

# U.S. Customs and Border Protection

  
CBP Dec. 19–12

**WESTERN HEMISPHERE TRAVEL INITIATIVE:  
DESIGNATION OF AN APPROVED NATIVE AMERICAN  
TRIBAL CARD ISSUED BY THE PUYALLUP TRIBE OF  
INDIANS AS AN ACCEPTABLE DOCUMENT TO DENOTE  
IDENTITY AND CITIZENSHIP FOR ENTRY IN THE UNITED  
STATES AT LAND AND SEA PORTS OF ENTRY**

**AGENCY:** U.S. Customs and Border Protection, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces that the Commissioner of U.S. Customs and Border Protection is designating an approved Native American tribal card issued by the Puyallup Tribe of Indians to U.S. and Canadian citizens as an acceptable travel document for purposes of the Western Hemisphere Travel Initiative. The approved card may be used to denote identity and citizenship of Puyallup Tribe of Indians members entering the United States from contiguous territory or adjacent islands at land and sea ports of entry.

**DATES:** This designation will become effective on December 9, 2019.

**FOR FURTHER INFORMATION CONTACT:** Colleen Manaher, Executive Director, Planning, Program Analysis, and Evaluation, Office of Field Operations, U.S. Customs and Border Protection, via email at [Colleen.M.Manaher@cbp.dhs.gov](mailto:Colleen.M.Manaher@cbp.dhs.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

*The Western Hemisphere Travel Initiative*

Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108–458, as amended, required the Secretary of Homeland Security (Secretary), in consultation with the Secretary of State, to develop and implement a plan to require U.S. citizens and individuals for whom documentation requirements have previously been waived under section 212(d)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(4)(B)) to present a passport or

other document or combination of documents as the Secretary deems sufficient to denote identity and citizenship for all travel into the United States. *See* 8 U.S.C. 1185 note. On April 3, 2008, the Department of Homeland Security (DHS) and the Department of State promulgated a joint final rule, effective on June 1, 2009, that implemented the plan known as the Western Hemisphere Travel Initiative (WHTI) at U.S. land and sea ports of entry. *See* 73 FR 18384 (the WHTI Land and Sea Final Rule). It amended various sections in the Code of Federal Regulations (CFR), including 8 CFR 212.0, 212.1, and 235.1. The WHTI Land and Sea Final Rule specifies the documents that U.S. citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico are required to present when entering the United States at land and sea ports of entry.

Under the WHTI Land and Sea Final Rule, one type of citizenship and identity document that may be presented upon entry to the United States at land and sea ports of entry from contiguous territory or adjacent islands<sup>1</sup> is a Native American tribal card that has been designated as an acceptable document to denote identity and citizenship by the Secretary, pursuant to section 7209 of IRTPA. Specifically, 8 CFR 235.1(e), as amended by the WHTI Land and Sea Final Rule, provides that upon designation by the Secretary of Homeland Security of a United States qualifying tribal entity document as an acceptable document to denote identity and citizenship for the purposes of entering the United States, Native Americans may be permitted to present tribal cards upon entering or seeking admission to the United States according to the terms of the voluntary agreement entered between the Secretary of Homeland Security and the tribe. It provides that the Secretary of Homeland Security will announce, by publication of a notice in the **Federal Register**, documents designated under this paragraph. It further provides that a list of the documents designated under this section will also be made available to the public.

A United States qualifying tribal entity is defined as a tribe, band, or other group of Native Americans formally recognized by the United States Government which agrees to meet WHTI document standards. *See* 8 CFR 212.1.<sup>2</sup> Native American tribal cards are also referenced in 8 CFR 235.1(b), which lists the documents U.S. citizens may use to establish identity and citizenship when entering the United States. *See* 8 CFR 235.1(b)(7).

<sup>1</sup> "Adjacent islands" is defined in 8 CFR 212.0 as "Bermuda and the islands located in the Caribbean Sea, except Cuba." This definition applies to 8 CFR 212.1 and 235.1. <sup>2</sup> This definition applies to 8 CFR 212.1 and 235.1.

<sup>2</sup> This definition applies to 8 CFR 212.1 and 235.1.

The Secretary has delegated to the Commissioner of U.S. Customs and Border Protection (CBP) the authority to designate certain documents as acceptable border crossing documents for persons arriving in the United States by land or sea from within the Western Hemisphere, including certain United States Native American Tribal Cards. *See* DHS Delegation Number 7105 (Revision 00), dated January 16, 2009.

### *Tribal Card Program*

The WHTI Land and Sea Final Rule allowed U.S. federally recognized Native American tribes to work with CBP to enter into agreements to develop tribal ID cards that can be designated as acceptable to establish identity and citizenship when entering the United States at land and sea ports of entry from contiguous territory or adjacent islands. CBP has been working with various U.S. federally recognized Native American tribes to facilitate the development of such cards.<sup>3</sup> As part of the process, CBP will enter into one or more agreements with a U.S. federally recognized tribe that specify the requirements for developing and issuing WHTI-compliant Native American tribal cards, including a testing and auditing process to ensure that the cards are produced and issued in accordance with the terms of the agreements.

After production of the cards in accordance with the specified requirements, and successful testing and auditing by CBP of the cards and program, the Secretary of Homeland Security or the Commissioner of CBP may designate the Native American tribal card as an acceptable WHTI-compliant document for the purpose of establishing identity and citizenship when entering the United States by land or sea from contiguous territory or adjacent islands. Such designation will be announced by publication of a notice in the **Federal Register**. More information about WHTI-compliant documents is available at [www.cbp.gov/travel](http://www.cbp.gov/travel).

The Pascua Yaqui Tribe of Arizona became the first Native American tribe to have its Native American tribal card designated as a WHTI-compliant document by the Commissioner of CBP. This designation was announced in a notice published in the **Federal Register** on June 9, 2011 (76 FR 33776). Subsequently, the Commissioner of CBP announced the designation of several other Native American tribal cards as WHTI compliant documents. *See, e.g.*, the Native American tribal cards of the Kootenai Tribe of Idaho, 77 FR 4822 (January 31, 2012); the Seneca Nation of Indians, 80 FR 40076 (July 13, 2015); the Hydaburg Cooperative Association of Alaska, 81 FR

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<sup>3</sup> The Native American tribal cards qualifying to be a WHTI-compliant document for border crossing purposes are commonly referred to as “Enhanced Tribal Cards” or “ETCs.”

33686 (May 27, 2016); and the Pokagon Band of Potawatomi Indians, 82 FR 42351 (September 7, 2017).

*Puyallup Tribe of Indians WHTI-Compliant Native American Tribal Card Program*

The Puyallup Tribe of Indians (Puyallup Tribe) has voluntarily established a program to develop a WHTI-compliant Native American tribal card that denotes identity and U.S. or Canadian citizenship. On July 10, 2015, CBP and the Puyallup Tribe entered into a Memorandum of Agreement (MOA) to develop, issue, test, and evaluate tribal cards to be used for border crossing purposes. Pursuant to this MOA, the cards are issued to members of the Puyallup Tribe who can establish identity, tribal membership, and U.S. or Canadian citizenship. The cards incorporate physical security features acceptable to CBP as well as facilitative technology allowing for electronic validation of identity, citizenship, and tribal membership by CBP.<sup>4</sup>

CBP has tested the cards developed by the Puyallup Tribe pursuant to the above MOA and related agreements, and has performed an audit of the tribe's card program. On the basis of these tests and audit, CBP has determined that the Native American tribal cards meet the requirements of section 7209 of the IRTPA and are acceptable documents to denote identity and citizenship for purposes of entering the United States at land and sea ports of entry from contiguous territory or adjacent islands.<sup>5</sup> CBP's continued acceptance of the Native American tribal cards as a WHTI-compliant document is conditional on compliance with the MOA and related agreements.

Acceptance and use of the WHTI-compliant Native American tribal cards is voluntary for tribe members. If an individual is denied a WHTI-compliant Native American tribal card, he or she may still apply for a passport or other WHTI-compliant document.

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<sup>4</sup> In 2017, CBP and the Puyallup Tribe entered into additional agreements related to the MOA. CBP and the Puyallup Tribe entered into a Service Level Agreement (SLA) on May 4, 2017, concerning technical requirements and support for the production, issuance, and verification of the Native American Tribal Cards. CBP and the Puyallup Tribe also entered into an Interconnection Security Agreement on July 28, 2017, with respect to individual and organizational security responsibilities for the protection and handling of unclassified information.

<sup>5</sup> The Native American tribal card issued by the Puyallup Tribe may not, by itself, be used by Canadian citizen tribal members to establish that they meet the requirements of section 289 of the Immigration and Nationality Act (INA) [8 U.S.C. 1359]. INA § 289 provides that nothing in this title shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race. While the tribal card may be used to establish a card holder's identity for purposes of INA § 289, it cannot, by itself, serve as evidence of the card holder's Canadian birth or that he or she possesses at least 50% American Indian blood, as required by INA § 289.

## Designation

This notice announces that the Commissioner of CBP designates the Native American tribal card issued by the Puyallup Tribe in accordance with the MOA and all related agreements between the tribe and CBP as an acceptable WHTI-compliant document pursuant to section 7209 of the IRTPA and 8 CFR 235.1(e). In accordance with these provisions, the approved card, if valid and lawfully obtained, may be used to denote identity and U.S. or Canadian citizenship of Puyallup Tribe members for the purposes of entering the United States from contiguous territory or adjacent islands at land and sea ports of entry.

Dated: December 2, 2019.

MARK A. MORGAN,  
*Acting Commissioner,*  
*U.S. Customs and Border Protection.*

[Published in the Federal Register, December 9, 2019 (84 FR 67278)]



## PROPOSED REVOCATION OF THREE RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF LIGHTED METAL TREES

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

**ACTION:** Notice of proposed revocation of three ruling letters, and proposed revocation of treatment relating to the tariff classification of lighted metal trees.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke three ruling letters concerning tariff classification of lighted metal trees 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 January 25, 2020.

**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, 10<sup>th</sup> 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:** Marina Mekheil, Chemicals, Petroleum, Metals & Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–0974.

## **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 3 ruling letters pertaining to the tariff classification of lighted metal trees. Although in this notice, CBP is specifically referring to New York Ruling Letters (“NY”) N236262, dated January 4, 2013, (Attachment A), N260368, dated January 21, 2015, (Attachment B), and N255988, dated September 4, 2014 (Attachment C), 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 three identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should 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 transac-

tions 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 N236262, N260368, and N255988, CBP classified lighted metal trees in heading 9405, HTSUS, specifically in subheadings 9405.40.60, HTSUS, which provides for “Lamps and lighting fittings...not elsewhere specified or included: Other electric lamps and lighting fittings: Of base metal: Other,” and 9405.40.84, HTSUS, which provides for “Lamps and lighting fittings...: Other electric lamps and lighting fittings: Other.”<sup>1</sup> CBP has reviewed N236262, N260368, and N255988 and has determined the ruling letters to be in error. It is now CBP’s position that lighted metal trees are properly classified, in headings 6702, HTSUS, and 8306, HTSUS, specifically in subheadings 6702.90.65, HTSUS, which provides for “Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: of other materials: Other: Other,” and 8306.29.00, HTSUS, which provides for “Bells, gongs and the like, nonelectric, of base metal...; Statuettes and other ornaments, and parts thereof; Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N236262, NY N260368, and NY N255988 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H305354, set forth as Attachment 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: December 6, 2019

ALLYSON MATTANAH  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

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<sup>1</sup> 9405.40.80 in the 2014 edition of the HTSUS.

## ATTACHMENT A

January 4, 2013

CLA-2-94:OT:RR:NC:1:110

CATEGORY: Classification

TARIFF NO.: 9405.40.6000

Ms. ALICE LIU  
ATICO INTERNATIONAL USA INC.  
501 SOUTH ANDREWS AVENUE  
FT. LAUDERDALE, FL 33301

RE: The tariff classification of a lighted metal tree from China.

DEAR Ms. LIU:

In your letter dated December 3, 2012, you requested a tariff classification ruling.

The item under consideration is identified as the Halloween Spooky Tree, Item Number A079AA02291. A sample was submitted with your ruling request and will be returned to you.

Item Number A079AA02291 is a light sculpture in the shape of a leafless tree, measuring approximately 60 inches tall. The light sculpture is constructed of a black-painted metal (non brass) wire frame intertwined with a light string. The light string consists of two insulated wire conductors twisted together and wrapped in black tape incorporating 50 black lamp-holders. The lamp-holders enclose orange-colored miniature plastic LED (light emitting diode) lamps. The end of the light string comprised of a 30 inch lead wire with a combination of two-prong plug, a socket rated for 125 volt (V) and two 3 amp (A) fuses. There is a rectangular metal anchor at the base for mounting the light sculpture onto the flat surface, i.e. ground or floor. Although the light sculpture is referenced as a Halloween Spooky Tree designed for indoor and outdoor use, neither the "tree" nor the orange-colored bulbs are recognized as a festive motifs. Item Number A079AA02291, therefore, is not limited to holiday use, and not classified as a festive article.

The applicable subheading for the Halloween Spooky Tree, Item Number A079AA02291, will be 9405.40.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Lamps and lighting fittings...not elsewhere specified or included: Other electric lamps and lighting fittings: Of base metal: Other." The general rate of duty will be 6 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Hope Abada at (646) 733-3016.

*Sincerely,*

THOMAS J. RUSSO

*Director*

*National Commodity Specialist Division*



ATTACHMENT B

N260368

January 21, 2015  
CLA-2-94:OT:RR:NC:N4:110  
CATEGORY: Classification  
TARIFF NO.: 9405.40.6000

Ms. MARILYN-JOY CERNY  
CERNY ASSOCIATES, P.C.  
24 SMITH STREET, BUILDING 2, SUITE 102  
PAWLING, NY 12564

RE: The tariff classification of an LED lighted leafless trees from China

DEAR Ms. CERNY:

In your letter dated December 16, 2014, you requested a tariff classification ruling on behalf of your client Santa's Best. A sample of Item Number 2407031 was submitted and will be returned to you as requested.

The merchandise consists of 5 LED leafless trees identified as the "Lighted Branch Tree" or a "Lighted Deciduous Tree." It is stated that the 5 LED leafless trees Items Number 2407031, 7407200, 7407237, 2407029 and 2407025 are identical in construction however, they vary in the light system configurations, and sizes that range from 4 feet to 8 feet tall. The sample, Item Number 2407031 is a lighted leafless tree that measures approximately 7 feet tall, inserted into a round steel wire base. The item is comprised of a collapsible steel framework with pliable steel wires that resembles bare tree branches, and LED light strings powered by a two-prong plug wire. The steel tree trunk and branches are welded together. The light strings feature 300 miniature LED lamps (bulbs) inserted into weather-resistant sealed lamp holders and attached to the trunk and branches by plastic clips. The remote controlled lights feature changing bulb colors and function as a steady, pulsating or twinkling lights. The remote control is included.

The applicable subheading for Items Number 2407031, 7407200, 7407237, 2407029, 2407025, will be 9405.40.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Lamps and lighting fittings...: Other electric lamps and lighting fittings: Of base metal: Other than of brass." The rate of duty will be 6 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Hope Abada at [hope.abada@cbp.dhs.gov](mailto:hope.abada@cbp.dhs.gov).

*Sincerely,*

GWENN KLEIN KIRSCHNER  
*Director*

*National Commodity Specialist Division*

## ATTACHMENT C

N255988

September 4, 2014

CLA-2-94:OT:RR:NC:N4:110

CATEGORY: Classification

TARIFF NO.: 9405.40.8000

MS. MARTHA DE CASTRO  
BED BATH & BEYOND  
700 LIBERTY AVE.  
UNION, NJ 07083

RE: The tariff classification of LED branch stakes from China

DEAR MS. CASTRO:

In your letter dated August 4, 2014, you requested a tariff classification ruling.

The items under consideration are the 24" LED Lighted Flocked Tree, SKU number 42666134, and the 24" LED Lighted Glitter Tree, SKU 42666141. Based on the samples and the information that you have provided, the items are identical in construction except for their color appearance. SKU number 42666134 is painted in dark brown color and decorated with white flocking to mimic snow. SKU number 42666141 is painted in gold color with glitter. The items are described as light sculptures in the shape of leafless trees. The leafless trees measure approximately 24 inches tall. The trees' branches are made of thin wires intertwined with a light string. The plastic wires and pole are wrapped with brown PVC tape. The tips of the branches contain clear miniature LED bulbs, powered by three AA batteries that are located underneath the rectangular base. The battery box is equipped with an On/Off slide switch. It is stated that the trees are composed of 55 percent plastic and 45 percent metal. Samples were submitted with your ruling request and will be returned to you.

The applicable subheading for the 24" LED Lighted Flocked Tree, SKU number 42666134, and the 24" LED Lighted Glitter Tree, SKU 42666141 will be 9405.40.8000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Lamps and lighting fittings...: Other electric lamps and lighting fittings: Other." The general rate of duty will be 3.9 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Hope Abada at [hope.abada@cbp.dhs.gov](mailto:hope.abada@cbp.dhs.gov).

*Sincerely,*

GWENN KLEIN KIRSCHNER

*Director*

*National Commodity Specialist Division*

ATTACHMENT D

HQ H305354

OT:RR:CTF:CPMM  
H305354MMM

CATEGORY: Classification  
TARIFF NO.: 6702.90.6500; 8306.29.0000

Ms. ALICE LIU  
ATICO INTERNATIONAL USA INC.  
501 SOUTH ANDREWS AVENUE  
FT. LAUDERDALE, FL 33301

RE: Revocation of NY N236262, NY N260368, and NY N255988;  
Classification of lighted metal trees

DEAR Ms. LIU,

This is in reference to the New York Ruling Letter (NY) N236262, issued to you by U.S. Customs and Border Protection (CBP) on January 4, 2013, concerning classification of a lighted metal tree under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed your ruling, and determined that it is incorrect, and for the reasons set forth below, are revoking your ruling in regard to the lighted tree.

We have also reviewed the following rulings: NY N260368, dated January 21, 2015 and NY N255988, dated September 4, 2014 and determined that they are also incorrect, and for the reasons set forth below, we are also revoking those rulings.

**FACTS:**

In your ruling NY N236262, CBP stated as follows with respect to the subject merchandise:

[The] [i]tem ... is a light sculpture in the shape of a leafless tree, measuring approximately 60 inches tall. The light sculpture is constructed of a black-painted metal (non brass) wire frame intertwined with a light string. The light string consists of two insulated wire conductors twisted together and wrapped in black tape incorporating 50 black lamp-holders. The lamp-holders enclose orange-colored miniature plastic LED (light emitting diode) lamps.

The end of the light string comprised of a 30 inch lead wire with a combination of two-prong plug, a socket rated for 125 volt (V) and two 3 amp (A) fuses. There is a rectangular metal anchor at the base for mounting the light sculpture onto the flat surface, i.e. ground or floor. Although the light sculpture is referenced as a Halloween Spooky Tree designed for indoor and outdoor use, neither the "tree" nor the orange-colored bulbs are recognized as a festive motifs.

Additionally in ruling NY N260368, CBP stated as follows with respect to the subject merchandise:

The merchandise consists of 5 LED leafless trees identified as the "Lighted Branch Tree" or a "Lighted Deciduous Tree..." The sample...is a lighted leafless tree that measures approximately 7 feet tall, inserted into a round steel wire base. The item is comprised of a collapsible steel framework with pliable steel wires that resembles bare tree branches, and LED light strings powered by a two-prong plug wire. The steel tree

trunk and branches are welded together. The light strings feature 300 miniature LED lamps (bulbs) inserted into weather-resistant sealed lamp holders and attached to the trunk and branches by plastic clips. The remote controlled lights feature changing bulb colors and function as a steady, pulsating or twinkling lights. The remote control is included.

CBP classified the lighted metal trees in NY N236262 and NY N260368 in heading in 9405 HTSUS, specifically in subheading 9405.40.6000, HTSUS, which provides for “Lamps and lighting fittings...not elsewhere specified or included: Other electric lamps and lighting fittings: Of base metal: Other.”

In ruling NY N255988, CBP stated as follows with respect to the subject merchandise:

The items under consideration are the 24” LED Lighted Flocked Tree..., and the 24” LED Lighted Glitter Tree...The items are described as light sculptures in the shape of leafless trees. The leafless trees measure approximately 24 inches tall. The trees’ branches are made of thin wires intertwined with a light string. The plastic wires and pole are wrapped with brown PVC tape. The tips of the branches contain clear miniature LED bulbs, powered by three AA batteries that are located underneath the rectangular base. The battery box is equipped with an On/Off slide switch. It is stated that the trees are composed of 55 percent plastic and 45 percent metal.

CBP classified the lighted metal tree in NY N255988 in heading in 9405 HTSUS, specifically in subheading 9405.40.8000, HTSUS, which provides for “Lamps and lighting fittings...: Other electric lamps and lighting fittings: Other.”

#### **ISSUE:**

Whether the lighted metal trees are classified in heading 6702, as artificial flowers, foliage and fruit and parts thereof, in 8306, as statuettes and other ornaments, of base metal, or 9405, as lamps.

#### **LAW AND ANALYSIS:**

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. GRI 2(a) provides, in relevant part, that “[a]ny reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished articles has the essential character of the complete or finished article.”

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 2018 HTSUS provisions under consideration are as follows:

<b>6702</b>	Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit
<b>8306</b>	Bells, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base metal; mirrors of base metal; and base metal parts thereof
<b>9405</b>	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included

We begin our analysis with Heading 6702, which applies to artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit. Note 3(b) to Chapter 67 states:

3. Heading 67.02 does not cover:

(b) Artificial flowers, foliage or fruit of pottery, stone, metal, wood or other materials, obtained in one piece by moulding, forging, carving, stamping or other process, or consisting of parts assembled otherwise than by binding, glueing, fitting into one another or similar methods.

Additionally, the General Explanatory Notes to Heading 6702 states:

This heading covers:

(1) Artificial flowers, foliage and fruit in forms resembling the natural products, made by assembling various parts (by binding, glueing, assembling by fitting into one another or similar methods). This category also includes conventional representations of flowers, foliage or fruit made up in the manner of artificial flowers, etc.

(2) Parts of artificial flowers, foliage or fruit (e.g., pistils, stamens, ovaries, petals, calyces, leaves and stems).

(3) Articles made of artificial flowers, foliage or fruit (e.g., bouquets, garlands, wreaths, plants), and other articles, for use as trimmings or as ornaments, made by assembling artificial flowers, foliage or fruit.

Heading 8306 applies to Bells, gongs and the like, non-electric, of base metal; statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base metal; mirrors of base metal. Section XV, in Note 3 defines “base metals” as:

Throughout the Nomenclature, the expression “base metals” means : iron and steel, copper, nickel, aluminium, lead, zinc, tin, tungsten (wolfram), molybdenum, tantalum, magnesium, cobalt, bismuth, cadmium, titanium, zirconium, antimony, manganese, beryllium, chromium, germanium, vanadium, gallium, hafnium, indium, niobium (columbium), rhenium and thallium.

The subject merchandise in the above rulings, NY N236262, NY N260368, and NY N255988, are composite goods within the meaning of GRI 3 in that they are comprised of two different components, a metal frame and a light

string. However, the trunk and branches provide the merchandise with its essential character and not the lights. When the lights are turned off, the artificial tree will continue to be displayed for ornamental or decorative purposes. Therefore, the subject merchandise is not classifiable under Heading 9405.<sup>2</sup>

The subject merchandise found in the above rulings are made of metal and are in forms that resemble natural products. According to Note 3(b) of Chapter 67, heading 6702 does not include artificial flowers and foliage made of metal when the merchandise is “obtained in one piece by molding, forging, carving, stamping or other process[es.]” The processes described in the first part of Note 3(b) are of the type that leave the product inseparable. Note 3(b) goes on to say that merchandise can be classified in heading 6702 when put together by binding, gluing, and fitting parts into one another. The methods described in the second part of Note 3(b) would allow merchandise to be unbound, unglued, and taken apart, and thus not “obtained in one piece.”

Following this language, the merchandise in Ruling N260368 cannot be classified in heading 6702 because the merchandise is obtained in one piece, and put together through welding, which leaves the trunk and branches inseparable, i.e. the branches and the trunk are melted together in a way that makes it impossible to take apart. The subject merchandise in NY N260368 is classified under heading 8306.

Conversely, in NY N236262 and NY N255988 the subject merchandise, based on the descriptions given, is not “obtained in one piece.”<sup>3</sup> The subject merchandise is constructed by intertwining materials and the use of PVC tape. The subject merchandise in these rulings are classified under 6702.

#### **HOLDING:**

By application of GRI 1 and 3(b), the subject artificial lighted metal trees in NY N236262 and NY N255988 are classified in heading 6702, HTSUS. The subject merchandise is specifically classified in subheading 6702.90.6500, HTSUSA (Annotated), which provides for: “Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: of other materials: Other: Other.” The 2018 column one general rate of duty for subheading, HTSUSA, is 17% *ad valorem*.

By application of GRI 1 and 3(b), the subject artificial lighted tree in NY N260368 is classified in heading 8306. The subject merchandise is specifically classified in subheading 8306.29.0000, HTSUSA (Annotated), which provides for: “Bells, gongs and the like, nonelectric, of base metal...; Statuettes and other ornaments, and parts thereof; Other.” The 2018 column one general rate of duty for subheading 8306.29.0000, HTSUSA, is free.

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](http://www.usitc.gov/tata/hts)

<sup>2</sup> See New York Ruling Letter N186342, dated October 25, 2011.

<sup>3</sup> See Chapter 67 Note 3(b) (If it were determined that the branches and trunk of the trees were molded, forged, etc. together, the subject merchandise would be classified under heading 8306).

**EFFECT ON OTHER RULINGS:**

New York Ruling Letters N236262, dated January 4, 2013, N260368, dated January 21, 2015, and N255988, dated September 4, 2014 are hereby REVOKED in accordance with the above analysis.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

- CC: Marilyn-Joy Cerny  
Cerny Associates, P.C.  
24 Smith Street, Building 2, Suite 102  
Pawling, NY 12564
- CC: Martha De Castro  
Bed Bath & Beyond  
700 Liberty Ave.  
Union, NJ 07083



**19 CFR PART 177**

**MODIFICATION OF THREE RULING LETTERS AND  
REVOCATION OF TWO RULING LETTERS, AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF CERTAIN ASIAN  
DUMPLINGS**

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

**ACTION:** Notice of modification of three ruling letters and revocation of two ruling letters, and of revocation of treatment relating to the tariff classification of turkey shomai, chicken wontons, shrimp har gow, shrimp pot stickers, shrimp shumai, hau kau and “party pack” dumplings.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) is modifying three ruling letters and revoking two ruling letters concerning the tariff classification of certain Asian dumplings under the Harmonized Tariff Schedule of the United States (“HTSUS”). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action

was published in the *Customs Bulletin*, Vol. 53, No. 39, on October 30, 2019. No comments were received in response to that notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 24, 2020.

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

## **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), a notice was published in the *Customs Bulletin*, Vol. 53, No. 39, on October 30, 2019, proposing to modify three ruling letters and revoke two ruling letters pertaining to the tariff classification of turkey shomai, chicken wontons, shrimp har gow, shrimp pot stickers, shrimp shumai, hau kau and “party pack” Asian dumplings. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In Headquarters Ruling Letter (“HQ”) 086283, CBP classified turkey shomai in heading 1602, HTSUS, specifically in subheading



1602.31.00, HTSUS, which provides for “Other prepared or preserved meat, meat offal or blood: Of poultry of heading 0105: Of turkeys,” and chicken wontons and shrimp har gow in heading 1605, HTSUS, specifically in subheading 1605.20.05, which provided for “Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved: Shrimps and prawns: Products containing fish meat; prepared meals.” In HQ M86459, CBP classified shrimp potstickers in heading 1605, HTSUS, specifically in subheading 1605.20.05. In New York Ruling Letter (“NY”) N100268, CBP classified “party pack” dumplings in heading 1605, HTSUS, specifically in subheading 1605.20.05, HTSUS. In NY 810007, CBP classified hau kau in heading 1605, HTSUS, specifically in subheading 1605.20.05, HTSUS. In NY N303010, CBP classified shrimp shumai in heading 1605, specifically in subheading 1605.21.10, HTSUS, which provides for “Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved: Shrimps and prawns: Not in airtight containers: Other.” CBP has reviewed HQ 086283, NY M86459, NY N100268, NY N303010 and NY 810007, and has determined these ruling letters to be in error. It is now CBP’s position that the turkey shomai, chicken wontons, shrimp har gow, shrimp pot stickers, shrimp shumai, hau kau and “party pack” Asian dumplings at issue are classified in heading 1902, HTSUS, specifically in subheading 1902.20.00, HTSUS, which provides in relevant part for: “Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni...: Stuffed pasta, whether or not cooked or otherwise prepared.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying HQ 086283, NY M86459 and NY N100268, revoking NY 810007 and NY N303010, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H199095, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: December 5, 2019

YULIYA A. GULIS  
for

MYLES B. HARMON,  
Director

*Commercial and Trade Facilitation Division*

*Attachment*

HQ H199095

December 5, 2019

OT:RR:CTF:FTM H199095 TSM

CATEGORY: Classification

TARIFF NO.: 1902.20.00

Ms. ESTELLE BUTTS  
 EXECUTIVE ASSISTANT  
 MITSUI FOODS, INC.  
 35 MAPLE STREET  
 NORWOOD, NJ 07648

RE: Modification of HQ 086283, NY M86459 and NY N100268; Revocation of NY N303010 and NY 810007; Classification of Turkey Shomai, Chicken Wontons, Shrimp Har Gow, Shrimp Pot Stickers, Shrimp Shumai, Hau Kau and “Party Pack”

DEAR Ms. BUTTS:

This is in reference to Headquarters Ruling Letter (“HQ”) 086283, dated May 14, 1990, issued to Mitsui Foods, Inc., concerning the tariff classification of certain Asian foods under the Harmonized Tariff Schedule of the United States (“HTSUS”).<sup>1</sup> In that ruling, U.S. Customs and Border Protection (“CBP”) classified turkey shomai in heading 1602, HTSUS, which provides in relevant part for “Other prepared or preserved meat.” CBP also classified chicken wontons and shrimp har gow in heading 1605, HTSUS, which provides for “Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved.”<sup>2</sup> We have reviewed HQ 086283 and find it to be in error with regard to the tariff classification of the turkey shomai, chicken wontons and shrimp har gow, shrimp pot stickers, shrimp shumai, hau kau and “party pack.” For the reasons set forth below, we hereby modify HQ 086283.

This is also in reference to four other rulings with substantially similar merchandise: (1) New York Ruling Letter (“NY”) M86459, dated October 11, 2006, which was issued to Glacier Imports, Inc., classifying shrimp pot stickers in heading 1605, HTSUS;<sup>3</sup> (2) NY N303010, dated February 13, 2019, which was issued to Nissin International Transport USA Inc., classifying shrimp shumai dumplings in heading 1605, HTSUS; (3) NY 810007, dated May 16, 1995, issued to Peter Hsu Enterprises, Inc., classifying hau kau dumplings under heading 1605, HTSUS; and, (4) NY N100268, dated April 27, 2010, issued to Trangs Group USA Inc., classifying “party pack” dumplings under heading 1605, HTSUS.<sup>4</sup>

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107

<sup>1</sup> HQ 086283 modified New York Ruling Letter (“NY”) 828470, dated April 20, 1988.

<sup>2</sup> We note that NY 086283 also classified two other products, turkey wok stickers and turkey cocktail spring rolls, which are not at issue here.

<sup>3</sup> We note that NY M86459 also classified one other product, shrimp egg rolls, which is not at issue here.

<sup>4</sup> We note that NY N100268 also classified two other products, honey shrimp and potato shrimp, which are not at issue here.

Stat. 2057), a notice was published in the *Customs Bulletin*, Volume 53, No. 39, on October 30, 2019, proposing to modify HQ 086283, NY M86459 and NY N100268, revoke NY 810007 and NY N303010, and revoke any treatment accorded to substantially identical transactions. No comments were received in response to the notice.

**FACTS:**

In HQ 086283, the subject merchandise is described as follows:

The merchandise at issue consists of ... oriental foods imported from Hong Kong. They are: turkey shomai, comprised of 27 percent turkey meat and 20 percent shrimp; chicken wonton, comprised of 27 percent shrimp and 13 percent chicken; hargrow, comprised of 37 percent shrimp ... All consist of a dough jacket filled with a mixture of the meat, fish, and/or vegetables, that is shaped, steamed, frozen and packaged.

In NY M86459, the subject merchandise is described as follows:

The ruling was requested on ... “Shrimp Potstickers.” ... [T]hese ... products consist of a dough jacket (of whole meal flour, salt, water and vegetable shortening) stuffed with shrimp (about 40% of the item’s total weight, in each instance) and various lesser percentages of cabbage, carrots, vermicelli, salt, sugar, vegetable shortening, sesame oil, mushrooms, and spring onions. Each individual ... “Shrimp Potsticker” will weigh approximately 15 grams. Prior to packaging, ... the potstickers will be steamed. Subsequently, ten (10) pieces of ... the “Shrimp Potstickers” will be sealed in plastic bags (not “air-tight”), inserted into their respective cardboard retail boxes, and frozen prior to their exportation to the United States.

In NY N303010, the subject merchandise is described as follows:

Shrimp Dumplings (Item Number WAF 91869, also known as Shrimp Shumai) is composed of onion, shrimp (21.17 percent), potato starch, wheat flour, oils, Lizardfish paste, water, egg white, soy protein, sugar, salt, monosodium glutamate, spices, wheat protein, soybean flour, shrimp extract, dextrin, potassium chloride, sodium citrate, calcium lactate, disodium succinate, disodium inosinate and disodium guanylate.

Shrimp Dumplings (Item Number WAF 97713, also known as Shrimp Shumai) is composed of onion, shrimp (17.85 percent), Pollock paste (17.85 percent), water, wheat flour, oils, potato starch, egg white, soy protein, sugar, salt, wheat protein, monosodium glutamate, spices, shrimp extract, potassium chloride, sodium citrate, calcium lactate, disodium succinate, disodium inosinate and disodium guanylate.

Both products will be imported in a frozen state. The consumer is directed to either fry, steam or microwave the items Indent to consumption. You state that item number WAF 97713 will be placed on trays, inserted into a polypropylene bag and packed 12 bags to a cardboard box. Item number WAF 91869 will be placed on trays, inserted into a microwavable bag and packed 10 bags to a cardboard box. The former items are sold to the food service industry, and the latter items are intended for retail sale.

In NY 810007, the subject merchandise is described as follows:

Hau Kau (shrimp dumplings) - fresh, uncooked, and frozen. The ingredients are shrimp (38 percent), vegetables, seasoning, and pastry. There are

two methods of packaging: 1) packed 2 kilograms per carton, 6 cartons to a master cartons, 2) 500 grams per carton, 20 cartons to a master carton.

In NY N100268, the subject merchandise is described as follows:

The third item, identified as a “Party Pack,” is made up principally of Asian-style dumplings of three different kinds, packed (mixed) together in one common bag. The three kinds are as follows:

- “Money Purses (Bags),” each of which consists of a dough jacket, shaped like a drawstring-type cloth coin bag, filled with fish, shrimp and other foodstuffs. The ingredients are filo pastry [wheat flour, water, salt, vegetable oil] (35%), whitefish [*Pangasius hypophthalmus*] (27.1%), chopped shrimp (15.52%), onion, modified starch, spring onion, peas, bean, cabbage, sweet corn, yam bean, carrot, salt, pepper, oyster sauce, sesame oil, garlic.
- “Shrimp Triangles,” each of which consists of a triangular-shaped dough jacket filled with shrimp, vegetables and other foodstuffs. The ingredients are *vannemei* shrimp (48%), filo pastry [water, wheat flour, vegetable oil, salt], cabbage, “vice vermicelli” (rice noodles), bean sprouts, carrot, vegetable oil, spring onion, corn starch, soy sauce, onion, garlic, sesame oil, red Thai curry seasoning, salt, sugar, pepper.
- “Filo Shrimp,” each of which consists of a cylinder-like dough jacket filled with shrimp and other foodstuffs. The ingredients are *vannemei* shrimp (50%), filo pastry [wheat flour, water, salt, vegetable oil], garlic powder, pepper.

In addition to the above-described dumplings, the “Party Pack” box will also contain sachets of teriyaki sauce (water, soybean sauce, sesame oil, sugar, salt) and sweet chili sauce (water, wheat flour, chili, garlic, sugar, salt).

#### ISSUE:

Are the subject Asian dumplings classified in headings 1602 or 1605, HTSUS, as prepared or preserved meat or crustaceans respectively? Or are they classified in heading 1902, HTSUS, which provides for stuffed pasta?

#### LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

1602 Other prepared or preserved meat, meat offal or blood:

\* \* \*

1605 Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved:

\* \* \*

1902 Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni; couscous, whether or not prepared:

\* \* \*

Note 2 to Chapter 16 provides as follows:

2. Food preparations fall in this chapter provided that they contain more than 20 percent by weight of sausage, meat, meat offal, blood, fish or crustaceans, molluscs or other aquatic invertebrates, or any combination thereof. In cases where the preparation contains two or more of the products mentioned above, it is classified in the heading of chapter 16 corresponding to the component or components which predominate by weight. *These provisions do not apply to the stuffed products of heading 1902 or to the preparations of heading 2103 or 2104 (emphasis added).*

\* \* \*

Note 1(a) to Chapter 19 provides as follows:

1. This chapter does not cover:
  - (a) Except in the case of stuffed products of heading 1902, food preparations containing more than 20 percent by weight of sausage, meat, meat offal, blood, fish or crustaceans, molluscs or other aquatic invertebrates, or any combination thereof (chapter 16);

\* \* \*

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

EN 19.02 states that:

The pasta of this heading are unfermented products made from semolinas or flours of wheat, maize, rice, potatoes, etc.

These semolinas or flours (or intermixtures thereof) are first mixed with water and kneaded into a dough which may also incorporate other ingredients (e.g., very finely chopped vegetables, vegetable juice or purées, eggs, milk, gluten, diastases, vitamins, colouring matter, flavouring).

The doughs are then formed (e.g., by extrusion and cutting, by rolling and cutting, by pressing, by moulding or by agglomeration in rotating drums) into specific predetermined shapes (such as tubes, strips, filaments, cockleshells, beads, granules, stars, elbow-bends, letters). In this process a small quantity of oil is sometimes added. These forms often give rise to the names of the finished products (e.g., macaroni, tagliatelle, spaghetti, noodles).

The products are usually dried before marketing to facilitate transport, storage and conservation; in this dried form, they are

brittle. The heading also covers undried (i.e., moist or fresh) and frozen products, for example, fresh gnocchi and frozen ravioli.

The pasta of this heading may be cooked, stuffed with meat, fish, cheese or other substances in any proportion or otherwise prepared (e.g., as prepared dishes containing other ingredients such as vegetables, sauce, meat). Cooking serves to soften the pasta without changing its basic original form.

Stuffed pasta may be fully closed (for example, ravioli), open at the ends (for example, cannelloni) or layered, such as lasagne.

\* \* \*

Note 2 to Chapter 16 and Note 1(a) to Chapter 19 state that products which contain more than twenty percent by weight of meat are classified in Chapter 16. However, the Notes state that stuffed pasta is always classified in heading 1902, HTSUS, regardless of the meat's weight. As such, we must first determine whether the turkey shomai, chicken wontons, shrimp har gow and shrimp pot stickers are stuffed pasta.

In HQ H180095, dated September 3, 2013, we proffered several definitions of the term "pasta."<sup>5</sup> We cited to *Webster's College Dictionary*, which defines "pasta" as "a flour paste or dough made of semolina and dried, as for spaghetti and macaroni, or used fresh, as for ravioli." See *Webster's College Dictionary* 1053 (4th Ed. 2007). We also cited *The American Heritage Dictionary*, which defines "pasta" as "1. Unleavened dough, made of wheat flour, water, and sometimes eggs, that is molded into any of a variety of shapes and boiled." These definitions are consistent with EN 19.02, which defines pasta as being comprised of semolina or flour which is mixed with water and then kneaded into dough. EN 19.02 further states that pasta may be cooked and stuffed with meat, fish or other substances. Heading 1902, HTSUS, also covers frozen stuffed pasta, such as frozen ravioli.

According to the aforementioned definitions, stuffed pasta consists of a semolina or flour dough jacket stuffed with meat, fish or other substances. The subject turkey shomai, chicken wontons, shrimp har gow, shrimp pot stickers, shrimp shumai, hau kau and "party pack" all consist of a flour dough jacket stuffed with turkey, chicken, shrimp and/or fish. Like frozen ravioli, the subject merchandise is molded into specific shapes and frozen. As such, the subject merchandise is classifiable as stuffed pasta of heading 1902, HTSUS. Note 2 to Chapter 16 excludes these products from classification in Chapter 16.

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<sup>5</sup> When, as in this case, a tariff term is not defined by the HTSUS or its legislative history, "the term's correct meaning is its common meaning." *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, a court may consult "dictionaries, scientific authorities, and other reliable information sources" and "lexicographic and other materials." *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (CCPA 1982); *Simod*, 872 F.2d at 1576.

**HOLDING:**

By application of GRI 1, the turkey shomai, chicken wontons, shrimp har gow and shrimp pot stickers are classified under heading 1902, HTSUS, and specifically under subheading 1902.20.00, HTSUS, which provides in relevant part for: “Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni...: Stuffed pasta, whether or not cooked or otherwise prepared.” The 2019 column one, general rate of duty is 6.4 percent *ad valorem*.

**EFFECT ON OTHER RULINGS:**

HQ 086283, dated May 14, 1990, is hereby modified with regard to the tariff classification of the turkey shomai, chicken wonton and shrimp har gow.

NY M86459, dated October 11, 2006, is hereby modified with regard to the tariff classification of the shrimp pot stickers.

NY N100268, dated April 27, 2010, is hereby modified with regard to the tariff classification of the “Party Pack” Asian-style dumplings.

NY 810007, dated May 16, 1995, is hereby revoked.

NY N303010, dated February 13, 2019, is hereby revoked.

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

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*



**19 CFR PART 177**

**REVOCATION OF TWO RULING LETTERS AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF “PERNOD ABSINTHE  
SUPERIEURE” AND “RICARD PASTIS DE MARSEILLE”**

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

**ACTION:** Notice of revocation of two ruling letters, and of revocation of treatment relating to the tariff classification of “Pernod Absinthe Superieure” and “Ricard Pastis de Marseille.”

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises inter-

ested parties that U.S. Customs and Border Protection (CBP) is revoking two ruling letters concerning tariff classification of “Pernod Absinthe Superieure” and “Ricard Pastis de Marseille” under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 53, No. 39, on October 30, 2019. One comment was received in response to that notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 24, 2020.

**FOR FURTHER INFORMATION CONTACT:** Catherine Miller, Food, Textiles, and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0101.

**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), a notice was published in the *Customs Bulletin*, Vol. 53, No. 39, on October 30, 2019, proposing to revoke two ruling letters pertaining to the tariff classification of “Pernod Absinthe Superieure” and “Ricard Pastis de Marseille.” Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer’s failure to advise CBP of substantially identical transactions



or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In New York Ruling Letter (“NY”) N304274 and NY N304276, both dated June 7, 2010, CBP classified “Pernod Absinthe Superieure” and “Ricard Pastis de Marseille” in heading 2208, HTSUS, specifically in subheading 2208.70.0030, Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”), which provides for ““Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages: Liqueurs and cordials: In containers each holding not over 4 liters.”” CBP has reviewed NY N304274 and NY N304276 and has determined the ruling letters to be in error. It is now CBP’s position that “Pernod Absinthe Superieure” and “Ricard Pastis de Marseille” are properly classified in heading 2208, HTSUS, specifically in subheading 2208.90.7500, HTSUSA, which provides for “Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages: Other: Other: Spirits: Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N304274 and NY N304276 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H305105, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: December 4, 2019

YULIYA A. GULIS  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H305105

December 4, 2019

OT:RR:CTF:FTM: H305105 CDM

CATEGORY: Classification

TARIFF NO.: 2208.90.7500

MR. J. KEVIN HORGAN

DEKIEFFER &amp; HORGAN, PLLC

1090 VERMONT AVENUE, NW, SUITE 800

WASHINGTON, DC 20005

RE: Revocation of NY N304274 (classification of “Pernod Absinthe Superieure”) and NY N304276 (classification of “Ricard Pastis de Marseille”)

DEAR MR. HORGAN:

On June 7, 2019, U.S. Customs and Border Protection (“CBP”) issued New York Ruling Letters (“NY”) N304274 and NY N304276 to Adena M. Santiago at Husch Blackwell LLP, representing Pernod Ricard USA, LLC (“Pernod Ricard”). The rulings pertained to the tariff classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of “Pernod Absinthe Superieure” (NY N304274) and “Ricard Pastis de Marseille” (NY N304276). In NY N304274 and NY N304276, CBP classified both “Pernod Absinthe Superieure” and “Ricard Pastis de Marseille” in subheading 2208.70.00, HTSUS, which provides for “Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages: Liqueurs and cordials: In containers each holding not over 4 liters.”

You submitted a request for reconsideration of NY N304274 and NY N304276, dated July 16, 2019, on behalf of your client, Pernod Ricard. We have reviewed NY N304274 and NY N304276 and determined them to be in error because the products do not meet the requisite sugar, dextrose, or levulose amount to be classified as liqueurs and cordials, as defined by the regulations of the United States Tobacco Tax and Trade Bureau, providing the standards of identity for distilled spirits. Accordingly, NY N304274 and NY N304276 are revoked.

You have asked that certain information submitted in connection with this request be treated as confidential, pursuant to 19 C.F.R. § 177.2(b)(7). Your request for confidentiality is approved. The information concerning the percentages and/or amounts of ingredients will not be released to the public.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. No. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed action was published on October 30, 2019, in Volume 53, Number 39, of the *Customs Bulletin*. Upon publication in the *Customs Bulletin*, CBP received one comment in support of its proposed action concerning NY N304274 and NY N304276.

**FACTS:**

In NY N304274, “Pernod Absinthe Superieure” from France was described as follows:

The product consists of a distillate of anise seed and wormwood, drinking water, and herbs extract. “Pernod Absinthe Superieure” has an alcohol volume of 68 percent. The product will be imported in 375 ml bottles.

In NY N304276, “Ricard Pastis de Marseille” from France was described as follows:

“Ricard Pastis de Marseille” is Ricard’s Pastis Anise and Licorice Flavored Spirits. The product consists of a mixture of water, ethyl alcohol, sugar, natural extracts of licorice, aniseed, burned sugar, and a blend of aromatic plants. “Ricard Pastis de Marseille” has an alcohol volume of 45 percent. The product will be imported in 750 ml bottles.

In both rulings, Pernod Ricard submitted an ingredients’ breakdown, a photograph, and descriptive literature of the product. Pursuant to the information submitted in NY N304274 and NY N304276, “Pernod Absinthe Superieure” contained no sugar and “Ricard Pastis de Marseille” contained sugar content less than 2.5 percent by weight. In your request for reconsideration of NY N304274 and NY N304276, you confirmed that “Pernod Absinthe Superieure” and “Ricard Pastis de Marseille” contain sugar content of less than 2.5 percent volume by weight. There were no samples submitted for reconsideration.

**ISSUE:**

Whether “Pernod Absinthe Superieure” and “Ricard Pastis de Marseille” are properly classified in subheading 2208.70.00, HTSUS, as liqueurs and cordials, or in subheading 2208.90.75, HTSUS, as other spirits.

**LAW AND ANALYSIS:**

Classification under the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”) 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 2019 HTSUS provisions under consideration are as follows:

<b>2208</b>	“Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages: * * *
<b>2208.70.00</b>	Liqueurs and cordials: In containers each holding not over 4 liters * * *
<b>2208.90.75</b>	Other: Spirits: Other

You argue that “Pernod Absinthe Superieure” and “Ricard Pastis de Marseille” are flavored spirituous beverages that do not contain the required minimum amount of sweeteners to be classified in subheading 2208.70.00, HTSUS, as liqueurs or cordials and therefore they should be classified in

subheading 2208.90.75, HTSUS, which provides for ““Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages: Other: Other: Spirits: Other.”

You also argue that the Explanatory Notes (“ENs”) to the Harmonized Tariff Schedule support your argument that heading 2208, HTSUS, covers, whatever their alcoholic strength:

- (A) Spirits produced by distilling wine, cider or other fermented beverages or fermented grain or other vegetable products, without adding flavouring; they retain, wholly or partly, the secondary constituents (esters, aldehydes, acids, higher alcohols, etc.) which give the spirits their peculiar individual flavours and aromas.
- (B) Liqueurs and cordials, being spirituous beverages to which sugar, honey or other natural sweeteners and extracts or essences have been added (e.g., spirituous beverages produced by distilling, or by mixing, ethyl alcohol or distilled spirits, with one or more of the following : fruits, flowers or other parts of plants, extracts, essences, essential oils or juices, whether or not concentrated). These products also include liqueurs and cordials containing sugar crystals, fruit juice liqueurs, egg liqueurs, herb liqueurs, berry liqueurs, spice liqueurs, tea liqueurs, chocolate liqueurs, milk liqueurs and honey liqueurs.
- (C) All other spirituous beverages not falling in any preceding heading of this Chapter.

Provided that their alcoholic strength by volume is less than 80% vol, the heading also covers undenatured spirits (ethyl alcohol and neutral spirits) which, contrary to those at (A), (B) and (C) above, are characterised by the absence of secondary constituents giving a flavour or aroma. These spirits remain in the heading whether intended for human consumption or for industrial purposes.

In addition to undenatured ethyl alcohol of an alcoholic strength by volume of less than 80% vol, the heading includes, *inter alia*:

- (6) Spirituous beverages (generally known as liqueurs), such as anisette (obtained from green anise and badian), curaçao, (manufactured with the peel of the bitter orange), kummel (flavoured with caraway or cumin seeds).
- (7) The liqueurs known as “crèmes”, because of their consistency or colour. They are generally of relatively low alcoholic content and very sweet (for example, creams of cocoa, bananas, vanilla, coffee). The heading also covers spirits consisting of emulsions of spirit with products such as egg yolk or cream.

\* \* \*

- (13) Alcoholic aperitives (absinth, bitters, etc.) other than those with a basis of wine of fresh grapes which fall in heading 22.05.

\* \* \*

EN 22.08. Relying on this EN, you assert that paragraph 13 indicates that aperitifs containing insufficient sweeteners should not be grouped with liqueurs and cordials and further that absinth and bitters are to be classified together as unsweetened aperitifs. You assert “Pernod Absinthe Superieure” and “Ricard Pastis de Marseille” do not contain the required minimum amount of sweeteners to be classified under subheadings 2208.20 through 2208.70, HTSUS, and therefore the only appropriate subheading is the basket provision 2208.90.7500, HTSUSA, for other spirituous products.

“Pernod Absinthe Superieure” and “Ricard Pastis de Marseille” are classifiable under heading 2208, HTSUS, which provides for “Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages.”

The issue lies at the six-digit subheading level. The industry standards of identity for cordials and liqueurs indicate that liqueurs or cordials must contain “sugar, dextrose, or levulose, or a combination thereof, in an amount not less than 2.5 percent by weight of the finished product” as defined by Title 27 (Alcohol, Tobacco Products and Firearms) of the Code of Federal Regulations, administered by the Alcohol and Tobacco and Tax and Trade Bureau (“TTB”) of the United States Department of the Treasury. *See* 27 C.F.R. § 5.22(h). Furthermore, CBP has recognized that to be classified as cordials or liqueurs, the imported spirituous products must contain a minimum of 2.5 percent sugar content. *See, e.g.*, NY J88195, dated September 17, 2003; Headquarters Ruling Letter (“HQ”) 085902, dated February 12, 1990.

Under the facts presented, “Pernod Absinthe Superieure,” which contains no sugar content, and “Ricard Pastis de Marseille,” which contains under one percent sugar content, do not meet the requisite sugar content to be classified as a liqueur or cordial because they both contain under 2.5 percent sugar content. Therefore, under GRI 1, “Pernod Absinthe Superieure” and “Ricard Pastis de Marseille” do not meet the terms of the subheading for liqueurs and cordials.”

Since “Pernod Absinthe Superieure” and “Ricard Pastis de Marseille” do not fall under any of the provisions in subheadings 2208.20–2208.70, HTSUS, these products are classified under the basket provision provided in 2208.90, HTSUS. This comports with the guidance provided in EN 22.08 which covers, *eo nomine*, absinth under heading 2208, HTSUS, as alcoholic aperitifs. Accordingly, we find that “Pernod Absinthe Superieure” and “Ricard Pastis de Marseille” are classified in subheading 2208.90.7500, HTSUSA, which provides for “Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages: Other: Other: Spirits: Other.”

#### **HOLDING:**

Under the authority of GRI 1, “Pernod Absinthe Superieure” and “Ricard Pastis de Marseille” are classified under heading 2208, HTSUS, and specifically in subheading 2208.90.7500, HTSUSA, which provides for “Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages: Other: Other: Spirits: Other.” The 2019 column one, general rate of duty is free.

**EFFECT ON OTHER RULINGS:**

NY N304274, dated June 7, 2019, is REVOKED.

NY N304276, dated June 7, 2019, is REVOKED.

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

*Sincerely,*

YULIYA A. GULIS

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

  
**PROPOSED MODIFICATION OF FOUR LETTERS AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF TOPPINGS**

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

**ACTION:** Notice of proposed modification of four ruling letters and proposed revocation of treatment relating to the tariff classification of toppings.

**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 four ruling letters concerning tariff classification of toppings 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 January 25, 2020.

**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, 10<sup>th</sup> 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:** Parisa J. Ghazi, Food, Textiles, and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325-0272.

**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 four ruling letters pertaining to the tariff classification of toppings. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") F89129, dated July 19, 2000 (Attachment A), NY A80432, dated March 4, 1996 (Attachment B), NY D87491, dated February 16, 1999 (Attachment C), and NY F87143, dated June 15, 2000 (Attachment D), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the four identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY F89129, NY A80432, NY D87491 and NY F87143, CBP classified toppings in heading 2106, HTSUS, which provides for “Food preparations not elsewhere specified or included.” CBP has reviewed NY F89129, NY A80432, NY D87491 and NY F87143 and has determined the ruling letters to be in error. It is now CBP’s position that certain toppings in these rulings are properly classified, in heading 2008, HTSUS, which provides for “Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY F89129, NY A80432, NY D87491 and NY F87143 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H304024, set forth as Attachment E to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: December 6, 2019

MYLES B. HARMON,  
*Director*  
*Commercial and Trade Facilitation Division*

Attachments



ATTACHMENT A

NY F89129

July 19, 2000

CLA-2-20:RR:NC:2:228 F89129

CATEGORY: Classification

TARIFF NO.: 2008.92.1040, 2008.92.9094,  
2008.99.3000, 2008.99.4000, 2106.90.9500,  
2106.90.9700

MR. CLAUDE SCHELLENBERGER  
MAX FELCHLIN AG  
MAIN STREET 63  
CH-6431 SCHWYZ/SWITZERLAND

RE: The tariff classification of toppings from Switzerland.

DEAR MR. SCHELLENBERGER:

In your letter dated June 27, 2000, you requested a tariff classification ruling.

Samples, ingredients breakdowns, and pictorial literature were submitted with your letter. The samples were examined and disposed of. TO18E Forest Berries Topping, TO19E Guava Topping, TO14E Mango Topping, and TO17E Tropical Topping, are viscous, fluid products, ready to use as toppings for plated desserts, ice cream, milk shakes, etc. The TO18E Forest Berries Topping consists of 40 percent sugar, 14 percent raspberry pulp, 13 percent cherry pulp, 11.7 percent glucose syrup, 9 percent sorbitol, 8 percent blueberry pulp, and 5 percent elder juice. TO19E Guava Topping consists of 40 percent guava pulp, 37 percent sugar, 16 percent glucose syrup, and 5 percent sorbitol. TO14E Mango Topping consists of 45 percent sugar, 35 percent mango pulp, 11.30 percent glucose syrup, 5 percent sorbitol, 2.40 and water. TO17E Tropical Topping consisting of 37 percent sugar, 20 percent glucose syrup, 12 percent mango pulp, 12 percent passion fruit, and 8 percent lemon juice. The toppings also contain thickening agents, preservatives, colors, and natural fruit flavor. The toppings will be sold to food service industry professionals in 1-kg bottles, 6 bottles to a carton.

The applicable subheading for the TO18E Forest Berries Topping, when packed in airtight containers, will be 2008.92.1040, Harmonized Tariff Schedule of the United States (HTS), which provides for fruit, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included...other, including mixtures other than those of subheading 2008.19...mixtures...in airtight containers and not containing apricots, citrus fruits, peaches or pears...other. The rate of duty will be 5.6 percent ad valorem.

When not in airtight containers, the applicable subheading for the TO18E Forest Berries Topping will be 2008.92.9094, HTS, which provides for fruit, otherwise prepared or preserved... mixtures...other...other. The rate of duty will be 14.9 percent ad valorem.

The applicable subheading for the TO19E Guava Topping, will be 2008.99.3000, HTS, which provides for fruit, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included...other...guavas. The rate of duty will be free.

The applicable subheading for the TO14E Mango Topping, will be 2008.99.4000, HTS, which provides for fruit, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included...other...mangoes. The rate of duty will be 1.5 cents per kilogram.

The applicable subheading for the TO17E Tropical Topping, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 2106.90.9500 Harmonized Tariff Schedules of the United States (HTS), which provides for food preparations not elsewhere specified or included...other...other...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The rate of duty will be 10% ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the product will be classified in subheading 2106.90.9700, HTS, and dutiable at the rate of 28.8 cents per kilogram plus 8.5 percent ad valorem. In addition, products classified in subheading 2106.90.9700, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.17.49 to 9904.17.56, 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 Stanley Hopard at 212-637-7065.

*Sincerely,*

ROBERT B. SWIERUPSKI  
*Director,*  
*National Commodity*  
*Specialist Division*

ATTACHMENT B

NY A80432

March 4, 1996

CLA-2-21:RR:NC:FC:228 A80432

CATEGORY: Classification

TARIFF NO.: 2101.12.9000; 2106.90.9997

MS. KATHRYN L. MOSS  
TOWER GROUP INTERNATIONAL, INC.  
128 DEARBORN STREET  
BUFFALO, NY 14207-1227

RE: The tariff classification of flavoring compounds from Canada

DEAR MS. MOSS:

In your letters dated December 19, 1995 and February 15, 1996, on behalf of Embassy Food Specialties, Ltd., Etobicoke, Ontario, Canada, you requested a tariff classification ruling.

Samples and ingredients breakdowns were provided with your first letter. Additional information was submitted with your February correspondence. The samples were examined and disposed of. The products are viscous syrups and pastes, packed in 2.2-pound plastic jars or 10-pound plastic pails, used to flavor baked products, creams, fonds, and ice creams. Espresso Compound is composed of 58 percent water, 36 percent espresso coffee, 2 percent methylcellulose, and one percent each of citric acid and sodium benzoate. Blueberry compound consists of 68 percent "blueberry fruit preparation" (65 percent fructose, 30 percent blueberries, and 5 percent pectin, sodium benzoate, water and sugar), 28 percent glucose, 2 percent water, and one percent each of citric acid and artificial flavor.

The applicable subheading for the Espresso Compound will be 2101.12.9000, Harmonized Tariff Schedules of the United States, (HTS), which provides for extracts, essences and concentrates, of coffee, tea or mate and preparations with a basis of these products or with a basis of coffee, tea or mate...preparations with a basis of extracts, essences or concentrates or with a basis of coffee...other...other. The general rate of duty will be 9.5 percent ad valorem.

The applicable subheading for the Blueberry Compound will be 2106.90.9997, HTS, which provides for food preparations not elsewhere specified or included...other...other...containing sugar derived from sugar cane and/or sugar beets. The general rate of duty will be 8.8 percent ad valorem.

Your inquiry does not provide enough information for us to give a classification ruling on the Chocolate Compound and the Brandy and Champagne Compounds. Your request for a classification ruling for the Chocolate Compound should include the fat content of the cocoa powder. For the Brandy and Champagne Compounds, provide chemical names of the natural and artificial flavor components (eg. orange essential oil, etc.) and provide the percentage, by weight, of each component in the compound.

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 Stanley Hopard at 212-466-5760.

*Sincerely,*  
ROGER J. SILVESTRI  
*Director*  
*National Commodity*  
*Specialist Division*

ATTACHMENT C

NY D87491

February 16, 1999

CLA-2-21:RR:NC:2:228 D87491

CATEGORY: Classification

TARIFF NO.: 2106.90.9100; 2106.90.9500;  
2106.90.9700

MR. LUIGI LOIOLA  
FREDDE DELIZIE LTD.  
500 UNIVERSITY AVE. No. 511  
HONOLULU, HI 96826

RE: The tariff classification of ice cream flavorings from Italy

DEAR MR. LOIOLA:

In your letter dated January 25, 1999 you requested a tariff classification ruling.

The merchandise is described as ice cream flavorings, in fluid form, imported in 6-kilogram tins, for use in the manufacture of ice cream. Mint Paste flavoring is composed of 55 percent sugar, 42 percent glucose syrup, 2.5 percent flavor, and .5 percent color. Amarena Paste flavoring consists of 31 percent amarena, 30 percent each of sugar and glucose syrup, 3 percent citric acid, 2 percent each of tartaric acid and color, and one percent each of flavor and pectin. Cocco flavoring contains 33 percent sugar, 30 percent coconut, 17.6 percent water, 16 percent glucose syrup, and 3.4 percent flavor. Frutti di Bosco flavoring is made from 42 percent sugar, 28 percent glucose syrup, 24 percent wildberries, 3.4 percent flavor, one percent each of citric and tartaric acid, and less than one percent pectin.

The applicable subheading for Mint Paste flavoring will be 2106.90.9100, Harmonized Tariff Schedules of the United States (HTS), which provides for food preparations not elsewhere specified or included...other...blended syrups described in additional U.S. note 4 to chapter 17...other. The rate of duty will be 29.6 cents per kilogram, plus 8.8 percent ad valorem. In addition, products classified in subheading 2106.90.9100, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.17.66 to 9904.17.72, HTS.

The applicable subheading for the Amarena Paste, Cocco, and Frutti di Bosco flavorings, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 2106.90.9500, Harmonized Tariff Schedules of the United States (HTS), which provides for food preparations not elsewhere specified or included...other ...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The rate of duty will be 10 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the flavorings will be classified in subheading 2106.90.9700, HTS, and dutiable at the rate of 29.6 cents per kilogram plus 8.8 percent ad valorem. In addition, products classified in subheading 2106.90.9700, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.17.49 to 9904.17.56, HTS.

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

Your inquiry does not provide enough information for us to give a classification ruling on Melon Variegato flavoring. The ingredients breakdown for this product should indicate the Brix of the glucose syrup ingredient. In addition, please submit a sample of this article..

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 Stanley Hopard at 212-637-7065.

*Sincerely,*

ROBERT B. SWIERUPSKI  
*Director,*  
*National Commodity*  
*Specialist Division*

ATTACHMENT D

NY F87143

June 15, 2000

CLA-2-20:RR:NC:2:228 F87143

CATEGORY: Classification

TARIFF NO.: 2008.99.2000, 2008.99.9090,  
2106.90.9400

MR. CLAUDE SCHELLENBERGER  
MAX FELCHLIN AG  
MAIN STREET 63  
CH-6431 SCHWYZ/SWITZERLAND

RE: The tariff classification of toppings from Switzerland.

DEAR MR. SCHELLENBERGER:

In your letter dated May 10, 2000, you requested a tariff classification ruling.

Samples, ingredients breakdowns, and pictorial literature were submitted with your letter. The samples were examined and disposed of. TO12E Raspberry Topping, TO15E Kiwi Topping, and TO10E Strawberry Topping, are colored, viscous, fluid products, ready to use as toppings for plated desserts, ice cream, milk shakes, etc. The Raspberry Topping, contains 36 percent sugar, 30 percent raspberry pulp, 19.40 percent water, 12 percent glucose syrup, 2 percent thickener. The Kiwi Topping contains 35 percent kiwi pulp, 33 percent sugar, 16.51 percent water, 12 percent glucose syrup, 2.55 percent thickener. The Strawberry topping contains 47 percent sugar, 27.7 percent water, 23 percent strawberry pulp, and 1.4 percent thickener. The toppings also contain less than one percent each of acidulant, preservatives, colors and natural fruit flavor. The toppings will be sold to food service industry professionals in 1-kg bottles, 6 bottles to a carton.

The applicable subheading for the TO12E Raspberry Topping will be 2008.99.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for fruit, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included...other...other...berries...other. The rate of duty will be 4.5 percent ad valorem.

The applicable subheading for the TO15E Kiwi Topping, will be 2008.99.9090, HTS, which provides for fruit, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included...other...other...other...other. The rate of duty will be 6 percent ad valorem.

The applicable subheading for the TO10E Strawberry Topping, will be 2106.90.9400, HTS, which provides for food preparations not elsewhere specified or included...other...other...articles containing over 65 percent by dry weight of sugar described in additional U.S. note 2 to chapter 17...other. The rate of duty will be 28.8 cents per kilogram plus 8.5 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 Stanley Hopard at 212-637-7065.

*Sincerely,*  
ROBERT B. SWIERUPSKI  
*Director,*  
*National Commodity*  
*Specialist Division*



ATTACHMENT E

HQ H304024  
OT:RR:CTF:FTM H304024 PJG  
CATEGORY: Classification  
TARIFF NO.: 2008.97

CLAUDE SCHELLENBERGER  
MAX FELCHLIN AG  
MAIN STREET 63  
CH-6431 SCHWYZ/SWITZERLAND

RE: Modification of NY F89129, NY A80432, NY D87491 and NY F87143;  
tariff classification of toppings

DEAR MR. SCHELLENBERGER:

On July 19, 2000, U.S. Customs and Border Protection (“CBP”) issued to you New York Ruling Letter (“NY”) F89129. The ruling pertains to the tariff classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of four toppings, specifically, TO18E Forest Berries Topping, TO19E Guava Topping, TO14E Mango Topping, and TO17E Tropical Topping. We have since reviewed NY F89129 and determined it to be in error with respect to the classification of the TO17E Tropical Topping. For the reasons set forth below, we hereby modify NY F89129. It is now CBP’s position that TO17E Tropical Topping is classified in heading 2008, HTSUS.

Similarly, we have reviewed NY A80432, dated March 4, 1996, NY D87491, dated February 16, 1999, and NY F87143, dated June 15, 2000, and determined them to be in error with respect to the classification of the Blueberry Compound, Cocco and Frutti di Bosco flavorings, and the TO10E Strawberry Topping, respectively. All of these products were classified in heading 2106, HTSUS. For the reasons set forth below, NY A80432, NY D87491, and NY F87143 are modified with respect to the tariff classification of the products identified here. It is now CBP’s position that the Blueberry Compound, Cocco and Frutti di Bosco flavorings, and the TO10E Strawberry Topping are classified in heading 2008, HTSUS.

**FACTS:**

In NY F89129 the toppings were described as follows:

TO18E Forest Berries Topping, TO19E Guava Topping, TO14E Mango Topping, and TO17E Tropical Topping, are viscous, fluid products, ready to use as toppings for plated desserts, ice cream, milk shakes, etc. The TO18E Forest Berries Topping consists of 40 percent sugar, 14 percent raspberry pulp, 13 percent cherry pulp, 11.7 percent glucose syrup, 9 percent sorbitol, 8 percent blueberry pulp, and 5 percent elder juice. TO19E Guava Topping consists of 40 percent guava pulp, 37 percent sugar, 16 percent glucose syrup, and 5 percent sorbitol. TO14E Mango Topping consists of 45 percent sugar, 35 percent mango pulp, 11.30 percent glucose syrup, 5 percent sorbitol, 2.40 and water. TO17E Tropical Topping consisting of 37 percent sugar, 20 percent glucose syrup, 12 percent mango pulp, 12 percent passion fruit, and 8 percent lemon juice. The toppings also contain thickening agents, preservatives, colors, and natural fruit flavor. The toppings will be sold to food service industry professionals in 1-kg bottles, 6 bottles to a carton.

In NY F89129, CBP classified TO18E Forest Berries Topping, TO19E Guava Topping, and TO14E Mango Topping in heading 2008, HTSUS, which provides for “Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included.” Conversely, in NY F89129, CBP classified the TO17E Tropical Topping in heading 2106, HTSUS, which provides for “Food preparations not elsewhere specified or included.” It is now CBP’s position that the TO17E Tropical Topping is classified under heading 2008, HTSUS.

**ISSUE:**

Whether TO17E Tropical Topping is classifiable in heading 2008, HTSUS, which provides for “Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included,” or in heading 2106, HTSUS, which provides for “Food preparations not elsewhere specified or included.”

**LAW AND ANALYSIS:**

Classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) is determined 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 2019 HTSUS provisions under consideration are as follows:

**2008** Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included:

**2106** Food preparations not elsewhere specified or included:

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

General EN to Chapter 20 states, in relevant part, as follows:

This Chapter includes:

\* \* \*

(6) Vegetables, fruit, nuts and other edible parts of plants prepared or preserved by other processes not provided for in Chapter 7, 8 or 11 or elsewhere in the Nomenclature.

\* \* \*

EN to 20.08 states, in relevant part, as follows:

This heading covers fruit, nuts and other edible parts of plants, whether whole, in pieces or crushed, including mixtures thereof, prepared or preserved otherwise than by any of the processes specified in other Chapters or in the preceding headings of this Chapter.

It includes, *inter alia*:

\* \* \*

(3) Fruit (including fruit-peel and seeds) preserved in water, in syrup, in chemicals or in alcohol.

(4) Fruit pulp, sterilised, whether or not cooked.

\* \* \*

The products of this heading may be sweetened with synthetic sweetening agents (e.g., sorbitol) instead of sugar. Other substances (e.g., starch) may be added to the products of this heading, provided that they do not alter the essential character of fruit, nuts or other edible parts of plants.

The products of this heading are generally put up in cans, jars or airtight containers, or in casks, barrels or similar containers.

\* \* \*

EN to 21.06 states, in relevant part, as follows:

**Provided that they are not covered by any other heading of the Nomenclature**, this heading covers:

(A) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.), for human consumption.

(B) Preparations consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption. The heading includes preparations consisting of mixtures of chemicals (organic acids, calcium salts, etc.) with foodstuffs (flour, sugar, milk powder, etc.), for incorporation in food preparations either as ingredients or to improve some of their characteristics (appearance, keeping qualities, etc.) (see the General Explanatory Note to Chapter 38).

However, the heading **does not cover** enzymatic preparations containing foodstuffs (e.g., meat tenderisers consisting of a proteolytic enzyme with added dextrose or other foodstuffs). Such preparations fall in **heading 35.07 provided** that they are not covered by a more specific heading in the Nomenclature.

The heading includes, *inter alia*:

\* \* \*

(4) Pastes based on sugar, containing added fat in a relatively large proportion and, sometimes, milk or nuts, not suitable for transformation directly into sugar confectionery but used as fillings, etc., for chocolates, fancy biscuits, pies, cakes, etc.

\* \* \*

As heading 2106, HTSUS, provides for “[f]ood preparations not elsewhere specified or included,” the initial determination is whether the subject toppings are classifiable in another heading in the HTSUS. Consistent with the above-referenced ENs to 20.08, this heading covers fruit, whether whole, in pieces or crushed, including mixtures thereof, prepared or preserved in water, in syrup, in chemicals or in alcohol.

Similar to the other toppings classified in NY F89129 under heading 2008, HTSUS, TO17E Tropical Topping contains fruit pulp, sugar, and glucose syrup. Additionally, TO17E Tropical Topping contains passion fruit and lemon juice. In accordance with General EN to Chapter 20 and EN to 20.08, fruit that is prepared otherwise than by any of the processes specified in other Chapters or in the preceding headings of Chapter 20, are classifiable in heading 20.08. In this case, TO17E Tropical Topping is preserved in syrup. Moreover, neither the passion fruit nor the lemon juice preclude the classification of the TO17E Tropical Topping from heading 2008, HTSUS. There is no language in the legal notes, heading, or the ENs that precludes lemon juice as an ingredient of a product of heading 2008, HTSUS. Also, heading 2008, HTSUS, and EN 20.08 specifically allow for prepared fruit, so the passion fruit combined with the other ingredients does not preclude TO17E Tropical Topping from being classified in heading 2008, HTSUS. NY F89129 does not provide sufficient details concerning the processing of the ingredients into the toppings to preclude their classification in heading 2008, HTSUS.<sup>1</sup>

NY F89129 also does not provide sufficient details concerning whether TO17E Tropical Topping will be imported in airtight containers. Accordingly, if packed in airtight containers, the applicable subheading for TO17E Tropical Topping is 2008.97.10, HTSUS, which provides for “Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Other, including mixtures other than those of subheading 2008.19: Mixtures: In airtight containers and not containing apricots, citrus fruits, peaches or pears.” If imported not in airtight containers, then the applicable subheading for TO17E Tropical Topping is 2008.97.90, HTSUS, which provides for “Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Other, including mixtures other than those of subheading 2008.19: Mixtures: Other.”

In NY A80432, CBP classified a product called the Blueberry Compound and described as “viscous syrups and pastes, packed in 2.2-pound plastic jars or 10-pound plastic pails, used to flavor baked products, creams, fonds, and ice creams” in heading 2106, HTSUS. The Blueberry compound was described to “consist[] of 68 percent ‘blueberry fruit preparation’ (65 percent fructose, 30 percent blueberries, and 5 percent pectin, sodium benzoate, water and sugar), 28 percent glucose, 2 percent water, and one percent each of citric acid and artificial flavor.” Consistent with the analysis provided in this ruling, it is now CBP’s position that the Blueberry Compound is properly classified in heading 2008, HTSUS, and specifically in subheading 2008.99.18, HTSUS, which provides for “Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Other, including mixtures other than those of subheading 2008.19: Other: Berries: Blueberries.”

In NY D87491, CBP classified four products, one of which was called Cocco flavoring and another was called Frutti di Bosco flavoring. Both of these

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<sup>1</sup> Pursuant to correspondence from the National Commodity Specialist Division, the file for NY F89129 was destroyed in the World Trade Center tragedy on September 11, 2001.

products were described as “ice cream flavorings, in fluid form, imported in 6-kilogram tins, for use in the manufacture of ice cream.” The Cocco flavoring was said to contain 33 percent sugar, 30 percent coconut, 17.6 percent water, 16 percent glucose syrup, and 3.4 percent flavor. The Frutti di Bosco flavoring was stated to contain 42 percent sugar, 28 percent glucose syrup, 24 percent wildberries, 3.4 percent flavor, one percent each of citric and tartaric acid, and less than one percent pectin. CBP classified these products in heading 2106, HTSUS. Consistent with the analysis provided in this ruling, it is now CBP’s position that the Cocco and Frutti di Bosco flavorings are properly classified in heading 2008, HTSUS, and specifically, in subheading 2008.99.91, HTSUS, which provides for “Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Other, including mixtures other than those of subheading 2008.19: Other: Other: Other.”

In NY F87143, CBP classified three products, one of which was called the TO10E Strawberry Toppings and were described as “colored, viscous, fluid products, ready to use as toppings for plated desserts, ice cream, milk shakes, etc.” The TO10E Strawberry Toppings were stated to contain “47 percent sugar, 27.7 percent water, 23 percent strawberry pulp, and 1.4 percent thickener” and “less than one percent each of acidulant, preservatives, colors and natural fruit flavor.” The ruling further stated that “[t]he toppings will be sold to food service industry professionals in 1-kg bottles, 6 bottles to a carton.” CBP classified this product in heading 2106, HTSUS. Consistent with the analysis provided in this ruling, it is now CBP’s position that the TO10E Strawberry Toppings are properly classified in heading 2008, HTSUS, and specifically, in subheading 2008.80.00, HTSUS, which provides for “Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Strawberries.”

#### **HOLDING:**

Under the authority of GRIs 1 and 6, TO17E Tropical Topping, if imported in airtight containers, is classified in subheading 2008.97.10, HTSUS, which provides for “Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Other, including mixtures other than those of subheading 2008.19: Mixtures: In airtight containers and not containing apricots, citrus fruits, peaches or pears.” The 2019 column one, general rate of duty is 5.6 percent *ad valorem*.

If imported not in airtight containers, then the applicable subheading for TO17E Tropical Topping is 2008.97.90, HTSUS, which provides for “Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Other, including mixtures other than those of subheading 2008.19: Mixtures: Other.” The 2019 column one, general rate of duty is 14.9 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/](http://www.usitc.gov/tata/hts/).

**EFFECT ON OTHER RULINGS:**

NY F89129, dated July 19, 2000, is MODIFIED.

NY A80432, dated March 4, 1996, is MODIFIED only with respect to the classification of the Blueberry Compound.

NY D87491, dated February 16, 1999, is MODIFIED only with respect to the classification of the Cocco and Frutti di Bosco flavorings.

NY F87143, dated June 15, 2000, is MODIFIED only with respect to the classification of the TO10E Strawberry Topping.

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

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*



**PROPOSED REVOCATION OF A RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF THREE WOOD  
NESTING BOXES**

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

**ACTION:** Notice of proposed revocation of a ruling letter and revocation of treatment relating to the tariff classification of three wood nesting boxes.

**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 a ruling letter concerning tariff classification of three wood nesting boxes 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 January 25, 2020.

**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, 10<sup>th</sup> 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:** Karen S. Greene, Chemicals, Petroleum, Metals & Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325-0041.

**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 a ruling letter pertaining to the tariff classification of three wood nesting containers. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N248789, dated January 9, 2014 (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 ruling letter 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 N248789, CBP classified three wood nesting boxes in subheading 4202.12, HTSUS, which provides as follows: “Trunks, suitcases, vanity cases, attache 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: Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers: With outer surface of plastics or of textile materials: with outer surface of plastics.” CBP has reviewed NY N248789 and has determined the ruling letter to be in error.

It is now CBP’s position that the three wood nesting boxes described above are properly classified in heading 4420, specifically subheading 4420.90.65, HTSUS, which provides as follows: “Wood marquetry and inlaid wood; caskets and cases for jewelry or cutlery and similar articles, of wood; statuettes and other ornaments, of wood; wooden articles of furniture not falling within chapter 94: Other: Jewelry boxes, silverware chests, cigar and cigarette boxes, microscope cases, tool or utensil cases and similar boxes, cases and chests, all the foregoing of wood: Other: lined with textile fabrics.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N248789, and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ 284371, 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: December 6, 2019

ALLYSON R. MATTANAH  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments



ATTACHMENT A

N248789

January 9, 2014  
CLA-2-42:OT:RR:NC:N4:441  
CATEGORY: Classification  
TARIFF NO.: 4202.12.2020

TONJA DAVENPORT  
DOLLAR GENERAL CORPORATION  
100 MISSION RIDGE  
GOODLETTSVILLE, TN 37072

RE: The tariff classification of trunks from China

DEAR Ms. DAVENPORT:

In your letter dated December 10, 2013, you requested a tariff classification ruling. You have submitted samples, which are being returned to you.

Item 13610701 consists of three small hard-sided trunks. They are constructed with an outer surface of plastic sheeting material. They each feature a textile-lined interior storage compartment, a metal latch closure, and a top opening. They are durable and suitable for repetitive use.

The information you provided with your ruling request suggests that the articles are classified under subheading 4202.99.3000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for containers and cases, other, of materials (other than leather, composition leather, sheeting of plastic, textile materials, vulcanized fiber or paperboard) wholly or mainly covered with paper, of wood, lined with textile fabrics. However, your samples are not constructed with an outer surface of paper. The outer surface of each trunk is plastic sheeting material. Moreover, this subheading provides for "other" containers and cases of Heading 4202. Trunks are specifically provided for previously in the heading and will be classified therein.

The applicable subheading for the trunks will be 4202.12.2020, HTSUS, which provides for trunks, suitcases, vanity cases and similar containers, with outer surface of plastics, structured rigid on all sides. The rate of duty will be 20 percent ad valorem.

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

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

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

*Sincerely,*

GWENN KLEIN KIRSCHNER  
*Acting Director*  
*National Commodity Specialist Division*

## ATTACHMENT B

HQ H284371

OT:RR:CTF: CPMM H284371 KSG

CATEGORY: Classification

TARIFF NO.: 4420.90.65

TONYA DAVENPORT  
DOLLAR GENERAL CORPORATION  
100 MISSION RIDGE  
GOODLETTSVILLE TN 37072

RE: Revocation of NY N248789, dated January 9, 2014; tariff classification of three wood nesting boxes

DEAR Ms. DAVENPORT:

This letter is in reference to New York Ruling Letter (NY) N248789, dated January 9, 2014, regarding the classification of three wood nesting boxes in the Harmonized Tariff Schedule of the United States (HTSUS).

In NY N248789, U.S. Customs & Border Protection (CBP) classified the three wood nesting boxes in subheading 4202.12, HTSUS, which provides for “Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; Trunks, suitcases, vanity cases, attache cases, briefcases, school satchel and similar containers: With outer surface of plastics or textile materials: with outer surface of plastics.”

We have reviewed NY N248789 and determined that the ruling is in error. Accordingly, for the reasons set forth below, CBP is revoking NY N248789.

**FACTS:**

This ruling involves three decorative wood nesting boxes that are square-shaped, with the largest box measuring 8” x 8” x 8”, the middle box measuring 6.5” x 6.5” x 6.5” and the smallest box measuring 5” x 5” x 5”. The boxes are sized to fit inside each other. The boxes are made of medium density fiber (MDF) with plastic sheeting exteriors and black textile lining. The largest box is pink, the middle box is purple and the smallest box is teal. No marketing information was submitted by the importer. A sample was provided.

**ISSUE:**

Whether the three nesting boxes are classified in heading 4202, HTSUS, as trunks or as similar containers, or in heading 4420, HTSUS, as wood boxes.

**LAW AND ANALYSIS:**

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

GRI 6 provides that for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those

subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

The HTSUS subheadings under consideration are the following:

- |            |  |
|------------|--|
| 4202       | Trunks, suitcases, vanity cases, attache 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: |
| 4202.12    | Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers:<br><br>With outer surface of plastics or of textile materials:<br><br>With outer surface of plastics   |
| ***        |  |
| 4420       | Wood marquetry and inlaid wood; caskets and cases for jewelry or cutlery and similar articles, of wood; statuettes and other ornaments, of wood: wooden articles of furniture not falling within chapter 94:   |
| 4420.90    | Other:<br><br>Jewelry boxes, silverware chests, cigar and cigarette boxes, microscope cases, tool or utensil cases and similar boxes, cases and chests, all the foregoing of wood:<br><br>Other:   |
| 4420.90.45 | Not lined with textile fabrics.  |
| 4420.90.65 | Lined with textile fabrics   |

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, 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).

Chapter Note 1 (e), Chapter 44, HTSUS, provides that the chapter does not cover articles of heading 4202. The Chapter Notes have the same legal force as the text of the headings. *See Roche Vitamins, Inc. v. United States*, 772 F.3d 728 at 730 (Fed. Cir. 2014). The EN to heading 4202 states that “this heading covers only the articles specifically named therein and similar containers.” Therefore, the first question presented is whether the above described articles are classified in heading 4202, HTSUS.

The initial question in this case is whether the nesting boxes described above are considered “trunks” which is listed as the first exemplar in heading 4202, HTSUS. Neither the HTSUS nor the ENs define the term “trunk.”

When terms are not defined in the HTSUS or the ENs, they are construed in accordance with their common and commercial meanings, which are presumed to be the same. In determining the common meaning of a term in the tariff, courts may and do consult dictionaries, scientific authorities and other reliable sources of information. *Nippon Kogaku (USA), Inc. v. United States*, 673 F.2d 380 (C.C.P.A. 1982); *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375 (Fed. Cir. 1999.)

Heading 4202 is an *eo nomine* provision for trunks because it covers the article by name. Since we cannot determine the meaning of the word “trunk” based on the HTSUS or the ENs, we examine dictionary definitions of the word “trunk.”

The word “trunk” is defined as: “a large sturdy box or chest for holding or transporting clothes, personal effects, or other articles.” Trunk Definition, DICTIONARY.COM, <http://dictionary.reference.com/browse/trunk> (last visited Apr. 17, 2018). Based on the dictionary definition, trunks are containers designed to transport various items of clothing and personal effects; they are rugged containers designed for travel; they may have a lock to secure the items and they likely have compartments, trays or drawers to organize clothing and personal effects.

The three nesting boxes are not designed to transport various items of clothing and personal effects, do not have handles, compartments, trays or drawers, or a lock to provide security and are not rugged or durable to withstand the rigors of travel. The containers involved in this case are primarily decorative articles that might store a few items if not nested, but are not primarily utilitarian. Accordingly, we find that the nesting boxes described in this case are not “trunks.”

Further, the articles described above are not “similar containers” to the list of exemplars in heading 4202, HTSUS. The Court of International Trade held in *Totes, Inc. v. United States*, 865 F. Supp. 867 (Ct. Int’l Trade 1994), that containers that organized an automobile trunk were classified in heading 4202, HTSUS, as “similar containers” by application of *eiusdem generis* (which means of the same kind). The court noted that the individual exemplars are “disparate in their physical characteristics, purposes and uses ranging from such small containers as spectacle and cigarette cases, wallets, and tobacco pouches to such large containers as trunks and suitcases.” The court then concluded that the listed exemplars in heading 4202 possess four essential characteristics or common purposes that unite them: to organize, store, protect and carry various items. Since the automobile trunk organizers shared the four essential characteristics of the exemplars, the court concluded that they were properly classified in heading 4202, HTSUS.

In *Otter Products, LLC v. United States*, 70 F. Supp. 3d 1281 (Ct. Int’l Trade 2015), *aff’d* in 834 F.3d 1369 (Fed. Cir. 2016), Otterbox cellphone cases of the Commuter and Defender series (cellphone cases comprised of either a rigid outer plastic shell and a silicone mid-layer or a clear protective plastic membrane, a high-impact polycarbonate shell, a plastic belt clip holster and a durable outer silicone cover) were classified in subheading 3926.90.99, HTSUS and not in heading 4202, HTSUS. Of the four essential characteristics of “similar containers” in heading 4202, HTSUS, the court found that only one, “protecting” was clearly shared with the subject cases and the Otterbox products. Accordingly, the court concluded that the Otterbox products were not classified in heading 4202, HTSUS.

The following cases are distinguishable.<sup>1</sup> In accordance with *Otter Products*, the nesting boxes, which possess at most one or none of the characteristics of the containers classified in heading 4202 as “similar containers,” are not properly classified as “similar containers.” Accordingly, we find that the nesting boxes are not classified in heading 4202 as “similar containers.”

Since we have concluded that the nesting boxes are not classified in heading 4202, HTSUS, and the nesting boxes are made of wood (MDF), we look at heading 4420, HTSUS. The EN for heading 4420 states that “articles of this heading may be made of ordinary wood or particle board or similar board, fiberboard, laminated wood or densified wood.”<sup>2</sup>

Because the nesting boxes are made of wood<sup>3</sup>, we conclude that the nesting boxes are classified in heading 4420, HTSUS. Having determined that the subject merchandise is classified in heading 4420, HTSUS, we apply GRI 6 to determine the proper subheading classification.

Heading 4420, HTSUS, covers among other things, “cases for jewelry or cutlery and similar articles, of wood...” Subheading 4420.90 lists jewelry boxes, silverware chests, cigar and cigarette boxes, microscope cases, tool or utensil cases and similar boxes....The EN to heading 4420 states that the heading covers a wide variety of articles of wood...such as... small furnishing goods. The list of exemplars set forth above are all small wood boxes or containers designed to hold specific small objects (and, except for microscope cases, contain small household goods) that would be placed on a table, desk or other piece of furniture. The wooden nesting boxes are articles of wood that are small furnishing goods; they are of the size and design that they would be placed on furniture and used to contain small household objects.

In comparable cases, CBP has classified wooden nesting containers in subheading 4420.90, HTSUS. For instance, in NY R04221, dated June 27,

<sup>1</sup> In NY N234128, dated November 9, 2012, the container classified in heading 4202, HTSUS, had a removable plastic tray, a chrome carrying handle, a combination lock for security and a side keyhole. In NY N224635, dated July 9, 2012, the container, which was classified in heading 4202, HTSUS, had a handle and a latch closure. In NY N103895, dated May 7, 2010, the container had an interior compartment, a metal carrying handle and a metal latch that secures with a key. Unlike the containers that are the subject of the NY rulings cited above that are classified in heading 4202, the nesting boxes do not have a handle, lock, drawers or a tray; and are not durable. In this case, the nesting boxes are primarily decorative. Therefore, the nesting boxes are not useful for carrying and are of limited use for protecting. Because of their size, they are useful only for storage of small items, if not nested inside each other. If the boxes are nested inside each other, they possess none of the features of the exemplars as a primary characteristic.

<sup>2</sup> Consistent with chapter note 1(o), chapter 44, HTSUS, chapter 44 excludes articles of chapter 94. Therefore, we must next consider whether the articles fall within chapter 94, HTSUS. Chapter 94 provides, as follows: Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like; prefabricated buildings. Chapter Note 2 to chapter 94, HTSUS, states that the articles referred to in headings 9401 to 9403 are to be classified in those headings only if they are designed for placing on the floor or ground. Based on size, the nesting boxes in this case are not designed for placing on the floor or ground and therefore, are not classified in chapter 94.

<sup>3</sup> While the nesting boxes are covered in plastic sheeting, they remain a wooden article. See NY L82942, dated August 30, 2005. In NY L82942, dated August 30, 2005, CBP classified a round box measuring 18.5” in diameter and 22” high made of MDF covered on the inside and outside with faux plastic leather in subheading 4420.90.45, HTSUS. The lid has a decorative patchwork design and genuine leather trim. The MDF greatly exceeded the other materials in weight and value.

2006, in which CBP classified hand painted floral designed plywood nesting containers lined in velvet in subheading 4420.90.65, HTSUS (there were three (3) sizes: 17.3" L x 7.5" W x 8.7" H; 20.5" L x 10.2" W x 12.2" H; and 25.2" L x 13.4" W x 15.4" H).

In NY N032230, dated July 18, 2008, small unlined containers made of wood, with a PVC handle, an iron clasp closure, and with iron rivets were classified in subheading 4420.90.45, HTSUS. They measured 4" in length x 2 3/4" in width x 2 3/4" in height.

In NY R01495, dated March 3, 2005, CBP classified three sizes of decorative spruce wood and plywood containers placed on top of each other in subheading 4420.90.45, HTSUS. The rectangular-shaped containers have hinged lids, metal clasp closures and unlined interiors. The three sizes are: 17.25" x 9.5" x 7.75"; 22.5" x 12.5" x 11.5"; and 30.5" x 19.75" x 15".

Similarly, in NY R01546, dated March 3, 2005, CBP classified three sizes of hand painted floral nesting containers made of plywood with hinged lids and metal clasp closures lined with a "velvety paper" in subheading 4420.90.45, HTSUS.

In NY N238344, dated March 12, 2013, two wooden nesting containers made of MDF covered with a woven textile, trimmed with polyurethane strips and metal hardware, and lined with non-woven textile were classified by CBP in subheading 4420.90.80, HTSUS.

Lastly, in NY I89663, dated January 30, 2003, unlined nesting rectangular-shaped containers made of wood and covered on the outside with decorative leather straps were classified by CBP in subheading 4420.90.80, HTSUS.

Like the exemplars listed in subheading 4420.90, HTSUS, the goods in the instant case are small wood boxes or containers designed to hold small household goods that would be placed on a table, desk or other piece of furniture. Further, like the merchandise in NY L82942, where plastic sheeting covers the MDF and there is a metal clasp, the essential character of the good is determined by the MDF as it exceeds the weight of other components and contributes more to the storage role of the good.

Based on the above, we find that the three wooden nesting boxes are classified in subheading 4420.90, HTSUS. Since the three nesting boxes have a textile lining, they are classified in subheading 4420.90.65, HTSUS.

#### **HOLDING:**

Pursuant to GRIs 1 and 6, the three nesting boxes are classified in subheading 4420.90.65, HTSUS. The 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 for at [www.usitc.gov](http://www.usitc.gov).

#### **EFFECT ON OTHER RULINGS:**

NY N248789 is revoked in accordance with the above analysis.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

## 19 CFR PART 177

### REVOCATION OF THREE RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERAMIC GRINDING MEDIA

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

**ACTION:** Notice of revocation of three ruling letters, and of revocation of treatment relating to the tariff classification of ceramic grinding media.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking three ruling letters concerning tariff classification of ceramic grinding media under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 52, No. 40, on October 3, 2018. No comments were received in response to that notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 24, 2020.

**FOR FURTHER INFORMATION CONTACT:** Lindsay Heebner, Chemicals, Petroleum, Metals, and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–0266.

#### 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), a notice was published in the *Customs Bulletin*, Vol. 52, No. 40, on October 3, 2018, proposing to revoke three ruling letters pertaining to the tariff classification of ceramic grinding media. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In Headquarters Ruling Letter ("HQ") 962906, dated August 9, 2002; HQ 089007, dated July 22, 1991; and New York Ruling Letter ("NY") C88836 dated June 25, 1998, CBP classified ceramic grinding media in heading 6909, HTSUS, specifically in subheading 6909.11.20, HTSUS, which provides for "ceramic wares for laboratory, chemical or other technical uses, machinery parts, of porcelain or china." CBP has reviewed HQ 962906; HQ 089007; and NY C88836 and has determined the ruling letters to be in error. It is now CBP's position that ceramic grinding media is properly classified, in heading 6909, HTSUS, specifically in subheading 6909.19.50, HTSUS, which provides for "Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods: Ceramic wares for laboratory, chemical or other technical uses: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking HQ 962906; HQ 089007; and NY C88836 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H277991, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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



Dated: November 26, 2019

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

*Attachment*

HQ H277991

November 26, 2019

OT:RR:CTF:CPMM:LMH

CATEGORY: Classification

TARIFF NO.: 6909.19.5095

JOSEPH S. KAPLAN  
LAW OFFICES OF ROSS & HARDIES  
65 EAST 55TH STREET  
NEW YORK, NY 10022-3219

RE: Revocation of HQ 962906; HQ 089007; and NY C88836; Tariff classification of ceramic grinding media.

DEAR JOSEPH KAPLAN,

U.S. Customs and Border Protection (CBP) issued you Headquarters Ruling Letters (HQ) 962906, dated August 9, 2002; HQ 089007, dated July 22, 1991; and New York Ruling Letter (NY) C88836 dated June 25, 1998. Those rulings pertain to the tariff classification under the Harmonized Tariff Schedule of the United States, (HTSUS) of ceramic grinding media. We have since reviewed these rulings and find them to be in error, as set forth herein.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke HQ H262551 was published on October 3, 2018, in Volume 52, Number 40, of the Customs Bulletin. No comments were received in response to this Notice.

**FACTS:**

HQ 962906 states the following, in relevant part:

The subject articles are ceramic beads identified as ER 120B, that are used in grinding mills to grind marble to a one micron size. The protestant claims that the articles are of porcelain.

HQ 089007 states the following, in relevant part:

The product at issue is called ceramic minibeads. The importer's letter describes the minibeads as grinding media which are used in machinery that grind calcium carbonate in a water solution to produce a very fine particle size grade used in the production of paper.

NY C88836 states the following, in relevant part:

The subject merchandise consists of white ceramic minibeads of porcelain, referred to as the "torayceram beads," which will be utilized as an essential media in machines for grinding mills.

**ISSUE:**

Whether the ceramic grinding media is classified as porcelain of subheading 6909.11, HTSUS, or other ceramic of subheading 6909.19, HTSUS.

**LAW AND ANALYSIS:**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the

goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

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

6909	Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods: Ceramic wares for laboratory, chemical or other technical uses:
6909.11	Of porcelain or china:
6909.11.20	Machinery parts.
6909.19	Other:
6909.19.50	Other.

Note 5(a) to chapter 69 states:

5. For the purposes of headings 6909 through 6914:

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

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

The ENs to chapter 69, subchapter II state:

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

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

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

Biscuit porcelain is unglazed porcelain, of which parian-ware (sometimes called Carrara porcelain) is a special, fine-grained, yellowish type containing more feldspar, and often resembling Paros marble in appearance, hence its name.

Applying GRI 1 and analyzing the headings and related section and chapter notes, chapter 69 includes ceramic wares for other technical uses. On the subheading level, 6909.11 provides for ceramics of porcelain or china, and 6909.19 provides for other ceramics. At issue is whether the ceramic grinding media is porcelain or another ceramic product. Note 5(a) to chapter 69 describes porcelain or china as “ceramic ware (other than stoneware), whether or not glazed or decorated, having a fired white body (unless artificially colored) which will not absorb more than 0.5 percent of its weight of water and is translucent in thicknesses of several millimeters.” Similarly, the ENs to chapter 69, subchapter II state that “hard porcelain is made from a body composed of kaolin (or kaolinic clays), quartz, feldspar (or feldspathoids), and sometimes calcium carbonate. It is covered with a colourless transparent glaze fired at the same time as the body and thus fused together. Soft porcelain contains less alumina but more silica and fluxes (e.g., feldspar).” In the absence of an exact definition of a term in the HTSUS or ENs, the term’s correct meaning is its common and commercial meaning.<sup>1</sup> Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources.<sup>2</sup> In this case, several dictionary definitions of porcelain support the EN definition and specify that clay (feldspar) is an essential ingredient. For example, the Oxford English Dictionary defines porcelain as “a hard white shiny substance made by baking clay and used for making delicate cups, plates and decorative objects; objects that are made of this.”<sup>3</sup> The Cambridge English Dictionary defines porcelain as “a hard but delicate, shiny, white substance made by heating a special type of clay to a high temperature, used esp. to make cups, plates, and small, decorative objects.”<sup>4</sup> Merriam-Webster defines porcelain as “a hard, fine-grained, sonorous, nonporous, and usually translucent and white ceramic ware that consists essentially of kaolin, quartz, and a feldspathic rock and is fired at a high temperature.”<sup>5</sup>

The product at issue is composed of vitrified zirconium oxide and silicon oxide and does not contain clay materials. In addition, the product may not be white or translucent in accordance with Note 5(a) to chapter 69. As such, the “porcelain” subheading does not apply and the product is placed in the “other” subheading.

### **HOLDING:**

By application of GRI 1, the ceramic grinding media is classified in heading 6909, HTSUS. It is specifically provided for in subheading 6909.19.5095,

<sup>1</sup> See *Nippon Kogasku (USA), Inc. v. United States*, 673 F.2d 380 (1982)

<sup>2</sup> See *C.J. Tower & Sons v. United States*, 673 F.2d 1268 (1982)

<sup>3</sup> See <https://www.oxfordlearnersdictionaries.com/us/definition/english/porcelain> (last visited 3/23/2018).

<sup>4</sup> See <https://dictionary.cambridge.org/us/dictionary/english/porcelain> (last visited 3/23/2018).

<sup>5</sup> See [https://www.merriam-webster.com/dictionary/porcelain?utm\\_campaign=sd&utm\\_medium=serp&utm\\_source=jsonld](https://www.merriam-webster.com/dictionary/porcelain?utm_campaign=sd&utm_medium=serp&utm_source=jsonld) (last visited 3/23/2018)

Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for, “Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods: Ceramic wares for laboratory, chemical or other technical uses: Other.” The 2018 column one general rate of duty is 4% *ad valorem*. Under *San Francisco Newspaper Printing Co. v. United States*, 9 CIT 517, 620 F. Supp. 738 (1985), the liquidation of the entries covering the merchandise which was the subject of Protest 1601–99–100078 was final on both the protestant and CBP. Therefore, this ruling has no effect on those entries.

Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at [www.usitc.gov](http://www.usitc.gov).

#### **EFFECT ON OTHER RULINGS:**

HQ 962906, dated August 9, 2002; HQ 089007, dated July 22, 1991; and NY C88836 dated June 25, 1998, are hereby REVOKED.

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

*Sincerely,*

ALLYSON R. MATTANAH

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

CC:

District Director of Customs  
511 N.W. Broadway Federal Building, Room 198  
Portland, Oregon 97209

Mr. Robert O. Kechian  
NNR Aircargo Service (USA) Inc.  
Hook Creek Blvd. & 145<sup>th</sup> Ave. Unit C-1A  
Valley Stream, NY 11581

## **MODIFICATIONS TO THE SECTION 321 DATA PILOT**

**AGENCY:** U.S. Customs and Border Protection, DHS.

**ACTION:** General notice.

**SUMMARY:** On July 23, 2019, U.S. Customs and Border Protection (CBP) published a general notice in the **Federal Register** (84 FR 35405) announcing the Section 321 Data Pilot, a voluntary pilot in which participants agree to electronically transmit certain advance data elements related to *de minimis* value shipments potentially eligible for release under section 321 of the Tariff Act of 1930, as amended. The purpose of the pilot is to improve CBP’s ability to

effectively and efficiently identify and target high-risk shipments, including for narcotics, counter-proliferation, and health and safety risks, in the e-commerce environment. This notice announces that CBP is modifying the Section 321 Data Pilot to include shipments arriving by ocean and to include international mail shipments. This notice also modifies the provisions governing misconduct under the pilot and extends the duration of the pilot an additional twelve months (through August 2021).

**DATES:** The voluntary pilot began on August 22, 2019, and will run for a total of approximately 24 months, through August 2021. CBP will accept applications from prospective pilot participants at any time until CBP has identified a sufficient number of eligible participants. At this time, the pilot is limited to a maximum of nine participants.

**ADDRESSES:** Prospective pilot participants should submit an email to *e-commercesmallbusinessbranch@cbp.dhs.gov*. In the subject line of your email please indicate “Application for Section 321 Data Pilot.” For information on what to include in the email, see section II.D (Application Process and Acceptance) of the notice published in the **Federal Register** on July 23, 2019 (84 FR 35405).

**FOR FURTHER INFORMATION CONTACT:** Laurie Dempsey, Director, IPR & E-Commerce Division at *laurie.b.dempsey@cbp.dhs.gov* or 202-615-0514 and Daniel Randall, Branch Chief, Manifest & Conveyance Security at 202-344-3282.

## **SUPPLEMENTARY INFORMATION:**

### **I. Section 321 Data Pilot**

On July 23, 2019, CBP published a general notice in the **Federal Register** (84 FR 35405) (hereafter referred to as the July 2019 notice) announcing the voluntary Section 321 Data Pilot. Participants in the Section 321 Data Pilot agree to electronically transmit certain data elements related to *de minimis* value shipments potentially eligible for release under section 321 of the Tariff Act of 1930, as amended (“section 321 shipments”). Section 321 provides for an administrative exemption from duty and taxes for shipments of merchandise imported by one person on one day having an aggregate fair retail value in the country of shipment of an amount specified by the Secretary by regulation, but not less than \$800. The July 2019 notice provided a description of the Section 321 Data Pilot, the eligibility requirements, and the application process for participation.

The Section 321 Data Pilot is intended to improve CBP’s ability to effectively and efficiently assess the security risks of shipments potentially eligible for release under section 321 of the Tariff Act of

1930, as amended (19 U.S.C. 1321(a)(2)(C)). The Section 321 Data Pilot tests the feasibility of collecting data elements, beyond those currently required by regulations, and of collecting data from non-traditional entities, such as online marketplaces. The July 2019 notice stated that the pilot would initially be limited to 9 participants and invited participation from all stakeholders in the e-commerce environment, including carriers, brokers, freight forwarders, and online marketplaces. Pilot participants agree to electronically transmit certain advance data elements to CBP regarding section 321 shipments arriving by air, truck, or rail. CBP excluded from the scope of the pilot shipments arriving by ocean, mail shipments covered by 19 CFR part 145, and shipments destined for a Foreign Trade Zone. CBP uses the advance information transmitted through the pilot to identify and target high-risk shipments, including for narcotics, counterproliferation, and health and safety risks. The results of the Section 321 Data Pilot will help CBP determine whether additional mandatory advance reporting requirements are necessary in the e-commerce environment.

## **II. Modifications to the Section 321 Data Pilot**

This notice announces that CBP is modifying the Section 321 Data Pilot to include shipments arriving by ocean and international mail shipments. This document also modifies the provisions governing misconduct under the pilot and extends the duration of the pilot an additional twelve months.

### *A. Expansions of the Section 321 Data Pilot To Include Shipments Arriving by Ocean*

In the July 2019 notice, CBP stated that the pilot applied to section 321 shipments arriving in the United States by air, truck, or rail. CBP is now expanding the pilot to include shipments arriving by ocean.

As described in detail in the July 2019 notice, CBP receives certain advance electronic data for shipments arriving in the United States by ocean. For example, regulations promulgated pursuant to the Trade Act of 2002 (Pub. L. 107–210, 116 Stat. 933 (Aug. 6, 2002)) require ocean carriers to transmit for each shipment the shipper's name and address, the consignee name and address, a description of the cargo, including the cargo's quantity and weight, and information regarding the vessel's voyage, including carrier code, date of arrival, and point of origin. *See* 19 CFR 4.7a. Additionally, regulations promulgated pursuant to the Security and Accountability for Every Port Act of 2006 (Pub. L. 109–347, 120 Stat. 1884, October 13, 2006 (SAFE Port Act)) require importers and carriers to submit additional data

before the cargo is brought to the United States. *See* 19 CFR part 149 (Importer Security Filing or ISF regulations). The data required by the ISF regulations include name and address of the seller, buyer, and manufacturer or supplier, the consignee identifying number, the ship to party (the first deliver-to-party scheduled to receive goods after the goods have been released from custody), country of origin, Harmonized Tariff Schedule of the United States (HTSUS) number, container stuffing location, and the name and address of the consolidator. 19 CFR 149.3(a).

These existing regulatory requirements do not provide CBP with the information necessary to effectively and efficiently assess the security risks of section 321 shipments arriving by ocean. This is because they generally apply to carriers and importers, who may not possess all of the relevant information relating to an e-commerce shipment's supply chain. In addition, the required information does not always adequately identify the entity causing the shipment to cross the border, the final recipient, or the contents of the package. For instance, under the ISF regulations, an importer may list a domestic deconsolidator as the "ship to party". There is no specific requirement to identify the final recipient of the shipment in the United States. This hinders CBP's ability to effectively target or identify high-risk shipments and CBP officers must use additional time and resources to inspect section 321 shipments. Expansion of the Section 321 Data Pilot to include shipments arriving by ocean will enable CBP to more effectively target or identify high-risk shipments by requiring additional data elements related to such shipments.

Such expansion will also enable CBP to test the feasibility of collecting advance data from typically non-regulated entities utilizing ocean transportation. It will also enable CBP to collect data regarding additional relevant shipments. Based on the initial operation of the pilot, CBP has learned that many e-commerce entities utilize all modes of transportation and that excluding ocean shipments from the pilot would exclude a substantial number of relevant shipments of potential participants. By expanding the scope of the pilot to include all modes of shipment (air, rail, truck, and ocean), the results of the pilot will be more relevant to possible future regulatory effects, trade facilitation benefits, or other initiatives in the e-commerce environment as a whole. For these reasons, CBP is expanding the Section 321 Data Pilot to include shipments arriving in the United States by ocean.



### *B. Expansion of the Section 321 Data Pilot To Include International Mail Shipments*

The July 2019 notice stated that the Section 321 Data Pilot would not apply to mail shipments covered by 19 CFR part 145. Part 145 applies to mail importations that are subject to Customs examination. CBP has determined that excluding these mail shipments from the pilot decreases CBP's ability to develop strategies for section 321 shipments as a whole because it is common in the e-commerce environment for entities to use international mail to ship section 321 shipments. CBP has also learned through the initial operation of the pilot that excluding international mail shipments may impose an additional burden on pilot participants because they would need to separate data relating to mail shipments from data relating to other section 321 shipments.

Accordingly, CBP is expanding the pilot to include section 321 shipments covered by 19 CFR part 145.<sup>1</sup> (Shipments destined for a Foreign Trade Zone continue to be excluded from the scope of the pilot.)

### *C. New Misconduct Section*

The July 2019 notice included a section VI, entitled "Misconduct Under the Pilot", which described the penalties CBP may impose on pilot participants for misconduct and the applicable procedures. CBP is revising the section VI language to clarify that those pilot participants who are unable to provide data elements contemplated by this test will not be subject to civil or criminal penalties, administrative sanctions, or liquidated damages solely for such inability. However, the revised language clarifies that test participants who repeatedly provide false, inaccurate or misleading data will be subject, at CBP's discretion, to civil and criminal penalties, administrative sanctions, liquidated damages or removal from participation. Additionally, the revised language clarifies that CBP may immediately remove a participant from the pilot for the repeated failure to provide data or the repeated submission of false, inaccurate or misleading data. CBP is also replacing the phrase "discontinuance from participation" with "removal from participation" for clarity. The language below replaces in full the misconduct section in the July 2019 notice and reads as follows:

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<sup>1</sup> Under current regulations, there is no requirement to submit advance electronic data to CBP for mail shipments. However, section 8003 of the Synthetics Trafficking and Overdose Prevention Act of 2018 (Pub. L. 115-271, 123 Stat. 4073) (STOP Act of 2018), requires CBP to issue regulations requiring the U.S. Postal Service to transmit certain advance electronic data to CBP for international mail shipments. CBP is in the process of drafting those regulations.

## VI. Misconduct Under the Pilot

A pilot participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, or removal from participation in the Section 321 Data Pilot for any of the following:

- (1) Failure to follow the rules, terms, and conditions of this pilot;
- (2) Failure to exercise reasonable care in the execution of participant obligations; or
- (3) Failure to abide by applicable laws and regulations.

Test participants who are unable to provide data elements contemplated by this test will not be subject to civil and criminal penalties, administrative sanctions, or liquidated damages solely for such inability. Test participants who repeatedly provide false, inaccurate or misleading data will be subject, at CBP's discretion, to civil and criminal penalties, administrative sanctions, liquidated damages or removal from participation.

If the Director, Intellectual Property Rights and E-Commerce Division, Office of Trade, finds that there is a basis for removal of pilot participation privileges, the pilot participant will be provided a written notice proposing the removal with a description of the facts or conduct warranting the action. The pilot participant will be offered the opportunity to appeal the decision in writing within 10 calendar days of receipt of the written notice. The appeal of this determination must be submitted to the Executive Director, Trade Policy and Programs, Office of Trade, by emailing *e-commercesmallbusinessbranch@cbp.dhs.gov*.

The Executive Director, Trade Policy and Programs, Office of Trade, will issue a decision in writing on the proposed action within 30 working days after receiving a timely filed appeal from the pilot participant. If no timely appeal is received, the proposed notice becomes the final decision of the Agency as of the date that the appeal period expires. A proposed removal of a pilot participant's privileges will not take effect unless the appeal process under this paragraph has been concluded with a written decision adverse to the pilot participant.

In cases of willfulness, the repeated failure to provide data, the repeated submission of false, inaccurate or misleading data, or those in which public health, interest, or safety so requires, the Director, Intellectual Property Rights and E-Commerce Division, Office of Trade, may immediately remove the pilot participant's privileges upon written notice to the pilot participant. The notice will contain a description of the facts or conduct warranting the immediate action. The pilot participant will be offered the opportunity to appeal the decision within 10 calendar days of receipt of the written notice

providing for immediate removal from participation. The appeal of this determination must be submitted to the Executive Director, Trade Policy and Programs, Office of Trade, by emailing [ecommercesmallbusinessbranch@cbp.dhs.gov](mailto:ecommercesmallbusinessbranch@cbp.dhs.gov).

The immediate removal will remain in effect during the appeal period. The Executive Director, Trade Policy and Programs, Office of Trade, will issue a decision in writing on the removal within 15 working days after receiving a timely filed appeal from the pilot participant. If no timely appeal is received, the notice becomes the final decision of the Agency as of the date that the appeal period expires.

#### *D. Twelve Month Extension*

The Section 321 Data Pilot was originally intended to run for approximately one year. CBP is extending the pilot to run an additional twelve months, through August 2021. The additional time is necessary in order for pilot participants to modify their communication systems in order to execute the provisions of the pilot and for CBP to collect a sufficient amount of data from the participants.

Subject to the amendments herein, all other provisions of the July 2019 notice, except for section “VI. Misconduct Under the Pilot,” remain applicable to the Section 321 Data Pilot. CBP reiterates that it is not waiving any regulations for purposes of the pilot. All of the existing regulations, including the Trade Act of 2002 requirements and the ISF regulations described above, continue to apply to pilot participants.

Dated: December 4, 2019.

ROBERT E. PEREZ,  
*Deputy Commissioner,*  
*U.S. Customs and Border Protection.*

[Published in the Federal Register, December 9, 2019 (84 FR 67280)]

## **AGENCY INFORMATION COLLECTION ACTIVITIES:**

### **Prior Disclosure**

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

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

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information

collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

**DATES:** Comments are encouraged and must be submitted (no later than January 13, 2020) to be assured of consideration.

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

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email *CBP\_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (84 FR 53164) on October 4, 2019, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including

through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

### **Overview of This Information Collection**

**Title:** Prior Disclosure.

**OMB Number:** 1651–0074.

**Form Number:** N/A.

**Abstract:** The Prior Disclosure program establishes a method for a potential violator to disclose to CBP that they have committed an error or a violation with respect to the legal requirements of entering merchandise into the United States, such as underpaid tariffs or duties, or misclassified merchandise. The procedure for making a prior disclosure is set forth in 19 CFR 162.74 which requires that respondents submit information about the merchandise involved, a specification of the false statements or omissions, and what the true and accurate information should be. A valid prior disclosure will entitle the disclosing party to the reduced penalties pursuant to 19 U.S.C. 1592(c)(4).

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

**Type of Review:** Extension (without change).

**Affected Public:** Businesses.

**Estimated Number of Respondents:** 3,500.

**Estimated Number of Annual Responses:** 3,500.

**Estimated Time per Response:** 1 hour.

**Estimated Total Annual Burden Hours:** 3,500.

Dated: December 9, 2019.

SETH D. RENKEMA,  
*Branch Chief,*  
*Economic Impact Analysis Branch,*  
*U.S. Customs and Border Protection.*

**AGENCY INFORMATION COLLECTION ACTIVITIES:****Ship's Stores Declaration**

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

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

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than February 10, 2020) to be assured of consideration.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0018 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) Email. Submit comments to: *CBP\_PRA@cbp.dhs.gov*.

(2) Mail. Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229-1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email *CBP\_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at *https://www.cbp.gov/*.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions

from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

### **Overview of This Information Collection**

**Title:** Ship's Stores Declaration.

**OMB Number:** 1651-0018.

**Form Number:** CBP Form 1303.

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

**Type of Review:** Extension (without change).

**Affected Public:** Businesses.

**Abstract:** Ship's Stores Declaration, CBP Form 1303, is used by the carriers to declare articles to be retained on board the vessel, such as sea stores, ship's stores (*e.g.* alcohol and tobacco products), controlled narcotic drugs or bunker fuel in a format that can be readily audited and checked by CBP. This form collects information about the ship, the ports of arrival and departure, and the articles on the ship. CBP Form 1303 is provided for by 19 CFR 4.7, 4.7a, 4.81, 4.85 and 4.87 and is accessible at: <https://www.cbp.gov/newsroom/publications/forms?title=1303&=Apply>.

**Estimated Number of Respondents:** 8,000.

**Estimated Number of Responses per Respondent:** 13.

**Estimated Number of Total Annual Responses:** 104,000.

**Estimated Time per Response:** 15 minutes.

**Estimated Total Annual Burden Hours:** 26,000.

Dated: December 5, 2019.

SETH D. RENKEMA,  
*Branch Chief,*  
*Economic Impact Analysis Branch,*  
*U.S. Customs and Border Protection.*

[Published in the Federal Register, December 11, 2019 (84 FR 67749)]

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**AGENCY INFORMATION COLLECTION ACTIVITIES:**  
**Passenger List/Crew List**

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

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

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted no later than February 10, 2020 to be assured of consideration.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0103 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) Email. Submit comments to: *CBP\_PRA@cbp.dhs.gov*.

(2) Mail. Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229-1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email *CBP\_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center



at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

### Overview of This Information Collection

**Title:** Passenger List/Crew List.

**OMB Number:** 1651-0103.

**Form Number:** CBP Form I-418.

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

**Type of Review:** Extension (without change).

**Abstract:** CBP Form I-418 is prescribed by CBP, for use by masters, owners, or agents of vessels in complying with Sections 231 and 251 of the Immigration and Nationality Act (INA). This form is filled out upon arrival of any person by commercial vessel at any port within the United States from any place outside the United States. The master or commanding officer of the vessel is responsible for providing CBP officers at the port of arrival with lists or manifests of the persons on board such conveyances. CBP is in the process of amending its regulations to allow for the electronic submission of the data elements required on CBP Form I-418. This form is provided for in 8 CFR 251.1 and 251.3. A copy

of CBP Form I-418 can be found at <https://www.cbp.gov/newsroom/publications/forms?title=i-418&=Apply>.

**Affected Public:** Businesses.

**Estimated Number of Respondents:** 77,935.

**Estimated Number of Responses per Respondent:** 1.

**Estimated Time per Respondent:** 1 hour.

**Estimated Number of Total Annual Responses:** 77,935.

**Estimated Total Annual Hours:** 77,935.

Dated: December 5, 2019.

SETH D. RENKEMA,  
Branch Chief,  
Economic Impact Analysis Branch,  
U.S. Customs and Border Protection.

[Published in the Federal Register, December 11, 2019 (84 FR 67749)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:**

**Distribution of Continued Dumping and Subsidy Offset to  
Affected Domestic Producers**

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

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

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than February 10, 2020) to be assured of consideration.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0086 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) Email. Submit comments to: [CBP\\_PRA@cbp.dhs.gov](mailto:CBP_PRA@cbp.dhs.gov).

(2) Mail. Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade,

Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email [CBP\\_PRA@cbp.dhs.gov](mailto:CBP_PRA@cbp.dhs.gov). Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at <https://www.cbp.gov/>.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

### **Overview of This Information Collection**

**Title:** Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers.

**OMB Number:** 1651–0086.

**Form Number:** CBP Form 7401.

**Abstract:** This collection of information is used by CBP to make distributions of funds pursuant to the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA). 19 U.S.C. 1675c (repealed

by the Deficit Reduction Act of 2005, Public Law 109–171, 7601 (Feb. 8, 2006)). This Act prescribes the administrative procedures under which antidumping and countervailing duties assessed on imported products are distributed to affected domestic producers that petitioned for or supported the issuance of the order under which the duties were assessed. The amount of any distribution afforded to these domestic producers is based on certain qualifying expenditures that they incur after the issuance of the order or finding up to the effective date of the CDSOA's repeal, October 1, 2007. This distribution is known as the continued dumping and subsidy offset. The claims process for the CDSOA program is provided for in 19 CFR 159.61 and 159.63.

A notice is published in the **Federal Register** in June of each year in order to inform claimants that they can make claims under the CDSOA. In order to make a claim under the CDSOA, CBP Form 7401 may be used. This form is accessible at and can be submitted electronically through <https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=8776895>.

**Current Actions:** This submission is being made to extend the expiration date and to revise the burden hours as a result of updated estimates of the number of CDSOA claims prepared on an annual basis. There are no changes to the information collected.

**Type of Review:** Extension (with a change to the burden hours).

**Affected Public:** Businesses.

**Estimated Number of Respondents:** 1,200.

**Estimated Number of Responses per Respondent:** 2.

**Estimated Total Annual Responses:** 1,400.

**Estimated Time per Response:** 60 minutes.

**Estimated Total Annual Burden Hours:** 1,400.

Dated: December 5, 2019.

SETH D. RENKEMA,  
*Branch Chief,*  
*Economic Impact Analysis Branch,*  
*U.S. Customs and Border Protection.*

[Published in the Federal Register, December 11, 2019 (84 FR 67750)]

## AGENCY INFORMATION COLLECTION ACTIVITIES:

### Foreign Assembler's Declaration

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

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

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than February 10, 2020) to be assured of consideration.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0031 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) Email. Submit comments to: *CBP\_PRA@cbp.dhs.gov*.

(2) Mail. Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229-1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email *CBP\_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at *https://www.cbp.gov/*.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the meth-

odology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

### Overview of This Information Collection

**Title:** Foreign Assembler's Declaration (with Endorsement by Importer).

**OMB Number:** 1651-0031.

**Abstract:** In accordance with 19 CFR 10.24, a Foreign Assembler's Declaration must be made in connection with the entry of assembled articles under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS). This declaration includes information such as the quantity, value and description of the imported merchandise. The declaration is made by the person who performed the assembly operations abroad and it includes an endorsement by the importer. The Foreign Assembler's Declaration is used by CBP to determine whether the operations performed are within the purview of subheading 9802.00.80, HTSUS and therefore eligible for preferential tariff treatment.

19 CFR 10.24(d) require that the importer/assembler maintain records for 5 years from the date of the related entry and that they make these records readily available to CBP for audit, inspection, copying, and reproduction. Instructions for complying with this regulation are posted on the CBP.gov website at: <http://www.cbp.gov/trade/trade-community/outreach-programs/trade-agreements/nafta/repairs-alterations/subchpt-9802>.

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

**Type of Review:** Extension (without change).

**Affected Public:** Businesses.

*Foreign Assemblers Declaration (Reporting)*

**Estimated Number of Respondents:** 2,730.

**Estimated Number of Responses/ Recordkeeping per Respondent:** 128.

**Estimated Total Number of Responses:** 349,440.

**Estimated Time per Response/ Recordkeeping:** 50 minutes.

**Estimated Total Annual Burden Hours:** 291,083.

*Foreign Assemblers Declaration (Record Keeping)*

**Estimated Number of Respondents:** 2,730.

**Estimated Number of Responses/Recordkeeping per Respondent:** 128.

**Estimated Total Number of Responses:** 349,440.

**Estimated Time per Response/ Recordkeeping:** 5 minutes.

**Estimated Total Annual Burden Hours:** 29,004.

Dated: December 5, 2019.

SETH D. RENKEMA,  
*Branch Chief,*  
*Economic Impact Analysis Branch,*  
*U.S. Customs and Border Protection.*

[Published in the Federal Register, December 11, 2019 (84 FR 67751)]

## **AGENCY INFORMATION COLLECTION ACTIVITIES:**

### **Petroleum Refineries in Foreign Trade Sub-Zones**

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

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

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

**DATES:** Comments are encouraged and must be submitted (no later than January 13, 2020) to be assured of consideration.

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

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email [CBP\\_PRA@cbp.dhs.gov](mailto:CBP_PRA@cbp.dhs.gov). Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (84 FR 53163) on October 4, 2019, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

### **Overview of This Information Collection**

**Title:** Petroleum Refineries in Foreign Trade Sub-zones.

**OMB Number:** 1651-0063.

**Abstract:** The Foreign Trade Zones Act, 19 U.S.C. 81c(d) contains specific provisions for petroleum refinery sub-zones. It permits refiners and CBP to assess the relative value of such products at the end of the manufacturing period during which



these products were produced when the actual quantities of these products resulting from the refining process can be measured with certainty.

19 CFR 146.4(d) provides that the operator of the refinery sub-zone is required to retain all records relating to the above mentioned activities for five years after the merchandise is removed from the sub-zone. Further, the records shall be readily available for CBP review at the sub-zone.

Instructions on compliance with these record keeping provisions are available in the Foreign Trade Zone Manual which is accessible at: <http://www.cbp.gov/document/guides/foreign-trade-zones-manual>.

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

**Type of Review:** Extension (without change).

**Affected Public:** Businesses.

**Estimated Number of Respondents:** 81.

**Estimated Number of Total Annual Responses:** 81.

**Estimated Time per Response:** 1,000 hours.

**Estimated Total Annual Burden Hours:** 81,000.

Dated: December 9, 2019.

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