNI CERVANTES
JAKKS PACIFIC, INC.
21749 BAKER PARKWAY
WALNUT, CA 91789

RE: The tariff classification of a digital video camera with accessories, a camera's waterproof case, and a camera's mounting kit, all from China

DEAR MR. CERVANTES:

In your letter dated June 13, 2012, you requested a tariff classification ruling. Samples are being returned as requested.

The subject merchandise, at the time of importation, consists of the following three articles, with each individually packaged for retail sale:

The Action Shot-Digital Video Camera (item number 45821), which is a small cylindrical sports camera capable of recording both still images and moving images, that is being imported with various accessories: a mounting case, a dongle, a head/helmet mounting bracket with strap, a board mount, and an adhesive;

The Action Shot-Water Proof Case, item number 45824, which is a molded plastic waterproof camera case specially shaped and fitted to the Action Shot-Digital Video Camera; and

The Action Shot-Mounting Kit, item number 45826, which contains two plastic mounting brackets (an angle bracket and a handlebar bracket), two plastic board mounts, and two adhesives, all for attaching the Action Shot-Digital Video Camera to various sports-related articles; and a storage pouch to hold the brackets, the board mounts, and the adhesives.

The issue of the scope of digital video cameras under heading 8525 is currently pending before the United States Court of International Trade in the matter of Sony Electronics v. United States, Court Nos. 08-00264 and 08-00265. Section 177.7, Customs Regulations (19 CFR 177.7) provides that rulings will not be issued in certain circumstances. Section 177.7(b) states, in pertinent part, the following:

No ruling letter will be issued with respect to any issue which is pending before the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit or any court of appeal therefrom.

In light of the prohibition set out in 19 CFR 177.7(b), and as the instant ruling request for the subject digital video camera is closely related to the issue presently pending in the Court of International Trade, we are unable to issue a ruling letter to you with respect to this merchandise. Accordingly, we are administratively closing our file on this digital video camera with accessories, item number 45821.

In reference to the Action Shot-Water Proof Case, you suggest classification in subheading 3926.90.9980, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of plastics, other. In this regard, legal note 2(m) to chapter 39, HTSUS, excludes goods described in

heading 4202, HTSUS, from classification in any of the subheadings of chapter 39, HTSUS. Further, camera cases are specifically provided in heading 4202, HTSUS. As such, they cannot be classified in subheading 3926.90.9980, HTSUS, or in any other subheading of chapter 39, HTSUS.

The applicable subheading for this waterproof camera case, item number 45824, will be 4202.99.9000, HTSUS, which provides, in part, for other bags and containers, other, other, other. The rate of duty will be 20 percent ad valorem.

The applicable subheading for the Action Shot-Mounting Kit, item number 45826, will be 3926.90.9980, HTSUS, which provides for other articles of plastics, other. The rate of duty will be 5.3 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lisa Cariello at (646) 733-3014.

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

ATTACHMENT E

HQ H287090
CLA-2 OT:RR:CTF:EMAIN:SKK
CATEGORY: Classification
TARIFF NO.: 8529.90.86

MR. MATTHEW NAKACHI
JUNKER & NAKACHI
ONE MARKET SPEAR TOWER; SUITE 3600
SAN FRANCISCO, CA 94105

RE: Revocation of NYs N240464; L83830; I84647; Modification of NY
N222075; molded plastic waterproof camera housing

DEAR MR. NAKACHI:

This is in response to your correspondence, dated May 22, 2017, on behalf of your client, GoPro, Inc. (GoPro), requesting reconsideration of New York Ruling Letter (NY) N240464, dated May 3, 2013, in which U.S. Customs and Border Protection (CBP) classified a rigid molded plastic camera housing designed for use with GoPro's Hero3 camera system in subheading 4202.99.90, HTSUS, which provides for, in pertinent part, "similar containers" to those containers specifically listed in heading 4202, HTSUS. Counsel advocates classification of the subject housing in subheading 8529.90.86, HTSUS, as "[P]arts suitable for use solely or principally with the apparatus of heading 8525 to 8528: Other parts of articles of headings 8525 and 8527, except parts of cellular telephones: Other." This ruling takes into consideration information provided by counsel to CBP at a meeting held in Washington D.C. on November 29, 2017. A sample of the subject merchandise was provided to CBP for examination.

We have reviewed the classification of the subject camera housing and have determined that NY N240464 is in error.

In addition, CBP has also reviewed NYs N222075, dated July 9, 2012, L83830, dated April 11, 2005, and I84647, dated August 7, 2002, which involve the classification of substantially similar rigid molded plastic camera housings. As with NY N240464, we have determined that the tariff classification of the subject merchandise in NYs L83830 and I84647 is incorrect, and the classification of one of the items at issue in NY N222075 is incorrect.

Pursuant to the analysis set forth below, CBP is revoking NY's N240464, L83830, and I84647 and modifying NY N222075.

FACTS:

On September 24, 2013, counsel submitted a request for reconsideration of NY N240464, issued to Woodman Labs, Inc., in which CBP classified a rigid molded plastic housing designed for use with the GoPro Hero3 camera system in subheading 4202.99.90, HTSUS, which provides for, in pertinent part, "similar containers" to those containers specifically listed in heading 4202, HTSUS. Counsel submitted that the article was properly classified in heading 3926, HTSUS, as other articles of plastic.

On May 22, 2017, GoPro submitted a subsequent request for reconsideration of NY N240464. Counsel argues new factual information and advocates classification of the subject housing in subheading 8529.90.86, HTSUS, as

“[P]arts suitable for use solely or principally with the apparatus of heading 8525 to 8528: Other parts of articles of headings 8525 and 8527, except parts of cellular telephones: Other.”

The article at issue in NY N240464 is a rigid molded plastic housing designed for use with GoPro’s Hero3 camera system¹ and is imported separately from the camera system’s other components. The Hero3² camera system is designed to record digital video (and, in some applications, audio) of the user’s “extreme” activity (*i.e.* deep sea diving, surfing, skydiving, motorcycling, skateboarding, biking, etc.). The camera is usually operated in a hands-free environment, with the camera housing mounted onto a helmet, chest harness, or vehicle, among other things.

The Hero3 camera system is put up as a set for retail sale and packaged together with the following articles: camera; high capacity lithium-ion battery; waterproof camera housing; quick release buckle and thumb screw; adhesive mounts, and; USB cable. These components are also offered for sale separately. Counsel states that GoPro offers a variety of camera housings for sale separately to accommodate specific uses of the camera system, as well as to provide cosmetic alternatives to the standard housing (*i.e.*, an opaque black housing, a “skeleton” housing which is not waterproof but enhances audio recording, camouflage housing, waterproof housing)³. The camera component weighs 2.6 ounces and the housing weighs 2.2 ounces. The camera measures 2 ¼ inches in length, 1 ½ inches in width, and ¾ of an inch in depth, and the housing’s dimensions are only slightly larger to accommodate the camera. The camera is capable of taking video at various resolutions: in NTSC fps and PAL fps format, and in .mp4 file video format with accompanying audio. It can capture still photos at various resolutions or simultaneous video and photo. The standard Hero3 model does not have a viewfinder, nor does it come with a liquid crystal display screen on which the user views the recorded images.

The camera is used while enclosed in the housing which is specially shaped and fitted to accommodate the camera’s operational buttons so that they may be activated while enclosed in the waterproof housing. The most common usage for the Hero3 camera system is for consumers to turn the video camera on and leave it on (operating it “hands-free”) while engaged in an “extreme” activity. Users subsequently connect the camera to a computer to download images or video. Although counsel describes the housing as “permanently or semi-permanently” attached to the camera, it is a removable housing that can be completely separated from the camera by means of opening a clasp closure and removing the camera. Counsel submits that the housing is designed to enable the camera’s operation underwater and to permit it to be mounted onto other objects to enable hands-free recording of extreme activities.

The Hero3 camera housing at issue in NY N240464 possesses the following features:

- A water-tight silicon gasket seal which secures the camera inside the housing for use underwater and allows the camera to withstand compression forces up to depths of 60 meters (196.85 feet);

¹ Counsel submits that the subject plastic housing at issue in NY N240464 may also be used with the Hero4 camera system.

² The Hero3 camera system consists of three editions: Hero3+ Black Edition, Hero3+ Silver Edition, and the Hero3 White Edition.

³ Only the housing for the Hero3 series is the subject of this reconsideration.

- Three spring-loaded buttons designed to facilitate functional operation of the camera while underwater at compression depths. The buttons on the exterior of the housing are mated with corresponding buttons on the camera secured inside;
- A replaceable lens (*i.e.*, polarized or dye filter application for underwater filming) that attaches onto the exterior of the housing;
- Padding on the inner rear door ensures a snug fit and stabilizes the camera;
- A functional heat-sink designed to mate with the GoPro camera to draw heat away from the camera during operation;
- A flat glass lens with three layers of lens coatings for anti-fog, hydrophilic (water-repelling) and hydrophobic (water-attracting) properties, secured by six screws to ensure a watertight seal;
- A proprietary release closure device to ensure the housing doesn't open inadvertently when submerged at depth;
- A universal mounting system, with a screw-style closure. This system secures the housing with the camera inside onto all of GoPro's various accessories, including a gooseneck clamp, tri-pod stand, head strap, and chest harness. The camera alone is not capable of being mounted onto the accessories; it requires the housing for connectability.



ISSUE:

Whether the subject camera housing is classifiable under heading 4202, HTSUS, as a “camera case” or a “similar container,” under heading 3926, HTSUS, as an “other article of plastic,” or under heading 8529, HTSUS, as a “part” of an apparatus of heading 8525 to 8528.

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 will 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 the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

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

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other * * *
4202	Trunks, suitcases, vanity cases, attaché cases, brief-cases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: [Emphasis added]
4202.99	Other:
4202.99.90	Other * * *
8529	Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528:
8529.90	Other:
8529.90.86	Other

Note 2 to Section XVI, HTSUS, states, in pertinent part:

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

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

Notes 1 and 2 to Chapter 39, HTSUS, provide, in pertinent part:

1. Throughout the tariff schedule the expression “plastics” means those materials of headings 3901 to 3914 which are or have been capable, either at the moment of polymerization or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticizer) by molding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence.

* * *

2. This chapter does not cover:

* * *

(m) Saddlery or harness (heading 4201) or trunks, suitcases, handbags or other containers of heading 4202;

* * *

(s) Articles of section XVI (machines and mechanical or electrical appliances);

* * *

As Chapter 39 Note 2(m) excludes other containers of heading 4202, HTSUS, our initial analysis is whether the subject camera housing is classifiable as a “camera case” or “similar container” of heading 4202, HTSUS.

Heading 4202, HTSUS contains both specifically named categories of products as well as residual provisions for “similar containers.” Therefore, CBP is tasked with performing both *eo nomine* and *ejusdem generis* analyses to determine whether the subject Hero3 camera housing is classified in heading 4202, HTSUS. *Eo nomine* provisions are those that describe articles by specific names and not by use. Absent limiting language or contrary legislative intent, *eo nomine* provisions cover all forms of the named article. *Nidec Corporation v. United States*, 68 F.3d 1333, 1336 (Fed. Cir. 1995). *Ejusdem generis*, meaning “of the same kind,” requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms. *See Totes, Inc. v. United States*, 18 C.I.T. 919, 923–24, 865 F. Supp. 857, 871 (1994), *aff’d* 69 F.3d 495 (Fed. Cir. 1995).

The terms of the HTSUS are construed according to their common commercial meaning. *See Millennium Lumber Distrib. Ltd., v. United States*, 558 F.3d 1326, 1329 (Fed. Cir. 2009). To ascertain the common commercial meaning of a tariff term, CBP “may rely on its own understanding of the term as well as lexicographic and scientific authorities.” *See Lon-Ron Mft. Co. v. United States*, 334 F.3d 1304, 1309 (Fed. Cir. 2003). The term “camera case” is a commercially understood construct of two words that is neither defined in the tariff nor in lexicographic sources. CBP has classified both “cases” and “camera cases” *eo nomine* under heading 4202, HTSUS. *See* NYs N237453, dated February 6, 2013 (where CBP classified a camera case designed to provide organization, storage, portability and protection to a digital camera, in subheading 4204.99.00, HTSUS), N208448, dated April 3, 2012 (where CBP classified a camera case in 4204.99.00, HTSUS, stating, “[T]he case is not considered to be a part of the camera as it does not contribute to the function of the camera itself”), and N047863, dated January 8, 2009 (where

CBP classified a camera case with a main compartment, mesh pocket, shoulder straps, and a hook-and-loop flap closure in subheading 4202.99.00, HTSUS).⁴

On August 24, 2016, the U.S. Court of Appeals for the Federal Circuit (CAFC) issued an opinion affirming the U.S. Court of International Trade's (CIT) decision in *Otter Products, LLC v. United States*, 70 F. Supp. 3d 1281 (Ct. Int'l Trade 2015). The CIT had held that two styles of smartphone covers were classifiable as other articles of plastic under subheading 3926.90.99, HTSUS, and had rejected CBP's claim that the covers were classifiable as "similar containers" under subheading 4202.99, HTSUS. (*Otterbox I*). The CAFC noted that because the phone covers are not a specifically named exemplar of heading 4202, they could only be classified under heading 4202 if they qualified as "similar containers." To be classifiable as a container similar to the named exemplars of heading 4202, HTSUS, the phone covers must share the same essential characteristics and purposes as those containers. The CAFC found that because the phone covers neither store, organize, nor carry smartphones, they do not sufficiently share the essential characteristics of heading 4202 containers. In reaching its decision, the CAFC noted that the covers are designed to allow a smartphone to remain fully usable while inside the cover and this essential purpose was deemed inconsistent with the exemplars of heading 4202 which generally do not permit the use of their contents. See *Otter Prods., LLC v. United States*, (Fed. Cir. 2016) (*Otterbox II*).

The subject Hero3 camera housing does not share the same defining characteristics as the products previously ruled by CBP as *eo nomine* "camera cases," cited *supra*. The products in the above-cited rulings enclose the camera and feature textile padding to protect the camera while it is being transported or stored, compartments or pockets to organize camera accessories, and shoulder straps or handles to facilitate transport. The Hero3 camera housing is distinguishable from the camera cases described above in that it does not organize any other components of the subject camera system (the Hero3 camera housing only holds a single electronic device which the CAFC in *Otterbox II* held did not serve an organizational purpose. See *Otterbox II* at 1290), nor does it provide a means of carrying the camera. The Hero3 may offer waterproof protection to the camera by means of sealed silicone gaskets, however its rigid molded plastic shell does not otherwise offer meaningful protection for the camera while stored. The Hero3 camera housing may not be interchangeably used with other cameras on the market (other than later GoPro Hero model iterations, as noted above). Without the housing, the camera cannot function underwater as it is designed to do, nor can it connect to the mounting accessories needed when the user is performing an extreme activity such as sky diving, or surfing. All aspects of the Hero3 camera housing are engineered to further the specific purpose of utilizing a camera underwater or during an extreme activity. These characteristics substantially differ from those attributed to "camera cases" commonly found on the

⁴ See also NYs L82701, dated March 9, 2005 (where CBP classified five types of textile or soft wrap-around cases in heading 4202.92.90, HTSUS), J81852, dated March 14, 2003 (where CBP classified a camera case designed to store a digital camera with a hard PVC external sheeting and interior lined with manmade textile fabric, zipper enclosure, and a belt loop, in subheading 4202.92.90, HTSUS), and I81939, dated May 24, 2002 (where CBP classified a case designed to be worn around the waist and hold a camera when not in use in subheading 4204.92.90, HTSUS).

market, which merely offer a protective and organized place for the camera to be stored when not in use or when being transported to where the camera will be removed and used. For these reasons, the subject merchandise is not a “camera case” of heading 4202, HTSUS.

As we have determined that the subject Hero3 camera housing is not classifiable as an *eo nomine* camera case of heading 4202, HTSUS, we now consider whether it is classifiable as a “similar container” of that heading. The Federal Circuit has established that when a list of items is followed by a general word or phrase, then the rule of *ejusdem generis* is used to determine the scope of that general word or phrase.” See *Avenues in Leather, Inc. v. United States*, 178 F.3d 1241, 1244 (Fed. Cir. 1999) (citing *Totes, Inc. v. United States*, 69 F.3d 495, 498 (Fed. Cir. 1995)). In classification cases, *ejusdem generis* requires that for any imported merchandise to fall within the scope of a general term or phrase the merchandise must possess the same essential characteristics or purposes that unite the enumerated exemplars. *Nissho-Iwai Am. Corp. v. United States*, 641 F. Supp. 808, 810 (Ct. Int’l Trade 1986). In addition, classification under *ejusdem generis* is appropriate where the characteristics or purpose do not have a more specific primary purpose that is inconsistent with the listed exemplars. See *Victoria’s Secret Direct, LLC v. United States*, 908 F. Supp. 2d 1332 (Ct. Int’l Trade 2013). The *Avenues* court, citing *Totes*, stated that the essential characteristics of the listed exemplars of heading 4202 are those of “organizing, storing, protecting, and carrying various items.” [emphasis added] See *Avenues*, 178 F.3d at 1245, citing *Totes*, 69 F.3d at 498. In *Lon-Ron*, 334 F.3d at 1313, the CAFC held “[T]he essential characteristics of the articles falling within subheading 4202.32 are that they generally organize, store, protect, or carry items.” [emphasis added] To clarify whether a product must share all four unifying characteristics to qualify as a similar container under heading 4202, HTSUS, or whether sharing some subset of those four characteristics would suffice, the CAFC in *Otterbox II*, at 14, stated:

[T]here is no requirement that the subject merchandise meet all four characteristics to qualify as a ‘similar container’ under Heading 4202. Courts should consider the four characteristics collectively and then determine whether, in light of those considerations, the classification would lead to an inconsistency. If, for example, an item met only one of the four characteristics, it almost certainly would not qualify as a ‘similar container’ under heading 4202.

Accordingly, the subject Hero3 camera housing must meet a two-prong test in order to be classifiable as a “similar container” of heading 4202, HTSUS: (1) the subject article’s essential characteristics must be consistent with those of the listed exemplars of heading 4202, HTSUS, (*i.e.*, organization, storage, protection, conveyance), and; (2) it must not have a more specific primary purpose that is inconsistent with the listed exemplars.

With regard to the first prong, our initial inquiry is whether the Hero3 camera housing serves to “organize” its contents. We note that as the subject housing contains only one item, a camera, it does not serve an organizational function regarding the camera. As regards the Hero3 camera housing’s “storage” capability, we note that this term is defined in lexicographic sources to mean “to place or leave in a location ... for preservation or later use or disposal.” See www.merriam-webster.com/dictionary/store (site last visited April 10, 2018). The subject camera housing does not “store” the camera for future use or preservation. Its primary function and purpose is to aid in the

camera's active use while it is enclosed in the housing. As such, CBP does not find that the subject housing "stores" the camera. The third essential characteristic shared by heading 4202, HTSUS, exemplars is that of "protection." While the Hero3 camera housing offers protection to the camera in that it provides a watertight seal and features a heat sink which draws heat away from the camera while in use, it does not have protective padding to protect the camera while it is stored or transported (other than slight padding on the inner rear door to ensure a snug fit and stabilize the camera for filming), nor does it protect the camera's lens. CBP also notes that GoPro sells a padded protective case with compartments and a strap as an accessory on its website, and this may be indicative of the fact that the plastic camera housing is not suitable or intended for protection when the camera is not in use. Considering these facts in their totality, CBP is of the view that while the Hero3 camera housing provides water and heat protection to the camera when the camera is in use, its rigid, unpadded design and absence of lens protection renders it of limited capacity to protect the camera when it is being stored or transported. The fourth defining characteristic of heading 4202 exemplars is the ability of a container to carry or transport its contents. The Hero3 camera housing's design is not intended, either principally or incidentally, to "carry" a camera, but to enclose a camera while it is being used. The housing possesses no straps, handles, or grips and the hard plastic is likely to be slippery when wet. The housing's multi-function interchangeable mounting system secures the camera onto a chest harness, head gear, or onto a vehicle or other solid surface. In that manner, the housing does not "carry" the camera; rather, the housing's mounting function permits the camera to attach to various other items to enable the digital recording of extreme footage in various settings. CBP does not view the housing's ability to affix to another item as the equivalent of carrying or conveying the camera. In applying these four characteristics collectively, CBP is of the view that while the subject Hero3 housing does offer a limited degree of protection, it does not serve to organize, store, or carry/transport a camera and therefore does not share the essential characteristics of the articles listed as exemplars of heading 4202, HTSUS.

Under the second prong of an *ejusdem generis* analysis, CBP must consider the "specific primary purpose" of the imported merchandise as compared to the listed exemplars. The specific primary purpose must be the predominant use, rather than simply one possible use. *See Len-Ron*, 334 F.3d at 1311. As noted above, the specific primary purpose of the Hero3 camera housing is to enable the camera's active use while the camera is enclosed in the housing, specifically by permitting the camera to be used underwater and by providing a means of mounting the camera to other articles so as to permit hands-free filming of extreme activities. As such, the Hero3 camera housing's primary purpose is inconsistent with that of the exemplars of heading 4202, *i.e.*, organizing, storing, protecting, carrying. *See also Otterbox II*, at 17–18, where the CAFC noted that a case that is designed to hold and protect a device while it remains 100% functional is "inconsistent with the purposes of the exemplars in heading 4202." For the reasons set forth above, the subject Hero3 camera housing does not meet the courts' *ejusdem generis* standards for classification within heading 4202, HTSUS, as a "similar container." The Hero3 camera housing's essential characteristic and primary purpose is to enable the functioning of a camera underwater or during extreme activities, and not to store, organize, carry or protect the camera.

We next examine whether the subject camera housing is classifiable in heading 3926, HTSUS, which provides for “[O]ther articles of plastics and articles of other materials of headings 3901 to 3914.” The subject Hero3 camera housing is made of plastics of headings 3901 to 3914. However, as Chapter 39 Note 2(s) excludes articles of Section XVI, which includes heading 8529, HTSUS, we must determine whether the subject camera housing is classifiable as a “part” of a digital camera of heading 8525, HTSUS, as provided for in subheading 8529, HTSUS.

The courts have examined the meaning of “parts” for purposes of classification under the HTSUS and two distinct though not inconsistent tests have resulted. See *Bauerhin Technologies Limited Partnership*, and *John V. Carr & Sons Inc., v. United States*, 110 F.3d 774 (Fed. Cir. 1997), citing *United States v. Willoughby Camera Stores, Inc.*, 21 C.C.P.A. 322 (1933), and *United States v. Pompeo*, 43 C.C.P.A. 9 (1955). The court in *Bauerhin*, citing *Willoughby Camera*, stated, “the mere fact that two articles are designed and constructed to be used together, does not necessarily make either a part of the other.” *Bauerhin* also stated that the threshold question is whether an item “is an integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article.” *Willoughby Camera*, 21 C.C.P.A. at 324. In *United States v. Pompeo*, the court stated that an imported item dedicated solely for use with another article is a part of that article provided that, when applied to that use, the article will not function without it. *Pompeo*, 43 C.C.P.A. at 14. Under either line of cases, an imported item is not a part if it is a “separate and distinct commercial entity.” See also *ABB, Inc. v. United States*, 28 Ct. Int’l Trade 1444, 1452–53 (2004), citing *Willoughby Camera*, 21 C.C.P.A. at 325; *Bauerhin*, 100 F.3d at 779 (applying the *Willoughby Camera* “distinct and separate commercial entity” criteria to the second definition of parts, which derives from *Pompeo*, 43 C.C.P.A. at 13). The Federal Circuit confirmed the above in *Rollerblade, Inc. v. United States*, 283 F.3d 1349 (Fed. Cir. 2002), when it stated parts were defined as, “an essential element or constituent; integral portion which can be separated, replaced, etc.” *Id.* at 1353, (citing *Webster’s New World Dictionary*, 984 (3d College Ed. 1988)).

In the instant matter, GoPro’s Hero3 camera is unable to perform its primary function of capturing underwater and extreme activity footage without the subject housing. The housing’s water-tight silicon gasket seal and spring-loaded buttons enable the camera to function while underwater.⁵ The housing’s mounting system enables the camera to operate in a hands-free capacity and to adhere to various surfaces. The housing is not a separate and distinct commercial entity and is not interchangeable with other products on the market. It is an integral component part to the Hero3 camera as the camera cannot function in its intended capacity without it.⁶ As cameras are

⁵ Later iterations of GoPro’s Hero series camera systems are capable of functioning underwater, to a limited depth, without a housing. GoPro markets the Hero 5 on its website as “HERO5 Black is built tough and waterproof without a housing down to 33ft (10m).is markets.” See <https://shop.gopro.com/cameras/hero5-black/CHDX-502-master.html>. (site last visited December 27, 2017)

⁶ This determination is consistent with HQ 966133, dated March 11, 2003, in which CBP, citing *Rollerblade*, classified certain “Quick Change Lens Packs” and printed circuit assemblies as parts of television cameras in heading 8529, HTSUS, noting the subject lenses were “an essential element or constituent; integral portion[s] which can be separated, replaced etc.” and “necessary for the efficient operation” of the camera.

prima facie classified in heading 8525, HTSUS, parts thereof, such as the camera housing at issue, are classified in subheading 8529, HTSUS, which provides for “[P]arts suitable for use solely or principally with the apparatus of headings 8525 to 8528.”

Heading 8529, HTSUS, is a heading within Section XVI of the HTSUS; therefore, Note 2 of that section, *cited supra*, further guides classification of this article. As the subject camera housing is not included in any other headings of Chapter 84 or 85, and it is specifically made for GoPro cameras which are classified in heading 8525, HTSUS, classification of the subject camera housing is proper in subheading 8529.90.86, HTSUS, as per Section XVI, Note 2(b).

Prior to the issuance of NY H240464, CBP issued several rulings in which products designed to allow use of a camera while underwater were classified as “similar containers” in a residual provision of heading 4202, HTSUS. *See* NYs N222075, dated July 9, 2012 (molded plastic waterproof case, specially fitted and shaped for use with a particular kind of camera to allow for the use of the camera underwater at depths of up to three meters while the camera is inside the case, capable of being mounted on another surface using compatible mounting hardware)⁷, L83830, dated April 11, 2005 (rigid plastic case specially shaped and fitted to fit certain specific digital cameras to allow for underwater use of the camera while it is in the case), I84647, August 7, 2002 (specially shaped and designed waterproof case for use with Canon’s “Power Shot” camera, for underwater use of the camera while it is in the case). The products at issue in NYs N222075, L83830 and I84647 are not properly classifiable in heading 4202, HTSUS, in that they do not possess the court-prescribed four essential characteristics common to heading 4202 containers: (1) organization; (2) storage; (3) protection, and; (4) portability. In this regard, CBP agrees that the products at issue in those NY rulings do not possess the essential characteristics shared by the exemplars of heading 4202, HTSUS, for the same reasons that the subject Hero3 camera housing does not.

We further note that one significant characteristic exists that differentiates these articles from the Hero3 camera housing at issue and precludes their classification in heading 8529, HTSUS, as “[P]arts suitable for use solely or principally with the apparatus of headings 8525 to 8528.” The waterproof cases at issue in NYs N222075, L83830, and I84647 are distinguishable from the subject Hero3 camera housing in that they are not necessary to the functioning of the camera for which they are specially designed and, in that respect, they function like a waterproof accessory. Conversely, GoPro’s Hero3 camera is intended for use only while enclosed in its camera housing and it is not capable of functioning in its intended capacity outside of the housing. As the articles at issue in NYs N222075, L83830 and I84647 are not integral to the functioning of the cameras for which they are designed to fit, they are not classifiable as “parts” of heading 8529, HTSUS.

As the articles at issue in NYs N222075, L83830 and I84647 are articles made of plastics of headings 3901 to 3914, HTSUS, not elsewhere more specifically provided for in the tariff schedule, classification is proper in subheading 3926.90.99, HTSUS, which provides for “[O]ther articles of plastics and articles of other materials of headings 3902 to 3914: Other.” *See* NY N006211, dated February 9, 2007, in which CBP classified a silicon plastic

⁷ NY N222075 also classified a mounting kit in subheading 3926.90.9980, HTSUS, which is not at issue in this reconsideration.

waterproof case for a digital camera, with a clear polycarbonate cap and plastic buttons, in subheading 3926.90.99, HTSUS.

HOLDING:

By application of GRI 1, the Hero3 camera housing at issue in NY N240464 is classified in heading 8529, HTSUS. Specifically, by application of GRI 6, it is provided for in subheading 8529.90.86, HTSUS, which provides for “[P]arts suitable for use solely or principally with the apparatus of headings 8525 to 8528: Other parts of articles of headings 8525 to 8527, except parts of cellular telephones: Other.” The 2018 applicable rate of duty is free.

By application of GRI 1, the rigid molded plastic waterproof camera housings at issue in NYs N222075, L83830 and I84647 are classified in heading 3926, HTSUS. Specifically, by application of GRI 6, they are provided for in subheading 3926.90.99, HTSUS, which provides for “[O]ther articles of plastics and articles of other materials of headings 3902 to 3914: Other.” The 2018 applicable rate of duty is 5.3% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

In accordance with the analysis set forth above, NYs N240464, dated May 3, 2013, L83830, dated April 11, 2005, and I84647, dated August 7, 2002 are REVOKED, and NY N222075, dated July 9, 2012, is MODIFIED with respect to the molded plastic waterproof camera housing, identified as item number 45824.

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

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

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**PROPOSED MODIFICATION OF TWO RULING LETTERS
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF DECORATIVE WOODEN
NUTCRACKERS**

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

ACTION: Notice of proposed modification of two ruling letters, and revocation of treatment relating to the tariff classification of decorative wooden nutcrackers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify two ruling letters concerning tariff classification of decorative wooden nutcrackers 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.

DATE: Comments must be received on or before August 6, 2018.

ADDRESS: Written comments are to be addressed to 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: Alben Peters, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–0321.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with 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 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to modify two ruling letters pertaining to the tariff classification of decorative wooden nutcrackers. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) I82063, dated June 17, 2002 (Attachment A) and NY I82064, dated June 17, 2002 (Attachment B), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the two rulings identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), 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 comment period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY I82063, CBP classified a decorative wooden nutcracker representing Dorothy from “The Wizard of Oz” in heading 9505, HTSUS, specifically in subheading 9505.10.15, HTSUS, which provides for “Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Articles for Christmas festivities and parts and accessories thereof: Christmas ornaments: Other: Of wood.” CBP classified the remaining decorative wooden nutcrackers in NY I82063 representing Cowardly Lion, Scarecrow, and Tin Man from “The Wizard of Oz” and the decorative wooden nutcrackers in NY I82064 in heading 4420, specifically in subheading 4420.10.00, HTSUS, which provides for “Wood marquetry and inlaid wood; caskets and cases for jewelry or cutlery and similar articles, of wood; statuettes and other ornaments, of

wood; wooden articles of furniture not falling within chapter 94: Statuettes and other ornaments, of wood” but CBP’s analysis was incorrect. CBP has reviewed NY I82063 and NY I82064, and has determined these ruling letters to be in error. It is now CBP’s position that all the subject decorative wooden nutcrackers are properly classified in heading 4420, HTSUS, specifically in subheading 4420.10.00, HTSUS, which provides for “Wood marquetry and inlaid wood; caskets and cases for jewelry or cutlery and similar articles, of wood; statuettes and other ornaments, of wood; wooden articles of furniture not falling within chapter 94: Statuettes and other ornaments, of wood” and it is immaterial whether the nutcrackers were “human” or “non-human” type.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY I82063 and NY I82064, and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H143395, set forth as Attachment C to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: May 24, 2018

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

NY I82063

June 17, 2002

CLA-2-44:RR:NC:SP:230 I82063

CATEGORY: Classification

TARIFF NO.: 4420.10.0000; 9505.10.1500

Ms. RITA PITTS
DILLARD'S, INC.
1600 CANTRELL ROAD
LITTLE ROCK, AR 72201

RE: The tariff classification of decorative wooden nutcrackers from Germany.

DEAR Ms. PITTS:

In your letter dated May 23, 2002, you requested a tariff classification ruling.

The ruling was requested on four decorative wooden "nutcrackers," each of which represents a character from "The Wizard of Oz." A sample of one ("Cowardly Lion") was submitted and is being returned to you as requested. Photos of the other three were submitted. All are composed of wood, but are ornamented with paint, fabric clothing, and/or accessories of various materials.

Style #ZDIES1805 is an 18"-high "Cowardly Lion" figure dressed like a king in a fabric robe. A lever on the back can be operated to make the mouth move.

Style #ZDIES1806 is a 15"-high "Dorothy" figure in a fabric dress. A lever on the back can be operated to make the chin move.

Style #ZDIES0961 is a 17"-high "Scarecrow" figure with fabric apparel. A lever on the back can be operated to make the mouth move.

Style #ZDIES0960 is a 19"-high "Tin Man" figure painted in a silver color to simulate a "tin suit." A lever on the back can be operated to make the mouth move.

You believe that these nutcrackers are classifiable as "festive articles" in subheading 9505.10, Harmonized Tariff Schedule of the United States (HTS). However, following *Midwest of Cannon Falls vs. United States* (96-1271, -1279), Customs has taken the position that while "human" nutcracker figures can be considered "festive" (Christmas ornaments) for tariff purposes, non-human ones cannot. Among the instant products, only "Dorothy" is a human representation.

Accordingly, the applicable subheading for Style #ZDIES1806 ("Dorothy") will be 9505.10.1500, HTS, which provides for festive, carnival or other entertainment articles...articles for Christmas festivities...Christmas ornaments...of wood. The rate of duty will be free.

The applicable subheading for style numbers ZDIES1805 ("Cowardly Lion"), ZDIES0961 ("Scarecrow") and ZDIES0960 ("Tin Man") will be 4420.10.0000, HTS, which provides for statuettes and other ornaments, of wood. The rate of duty will be 3.2%.

The holding set forth above applies only to the specific factual situation and merchandise description as identified in the ruling request. This position is clearly set forth in 19 CFR 177.9(b)(1). This section states that a ruling letter

is issued on the assumption that all of the information furnished in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

This ruling is being issued under the assumption that the subject goods, in their condition as imported into the United States, conform to the facts and the description as set forth both in the ruling request and in this ruling. In the event that the facts or merchandise are modified in any way, you should bring this to the attention of Customs and you should resubmit for a new ruling in accordance with 19 CFR 177.2. You should also be aware that the material facts described in the foregoing ruling may be subject to periodic verification by the Customs Service.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Paul Garretto at 646-733-3035.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT B

NY I82064

June 17, 2002

CLA-2-44:RR:NC:SP:230 I82064

CATEGORY: Classification

TARIFF NO.: 4420.10.0000

Ms. RITA PITTS
DILLARD'S, INC.
1600 CANTRELL ROAD
LITTLE ROCK, AR 72201

RE: The tariff classification of decorative wooden nutcrackers from Germany.

DEAR Ms. PITTS:

In your letter dated May 23, 2002, you requested a tariff classification ruling.

The ruling was requested on two decorative wooden "nutcrackers," samples of which were submitted and are being returned to you as requested. Both are composed of wood, but are ornamented with paint, fabric clothing, and/or accessories of various materials.

Style #227T3137GS is an 8½"-high snowman figure with a black hat. A lever on the back can be operated to make the chin move.

Style #S1849 is a 16"-high standing rat figure, known as "Herr Ratty-Wind," dressed in a fabric vest, jacket and hat. A lever on the back can be operated to make the chin move.

You believe that these nutcrackers are classifiable as "festive articles" in subheading 9505.10, Harmonized Tariff Schedule of the United States (HTS). However, following *Midwest of Cannon Falls vs. United States* (96-1271, -1279), Customs has taken the position that while "human" nutcracker figures can be considered "festive" (Christmas ornaments) for tariff purposes, non-human ones cannot. The above-described styles are not human representations.

Accordingly, the applicable subheading for style numbers 227T3137GS (snowman) and S1849 ("Herr Ratty-Wind") will be 4420.10.0000, HTS, which provides for statuettes and other ornaments, of wood. The rate of duty will be 3.2%.

The holding set forth above applies only to the specific factual situation and merchandise description as identified in the ruling request. This position is clearly set forth in 19 CFR 177.9(b)(1). This section states that a ruling letter is issued on the assumption that all of the information furnished in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

This ruling is being issued under the assumption that the subject goods, in their condition as imported into the United States, conform to the facts and the description as set forth both in the ruling request and in this ruling. In the event that the facts or merchandise are modified in any way, you should bring this to the attention of Customs and you should resubmit for a new ruling in accordance with 19 CFR 177.2. You should also be aware that the material facts described in the foregoing ruling may be subject to periodic verification by the Customs Service.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Paul Garretto at 646-733-3035.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT C

HQ H143395
OT:RR:CTF:CPMM H143395 APP
CATEGORY: Classification
TARIFF NO.: 4420.10.0000

MS. RITA PITTS
DILLARD'S, INC.
1600 CANTRELL ROAD
LITTLE ROCK, AR 72201

RE: Modification of NY I82063 and NY I82064; Tariff classification of decorative wooden nutcrackers from Germany

DEAR MS. PITTS:

This is to inform you that U.S. Customs and Border Protection ("CBP") has reconsidered New York Ruling Letters ("NY") I82063 and I82064, dated June 17, 2002, regarding the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of decorative wooden nutcrackers.

In NY I82063, CBP classified a wooden nutcracker representing Dorothy from "The Wizard of Oz" under heading 9505, HTSUS, specifically under subheading 9505.10.15, HTSUS, which provides for "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Articles for Christmas festivities and parts and accessories thereof: Christmas ornaments: Other: Of wood." The remaining wooden nutcrackers in NY I82063 representing Cowardly Lion, Scarecrow, and Tin Man from "The Wizard of Oz" were classified under heading 4420, HTSUS, specifically under subheading 4420.10.00, HTSUS, which provided for "Wood marquetry and inlaid wood; caskets and cases for jewelry or cutlery and similar articles, of wood; statuettes and other ornaments, of wood; wooden articles of furniture not falling within chapter 94: Statuettes and other ornaments, of wood." CBP's reasoning in NY I82063 was that only "human" nutcrackers can be considered "festive" for tariff classification purposes.

In NY I82064, CBP classified a wooden snowman nutcracker and a wooden rat nutcracker under heading 4420, HTSUS, specifically under subheading 4420.10.00, HTSUS. Even though CBP correctly classified the two nutcrackers in NY I82064, CBP incorrectly concluded that "non-human" nutcrackers cannot be considered "festive" articles for tariff classification purposes.

We have determined that both rulings are incorrect and for the reasons set forth below we hereby modify NY I82063 (the tariff classification of the Dorothy nutcracker and the conclusion that only human nutcrackers can be "festive") and NY I82064 (the conclusion that non-human nutcrackers cannot be "festive").

FACTS:

The merchandise in NY I82063 consists of four decorative wooden nutcrackers ornamented with paint, fabric clothing, and/or accessories of various materials, representing Dorothy, Cowardly Lion, Scarecrow, and Tin Man from the 1939 film "The Wizard of Oz." A lever on the back can be operated to make the mouth of each figure move. Style number ZDIES1805, Cowardly Lion (18 inches high), is a wooden lion figure with a crown dressed in a fabric robe. Style number ZDIES1806, Dorothy figure (15 inches high), is in a fabric

dress. Style number ZDIES0961, Scarecrow figure (17 inches high), is in fabric apparel. Style number ZDIES0960, Tin Man (19 inches high), is painted in silver to simulate a tin suit.

The merchandise in NY I82064 consists of two decorative wooden nutcrackers ornamented with paint, fabric clothing, and/or accessories of various materials. A lever on the back can be operated to make the chin of each move. Style number 227T3137GS is a wooden snowman figure (8.5 inches high) with a black hat. Style number S1849 is a wooden standing rat figure (16 inches high) dressed in a fabric vest, jacket, and hat, representing Herr Ratty-Wind from the children's novel "The Wind in the Willows" by Kenneth Grahame.

ISSUE:

Whether the instant six nutcrackers are classified in heading 4420, HTSUS, as statuettes or other ornaments, of wood, or in heading 9505, HTSUS, as Christmas ornaments, of wood.

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.

GRI 2(b) provides that the classification of goods consisting of more than one material or substance shall be according to the principles of GRI 3. GRI 3(a) states that goods should be classified according to the heading, which affords the most specific description, unless the multiple headings under consideration refer to only part of the materials or substances contained in goods that are mixed or composite, or to only part of the items in a set put up for retail sale. GRI 3(b) provides that "composite goods consisting of different materials or made up of different components" are to be classified "as if they consisted of the material or component which gives them their essential character," and where this is not possible, "under the heading which occurs last in numerical order among those which equally merit consideration."

Pursuant to GRI 6, classification at the subheading level uses the same rules, *mutatis mutandis*, as classification at the heading level.

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

4420	Wood marquetry and inlaid wood; caskets and cases for jewelry or cutlery and similar articles, of wood; statuettes and other ornaments, of wood; wooden articles of furniture not falling within chapter 94:
9505	Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof:

Pursuant to Note 1(p) to chapter 44, HTSUS, this chapter does not cover articles of chapter 95, HTSUS.

Note 1(w) to chapter 95, HTSUS, states that this chapter does not cover "[t]ableware, kitchenware, toilet articles, carpets and other textile floor cov-

erings, apparel, bed linen, table linen, toilet linen, kitchen linen and similar articles having a utilitarian function (classified according to their constituent material).”¹

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).

EN 44.20, provides, in relevant part, that:

This heading covers panels of wood marquetry and inlaid wood, including those partly of material other than wood.

The articles of this heading may be made of ordinary wood or of particle board or similar board, fibreboard, laminated wood or densified wood (see Note 3 to this Chapter).

It also covers a wide variety of articles of wood (including those of wood marquetry or inlaid wood), generally of careful manufacture and good finish, such as: small articles of cabinetwork (for example, caskets and jewel cases); small furnishing goods; decorative articles. Such articles are classified in this heading, even if fitted with mirrors, **provided** they remain essentially articles of the kind described in the heading. Similarly, the heading includes articles wholly or partly lined with natural or composition leather, paperboard, plastics, textile fabrics, etc., **provided** they are articles essentially of wood.

The heading includes: ... (3) Statuettes, animals, figures and other ornaments.

EN 95.05, states, in relevant part, that heading 9505 covers:

(A) **Festive, carnival or other entertainment articles**, which in view of their intended use are generally made of non-durable material. They include:

(1) Festive decorations used to decorate rooms, tables, etc. (such as garlands, lanterns, etc.); decorative articles for Christmas trees (tinsel, coloured balls, animals and other figures, etc); cake decorations which are traditionally associated with a particular festival (e.g., animals, flags).

(2) Articles traditionally used at Christmas festivities, e.g., artificial Christmas trees, nativity scenes, nativity figures and animals, angels, Christmas crackers, Christmas stockings, imitation yule logs, Father Christmases ...

The heading **excludes** statuettes, statues and the like of a kind used for decorating places of worship.

The heading also **excludes** articles that contain a festive design, decoration, emblem or motif and have a utilitarian function, e.g., tableware, kitchenware, toilet articles, carpets and other textile floor coverings, apparel, bed linen, table linen, toilet linen, kitchen linen.

¹ Formerly Note 1(v) to chapter 95, HTSUS, added in 2007.

First, we will determine whether the instant decorative wooden nutcrackers are classified in heading 9505, HTSUS. If they are classified in heading 9505, HTSUS, they will be excluded from heading 4420, HTSUS, by application of Note 1(p) to chapter 44, HTSUS. Heading 9505, HTSUS, covers decorative articles for Christmas trees and articles traditionally used at Christmas festivities. See EN 95.05. To be classified as “festive” under chapter 95, HTSUS, an article must satisfy two criteria: (1) It must be closely associated with a festive occasion and (2) the article is used or displayed principally during that festive occasion. See *Park B. Smith, Ltd. v. United States*, 347 F.3d 922, 927–29 (Fed. Cir. 2003) (citing *Midwest of Cannon Falls v. United States*, 122 F.3d 1423, 1427–29 (Fed. Cir. 1997)). If the use or display of the article at other times would not be “aberrant” then it does not satisfy the criteria for “festive” articles under chapter 95, HTSUS. *Park B. Smith*, 347 F.3d at 929. The utilitarian function of articles does not preclude their classification as “festive” articles under heading 9505, HTSUS. See *Michael Simon Design, Inc. v. United States*, 501 F.3d 1303 (Fed. Cir. 2007), *aff’d*, 452 F. Supp. 2d 1316 (CIT 2006).

In *Midwest of Cannon Falls*, 122 F.3d at 1423, the Court of Appeals for the Federal Circuit (“CAFC”) classified decorative nutcrackers (Santa, soldier, king, presidents, athletes, and professionals), whose form and design were similar to that of the soldier/king nutcracker from Pyotr Ilyich Tchaikovsky’s “The Nutcracker,” a ballet adaptation of E. T. A. Hoffmann’s story “The Nutcracker and the Mouse King,” under heading 9505, HTSUS, as wooden festive articles. The nutcrackers were sold to customers mainly during the Christmas season and lacked functionality and suitability as decorative items outside the Christmas holiday season. In *Wilton Indus. v. United States*, 31 CIT 863, 907–908 (2007), the CIT held that a cookie cutter in the shape of a traditional nutcracker sold with Christmas-themed cookie cutters was a symbol “closely associated with” Christmas and “so intrinsically linked to Christmas” that its use featuring this motif at other times of the year would be “aberrant.” The court also held that cookie cutters in the shape of an unadorned snowman, a star, a drum, a rocking horse, and a teddy bear were not similarly “closely associated” with Christmas and their use at other times would not be “aberrant.”

The subject six nutcrackers are decorative wooden figures representing “The Wizard of Oz” characters, a snowman, and Herr Ratty-Wind from “The Wind in the Willows.” Wooden nutcrackers date back to the 1800s and nowadays they are manufactured to meet the demands of collectors year-round.² Collectors look for the traditional toy soldier/king nutcracker from “The Nutcracker” ballet, which has become a Christmas tradition, as well as other designs such as royalty, bakers, chimney sweeps, and policemen nutcrackers. Unlike “The Nutcracker” ballet type soldier/king nutcracker, the instant nutcrackers are not closely associated with the Christmas holiday. See *Wilton Indus.*, *supra*. Even if the instant wooden figures are used or displayed principally during the Christmas holiday season, their use or display at other times would not be “aberrant.” Their use may not be confined to the holiday

² See Nutcracker Museum, The History of Nutcrackers, <http://nutcrackermuseum.com/history.htm> (last visited Mar. 23, 2018).

season and therefore they are not closely associated only with Christmas. Just like the cookie cutters in the shape of an unadorned snowman, a star, a drum, a rocking horse, and a teddy bear in *Wilton Indus.*, *supra*, the instant wooden figures are not associated with the Christmas holiday and can be used or displayed at other times of the year.

In HQ 962453, dated November 3, 1999, CBP clarified that an ordinary snowman is “not automatically an accepted symbol for the recognized holiday of Christmas” and in NY 872310, dated April 6, 1992, CBP classified the same characters (Cowardly Lion, Dorothy, Tin Man, and Scarecrow) from “The Wizard of Oz” as statuettes and other ornaments of wood of heading 4420, HTSUS. Just like the wooden figures in NY 872320, the instant four nutcrackers from “The Wizard of Oz” are not associated with the Christmas holiday season. The remaining two wooden figures, a snowman associated with the winter season and the Herr Ratty-Wind character from the children’s novel “The Wind in the Willows,” are also not associated with the Christmas holiday season.

Since the instant six wooden figures are not closely associated with the Christmas holiday and their use or display at other times would not be “aberrant,” they are not classifiable under heading 9505, HTSUS. It is immaterial whether they are “human” or “non-human” nutcrackers. *See Midwest of Cannon Falls, supra* (the CAFC did not distinguish between human and non-human nutcracker characters).

It is our determination that the instant six nutcrackers are wooden statuettes covered by heading 4420, HTSUS. *See EN 44.20, supra*. By application of GRIs 1 and 3(b), even though they are ornamented with paint, fabric clothing, and/or accessories of various materials, they are classified as statuettes of wood consistent with EN 44.20 because they are essentially of wood. CBP has previously classified wooden nutcrackers in heading 4420, HTSUS, specifically under subheading 4420.10.00, HTSUS. *See NY M84661*, dated July 25, 2006 (classifying three styles of decorative wooden nutcrackers made of wood, except for the heads and hands, which were made of plush textile). It should be further noted that heading 4420, HTSUS, is more specific than heading 9505, HTSUS, because the term “articles of wood” covers a narrower set of items and more clearly identifies the wooden figures than the term “festive articles.” *See Russ Berrie & Co. v. United States*, 381 F.3d 1334 (Fed. Cir. 2004) (concluding that heading 7117, HTSUS, is more specific than heading 9505, HTSUS, because the description “imitation jewelry” is by name while the description “festive article” is by class).

Therefore, the wooden snowman and Herr Ratty-Wind nutcrackers in NY I82064 and the wooden Cowardly Lion, Scarecrow and Tin Man nutcrackers in NY I82063 were correctly classified in heading 4420, HTSUS. The Dorothy nutcracker in NY I82063, which was incorrectly classified in heading 9505, HTSUS, should be classified in heading 4420, HTSUS.

HOLDING:

By application of GRIs 1, 3(b), and 6, all nutcrackers in NY I82063 and NY I82064 are classified in heading 4420, specifically under subheading 4420.10.00, which provides for “Wood marquetry and inlaid wood; caskets and cases for jewelry or cutlery and similar articles, of wood; statuettes and

other ornaments, of wood; wooden articles of furniture not falling within chapter 94: Statuettes and other ornaments, of wood.”³ The 2018 column one, duty rate is 3.2% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at <https://hts.usitc.gov/current>.

EFFECT ON OTHER RULINGS:

NY I82063, dated June 17, 2002, is MODIFIED with respect to the tariff classification of the Dorothy wooden nutcracker and the tariff classification analysis.

NY I82064, dated June 17, 2002, is MODIFIED with respect to the tariff classification analysis.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

³ This is consistent with the criteria set forth in *Park B. Smith*, 347 F.3d at 927–29, *supra*. It is immaterial whether the nutcrackers are of “human” type or “non-human” type.

**PROPOSED MODIFICATION OF ONE RULING LETTER
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A MINE PERSONNEL
CARRIER**

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

ACTION: Notice of proposed modification of one ruling letter and revocation of treatment relating to the tariff classification of a Mine Personnel Carrier.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify one ruling letter concerning tariff classification of a Mine Personnel Carrier 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.

DATE: Comments must be received on or before August 6, 2018.

ADDRESS: Written comments are to be addressed to 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: Patricia Fogle, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0061.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibil-

ity 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 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of a Mine Personnel Carrier. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N106796, dated June 2, 2010 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), 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 comment period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N106796, CBP classified a Mine Personnel Carrier in heading 8703, HTSUS, specifically in subheading 8703.33.0045, HTSUSA, which provides for “Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars: Other vehicles with compression-ignition internal combustion piston engine (diesel or semi-diesel): Of a cylinder capacity exceeding 2,500 cc: Other: New.” CBP has reviewed NY N106796 and has determined the ruling letter should be modified to reflect that sufficient evidence was not submitted to support the assertion that ten people could be seated in the vehicle and, therefore, the subject mine personnel carrier is not described by heading 8702, which provides for “Motor vehicles for the transport of ten or more persons, including the driver.” NY N106796 should also be modified by changing the reference to the “Hydraulic

Boom Lift Truck” to the “Mine Personnel Carrier.” It is now CBP’s position that the Mine Personnel Carrier is properly classified, in heading 8703, HTSUS, specifically in subheading 8703.33.01, HTSUS, which provides for “Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars: Other vehicles, with only compression-ignition internal combustion piston engine (diesel or semi-diesel): Of a cylinder capacity exceeding 2,500 cc.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N106796 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H269330, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: May 24, 2018

GREG CONNOR

For

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N106796

June 2, 2010

CLA-2-87:OT:RR:NC:N1:101

CATEGORY: Classification

TARIFF NO.: 8703.33.0045

KENNETH M. CARMON, PRESIDENT
BAY BROKERAGE, INC.
44951 COUNTRY ROUTE 191, SUITE 201
WELLESLEY ISLAND, NY 13640-

RE: The tariff classification of a Mine Personnel Carrier from Japan

DEAR MR. CARMON,

In your letter dated May 14, 2010, you requested a tariff classification ruling on behalf of your client, Mobile Parts Inc., of Val Caron Ontario, Canada.

The item concerned is a Mine Personnel Carrier. It consists of the chassis and cab of a Toyota Land Cruiser modified with a rear passenger seating.

The Carrier features power steering, tilt steering wheel, seatbelts in the two (2) front seats, air conditioning, heating, stereo system, 4.2-litre compression-ignition engine, 3200 kg. (7055 lbs.) GVW suspension and 5-speed manual transmission. The rear passenger portion is equipped with non-removable upholstered bench seats, parallel to each other. You state in your ruling request that the bench seats accommodate from six to eight miners dressed in underground safety equipment. Entry is through the rear by means of a step-up bumper. The rear compartment has no lockers, tool boxes or other visible storage capability. Though open at the bottom, the bench seats are built low to the floor which makes storage of tools or other equipment impractical.

You state in your ruling request that at the time of import the vehicle is equipped with an exhaust purifier and, although not equipped with governor to restrict speed, the gearing of the vehicle only allows a top speed of 20 miles per hour.

The applicable classification subheading for the Hydraulic Boom Lift Truck will be 8703.33.0045, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Motor cars and other motor vehicles principally designed for the transport of persons ... , including station wagons and racing cars: Other vehicles, with compression-ignition internal combustion engine...: Of a cylinder capacity exceeding 2,500 cc: Other: New". The rate of duty will be 2.5%.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Richard Laman at 646-733-3017.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

ATTACHMENT B

HQ H269330

CLA-2 OT:RR:CTF:EMAIN H269330 PF

CATEGORY: Classification

TARIFF NO.: 8703.33.01

MR. KENNETH M. CARMON, PRESIDENT
BAY BROKERAGE, INC.
44951 COUNTRY ROUTE 191, SUITE 201
WELLESLEY ISLAND, NEW YORK 13640

RE: Modification of NY N106796; tariff classification of a Mine Personnel Carrier

DEAR MR. CARMON:

On June 2, 2010, U.S. Customs and Border Protection (“CBP”) issued to you New York Ruling Letter (“NY”) N106796. It concerned the tariff classification of a Mine Personnel Carrier under the Harmonized Tariff Schedule of the United States (“HTSUS”). We have reconsidered NY N106796 and have determined that the Law and Analysis section should be modified to reflect that sufficient evidence was not provided to support the assertion regarding the number of seats in the vehicle.

FACTS:

In NY N106796, the subject Mine Personnel Carrier was described as follows:

It consists of the chassis and cab of a Toyota Land Cruiser modified with a rear passenger seating.

The Carrier features power steering, tilt steering wheel, seatbelts in the two (2) front seats, air conditioning, heating, stereo system, 4.2-litre compression-ignition engine, 3200 kg. (7055 lbs.) GVW suspension and 5-speed manual transmission. The rear passenger portion is equipped with non-removable upholstered bench seats, parallel to each other. You state in your ruling request that the bench seats accommodate from six to eight miners dressed in underground safety equipment. Entry is through the rear by means of a step-up bumper. The rear compartment has no lockers, tool boxes or other visible storage capability. Though open at the bottom, the bench seats are built low to the floor which makes storage of tools or other equipment impractical.

You state in your ruling request that at the time of import the vehicle is equipped with an exhaust purifier and, although not equipped with governor to restrict speed, the gearing of the vehicle only allows a top speed of 20 miles per hour.

In NY N106796, CBP classified the merchandise in heading 8703, HTSUS, and specifically under subheading 8703.33.0045, HTSUSA, which in the 2010 Basic Edition of the HTSUS provided for “Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars: Other vehicles with compression-ignition internal combustion piston engine (diesel or semi-diesel): Of a cylinder capacity exceeding 2,500 cc: Other: New.” We note that

in one place, CBP inadvertently referred to the article as a “Hydraulic Boom Lift Truck” rather than as a “Mine Personnel Carrier.”¹

ISSUE:

Whether the subject Mine Personnel Carrier is classifiable in heading 8702, HTSUS, which provides for “Motor vehicles for the transport of ten or more persons, including the driver,” or in heading 8703, HTSUS, which provides for “Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars.”

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

8702	Motor vehicles for the transport of ten or more persons, including the driver:
8703	Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars:
	Other vehicles, with only compression-ignition internal combustion piston engine (diesel or semi-diesel):
8703.33.01	Of a cylinder capacity exceeding 2,500 cc:

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the “official interpretation of the Harmonized System” at the international level. *See* 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989). 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 id.*

EN to 87.03 states, in pertinent part:

* * *

The classification of certain motor vehicles in this heading is determined by certain features which indicate that the vehicles are principally designed for the transport of persons rather than for the transport of goods (**heading 87.04**). These features are especially helpful in determining the classification of motor vehicles which generally have a gross vehicle weight rating of less than 5 tonnes and which have a single enclosed interior space comprising an area for the driver and passengers and another area that may be used for the transport of both persons and goods. Included in this category of motor vehicles are those commonly known as “multipurpose” vehicles (e.g., van-type vehicles, sports utility

¹ On June 2, 2010, in NY 106798, CBP also issued a ruling classifying a Hydraulic Boom Lift Truck in heading 8705, HTSUS.

vehicles, certain pick-up type vehicles). The following features are indicative of the design characteristics generally applicable to the vehicles which fall in this heading:

- (a) Presence of permanent seats with safety equipment (e.g., safety seat belts or anchor points and fittings for installing safety seat belts) for each person or the presence of permanent anchor points and fittings for installing seats and safety equipment in the rear area behind the area for the driver and front passengers; such seats may be fixed, fold-away, removable from anchor points or collapsible;
- (b) Presence of rear windows along the two side panels;
- (c) Presence of sliding, swing-out or lift-up door or doors, with windows, on the side panels or in the rear;
- (d) Absence of a permanent panel or barrier between the area for the driver and front passengers and the rear area that may be used for the transport of both persons and goods;
- (e) Presence of comfort features and interior finish and fittings throughout the interior that are associated with the passenger areas of vehicles (e.g., floor carpeting, ventilation, interior lighting, ashtrays).

* * *

In HQ 962540, dated March 31, 1999, CBP classified two customized Toyota Land Cruiser mine vehicles, specifically, a covered mine personnel carrier and a hydraulic lift or boom vehicle. With regard to the covered mine personnel carrier, CBP stated the following:

[B]eyond stating [in its] submission that the personnel carrier ‘contains bench seats that accommodate six to eight miners,’ Mac makes no argument that the vehicle is ‘designed’ for the transport of ten or more persons. Neither submitted literature nor Federal mine safety and health regulations specify the vehicle’s seating capacity. There is no evidence from which we can conclude the personnel carrier is described by heading 8702.

Similarly, in the instant case, you stated in your ruling request that the “open rear passenger compartment” has “bench seats [that] accommodate from six to eight miners dressed in underground safety equipment.” No further evidence was submitted to support this assertion. Moreover, in response to questions raised by CBP, you stated that the “vehicle is equipped with six (6) sets of seat belts for passengers sitting in the rear seats.” You did not explain the absence of the additional two seat belts in the rear passenger seating area. NY N106796 is being modified to reflect that sufficient evidence was not submitted to support the assertion that ten people could be seated in the vehicle and, therefore, the subject mine personnel carrier is not described by heading 8702, which provides for “Motor vehicles for the transport of ten or more persons, including the driver.” NY N106796 is also being modified by changing the reference to the “Hydraulic Boom Lift Truck” to the “Mine Personnel Carrier.”

We find that the remainder of the justification provided for in NY N106796 concerning the classification of the subject merchandise is correct and should remain unchanged. Therefore, the subject Mine Personnel Carrier is properly classified under heading 8703, HTSUS. The subheading number, however,

must be adjusted to reflect the corresponding subheading in the Revision 4 Edition of the 2018 HTSUS. Therefore, the appropriate classification for the subject merchandise is 8703.33.01, HTSUS, which provides for “Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars: Other vehicles, with only compression-ignition internal combustion piston engine (diesel or semi-diesel): Of a cylinder capacity exceeding 2,500 cc.”

HOLDING:

Under the authority of GRIs 1 and 6, the subject Mine Personnel Carrier is classified in heading 8703, HTSUS, specifically under subheading 8703.33.01, HTSUS, which provides for “Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars: Other vehicles, with only compression-ignition internal combustion piston engine (diesel or semi-diesel): Of a cylinder capacity exceeding 2,500 cc.” The 2018 column one, general rate of duty is 2.5 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N106796, dated June 2, 2010, is MODIFIED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division