

U.S. Customs and Border Protection



COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(NO. 9 2018)

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

SUMMARY: The following copyrights, trademarks, and trade names were recorded with U.S. Customs and Border Protection in September 2018. The last notice was published in the CUSTOMS BULLETIN Vol. 52, No. 40, October 3, 2018.

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

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

CHARLES R. STEUART

Chief,

*Intellectual Property Rights Branch
Regulations and Rulings, Office of Trade*

CBP IPR RECORDATION — SEPTEMBER 2018

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 87-00373	09/01/2018	03/24/2027	TABU (Stylized)	Finanz St. Honore, B.V.	No
COP 18-00128	09/01/2018	09/01/2038	Granger Plastics dot com.	Granger Plastics Company	No
TMK 18-00890	09/01/2018	11/07/2028	ORTONYX	Tsanko, Maksym	No
TMK 18-00891	09/01/2018	06/09/2020	OXO	Helen of Troy Limited	No
TMK 18-00892	09/01/2018	06/14/2027	TOROS-GROUP	Tsanko, Maksym	No
TMK 18-00893	09/01/2018	09/01/2020	OXO	Helen of Troy Limited	No
TMK 18-00894	09/01/2018	08/31/2026	OUTWOODS	Olem Shoe Corp.	No
TMK 18-00895	09/01/2018	08/03/2025	ADJUST-A-LIFT	WARWICK ENTERPRISES, INC.	No
TMK 18-00896	09/01/2018	03/21/2021	OXO TOT	Helen of Troy Limited	No
TMK 18-00897	09/01/2018	10/30/2021	OXO	HELEN OF TROY LIMITED	No
TMK 18-00898	09/01/2018	08/15/2022	COOL WATER (Stylized)	Zino Davidoff SA	No
TMK 18-00899	09/01/2018	04/16/2021	OXO	HELEN OF TROY LIMITED	No
TMK 18-00900	09/01/2018	08/03/2025	OXO	HELEN OF TROY LIMITED	No
TMK 18-00901	09/01/2018	07/04/2027	H & Design	HELEN OF TROY	No
TMK 15-01066	09/01/2018	10/15/2028	DC53	Daido Steel Co., LTD	No
TMK 18-00902	09/01/2018	11/28/2028	Design Only (Bear Head)	Chicago Bears Football Club, Inc.	No
TMK 18-00903	09/01/2018	08/22/2021	NATURAL BALANCE	Natural Balance Pet Foods, Inc.	No
TMK 18-00904	09/01/2018	10/25/2026	DICK VAN PATTEN'S NATURAL BALANCE ULTRA PREMIUM DOG FOOD & Design	Natural Balance Pet Foods, Inc.	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 18-00905	09/01/2018	10/31/2028	THE WITHERS	The Withers Winery Holdings LLC	No
TMK 18-00906	09/01/2018	11/21/2028	IN HAND	The Withers Winery Holdings LLC	No
TMK 18-00907	09/01/2018	08/17/2026	DON ERNESTO'S	Hagafen Cellars	No
TMK 18-00908	09/01/2018	10/25/2027	DCMX	Daido Steel Co., Ltd.	No
TMK 18-00909	09/01/2018	05/06/2028	SAVEGRE	StreetCar ORV, LLC DBA American Expedition Vehicles	No
TMK 18-00910	09/01/2018	05/06/2028	PINTLER	StreetCar ORV, LLC DBA American Expedition Vehicles	No
TMK 18-00911	09/01/2018	10/24/2028	SUPER MARIO ODYSSEY	Nintendo of America Inc.	No
TMK 18-00912	09/01/2018	05/06/2028	SALTA	StreetCar ORV, LLC	No
TMK 99-00664	09/01/2018	12/01/2028	S.W.A.T.	BATTENFELD TECHNOLOGIES, INC.	No
TMK 93-00111	09/01/2018	11/30/2028	DESIGN ONLY (Tree Logo)	TBL LICENSING LLC	No
TMK 93-00114	09/01/2018	11/30/2028	TIMBERLAND (Stylized)	TBL LICENSING LLC	No
TMK 09-00334	09/01/2018	08/21/2028	WRANGLER	Wrangler Apparel Corp.	No
TMK 18-00913	09/04/2018	01/23/2023	OXO TOT	Helen of Troy	No
TMK 18-00914	09/04/2018	05/06/2028	KATLA	StreetCar ORV, LLC	No
TMK 18-00958	09/09/2018	08/26/2019	NUTRISH	DPC PET SPECIALTIES LLC	No
TMK 18-00959	09/09/2018	11/05/2028	ENROUTE	FN CELLARS, LLC	No
TMK 10-01005	09/09/2018	10/21/2028	FLUKE & Design	Fluke Corporation	No
TMK 12-01237	09/09/2018	09/16/2028	AUBURN TIGERS	Auburn University	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
COP 98–00258	09/09/2018	09/09/2038	Wario Land II.	Nintendo of America, Inc.	No
TMK 01–00443	09/09/2018	10/21/2028	TOTAL GYM & Design	TOTAL GYM GLOBAL CORP.	No
TMK 95–00542	09/09/2018	06/04/2019	CHANTILLY	IMG FRAGRANCE BRANDS LLC	No
TMK 03–00573	09/09/2018	12/17/2021	SCOOP AWAY	THE CLOROX PET PRODUCTS COMPANY	No
TMK 94–00621	09/09/2018	12/19/2019	SMUCKER'S & Design	J. M. SMUCKER COMPANY, THE	No
TMK 11–01295	09/09/2018	07/14/2027	PUP-PERONI	BIG HEART PET, INC.	No
TMK 08–01009	09/09/2018	12/24/2028	Jaegermeister (Stylized)	MAST-JAEGERMEISTER SE	No
TMK 16–00602	09/09/2018	10/19/2025	Lava Brand & Design	Schylling Inc.	No
TMK 18–00915	09/09/2018	05/06/2028	BORAH	StreetCar ORV, LLC	No
TMK 18–00916	09/09/2018	07/04/2027	DESIGN ONLY (Fuel Caddy - Installed)	STREETCAR ORV, LLC	No
TMK 18–00917	09/09/2018	07/04/2027	DESIGN ONLY (Fuel Caddy - Without Wheel Installed)	STREETCAR ORV, LLC	No
COP 18–00129	09/09/2018	09/09/2038	Horizontal Gas Monkey Garage With Monkey Face Image	Gas Monkey Holdings, LLC	No
COP 18–00130	09/09/2018	09/09/2038	Gas Monkey Garage Top Over Bottom With Monkey Face Image	Gas Monkey Holdings, LLC	No
COP 18–00131	09/09/2018	09/09/2038	Gas Monkey Garage Blood Sweat Beers Spark Plugs Image	Gas Monkey Holdings, LLC	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 18-00929	09/09/2018	01/10/2028	DESIGN ONLY (OFF-WHITE RECTANGULAR STRIPES - VERTICAL)	Off-White LLC	No
TMK 18-00930	09/09/2018	11/21/2022	YEZZ	Worden Enterprises, Inc.	No
TMK 18-00931	09/09/2018	03/19/2028	OUTPOST	StreetCar ORV, LLC	No
TMK 18-00932	09/09/2018	03/06/2027	HIGHMARK	StreetCar ORV, LLC	No
TMK 18-00933	09/09/2018	02/11/2025	Simmons and Design (logo)	Simmons Engineering Corporation	No
TMK 18-00934	09/09/2018	11/08/2027	RECRUIT	StreetCar ORV, LLC	No
TMK 18-00935	09/09/2018	01/04/2027	SIMCUT	Simmons Engineering Corporation DBA Simmons Knife & Saw Company	No
TMK 18-00936	09/09/2018	11/04/2025	PROSPECTOR	StreetCar ORV LLC	No
TMK 18-00937	09/09/2018	09/11/2023	BRUTE DOUBLE CAB	StreetCar ORV LLC	No
TMK 18-00938	09/09/2018	08/22/2022	BRUTE	StreetCar ORV LLC	No
TMK 18-00939	09/09/2018	05/20/2028	PROCAL MODULE	StreetCar ORV, LLC DBA American Expedition Vehicles	No
TMK 18-00940	09/09/2018	05/27/2028	AMERICAN EXPEDITION VEHICLES	American Expedition Vehicles, Inc.	No
TMK 18-00941	09/09/2018	05/06/2028	AEV+Bison Logo	StreetCar ORV, LLC DBA American Expedition Vehicles	No
TMK 18-00942	09/09/2018	05/20/2028	AEV+Bison Logo	StreetCar ORV, LLC DBA American Expedition Vehicles	No
TMK 18-00943	09/09/2018	10/24/2022	AEV+Bison Logo	StreetCar ORV LLC	No

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TMK 18-00944	09/09/2018	01/06/2020	DESIGN ONLY (Bison Logo)	STREETCAR ORV, LLC	No
TMK 18-00945	09/09/2018	06/25/2028	SO NATURAL DR. LIONIS COSMETICS & Design	LIONIS SAVVAS & SIA ETERRORRITHMI ETAIRIA	No
TMK 18-00928	09/09/2018	08/02/2020	DESIGN ONLY (OSEM Bamba)	OSEM INVESTMENTS LTD.	No
TMK 18-00927	09/09/2018	05/25/2027	BAMBA	Osem Food Industries Ltd.	No
COP 18-00132	09/09/2018	09/09/2038	Teresa Head Sculpt (K8385)	Mattel, Inc.	No
TMK 18-00926	09/09/2018	09/25/2022	PAN SANTA EDUVIGIS	Ernestina Castro, S.A. De C.V.	No
TMK 99-00181	09/09/2018	06/14/2028	JOKER (stylized)	REPUBLIC TECHNOLOGIES (NA), LLC	No
TMK 18-00924	09/09/2018	11/22/2027	AEV+Bison Logo (Stacked)	StreetCar ORV, LLC	No
TMK 18-00923	09/09/2018	12/08/2025	AEV	American Expedition Vehicles, Inc.	No
TMK 18-00921	09/09/2018	03/01/2020	AMERICAN EXPEDITION VEHICLES	American Expedition Vehicles, Inc.	No
TMK 07-01053	09/09/2018	05/17/2028	PATHFINDER	24-7 INTERNATIONAL LLC	No
TMK 18-00920	09/09/2018	12/28/2019	FRIO	FRIO UK	No
TMK 18-00919	09/09/2018	10/29/2026	FULLER	GALAXY BRUSH LLC	No
TMK 18-00918	09/09/2018	10/27/2024	FULLER BRUSH	GALAXY BRUSH LLC	No
TMK 18-00922	09/09/2018	10/27/2024	FULLER BRUSH	GALAXY BRUSH LLC	No
TMK 18-00925	09/09/2018	03/05/2021	JIF (Stylized)	THE J. M. SMUCKER COMPANY	No
TMK 18-00946	09/09/2018	10/03/2028	SIERRA WHITE	Cold Spring Granite Company	No
TMK 18-00947	09/09/2018	02/14/2028	SANTA CRUZ organic (Stylized) and Design	SMUCKER NATURAL FOODS, INC.	No

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TMK 07-00779	09/09/2018	11/28/2020	Lamp Design	Schylling Inc.	No
TMK 18-00948	09/09/2018	09/19/2028	80 DAY OBSESSION	Beachbody, LLC	No
TMK 18-00949	09/09/2018	03/14/2020	DICKINSON'S	THE J. M. SMUCKER COMPANY	No
TMK 18-00950	09/09/2018	12/09/2024	TRUROOTS	SMUCKER NATURAL FOODS, INC.	No
TMK 18-00951	09/09/2018	01/24/2028	SAHALE	Sahale Snacks, Inc.	No
TMK 18-00952	09/09/2018	01/19/2027	FOLGERS	THE FOLGER COFFEE COMPANY	No
TMK 18-00954	09/09/2018	10/17/2022	CAFÉ BUSTELO	THE FOLGER COFFEE COMPANY	No
TMK 18-00953	09/09/2018	04/23/2027	R.W. KNUDSEN FAMILY	SMUCKER NATURAL FOODS, INC.	No
TMK 08-01186	09/09/2018	09/17/2028	HARLEY-DAVIDSON MOTOR CLOTHES AN AMERICAN LEGEND AND DESIGN	H-D U.S.A., LLC	No
TMK 18-00955	09/09/2018	04/10/2028	CRISCO	THE J. M. SMUCKER COMPANY	No
TMK 18-00956	09/09/2018	01/24/2028	CLARINET	Hagafen Cellars	No
TMK 18-00957	09/09/2018	08/31/2026	MEOW MIX (Stylized)	BIG HEART PET, INC.	No
TMK 18-00960	09/10/2018	01/20/2026	BELLA UNION & Design	FN Cellars, LLC	No
TMK 18-00961	09/10/2018	11/11/2022	KIBBLES'N BITS	BIG HEART PET, INC.	No
TMK 07-00312	09/10/2018	10/09/2022	Lamp Design	Schylling Inc.	No
TMK 98-01028	09/10/2018	12/17/2025	ALDO ROSSINI	OLEM SHOE CORP.	No
TMK 18-00962	09/11/2018	09/30/2025	ASCEND	Bass Pro Intellectual Property, L.L.C.	No
TMK 18-00963	09/11/2018	02/01/2022	ASCEND	Bass Pro Intellectual Property, L.L.C.	No

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TMK 18–00964	09/11/2018	09/26/2028	CLEVELAND CAVALIERS C and Design	CAVALIERS OPERATING COMPANY, LLC	No
TMK 18–00965	09/11/2018	10/24/2028	INDEX FRESH	Index Fresh, Inc.	No
TMK 11–01296	09/11/2018	12/07/2021	9LIVES	BIG HEART PET, INC.	No
TMK 11–01281	09/11/2018	07/05/2020	GRAVY TRAIN	BIG HEART PET, INC.	No
TMK 11–01255	09/11/2018	12/06/2021	MILO'S KITCHEN & Design	BIG HEART PET, INC.	No
TMK 18–00975	09/12/2018	11/28/2028	KOHM	VEPRINITE LLC	No
TMK 18–00977	09/12/2018	11/21/2028	BELOVED CAFE	Fahim Kambiz DBA Beloved Cafe	No
TMK 18–00976	09/12/2018	01/31/2028	CHUBBY GORILLA	CHUBBY GORILLA, INC.	No
TMK 18–00978	09/12/2018	08/08/2028	STUBBY	Chubby Gorilla, Inc.	No
COP 18–00133	09/12/2018	09/12/2038	CHUBBY GORILLA	Chubby Gorilla, Inc.	No
COP 18–00134	09/12/2018	09/12/2038	Northern Central Distributing, Inc. Published Catalog 2015.	Northern Central Distributing, Inc.	No
COP 99–00009	09/12/2018	09/12/2038	Zelda: Ocarina of Time	Nintendo of America, Inc.	No
TMK 02–00116	09/12/2018	11/04/2028	NETS and Design	BROOKLYN BASKETBALL, LLC	No
TMK 11–01256	09/12/2018	03/07/2025	NATURE'S RECIPE	BIG HEART PET, INC.	No
TMK 11–01258	09/12/2018	04/15/2025	SNAUSAGES	BIG HEART PET, INC.	No
TMK 18–00969	09/12/2018	10/24/2027	PREMIER	TOP TOBACCO L.P.	No
TMK 18–00970	09/12/2018	03/06/2026	SUPERMATIC	TOP TOBACCO L.P.	No
TMK 18–00971	09/12/2018	11/12/2025	E-Z WIDER (stylized)	REPUBLIC TECHNOLOGIES (NA), LLC	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 18-00972	09/12/2018	10/01/2027	E-Z WIDER SLOW-BURNING	REPUBLIC TECHNOLOGIES (NA), LLC	No
TMK 18-00966	09/12/2018	09/01/2019	SMOKY	REPUBLIC TECHNOLOGIES (NA), LLC	No
TMK 18-00973	09/12/2018	04/05/2020	BULL DURHAM	TOP TOBACCO L.P.	No
TMK 18-00974	09/12/2018	10/29/2024	LUMINARA	LUMINARA WORLDWIDE, LLC	No
TMK 18-00967	09/12/2018	12/25/2027	WARING	Conair Corporation	No
TMK 18-00968	09/12/2018	08/18/2024	WARING	CONAIR CORPORATION	No
TMK 06-00317	09/12/2018	11/27/2028	ERNIE BALL	ERNIE BALL, INC.	No
TMK 16-00739	09/12/2018	02/04/2029	RIDERS	The H.D. Lee Company, Inc.	No
TMK 07-00323	09/12/2018	08/30/2026	KUSH	IP TRADEMARK HOLDINGS INC.	No
COP 18-00135	09/13/2018	09/13/2038	Northern Central Distributing, Inc. Published Catalog 2017.	Northern Central Distributing, Inc.	No
COP 18-00136	09/13/2018	09/13/2038	Group Registration Photos, YHD Products 2016 B,	Northern Central Distributing, Inc.	No
TMK 18-00979	09/13/2018	09/23/2024	PREMIER SUPERMATIC	TOP TOBACCO L.P. LIMITED	No
COP 18-00139	09/14/2018	09/14/2038	Group Registration Photos, YHD Products 2016 A	Northern Central Distributing, Inc.	No
COP 18-00140	09/14/2018	09/14/2038	Group Registration Photos, YHD Products 2017	Northern Central Distributing, Inc. Address	No
TMK 18-00980	09/14/2018	03/09/2019	AGPTEK (Stylized)	Mambate USA Inc.	No
TMK 18-00981	09/14/2018	07/10/2028	Allergan and Logo Design	Allergan, Inc.	No

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TMK 06–00938	09/14/2018	11/26/2028	BUD	ANHEUSER-BUSCH, INCORPORATED	No
TMK 18–00982	09/14/2018	04/02/2028	PINK NATION (Stylized)	Victoria’s Secret Stores Brand Management, Inc.	No
TMK 05–00217	09/14/2018	11/11/2018	MIAMI HEAT	MIAMI HEAT LIMITED PARTNERSHIP	No
TMK 16–00606	09/14/2018	12/02/2024	COLORMAX	Schylling Inc.	No
TMK 88–00599	09/14/2018	10/12/2028	3 + 1 Headstock Design	ERNIE BALL, INC.	No
COP 18–00137	09/14/2018	09/14/2038	Gas Monkey Typeface	Gas Monkey Holdings, LLC	No
TMK 17–00232	09/14/2018	10/15/2024	9W	ABG-NINE WEST, LLC	No
COP 18–00138	09/14/2018	09/14/2038	Monkey Face With Spittle	Gas Monkey Holdings, LLC	No
TMK 18–00983	09/17/2018	10/24/2028	Victoria Sport (stylized)	Victoria’s Secret Stores Brand Management, Inc.	No
TMK 99–00568	09/17/2018	12/12/2028	DESIGN ONLY	ABG-TRETORN, LLC	No
TMK 18–00984	09/18/2018	08/29/2028	VS (Stylized)	Victoria’s Secret Stores Brand Management, Inc.	No
TMK 18–00985	09/18/2018	11/15/2025	EXTANG	EXTANG CORPORATION	No
TMK 04–00687	09/18/2018	04/01/2027	LIQUID-PLUMR	THE CLOROX COMPANY	No
COP 18–00141	09/19/2018	09/19/2038	flowchart for writing computer and API code.	Kelly A. Vanscoy Barnett	No
TMK 18–00986	09/19/2018	12/11/2028	LOFT + MANOR	Vis, LLC	No
TMK 18–00987	09/19/2018	04/09/2026	AIRWAIR	AIRWAIR INTERNATIONAL LTD.	No

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TMK 17-00233	09/19/2018	09/08/2023	NINE WEST	ABG-NINE WEST, LLC	No
TMK 02-01006	09/19/2018	09/23/2028	BCI	CANON KABUSHIKI KAISHA	No
TMK 13-00054	09/19/2018	09/02/2028	PRADA (Stylized)	PRADA S.A.	No
TMK 06-00322	09/19/2018	09/14/2027	MUSIC MAN	ERNIE BALL, INC.	No
TMK 16-00231	09/19/2018	12/30/2028	B and Design	Inspiration Beverage Company, LLC	No
TMK 18-00988	09/20/2018	07/27/2024	AIRWAIR and Design	AIRWAIR INTERNATIONAL LTD.	No
TMK 18-00989	09/20/2018	07/05/2021	DR. MARTENS DR. MARTENS and Cross Design	“Dr. Martens” International Trading GmbH	No
TMK 18-00990	09/20/2018	10/04/2020	DM’S	Dr. Martens International Trading GmbH	No
TMK 18-00991	09/20/2018	02/06/2028	DM’S	Dr. Martens International Trading GmbH	No
TMK 18-00992	09/20/2018	12/24/2023	DOC MARTENS	“Dr. Martens” International Trading GmbH	No
TMK 18-00993	09/20/2018	12/24/2023	DOC MARTENS	“Dr. Martens” International Trading GmbH	No
TMK 18-00994	09/20/2018	11/21/2021	DOC’S	“DR. MARTENS” INTERNATIONAL TRADING GMBH	No
TMK 18-00995	09/20/2018	04/04/2020	DOC’S	DR. MARTENS INTERNATIONAL TRADING GMBH	No

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TMK 18–00997	09/20/2018	10/30/2026	DR MARTENS AIR CUSHION SOLE OIL FAT ACID PETROL ALKALI RESISTANT and Design	“Dr. Martens” International Trading GmbH	No
TMK 18–00996	09/20/2018	05/11/2027	DR. MARTENS	“Dr. Martens” International Trading GmbH	No
TMK 18–00998	09/20/2018	01/12/2024	DR. MARTENS	“DR. MARTENS” INTERNATIONAL TRADING GMBH	No
TMK 18–00999	09/20/2018	07/07/2025	DR. MARTENS	“Dr. Martens” International Trading GmbH	No
TMK 18–01000	09/20/2018	11/25/2019	DR. MARTENS AIR WAIR and Design	Airwair International LTD	No
TMK 18–01001	09/20/2018	01/25/2027	AIRWAIR DR. MARTENS WITH BOUNC-ING SOLES (Stylized) and Design	“Dr. Martens” International Trading GmbH	No
TMK 08–01210	09/20/2018	10/08/2028	D601	Friction Materials Standards Institute, Inc.	No
TMK 08–01211	09/20/2018	10/08/2028	7259	Friction Materials Standards Institute, Inc.	No
COP 98–00219	09/21/2018	09/21/2038	Share a Smile Becky.	Mattel, Inc.	No
TMK 08–00145	09/21/2018	02/21/2023	NINA RICCI	PUIG FRANCE	No
TMK 18–01003	09/21/2018	10/17/2028	HYALEGIX	The Hymed Group Corporation	No
TMK 18–01004	09/21/2018	01/07/2028	Design only	AIRWAIR INTERNATIONAL LTD.	No

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TMK 18-01005	09/21/2018	12/09/2023	MAGNUM	LATCHMAN, ROBERT	No
TMK 18-01002	09/21/2018	11/05/2024	POWER KING & Design	QV TOOLS, LLC	No
COP 18-00142	09/21/2018	09/21/2038	Fan Club	Artistic Tile, Inc.	No
TMK 18-01006	09/21/2018	12/11/2022	ORGANIC ESSENCE	West, Ellery	No
TMK 18-01007	09/21/2018	07/19/2021	ISDIN	ISDIN, S.A.	No
TMK 18-01008	09/21/2018	02/07/2028	CUSTOM DYNAMICS	Custom Dynamics, LLC	No
TMK 18-01009	09/21/2018	07/17/2028	PROBEAM	Custom Dynamics, LLC	No
TMK 18-01010	09/21/2018	02/07/2028	CUSTOM DYNAMICS & Design	Custom Dynamics, LLC	No
TMK 18-01011	09/21/2018	06/11/2024	ISDIN & Design	ISDIN, S.A	No
TMK 18-01012	09/21/2018	06/01/2026	TRUBEAM	Custom Dynamics, LLC	No
TMK 18-01013	09/21/2018	02/21/2028	GLOBOPAK & Design	Globopak LLC	No
COP 18-00143	09/21/2018	09/21/2038	SUPER NINTENDO ENTERTAINMENT SYSTEM CLASSIC EDITION.	Nintendo of America Inc.	No
TMK 18-01014	09/21/2018	06/10/2019	1 MILLION	PUIG FRANCE	No
TMK 18-01015	09/21/2018	12/04/2028	3A	3-A Sanitary Standards, Inc.	No
TMK 18-01016	09/21/2018	11/25/2019	1 MILLION & Design	PUIG FRANCE	No
COP 18-00144	09/21/2018	09/21/2038	POKEMON ULTRA MOON (U.S. Commercial Packaging)	Creatures Inc.,	No
COP 18-00145	09/21/2018	09/21/2038	POKEMON QUEST Korean	GAME FREAK inc.	No
TMK 15-00407	09/21/2018	09/11/2028	NFL	NFL PROPERTIES LLC	No

CBP IPR RECORDATION — SEPTEMBER 2018

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
COP 18–00146	09/21/2018	09/21/2038	jetvac 1000d et al.	PFM Medical AG.	No
COP 18–00147	09/21/2018	09/21/2038	Wonder Wallet Packaging.	Allstar Marketing Group, LLC	No
TMK 09–01139	09/21/2018	09/18/2026	GLAD and Design	THE GLAD PRODUCTS COMPANY	No
TMK 08–00809	09/21/2018	10/22/2028	MEDI RAY & Design	MEDI-RAY, INC.	No
TMK 17–00357	09/21/2018	08/20/2028	DESIGN ONLY (VA)	BOARDRIDERS IP HOLDINGS, LLC	No
TMK 09–00177	09/21/2018	10/08/2028	7653	Friction Materials Standards Institute, Inc.	No
TMK 09–00178	09/21/2018	10/08/2028	D369	Friction Materials Standards Institute, Inc.	No
TMK 09–00179	09/21/2018	10/08/2028	7479	Friction Materials Standards Institute, Inc.	No
TMK 09–00182	09/21/2018	10/08/2028	D785	Friction Materials Standards Institute, Inc.	No
TMK 14–00771	09/21/2018	09/23/2028	WD-40 & CAN Design	WD-40 Manufacturing Company	No
TMK 09–00729	09/21/2018	10/07/2028	JUDITH LEIBER (STYLIZED)	ABG-SLG, LLC	No
TMK 08–00994	09/24/2018	10/08/2028	DESIGN ONLY	Agri-Cover, Inc.	No
TMK 18–01017	09/24/2018	08/29/2028	ARYSE	CRUZE DISTRIBUTION LLC	No
TMK 18–01018	09/24/2018	04/02/2027	BALLISTIC NAILSCREWS	Universal Fastener Outsourcing, LLC	No
TMK 18–01019	09/24/2018	02/24/2026	DUCK BUTT	Universal Fastener Outsourcing, LLC	No
TMK 18–01020	09/24/2018	07/01/2027	FERRERO ROCHER	FERRERO S.p.A.	No

CBP IPR RECORDATION — SEPTEMBER 2018

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 18-01021	09/24/2018	01/21/2025	DUCK BUTT	Universal Fastener Outsourcing, LLC	No
TMK 18-01022	09/24/2018	02/28/2020	DESIGN ONLY (HORIZONTAL MILK POURING)	FERRERO S.P.A.	No
TMK 18-01023	09/24/2018	10/28/2025	KINDER and Design	Soremartec S.A.	No
TMK 18-01024	09/24/2018	06/27/2027	DESIGN ONLY (HORIZONTAL MILK POURING, TWO DROPS)	FERRERO S.p.A.	No
TMK 18-01025	09/24/2018	07/10/2027	DESIGN ONLY (HORIZONTAL MILK POURING, TWO DROPS)	FERRERO S.p.A.	No
TMK 18-01026	09/24/2018	04/15/2028	LA (Stylized)	Los Angeles Dodgers LLC	No
TMK 17-00355	09/24/2018	09/10/2028	RVCA & Design	BOARDRIDERS IP HOLDINGS, LLC	No
TMK 95-00271	09/25/2018	07/15/2026	TIC TAC THE 1 1/2 CALORIE BREATH MINT and Design	FERRERO S.P.A.	No
TMK 08-00734	09/25/2018	07/01/2028	GARDEN AND DESIGN	The Garden Company	No
TMK 18-01028	09/25/2018	05/18/2024	HYBRID	Universal Fastener Outsourcing, LLC	No
TMK 18-01029	09/25/2018	09/15/2024	FERRERO ROCHER & Design	Ferrero S.p.A.	No
TMK 18-01030	09/25/2018	09/14/2026	FERRERO ROCHER THE GOLDEN EXPERIENCE and Design	FERRERO S.p.A.	No
TMK 18-01031	09/25/2018	10/26/2021	PNEUSCREW	Universal Fastener Outsourcing, LLC	No
TMK 18-01032	09/25/2018	12/06/2021	Pneuscrew & Design	UNIVERSAL FASTENER OUTSOURC- ING, LLC	No

CBP IPR RECORDATION — SEPTEMBER 2018

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 18-01033	09/25/2018	09/20/2026	PT2000	Universal Fastener Outsourcing, LLC	No
TMK 18-01034	09/25/2018	04/24/2027	DESIGN ONLY	SOREMARTEC SA	No
TMK 12-00885	09/25/2018	09/24/2028	SWEETANGO	Regents of the University of Minnesota	No
TMK 18-01027	09/25/2018	04/19/2026	DESIGN ONLY (BROKEN WAFER, GLASS, HAZELNUTS, MILK POURING)	FERRERO S.P.A.	No
TMK 18-01035	09/25/2018	07/14/2019	KINDER BUENO	FERRERO S.p.A.	No
TMK 18-01036	09/25/2018	12/11/2028	KINDER JOY	SOREMARTEC SA	No
TMK 11-01299	09/25/2018	11/11/2028	MARILYN MONROE	THE ESTATE OF MARILYN MONROE, LLC	No
TMK 08-01140	09/25/2018	12/09/2028	BENGALS	Cincinnati Bengals, Inc.	No
TMK 10-00304	09/25/2018	04/24/2026	THREE WHITE COCONUT COVERED CANDIES SEEN THROUGH A TRANSPARENT WRAPPER (DESIGN)	Soremartec S.A.	No
TMK 97-00682	09/25/2018	10/30/2025	KINDER (Stylized)	FERRERO S.P.A.	No
TMK 07-00146	09/27/2018	06/24/2028	BURST MODE	LINEAR TECHNOLOGY LLC	No
TMK 17-00687	09/27/2018	09/18/2028	NY (Stylized)	New York Football Giants, Inc.	No
TMK 15-01252	09/27/2018	02/25/2029	THALLIUM PARIS AND DESIGN	Societe Parisienne de Parfums et Cosmetiques	No
TMK 18-01038	09/27/2018	02/17/2026	LUMINARA & DESIGN	Luminara Worldwide, LLC	No
TMK 08-01008	09/27/2018	01/14/2028	EL & DESIGN	ESTEE LAUDER INC	No

CBP IPR RECORDATION — SEPTEMBER 2018

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmkt/Tnm	Owner Name	GM Restricted
TMK 18-01039	09/27/2018	10/11/2027	DESIGN ONLY (DRIP)	Kylie Jenner, Inc.	No
TMK 18-01037	09/27/2018	09/03/2028	S SAGE and Design	Sage Publications, Inc.	No
TMK 18-01040	09/27/2018	10/18/2027	KYLIE	Kylie Jenner, Inc.	No
TMK 18-01041	09/27/2018	11/07/2028	KYLIE COSMETICS	Kylie Jenner, Inc.	No
TMK 18-01042	09/27/2018	05/27/2028	KYLIE COSMETICS BY KYLIE JENNER	Kylie Jenner, Inc.	No
TMK 18-01043	09/27/2018	03/05/2028	KYLIE JENNER	Kylie Jenner, Inc.	No
TMK 09-00285	09/27/2018	07/19/2028	Polo Player Symbol	PRL USA HOLDINGS, INC.	No
TMK 18-01044	09/27/2018	06/27/2028	KYLIGHTER	Kylie Jenner, Inc.	No
TMK 18-01045	09/27/2018	08/01/2028	KYLINER	Kylie Jenner, Inc.	No
TMK 18-01046	09/27/2018	08/01/2028	KYSHADOW	Kylie Jenner, Inc.	No
TMK 18-01047	09/27/2018	10/18/2027	DESIGN ONLY (LIPS)	Kylie Jenner, Inc.	No
TMK 18-01048	09/27/2018	05/13/2028	KYLIE KYLIE JENNER	Kylie Jenner, Inc.	No
TMK 18-01049	09/27/2018	12/01/2027	ST. JOHN'S BAY	J.C. PENNEY PURCHASING CORPORATION	No
TMK 18-01050	09/27/2018	11/08/2027	PROCRAFT CABINETRY	ProCraft Cabinetry, Inc. DBA ProCraft Cabinetry	No
TMK 18-01051	09/27/2018	03/05/2028	PROCRAFT CABINETRY PROFESSIONALLY CRAFTED CABINETS and Design	ProCraft Cabinetry, Inc. DBA ProCraft Cabinetry	No
TMK 18-01052	09/27/2018	12/22/2019	GOOD GRIPS	Helen of Troy Limited	No
TMK 18-01053	09/27/2018	06/09/2020	GOOD GRIPS & Design (Stylized)	Helen of Troy Limited	No

CBP IPR RECORDATION — SEPTEMBER 2018

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 18-01054	09/27/2018	06/04/2028	SOFTWARES	Helen of Troy Limited	No
TMK 18-01055	09/27/2018	08/19/2022	HOT TOOLS	HELEN OF TROY LIMITED	No
TMK 18-01056	09/27/2018	09/28/2026	OXO ON	Helen of Troy Limited	No
TMK 18-01057	09/27/2018	07/04/2027	Sailrite Logo	Sailrite Enterprises, Inc.	No
TMK 18-01058	09/27/2018	05/08/2025	SAILRITE	Sailrite Enterprises Inc.	No
COP 18-00148	09/27/2018	09/27/2038	billie ombre gigbilomgry temp small 002 500x500.	Artistic Tile, Inc.	No
TMK 18-01059	09/27/2018	11/29/2020	ULTRAFEED	Sailrite Enterprises, Inc.	No
TMK 18-01060	09/27/2018	01/25/2027	DESIGN ONLY (Phasetronics Logo)	PHASETRONICS, INC. DBA MOTOR-TRONICS	No
TMK 10-00848	09/27/2018	09/17/2028	DESIGN ONLY	Marc Jacobs Trademarks, L.L.C.	No

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

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

ACTION: General notice.

SUMMARY: This notice advises the public that the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties will remain the same from the previous quarter. For the calendar quarter beginning October 1, 2018, the interest rates for overpayments will be 4 percent for corporations and 5 percent for non-corporations, and the interest rate for underpayments will be 5 percent for both corporations and non-corporations. This notice is published for the convenience of the importing public and U.S. Customs and Border Protection personnel.

DATES: The rates announced in this notice are applicable as of October 1, 2018.

FOR FURTHER INFORMATION CONTACT: Bruce Ingalls, Revenue Division, Collection Refunds & Analysis Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 298-1107.

SUPPLEMENTARY INFORMATION:

Background

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

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

In Revenue Ruling 2018-25, the IRS determined the rates of interest for the calendar quarter beginning October 1, 2018, and ending on December 31, 2018. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (2%) plus three per-

centage points (3%) for a total of five percent (5%) for both corporations and non-corporations. For corporate overpayments, the rate is the Federal short-term rate (2%) plus two percentage points (2%) for a total of four percent (4%). For overpayments made by non-corporations, the rate is the Federal short-term rate (2%) plus three percentage points (3%) for a total of five percent (5%). These interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties are the same from the previous quarter. These interest rates are subject to change for the calendar quarter beginning January 1, 2019, and ending March 31, 2019.

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

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

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate overpayments (eff. 1-1-99) (percent)
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6
070106	123107	8	8	7
010108	033108	7	7	6
040108	063008	6	6	5
070108	093008	5	5	4
100108	123108	6	6	5
010109	033109	5	5	4
040109	123110	4	4	3
010111	033111	3	3	2
040111	093011	4	4	3
100111	033116	3	3	2
040116	033118	4	4	3
040118	123118	5	5	4

Dated: October 23, 2018.

SAMUEL D. GRABLE,
*Assistant Commissioner and
 Chief Financial Officer
 Office of Finance.*

[Published in the Federal Register, October 26, 2018 (83 FR 54130)]

**PROPOSED REVOCATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF WALLPAPER STRIPPERS**

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning tariff classification of wallpaper strippers 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 December 14, 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 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 one ruling letter pertaining to the tariff classification of wallpaper strippers. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) 898469, dated June 10, 1994 (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 898469, CBP classified wallpaper strippers in heading 8516, HTSUS, specifically in subheading 8516.10.00, HTSUS, which provides for “Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof: Electric instantaneous or storage water heaters and immersion heaters.” CBP has reviewed NY 898469 and has determined the ruling letter to be in error. It is now CBP’s position that the wallpaper strippers are properly classified, in heading 8516, HTSUS, specifically in subheading 8516.79.00, HTSUS, which provides for “Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus;

electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof: Other electrothermic appliances: Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY 898469 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H297833, 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: October 3, 2018

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

NY 898469

June 10, 1994

CLA-2-85:S:N:N3:113 898469

CATEGORY: Classification

TARIFF NO.: 8516.10.0080

MR. MICHAEL O'NEILL
O'NEILL & WHITAKER, INC.
1809 BALTIMORE AVENUE
KANSAS CITY, MO 64108

RE: The tariff classification of wallpaper strippers from the United Kingdom

DEAR MR. O'NEILL:

In your letter dated May 31, 1994, you requested a tariff classification ruling.

The merchandise consists of two portable steam wallpaper strippers. Model SS100 is the Earlex Steam Wallpaper Stripper. Model PWS150 is the Earlex Pro-Steam 2 Heavy Duty Steam Wallpaper Stripper. A sample of model SS100 was included with your request. Both wallpaper strippers are basically electric immersion heaters contained inside a water tank that is connected by a hose to a steam plate. Water is heated in the reservoir, thereby producing steam through the steam plate. The steam plate is applied to the wall, section by section. Heat and moisture are distributed, enabling the wallpaper to be removed easily with a knife. Model SS100 holds 4.0 liters of water, has an 8 inch by 11 inch steam plate, and a 12 foot hose. Model PWS150 features a 6.5 liter capacity, a 10 inch by 13 inch steam plate, a 16 foot hose, and a storage compartment. The wallpaper strippers can also be used in the home to steam iron hanging curtains, sterilize soil, and kill weeds on paths and patios. Accessories are available to adapt model PWS150 to perform additional household tasks such as cleaning upholstery, carpet, tile, and windows. Both units are guaranteed for domestic use for 12 months. The guarantee specifically excludes coverage for rental purposes.

The applicable subheading for the wallpaper strippers will be 8516.10.0080, Harmonized Tariff Schedule of the United States (HTS), which provides for other electric water heaters and immersion heaters. The rate of duty will be 3.7 percent ad valorem.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

ATTACHMENT B

HQ H297833
 CLA-2 OT:RR:CTF:EMAIN H297833 PF
 CATEGORY: Classification
 TARIFF NO.: 8516.79.00

MAERSK LOGISTICS USA INC.
 180 PARK AVENUE
 BUILDING 105
 PO BOX 950
 FLORHAM PARK, NJ 07932

RE: Revocation of NY N898469; tariff classification of wallpaper strippers

DEAR MR. SOREN SKU:

This is in reference to New York Ruling Letter (“NY”) 898469, issued to O’Neill & Whitaker, Inc., which was acquired by your firm. On June 10, 1994, U.S. Customs and Border Protection (“CBP”) issued a classification ruling, which involved classification of wallpaper strippers under the Harmonized Tariff Schedule of the United States (“HTSUS”). We have reviewed NY 898469 and determined that it is incorrect. For the reasons set forth below, we are revoking that ruling.

FACTS:

In NY 898469, the subject wallpaper strippers were described as follows:

The merchandise consists of two portable steam wallpaper strippers. Model SS100 is the Earlex Steam Wallpaper Stripper. Model PWS150 is the Earlex Pro-Steam 2 Heavy Duty Steam Wallpaper Stripper. A sample of model SS100 was included with your request. Both wallpaper strippers are basically electric immersion heaters contained inside a water tank that is connected by a hose to a steam plate. Water is heated in the reservoir, thereby producing steam through the steam plate. The steam plate is applied to the wall, section by section. Heat and moisture are distributed, enabling the wallpaper to be removed easily with a knife. Model SS100 holds 4.0 liters of water, has an 8 inch by 11 inch steam plate, and a 12 foot hose. Model PWS150 features a 6.5 liter capacity, a 10 inch by 13 inch steam plate, a 16 foot hose, and a storage compartment. The wallpaper strippers can also be used in the home to steam iron hanging curtains, sterilize soil, and kill weeds on paths and patios. Accessories are available to adapt model PWS150 to perform additional household tasks such as cleaning upholstery, carpet, tile, and windows. Both units are guaranteed for domestic use for 12 months. The guarantee specifically excludes coverage for rental purposes.

In that ruling, CBP classified the subject wallpaper strippers in subheading 8516.10.00, HTSUS, which provides for “Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof: Electric instantaneous or storage water heaters and immersion heaters.”

Online marketing materials for similar Earlex Steam Wallpaper Strippers describe the devices as the “fastest and easiest ways to remove all types of wall coverings.” In addition, a website featuring the Earlex Steam Wallpaper Strippers notes that they make light work of big wallpaper stripping jobs and that some models contain large and small steam plates for areas that are difficult to access.

ISSUE:

Whether the subject wallpaper strippers are classified in subheading 8516.10.00, HTSUS, as immersion heaters or in subheading 8516.79.00, HTSUS, as other electrothermic appliances of a kind used for domestic purposes.

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:

8516	Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof:
8516.10	Electric instantaneous or storage water heaters and immersion heaters
	Other electrothermic appliances:
8516.79	Other.

Additional U.S. Rules of Interpretation 1 (AUSR1), HTSUS, provides, in part:

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

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

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

The EN to heading 8516, HTSUS, state, in relevant part:

(A) ELECTRIC INSTANTANEOUS OR STORAGE WATER HEATERS AND IMMERSION HEATERS

This group includes:

(5) Immersion heaters of of different shapes and forms depending on their use, are generally used in tanks, vats, etc., for heating liquids, semi-fluid (other than solid) substances or gases. They are also designed to be used in pots, pans, tumblers, cups, baths, beakers, etc., usually with a heat-insulated handle and a hook for hanging the heater in the vessel.

They have a reinforced protective sheath which is highly resistant to mechanical stress and to seepage from liquids, semi-fluid (other than solid) substances and gases. A powder (usually magnesium oxide) with good dielectric and thermal properties holds the wire resistor (resistance) in place within the sheath and insulates it electrically.

Assemblies consisting of immersion heaters permanently incorporated in a tank, vat or other vessel are classified in heading **84.19** unless they are designed for water heating only or for domestic use, in which case they remain in this heading. Solar water heaters are also classified in heading 84.19.

* * *

(E) OTHER ELECTRO-THERMIC APPLIANCES OF A KIND USED FOR DOMESTIC PURPOSES

This group includes all electro-thermic machines and appliances provided they are normally used in the household.

* * *

Within Chapter 85, HTSUS, heading 8516, in pertinent part, provides for other electrothermic appliances of a kind used for domestic purposes. The Section and Chapter Notes and the ENs do not provide a clear definition of the term “electro-thermic appliances of the kind used for domestic purposes.” However, CBP has previously defined the term “electrothermal” as “[o]f or relating to the production of heat by electricity.” See HQ 965863, dated December 3, 2002 (citing the *Webster’s II New Riverside Dictionary* 423 (1988)). CBP has also defined the term “domestic” as “of or pertaining to the family or household.” See HQ 965861, dated January 7, 2003 (citing the *Merriam-Webster Collegiate Dictionary*, 10th ed., pg. 344 (1999)). Accordingly, goods of the heading must be the kind of electrically-heated good that are used in the household.

Our initial determination that the subject wallpaper strippers were classified in heading 8516, HTSUS, was correct because these devices are electrothermic appliances used for domestic purposes. Specifically, they are used in the household and powered by electricity to heat water and produce steam, which is then applied to a wall for wallpaper removal, on curtains for steam ironing, on soil for sterilization and on paths and patio for killing weeds. See *United States v. Carborundum Co.*, 63 C.C.P.A. 98, 102, 536 F.2d 373, 377 (1976). Therefore, the issue in this case is the proper classification at the subheading level. As a result, GRI 6 applies.

We originally determined that the subject wallpaper strippers were classified in subheading 8516.10.00, HTSUS, which provides for, *inter alia*, “Electric instantaneous or storage water heaters and immersion heaters,” because

they contained an immersion heater. While the wallpaper strippers contain an immersion element that heats water to produce steam, we are of the view that the electric fabric steamers as a whole are not within the scope of subheading 8516.10, HTSUS, because they are not used as a water or immersion heater.

The wallpaper strippers are appliances that produce steam by heating water in a tank and directing that steam to a specific, useful and separate purpose. The wallpaper strippers feature a number of components, including a water tank, steam plate, and hose, that together produce and direct steam for the purpose of removing wallpaper. In addition, the wallpaper strippers use steam to iron hanging curtains, sterilize soil, and kill weeds on paths and patios. Accessories can also be added to the wallpaper strippers to perform additional household tasks such as cleaning upholstery, carpet, tile, and windows. Therefore, since the primary function of the wallpaper strippers is the application of steam to fabric, materials, and articles and not the heating of water, we find that the wallpaper strippers are not water or immersion heaters, and cannot be classified in subheading 8516.10.00, HTSUS.

Because the function and design of the wallpaper strippers is not fully described by the terms of subheading 8516.10.00, HTSUS, they are properly classified as another electrothermic appliance in 8516.79.00, HTSUS, which provides for in relevant part, “[O]ther electrothermic appliances of a kind used for domestic purposes; . . . Other electrothermic appliances: Other.”

CBP has classified electric steam cleaners under subheading 8516.79.00, HTSUS, in NY K84905 (April 23, 2004), NY L82254 (February 16, 2005) and NY 168881 (June 24, 2011). In NY K84905, CBP described the merchandise as a clothes steamer with a water reservoir with a plastic cap or nozzle with five steam outlet holes whose function was to steam wrinkles from hanging fabrics, such as clothing or curtains. In NY L82254, CBP described the subject merchandise as a hand-held, pressurized steam cleaner with attachments that was designed to steam clean surfaces. The attachments included a jet nozzle, scrub brush, squeegee, angled head, fabric steamer and cloth, flexible extension hose, and a measuring cup for water. Moreover, in NY N168881, CBP classified a steam cleaner which had a boiler that heated water from the reservoir to create steam to clean and sanitize surfaces, windows, and clothing under subheading 8516.79.00, HTSUS. While we note that the wallpaper strippers are not clothing steamers, they have the same operating principle of applying steam to fabric, materials, and articles. As a result, we find that wallpaper strippers are properly classified in subheading 8516.79.00, HTSUS.

HOLDING:

By application of GRIs 1 (U.S. Additional Rule of Interpretation 1(a) and 6 and, the wallpaper strippers are classified in heading 8516, specifically subheading 8516.79.00, HTSUS, which provides, in relevant part, for: “Other electrothermic appliances of a kind used for domestic purposes; . . . : Other electrothermic appliances: Other.” The 2018 column one, general rate of duty is 2.7 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY 898469, dated June 10, 1994, is REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF A PLASTIC HARD DRIVE STORAGE CASE
KNOWN AS A HUDZEE CASE**

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

ACTION: Notice of proposed revocation of one ruling letter and revocation of treatment relating to the tariff classification of a plastic hard drive storage case known as a Hudzee case.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning tariff classification of a plastic hard drive storage case known as a Hudzee case 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 December 14, 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 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 revoke one ruling letter pertaining to the tariff classification of a plastic hard drive storage case known as a Hudzee case. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N287024, dated July 6, 2017 (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 ruling identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the 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 N287024, CBP classified a plastic hard drive storage case known as a Hudzee case in heading 3924, HTSUS, specifically in subheading 3924.90.56, HTSUS, which provides for “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Other: Other.” CBP has reviewed NY N287024 and has determined the ruling letter to be in error. It is now CBP’s position that the Hudzee case is properly classified, in heading 3926, HTSUS, specifically in subheading 3926.90.99, HTSUS, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N287024 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H296920, 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: October 3, 2018

ALLYSON MATTANAH

For

MYLES B. HARMON, DIRECTOR

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N287024

July 6, 2017

CLA-2-39:OT:RR:NC:N4:422

CATEGORY: Classification

TARIFF NO.: 3924.90.5650

MR. HOBYUNG YI
MAINFREIGHT INC.
630 SULLIVAN ROAD
ELIZABETH, NJ 07201

RE: The tariff classification of a plastic hard drive storage case from China

DEAR MR. YI:

In your letter dated June 7, 2017, on behalf of Untwist Systems, LLC, you requested a tariff classification ruling.

The submitted illustrations depict an item that is identified as a Hudzee Case. This item is an antistatic enclosure designed to protect a computer internal hard drive. It is made of red polypropylene (PP) plastic material with an interior padding that is made of foam that is laminated with a top layer of Mylar that compresses and conforms to protect each specific internal hard drive. The case has a secure safety latch, a reversible paper insert label to record the contents of each case and a clear label window.

You have suggested that this item is correctly classified in subheading 3923.90.0080, which provides for other articles for the conveyance or packing of goods, of plastics. However, the containers of heading 3923 are limited to those used to package or convey bulk or commercial goods and not those used to hold, store or transport items that are the personal possession of the consumer. Since the subject product is used for the storage, protection and organization of internal hard drives, it is precluded from classification in heading 3923.

The applicable subheading for the Hudzee Case will be 3924.90.5650, Harmonized Tariff Schedule of the United States (HTSUS), which provides for household articles...of plastics: other: other...other. The rate of duty will be 3.4 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 <https://hts.usitc.gov/current>.

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

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

Sincerely,

STEVEN A. MACK

Director

National Commodity Specialist Division

ATTACHMENT B

HQ H296920
OT:RR:CTF:CPMM H296920 APP
CATEGORY: Classification
TARIFF NO.: 3926.90.9990

MR. HOBYUNG YI
MAINFREIGHT INC.
630 SULLIVAN ROAD
ELIZABETH, NJ 07201

RE: Revocation of NY N287024; Tariff classification of a plastic hard drive storage case from China

DEAR MR. YI:

This is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York Ruling Letter (“NY”) N287024, dated July 6, 2017 (issued to Untwist Systems, LLC), regarding the classification, under the Harmonized Tariff Schedule of the United States (“HTSUS”), of a plastic hard drive storage case (known as a Hudzee case) from China. In NY N287024, CBP classified the plastic hard drive storage case under heading 3924, HTSUS, specifically under subheading 3924.90.56, HTSUS, which provides for “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Other: Other.” We have determined that this ruling is in error and that the correct tariff classification should be under heading 3926, HTSUS, specifically under subheading 3926.90.99, HTSUS, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.” Accordingly, for the reasons set forth below, we hereby revoke NY N287024.

FACTS:

The Hudzee case at issue is an antistatic enclosure designed to protect a computer internal hard drive. It is made of red polypropylene plastic material with an interior padding of foam laminated with a top layer of Mylar that compresses and conforms to protect each specific internal hard drive. The case has a secure safety latch, a reversible paper insert label to record the contents of each case, and a clear label window.

ISSUE:

Whether the plastic hard drive storage case is classifiable under heading 3924, HTSUS, as other household article of plastics or under heading 3926, HTSUS, as other article of plastics.

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. 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 consideration¹ in this case are as follows:

3924	Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics:
3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:

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).

It is undisputed that the Hudzee case is not classifiable in heading 3923, HTSUS, because it is not used for packing and conveyance of other personal or non-personal items. At issue are headings 3924, HTSUS, and 3926, HTSUS, and we will address them in turn.

Heading 3924, HTSUS, covers “tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics.” EN 39.24 provides that heading 3924 covers the following articles of plastics:

(A) Tableware such as tea or coffee services, plates, soup tureens, salad bowls, dishes and trays of all kinds, coffee-pots, teapots, sugar bowls, beer mugs, cups, sauce-boats, fruit bowls, cruets, salt cellars, mustard pots, egg-cups, teapot stands, table mats, knife rests, serviette rings, knives, forks and spoons.

(B) Kitchenware such as basins, jelly moulds, kitchen jugs, storage jars, bins and boxes (tea caddies, bread bins, etc.), funnels, ladles, kitchen-type capacity measures and rolling-pins.

(C) Other household articles such as ash trays, hot water bottles, match-box holders, dustbins, buckets, watering cans, food storage containers, curtains, drapes, table covers and fitted furniture dust-covers (slipovers).

(D) Hygienic and toilet articles (whether for domestic or non-domestic use) such as toilet sets (ewers, bowls, etc.), sanitary pails, bed pans, urinals, chamber-pots, spittoons, douche cans, eye baths; teats for baby bottles (nursing nipples) and finger-stalls; soap dishes, towel rails, toothbrush holders, toilet paper holders, towel hooks and similar articles for bathrooms, toilets or kitchens, not intended for permanent installation in or on walls. However, such articles intended for permanent installation in or on walls or other parts of buildings (e.g., by screws, nails, bolts or adhesives) are **excluded (heading 39.25)**.

¹ The Hudzee case is not listed *eo nomine* in heading 4202, HTSUS, and is not similar to the exemplars listed therein. EN 42.02 excludes articles “which, although they may have the character of containers, are not similar to those enumerated in the heading.” The four characteristics that unite the exemplars of heading 4202, HTSUS, are organizing, storing, protecting, and carrying. The Hudzee case is not a container of heading 4202, HTSUS, because even though it is used to protect and store an internal hard drive when not in use, it does not organize or carry it. *See Otter Prods., LLC v. United States*, 70 F. Supp. 3d 1281 (CIT 2015), *aff’d*, 834 F.3d 1369 (Fed. Cir. 2016).

Heading 3924, HTSUS, is organized into categories (e.g., tableware and kitchenware) followed by the general phrase “other household articles.” “[W]hen a list of items is followed by a general word or phrase, the rule of *ejusdem generis* is used to determine the scope of the general word or phrase.” *Aves. in Leather, Inc. v. United States*, 178 F.3d 1241, 1244 (Fed. Cir. 1999). “In classification cases, *ejusdem generis* requires that, for any imported merchandise to fall within the scope of the general term or phrase, the merchandise must possess the same essential characteristics or purposes that unite the listed examples preceding the general term or phrase ... Thus, under an *ejusdem generis* analysis, a court must consider the common characteristics or unifying purpose of the listed exemplars in a heading as well as consider the specific primary purpose of the imported merchandise. Classification of imported merchandise under *ejusdem generis* is appropriate only if the imported merchandise shares the characteristics or purpose and does not have a more specific primary purpose that is inconsistent with the listed exemplars.” *Id.*

The essential characteristics or purposes of the exemplars of EN 39.24 is that they are of plastic, are used in the household, and are reusable. See HQ W968181, dated October 3, 2006. The Hudzee case at issue is not tableware, kitchenware, or a hygienic and toilet article. We need to determine whether the Hudzee case can be classified, *ejusdem generis*, in heading 3924, HTSUS, under “other household articles.” The primary location of the article alone does not determine its primary function and does not make it classifiable as a household article of heading 3924, HTSUS. EN 39.24 reflects that household articles are utilitarian and decorative in character or function as a receptacle, and are closely associated with household functions and activities such as dustbins and buckets for cleaning, watering cans for watering plants or a garden, and food storage containers to store food products for and in a household.

Unlike the exemplars provided as household articles of heading 3924, HTSUS, the sole purpose of the Hudzee case is to protect and store an internal hard drive that is not in use. The Hudzee case is not strictly used in the household, nor is it even primarily used in the household. It is readily used in the office and is not consistent with the narrow uses contemplated by household articles of heading 3924, HTSUS. The fact that the Hudzee case can be used in the home occasionally in itself is not sufficient to warrant its classification as a household article of heading 3924, HTSUS. In sum, the Hudzee case is not *ejusdem generis* with the “other household article of plastics” exemplars of EN 39.24(C) because even though it is of plastic and is reusable, it is not primarily used in the household. As such, the Hudzee case is not classifiable in heading 3924, HTSUS.

We next turn to heading 3926, HSTUS, which is the residual provision for plastics and covers articles of plastics not elsewhere specified or included. EN 39.26 states, in relevant part:

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

Heading 3926, HTSUS, is a general heading or basket provision, as evidenced by the word “other.” See *Item Co. v. United States*, 98 F.3d 1294, 1296 (Fed. Cir. 1996). Classification of imported merchandise in a basket provision is only appropriate if there is no tariff provision that covers the merchandise

more specifically. *See EM Indus., Inc. v. United States*, 22 CIT 156, 165, 999 F. Supp. 1473, 1480 (1998). Heading 3926, HTSUS, covers many articles of plastics, many of which are used within a home. EN 39.26 provides a long list of exemplars (*e.g.*, fittings for furniture, statuettes and other ornamental articles, fittings of general use, etc.) classified therein, many of which are commonly, if not principally, found in the home. Since the Hudzee case is not included in heading 3924, HTSUS, it falls by default into heading 3926, HTSUS.

CBP has previously classified universal media disk covers that are similar to the Hudzee case in heading 3926, HTSUS. Just like the Hudzee case, they were designed to protect and store other articles (*e.g.*, games and movies) from dust, dirt, and fingerprints. *See* NY N045112, dated December 18, 2008 (classifying universal media disk covers in subheading 3926.90.99, HTSUS); HQ H137840, dated December 16, 2010 (classifying a reusable universal media disk cover in subheading 3926.90.99, HTSUS).

Accordingly, the Hudzee case is classifiable in heading 3926, HTSUS, specifically in subheading 3926.90.99, HTSUS as “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.”

HOLDING:

By application of GRIs 1 and 6, the subject Hudzee case is classified in heading 3926, HTSUS, specifically under subheading 3926.90.99, HTSUS, as “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other” for the reasons explained above. The 2018 column one, duty rate 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 at <https://hts.usitc.gov/current>.

EFFECT ON OTHER RULINGS:

NY N287024, dated July 6, 2017, is hereby REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF TWISTABLE COLORED
PENCILS**

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

ACTION: Notice of proposed revocation of one ruling letter and revocation of treatment relating to the tariff classification of twistable colored pencils.

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 New York Ruling Letter (NY) R00817, dated September 16, 2004, concerning tariff classification of twistable colored pencils 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 December 14, 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: Claudia Garver, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325–0024.

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 one ruling letter pertaining to the tariff classification of twistable colored pencils. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) R00817, dated September 16, 2004 (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 R00817, CBP classified Crayola twistable colored pencils in heading 9609, HTSUS, specifically in subheading 9609.10.00, HTSUS, which provides for “Pencils (other than those pencils of heading 9608), crayons, pencil leads, pastels, drawing charcoals, writing or drawing chinks and tailors’ chinks: Pencils and crayons, with leads encased in a rigid sheath.” CBP has reviewed NY R00817 and has determined the ruling letter to be in error. It is now CBP’s position that the Crayola twistable colored pencils are properly classified in heading 9608, HTSUS, specifically in subheading 9608.40.40, HTSUS, which provides for “Ball point pens; felt tipped and other porous-tipped pens and markers; fountain pens, stylograph pens and other pens; duplicating stylos; propelling or sliding pencils; pen- holders, pencil-holders and similar holders; parts (including caps and

clips) of the foregoing articles, other than those of heading 96.09: Propelling or sliding pencils: With a mechanical action for extending, or for extending and retracting, the lead.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY R00817 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H293295, 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: October 4, 2018

ALLYSON MATTANAH

FOR

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

NY R00817

September 16, 2004

CLA-2-96:RR:NC:2:224 R00817

CATEGORY: Classification

TARIFF NO.: 9609.10.0000

WANDA HABRIAL
BINNEY & SMITH, INC.
1100 CHURCH LANE
EASTON PA 18043

RE: The tariff classification of twistable pencils from China.

DEAR MS. HABRIAL:

In your electronic ruling request dated September 13, 2004, you requested a tariff classification ruling.

The merchandise consists of twistable colored pencils. The pencils are composed of a clear plastic barrel with a colored lead inserted that is refreshed by twisting the end of the barrel.

The applicable subheading for the twistable colored pencils will be 9609.10.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for pencils...crayons, pencil leads, pastels, drawing charcoals, writing or drawing chalks and tailors' chalks: pencils and crayons, with leads encased in a rigid sheath. The rate of duty will be 14 cents per gross plus 4.3 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 Tom McKenna at 646-733-3025.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT B

HQ H293295
CLA-2 OT:RR:CTF:CPM H293295 CkG
CATEGORY: Classification
TARIFF NO.: 9608.40.80

WANDA HABRIAL
BINNEY & SMITH, INC.
1100 CHURCH LANE
EASTON PA 18043

Re: Revocation of NY R00817; classification of twistable colored pencils

DEAR MS. HABRIAL:

This is in reference to New York Ruling Letter (NY) R00817, issued to you on September 16, 2004, concerning the classification of Crayola twistable colored pencils. For the reasons set forth below, we have determined that the classification of the colored pencils in heading 9609, HTSUS, was incorrect.

FACTS:

In NY R00817, the subject merchandise was described as follows:

The merchandise consists of twistable colored pencils. The pencils are composed of a clear plastic barrel with a colored lead inserted that is refreshed by twisting the end of the barrel.

The mechanism of action consists of a spring that encircles the writing core and holds it in place; as the end of the barrel is twisted, the spring moves forward, carrying the writing core with it. When twisting in the other direction, the movement is reversed.

ISSUE:

Whether the instant articles are classified as propelling pencils in heading 9608, HTSUS, or in heading 9609, HTSUS, as crayons or as pencils other than those of heading 9608, HTSUS.

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings or notes do not require otherwise, the remaining GRIs 2 through 6 may be applied.

The HTSUS provisions under consideration are as follows:

- 9608: Ball point pens; felt tipped and other porous-tipped pens and markers; fountain pens, stylograph pens and other pens; duplicating stylos; propelling or sliding pencils; pen-holders, pencil-holders and similar holders; parts (including caps and clips) of the foregoing articles, other than those of heading 96.09.
- 9608.40: Propelling or sliding pencils:
- 9608.40.40: With a mechanical action for extending, or for extending and retracting, the lead...
- 9608.40.80: Other....

- 9609: Pencils (other than those pencils of heading 9608), crayons, pencil leads, pastels, drawing charcoals, writing or drawing chalks and tailors' chalks:
- 9609.10.00: Pencils and crayons, with leads encased in a rigid sheath...

* * * *

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

EN 96.08 provides, in pertinent part, as follows:

This heading covers :

...

- (5) **Propelling pencils or sliding pencils** , single or multilead type; including the spare leads normally contained therein.

EN 96.09 provides, in pertinent part, as follows:

The articles of this heading are of two types :

- (A) Those without any covering or simply covered with a protective band of paper (e.g., chalks, drawing charcoals, pencil leads, certain crayons, pastels, and slate pencils).
- (B) Pencils and crayons, with leads encased in wood or plastics or in some cases in a sheath composed of layers of paper.

The heading includes :

- (1) **Slate pencils** of natural or agglomerated slate.

...

- (5) **Crayons and pastels**, usually made of a mixture of chalk or clay, colouring matter, shellac or wax, spirit and turpentine.
- (6) **Pencils and crayons**, with leads encased in a rigid sheath.

* * * *

In NY R00817, CBP classified twistable colored pencils in heading 9609, HTSUS, which provides for “Pencils (other than pencils of heading 96.08), crayons, pencil leads, pastels, drawing charcoals, writing or drawing chalks and tailors’ chalks.” By the terms of the heading, pencils can only be classified in heading 9609 if they are not otherwise provided for in heading 9608, HTSUS. Heading 9608, in turn, provides for, inter alia, “propelling or sliding pencils”. Thus, we must first consider whether the instant articles are classified in heading 9608, HTSUS; if so, then they cannot be classified in heading 9609, HTSUS.

Crayons are classified in heading 9609, HTSUS; colored pencils are classified in heading 9608, HTSUS, if mechanical (i.e., “propelling pencils”), and in heading 9609, HTSUS, if they have no mechanical

features. None of the terms “pencil”, “crayon” or “propelling pencil” are defined in the HTSUS or the ENs. In cases where tariff terms are undefined, they are to be construed in accordance with their common and commercial meanings which are presumed to be the same (*Nippon Kogaku, Inc. v. United States*, 69 CCPA 89, 92, 673 F.2d 380 (1982); see also *Nylos Trading Company v. United States*, 37 CCPA 71, 73, C.A.D. 423 (1949), and *Winter-Wolff, Inc., v. United States*, CIT Slip Op. 98–15 (Customs Bulletin and Decisions, March 25, 1998, vol. 32, no. 12, 71, at 74, “When, however, a tariff term is not clearly defined by the statute or its legislative history, it is also fundamental that the correct meaning of the tariff term is ‘presumed to be the same as its common or dictionary meaning in the absence of evidence to the contrary’”).

“Pencil” is variously defined as “an instrument for writing or drawing, consisting of a thin stick of graphite or a similar substance enclosed in a long thin piece of wood or fixed in a metal or plastic case”¹, or “an implement for writing, drawing, or marking consisting of or containing a slender cylinder or strip of a solid marking substance.”²

“Propelling pencil”, in turn, is chiefly a British term synonymous with “mechanical pencil” in U.S. usage. See e.g., Macmillan Dictionary Online (“a pencil made from plastic or metal rather than wood that is always sharp and ready to write with. The British word is propelling pencil.”)³; see also Cambridge English Dictionary Online: “*noun* [C] UK /prə,pel.ɪŋ ˈpen.səl/US /prə,pel.ɪŋ ˈpen.səl/ uk **us mechanical pencil**”⁴ (emphasis added). A “propelling” or “mechanical” pencil is simply “a pencil made of metal or plastic with a lead that is moved forward by a mechanical device”⁵, or “a pencil in which the lead is pushed out by turning or pressing a part of the pencil.”⁶ Mechanical pencils are also sometimes described as having replaceable or refillable lead. See e.g., Oxford English Dictionary Online (“a pencil with a plastic or metal case and a thin replaceable lead that may be ex-

¹ Oxford English Dictionary Online, available at http://www.oed.com/search?searchType=dictionary&q=pencil&_searchBtn=Search (last visited January 10, 2018)

² Merriam Webster Dictionary Online, available at <https://www.merriam-webster.com/dictionary/pencil> (last visited January 10, 2018)

³ <http://www.macmillandictionary.com/dictionary/american/mechanical-pencil> (last visited January 10, 2018)

⁴ <https://dictionary.cambridge.org/dictionary/english/propelling-pencil> (last visited January 10, 2018)

⁵ See Merriam-Webster Dictionary Online at <https://www.merriamwebster.com/dictionary/mechanical%20pencil> (last visited January 10, 2018).

⁶ See Cambridge English Dictionary Online, available at <https://dictionary.cambridge.org/dictionary/english/propelling-pencil> (last visited January 10, 2018)

tended as the point is worn away by twisting the outer casing”⁷. The common element of all definitions of “propelling” or mechanical” pencil, however, is that lead is “propelled” forward via mechanical action. The inability to replace or refill the lead in a pencil using mechanical action to propel the lead forward therefore does not, in our estimation, preclude classification in heading 9608, HTSUS.

“Crayon” is only vaguely defined, as “a stick of white or colored chalk or of colored wax used for writing or drawing”⁸, or “[a] pointed stick or pencil of coloured chalk or other material, for drawing.”⁹ Products marketed and known in the channels of trade as “crayons” are blunt, thick sticks of colored wax used for drawing or coloring. The terms of heading 9609, specifically subheading 9609.10.00, HTSUS, further provide for, *inter alia*, crayons enclosed in a rigid sheath.

In addition, we note that Crayola’s colored pencils are made by mixing extenders, binder, pigment and water, which after mixing, are rolled into flat sheets, and pressed into cylinder shapes called cartridges. The cartridges are extruded and cut to size to create the pencil lead.¹⁰ Crayola crayons, on the other hand, are made from paraffin wax, pigment, and small amounts of other ingredients, which are poured into a mold until solidified.¹¹

The Crayola twistable colored pencils are writing or drawing instruments consisting of a solid marking substance enclosed in a rigid sheath; they therefore fall squarely within the definitions of “pencil” set out above. We further note that, in contrast to Crayola’s twistable crayons¹², the instant articles are marketed and advertised as pencils.¹³ The instant articles are therefore pencils made of plastic with a lead¹⁴ that is moved forward by a mechanical device—specifically, by twisting the bottom of the pencil, which moves the attached spring

⁷ https://en.oxforddictionaries.com/definition/us/mechanical_pencil (last visited January 10, 2018).

⁸ Merriam Webster Dictionary Online, available at <https://www.merriam-webster.com/dictionary/crayon> (last visited January 10, 2018)

⁹ Oxford English Dictionary Online, available at http://www.oed.com/search?searchType=dictionary&q=crayon&_searchBtn=Search (last visited January 11, 2018)

¹⁰ See <http://www.crayola.com/faq/your-business/can-you-tell-me-how-crayola-colored-pencils-are-made/>

¹¹ See e.g., <https://www.wired.com/2014/09/how-to-make-crayons/>.

¹² See <http://shop.crayola.com/color-and-draw/crayons/mini-twistable-crayons-10-ct.-5297150003.html>.

¹³ See <http://shop.crayola.com/color-and-draw/colored-pencils/twistables-colored-pencils-18-ct.-6874180007.html>; <http://shop.crayola.com/spotlight/coloring-and-sticker-books-and-crayons/art-with-edge-24-ct.-color-twist-shading-pencils-6874240000.html>.

¹⁴ We note that cores of pencils, colored or mechanical or otherwise, are not actually lead. Writing pencils typically have a core of graphite, whereas colored pencils have cores made up of a range of materials, generally consisting of a wax or oil base, a specific pigment and binding agents. To date, this has never resulted in colored pencils being considered other

forward, carrying the core with it. This mechanical action places the instant pencils squarely in the “twist”¹⁵ category of mechanical/propelling pencils, classified in heading 9608, HTSUS, specifically subheading 9608.40.40, HTSUS.

As the instant articles are *prima facie* classifiable as pencils of heading 9608, HTSUS, it is unnecessary to further consider whether they could also be considered crayons of heading 9609, HTSUS; by the terms of headings 9608 and 9609, any article which could conceivably be described in both headings must be classified in heading 9608, HTSUS, at GRI 1.

In contrast, we note that articles such as Crayola’s twistable crayons, which are too thick to be used in the manner of a pencil—i.e., for detailed drawing, writing or coloring—are correctly classified in heading 9609, HTSUS, because they do not meet the terms of heading 9608, HTSUS. See NY J81304, dated February 20, 2003, classifying Crayola twistable crayons in heading 9609, HTSUS.

HOLDING:

The twistable colored pencils are classified in heading 9608, HTSUS, specifically subheading 9608.40.40, HTSUS, which provides for “Ball point pens; felt tipped and other porous-tipped pens and markers; fountain pens, stylograph pens and other pens; duplicating stylos; propelling or sliding pencils; pen-holders, pencil-holders and similar holders; parts (including caps and clips) of the foregoing articles, other than those of heading 96.09: Propelling or sliding pencils: With a mechanical action for extending, or for extending and retracting, the lead.” The 2018 column one, general rate of duty is 6.6% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY R00817, dated September 16, 2004, is hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

than pencils. See also EN 96.09, which refers to colored pencil “leads”, “consisting of metallic oxides or other mineral pigments combined with clay, chalk or wax; indelible or copying leads, composed of clay tinted with a dye, such as aniline or fuchsine).”

¹⁵“Twist” mechanisms which advance and retract the lead with a turn of a knob are common in older mechanical pencils. See e.g., <https://www.jetpens.com/blog/guide-to-mechanical-pencils/pt/809> (last visited January 11, 2018); <https://www.cultpens.com/encyclopedia/guide-to-mechanical-pencils> (last visited January 11, 2018).

**PROPOSED MODIFICATION OF ONE RULING LETTER
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF PLASTIC
PLAY FOOD PACKAGED IN A PLASTIC BACKPACK**

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

ACTION: Notice of proposed modification of one ruling letter, and proposed revocation of treatment relating to the tariff classification of plastic play food packaged in a plastic backpack.

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 plastic play food packaged in a plastic backpack 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 December 14, 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: Beth Jenior, Food, Textiles and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0347.

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 plastic play food packaged in a plastic backpack. Although in this notice, CBP is specifically referring to Preclassification Ruling Letter (“PC”) K88915, dated September 29, 2004 (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 PC K88915, CBP classified the plastic play food and the plastic backpack together in heading 9503, HTSUS, specifically in subheading 9503.00.00, HTSUS, which provides for “other toys.” CBP has reviewed PC K88915 and has determined the ruling letter to be in error. It is now CBP’s position that the plastic play food and backpack are properly classified separately, with the backpack being classified in heading 4202, HTSUS, specifically in subheading 4202.92.45, HTSUS, which provides for “backpacks.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify PC K88915 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H300680, 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: October 4, 2018

IEVA K. O'ROURKE

For

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

PC K88915

September 29, 2004

CLA-2-95:RR:NC:SP:225

CATEGORY: Preclassification

MR. GEORFFREY GREENBERG

CREATIVE DESIGNS INTERNATIONAL, LTD. 207-
208 EAST PENNSYLVANIA BLVD. FEASTERVILLE,
PA 19053

RE: Preclassification of costumes and toys

DEAR MR. GREENBERG:

Preclassification is a feature of the Pre-Importation Review Program designed to provide importers with classification advice prior to importation and entry. This shifts the emphasis of the classification function from transaction based analysis after importation to up-front advice for future importation. It promotes voluntary compliance, uniformity and accuracy.

The final review of the preclassification determinations which were conducted on September 9, 2004 by National Import Specialist Alice J. Wong has been completed. A listing of the items which were preclassified is enclosed.

As of the date of this ruling, all Customs ports will accept entry of this merchandise at the preclassification tariff numbers. As the importer, you agree to enter according to this advice. Failure to comply will result in your disqualification from participation. You must also advise National Import Specialist Alice J. Wong of all changes or modifications made to items which have been preclassified and any new items you wish to submit for consideration.

A copy of this letter and the enclosed listing of preclassified merchandise should be given to your broker and all members of your staff who are involved with clearing merchandise through Customs.

If you have any questions pertaining to this matter, please contact National Import Specialist Alice J. Wong at 646-733-3026.

Sincerely,

ROBERT B. SWIERUPSKI

*Director,**National Commodity Specialist Division*

ATTACHMENT B

HQ H300680
CLA-2 OT:RR:CTF:TCM H300680 EGJ
CATEGORY: Classification
TARIFF NO.: 9503.00.00; 4202.92.45

GEOFFREY GREENBERG
CREATIVE DESIGNS INTERNATIONAL LTD.
207-208 EAST PENNSYLVANIA BLVD.
FEASTERVILLE, PA 19053

RE: Modification of PC K88915: Classification of Plastic Play Food in a Backpack

DEAR MR. GREENBERG:

We have reviewed unpublished Pre-Classification Ruling (PC) K88915, dated September 29, 2004, issued to you concerning the tariff classification of different types of merchandise, including Subway® plastic play food packaged inside of a plastic backpack. In the pre-classification ruling, CBP classified the play food and the backpack together under heading 9503, HTSUS. We have reviewed PC K88915 and find it to be in error with regard to the tariff classification of the Subway® plastic play food and backpack. For the reasons set forth below, we hereby modify PC K88915.

FACTS:

In PC K88915, the relevant merchandise consists of Subway® brand plastic play food packaged inside of a clear plastic backpack. According to the labeling on the sample, there are 29 pieces of plastic play food. The play food includes plastic cheese, lettuce, cold cuts, bread, and condiment containers. A picture of the merchandise is provided below:



ISSUE:

What is the tariff classification of the Subway® brand plastic play food packaged inside of a clear plastic backpack under the HTSUS?

LAW AND ANALYSIS:

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

The HTSUS provisions at issue are as follows:

4202	Trunks, suitcases, vanity cases, attaché cases, briefcases, 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:
	Other:
4202.92	With outer surface of sheeting of plastics or of textile materials:
	Travel, sports and similar bags:
4202.92.45	Other.
	* * *
9503.00.00	Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof
	* * *

Additional U.S. Note 1 to Chapter 42 states that:

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

Note 1(d) to Chapter 95 provides as follows:

1. This chapter does not cover:
 - (d) Sports bags or other containers of heading 4202, 4303 or 4304;

Note 4 to Chapter 95 provides as follows:

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

* * *

GRI 3(b) provides as follows:

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

...

- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale,

which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

GRI 5 provides as follows:

In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

- (a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and entered with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;
- (b) Subject to the provisions of rule 5(a) above, packing materials and packing containers entered with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.

* * *

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

The ENs to GRI 3(b) state, in pertinent part, as follows:

- (VII) In all these cases the goods are to be classified as if they consisted of the material or component **which gives them their essential character**, insofar as this criterion is applicable.
- (VIII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.
- (X) For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:
 - (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings. Therefore, for example, six fondue forks cannot be regarded as a set within the meaning of this Rule;
 - (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
 - (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

The term therefore covers sets consisting, for example, of different foodstuffs intended to be used together in the preparation of a ready-to-eat dish or meal.

The ENs to GRI 5 provide as follows:

RULE 5 (a)

(Cases, boxes and similar containers)

- (I) This Rule shall be taken to cover only those containers which:
- (1) are specially shaped or fitted to contain a specific article or set of articles, i.e., they are designed specifically to accommodate the article for which they are intended. Some containers are shaped in the form of the article they contain;
 - (2) are suitable for long-term use, i.e., they are designed to have a durability comparable to that of the articles for which they are intended. These containers also serve to protect the article when not in use (during transport or storage, for example). These criteria enable them to be distinguished from simple packings;
 - (3) are presented with the articles for which they are intended, whether or not the articles are packed separately for convenience of transport. Presented separately the containers are classified in their appropriate headings;
 - (4) are of a kind normally sold with such articles; and
 - (5) do not give the whole its essential character.
- (II) Examples of containers, presented with the articles for which they are intended, which are to be classified by reference to this Rule are:
- (1) Jewelry boxes and cases (heading 71.13);
 - (2) Electric shaver cases (heading 85.10);
 - (3) Binocular cases, telescope cases (heading 90.05);
 - (4) Musical instrument cases, boxes and bags (e.g., heading 92.02);
 - (5) Gun cases (e.g., heading 93.03).
- (III) Examples of containers not covered by this Rule are containers such as a silver caddy containing tea, or an ornamental ceramic bowl containing sweets.

RULE 5 (b)

(Packing materials and packing containers)

- (IV) This Rule governs the classification of packing materials and packing containers of a kind normally used for packing the goods to which they relate. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use, for example, certain metal drums or containers of iron or steel for compressed or liquefied gas.
- (V) This Rule is subject to Rule 5 (a) and, therefore, the classification of cases, boxes and similar containers of the kind mentioned in Rule 5 (a) shall be determined by the application of that Rule.

* * *

In PC K88915, CBP classified Subway® brand plastic play food and a clear plastic backpack together as a toy under heading 9503, HTSUS. There are three HTSUS provisions which may allow the instant merchandise to be

classified together: 1) Note 4 to Chapter 95, 2) GRI 3(b) or 3) GRI 5. Note 4 to Chapter 95 only applies to toys packaged together with other items which do not constitute a GRI 3(b) set. Therefore, we must first consider whether the play food and the backpack constitute a GRI 3(b) set.

We note that in order to be classified as a GRI 3(b) retail set, the subject merchandise must meet three requirements. First, the merchandise must consist of two or more articles which are *prima facie* classifiable in different headings. Second, the merchandise must consist of articles put up together to meet a particular need or to carry out a specific activity. Finally, the merchandise must be suitable for direct sale to users without repacking. *See Estee Lauder v. United States*, 815 F.Supp. 2d 1287, 1294 (Ct. Int'l Trade 2012) (citing to the ENs to GRI 3(b)).

The plastic play food and the backpack meet the first and third criteria. The play food is classified under heading 9503, HTSUS, and the backpack is classified under heading 4202, HTSUS. Further, they are packaged together and are suitable for direct sale to users without repacking.

However, the play food and backpack do not meet the second criterion necessary for classification as a GRI 3(b) retail set. They are not packaged together to meet a particular need or to carry out a specific activity. The play food is packed very tightly inside of the backpack. Examining the sample in our office, we struggled to fit all of the play food back inside of the backpack after removing it. We take the view that the consumer will likely store the play food in a container other than the instant backpack. Moreover, the play food and the backpack are not put up to meet a particular need or to carry out a specific activity. If a consumer is pretending to be a sandwich maker at a Subway® restaurant, then there is no connection to a backpack involved in that activity. For these reasons, we find that the play food and backpack do not constitute a GRI 3(b) retail set.

As we have determined that this merchandise cannot be classified together under GRI 3(b), we now turn to Note 4 to Chapter 95. Note 4 to Chapter 95 states that, subject to Note 1 to Chapter 95, items packaged together with toys for retail sale may be classified under heading 9503, HTSUS, so long as the toy and the item do not constitute a GRI 3(b) set and so long as the combination has the essential character of a toy. We take the view that the play food and the backpack are not a GRI 3(b) set and that the combination has the essential character of a toy.

However, Note 4 states that it is subject to the exclusions of Note 1 to Chapter 95. Note 1(d) excludes bags of heading 4202, HTSUS, from being classified in Chapter 95. Therefore, the backpack and play food combination cannot be classified together under heading 9503, HTSUS, by application of Note 4 to Chapter 95.

Finally, we turn to GRI 5, which applies to the classification of certain packaging. GRI 5(a) states that containers such as camera cases, musical instrument cases, gun cases and similar containers which are specially shaped or fitted to contain a specific article or set of articles, which are suitable for long-term use and are entered with the articles for which they are intended should be classified together with the article that they contain, so long as the container does not give the combination its essential character. The ENs to GRI 5(a) give examples of containers which are classified together with their contents under this provision, such as jewelry cases, electric shaver cases, binocular cases and telescope cases.

Although the clear backpack is suitable for long-term use, we find that it is not specially shaped or fitted to contain the play food. The examples of containers listed above are either shaped to precisely fit their contents, or else they are equipped with inserts that fit the contents. The backpack is not specially shaped or fitted to contain the play food. Therefore, the backpack cannot be classified together with the play food by application of GRI 5(a).

GRI 5(b) states that normal packaging can generally be classified together with its contents. However, GRI 5(b) does not apply to packaging which is suitable for repetitive use. We note that the backpack is sturdy and is suitable for repetitive use. Therefore, we cannot classify the backpack and the play food together by application of GRI 5(b). For all of the aforementioned reasons, we must classify the backpack separately from the play food.

HOLDING:

By application of GRIs 1 and 6, the backpack is classified under subheading 4202.92.45, HTSUS, which provides for, in pertinent part, for “[B]ackpacks ...: Other: With outer surface of sheeting of plastics or of textile materials: Travel, sports and similar bags: Other.” The 2018 column one, general rate of duty is 20 percent *ad valorem*.

By application of GRIs 1 and 6, the plastic play food is classified under subheading 9503.00.00, which provides for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof.” The 2018 column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

PC K88915, dated September 29, 2004, is hereby modified with regard to the tariff classification of the Subway® plastic play food and backpack.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

**PROPOSED MODIFICATION OF TWO RULING LETTERS
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A CERTAIN MEN'S WOVEN
SHIRT AND MEN'S WOVEN SUIT AS ARTICLES FOR THE
HANDICAPPED**

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 a certain men's woven shirt and a men's woven suit.

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 the tariff classification of a certain men's woven shirt and a men's woven suit under the Harmonized Tariff Schedule of the United States (HTSUS), as articles for the handicapped. 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 December 14, 2018.

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

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–0046.

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 a certain men's woven shirt and a men's woven suit as articles for the handicapped. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) N278872, dated September 29, 2016 (Attachment A), and NY N282688, dated January 27, 2017, (Attachment B), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the 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 N278872 and NY N282688, CBP found that a men's woven shirt with a magnetic front closure and magnetic sleeve cuff closures and a men's woven suit with magnetic closures on the jacket, vest and pants were eligible for classification in subheading 9817.00.96, HT-SUS, which provides for, among other things, articles specially designed or adapted for the use or benefit of physically or mentally handicapped persons, other than articles for the blind. CBP has reviewed NY N278872 and NY N282688 and has determined the ruling letters to be in error with regard to the classification of the

subject garments in subheading 9817.00.96, HTSUS. It is now CBP's position that these garments are not classifiable as articles for the handicapped.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N278872 and NY N282688, and to revoke or modify any other ruling not specifically identified, to reflect the analysis contained in proposed Headquarters Ruling Letter ("HQ") H300625 and HQ H300660, set forth as Attachments "C" and "D" to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: October 4, 2018

MONIKA R. BRENNER
For

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N278872

September 29, 2016

CLA-2-62:OT:RR:NC:N3:356

CATEGORY: Classification

TARIFF NO.: *6205.20.2026; 9817.00.96*

MR JOHN B. PELLEGRINI
MCGUIRE WOODS LLP
1345 AVENUE OF THE AMERICAS
SEVENTH FLOOR
NEW YORK, NY 10105-0106

RE: The tariff classification of a men's woven shirt from Bangladesh and Indonesia.

DEAR MR. PELLEGRINI:

In your letter dated July 27, 2016, you requested a tariff classification ruling on behalf of your client, PVH Corporation. As requested, your sample will be returned.

The submitted sample, described as a "Magna Click Shirt," is a men's shirt constructed from 55% cotton, 45% polyester, woven fabric. The garment features a self-fabric point collar; a full front opening secured by a left-over-right, seven button faux closure and a concealed seven magnet closure; a patch pocket on the left chest; long vented sleeves with a single button closure on the vent plackets; a faux button closure with a concealed magnetic closure on each cuff; a back yoke; a hanger loop and a box pleat on the center back panel; and a curved, hemmed bottom. You state that the shirts will be available in five basic and three fashion colors.

The applicable subheading for the "Magna Click Shirt" will be *6205.20.2026*, Harmonized Tariff Schedule of the United States (HTSUS), which provides for men's or boys' shirts, of cotton: other: dress shirts: other: men's. The duty rate will be 19.7% ad valorem.

Regarding your claim for duty free treatment under *9817.00.96*, HTSUS, these items are described on your website as "designed for individuals with limited mobility or dexterity." Magna Ready® shirts contain self-closing technology that eliminates the need to button a shirt. Simply pressing the two sides of the shirt front together snaps the magnets into place. The magnets are hidden between layers of fabric, and buttons or traditional closures are placed decoratively on the garments. The magnetic closures are clearly consistent with the garments being specially designed for use by those with chronic disabilities (for example, arthritis, Parkinson's disease) who struggle to dress themselves.

On that basis a secondary classification will apply for these items in *9817.00.96*, HTSUS, as specially designed or adapted for the use or benefit of the permanently or chronically physically or mentally handicapped (except articles for the blind), free of duty and user fees (if any). Note that this classification has no effect on any quota, visa, or restricted merchandise requirements or countervailing or dumping duties.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at <http://www.usitc.gov/tata/hts/>. We note that the submitted items are not marked with acceptable country of origin

marking in satisfaction of the marking requirements of 19 U.S.C. 1304 and 19 CFR Part 134. The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

As provided in section 134.41(b), Customs Regulations (19 CFR 134.41 (b)), the country of origin marking is considered conspicuous if the ultimate purchaser in the U.S. is able to find the marking easily and read it without strain.

In T.D. 54640(6), Customs determined that country of origin marking appearing on the inside center of the neck of shirts, blouses, coats, sweaters, etc., mid-way between the shoulder seams or in that immediate area, is conspicuous within the meaning of 19 U.S.C. 1304. In addition, textile fiber products imported into the United States must be labeled in accordance with the Textile Fiber Products Identification Act (15 USC 70 through 70k) and the rules promulgated thereunder by the Federal Trade Commission. We suggest you contact the Federal Trade Commission, Division of Enforcement, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580 for advice concerning the requirements of this Act. Information may also be obtained at the Federal Trade Commission website, www.ftc.gov.

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 Maryalice Nowak at maryalice.nowak@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK

Director

National Commodity Specialist Division

ATTACHMENT B

N282688

January 27, 2017

CLA-2-62:OT:RR:NC:N3:356

CATEGORY: Classification

TARIFF NO.: 6203.12.2010; 9817.00.96

Ms. BETH C. RING, Esq.
SANDLER, TRAVIS AND ROSENBERG, P.A.
551 FIFTH AVENUE, SUITE 1100
NEW YORK, NY 10176

RE: The tariff classification of a men's woven suit from Vietnam. Correction to Ruling Number *N281489*.

DEAR Ms. RING:

This replaces Ruling Number *N281489*, dated December 29, 2016, which contained a clerical error. Specifically, the ruling quoted the phrase "put up for retail sale," which was erroneously included in the Harmonized Tariff Schedule of the United States (2016) - Supplement 1, Chapter 62, Note 3(a). A complete corrected ruling follows.

In your letter dated November 29, 2016 you requested a tariff classification ruling on behalf of your client, Marcrafft Clothes, Inc. Your sample will be returned.

The submitted sample, for which a style number is not available, is comprised of three pieces: a men's suit-type jacket, a pair of men's trousers, and a men's vest. You indicate that the three pieces will be put up together for retail sale. In addition, although no information has been provided regarding the sizes of the garments, you state that the three pieces are of compatible size. The jacket, the trousers, and the two front panels of the vest are constructed from identical 65% polyester and 35% rayon, woven fabric.

The jacket is constructed of six panels sewn together lengthwise and features a notched collar with lapels; a non-functional button hole on the left lapel; a left-over-right, full front opening with two non-functional button holes on the left front panel; a button sewn over the upper button hole with a concealed magnet closure behind this button; a button sewn on the right front panel opposite the lower button hole; a hanger loop at the center rear inner neckline; long, hemmed, vented sleeves with four buttons on each sleeve; two inset pockets with flaps below the waist; two inner welt pockets on the left front panel; an inner welt pocket on the right front panel; a hemmed bottom with curved edges on the front panels; and two rear vents. The body and sleeves of the garment are lined with 100% polyester woven fabric.

The trousers feature a flat waistband; a left-over-right opening with a button, a non-functional button hole, and a hook-and-loop closure on the front waistband; two concealed magnet closures within the fly placket; four elastic strips enclosed within the waistband, two of which are partially visible on the waistband's inner surface; an inset coin pocket at the right front waist; two inset pockets at the waist; two welt pockets at the rear; and hemmed legs.

The vest is constructed from three panels (two in the front, and one in the rear) sewn together lengthwise. The rear panel is constructed of the same 100% polyester woven fabric as the lining of the jacket body. The garment features a V-neckline; oversized armholes; a left-over-right, full front opening with five faux button closures and five magnet closures concealed behind the

buttons; pointed front panels; two welt pockets at the waist; an adjustable polyester, woven fabric belt in the rear with a metal buckle; and a full lining of 100% polyester woven fabric.

Note 3(a), Chapter 62, Harmonized Schedule of the United States (HTSUS) defines a “suit” as:

a set of garments composed of two or three pieces made up, in respect of their outer surface, pieces made up in identical fabric, and comprising:

one suit coat or jacket the outer shell of which, exclusive of sleeves, consists of four or more panels, designed to cover the upper part of the body, possibly with a tailored waistcoat in addition whose front is made from the same fabric as the outer surface of the other components of the set and whose back is made from the same fabric as the lining of the suit coat or jacket; and

one garment designed to cover the lower part of the body and consisting of trousers, breeches or shorts (other than swimwear)... having neither braces nor bibs.

This note goes on to state that “all of the components of a “suit” must be... of corresponding or compatible size.”

The subject garments meet these requirements. Accordingly, the applicable subheading for this three-piece suit will be *6203.12.2010*, HTSUS, which provides for: Men’s or boys’ suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear): Suits: Of synthetic fibers: Other: Men’s. The rate of duty will be 27.3% ad valorem.

Regarding your claim for duty free treatment under *9817.00.96*, HTSUS, you state that these garments “are designed for individuals with limited mobility or dexterity.” The jacket, trousers, and vest contain Magna Ready® self-closing technology that eliminates the need to button or zip the garments. Simply pressing together the two sides of the jacket front, fly placket, and vest front snaps the magnets into place. The magnets are hidden between layers of fabric, and buttons are placed decoratively on the garments. The magnetic closures are clearly consistent with the garments being specially designed for use by those with chronic disabilities (for example, arthritis, Parkinson’s disease) who struggle to dress themselves.

On that basis, a secondary classification will apply for these items in *9817.00.96*, HTSUS, as specially designed or adapted for the use or benefit of the permanently or chronically physically or mentally handicapped (except articles for the blind), free of duty and user fees (if any).

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

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 Maryalice Nowak at maryalice.nowak@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK

Director

National Commodity Specialist Division

ATTACHMENT C

HQ H300625
OT:RR:CTF:VS H300625 CMR
CATEGORY: Classification
TARIFF NO.: 6205.20.2026

JOHN B. PELLEGRINI, Esq.
MCGUIREWOODS LLP
1345 AVENUE OF THE AMERICAS
SEVENTH FLOOR
NEW YORK, NY 10105-0106

RE: Modification of New York Ruling Letter N278872, dated September 29, 2016; Tariff classification of a men's woven shirt from Bangladesh and Indonesia; Articles for the Handicapped

DEAR MR. PELLEGRINI:

This is in reference to New York (NY) Ruling Letter N278872, dated September 29, 2016, which was issued to you, on behalf of your client, PVH Corporation. We are modifying NY N278872 with regard to the determination that the shirt was eligible for classification under subheading 9817.00.96, of the Harmonized Tariff Schedule of the United States (HTSUS), as an article specially designed or adapted for the use or benefit of the handicapped, as that determination was incorrect. The tariff classification of the garment in subheading 6205.20.2026, (HTSUS), was correct and remains undisturbed by this decision.

FACTS:

The garment was described in NY N278872 as follows:

The submitted sample, described as a "Magna Click Shirt," is a men's shirt constructed from 55% cotton, 45% polyester, woven fabric. The garment features a self-fabric point collar; a full front opening secured by a left-over-right, seven button faux closure and a concealed seven magnet closure; a patch pocket on the left chest; long vented sleeves with a single button closure on the vent plackets; a faux button closure with a concealed magnetic closure on each cuff; a back yoke; a hanger loop and a box pleat on the center back panel; and a curved, hemmed bottom. You state that the shirts will be available in five basic and three fashion colors.

You indicated in the ruling request that the shirts with the magnetic closures are more expensive to produce and are designed for use by individuals with limited mobility or dexterity, such as individuals suffering from Parkinson's disease. You stated that the shirts would be marketed for use by handicapped individuals and would be available in limited styles and colors. Further, you stated that these shirts would be "40 percent more expensive than 'normal' shirts" reducing the probability of use by individuals not suffering from mobility or dexterity issues. Therefore, you claimed that these shirts satisfy the requirements for classification in subheading 9817.00.96, HTSUS, which provides for:

articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons; parts and accessories

(except parts and accessories of braces and artificial limb prosthetics) that are specially designed or adapted for use in the foregoing articles . . .
Other.

NY N278872 indicates that these items are described on your client's website as "designed for individuals with limited mobility or dexterity." The ruling further states:

Magna Ready® shirts contain self-closing technology that eliminates the need to button a shirt. Simply pressing the two sides of the shirt front together snaps the magnets into place. The magnets are hidden between layers of fabric, and buttons or traditional closures are placed decoratively on the garments. The magnetic closures are clearly consistent with the garments being specially designed for use by those with chronic disabilities (for example, arthritis, Parkinson's disease) who struggle to dress themselves.

Based on the above information, NY N278872 held that the shirt at issue was eligible for duty-free treatment under subheading 9817.00.96, HTSUS. As noted above, this determination was in error.

ISSUE:

Whether the "Magna Click Shirt" is eligible for duty-free treatment under subheading 9817.00.96, HTSUS, as articles specially designed or adapted for the handicapped.

LAW AND ANALYSIS:

Congress passed the Educational, Scientific, and Cultural Materials Importation Act of 1982, Pub. L. No. 97-446, 96 Stat. 2329, 2346 (1983), and the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107 (1988), to implement the Nairobi Protocol to the Florence Agreement on the Importation of Educational, Scientific and Cultural Materials ("Nairobi Protocol"), an international agreement intended to provide "duty free treatment to articles for the use or benefit of the physically or mentally handicapped persons, in addition to articles for the blind." *See also U.S. Customs Serv. Implementation of the Duty-Free Provisions of the Nairobi Protocol, Annex E, to the Florence Agreement*, T.D. 92-77, 26 *Cust. B. & Dec.* 240, 241 (1992) ("*Implementation of the Nairobi Protocol*"). Presidential Proclamation 5978 and Section 1121 of the Omnibus Trade and Competitiveness Act of 1988, provided for the implementation of the Nairobi Protocol into subheadings 9817.00.92, 9817.00.94, and 9817.00.96, HTSUS.¹ Therefore, this legislation eliminated duties for products covered by subheading 9817.00.96, HTSUS, which provides for:

articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons; parts and accessories (except parts and accessories of braces and artificial limb prosthetics) that are specially designed or adapted for use in the foregoing articles . . .
Other.

¹ By Presidential Proclamation 6821 of September 12, 1995, 60 *Federal Register* 47663 (published on September 13, 1995), the superior text preceding subheading 9817.00.92, HTSUS, (and applicable to subheadings 9817.00.92, 9817.00.94, and 9817.00.96, HTSUS) was modified to include parts and accessories for the articles of the subheading.

See subheading 9817.00.96, HTSUS; see also *Sigvaris, Inc. v. United States*, 227 F. Supp. 3d 1327, 1335 (Ct. Int'l Trade, 2017). Subheading 9817.00.96 excludes "(i) articles for acute or transient disability; (ii) spectacles, dentures, and cosmetic articles for individuals not substantially disabled; (iii) therapeutic and diagnostic articles; or, (iv) medicine or drugs." U.S. Note 4(b), Subchapter XVII, Chapter 98, HTSUS.

As the language of this provision indicates, classification within subheading 9817.00.96, HTSUS, depends on whether the article in question is "specially designed or adapted for the use or benefit of the blind or physically and mentally handicapped persons," and whether it falls within any of the enumerated exclusions. See subheading 9817.00.96, HTSUS; U.S. Note 4(b), Subchapter XVII, Chapter 98, HTSUS. Note 4(a) to Chapter 98, HTSUS, provides:

- (a) For purposes of subheadings 9817.00.92, 9817.00.94 and 9817.00.96, the term "blind or other physically or mentally handicapped persons" includes any person suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working.

U.S. Note 4(a), Subchapter XVII, Chapter 98, HTSUS. This list of exemplar activities indicates that the term "handicapped persons" is to be liberally construed so as to encompass a wide range of conditions, provided the condition substantially interferes with a person's ability to perform an essential daily task. See *Sigvaris*, 227 F. Supp. 3d at 1335. While the HTSUS and subchapter notes do not provide a proper definition of "substantial" limitation, the inclusion of the word "substantially" denotes that the limitation must be "considerable in amount" or "to a large degree." *Id.* at 1335 (citing *Webster's* at 2280).

In the Court of Appeals for the Federal Circuit's decision in *Sigvaris, Inc. v. United States*, 899 F.3d 1308 (Fed. Cir. 2018), the court found that the Court of International Trade reached the correct conclusion in finding the merchandise at issue therein, compression stockings, not eligible for classification under subheading 9817.00.96, HTSUS, but the court disagreed with the lower court's analysis. The court found that the Court of International Trade looked to the condition or disorder and whether it is a handicap. The court stated:

The plain language of the heading focuses the inquiry on the "persons" for whose use and benefit the articles are "specially designed," and not on any disorder that may incidentally afflict persons who use the subject merchandise.

* * *

... we must ask first, "for whose, if anyone's, use and benefit is the article specially designed," and then, "are those persons physically handicapped?"

Id.

The language of subheading 9817.00.96, HTSUS, states that the provision provides for "articles specially designed or adapted" for the use or benefit of the physically handicapped. The design and construction of an article may be indicative of whether it is specially designed or adapted for the use or benefit of the handicapped. The HTSUS does not establish a clear definition of what constitutes "specially designed or adapted for the use or benefit" of handi-

capped persons. In the absence of a clear definition, the Court of the International Trade stated that it may rely upon its own understanding of the terms or consult dictionaries and other reliable information. *See Danze, Inc. v. United States*, Slip Op. 18–69 (Ct. Int’l Trade 2018). Moreover, in analyzing this same provision in *Sigvaris v. United States*, the Court of International Trade construed these operative words as follows:

The term “specially” is synonymous with “particularly,” which is defined as “to an extent greater than in other cases or towards others.” [Webster’s] at 1647, 2186

. . . The dictionary definition for “designed” is something that is “done, performed, or made with purpose and intent often despite an appearance of being accidental, spontaneous, or natural.” [Webster’s] at 612 . . .

See Sigvaris, 227 F. Supp. 3d at 1336. *See also, Sigvaris, Inc. v. United States*, 899 F.3d 1308 (Fed. Cir. 2018), wherein the court cited the definitions relied upon by the Court of International Trade in *Sigvaris*, in concluding that “articles specially designed for handicapped persons must be made with the specific purpose and intent to be used by or benefit handicapped persons rather than the general public.” *See Sigvaris*, 899 F.3d 1308 (Fed. Cir. 2018). The Court of Appeals for the Federal Circuit refined this requirement which it found to be incomplete. The court concluded that:

to be “specially designed,” the subject merchandise must be intended for the use or benefit of a specific class of persons to an extent greater than for the use or benefit of others.

Sigvaris, 899 F.3d 1308.

Finally, the legislative history further aids our analysis of these terms as used in subheading 9817.00.96, HTSUS. The Senate stated in its Report that one of the goals of this law was to benefit the handicapped and show U.S. support for the rights of the handicapped. The Senate stated, in relevant part:

By providing for duty-free treatment of articles specially adapted for the blind or other physically or mentally handicapped persons, the committee does not intend that an insignificant adaptation would result in duty-free treatment for an entire relatively expensive article. Otherwise, the special tariff category will create incentives for commercially motivated tariff-avoidance schemes and pre-import and post-entry manipulation. Rather, the committee intends that, in order for an entire modified article to be accorded duty-free treatment, the modification or adaptation must be significant, so as clearly to render the article for use by handicapped persons.

S. Rep. No. 97 564, 97th Cong. 2nd Sess. (1982). The Senate was concerned that persons would misuse this tariff provision to avoid paying duties on expensive products. Similarly, in *Danze v. United States*, the court looked to the legislative history and noted that its interpretation of the terms “specially” and “designed” in *Sigvaris* comported with the legislative intent behind subheading 9817.00.96, HTSUS, that any modification or adaptation be “significant.” Specifically, the court in *Danze* stated:

“articles specially designed for handicapped persons must be made with the specific purpose and intent to be used by or benefit handicapped persons rather than the general public.” *Sigvaris*, 227 F. Supp. 3d at 1336. Any adaptation or modification to an article to render it for use or benefit by handicapped persons must be significant.

See *Danze* at 14.

CBP has recognized several factors to be utilized and weighed against each other on a case-by-case basis when determining whether a particular product is “specially designed or adapted” for the benefit or use of handicapped persons. See *Implementation of the Nairobi Protocol*, 26 *Cust. Bull. & Dec.* at 243–244. These factors include: (1) the physical properties of the article itself (*i.e.*, whether the article is easily distinguishable by properties of the design, form, and the corresponding use specific to this unique design, from articles useful to non-handicapped persons); (2) whether any characteristics are present that create a substantial probability of use by the chronically handicapped so that the article is easily distinguishable from articles useful to the general public and any use thereof by the general public is so improbable that it would be fugitive; (3) whether articles are imported by manufacturers or distributors recognized or proven to be involved in this class or kind of articles for the handicapped; (4) whether the articles are sold in specialty stores which serve handicapped individuals; and, (5) whether the condition of the articles at the time of importation indicates that these articles are for the handicapped. See also *Danze, Inc. v. United States*, Slip Op. 18–69 (Ct. Int’l Trade 2018); *Sigvaris, Inc. v. United States*, 227 F.Supp.3d 1327 (Ct. Int’l Trade, 2017), *aff’d*, 899 F.3d 1308 (Fed. Cir. 2018). The court in *Sigvaris*, 899 F.3d 1308 (Fed. Cir. 2018), found that “[t]hese factors aid in assessing whether the subject merchandise is intended for the use or benefit of a specific class of persons to a greater extent than for the use or benefit of others.” The court adopted these factors into its analysis.

Looking to the court’s analysis in *Sigvaris*, 899 F.3d 1308 (Fed. Cir. 2018), we must first examine for whose use and benefit the Magna Click shirt is “specially designed,” and whether such persons are physically handicapped. In other words, we must consider whether such persons are suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities. In this case, the life activity for which the shirt is claimed to be “specially designed”² is the ability to dress oneself.

With regard to the first two factors to consider in determining whether an article is “specially designed,” *i.e.*, the physical properties of the article and any characteristics of the article that easily distinguish it from articles useful to the general public, we find that the Magna Click shirt is not distinguishable from articles useful to the general public. Magnetic closures for garments have become mainstream in their use. An internet search revealed numerous websites advertising men’s shirts with magnetic closures, which is evidence that the mainstream use of magnetic closures is especially true with regard to men’s shirts. While it is true that some websites advertising such shirts make reference to a garment as “adaptive clothing” or as being for those with limited dexterity, those same websites include that such shirts are also beneficial or useful for those who would like to avoid the hassle of buttons.³ These shirts, with magnetic front closures, are being sold by vari-

² References to “specially designed” include “specially designed or adapted.”

³ See <https://www.jpennney.com/p/van-heusen-easy-care-magnaclick-long-sleeve-twill-dress-shirt>, wherein the shirt description includes the following statement: “Hidden magnetic closures are featured underneath the buttons, making everyday fashion a breeze for those with limited dexterity or others who would like to avoid the hassle of buttons.” The garment is described as being of 55% cotton/45% polyester twill wrinkle-free fabric and having long sleeves, a spread collar, a regular fit, and a magnetic closure. The shirt is designed for the young men’s/adult age group.

ous stores, including J.C. Penney's, The Men's Wearhouse,⁴ Costco,⁵ Kohl's,⁶ Macy's,⁷ Duluth Trading Company,⁸ as well as by companies which generally market products to individuals with disabilities or considered "senior", such as Silvert's⁹, where a men's shirt with magnetic buttons appears when one clicks the "Men's Regular" or "Men's Adaptive" tabs. In the case of Silvert's, the descriptive text indicates that the target market is individuals with lowered hand dexterity due to illness. The descriptive text states, among other things:

This magnet fastening shirt features terrific dressing for those with lowered hand dexterity when paralysis is an issue caused by arthritis, Rheumatoid arthritis, Parkinson's, Neuropathy, Multiple Sclerosis, ALS and Stroke. The best in Parkinson's clothing magnetic buttons for clothing make the difficult task of dressing a breeze! The faux-button placket and cuffs conceal magnetic closures that make dressing incredibly

⁴ See <https://www.menswearhouse.com/shirts/dress-shirts/classic-fit-regular-shirts/magnaclick-reg-blue-classic-fit-dress-shirt-53U053U102>, wherein the product details provide: "This ingenious dress shirt has all of the classic styling of a fine men's dress shirt, but with a secret benefit – magnets. MagnaClick® shirts feature hidden magnetic closures wherever you'd find a button. It is the perfect choice for those with limited dexterity, or anyone who wants to eliminate the fuss of buttons." The garment is described as being of 60% cotton/40% polyester fabric with a spread collar, chest pocket, magnetic closures on the front placket and sleeve cuffs and having a "classic fit." It is also identified as "adaptive clothing."

⁵ See <https://www.costco.com/MagnaClick-Men%E2%80%99s-Dress-Shirt.product.100418298.html>, wherein the garment is identified as "adaptive clothing" and "stress free apparel." The product details state:

To the unknowing eye, a MagnaClick® shirt looks just like any other dress shirt hanging in the closet. Same collar and cuffs, same row of little white buttons down the front. But, those buttons are merely for looks. Hidden inside the placket of a MagnaClick® shirt are powerful magnets that link together for a secure closure without the hassle of manipulating tiny buttons into buttonholes.

⁶ See <https://www.kohls.com/product/prd-3299808/mens-magnaclick-regular-fit-spread-collar-dress-shirt.jsp>, wherein the product details provide: "Easy style. Featuring hidden magnetic closures, this men's MagnaClick dress shirt makes standout style simple for those with limited dexterity or anyone who'd rather do without the fuss of buttons."

⁷ See <https://www.macys.com/shop/product/magnaclick-mens-classic-fit-solid-shirt?ID=6380592&CategoryID=20626&swatchColor=Blue#fn=BRAND%3DMagnaClick%26SIZE%3D%26sp%3D1%26spc%3D3%26ruleId%3D78%7CBOOST%20ATTRIBUTE%26searchPass%3DmatchNone%26slotId%3D3>, wherein the "MagnaClick Men's Classic-fit Solid Shirt" description states: "Magnet closures at the center front placket and cuffs bring unbeatable convenience and versatility to this classic long-sleeve shirt from MagnaClick." See also, <https://www.macys.com/shop/product/magnaclick-mens-knit-solid-pima-cotton-polo?ID=6465511&CategoryID=20626&swatchColor=Black#fn=BRAND%3DMagnaClick%26SIZE%3D%26sp%3D1%26spc%3D3%26ruleId%3D78%7CBOOST%20ATTRIBUTE%26searchPass%3DmatchNone%26slotId%3D1>, wherein the "MagnaClick Men's Knit Solid Pima Cotton Polo" shirt description states: "MagnaClick presents a classic short-sleeve polo in soft Pima cotton, finished with a hidden magnet-close placket down the front for a stylish and convenient twist."

⁸ See <https://www.duluthtrading.com/mens-wrinklefighter-long-sleeve-shirt-92105.html>, wherein the descriptive text includes the following: "If you have a health condition or disability that affects your dexterity, have big fingers – or if you just want to get dressed more quickly and easily – this shirt is for you."

⁹ See <https://www.silverts.com/show.php/product/40000-magnetic-buttons-mens-shirt-arthritis-parkinsons-mens-magnetic-closing-shirts-with-shirt-magnet-buttons>,

easy..... If you are looking for a great gift for someone who is handicapped, disabled or an elderly senior look no further.

Furthermore, in an article appearing on *www.businesswire.com*, dated September 27, 2016, and entitled, “Van Heusen Introduces Adaptive Clothing Solutions in Major Retailers Utilizing Hidden Magnet Closures,” David Sirkin, President, The Dress Furnishings Group at PVH Corporation, was quoted as stating:

“We are extremely proud to launch the *Van Heusen* dress shirt featuring *MagnaClick*™ technology We believe this is a game-changing product that offers a stylish, high quality solution for consumers with limited dexterity or those seeking an alternative to buttons.”

You stated that these shirts are more expensive to produce, but did not provide any evidence to support the assertion or the range of the additional expense claimed. Further, you stated that these shirts would be 40 percent more expensive than “normal” shirts, making it less likely than individuals without mobility or dexterity limitations would purchase these shirts. However, we found the MagnaClick men’s dress shirt for sale online at various prices depending on the retailer. The prices for which the shirts were offered for sale ranged from \$22.99 to \$74.50. While we noticed some variation in prices between the magnetic closure shirts and “normal” shirts, the greatest variation we found was a 25 percent difference. This is far less than the 40 percent greater expense claimed in the ruling request. Further, we note that Macy’s sold the MagnaClick shirts and comparable “normal” shirts for the exact same price.

As the court in *Sigvaris*, 899 F.3d 1308 (Fed. Cir. 2018), stated, we must consider for whose benefit the article is specially designed and whether the article is intended for the use or benefit of a specific class of persons to an extent greater than for the use or benefit of others. Based upon the information we have found, we find that the “Magna Click Shirt” at issue is not specially designed or adapted for the use or benefit of a specific class of persons, *i.e.*, the handicapped, to an extent greater than for the use or benefit of the general public. The use of magnets for the front closure and on the sleeve cuffs does not cause this article to be easily distinguishable from articles useful to non-handicapped persons. As the use of magnets for closures in garments has become mainstream, we do not view their use to be a significant adaptation to a garment such that the use of a garment with such closures would be more prevalent among the handicapped or disabled, as opposed to the general public. In fact, we have found identical or virtually identical shirts being marketed to the general public for their use and convenience. In addition, while individuals with some limited dexterity in their fingers may find such shirts convenient, their dexterity issue may not rise to a level that one would consider such individuals to be handicapped. For instance, as the Duluth Trading Company webpage pointed out with regard to the magnetic closure shirt it was advertising, “[i]f you have big fingers, . . . this shirt is for you.” We also do not find any characteristics about the Magna Click Shirt at issue that creates a substantially greater probability of use by the handicapped versus the general public. These garments are marketed to the general public, as well as to those with difficulties dressing themselves, so use by the general public is not so improbable that it would be fugitive.

As to the remaining factors we consider in determining whether an article qualifies as “specially designed or adapted,” the Magna Click Shirt is imported and sold by PVH, an entity that has established itself as one of the largest apparel companies in the world. PVH is not generally recognized as a distributor of wearing apparel for the chronically disabled. *See* Headquarters Ruling Letter (HQ) H292642, dated June 29, 2018, and HQ H292346, dated June 29, 2018. While the garment, or virtually identical garments are sold in specialty stores or websites, such as Silvert’s, the Magna Click Shirt is sold by various retailers who market merchandise to the general public and not just a special segment or group of the public. As to the condition of the Magna Click Shirt at the time of importation, we do not believe there is anything with regard to the garment that indicates that it is for the use or benefit of the handicapped.

HOLDING:

The “Magna Click Shirt” is not eligible for duty-free treatment under subheading 9817.00.96, HTSUS, as an article specially designed or adapted for the handicapped. NY N278872 is hereby modified.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

ATTACHMENT D

HQ H300660
OT:RR:CTF:VS H300660 CMR
CATEGORY: Classification
TARIFF NO.: 6203.12.2010

BETH C. RING, ESQ.
SANDLER, TRAVIS & ROSENBERG, P.A.
551 FIFTH AVENUE, SUITE 1100
NEW YORK, NY 10176

RE: Modification of New York Ruling Letter N282688, dated January 27, 2017; Tariff classification of a men’s woven suit from Vietnam; Articles for the Handicapped

DEAR Ms. RING:

This is in reference to New York (NY) Ruling Letter N282688, dated January 27, 2017, which was issued to you, on behalf of your client, Marcraft Clothes, Inc. We are modifying NY N282688 with regard to the determination that the suit was eligible for classification as an article specially designed or adapted for the use or benefit of the handicapped, as that determination was incorrect. The tariff classification of the garment in subheading 6203.12.2010, of the Harmonized Tariff Schedule of the United States (HTSUS), was correct and remains undisturbed by this decision.

FACTS:

The garment was described in NY N282688, in part, as follows:

The submitted sample, for which a style number is not available, is comprised of three pieces: a men’s suit-type jacket, a pair of men’s trousers, and a men’s vest. You indicate that the three pieces will be put up together for retail sale. In addition, although no information has been provided regarding the sizes of the garments, you state that the three pieces are of compatible size. . . .

The jacket is constructed of six panels sewn together lengthwise and features a notched collar with lapels; a non-functional button hole on the left lapel; a left-over-right, full front opening with two non-functional button holes on the left front panel; a button sewn over the upper button hole with a concealed magnet closure behind this button; a button sewn on the right front panel opposite the lower button hole;

The trousers feature a flat waistband; a left-over-right opening with a button, a non-functional button hole, and a hook-and-loop closure on the front waistband; two concealed magnet closures within the fly placket; four elastic strips enclosed within the waistband, two of which are partially visible on the waistband’s inner surface;

The vest is constructed from three panels (two in the front, and one in the rear) sewn together lengthwise. The garment features a V-neckline; oversized armholes; a left-over-right, full front opening with five faux button closures and five magnet closures concealed behind the buttons;

You indicated in the ruling request that the garments (the components of the suit) “are designed for individuals with limited mobility or dexterity and

contain self-closing magnets using the “Magna Ready”® technology that eliminates the need to button the jacket, vest or trousers.” You stated that “[t]he magnetic closures are clearly consistent with the garments being specially designed for use by those with chronic disabilities (e.g. arthritis, Parkinson’s disease) who struggle to dress themselves.” You also indicated that the suit would be sold with a tag similar to a tag used on the shirts which were the subject of NY N278872. The tag you submitted, which was to be used with shirts, stated, among other things: “Magna Ready Stress Free Shirting.” The tag contains a message from the creator of MagnaReady, Maura Horton, regarding the inspiration for the line which was her husband’s Parkinson’s disease.

ISSUE:

Whether the subject suit with Magna Ready® self-closing technology is eligible for duty-free treatment under subheading 9817.00.96, HTSUS, as an article specially designed or adapted for the handicapped.

LAW AND ANALYSIS:

Congress passed the Educational, Scientific, and Cultural Materials Importation Act of 1982, Pub. L. No. 97–446, 96 Stat. 2329, 2346 (1983), and the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100–418, 102 Stat. 1107 (1988), to implement the Nairobi Protocol to the Florence Agreement on the Importation of Educational, Scientific and Cultural Materials (“Nairobi Protocol”), an international agreement intended to provide “duty free treatment to articles for the use or benefit of the physically or mentally handicapped persons, in addition to articles for the blind.” See also *U.S. Customs Serv. Implementation of the Duty-Free Provisions of the Nairobi Protocol, Annex E, to the Florence Agreement*, T.D. 92–77, 26 *Cust. B. & Dec.* 240, 241 (1992) (“*Implementation of the Nairobi Protocol*”). Presidential Proclamation 5978 and Section 1121 of the Omnibus Trade and Competitiveness Act of 1988, provided for the implementation of the Nairobi Protocol into subheadings 9817.00.92, 9817.00.94, and 9817.00.96, HTSUS.¹⁰ Therefore, this legislation eliminated duties for products covered by subheading 9817.00.96, HTSUS, which provides for:

articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons; parts and accessories (except parts and accessories of braces and artificial limb prosthetics) that are specially designed or adapted for use in the foregoing articles . . . Other.

See subheading 9817.00.96, HTSUS; see also *Sigvaris, Inc. v. United States*, 227 F. Supp. 3d 1327, 1335 (Ct. Int’l Trade, 2017). Subheading 9817.00.96 excludes “(i) articles for acute or transient disability; (ii) spectacles, dentures, and cosmetic articles for individuals not substantially disabled; (iii) therapeutic and diagnostic articles; or, (iv) medicine or drugs.” U.S. Note 4(b), Subchapter XVII, Chapter 98, HTSUS.

As the language of this provision indicates, classification within subheading 9817.00.96, HTSUS, depends on whether the article in question is “spe-

¹⁰ By Presidential Proclamation 6821 of September 12, 1995, 60 *Federal Register* 47663 (published on September 13, 1995), the superior text preceding subheading 9817.00.92, HTSUS, (and applicable to subheadings 9817.00.92, 9817.00.94, and 9817.00.96, HTSUS) was modified to include parts and accessories for the articles of the subheading.

cially designed or adapted for the use or benefit of the blind or physically and mentally handicapped persons,” and whether it falls within any of the enumerated exclusions. *See* subheading 9817.00.96, HTSUS; U.S. Note 4(b), Subchapter XVII, Chapter 98, HTSUS. Note 4(a) to Chapter 98, HTSUS, provides:

- (a) For purposes of subheadings 9817.00.92, 9817.00.94 and 9817.00.96, the term “blind or other physically or mentally handicapped persons” includes any person suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities, such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working.

U.S. Note 4(a), Subchapter XVII, Chapter 98, HTSUS. This list of exemplar activities indicates that the term “handicapped persons” is to be liberally construed so as to encompass a wide range of conditions, provided the condition substantially interferes with a person’s ability to perform an essential daily task. *See Sigvaris*, 227 F. Supp. 3d at 1335. While the HTSUS and subchapter notes do not provide a proper definition of “substantial” limitation, the inclusion of the word “substantially” denotes that the limitation must be “considerable in amount” or “to a large degree.” *Id.* at 1335 (citing *Webster’s* at 2280).

In the Court of Appeals for the Federal Circuit’s decision in *Sigvaris, Inc. v. United States*, 899 F.3d 1308 (Fed. Cir. 2018), the court found that the Court of International Trade reached the correct conclusion in finding the merchandise at issue therein, compression stockings, not eligible for classification under subheading 9817.00.96, HTSUS, but the court disagreed with the lower court’s analysis. The court found that the Court of International Trade looked to the condition or disorder and whether it is a handicap. The court stated:

The plain language of the heading focuses the inquiry on the “persons” for whose use and benefit the articles are “specially designed,” and not on any disorder that may incidentally afflict persons who use the subject merchandise.

* * *

... we must ask first, “for whose, if anyone’s, use and benefit is the article specially designed,” and then, “are those persons physically handicapped?”

Id.

The language of subheading 9817.00.96, HTSUS, states that the provision provides for “articles specially designed or adapted” for the use or benefit of the physically handicapped. The design and construction of an article may be indicative of whether it is specially designed or adapted for the use or benefit of the handicapped. The HTSUS does not establish a clear definition of what constitutes “specially designed or adapted for the use or benefit” of handicapped persons. In the absence of a clear definition, the Court of the International Trade stated that it may rely upon its own understanding of the terms or consult dictionaries and other reliable information. *See Danze, Inc. v. United States*, Slip Op. 18–69 (Ct. Int’l Trade 2018). Moreover, in analyzing this same provision in *Sigvaris v. United States*, the Court of International Trade construed these operative words as follows:

The term “specially” is synonymous with “particularly,” which is defined as “to an extent greater than in other cases or towards others.” [Webster’s] at 1647, 2186

. . . The dictionary definition for “designed” is something that is “done, performed, or made with purpose and intent often despite an appearance of being accidental, spontaneous, or natural.” [Webster’s] at 612 . . .

See *Sigvaris*, 227 F. Supp. 3d at 1336. See also, *Sigvaris, Inc. v. United States*, 899 F.3d 1308 (Fed. Cir. 2018), wherein the court cited the definitions relied upon by the Court of International Trade in *Sigvaris*, in concluding that “articles specially designed for handicapped persons must be made with the specific purpose and intent to be used by or benefit handicapped persons rather than the general public.” See *Sigvaris*, 899 F.3d 1308 (Fed. Cir. 2018). The Court of Appeals for the Federal Circuit refined this requirement which it found to be incomplete. The court concluded that:

to be “specially designed,” the subject merchandise must be intended for the use or benefit of a specific class of persons to an extent greater than for the use or benefit of others.

Sigvaris, 899 F.3d 1308.

Finally, the legislative history further aids our analysis of these terms as used in subheading 9817.00.96, HTSUS. The Senate stated in its Report that one of the goals of this law was to benefit the handicapped and show U.S. support for the rights of the handicapped. The Senate stated, in relevant part:

By providing for duty-free treatment of articles specially adapted for the blind or other physically or mentally handicapped persons, the committee does not intend that an insignificant adaptation would result in duty-free treatment for an entire relatively expensive article. Otherwise, the special tariff category will create incentives for commercially motivated tariff-avoidance schemes and pre-import and post-entry manipulation. Rather, the committee intends that, in order for an entire modified article to be accorded duty-free treatment, the modification or adaptation must be significant, so as clearly to render the article for use by handicapped persons.

S. Rep. No. 97 564, 97th Cong. 2nd Sess. (1982). The Senate was concerned that persons would misuse this tariff provision to avoid paying duties on expensive products. Similarly, in *Danze v. United States*, the court looked to the legislative history and noted that its interpretation of the terms “specially” and “designed” in *Sigvaris* comported with the legislative intent behind subheading 9817.00.96, HTSUS, that any modification or adaptation be “significant.” Specifically, the court in *Danze* stated:

“articles specially designed for handicapped persons must be made with the specific purpose and intent to be used by or benefit handicapped persons rather than the general public.” *Sigvaris*, 227 F. Supp. 3d at 1336. Any adaptation or modification to an article to render it for use or benefit by handicapped persons must be significant.

See *Danze* at 14.

CBP has recognized several factors to be utilized and weighed against each other on a case-by-case basis when determining whether a particular product is “specially designed or adapted” for the benefit or use of handicapped persons. See *Implementation of the Nairobi Protocol*, 26 *Cust. Bull. & Dec.* at 243–244. These factors include: (1) the physical properties of the article itself

(*i.e.*, whether the article is easily distinguishable by properties of the design, form, and the corresponding use specific to this unique design, from articles useful to non-handicapped persons); (2) whether any characteristics are present that create a substantial probability of use by the chronically handicapped so that the article is easily distinguishable from articles useful to the general public and any use thereof by the general public is so improbable that it would be fugitive; (3) whether articles are imported by manufacturers or distributors recognized or proven to be involved in this class or kind of articles for the handicapped; (4) whether the articles are sold in specialty stores which serve handicapped individuals; and, (5) whether the condition of the articles at the time of importation indicates that these articles are for the handicapped. *See also Danze, Inc. v. United States*, Slip Op. 18–69 (Ct. Int'l Trade 2018); *Sigvaris, Inc. v. United States*, 227 F.Supp.3d 1327 (Ct. Int'l Trade, 2017), *aff'd*, 899 F.3d 1308 (Fed. Cir. 2018). The court in *Sigvaris*, 899 F.3d 1308 (Fed. Cir. 2018), found that “[t]hese factors aid in assessing whether the subject merchandise is intended for the use or benefit of a specific class of persons to a greater extent than for the use or benefit of others.” The court adopted these factors into its analysis.

Looking to the court’s analysis in *Sigvaris*, 899 F.3d 1308 (Fed. Cir. 2018), we must first examine for whose use and benefit the subject suit is “specially designed,” and whether such persons are physically handicapped. In other words, we must consider whether such persons are suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities. In this case, the life activity for which the suit is claimed to be “specially designed”¹¹ is the ability to dress oneself.

With regard to the first two factors to consider in determining whether an article is “specially designed,” *i.e.*, the physical properties of the article and any characteristics of the article that easily distinguish it from articles useful to the general public, we find that the subject suit is not distinguishable from articles useful to the general public. Magnetic closures for garments have become mainstream in their use. An internet search revealed numerous websites advertising men’s shirts with magnetic closures. While it is true that some websites advertising such shirts make reference to a garment as “adaptive clothing” or as being for those with limited dexterity, those same websites include that such shirts are also beneficial or useful for those who would like to avoid the hassle of buttons.¹² These shirts, with magnetic front closures, are being sold by various stores, including J.C. Penney’s, The Men’s Wearhouse,¹³

¹¹ References to “specially designed” include “specially designed or adapted.”

¹² *See* <https://www.jcpenney.com/p//van-heusen-easy-care-magnaclick-long-sleeve-twill-dress-shirt>, wherein the shirt description includes the following statement: “Hidden magnetic closures are featured underneath the buttons, making everyday fashion a breeze for those with limited dexterity or others who would like to avoid the hassle of buttons.” The garment is described as being of 55% cotton/45% polyester twill wrinkle-free fabric and having long sleeves, a spread collar, a regular fit, and a magnetic closure. The shirt is designed for the young men’s/adult age group.

¹³ *See* <https://www.menswearhouse.com/shirts/dress-shirts/classic-fit-regular-shirts/magnaclick-reg-blue-classic-fit-dress-shirt-53U053U102>, wherein the product details provide: “This ingenious dress shirt has all of the classic styling of a fine men’s dress shirt, but with a secret benefit – magnets. MagnaClick® shirts feature hidden magnetic closures wherever you’d find a button. It is the perfect choice for those with limited dexterity, or anyone who wants to eliminate the fuss of buttons.” The garment is described as being of

Costco,¹⁴ Kohl's,¹⁵ Macy's,¹⁶ Duluth Trading Company,¹⁷ as well as by companies which generally market products to individuals with disabilities or considered "senior", such as Silvert's¹⁸, where a men's shirt with magnetic buttons appears when one clicks the "Men's Regular" or "Men's Adaptive" tabs.

We have found other garments, in addition to shirts, using magnetic closures as part of their design. These garments include men's trousers available at Macy's, Kohl's, and Costco;¹⁹ boys' uniform shorts, along with pants, skirts, shirts and a dress referred to as uniform garments, available from

60% cotton/40% polyester fabric with a spread collar, chest pocket, magnetic closures on the front placket and sleeve cuffs and having a "classic fit." It is also identified as "adaptive clothing."

¹⁴ See <https://www.costco.com/MagnaClick-Men%E2%80%99s-Dress-Shirt.product.100418298.html>, wherein the garment is identified as "adaptive clothing" and "stress free apparel." The product details state:

To the unknowing eye, a MagnaClick® shirt looks just like any other dress shirt hanging in the closet. Same collar and cuffs, same row of little white buttons down the front. But, those buttons are merely for looks. Hidden inside the placket of a MagnaClick® shirt are powerful magnets that link together for a secure closure without the hassle of manipulating tiny buttons into buttonholes.

¹⁵ See <https://www.kohls.com/product/prd-3299808/mens-magnaclick-regular-fit-spread-collar-dress-shirt.jsp>, wherein the product details provide: "Easy style. Featuring hidden magnetic closures, this men's MagnaClick dress shirt makes standout style simple for those with limited dexterity or anyone who'd rather do without the fuss of buttons."

¹⁶ See <https://www.macys.com/shop/product/magnaclick-mens-classic-fit-solid-shirt?ID=6380592&CategoryID=20626&swatchColor=Blue#fn=BRAND%3DMagnaClick%26SIZE%3D%26sp%3D1%26spc%3D3%26ruleId%3D78%7CBOOST%20ATTRIBUTE%26searchPass%3DmatchNone%26slotId%3D3>, wherein the "MagnaClick Men's Classic-fit Solid Shirt" description states: "Magnet closures at the center front placket and cuffs bring unbeatable convenience and versatility to this classic long-sleeve shirt from MagnaClick." See also, <https://www.macys.com/shop/product/magnaclick-mens-knit-solid-pima-cotton-polo?ID=6465511&CategoryID=20626&swatchColor=Black#fn=BRAND%3DMagnaClick%26SIZE%3D%26sp%3D1%26spc%3D3%26ruleId%3D78%7CBOOST%20ATTRIBUTE%26searchPass%3DmatchNone%26slotId%3D1>, wherein the "MagnaClick Men's Knit Solid Pima Cotton Polo" shirt description states: "MagnaClick presents a classic short-sleeve polo in soft Pima cotton, finished with a hidden magnet-close placket down the front for a stylish and convenient twist."

¹⁷ See <https://www.duluthtrading.com/mens-wrinklefighter-long-sleeve-shirt-92105.html>, wherein the descriptive text includes the following: "If you have a health condition or disability that affects your dexterity, have big fingers – or if you just want to get dressed more quickly and easily – this shirt is for you."

¹⁸ See <https://www.silverts.com/show.php/product/40000-magnetic-buttons-mens-shirt-arthritis-parkinsons-mens-magnetic-closing-shirts-with-shirt-magnet-buttons>,

¹⁹ See <https://www.macys.com/shop/product/magnaclick-mens-classic-fit-chino-pants?ID=6235455&CategoryID=89&mltPDP=true&swatchColor=Black#fn=BRAND%3DMagnaClick%26SIZE%3D%26sp%3D1%26spc%3D1%26ruleId%3D136%7CBOOST%20ATTRIBUTE%7CBOOST%20SAVED%20SET%26searchPass%3DmatchNone%26slotId%3D1>; <https://www.kohls.com/product/prd-3347003/mens-magnaclick-classic-fit-chino-pants.jsp>; <https://www.costco.com/MagnaClick-Men%27s-Dress-Pant.product.100419200.html>.

Land's Ends²⁰ chef jackets;²¹ chef pants;²² a men's collarless blazer sold by Maison Margiela;²³ a Nic +Zoe women's tailored, collarless blazer sold by Nordstrom's;²⁴ a Fleurette wool duster coat with spiral mink fur sold by Neiman Marcus;²⁵ and various babies' garments available at Dillard's Lord & Taylor, Target, Buy Buy Baby, and Branches Gifts in Bloom,²⁶ and Nordstrom's, Zulily, and Bed, Bath and Beyond.²⁷ In 2011, Lanvin offered a double-breasted jacket with a magnetic closure.²⁸ While in some cases, such as the men's trousers and the children's uniform garments available from Land's End, the term "adaptive" is used to describe the garments, the vast majority of the garments referenced here are clearly marketed to the general public and not any special class or group of individuals. Even with regard to the garments in which the term adaptive was used in the garments' descriptions, we find descriptive marketing text which is reaching out to the general public. For example, Kohl's descriptive text for the "Men's MagnaClick Classic-Fit Chino Pants" states:

Ease style. Featuring hidden magnetic closures, these men's chino pants from MagnaClick makes standout style simple for those with limited dexterity or anyone who'd rather do without the fuss of buttons.

Another example is found on the Duluth Trading Company webpage for the "Men's Magnet Front Wrinklefighter Shirt." The webpage text includes the following: "If you have a health condition or disability that affects your dexterity, have big fingers – or if you just want to get dressed more quickly and easily – this shirt is for you." The garment is being marketed to people at all levels of ability, *i.e.*, the general public.

As the court in *Sigvaris*, 899 F.3d 1308 (Fed. Cir. 2018), stated, we must consider for whose benefit the article is specially designed and whether the article is intended for the use or benefit of a specific class of persons to an extent greater than for the use or benefit of others. Based upon the information we have found, we find that the subject suit is not specially designed or adapted for the use or benefit of a specific class of persons, *i.e.*, the handicapped, to an extent greater than for the use or benefit of the general public. The use of magnets for the front closure of a jacket or vest, or the fly of a pair

²⁰ See https://www.landsend.com/products/school-uniform-boys-adaptive-blend-chino-short/id_324896?sku_0=:CLN; <https://www.landsend.com/shop/search?initialSearch=true&Ntt=adaptive>.

²¹ See <https://www.bragardusa.com/magic-double-breasted-chef-jacket-white.html>; <https://www.bragardusa.com/magic-double-breasted-chef-jacket-black.html>; <https://www.bragardusa.com/fantastic-chef-jacket.html>.

²² See <https://www.bragardusa.com/pratic-chef-pants.html>.

²³ See https://www.maisonmargiela.com/us/maison-margiela/blazer_cod41502287je.html.

²⁴ See <https://shop.nordstrom.com/s/niczoe-sleek-jacket/4951276?origin=category-personalizedsort&breadcrumb=Home%2FBrands%2FNIC%2BZOE&color=black%20onyx>.

²⁵ See https://www.neimanmarcus.com/p/fleurette-magnetic-wool-duster-coat-w-spiral-mink-fur-prod202600089?childItemId=NMTVXL4_.

²⁶ See <https://www.easymagneticclose.com/>;

²⁷ See <https://magneticme.com/>; <https://shop.nordstrom.com/c/baby-clothes/magnetic-me~7563>; <https://www.zulily.com/e/magnetic-me-by-magnificent-baby-245459.html>; and <https://www.bedbathandbeyond.com/store/brand/magnetic-me-by-magnificent-baby/6007/>

²⁸ See <http://daman.co.id/lanvin-magnetic-closure-double-breasted-jacket/>

of pants, does not cause this suit to be easily distinguishable from articles useful to non-handicapped persons. As the use of magnets for closures in garments has become mainstream, we do not view their use to be a significant adaptation to a garment such that the use of a garment with such closures would be more prevalent among the handicapped or disabled, as opposed to the general public. In addition, while individuals with some limited dexterity in their fingers may find such garments convenient, their dexterity issue may not rise to a level that one would consider such individuals to be handicapped. We also do not find any characteristics about the subject suit that creates a substantially greater probability of use by the handicapped versus the general public. Garments with magnetic closures are marketed to the general public, as well as to those with difficulties dressing themselves, so use by the general public is not so improbable that it would be fugitive.

As to the remaining factors we consider in determining whether an article qualifies as “specially designed or adapted,” the subject suit is imported and sold by Marcrafit Clothes, Inc. an entity identified by Bloomberg as a wholesale apparel store which specializes in providing men’s and boys’ clothing.²⁹ Marcrafit Clothes is not generally recognized as a distributor of wearing apparel for the chronically disabled. *See* Headquarters Ruling Letter (HQ) H292642, dated June 29, 2018, and HQ H292346, dated June 29, 2018. We were unable to find the suit being sold by any retailers; however, we have found numerous garments, including jackets and pants with magnetic closures that are designed for use by the general public and not a special segment or group. As to the condition of the suit at the time of importation, we do not believe there is anything with regard to the garment that indicates that it is for the use or benefit of the handicapped.

HOLDING:

The subject suit is not eligible for duty-free treatment under subheading 9817.00.96, HTSUS, as an article specially designed or adapted for the handicapped. NY N282688 is hereby modified.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

²⁹ <https://www.bloomberg.com/profiles/companies/0274059Z:US-marcraft-clothes-inc>.

**PROPOSED REVOCATION OF NINE RULING LETTERS
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF ARTICLES OF SOAPSTONE
OR STEATITE**

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

ACTION: Notice of proposed revocation of nine ruling letters, and revocation of treatment relating to the tariff classification of articles of soapstone or steatite.

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 nine ruling letters concerning tariff classification of articles of soapstone or steatite 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 December 14, 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: Reema Radwan, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–7703.

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 revoke nine ruling letters pertaining to the tariff classification of articles of soapstone or steatite. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N245635, dated September 24, 2013 (Attachment A); Headquarters Ruling Letter (“HQ”) 958353, dated November 2, 1995 (Attachment B); NY 811379, dated June 26, 1995 (Attachment C); NY 811779, dated July 5, 1995 (Attachment D); NY B86726, dated July 3, 1997 (Attachment E); NY H80981, dated July 11, 2001 (Attachment F); NY N063856 dated July 1, 2009 (Attachment G); NY N156155, dated April 5, 2011 (Attachment H); and NY N156975, dated April 5, 2011 (Attachment I), 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 nine 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 N245635, HQ 958353, NY 811779, NY B86726, NY H80981, NY N063856, and NY N156975, CBP classified articles of soapstone or steatite in heading 7116, HTSUS, specifically in subheading 7116.20.40, HTSUS, which provides for “articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Of semiprecious stones (except rock crystal): Other.” In NY N156155 and NY 811379, CBP classified some of the

articles of soapstone in subheading 7116.20.40, HTSUS, and classified other articles of soapstone in subheading 7116.20.35, HTSUS, which provides for “articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Of semiprecious stones (except rock crystal): Figurines of semiprecious stone.” CBP has reviewed NY N245635, HQ 958353, NY 811779, NY B86726, NY H80981, NY N063856, NY N156975, N156155, and NY 811379 and has determined the ruling letters to be in error. It is now CBP’s position that articles of soapstone or steatite are properly classified in heading 6802, HTSUS, specifically in subheading 6802.99.00, HTSUS, which provides for “worked monumental or building stone (except slate) and articles thereof, other than goods of heading 6801; mosaic cubes and the like, of natural stone (including slate), whether or not on a backing; artificially colored granules, chippings and powder, of natural stone (including slate): Other: Other stone.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N245635, HQ 958353, NY 811779, NY B86726, NY H80981, NY N063856, NY N156975, N156155, and NY 811379 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H250466, set forth as Attachment J 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: June 19, 2018

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N245635

September 24, 2013

CLA-2-71:OT:RR:NC:N4:433

CATEGORY: Classification

TARIFF NO.: 7116.20.4000

DAVE COLLINS
DIRECTOR, COMMERCIAL OPERATIONS
721 LOGISTICS, LLC
300 STEVENS DRIVE, SUITE 105
LESTER, PA 19113

RE: The tariff classification of Whisky Rocks from China.

DEAR MR. COLLINS:

In your letter dated August 26, 2013, on behalf of The American Belt Company, you requested a tariff classification ruling. A photo was provided. The photo depicts an item identified as the Whisky Rocks. Whisky Rocks are soapstone cubes meant to be frozen and used instead of ice cubes to keep whisky, vodka and other sprits cold. Nine cubes are packaged per box. Unlike ice cubes, which melt, the soapstone cubes will not dilute the taste of drinks.

Online advertising literature indicates that serious Scotch drinkers, who condemn drinking Scotch whisky with ice, can now enjoy their drink cold, without diluting it. These cubes are reusable, simply rinse with water, and re-freeze.

The Explanatory Notes (ENs), which constitute the official interpretation of the Harmonized Tariff Schedule (HTS) at the international level, for Chapter 71, heading 7116 (Articles of natural or cultured pearls, precious and semi-precious stones (natural, synthetic or reconstructed)), state in pertinent part, this heading covers all articles (other than those excluded by Notes 2 (b) and 3 to this Chapter), wholly of natural or cultured pearls, precious or semi-precious stones, or consisting partially of natural or cultured pearls or precious or semi-precious stones, but not containing precious metals or metals clad with precious metal (except as minor constituents). As soapstone is listed as a semiprecious stone in the annex to heading 7103, HTS, we are of the opinion that the cubes made from soapstone are articles falling within the 7116 provision.

The applicable subheading for the Whisky Rocks will be *7116.20.4000*, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Of semiprecious stones (except rock crystal): Other.” The rate of duty will be 10.5% 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 Neil H. Levy at (646) 733-3036.

Sincerely,
MYLES HARMON
Acting Director
National Commodity Specialist Division

ATTACHMENT B

HQ 958353

November 2, 1995

CLA-2 R:C:M 958353 RFA

CATEGORY: Classification

TARIFF NO.: 7116.20.40

MR. ROLF FREDNER
ROLF FREDNER, INC.
63 MELROSE DRIVE
NEW ROCHELLE, NY 10804-4609

RE: soapstone wood-burning stove; articles of stone; precious or semiprecious stones; stoves; furniture; chapters 68, 71, 84, and 94; Legal Note 1(d) to Chapter 68; Legal Note 1(a) to Chapter 71; EN 71.16; HQ 955999; NY 811779, affirmed

DEAR MR. FREDNER:

In a letter dated July 27, 1995, to the Area Director of Customs, New York Seaport, you requested reconsideration of NY 811779, dated July 5, 1995, in which a soapstone wood-burning stove was classified as an article of semiprecious stone under subheading 7116.20.4000 of the Harmonized Tariff Schedule of the United States (HTSUS). Your letter was referred to this office for a response. In preparing this ruling we have also examined the pamphlet submitted with your letter of September 18, 1995.

FACTS:

The pamphlet submitted describes the merchandise as the OCTO model wood-burning stove which is constructed on its exterior and interior of soapstone (steatite). The octagonal-shaped stove is manufactured in a pre-fabricated kit form for assembly at the site of installation (primarily in private residences). The door on the front of the stove is made of either brass, steel or a combination of brass and glass. A stove extraction pipe made of steel is included with the kit for connection to a chimney.

According to the pamphlet, the soapstone wood-burning stove is designed to utilize a powerful draft to create a hearty blaze capable of generating very high temperatures. A good air supply improves the combustion of the harmful gases and this enables the soapstone stove to use 70–80% of the latent heat energy in wood. The steatite in the stove retains heat and continues to radiate warmth 8 to 10 hours after the final stoking. This is possible because steatite has 3 times as much heat-retaining capability as materials used in traditional solid fuel fires.

ISSUE:

Is the soapstone wood-burning stove classifiable as articles of precious or semiprecious stones or as articles of stone, not elsewhere specified, under the HTSUS?

LAW AND ANALYSIS:

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

In NY 811779, dated July 5, 1995, the Area Director of Customs, New York Seaport, held that the soapstone wood-burning stove was classifiable under subheading 7116.20.40, HTSUS, which provides for: “[a]rticles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed): [o]f precious or semiprecious stones (natural, synthetic or reconstructed): [o]ther: [o]f semiprecious stones (except rock crystal): [o]ther . . .”

You contend that the soapstone wood-burning stove should be classified under subheading 6815.99.00, HTSUS, which provides for: “[a]rticles of stone . . ., not elsewhere specified or included: [o]ther articles: [o]ther: [t]alc, steatite and soapstone, cut or sawed, or in blanks, crayons, cubes, disks or other forms. . .” You believe that this subheading is a more appropriate provision because soapstone has no relevance to semiprecious stone.

Both chapters 68 and 71, HTSUS, provide for articles made of stone. However, the plain language of chapter 71, HTSUS, clearly indicates that stone identified as “precious/semiprecious” for tariff purposes, and articles made from it are classified in chapter 71. Furthermore, Legal Note 1(d) to chapter 68, states that “[t]his chapter does not cover: [a]rticles of chapter 71.” Therefore, if an article is made of semiprecious stone, it is to be classified in chapter 71. See Legal Note 1(a) to chapter 71. The tariff schedule is quite clear that classification of an article in chapter 71, takes precedence over classification of an article under chapter 68.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 FR 35127, 35128 (August 23, 1989). The Annex to the ENs for chapter 71, pages 966–969, lists soapstone (or steatite) as a precious or semiprecious stone. EN 71.16, pp. 963–964, states in pertinent part:

[t]his heading covers all articles (other than those excluded by Notes 2(b) and 3 to this Chapter), wholly of natural or cultured pearls, precious or semiprecious stones, or consisting partly of natural or cultured pearls or precious or semi-precious stones, but not containing precious metals or metals clad with precious metal . . . [i]t thus includes: (B) [o]ther articles consisting wholly or partly of precious or semi-precious stones; Subject to these conditions, the heading therefore covers: goblets and cups (often in garnet); statuettes and ornamental articles (e.g., of jade); mortars and pestles (e.g., in agate); knife edges or bearings of agate or other precious or semiprecious stones for weighing apparatus; . . . agate rings for fishing rods, paper-knives, ink-stands, paperweights, ashtrays (e.g., of agate or onyx).

In HQ 955999, dated June 2, 1994, Customs stated that “[h]eading 7116, HTSUS, covers all articles of precious or semiprecious stone. This heading does not distinguish between the grade of stone but includes all types of precious or semi-precious stones not more specifically described by other parts of the tariff.” The subject wood-burning stove is made of steatite which is included in the list of precious or semiprecious stones. Because steatite is specifically mentioned, articles made of steatite cannot be classified under chapter 68, HTSUS. Therefore, we conclude that the soapstone wood-burning stove is provided for in subheading 7116.20.40, HTSUS.

Classification of the merchandise under chapter 84 or 94, HTSUS, as stoves or furniture, respectively, was considered. However, section XVI, HTSUS, which covers chapter 84, states that: “[t]his section does not cover: precious

or semiprecious stones (natural, synthetic or reconstructed) of headings 7102 to 7104, or articles wholly of such stones of heading 7116, except unmounted worked sapphires and diamonds for styli . . . (emphasis added)” See Legal Note 1(f) to section XVI. Chapter 94, which provides for furniture, excludes all furniture made from articles of chapter 71. See Legal Note 1(c) to chapter 94. Examination of the entire structure of the HTSUS indicates a clear preference that articles wholly or principally made of precious or semiprecious stones, regardless of its function, are to be classified in chapter 71, HTSUS.

HOLDING:

The soapstone wood-burning stove is classifiable under subheading 7116.20.40, HTSUS, which provides for other articles of semiprecious stones. The general, column one rate of duty is 18.9 percent ad valorem.

NY 811779, dated July 5, 1995, is affirmed.

Sincerely,

JOHN DURANT,

Director

Tariff Classification Appeals Division

ATTACHMENT C

NY 811379

June 26, 1995

CLA-2-71:S:N:N6:344 811379

CATEGORY: Classification

TARIFF NO.: 7116.20.4000; 7116.20.3500

MR. ANUJ SURI SAIMEX
7757 NEWHOPE WEST
LIVERPOOL, NY 13090

RE: The tariff classification of soapstone articles from India.

DEAR MR. SURI:

In your letter dated June 6, 1995 you requested a tariff classification ruling.

You have submitted a sample of an oval shaped soapstone container measuring approximately 2 1/8" x 1 1/8" deep. The sides of the container have been carved with a decorative open work design. The lid of the container is inlaid with colorful stones to form a flower.

You have also submitted photographs of numerous articles such as animal figurines, coasters, variously shaped containers, decorative eggs and decorative plates which you plan to import both in soapstone and marble.

We are unable to issue a binding ruling for any article made of marble without a sample. Please resubmit your request with a sample of the marble that will be used in the construction of these articles and we will be happy to respond to your request.

The applicable subheading for the containers, decorative eggs, coasters and decorative plates, all of soapstone, will be 7116.20.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for Articles of...semiprecious stones: Other: Other. The rate of duty will be 18.9% ad valorem.

The applicable subheading for the animal figurines made of soapstone will be 7116.20.3500, HTS, which provides for Figurines of semiprecious stone. The rate of duty will be 4.5% ad valorem.

Articles classifiable under subheadings 7116.20.4000 and 7116.20.3500, HTS, which are products of India, are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

ATTACHMENT D

NY 811779

July 5, 1995

CLA-2-71:S:N:N6:344 811779

CATEGORY: Classification

TARIFF NO.: 7116.20.4000

MR. ROLF FREDNER
ROLF FREDNER, INC.
63 MELROSE DRIVE
NEW ROCHELLE, NEW YORK 10804-4609

RE: The tariff classification of a soapstone wood-burning stove from Norway.

DEAR MR. FREDNER:

In your letter dated June 14, 1995, you requested a tariff classification ruling.

You have not submitted a sample, however, you have provided us with descriptive literature. The article at issue is the OCTO model wood-burning stove which is constructed on its exterior and interior of soapstone (steatite). The stove is manufactured in a pre-fabricated kit form for assembly at the site of installation (usually private homes). The door is made of either brass, steel or a combination of brass and glass. A stove extraction pipe made of steel is included with the kit. Assembly of the octagonally-shaped stove requires no screws, pins nor adhesives.

The applicable subheading for the OCTO soapstone wood-burning stove will be 7116.20.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for Articles of...semiprecious stones (except rock crystal): Other. The rate of duty will be 18.9% ad valorem.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

ATTACHMENT E

NY B86726

July 31, 1997

CLA-2-71:RR:NC:SP:233 B86726

CATEGORY: Classification

TARIFF NO.: 7116.20.4000

MS. JOANNE BALICE
CBI DISTRIBUTING CORP.
2400 W. CENTRAL RD.
HOFFMAN ESTATES, IL 60195-1930

RE: The tariff classification of a soapstone trinket box from India.

DEAR MS. BALICE:

In your letter dated July 3, 1997, you requested a tariff classification ruling.

The submitted sample is a trinket box made from soapstone which is found in natural form and polished to a smooth finish. It measures approximately 1" x 1 1/2" x 1" deep. It has a lid which is decorated with flowers.

The applicable subheading for the soapstone trinket box will be 7117.20.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for Articles of semiprecious stones: Other: Other. The rate of duty will be 14.7% ad valorem.

Articles classifiable under subheading 7116.20.4000, HTS, which are products of India, are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. However, the GSP has expired May 31, 1997 and has not been extended. Congress may choose to renew GSP. In that case, the GSP provision cited herein may apply retroactively.

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 Lawrence Mushinske at 212-466-5739.

Sincerely,

GWENN KLEIN KIRSCHNER
Chief, Special Products Branch
National Commodity Specialist Division

ATTACHMENT F

NY H80981

July 11, 2001

CLA-2-71:RR:NC:SP:233 H80981

CATEGORY: Classification

TARIFF NO.: 7116.20.4000

MR. CHARLES S. PARISI
PARISI SERVICES, INC.
P.O. BOX 91217
LOS ANGELES, CA 90009

RE: The tariff classification of a soapstone trinket box from India.

DEAR MR. PARISI:

In your letter dated May 7, 2001, on behalf of Promotional Media Inc., you requested a ruling on tariff classification. A representative sample of the item was submitted and was sent to our Customs laboratory for analysis.

The submitted sample is a light green hinged trinket box that measures approximately 4" in width by 3" in length by 1½" in height and 1" in depth. There is a carved leaf design on the top and sides of the box and an inscription on the lid that reads "God Loves You So Do We."

You indicated in your letter that the box is composed of marble; however, our Customs laboratory has determined that this article is composed of soapstone.

The applicable subheading for the soapstone trinket box will be 7116.20.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed): of precious or semiprecious stones (natural, synthetic or reconstructed): other: of semiprecious stones (except from rock crystal): other. The rate of duty will be 10.5% ad valorem. Articles classifiable under subheading 7116.20.4000, HTS, which are products of India may be entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. The GSP is subject to modification and periodic suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse. To obtain current information on GSP, check the Customs Web site at www.customs.gov. At the Web site, click on "CEBB" then search for the term "GSP."

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 Lawrence Mushinske at 212-637-7061.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT G

N063856

July 1, 2009

CLA-2-71:OT:RR:NC:2:240

CATEGORY: Classification

TARIFF NO.: 7116.20.40000

Ms. KATHLEEN ROOT
BARTHCO TRADE CONSULTANTS
5101 SOUTH BROAD STREET
PHILADELPHIA, PA 19112

RE: The tariff classification of an Incense Sticks Gift Set, Item # BL-1012
from India

DEAR Ms. ROOT:

In your letter dated June 2, 2009, you requested a tariff classification ruling on behalf of your client Big Lots Stores Inc. A sample was submitted for review with your inquiry

The Incense Sticks Gift Set, Item # BL-1012, consists of 21 incense cones, 20 incense sticks, 2 fragranced candles, a carved soapstone incense holder, and an 8.5 inch by 1.5 inch soapstone ash catcher. The incense cones may be placed inside the open carved soapstone incense holder for burning or on the soapstone ash catcher. The incense sticks may be placed in the open carving of the soapstone holder for burning. The products, packaged together for retail sale in a cardboard box and clear cover, are used to fragrance the home.

The Explanatory Notes to the Harmonized Tariff System provide guidance in the interpretation of the Harmonized Commodity Description and Coding System at the international level. Explanatory Note X to GRI 3 provides that the term “goods put up in sets for retail sale” mean goods that: (a) consist of at least two different articles which are prima facie, classifiable in different headings; (b) consist of articles put up together to meet a particular need or carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repacking. It is the opinion of this office that the items packaged together do represent a set in accordance with Explanatory Note X. In accordance, in part, with GRI 3(b) “... goods put up in sets for retail sale, which cannot be classified by reference to GRI 3(a), shall be classified as if they consisted of the material or component which gives them their essential character”. Explanatory Note VIII to GRI 3(b) states that the factor, which determines essential character will vary between different kinds of goods. It may for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the goods. Based upon the nature of the components and their use, it is the opinion of this office that no single item imparts the essential character. Each component is of equal importance in conducting the activity. Therefore classification will be in accordance with GRI 3(c), Harmonized Tariff Schedule of the United States (HTSUS), which requires, in part, that the set be classified in the heading which occurs last in numerical order among those which merit equal consideration. The soapstone articles appear last in the tariff.

The applicable subheading for the Incense Sticks Gift Set, Item # BL-1012 will be 7116.20.4000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Articles of natural or cultured pearls, precious

or semiprecious stones (natural, synthetic or reconstructed); Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Of semiprecious stones (except rock crystal): Other. The rate of duty will be 10.5 percent ad valorem.

Articles classifiable under subheading *7116.20.4000*, HTSUS, which are products of India, are currently entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. The GSP, however, is subject to modification and periodic suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse. To obtain current information on GSP, check our Web site at www.cbp.gov and search for the term "GSP".

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 Stephanie Joseph at (646) 733-3268 or National Import Specialist Neil Levy at (646) 733-3036.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

ATTACHMENT H

N156155

April 5, 2011

CLA-2-71:OT:RR:NC:N4:433

CATEGORY: Classification

TARIFF NO.: 7116.20.3500; 7116.20.4000

KATHLEEN ROOT, LCB, CCS
CUSTOMS COMPLIANCE ADVISOR
TRADE SERVICES
BARTHCO, DIVISION OF OHL
5101 SOUTH BROAD STREET
PHILADELPHIA, PA 19112

RE: The tariff classification of soapstone articles from India.

DEAR MS. ROOT:

In your letter dated March 18, 2011, on behalf of Big Lots Stores Inc., you requested a tariff classification ruling. As requested, the samples submitted will be returned to you.

Item # FA-233 is described as a natural soapstone turtle and Item # FA-633 is described as a natural soapstone frog. Item # BL-SI-02PP is described as a soapstone carved candle pillar holder. Per the provided Import Product Data Sheet, this item is available in six assorted designs, with each design varying in color and shading. Its dimensions are of a square, measuring 4.5 inches by 4.5 inches, with a carved out circle having a 3 inch diameter for placement of a candle.

When interpreting and implementing the Harmonized Tariff Schedule of the United States (HTSUS), the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. CBP believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to Chapter 71, heading 7116 state in pertinent part, this heading covers all articles (other than those excluded by Notes 2 (b) and 3 to this Chapter), wholly of natural or cultured pearls, precious or semi-precious stones, or consisting partially of natural or cultured pearls or precious or semi-precious stones, but not containing precious metals or metals clad with precious metal (except as minor constituents). Further provided, the EN to heading 7116, at (B), states in pertinent part, it thus includes: statuettes and other ornamental articles. As the mineral Talc, also known by its commercial names of Steatite and Soapstone, is listed in the Annex of Precious or Semi-Precious Stones to heading 7103, ENs, it is our opinion the decorative articles made of natural soapstone fall within heading 7116, HTSUS – the provision, among other things, for articles of semi-precious stones.

The applicable subheading for the soapstone turtle and frog, will be 7116.20.3500, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Of semiprecious stones (except rock crystal): Figurines of semiprecious stone.” The rate of duty will be 4.5% ad valorem.

The applicable subheading for the soapstone carved candle pillar holder, will be *7116.20.4000*, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Of semiprecious stones (except rock crystal): Other.” The rate of duty will be 10.5% 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 Neil H. Levy at (646) 733-3036.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

ATTACHMENT I

N156975

April 5, 2011

CLA-2-71:OT:RR:NC:N4:433

CATEGORY: Classification

TARIFF NO.: 7116.20.4000

BRUCE E. BARSHAY
 ATLANTIC CITY BUS CO.
 7232 FIRST AVENUE
 MAYS LANDING, NJ 08330

RE: The tariff classification of a soapstone article from India.

DEAR MR. BARSHAY:

In your letter dated March 27, 20011, you requested a tariff classification ruling. No sample or photograph was provided.

The merchandise is described as a carved elephant with a baby elephant inside the mother. The dimensions for the carving are stated at approximately 5 inches by 5 inches by 3.5 inches.

When interpreting and implementing the Harmonized Tariff Schedule of the United States (HTSUS), the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. CBP believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to Chapter 71, heading 7116 state in pertinent part, this heading covers all articles (other than those excluded by Notes 2 (b) and 3 to this Chapter), wholly of natural or cultured pearls, precious or semi-precious stones, or consisting partially of natural or cultured pearls or precious or semi-precious stones, but not containing precious metals or metals clad with precious metal (except as minor constituents). Further provided, the EN to heading 7116, at (B), states in pertinent part, that it includes: statuettes and other ornamental articles. As the mineral Talc, also known by its commercial names of Steatite and Soapstone, is listed in the Annex of Precious or Semi-Precious Stones to heading 7103, ENs, it is our opinion the decorative articles made of natural soapstone fall within heading 7116, HTSUS – the provision, among other things, for articles of semi-precious stones.

Based on the dimensions provided, the soapstone elephant carving does not appear to be in the round, and is therefore not considered a figurine or statuette classifiable under subheading 7116.20.3500, HTSUS. Consequently, the carving falls to subheading 7116.20.4000, HTSUS. The applicable subheading for the soapstone elephant carving, will be 7116.20.4000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Of semiprecious stones (except rock crystal): Other.” The rate of duty will be 10.5% 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 Neil H. Levy at (646) 733-3036.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

ATTACHMENT J

HQ H250466
 OT:RR:CTF:CPMM H250466 RGR
 CATEGORY: Classification
 TARIFF NO.: 6802.99.00

MR. DAVE COLLINS

DIRECTOR, COMMERCIAL OPERATIONS
 721 LOGISTICS, LLC
 300 STEVENS DRIVE, SUITE 105
 LESTER, PA 19113

RE: Revocation of NY N245635, HQ 958353, NY 811379, NY 811779,
 NY B86726, NY H80981, NY N063856, NY N156155, NY N156975;
 Tariff classification of articles of soapstone or steatite

DEAR MR. COLLINS:

This letter is in reference to one ruling letter issued by U.S. Customs and Border Protection (“CBP”) concerning the classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of certain articles of soapstone or steatite under subheading 7116, HTSUS. Specifically, in New York Ruling Letter (“NY”) N245635, dated September 24, 2013, CBP classified certain soapstone whisky cubes in subheading 7116.20.40, HTSUS. We have reviewed NY N245635 and find it to be incorrect. For the reasons set forth below, we are revoking that ruling.

For the reasons set forth below, we are also revoking eight other rulings on substantially similar merchandise: Headquarters Ruling Letter (“HQ”) 958353¹, dated November 2, 1995; NY 811379², dated June 26, 1995; NY 811779³, dated July 5, 1995; NY B86726⁴, dated July 3, 1997; NY H80981⁵, dated July 11, 2001; NY N063856⁶, dated July 1, 2009; NY N156155⁷, dated April 5, 2011; and NY N156975⁸, dated April 5, 2011.

FACTS:

In NY N245635, CBP described the merchandise as follows:

Whisky Rocks are soapstone cubes meant to be frozen and used instead of ice cubes to keep whisky, vodka and other spirits cold. Nine cubes are packaged per box. Unlike ice cubes, which melt, the soapstone cubes will not dilute the taste of drinks. Online advertising literature indicates that

¹ HQ 959353 classified a soapstone wood-burning stove in subheading 7116.20.40, HTSUS.

² NY 811379 classified containers, decorative eggs, coasters, and decorative plates made of soapstone in subheading 7116.20.40, HTSUS. It also classified animal figurines made of soapstone in subheading 7116.20.35, HTSUS.

³ NY 811779 classified a wood-burning stove made of soapstone in subheading 7116.20.40, HTSUS.

⁴ NY B86726 classified a soapstone trinket box in subheading 7116.20.40, HTSUS.

⁵ NY H80981 classified a soapstone trinket box in subheading 7116.20.40, HTSUS.

⁶ NY N063856 classified an incense sticks gift set in subheading 7116.20.40, HTSUS, because the essential character of the retail set was imparted by the soapstone incense holder,

⁷ NY N156155 classified soapstone figurines in subheading 7116.20.35, HTSUS. It also classified a soapstone carved candle pillar holder in subheading 7116.20.40, HTSUS.

⁸ NY N156975 classified a soapstone elephant carving in subheading 7116.20.40, HTSUS.

Scotch drinkers, who condemn drinking Scotch whisky with ice, can now enjoy their drink cold, without diluting it. These cubes are reusable, simply rinse with water, and re-freeze.

ISSUE:

Whether the subject soapstone⁹ articles are classifiable under heading 6802, HTSUS, as “worked monumental or building stone (except slate) and articles thereof” or under subheading 7116, HTSUS, as “articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed).”

LAW AND ANALYSIS:

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

The 2018 HTSUS provisions under consideration are as follows:

6802 Worked monumental or building stone (except slate) and articles thereof, other than goods of heading 6801; mosaic cubes and the like, of natural stone (including slate), whether or not on a backing; artificially colored granules, chippings and powder, of natural stone (including slate):

* * *

7116 Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed):

* * *

Pursuant to note 1 of chapter 71, HTSUS, all articles consisting wholly or partly of semiprecious stones (natural, synthetic or reconstructed) are to be classified in chapter 71. Pursuant to note 1(d) of chapter 68, HTSUS, chapter 68 does not cover articles of chapter 71, HTSUS. Therefore, if articles of soapstone or steatite are provided for in heading 7116, or in any other heading of chapter 71, they cannot be classified in heading 6802, HTSUS.

According to note 2 of chapter 68, “‘worked monumental or building stone’ applies not only to the varieties of stone referred to in heading 2515 or 2516, but also to all other natural stone (for example, quartzite, flint, dolomite and steatite) similarly worked.”

In understanding the language of the HTSUS, the Explanatory Notes (“ENs”) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the Harmonized System at the international level. *See* T.D. 89–90, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The ENs to heading 6802 state, in relevant part, that heading 6802 “covers stone which has been further processed than mere shaping into blocks, sheets

⁹The EN to heading 25.26, HTSUS, the provision for natural steatite, states that “Soapstone is a variety of natural steatite.”

or slabs by splitting, roughly cutting or squaring, or squaring by sawing (square or rectangular faces).” The ENs to heading 6802 also state that the heading covers:

(b) Stone of any shape (including, blocks, slabs or sheets) whether or not in the form of finished articles. . . dressed with the pick, bushing hammer, or chisel, etc., furrowed with the drag-comb, etc., planed, sand dressed, ground, polished, chamfered, moulded, turned, ornamental, carved, etc.

The heading therefore includes not only construction stone (including facing slabs) worked as above, but also articles such as steps, cornices, pediments, balustrades, corbels and supports; door or window frames and lintels; thresholds; mantelpieces; window sills; doorsteps; tombstones; boundary stones and milestones, bollards; panoramic indicators (enamelled or not); guard posts and fenders; sinks, troughs, fountain basins; balls for crushing mills; flower pots; columns, bases and capitals for columns; statues, statuettes, pedestals; high or low reliefs; crosses; figures of animals; bowls, vases, cups; cachou boxes; writing-sets; ashtrays; paper weights; artificial fruit and foliage, etc. other ornamental goods essentially of stone are, in general, classified in this heading.

The EN to heading 71.03 states, in pertinent part, that the heading for precious and semi-precious stones excludes “Steatite (unworked, heading 25.26; worked, heading 68.02).” Steatite is a compact form of talc.¹⁰ The Merriam-Webster Dictionary defines “steatite” as “a massive talc having a grayish-green or brown color: soapstone.”¹¹ Accordingly, the EN to heading 71.03 also excludes articles of soapstone.

The EN to heading 71.16 states, in pertinent part, the following:

This heading covers all articles (**other than** those **excluded** by Notes 2 (B) and 3 to this Chapter), wholly of natural or cultured pearls, precious or semi-precious stones, or consisting partly of natural or cultured pearls or precious or semi-precious stones, but **not** containing precious metals or metals clad with precious metal (**except** as minor constituents) (see Note 2 (B) to this Chapter).

Soapstone is a variety of natural steatite. Like Talc, it is a mineral substance rich in hydrous magnesium silicate.¹² Its special properties make it suitable for various uses and as a building component in kitchens, laboratories, woodstoves, wall and floor tiles, molds for metal casting, ornamental carving and sculptures, and electrical panels, among other uses.¹³ It is not particularly rare or valuable. It is not listed among the gemstones for sale on various websites.¹⁴

¹⁰ <https://www.britannica.com/science/steatite> (last visited on January 16, 2018).

¹¹ <https://www.merriam-webster.com/dictionary/steatite> (last visited on January 16, 2018);

¹² See EN to heading 25.26.

¹³ <http://geology.com/rocks/soapstone.shtml> (last visited November 1, 2017).

¹⁴ <https://rocktumbler.com/tips/semiprecious-precious/>; <https://www.charlesandcolvard.com/blog/post/precious-vs-semiprecious-gems-whats-the-difference/>; <https://www.gemrockauctions.com/es/learn/additional-gemstone-information/a-list-of-precious-and-semi-precious-gemstones-and-their-treatments>; <https://www.gemselect.com/other-info/precious-gems.php>

Prior to March 2012, the Annex to the ENs to chapter 71 listed soapstone and steatite as precious or semiprecious stone. Noting the discrepancy with the EN to heading 71.03 excluding steatite from the heading as a semiprecious stone in favor of heading 68.02 in accordance with note 2 to chapter 68, the Harmonized System Committee (“HSC”) deleted the terms “soapstone” and “steatite” from the Annex to the ENs to chapter 71 identifying precious or semiprecious stone. Accordingly, articles of soapstone or steatite are not specifically included in chapter 71 under note 1 to the chapter, or excluded from classification in chapter 68 under note 1(d) to that chapter. Furthermore, note 2 to chapter 68 specifically states that steatite stone is provided for as monumental building stone in the chapter. It follows, then, that an article of steatite is classified in heading 6802 under the legal terms and the EN thereto. This is the case even if the particular article is not being used as a building stone.

Since the soapstone whisky cubes in NY N245635 are articles of soapstone, we find that such merchandise, along with articles of soapstone or steatite in HQ 958353, NY 811379, NY 811779, NY B86726, NY H80981, NY N063856, NY N156155, and NY N156975 are classifiable in heading 6802, which provides for “Worked monumental or building stone (except slate) and articles thereof, other than goods of heading 6801; mosaic cubes and the like, of natural stone (including slate), whether or not on a backing; artificially colored granules, chippings and powder, of natural stone (including slate).”

HOLDING:

Pursuant to GRIs 1 and 6, articles of soapstone or steatite are classified in heading 6802, HTSUS, specifically in subheading 6802.99.00, which provides for “Worked monumental or building stone (except slate) and articles thereof, other than goods of heading 6801; mosaic cubes and the like, of natural stone (including slate), whether or not on a backing; artificially colored granules, chippings and powder, of natural stone (including slate): Other: Other stone.” The 2018 column one, general rate of duty is 6.5% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N259445, dated September 24, 2013; HQ 958353, dated November 2, 1995; NY 811379, dated June 26, 1995; NY 811779, dated July 5, 1995; NY B86726, dated July 3, 1997; NY H80981, dated July 11, 2001; NY N063856 dated July 1, 2009; NY N156155, dated April 5, 2011; and NY N156975, dated April 5, 2011, are revoked.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Cc: Mr. Anuj Suri
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