

# U.S. Customs and Border Protection



## 19 CFR PART 177

### **REVOCAION OF ONE RULING LETTER AND REVOCAION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF PISTON PIN BUSHINGS FROM INDIA**

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

**ACTION:** Notice of revocation of one ruling letter, and of revocation of treatment relating to the tariff classification of piston pin bushings from India.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning tariff classification of piston pin bushings from India 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. 51, No. 44, on November 1, 2017. 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**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 9, 2018.

**FOR FURTHER INFORMATION CONTACT:** Dwayne Rawlings, Electronics, Machinery, Automotive, and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0092.

#### **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. 51, No. 44, on November 1, 2017, proposing to revoke one ruling letter pertaining to the tariff classification of piston pin bushings from India. 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") 864550 dated July 2, 1991, CBP classified certain piston pin bushings from India in heading 8409, HTSUS, specifically in subheading 8409.99.91, HTSUS, which provides for "Parts suitable for use solely or principally with the engines of heading 8407 or 8408: Other: Other: Other: For vehicles of subheading 8701.20, or heading 8702, 8703 or 8704." CBP has reviewed NY 864550 and has determined the ruling letter to be in error. It is now CBP's position that the piston pin bushings are properly classified, by operation of GRI 1, in heading 8483, HTSUS, specifically in subheading 8483.30.80, HTSUS, which provides for "Transmission shafts (including camshafts and crankshafts) and cranks; bearing housings, housed bearings and plain shaft bearings ...: Bearing houses; plain shaft bearings: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY 864550 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H287802, 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 20, 2017

GREG CONNOR

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

*Attachment*

HQ H287802

December 20, 2017

CLA-2 OT:RR:CTF:TCM H287802 DSR

CATEGORY: Classification

TARIFF NO.: 8483.30.80

MR. STEVE HOROWITZ  
VICTOR HAHN CHB  
8816 SEPULVEDA BLVD., SUITE 107  
LOS ANGELES, CA 90045

RE: Revocation of NY 864550; tariff classification of piston pin bushings from India

DEAR MR. HOROWITZ:

In New York Ruling Letter (“NY”) 864550 (July 2, 1991), U.S. Customs and Border Protection (“CBP”) classified certain piston pin bushings from India in subheading 8409.99.91, Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for parts for use solely or principally with the engines of vehicles of subheading 8701.20, or heading 8702, 8703 or 8704. Since NY 864550 was issued, CBP has reviewed the ruling and determined that the classification provided for the piston pin bushings is incorrect and, therefore, the ruling must be revoked for the reasons set forth in this ruling.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed modification of NY 864550 was published on November 1, 2017, in the Customs Bulletin, Volume 51, No. 44. CBP received no comments in response to the notice.

**FACTS:**

The imported articles are described as piston pin bushings that are designed for installation in automotive diesel engines. A piston pin, also called a wrist pin, is the cylindrical or tubular metal piece that attaches the piston to the connecting rod. The bushing for the piston pin is a sleeve placed in a bore to serve as a bearing surface. The piston pin bushings are imported in a condition ready to be installed on the piston end of a connecting rod. No other fabrication or machining is needed.

**ISSUE:**

Whether the articles are classified under heading 8409, HTSUS, as parts suitable for use solely or principally with engines of headings 8407 or 8408, or as plain shaft bearings under heading 8483, 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. In addition, in interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and



bearing.” *Merriam Webster’s Third New International Dictionary*, p. 192 (2003) (cited in HQ H127797, dated November 29, 2011).

We recognize that the term “bushing” is an industry term and is used in many capacities to include a plain shaft bearing. In NY 864550, the subject piston pin bushing is placed into a bore to keep a piston pin in place by serving as a bearing surface. That function is akin to that of a plain shaft bearing provided for under heading 8483 in that the pin rotates against the inside of the bushing for anti-friction and anti-wear purposes.

Therefore, even though the subject article is used in the engine of a motor vehicle, application of Note 2(a) to Section XVI, HTSUS compels a finding that the articles of NY 864550 are instead properly classified in subheading 8483.30.80, which provides for other plain shaft bearings without a housing. See NY E82314, dated June 10, 1999 (in which a bushing used in a linear hydraulic cylinder for the purpose of aligning a sliding piston rod within a cylinder housing is classified as a plain shaft bearing of heading 8483, HTSUS); see also NY J85381, dated June 20, 2003.

**HOLDING:**

By application of GRI 1 (Note 2(a) to Section XVI) and GRI 6, the piston pin bushings of NY 864550 are classified in subheading 8483.30.80, which provides for other plain shaft bearings without a housing, dutiable at 4.5% *ad valorem*. Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

NY 864550, dated July 2, 1991, is revoked in accordance with this decision.

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

*Sincerely,*

GREG CONNOR

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**19 CFR PART 177****MODIFICATION OF ONE RULING LETTER AND  
REVOCAION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF CONCEALER AND BRONZER  
POWDERS**

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

**ACTION:** Notice of modification of one ruling letter and of revocation of treatment relating to the tariff classification of concealer and bronzer powders.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter concerning tariff classification of concealer and bronzer powders 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. 51, No. 48, on November 29, 2017. 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 July 9, 2018.

**FOR FURTHER INFORMATION CONTACT:** Albena Peters, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325–0321.

**SUPPLEMENTARY INFORMATION:****BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter,

classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 51, No. 48, on November 29, 2017, proposing to modify one ruling letter pertaining to the tariff classification of concealer and bronzer powders. 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") J86656, dated July 24, 2003, CBP classified concealer and bronzer powders in heading 3304, HTSUS, specifically in subheading 3304.99.50, HTSUS, which provides for "Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Other: Other: Other." CBP has reviewed NY J86656 and has determined the ruling letter to be in error. It is now CBP's position that the concealer and bronzer powders are properly classified, in heading 3304, HTSUS, specifically in subheading 3304.91.00, HTSUS, which provides for "Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Other: Powders, whether or not compressed."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY J86656 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H281812, 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: January 3, 2018

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

*Attachment*

HQ H281812

January 3, 2018

OT:RR:CTF:CPMM H281812 APP

CATEGORY: Classification

TARIFF NO.: 3304.91.00

MS. STACY BAUMAN  
AMERICAN SHIPPING COMPANY, INC.  
140 SYLVAN AVENUE  
ENGLEWOOD CLIFFS, NJ 07632

RE: Modification of NY J86656; Tariff classification of concealer and bronzer powders

DEAR MS. BAUMAN:

This is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York Ruling Letter (“NY”) J86656, dated July 24, 2003 (issued to Topline Products Company) regarding the classification, under the Harmonized Tariff Schedule of the United States (“HTSUS”), of concealer and bronzer powders. In NY J86656, CBP classified the concealer and bronzer powders under heading 3304, HTSUS, specifically under subheading 3304.99.50, HTSUS, which provides for “Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Other: Other: Other.” We have determined that this ruling is in error. Therefore, for the reasons set forth below we hereby modify NY J86656 with respect to the concealer and bronzer powders.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the *Customs Bulletin*, Volume 51, No. 48, on November 29, 2017, proposing to modify NY J86656 and to revoke any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

**FACTS:**

At issue are concealer and bronzer powders, which are applied to the skin to give it color or shine, or to cover spots, blemishes, and dark under-eye circles. The powders are poured into aluminum pans and pressure is applied to the pans compressing the powder. The aluminum pans are then placed and glued into plastic compacts, and packaged onto a folding carton or on a blister card.

**ISSUE:**

Whether the subject concealer and bronzer makeup preparations are classified in subheading 3304.91.00, HTSUS, as “Powders, whether or not compressed” or in subheading, 3304.99.50, HTSUS, as other makeup preparations.

**LAW AND ANALYSIS:**

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

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

3304	Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Other:
3304.91.00	Powders, whether or not compressed Other:
3304.99.50	Other

In interpreting the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) may be utilized. The ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN 33.04(A)(3) states that heading 3304 covers “Other beauty or make-up preparations and preparations for the care of the skin (other than medicaments), such as: **face powders (whether or not compressed)**, baby powders (including talcum powder, not mixed, not perfumed, put up for retail sale), other powders and grease paints.” (emphasis added).

There is no dispute that the subject concealer and bronzer powders are classified as other beauty or makeup preparations and preparations for the care of the skin (other than medicaments) in heading 3304, HTSUS. At issue is the proper subheading. As a result, GRI 6 applies.

In NY A85580, dated August 2, 1996, CBP classified pans containing powdered blush and face powder in subheading 3304.91.00, HTSUS. In NY E83797, dated July 2, 1999, CBP classified a metal pan containing three shades of pressed facial powder for use as a cosmetic foundation in subheading 3304.91.00, HTSUS. In NY N021535, dated January 31, 2008, CBP classified sunscreen face/body powder used as a natural sunscreen in subheading 3304.91.00, HTSUS. Just like the face powders in NY A85580, NY E83797 and NY N021535, the subject concealer and bronzer powders are preparations for the care of the skin applied to the skin to give it color or shine, or to cover spots, blemishes, and dark under-eye circles. Because the instant concealer and bronzer powders are *prima facie* classifiable in subheading 3304.91.00, HTSUS as powders, whether or not compressed, they are not classifiable in subheading 3304.99.50, HTSUS, the basket provision for other than powders.

**HOLDING:**

By application of GRIs 1 and 6, the subject concealer and bronzer powders are classified under heading 3304, HTSUS, specifically under subheading 3304.91.00, HTSUS, as “Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Other: Powders, whether or not compressed.” The 2017 column one, duty rate 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 at <https://hts.usitc.gov/current>.

**EFFECT ON OTHER RULINGS:**

NY J86656, dated July 24, 2003, is hereby MODIFIED with respect to the concealer and bronzer powders.

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

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**19 CFR PART 177****REVOCAION OF ONE RULING LETTER AND  
REVOCAION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF YTTRIA STABILIZED  
ZIRCONIUM OXIDE POWDER**

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

**ACTION:** Notice of revocation of one ruling letter and of revocation of treatment relating to the tariff classification of yttria stabilized zirconium oxide powder.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning tariff classification of yttria stabilized zirconium oxide powder 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. 51, No. 48, on November 29, 2017. 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 July 9, 2018.

**FOR FURTHER INFORMATION CONTACT:** Alben Peters, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325–0321.

**SUPPLEMENTARY INFORMATION:****BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter,

classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 51, No. 48, on November 29, 2017, proposing to revoke one ruling letter pertaining to the tariff classification of yttria stabilized zirconium oxide powder. 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") N251680, dated June 23, 2014, CBP classified yttria stabilized zirconium oxide powder in heading 3824, HTSUS, specifically in subheading 3824.90.92, HTSUS, which provides for "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other." CBP has reviewed NY N251680 and has determined the ruling letter to be in error. It is now CBP's position that yttria stabilized zirconium oxide powder is properly classified, in heading 3824, HTSUS, specifically in subheading 3824.99.39, HTSUS, which provides for "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Mixtures of two or more inorganic compounds: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N251680 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H282216, 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: January 3, 2018

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

*Attachment*

HQ H282216

January 3, 2018

OT:RR:CTF:CPMM H282216 APP

CATEGORY: Classification

TARIFF NO.: 3824.99.39

MR. CHRISTOPHER CONSTANTINE  
 OERLIKON METCO US, INC.  
 1101 PROSPECT AVENUE  
 WESTBURY, NY 11590

RE: Revocation of NY N251680; Tariff classification of Yttria Stabilized Zirconium Oxide Powder

DEAR MR. CONSTANTINE:

This is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York Ruling Letter (“NY”) N251680, dated June 23, 2014 (issued to Sulzer Metco (US), Inc.) regarding the classification, under the Harmonized Tariff Schedule of the United States (“HTSUS”), of yttria stabilized zirconium oxide powder. In NY N251680, CBP classified the product under heading 3824, HTSUS, specifically under subheading 3824.90.92, HTSUS (2014), which provides for “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other.”<sup>1</sup> We have determined that this ruling is in error. Therefore, for the reasons set forth below we hereby revoke NY N251680.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the *Customs Bulletin*, Volume 51, No. 48, on November 29, 2017, proposing to revoke NY N251680 and to revoke any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

**FACTS:**

The merchandise at issue in NY N251680 is yttria stabilized zirconium oxide powder used in high-temperature ceramic applications such as crucibles or furnace linings. The Material Safety Data Sheet supplied by the manufacturer states that the yttria stabilized zirconium oxide powder consists of zirconium dioxide (87–91%), Chemical Abstracts Service (“CAS”) No. 1314–23–4; yttrium oxide (7.5–13%), CAS No. 1314–36–9; and hafnium dioxide (0.1–1.8%), CAS No. 12055–23–1. All compounds in this mixture are inorganic.

The CBP Laboratories and Scientific Services (“LSSD”) New York Laboratory examined a sample of yttria stabilized zirconium oxide powder supplied by Sulzer Metco. LSSD Report No. NY20140528, dated May 7, 2014, states the following:

<sup>1</sup> The current subheading is 3824.99.92, HTSUS (2017), which provides for “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other: Other.”



Information from the importer indicates that the sample is a 7–8% yttria stabilized zirconium oxide powder. It is said to have trace amounts of alumina, silica, iron oxide, calcia and magnesia and minor amounts of hafnia. Note: A name ending in the letter A usually indicates the oxide of an element. For example, yttria is yttrium oxide.

Yttrium can be substituted for zirconium in the crystal structure of zirconium oxide. The percentage of yttrium can be varied over a continuous range. Yttrium is added so that the zirconium oxide remains in the cubic crystal form. Pure zirconium oxide would exist in a different crystal form and would have different properties. Yttrium does not usually occur in nature along with zirconium.

In our opinion, yttrium cannot be considered an impurity.

### ISSUE:

Whether the subject yttria stabilized zirconium oxide powder is classified in subheading 3824.99.39, HTSUS, as a mixture of two or more inorganic compounds or in subheading 3824.99.92, HTSUS, as an other chemical preparation.

### LAW AND ANALYSIS:

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

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

3824	Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other:
3824.99	Other: Other:
3824.99.39	Other: Mixture of two or more inorganic compounds: Other
3824.99.92	Other: Other: Other

There is no dispute that the yttria stabilized zirconium oxide powder is classified as an other chemical product in subheading 3824.99, HTSUS. At issue is the proper 8-digit tariff rate. As a result, GRI 6 applies.

Subheading 3824.99.39, HTSUS covers mixtures of two or more inorganic compounds. See NY N263876, dated April 22, 2015 (classifying two grades of

inorganic mixtures under subheading 3824.90.39, HTSUS (2015), which became subheading 3824.99.39 in 2017). Subheading 3824.99.92, HTSUS is a residual provision. See Headquarters Ruling Letter (“HQ”) H058796, dated December 7, 2009 (classifying a mixture of halogenated hydrocarbons in subheading 3824.90.92, HTSUS, which is now subheading 3824.99.92, HTSUS, because it could not be classified in the previous subheadings); NY N052735, dated February 26, 2009 (classifying a chemical mixture composed of organic and inorganic compounds and polymers in subheading 3824.90.92, HTSUS). “Classification of imported merchandise in a basket provision is appropriate only when there is no tariff category that covers the merchandise more specifically.” *Apex Universal, Inc. v. United States*, 22 CIT 465 (1998) (ceramic raised pavement markers were classified under the basket provision for “other ceramic articles” because they did not meet the terms of any of the more specific provisions in Chapter 69, HTSUS). Thus, we first need to determine whether the instant yttria stabilized zirconium oxide powder is specifically covered by subheading 3824.99.39, HTSUS.

The Material Safety Data Sheet supplied by the manufacturer reveals that the instant yttria stabilized zirconium oxide powder consists of zirconium dioxide (87–91%), yttrium oxide (7.5–13%), and hafnium dioxide (0.1–1.8%). According to the CBP LSSD report, the supplied sample was a 7–8% yttria stabilized zirconium oxide powder and contained trace amounts of alumina, silica, iron oxide, calcia and magnesia and minor amounts of hafnia. As in NY N263876, the instant product is a mixture of two or more inorganic compounds and is *prima facie* classifiable in subheading 3824.99.39, HTSUS. Unlike in HQ H058796 and NY N052735, the instant product does not contain any organic compounds or polymers. Because the subject yttria stabilized zirconium oxide powder is specifically covered by subheading 3824.99.39, HTSUS, it is not classifiable as other than mixtures of two or more inorganic compounds under the basket provision in subheading 3824.99.92, HTSUS.

#### **HOLDING:**

By application of GRIs 1 and 6, the subject yttria stabilized zirconium oxide powder is classified under heading 3824, HTSUS, specifically under subheading 3824.99.39, HTSUS, as “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Mixtures of two or more inorganic compounds: Other.” The 2017 column one, duty rate 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 at <https://hts.usitc.gov/current>.

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

NY N251680, dated June 23, 2014, 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*

**REVOCAION OF A RULING LETTER AND REVOCAION  
OF TREATMENT RELATING TO THE TARIFF  
CLASSIFICATION OF A FORK LIFT LOAD ROLLER**

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

**ACTION:** Notice of revocation of a ruling letter and revocation of treatment relating to the tariff classification of Fork Lift Load Roller.

**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 a ruling letter concerning tariff classification of a Fork Lift Load Roller 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. 51, No. 44, on November 1, 2017. 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 July 9, 2018.

**FOR FURTHER INFORMATION CONTACT:** Anthony L. Shurn, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0218.

**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. 51, No. 44, on November 1, 2017, proposing to revoke a ruling letter pertaining to the tariff classification of a Fork Lift Load Roller. 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 HQ 088457, CBP classified the Fork Lift Load Roller at issue in heading 8431, HTSUS, specifically in subheading 8431.20.00, HTSUS, which provides for "Parts suitable for use solely or principally with the machinery of headings 8425 to 8430: Of machinery of heading 8427..." CBP has reviewed HQ 088457, and has determined the ruling letter to be in error. It is now CBP's position that the Fork Lift Load Roller is properly classified, by operation of GRI 1, in heading 8482, HTSUS. Specifically, the Fork Lift Load Roller is properly classified under subheading 8482.10.50, HTSUS, which provides for "Ball or roller bearings, and parts thereof: Ball bearings: Other..."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking HQ 088457, and modifying or revoking any other ruling not specifically identified, to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H289349, 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 29, 2017

GREG CONNOR  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

*Attachment*

HQ H289349

December 29, 2017

CLA-2 OT:RR:CTF:TCM H289349 ALS

CATEGORY: Classification

TARIFF NO.: 8482.10.50

MR. MICHAEL V. CHANEY

A.W. FENTON COMPANY, INC.

1452 DONALDSON ROAD

ERLANGER, KENTUCKY 41018-1025

RE: Revocation of CBP Ruling HQ 088457 (January 31, 1991); Tariff classification of Fork Lift Load Rollers a/k/a Mast Guide Rollers

DEAR MR. CHANEY:

This letter is to inform you that we have reconsidered and revoked the above-referenced ruling. The ruling was in response to a request for such that you filed on behalf of Scott Bearings, Inc. The ruling and this reconsideration addresses the legal tariff classification of Fork Lift Load Rollers, also referred to as Mast Guide Rollers.

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 088457 was published on November 1, 2017, in Volume 51, Number 44 of the Customs Bulletin. No comments were received in response to this notice.

**FACTS:**

The Fork Lift Load Roller consists of an inner metal ring that is surrounded by round metal balls that are in turn surrounded by an outer metal ring. The complete Load Roller is shaped like a round disc with a hole in the center, somewhat resembling a donut. The metal balls are sealed within the inner and outer rings and are not visible when the Load Roller is completely assembled. The outer ring comes into direct contact with and engages the fork lift mast channels. As is noted in HQ 088457, “[t]he rollers are used as tires on which fork lift masts roll.”

**ISSUE:**

Is the Fork Lift Load Roller, as described above, properly classified under heading 8431, HTSUS, which provides for “Parts suitable for use solely or principally with the machinery of headings 8425 to 8430”, or heading 8482, HTSUS, which provides for “Ball or roller bearings, and parts thereof”?

**LAW AND ANALYSIS:**

Classification under the HTSUS is determined in accordance with the General Rules of Interpretation (“GRI”) and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation (“ARI”). GRI 1 provides that the classification of goods shall be “determined according to the terms of the headings and any relative section or chapter notes.” In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, GRIs 2 through 6 may be applied in order.

The following headings and subheadings of the HTSUS are under consideration in this case:

8431	Parts suitable for use solely or principally with the machinery of headings 8425 to 8430:
8431.20.00	Of machinery of heading 8427...
	* * *
8482	Ball or roller bearings, and parts thereof:
8482.10	Ball bearings:
8482.10.50	Other...
	* * * * *

Note 2(a) to Section XVI, HTSUS, under which headings 8431 and 8482 fall, provides the following:

2. Subject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:
  - (a) Parts which are goods included in any of the headings of chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;

Thus, in accordance with Note 2(a), if the subject merchandise is, as a part of a fork lift truck, included in heading 8482, then it is excluded from being classified under heading 8431 as a part of the fork lift assembly.

CBP stated the following in HQ 960291 (July 31, 1997):

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Relevant ENs at p.1433 [of the WCO Explanatory Notes] state that heading 84.82 covers all ball, roller or needle roller type bearings. We note the merchandise under protest is described as roller assemblies and thrust rollers, yet they were classified in liquidation as ball bearings. The ENs state the function of bearings of heading 84.82 is to reduce friction. They are generally fitted between the bearing housing and a shaft or axle and are designed to give radial support, thrust support, or both. Ball bearings include those with a steel outer ring locked with a brass inner ring in which are enclosed balls in single or double rows; restricted travel type, of steel, comprising a grooved cylinder, a ball cage, and housing; and, the free-traveling type, of steel, comprising a segment, a casing enclosing the bearing balls, and a guide rail with a groove of triangular section. We note that for bearings to perform their function of reducing friction, they must have flanges or other design features that permit them to attach to the machine with which they will be used.

Ball or roller bearings meeting this EN description which are identifiable parts of machines or other apparatus of Chapters 84 or 85 are provided for in heading 8482, under the authority of Section XVI, Note 2(a), HTSUS. Other parts suitable for use solely or principally with a

machine or apparatus of those chapters are classifiable with that machine or apparatus, under the authority of Section XVI, Note 2(b), HTSUS. It is apparent from the Customs Form 6445 that local Customs officials determined that the roller assemblies and thrust rollers under protest conform to the description in the ENs and are goods of heading 8482.

Upon reconsideration of HQ 088457, we find HQ 960291 to be wholly applicable to the subject Fork Lift Load Roller. Likewise, we conclude that, with the Fork Lift Load Roller of HQ 088457 being substantially similar to the articles of HQ 960291, HQ 088457 is therefore in error.

Given the foregoing, we conclude that the Fork Lift Load Roller is a roller bearing that is properly classified under heading 8482, HTSUS. Specifically, the Fork Lift Load Roller is properly classified under subheading 8482.10.50, HTSUS, which provides for “Ball or roller bearings, and parts thereof: Ball bearings: Other...”

**HOLDING:**

By application of GRI 1 and Note 2(a) to Section XVI, the Fork Lift Load Roller is a roller bearing that is properly classified under heading 8482, HTSUS. Specifically, the Fork Lift Load Roller is properly classified under subheading 8482.10.50, HTSUS, which provides for “Ball or roller bearings, and parts thereof: Ball bearings: Other...” The general column one rate of duty, for merchandise classified in this subheading is 9%.

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

**EFFECT ON OTHER RULINGS:**

CBP Ruling HQ 088457 (January 31, 1991) is 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,*

GREG CONNOR

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*



**PROPOSED REVOCATION OF ONE RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF MEDIA ROLLS ON PLASTIC  
REELS WITH CODE APERTURES DESIGNED FOR USE  
WITH SPECIFIC PRINTERS**

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

**ACTION:** Notice of proposed revocation of one ruling letter and revocation of treatment relating to the tariff classification of media rolls on plastic reels with code apertures designed for use with specific printers.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning tariff classification of media rolls on plastic reels with code apertures designed for use with specific printers 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 June 8, 2018.

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

**FOR FURTHER INFORMATION CONTACT:** Suzanne Kingsbury, Electronics, Machinery, Automotives and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0113.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an



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

Pursuant to 19 U.S.C. §1625(c)(1), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of media rolls on plastic reels with code apertures designed for use with specific printers. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) N246471, dated October 29, 2013, (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

Similarly, pursuant to section 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 N246471, CBP classified media rolls on plastic reels with code apertures designed for use with specific printers in headings 3919, 4811, and 4821, specifically in subheading 3919.10.20, HTSUS, which provides for self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls: in rolls of a width not exceeding 20 cm: other; subheading 3919.90.50, HTSUS, which provides for self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls: other: other; subheading 4811.41.21, HTSUS, which provides for paper, paperboard, cellulose wadding and webs of cellulose fibers, coated, impreg-

nated, covered, surface-colored, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in heading 4803, 4809 or 4810: gummed or adhesive paper and paperboard: self-adhesive: other, and; subheading 4821.90.20, HTSUS, which provides for paper and paperboard labels of all kinds, whether or not printed: other.” CBP has reviewed NY N246471 and has determined the ruling letter to be in error. It is now CBP’s position that the subject media rolls on plastic reels with code apertures designed for use with specific printers are properly classified, by operation of GRI 1, in heading 8443, HTSUS, specifically in subheading 8443.99.25, HTSUS, which provides for “printing machinery...other printers...: parts and accessories: other: parts and accessories of printers: other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N246471 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H251008, 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: January 18, 2018

GREG CONNOR  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

## ATTACHMENT A

N246471

October 29, 2013

CLA-2-39:OT:RR:NC:N4:421

CATEGORY: Classification

TARIFF NO.: 3919.10.2055; 3919.90.5060;  
4811.41.2100; 4821.90.2000

MS. SANDRA LISS FRIEDMAN  
BARNES, RICHARDSON & COLBURN, LLP  
475 PARK AVENUE SOUTH  
NEW YORK, NY 10016

RE: The tariff classification of pressure sensitive tape and labels from  
China

DEAR MS. FRIEDMAN:

In your letter dated September 16, 2013, on behalf of Brother International, Inc., you requested a tariff classification ruling.

Four samples were provided with your letter. DK-1207 consists of die-cut self-adhesive plastic CD/DVD labels. DK-1209 consists of die-cut small self-adhesive paper address labels. DK-2113 consists of self-adhesive continuous length plastic tape. DK-2205 consists of self-adhesive continuous length paper tape. The die-cut labels and the continuous length tapes are imported on reels or spools which are designed to be snapped into the appropriate label printers to create finished plastic or paper printed labels.

You suggest classification in subheading 8443.99.2550, Harmonized Tariff Schedule of the United States (HTSUS), as parts or accessories of printers. Tariff classification under the HTSUS is governed by the principles set forth in the General Rules of Interpretation and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation. The General Rules of Interpretation 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. General Rule of Interpretation 3(a) states, in part, that the heading which provides the most specific description shall be preferred to headings providing a more general description. Additional U.S. Rule of Interpretation 1(c) states that in the absence of special language or context which otherwise requires, a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for "parts" or "parts and accessories" shall not prevail over a specific provision for such part or accessory. Even if the spools of tape and labels are considered to be parts of the labeling devices, they are more specifically provided for in headings 3919, 4811 and 4821 of the HTSUS, and those specific provisions prevail.

The applicable subheading for the DK-1207 self-adhesive die-cut plastic labels will be 3919.90.5060, HTSUS, which provides for self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls: other, other. The rate of duty will be 5.8 percent ad valorem.

The applicable subheading for the DK-2113 self-adhesive continuous plastic tape will be 3919.10.2055, HTSUS, which provides for self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics...in rolls of a width not exceeding 20 cm: other: other. The rate of duty will be 5.8 percent ad valorem.

The applicable subheading for the DK-2205 self-adhesive continuous length paper tape will be 4811.41.2100, HTSUS, which provides for paper, paperboard, cellulose wadding and webs of cellulose fibers, coated, impregnated, covered, surface-colored, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in heading 4803, 4809 or 4810: gummed or adhesive paper and paperboard: self-adhesive: other: in strips or rolls. The rate of duty will be free.

The applicable subheading for the DK-1209 die-cut small self-adhesive paper address labels will be 4821.90.2000, HTSUS, which provides for paper and paperboard labels of all kinds, whether or not printed: other (than printed): pressure-sensitive. The rate of duty will be 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 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 Joan Mazzola at (646) 733-3023.

*Sincerely,*

GWENN KLEIN KIRSCHNER

*Acting Director*

*National Commodity Specialist Division*

## ATTACHMENT B

HQ H251008

CLA-2 OT:RR:CTF:EMAIN H251008 SKK

CATEGORY: Classification

TARIFF NO.: 8443.99.2550

SANDRA LISS FRIEDMAN  
BARNES RICHARDSON & COLBURN, LLP  
475 PARK AVENUE SOUTH  
NEW YORK, NY 10016

RE: Revocation of NY N246471 (10/29/13); 8443.99.25, HTSUS; media roll assemblies of pressure-sensitive tape and labels imported on reels with code apertures and designed solely for use with specific machine; GRI 1; Section XVI Note 2(b).

DEAR Ms. FRIEDMAN:

This letter is in response to your November 27, 2013, request for reconsideration of New York Ruling Letter (NY) N246471, issued to Brother International, Inc. on October 29, 2013, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of four types of media roll assemblies. In NY N246471, U.S. Customs and Border Protection (CBP) classified the subject articles as follows:

- Item DK-2113 (self-adhesive continuous plastic tape on a plastic reel with code apertures), under subheading 3919.10.20, HTSUS, which provides for self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics...in rolls of a width not exceeding 20 cm: other.
- Item DK-1207 (self-adhesive die-cut plastic labels on a plastic reel with code apertures), under subheading 3919.90.50, HTSUS, which provides for self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls: other: other.
- Item DK-2205 (self-adhesive continuous length paper tape on a plastic reel with code apertures), under subheading 4811.41.21, HTSUS, which provides for paper, paperboard, cellulose wadding and webs of cellulose fibers, coated, impregnated, covered, surface-colored, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in heading 4803, 4809 or 4810: gummed or adhesive paper and paperboard: self-adhesive: other.
- Item DK-1209 (die-cut small self-adhesive paper address labels on a plastic reel with code apertures), under subheading 4821.90.20, HTSUS, which provides for paper and paperboard labels of all kinds, whether or not printed:

Upon reconsideration, we have determined NY 246471 to be in error. Pursuant to the analysis set forth below, CBP is revoking NY N246471.

**FACTS:**

In NY N246471 the subject merchandise was described as follows:

- DK-1207 consists of die-cut self-adhesive plastic CD/DVD labels on a plastic reel with code apertures.
- DK-1209 consists of die-cut small self-adhesive paper address labels on a plastic reel with code apertures.

- DK-2113 consists of self-adhesive continuous length plastic tape on a plastic reel with code apertures.
- DK-2205 consists of self-adhesive continuous length paper tape on a plastic reel with code apertures.

The self-adhesive labels and the continuous length tapes are imported on plastic reels which are designed for use with Brother QL Series Label Printers. Each QL printer is intended to work with specific DK media rolls. The label printers are PC or Mac connectable thermal transfer printers which can print up to 50 labels per minute. Two of the DK media rolls, DK-1209 and DK-1207, consist of die-cut labels which are fed through the appropriate QL printer model to create printed labels. As these are pre-cut, the finished label is peeled off the backing material. DK media rolls DK-2205 and DK 2113 both contain continuous length tape that can be programmed through the QL printer to be cut to specific lengths. In order to load the QL printer with the DK media roll, the user must snap the DK media roll into a compatible QL printer in the center of the carriage. Each model is wound onto a plastic reel or holder that incorporates a unique combination of blocked and open holes in its code aperture. The code aperture allows the printer to distinguish which particular DK media roll is in the printer. A blocked hole will activate the associated switch in the media center switch assembly. When the DK media roll is snapped into the machine, certain switches are engaged while others are not. Switches that touch an area where there is no open hole will be engaged. The holes vary in size as between the different DK tapes as the QL printers have various size media sensor assemblies. When the DK media roll is inserted and the switches are engaged, the media sensor switch assembly sends a code to the printer which is checked by the printer's software. This lets the printer know which model DK media roll is in the machine to inform the print area for the specific DK tape which has been inserted. If an incompatible DK tape is inserted in the printer, the computer monitor displays an error message.

#### **ISSUE:**

Whether the subject merchandise is classified under: heading 8443, HTSUS, as parts and accessories of printers; heading 3919, HTSUS, as self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics; heading 4811, HTSUS, as paper, paperboard, cellulose wadding and webs of cellulose fibers, coated, impregnated, covered, surface-colored, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in heading 4803, 4809 or 4810, or; heading 4821, HTSUS, as paper and paperboard labels of all kinds, whether or not printed.

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

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

The HTSUS provisions under consideration are as follows:

- 3919 Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls:
- 4811 Paper, paperboard, cellulose wadding and webs of cellulose fibers, coated, impregnated, covered, surface-colored, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in heading 4803, 4809 or 4810:
- 4821 Paper and paperboard labels of all kinds, whether or not printed:
- 8443 Printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof:

Additional U.S. Rule of Interpretation 1(c) provides:

1. In the absence of special language or context which otherwise requires...

\* \* \*

(c) A provision for parts of an article covers products solely or principally used as a part of such articles but a provision for 'parts' or 'parts and accessories' shall not prevail over a specific provision for such part or accessory; ...

\* \* \*

The General Notes to Section XVI provide, in pertinent part:

1. This Section does not cover:

\* \* \*

(c) Bobbins, spools, cops, cones, cores, reels or similar supports, of any material (for example, Chapter 39, 40, 44 or 48 or Section XV);

\* \* \*

2. Subject to Note 1 to this Section, Note 1 to Chapter 84 and Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 84.84, 85.44, 85.45, 85.46 or 85.47) are to be classified according to the following rules:

\* \* \*

(b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 84.79 or 85.43) are to be classified with the machines of that kind or in heading 84.09, 84.31, 84.48, 84.66, 84.73, 85.03, 85.22, 85.29 or 85.38 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 85.17 and 85.25 to 85.28 are to be classified in heading 85.17.

\* \* \*

\* \* \* \* \*

As Additional U.S. Rule of Interpretation 1(c) provides that a provision for parts shall not prevail over a specific provision for such a part, our initial analysis is whether the subject merchandise is specifically described in a provision in Chapter 39 or Chapter 48 of the tariff schedule before we examine whether classification as "part" in Chapter 84 is proper.

Heading 3919, HTSUS, an *eo nomine* tariff provision, provides for "[S]elf-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls." *Eo nomine* provisions are those that describe articles by specific names and not by use. Absent limiting language or contrary



legislative intent, *eo nomine* provisions cover all forms of the named article. *Nidec Corporation v. United States*, 68 F.3d 1333, 1336 (Fed. Cir. 1995). See *Lon-Ron Mft. Co. v. United States*, 334 F.3d 1304, 1309 (Fed. Cir. 2003). Further to the issue of *eo nomine* classification, it is well-established legal precedent that “[W]here an article is in character or function something other than as described by a specific statutory provision – either more limited or more diversified – and the difference is significant, it cannot find classification within such provision. It is said to be more than the article described in the statute.” *Robert Bosch Corp. v. United States*, 63 Cust. Ct. 96 (Cust. Ct. 2d Div. 1969), citing *Cragston Corporation v. United States*, 51 CCPA 27, C.A.D. 831 (1963); *United States v. The A.W. Fenton Company, Inc.*, 49 CCPA 45, C.A.D. 794 (1962).

In applying the principles of *eo nomine* classification to the subject media roll assemblies, referenced Items DK-1207 and DK-2113, we find them to be significantly more differentiated in function than the named exemplars listed in heading 3919, HTSUS. In this regard, we note that Items DK-1207 and DK-2113 are media rolls imported on plastic reels that feature code apertures. As noted *supra*, the code apertures allow the printer to distinguish which particular DK media roll is in the printer and to selectively activate the associated switch in the printer’s media center switch assembly. The reels are specifically designed to engage mechanically with a specific Brother QL Series Label Printer (*i.e.*, the printer cannot function without the subject media roll assemblies) and are integral to the printer’s intended function of producing finished labels. This technical feature serves to change the identity of the articles and renders them significantly differentiated in function from the exemplars listed in heading 3919, HTSUS (*i.e.*, self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls). Moreover, the subject media roll assemblies are not commercially interchangeable with the plastic articles described in heading 3919, HTSUS, and, as noted above, can only be used with specific Brother QL printers. For these reasons, Items DK-1207 and DK-2113 are not *prima facie* classifiable in heading 3919, HTSUS. See *CamelBak Prods., LLC v. United States*, 649 F.3d 1361 (Fed. Cir. 2011) in which the court examined whether certain specifications may be considered “merely an improvement” or whether they serve to change the identity of the article described by the statute. See also *Casio, Inc. v. United States*, 73 F.3d 1095 (Fed. Cir. 1996), where the court noted that “[T]he criterion is whether the item possess[es] features substantially in excess of those within the common meaning of the term.”

Similarly, pursuant to the above analysis, the subject merchandise identified as Items DK-2205 and DK-1209 are also not *prima facie* classifiable as rolls or labels of paper. Heading 4811, HTSUS, provides for, “[P]aper, paperboard, cellulose wadding and webs of cellulose fibers, coated, impregnated, covered, surface-colored, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in heading 4803, 4809 or 4810.” Heading 4821, HTSUS, provides for “[P]aper and paperboard labels of all kinds, whether or not printed.” While Items DK-2205 and DK-1209 are, respectively, self-adhesive continuous length paper tape and die-cut self-adhesive paper address labels, they are both imported on plastic reels that feature code apertures specifically designed to engage mechanically with a specific printer. As noted above, the code aperture reels render Items DK-2205 and DK-1209 significantly more differentiated in function than mere paper rolls or labels. Therefore, Items DK-2205



and DK-1209 are not *prima facie* classifiable in headings 4811 or 4821, HTSUS.

We now consider classification of the subject articles within Section XVI, HTSUS, specifically in heading 8443, HTSUS, which provides for, in pertinent part, parts of other printers.

As an initial matter, we note that classification in Section XVI is not precluded by Note 1(c) in that the subject articles are not classifiable as “[B]obbins, spools, cops, cones, cores, reels or similar supports, of any material (for example, Chapter 39, 40, 44 or 48 or Section XV).” The subject articles are not mere reels used to support media; rather, they are designed with apertures that provide a necessary code to a printing device to render it functional.

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

In the instant case, the subject media rolls imported on plastic reels with code apertures meet the definition of “parts” as defined by the courts because they are integral to, and dedicated solely for use with, the Brother QL Series Label Printer without which the printer machines could not function. Because the subject merchandise does not fall under the scope of a single heading of Section XVI as goods unto themselves, per Note 2(a) to Section XVI, *supra*, the subject merchandise is properly classified under heading 8443, HTSUS, as parts of printers by operation of Note 2(b) to Section XVI. Specifically, the subject media rolls imported on plastic reels with code apertures are classifiable under subheading 8443.99.25, HTSUS, which provides for other parts and accessories of printers. Because the section note provides that goods classifiable as parts of printing machines are to be classified as such, CBP need not perform a relative specificity analysis under GRI 3(a).

Classification of the subject media roll assemblies as parts and accessories of printers is consistent with the holding in *Mita Copystar America v. United States*, 160 F.3d 710; 1998 U.S. App. Lexis 28195; 20 Int’l Trade Rep. (BNA) 1707 (CAFC 1998), in which the court classified toner cartridges that were shaped to fit into specific electrostatic photocopiers under heading 8443, HTSUS. The merchandise at issue in *Mita Copystar* is similar to the subject merchandise in that the media roll assemblies are specially designed for specific printing devices so as to warrant classification as a part of those machines. See also *Brother International Corp. v. United States*, 26 C.I.T. 867; 248 F.Supp. 2d 1224; 24 Int’l Trade Rep (BNA) 1817; 2002 Ct. Intl. Trade

Lexis 74; Slip Op. 2002–80 (2002), in which the court considered the classification of a printing cartridge used in a multifunction center (MFC) and facsimile machine. The court determined that the printing cartridge was *prima facie* classifiable as part of the MFC and facsimile machines as the machines could not function in their intended capacity without the printing cartridge.

We further note that the subject merchandise at issue is distinguishable from the nylon filament spool cartridge at issue in NY N266336, dated July 23, 2015, which was classified in subheading 3916.90.30, HTSUS, as “[M]ono-filament of which any cross-sectional dimension exceeds 1 mm, rods, sticks and profile shapes, whether or not surface-worked but not otherwise worked, of plastics: of other plastics: other: other.” The nylon filament spool cartridge at issue in NY N266336 measures 8 inches by 2 inches in width, and is designed to be placed in a 3D printer (where the nylon filament will be liquefied and extruded onto a glass bed within the printer). The spool cartridge functions only to hold the nylon filament as it is inserted in the printer. In this regard, the spool cartridge at issue in NY N266336 differs significantly in function from the media roll assemblies at issue in this reconsideration in that the subject merchandise is designed with code apertures that allow the printer to distinguish which media roll is in the printer and to selectively activate the associated switch in the printer’s media center switch assembly. As opposed to being a mere conveyance for the continuous tape or labels to be inserted in a printer, the subject media rolls on plastic reels with code apertures are necessary for the printer to perform its intended function of producing labels.

#### **HOLDING:**

By application of GRI 1, the media rolls imported on plastic reels with code apertures at issue in NY N246471 (referenced Items DK-1207, DK-2113, DK-2205 and DK-1209) are classified in subheading 8443.99.25, HTSUS, which provides for printing machinery...other printers... parts and accessories: other: parts and accessories of printers: other. The 2018 applicable column one general rate of duty 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](http://www.usitc.gov).

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

NY N246471, dated October 29, 2013, is hereby REVOKED pursuant to the above analyses.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**19 CFR PART 177****REVOCAION OF ONE RULING LETTER AND  
REVOCAION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF GLASS SLEEVES  
FOR DIODES**

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

**ACTION:** Notice of revocation of one ruling letter and revocation of treatment relating to the tariff classification of glass sleeves for diodes.

**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 Headquarters Ruling Letter (HQ) 087044, dated May 21, 1990, concerning the tariff classification of glass sleeves for diodes 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. 51, No. 48, on November 29, 2017. 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 July 9, 2018.

**FOR FURTHER INFORMATION CONTACT:** Claudia Garver, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325–0024.

**SUPPLEMENTARY INFORMATION:****BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the

importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. §1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 51, No. 48, on November 29, 2017, proposing to revoke one ruling letter pertaining to the tariff classification of glass sleeves for diodes. 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 HQ 087044, CBP classified glass "sleeves" for diodes in heading 7011, HTSUS, specifically in subheading 7011.90.00, HTSUS, which provides for "Glass envelopes (including bulbs and tubes), open, and glass parts thereof, without fittings, for electric lamps, cathode-ray tubes or the like: Other." CBP has reviewed HQ 087044 and has determined the ruling letter to be in error. It is now CBP's position that the subject glass sleeves for diodes are properly classified, by operation of GRI 1, in heading 7002, HTSUS, specifically in subheading 7002.39.00, HTSUS, which provides for "Glass in balls (other than microspheres) of Heading 7018; rods or tubes, unworked: Tubes: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking HQ 087044 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H253027, 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: January 18, 2018

ALLYSON MATTANAH  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

*Attachment*

HQ H253027

January 18, 2018

CLA-2 OT:RR:CTF:CPM H253027 CkG

CATEGORY: Classification

TARIFF NO: 7002.39.00

JAMES PURCELL

INTERNATIONAL TRADE COMPLIANCE MANAGER, CORPORATE OFFICE

EMPOWERED OFFICIAL

SCHOTT NORTH AMERICA, INC.

400 YORK AVENUE,

DURYEA PA, 18642

RE: Revocation of HQ 087044; classification of glass sleeves for diodes

DEAR MR. PURCELL:

This letter is in regards to Headquarters Ruling Letter (HQ) 087044, which was issued to Schott Electronics, Inc., on May 21, 1990. In HQ 087044, CBP classified glass sleeves for diodes in heading 7011 of the Harmonized Tariff Schedule of the United States (HTSUS), as glass envelopes for electric lamps, cathode-ray tubes and the like. For the reasons set forth below, we have determined that the classification of the glass sleeve enclosures for diodes in heading 7011, HTSUS, was incorrect; it is now our position that they are classified in heading 7002, HTSUS.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke HQ 087044 was published on November 29, 2017, in Volume 51, Number 48 of the Customs Bulletin. No comments were received in response to that notice.

**FACTS:**

In HQ 087044, CBP described the subject articles as follows:

The articles in questions are glass sleeves used as housings for diodes. The glass sleeves are imported from West Germany by Schott Electronics.

The dimensions of the sleeves will vary depending upon the type of diode to be housed. You state that O.D.'s run between .200" down to .060". I.D.'s run from .130" down to .033", with lengths running from .200" down to .060". You also state that the material used would be Schott's numbers 8541<sup>1</sup> or 8532 glass.

You assert that Schott's customers will insert loose diode assemblies into the sleeves. The sleeves are then heated until they partially melt and fuse around the loose diode assemblies. The pieces are then cooled to room temperature. The glass sleeve provides each diode with structural strength and electrical integrity.

The product specifications for Schott type 8531 and 8532 glass state that both types are soft, sodium-free glass with a high lead content. The coefficient of mean linear thermal expansion (at a temperature of 20°C) of 9.1 for type

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<sup>1</sup> Although CBP stated in HQ 087044 that the type of glass used would be Schott's numbers 8541 and 8532, we note that Schott's submission referred only to Schott's types 8531 and 8532 glass, not 8541. We therefore proceed with the assumption that the types of glass used in the instant glass sleeves is Schott's types 8531 and 8532.

8531 and 8.7 for type 8532, and  $10^{-6}\text{K}^{-1}$  for both types at a temperature of  $300^{\circ}\text{C}$ .

### ISSUE:

Whether the instant articles are classified as parts of diodes in heading 8541, HTSUS; as glass envelopes for electric lamps, cathode-ray tubes or the like in heading 7011, HTSUS; or as unworked glass tubes of heading 7002, HTSUS.

### LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

7002:	Glass in balls (other than microspheres) of Heading 7018; rods or tubes, unworked:				
	Tubes:				
7002.32.00:	Of other glass having a liner coefficient of expansion not exceeding $5 \times 10^{-6}$ per Kelvin within a temperature range of $0^{\circ}\text{C}$ to $300^{\circ}\text{C}$ ...				
7002.39.00:	Other...				
		*	*	*	*
7011:	Glass envelopes (including bulbs and tubes), open, and glass parts thereof, without fittings, for electric lamps, cathode-ray tubes or the like:				
7011.90.00:	Other...				
		*	*	*	*
8541:	Diodes, transistors and similar semiconductor devices; photo-sensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezoelectric crystals; parts thereof:				
8541.90.00:	Parts...				
		*	*	*	*

Note 2 to Section XVI provides as follows:

2. Subject to note 1 to this section, note 1 to chapter 84 and note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:
  - (a) Parts which are goods included in any of the headings of chapter 84 or 85 (other than headings 8409, 9431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;
  - (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are

to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;

- (c) All other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8487 or 8548.

Note 1(b) to Chapter 85 provides as follows:

- (1) This chapter does not cover:  
 (b) articles of glass of Heading 7011;

Note 9 to Chapter 85 provides, in pertinent part, as follows:

9. For the purposes of headings 8541 and 8542:  
 (a) “*Diodes, transistors and similar semiconductor devices*” are semiconductor devices the operation of which depends on variations in resistivity on the application of an electric field;  
 ...

For the classification of the articles defined in this note, headings 8541 and 8542 shall take precedence over any other heading in the Nomenclature, except in the case of heading 8523, which might cover them by reference to, in particular, their function.

\* \* \* \*

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN to heading 7002, HTSUS, provides, in pertinent part, as follows:

This heading covers :

...

- (2) Glass rods and tubing of various diameters, which are generally obtained by drawing (combined with blowing in the case of tubing); they may be used for many purposes (e.g., for chemical or industrial apparatus; in the textile industry; for further manufacture into thermometers, ampoules, electric or electronic bulbs and valves, or ornaments). Certain tubes for fluorescent lighting (used mainly for advertising purposes) are drawn with partitions running through the length.

This group includes “enamel” glass, in bars, rods or tubes (“enamel” glass is defined in the Explanatory Note to heading 70.01).

Balls of this heading must be unworked; similarly rod and tubing must be unworked (i.e., as obtained direct from the drawing process or merely cut into lengths the ends of which may have been simply smoothed).

The heading **excludes** balls, rod and tubing made into finished articles or parts of finished articles recognisable as such; these are classified under



the appropriate heading (e.g., **heading 70.11**, **70.17** or **70.18**, or **Chapter 90**). If worked, but not recognisable as being intended for a particular purpose, they fall in **heading 70.20**.

This heading includes tubes (whether or not cut to length) of glass which has had fluorescent material added to it in the mass. On the other hand, tubes coated inside with fluorescent material, whether or not otherwise worked, are **excluded (heading 70.11)**.

EN 70.11 provides as follows:

This heading covers :

- (A) All open glass envelopes (including bulbs and tubes) of any shape or size, **without fittings**, for the manufacture of electric lamps, valves and tubes, whether these are for illuminating or other purposes (incandescent or vapour discharge lamps, X-ray tubes, radio valves, cathode-ray tubes, rectifier valves or other electronic tubes or valves, infra-red lamps, etc.). Most of these envelopes are mass-produced by automatic machines; they may be frosted, coloured, opal, metallised, coated with fluorescent material, etc.

Glass parts of envelopes (such as face-plates or cones of cathode-ray tubes for television receivers, spotlight bulb reflectors) remain in this heading.

- (B) Tubes with narrowed ends clearly intended for electric lamps, or bent into shape for advertising signs.
- (C) Tubes lined with a fluorescent substance (e.g., zinc silicate, cadmium borate, calcium tungstate).

By means of a series of operations (including, insertion of filaments or electrodes, exhaustion of the envelope, introduction of one or more rare gases, of mercury, etc., fitting of caps or connectors), these envelopes are made into electric lamps, cathode-ray tubes or the like of Chapter 85.

All the above-mentioned articles may be of ordinary glass, crystal glass or fused quartz.

The heading **does not include** :

- (a) Glass tubes merely cut to length, whether or not the ends have been fire polished or otherwise smoothed, or tubes which have had fluorescent materials (e.g., sodium uranate) added to the glass in the mass (**heading 70.02**).
- (b) Glass bulbs, tubes and envelopes, closed or with fittings, and finished bulbs, tubes and valves (see **headings 85.39, 85.40, 90.22**, etc.).

\* \* \* \*

In HQ 087044, CBP classified glass sleeves for diodes in heading 7011, HTSUS, as glass envelopes for electric lamps, cathode-ray tubes and the like. The requestor claimed classification in heading 8541, HTSUS, as parts of diodes. While we agree with our conclusion in HQ 087044 that the glass sleeves at issue were not classifiable as parts of diodes of heading 8541, we find that the classification in heading 7011, HTSUS, was incorrect. The glass sleeves are properly classified in heading 7002, HTSUS, as unworked glass rods or tubes.

As noted in HQ 087044, Note 1 to Chapter 85 precludes classification of the glass sleeves in heading 8541, HTSUS, if they are described by heading 7011, HTSUS. Therefore, we must first determine if the subject articles are classified in heading 7011, HTSUS, before examining the applicability of heading 8541, HTSUS.

The instant glass “sleeves” are not used “for” electric lamps or cathode-ray tubes. Furthermore, we do not find that diodes are “like” electric lamps or cathode-ray tubes. EN 70.11 provides various examples of products for which the glass tubes, rods, etc. of heading 7011 are used, such as incandescent or vapour discharge lamps, X-ray tubes, radio valves, cathode-ray tubes, rectifier valves or other electronic tubes or valves, infra-red lamps, etc. Diodes are not named in this list, nor are they similar to the products included on this list. In fact, EN 70.11 describes three categories of articles covered by this heading: glass envelopes, including tubes and bulbs, for the manufacture of electric lamps, valves and tubes; tubes with narrowed ends clearly intended for electric lamps, or bent into shape for advertising signs; and tubes lined with a fluorescent substance (e.g., zinc silicate, cadmium borate, calcium tungstate). The instant glass sleeves do not fall into any of the above categories. In light of the above, the glass sleeves are not products of heading 7011, HTSUS. The EN to heading 7011 directs the classification of “Glass tubes merely cut to length” to heading 7002, HTSUS.

As the glass sleeves are not classified in heading 7011, HTSUS, they are not precluded from classification in heading 8541 by application of Note 1 to Chapter 85. However, we note that the EN to heading 7011 directs the classification of “Glass tubes merely cut to length” to heading 7002, HTSUS. If the glass sleeves are classifiable in heading 7002, they are still precluded from classification in heading 8541, HTSUS, by application of Additional U.S. Rule of Interpretation (AUSRI) 1(c), which states that “a provision for “parts” or “parts and accessories” shall not prevail over a specific provision for such part or accessory”.

Heading 7002 provides for unworked balls, rods or tubes of glass. A “tube” is “a hollow elongated cylinder” (<https://www.merriam-webster.com/dictionary/tube>). The instant sleeves, as elongated hollow cylinders, are “tubes” of glass. The EN to heading 70.11 clarifies that “unworked” rods and tubing of heading 7011 are “as obtained direct from the drawing process or merely cut into lengths the ends of which may have been simply smoothed.” The instant tubes have been cut to a precise length but not further processed. Merely having been drawn and cut to a precise size and length does not constitute “working” for the purposes of heading 7002, HTSUS. We note that glass tubes being prepared for use as diode enclosures are frequently “bundled” together—for example, by coating a number of tubes in molten wax in order to form a block of tubes—and subsequently all cut at the same time. As such bundling is merely a step in the cutting process and does not shape or prepare the goods for any particular application, it does not make such enclosures “worked” pursuant to heading 7002, HTSUS.

Because the instant glass sleeves are classified in heading 7002, HTSUS, they cannot be classified in heading 8541, HTSUS. Additional U.S. Rule of Interpretation 1(c) provides that “a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for “parts” or “parts and accessories” shall not prevail over a specific provision for such part or accessory.” Heading 7002 specifically provides for glass in balls, rods or tubes, unworked. It therefore describes the glass sleeves with

considerable more specificity than a provision for parts of diodes. The glass sleeves are accordingly precluded from classification in heading 8541 by application of Additional U.S. Rule of Interpretation 1(c).<sup>2</sup>

As tubes of glass, the instant glass sleeves are classified under subheading 7002.3, HTSUS. The types of glass utilized in the instant glass sleeves have a coefficient of mean linear thermal expansion of 9.1 and 8.7 at a temperature of 20°C, and  $10^{-6}\text{K}^{-1}$  for at a temperature of 300°C. As the linear coefficient of expansion for the glass exceeds  $5 \times 10^{-6}$  per Kelvin within a temperature range of 0°C to 300°C, the instant glass sleeves are classified in subheading 7002.39.00, HTSUS.

**HOLDING:**

The Schott glass sleeves are classified in heading 7002, HTSUS, specifically subheading 7002.39.00, HTSUS, which provides for “Glass in balls (other than microspheres) of Heading 7018; rods or tubes, unworked: Tubes: Other.” The 2017 column one, general rate of duty is 6% *ad valorem*.

**EFFECT ON OTHER RULINGS:**

HQ 087044, dated May 21, 1990, is hereby revoked.

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

*Sincerely,*

ALLYSON MATTANAH

*for*

MYLES B. HARMON,

*Director,*

*Commercial and Trade Facilitation Division*

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<sup>2</sup> We note that Additional U.S. Rule 1(c) applies only in the absence of “special language or context which otherwise requires.” In prior rulings, CBP has deemed Note 2 to Section XVI to constitute such language. However, such special language or context only precludes the application of Additional U.S. Rule 1(c), HTSUS, where the competing provisions at issue are both within the same section or Chapter. *See e.g.*, HQ 967233, dated February 18, 2005; HQ H017185, dated April 17, 2008. Because headings 7002 and 8541 are in different Sections, Note 2 to Section XVI is not “special language or context” precluding the application of Additional U.S. Rule 1(c).

**19 CFR PART 177****REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE ELIGIBILITY OF AUTOMOTIVE BUMPERS FOR A DUTY EXEMPTION UNDER SUBHEADING 9802.00.50 HTSUS**

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

**ACTION:** Notice of revocation of one ruling letter and revocation of any treatment relating to the eligibility of automotive bumpers for a duty exemption under subheading 9802.00.50 of the Harmonized Tariff Schedule of the United States (HTSUS).

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning the eligibility of automotive bumpers for a duty exemption under subheading 9802.00.50, 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. 51, No. 48, on November 29, 2017. CBP received no comments concerning the proposed revocation.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 9, 2018.

**FOR FURTHER INFORMATION CONTACT:** Tebsy Paul, Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade, at (202) 325–0195.

**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. 51, No. 48 on November 29, 2017, proposing to revoke one ruling letter pertaining to the eligibility of automotive bumpers for a duty exemption under subheading 9802.00.50, HTSUS. 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 NY 284970, dated April 26, 2017, CBP classified automotive bumpers in heading 9802, HTSUS, specifically in subheading 9802.00.50, HTSUS, which provides for other articles returned to the United States after having been exported for repairs or alterations. CBP has reviewed NY 284970 and has determined the ruling letter to be in error. The painting process in Canada is an intermediate processing operation, not processing of a finished good. It is now CBP's position that automotive bumpers are not eligible for duty free treatment under subheading 9802.00.50, HTSUS.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY 284970 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H288285, 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: January 19, 2018

MONIKA R. BRENNER  
for

MYLES B. HARMON,  
Director

*Commercial and Trade Facilitation Division*

Attachment

HQ H288285

January 19, 2018

CLA-2 OT:RR:CTF:VS H288285 TP

CATEGORY: CLASSIFICATION

TARIFF NO.: 9802.00.50

JASMINE MOSS

CUSTOMS COORDINATOR

A.G. SIMPSON USA INC.

6640 STERLING DRIVE SOUTH

STERLING HEIGHTS, MI 48312-5845

RE: Revocation of NY 284970; Subheading 9802.00.50, HTSUS; Automotive bumpers from the United States

DEAR Ms. MOSS:

This is in reference to New York Ruling Letter (“NY”) 284970, dated April 26, 2017. At issue was the applicability of subheading 9802.00.50, Harmonized Tariff Schedule of the United States (“HTSUS”), to automotive bumpers painted in Canada. In NY 284970, U.S. Customs and Border Protection (“CBP”) determined, in relevant part, that painting the automotive bumpers in Canada was a repair or alteration eligible for duty free treatment under subheading 9802.00.50, HTSUS. It is now our position that such painting of automotive bumpers is not a repair or alteration eligible for duty free treatment under subheading 9802.00.50, HTSUS. For the reasons described in this ruling, we hereby revoke NY 284970.

On November 29, 2017, pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), notice of the proposed action was published in the *Customs Bulletin*, Vol. 51, No. 48. No comments were received in response to this notice.

**FACTS:**

NY 284970 stated, in relevant part, that A.G. Simpson purchases steel blanks from U.S. steel processors and stamps these steel blanks into bumper shells in the United States. These bumper shells are then shipped to a sister plant in Canada where they are painted various colors. After the bumpers are painted, they are returned to the United States where they are assembled into finished bumpers by adding sensors, fog lights, fasteners, brackets, electrical harnesses, step pads and end caps. CBP held that the bumpers are eligible for duty-free treatment under subheading 9802.00.50, HTSUS, because the bumpers are complete articles upon exportation to Canada and the painting operation did not transform the bumpers in name, use, performance, characteristics or tariff classification.

**ISSUE:**

Whether the automotive bumpers exported to Canada for the described painting process will qualify for subheading 9802.00.50, HTSUS treatment?

**LAW AND ANALYSIS:**

Subheading 9802.00.50, HTSUS, provides a full or partial duty exemption for articles returned to the United States after having been exported to be advanced in value or improved in condition by means of repairs or alterations. Articles returned to the United States after having been repaired or altered in Canada, whether or not pursuant to warranty, may be eligible for duty free treatment, provided the documentary requirements of section 181.64, CBP Regulations, (19 C.F.R. § 181.64), are satisfied. Section 181.64(a) states, in pertinent part:

‘Repairs or alterations’ means restoration, addition, renovation, redyeing, cleaning, resterilizing, or other treatment which does not destroy the essential character of, or create a new and commercially different good from, the good exported from the United States.

Section 181.64(b), CBP Regulations, (19 C.F.R. § 181.64(b)) states:

*Goods not eligible for duty-free or reduced-duty treatment after repair or alteration.* The duty-free or reduced-duty treatment referred to in paragraph (a) of this section shall not apply to goods which, in their condition as exported from the United States to Canada or Mexico, are incomplete for their intended use and for which the processing operation performed in Canada or Mexico constitutes an operation that is performed as a matter of course in the preparation or manufacture of the finished goods.

Classification under subheading 9802.00.50, HTSUS, is precluded where: (1) the exported articles are not complete for their intended use and the foreign processing operation is a necessary step in the preparation or manufacture of finished articles; or (2) the operations performed abroad destroy the identity of the exported articles or create new or commercially different articles through a process of manufacture. See *Guardian Indus. Corp. v. United States*, 3 Ct. Int’l Trade 9 (1982), and *Dolliff & Co., Inc., v. United States*, 81 Cust. Ct. 1, C.D. 4755, 455 F. Supp. 618 (1978), *aff’d*, 66 C.C.P.A. 77, C.A.D. 1225, 599 F.2d 1015 (1979).

In *Dolliff & Company, Inc.*, the issue presented was whether certain U.S.-origin Dacron polyester fabrics which were exported to Canada as greige goods for heat setting, chemical scouring, dyeing and treating with chemicals, were eligible for the partial duty exemption under item 806.20, TSUS, when returned to the United States. The court found that the processing steps performed on the exported greige goods were undertaken to produce finished fabric and could not be considered as alterations. The court stated that:

...repairs or alterations are made to completed articles and do not include intermediate processing operations, which are performed as a matter of course in the preparation or manufacture of finished articles.

Conversely, in *Amity Fabrics, Inc. v. United States*, C.D. 2104, 43 Cust. Ct. 64 (1959), “pumpkin” colored fabrics were exported to Italy to be redyed black since the pumpkin color had gone out of fashion and black was a consistently good seller. The court held that the identity of the goods was not lost or destroyed by the dyeing process, that no new article was created since there was no change in the character, quality, texture, or use of the merchandise; it was merely changed in color. The court found that such change constituted an alteration for purposes of a precursor provision to subheading 9802.00.50, HTSUS.

As such, CBP has previously held that initial painting processes do not qualify for the duty exemption under subheading 9802.00.50, HTSUS. In



H278563, dated November 23, 2016, aluminum coils were exported to Canada to undergo a paint coating process. The aluminum coils were then reimported into the United States to be further processed by cutting to size and flattening to create their end use as ceiling panels. CBP concluded that the painting process in Canada was a step in the production process of the coil. Therefore, the painting processing in Canada was a necessary step in the production of a finished good and the aluminum coils did not qualify for subheading 9802.00.50, HTSUS treatment.

After reviewing the above-referenced cases, we find that painting the automotive bumpers in Canada does not constitute a repair or alteration under 9802.00.50, HTSUS. The painting process is an intermediate processing operation. *See Dolliff & Company, Inc. v. United States*, 599 F.2d 1015 (1979). This is not a repainting operation as contemplated by the redyeing in Amity Fabrics and as noted in 19 C.F.R. § 181.64(a), which permits redyeing but not dyeing. In the present case, painting the automotive bumpers is a continuation of the production process to be fit for its intended purpose. Furthermore, the operations performed in the United States are not relevant as to whether the painting, as performed in Amity Fabrics, is acceptable. The standard is not whether the bumpers were transformed in name, use, performance, characteristics or tariff classification in Canada, but rather whether the exported products are complete for their intended purpose. Here, painting the bumpers prevents them from rusting; therefore, the bumpers are not ready for their intended purpose upon exportation to Canada. As the painting procedure in Canada is not processing of a finished good, the automotive bumpers exported to Canada for painting do not qualify for subheading 9802.00.50, HTSUS, treatment.

**HOLDING:**

NY 284970 is revoked to reflect that the painting of automotive bumpers as described above does not constitute an alteration; therefore, the bumpers are not eligible for duty free treatment under subheading 9802.00.50, HTSUS.

**EFFECT ON OTHER RULINGS:**

NY 284970, dated April 26, 2017, is 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,*

MONIKA R. BRENNER

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*



**19 CFR PART 177****REVOCAION OF ONE RULING LETTER, MODIFICATION  
OF ONE RULING LETTER, AND REVOCAION OF  
TREATMENT RELATING TO THE TARIFF  
CLASSIFICATION OF MONEY BELTS**

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

**ACTION:** Notice of revocation of one ruling letter, modification of one ruling letter, and revocation of treatment relating to the tariff classification of money belts.

**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 New York Ruling Letter (“NY”) 868779 and modifying NY 871870, concerning the tariff classification of textile money belts 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. 51, No. 48, on November 29, 2017. 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 July 9, 2018.

**FOR FURTHER INFORMATION CONTACT:** Claudia Garver, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325–0024.

**SUPPLEMENTARY INFORMATION:****BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the

importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. §1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 51, No. 48, on November 29, 2017, proposing to revoke one ruling letter and to modify one ruling letter pertaining to the tariff classification of textile money belts. 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 NY 868779 and NY 871870, CBP classified two textile money belts in heading 4202 of the Harmonized Tariff Schedule of the United States (HTSUS), specifically in subheading 4202.32.95, HTSUS, as articles of a kind normally carried in the pocket or in the handbag, with an outer surface of textile materials. CBP has reviewed NY 868779 and NY 871870 and has determined the ruling letters to be in error. It is now CBP's position that the subject money belts are properly classified in heading 4202, HTSUS, specifically in subheadings 4202.92.15 and 4202.92.31, HTSUS, as travel, sports and similar bags, with an outer surface of textile materials.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY 868779, modifying NY 871870, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H257531, 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: January 22, 2018

ALLYSON MATTANAH  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

*Attachment*

HQ H257531

January 22, 2018

CLA-2 OT:RR:CTF:CPM H257531 CkG

CATEGORY: Classification

TARIFF NO: 4202.92.31

MICHAEL DUGAN  
WESTERN OVERSEAS CORPORATION  
CORPORATE HEADQUARTERS  
10731 WALKER STREET  
CYPRESS, CA 90630-475

RE: Revocation of NY 868779 and Modification of NY 871870; classification of money belts

DEAR MR. DUGAN:

This letter is in regards to New York Ruling Letter (NY) 868779, dated November 25, 1991, issued to Western Overseas Corporation on behalf of Packaged Paper Products. In NY 868779, CBP classified a textile money belt in subheading 4202.32.95 of the Harmonized Tariff Schedule of the United States (HTSUS), as articles of a kind normally carried in the pocket or in the handbag, with an outer surface of textile materials. We have also identified NY 871870, dated March 19, 1992, which classified a similar “Cache” money belt in subheading 4202.32.40, HTSUS. We have reconsidered these decisions, and for the reasons set forth below, have determined that the money belts are correctly classified in subheading 4202.92.31, HTSUS.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY 868779 and modify NY 871870 was published on November 29, 2017, in Volume 51, Number 48 of the Customs Bulletin. No comments were received in response to that notice.

**FACTS:**

The subject merchandise is described in NY 868779 as follows:

The submitted sample is a money belt constructed of 60% polyester/40% cotton fibers. It is flat in design, unlined, measures approximately 17 1/2” x 4 3/4” and is designed to be worn around the waist. It has two zippered storage pockets, one larger than the other designed to contain money. The zipper closure is concealed by means of a textile flap.

The money belt at issue in NY 871870 is described as follows:

Item B, described as a “Cache”, is a money belt constructed of 100% cotton designed to be worn on the person. The item is flat in design, unlined, and measures approximately 16 inches by 4 1/2 inches designed to be worn around the waist underneath the clothing. It has a zippered compartment with two internal pockets. The zipper closure is concealed by means of a textile flap.

**ISSUE:**

Whether the money belts are classified in subheading 4202.32, HTSUS, as articles of a kind normally carried in the pocket or a handbag, or in subheading 43202.92, HTSUS, as travel, sport or similar bags.

**LAW AND ANALYSIS:**

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

The HTSUS provisions under consideration are as follows:

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:
	Other:
4202.92:	With outer surface of sheeting of plastics or of textile materials:  Travel, sports and similar bags:  With outer surface of textile materials:  Of vegetable fibers and not of pile or tufted construction:
4202.92.15:	Of cotton...
4202.92.31:	Of man-made fibers...
	* * * *

Heading 4202, HTSUSA, provides for various types of bags or containers. These bags and containers are broken up into four types, at the five-digit subheading level (4202.1, 4202.2, 4202.3, and 4202.9): “Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers”; “[h]andbags, whether or not with shoulder strap, including those without handle”; “[a]rticles of a kind normally carried in the pocket or in the handbag; and “[o]ther”.

In NY 868779 and 871870, CBP concluded that money belts, measuring 17.5 inches by 4.75 inches and 16 inches by 4.5 inches, respectively, were “of a kind” normally carried in the pocket or a handbag. This conclusion was incorrect. These money belts are not designed to be carried inside any other bag or container; they are designed to fasten around the waist precisely so that they can be transported by themselves, without the need for any other kind of container. Placing either money belt inside a pocket or handbag would defeat the entire purpose of the article, which is to provide secure, easy and unobstructed access to money and other small valuables. Taking the money belt out of the pocket or purse in order to remove the valuables stored within would be an extra, unnecessary step. Additionally, at a width of 17 and 16 inches, both money belts are too large to fit inside most handbags and pockets.

The instant money belts also do not fall under subheading 4202.1 as a trunk, suitcase, briefcase or similar container, or in subheading 4202.2 as a handbag. We note first that the money belts are smaller and less durable

than a trunk, suitcase, or any of the other named items of that type. The articles of subheading 4202.1 are designed to carry clothes, laptops, paper files, textbooks and other such items that clearly unsuited for carrying in the money belt. A money belt is also unlike a handbag or purse in that it is designed to be principally worn about the waist like a belt, while purses and handbags are carried in the hand or on the shoulder.

As the money belts do not fall under 4202.1, 4202.2 or 4202.3, they fall under 4202.9 "Other". Under the "Other" provision, 4202.91 provides for articles with an outer surface of leather or of composition leather, and 4202.92 provides for articles "with outer surface of plastic sheeting or of textile materials." The money belt at issue in NY 868779 is made of polyester and cotton; the "Cache" money belt at issue in NY 871870 is made of 100% cotton. Both articles therefore fall under subheading 4202.92. Subheading 4202.92 is further divided into provisions for travel, sports and similar bags, musical instrument cases, and other. A money belt is designed to be worn around the waist while the wearer is traveling, sightseeing, engaged in a sporting activity, or similar activities where quick and convenient but also secure access to money and other small belongings may be necessary. As they are primarily used during travel and for sports, we find that the money belts fall under the category of travel, sports and similar bags.

Additionally, we note that CBP has consistently classified similar articles such as fanny packs and other waist bags or pouches in subheading 4202.92, as travel, sports and similar bags. *See e.g.*, Headquarters Ruling Letter (HQ) 083800, dated June 13, 1989; HQ 957674, dated October 25, 1995; HQ 963567, dated September 18, 2001; NY N261077, dated February 13, 2015; NY N260055, dated January 9, 2015; NY N237379, dated February 8, 2013; NY K81270, dated December 3, 2003; NY I82783, dated June 6, 2002; NY 818841, dated February 27, 1996.

The provision for travel, sports and similar bags under subheading 4202.92 is further subdivided between travel, sports and similar bags of vegetable fibers and those of man-made materials. The "Cache" money belt is made of 100% cotton and is therefore classified in subheading 4202.92.15, HTSUS, as a travel, sports or similar bag, of cotton. The money belt at issue in NY 868779, however, is a composite article of cotton and polyester. At GRI 1, it is therefore not classifiable as either an article of cotton or an article of man-made fibers. We must therefore turn to the remaining GRIs. GRI 2 provides that unfinished articles, as well as mixtures and combinations, are to be classified pursuant to GRI 3. GRI 3(a) states that when merchandise is classifiable under more than one heading, the merchandise should be classified in the most specific heading. However, GRI 3(a) further states that "when two or more headings each refer to . . . part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods." GRI 3(b), in turn, states in relevant part that composite goods consisting of different materials or made up of different components which cannot be classified by reference to GRI 3(a), are to be classified as if they consisted of the material or component which gives them their essential character.

Subheadings 4202.92.15 and 4202.92.31 each describe only part of the instant money belt; therefore, neither subheading is more specific for the purposes of GRI 3(a). We thus turn to GRI 3(b). Explanatory Note VIII to GRI 3(b) explains that "[t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the

nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods.” In the instant case, we find that as the polyester makes up the bulk of the article, the money belt is classified at GRI 3 in subheading 4202.92.31, HTSUS, as a travel, sports or similar bag with an outer surface of man-made fibers.

#### **HOLDING:**

By application of GRIs 1 and 6, the “Cache” money belt at issue in NY 871870 is classified in heading 4202, HTSUS, specifically subheading 4202.92.15, 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; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastics or of textile materials: Travel, sports and similar bags: With outer surface of textile materials: Of vegetable fibers and not of pile or tufted construction: Of cotton.” The 2017 column one, general rate of duty is 6.3% ad valorem.

By application of GRIs 1, 3 and 6, the money belt at issue in NY 868779 is classified in heading 4202, HTSUS, specifically subheading 4202.92.31, 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; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastics or of textile materials: Travel, sports and similar bags: With outer surface of textile materials: Of man-made fibers.” The 2017 column one, general rate of duty is 17.6%.

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

NY 868779, dated November 25, 1991, is hereby revoked. NY 871870, dated March 19, 1992, is hereby modified with respect to the “Cache” money belt.

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

*Sincerely,*

ALLYSON MATTANAH

*for*

MYLES B. HARMON,

*Director,*

*Commercial and Trade Facilitation Division*

**19 CFR PART 177****REVOCAION OF ONE RULING LETTER AND  
REVOCAION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF DECORATIVE QUARTZ  
ROCKS**

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

**ACTION:** Notice of revocation of one ruling letter and revocation of treatment relating to the tariff classification of decorative quartz rocks.

**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 New York Ruling Letter (NY) M86055, dated August 21, 2006, concerning the tariff classification of decorative quartz rocks 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. 51, No. 48, on November 29, 2017. 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 July 9, 2018.

**FOR FURTHER INFORMATION CONTACT:** Claudia Garver, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325–0024.

**SUPPLEMENTARY INFORMATION:****BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter,



classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. §1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 51, No. 48, on November 29, 2017, proposing to revoke one ruling letter pertaining to the tariff classification of decorative quartz rocks. 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 NY M86055, CBP classified decorative quartz rocks in heading 7103, HTSUS, which provides for "Precious stones (other than diamonds) and semiprecious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semiprecious stones, temporarily strung for convenience of transport." CBP has reviewed NY M86055 and has determined the ruling letter to be in error. It is now CBP's position that the decorative quartz rocks are properly classified, by operation of GRI 1, in heading 6815, HTSUS, specifically in subheading 6815.99.4070, HTSUSA, which provides for "Articles of stone or of other mineral substances (including carbon fibers, articles of carbon fibers and articles of peat), not elsewhere specified or included: Other articles: Other: Other: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY M86055 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H256434, 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: January 23, 2018

ALLYSON MATTANAH  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

*Attachment*

HQ H256434

January 23, 2018  
CLA-2 OT:RR:CTF:CPM H256434 CkG  
CATEGORY: Classification  
TARIFF NO: 6815.99.4070

MS. YOLANDA MASSEY  
MICHAELS STORES PROCUREMENT COMPANY, INC.  
8000 BENT BRANCH DRIVE  
IRVING, TX 75063

RE: Revocation of NY M86055; classification of decorative quartz rocks

DEAR MS. MASSEY:

This letter is in regards to New York Ruling Letter (NY) M86055, issued to Michaels Stores Procurement Company, Inc. on August 21, 2006. In NY M86055, CBP classified decorative quartz river rocks in heading 7103 of the Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Precious stones (other than diamonds) and semiprecious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semiprecious stones, temporarily strung for convenience of transport.” We have reconsidered this decision, and for the reasons set forth below, we have determined that the quartz rocks are correctly classified in heading 6815, HTSUS.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY M86055 was published on November 29, 2017, in Volume 51, Number 48 of the Customs Bulletin. No comments were received in response to that notice.

**FACTS:**

The subject merchandise was described in NY M86055 as follows:

The submitted sample consists of 28 ounces of decorative natural river rocks made of quartz that have been tumbled and dyed powder blue, packed in a plastic net sack. The rocks are for use in floral arrangements, candle displays, fountains and aquariums.

**ISSUE:**

Whether the instant quartz rocks are classified in heading 2506, HTSUS, as quartz; in heading 6802, HTSUS, as worked monumental or building stone, mosaic cubes, or artificially colored granules, chippings and powder; in heading 6815, HTSUS, as other articles of stone or of other mineral substances; or in heading 7103, HTSUS, as precious or semiprecious stones.

**LAW AND ANALYSIS:**

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

The HTSUS provisions under consideration are as follows:

- 2506: Quartz (other than natural sands); quartzite, whether or not roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape:
- 6802: Worked monumental or building stone (except slate) and articles thereof, other than goods of heading 6801; mosaic cubes and the like, of natural stone (including slate), whether or not on a backing; artificially colored granules, chippings and powder, of natural stone (including slate):
- 6815: Articles of stone or of other mineral substances (including carbon fibers, articles of carbon fibers and articles of peat), not elsewhere specified or included:
- 7103: Precious stones (other than diamonds) and semiprecious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semiprecious stones, temporarily strung for convenience of transport:

\* \* \* \*

Note 1 to Chapter 25 provides as follows:

1. Except where their context or note 4 to this chapter otherwise requires, the headings of this chapter cover only products which are in the crude state or which have been washed (even with chemical substances eliminating the impurities without changing the structure of the product), crushed, ground, powdered, levigated, sifted, screened, concentrated by flotation, magnetic separation or other mechanical or physical processes (except crystallization), but not products which have been roasted, calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading.

\* \* \* \*

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 General Explanatory Note to Chapter 25 provides as follows:

As provided in Note 1, this Chapter covers, except where the context otherwise requires, mineral products **only** in the crude state or washed (including washing with chemical substances to eliminate impurities provided that the structure of the product itself is not changed), crushed, ground, powdered, levigated, sifted, screened or concentrated by flotation, magnetic separation or other mechanical or physical processes (not including crystallisation). The products of this Chapter may also be heated to remove moisture or impurities or for other purposes, provided that the heat treatment does not modify their chemical or crystalline structures. However, other heat treatments (e.g., roasting, fusion or calcination) are not allowed, unless specifically permitted by the heading text. Thus, for example, heat treatment which could entail a change in chemical or crystalline structure is allowed for products of headings 25.13 and 25.17, because the texts of these headings explicitly refer to heat treatment.

The products of this Chapter may contain an added anti-dusting agent, provided that such addition does not render the product particularly suitable for specific use rather than for general use. Minerals which have been **otherwise** processed (e.g., purified by re-crystallisation, obtained by mixing minerals falling in the same or different headings of this Chapter, made up into articles by shaping, carving, etc.) **generally fall in later Chapters** (for example, **Chapter 28** or **68**).

In certain cases, however, the headings :

- (1) Refer to goods which by their nature must have been subjected to a process not provided for by Note 1 to this Chapter. Examples include pure sodium chloride (heading 25.01), certain forms of refined sulphur (heading 25.03), chamotte earth (heading 25.08), plasters (heading 25.20), quicklime (heading 25.22) and hydraulic cements (heading 25.23).
- (2) Specify conditions or processes which are admissible in those cases in addition to those allowed generally under Note 1 to this Chapter. For example, witherite (heading 25.11), siliceous fossil meals and similar siliceous earths (heading 25.12) and dolomite (heading 25.18) may be calcined; magnesite and magnesia (heading 25.19) may be fused or calcined (dead-burned (sintered) or caustic-burned). In the case of dead-burned (sintered) magnesia, other oxides (e.g., iron oxide, chromium oxide) may have been added to facilitate sintering. Similarly the materials of headings 25.06, 25.14, 25.15, 25.16, 25.18 and 25.26 may be roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape.

When products are classifiable in heading 25.17 and any other heading of this Chapter, they are to be classified in heading 25.17.

The Chapter **excludes** precious or semi-precious stones of **Chapter 71**.

The Explanatory Note to heading 2506 provides as follows:

**Quartz** is the naturally occurring crystal form of silica.

It falls in this heading **only** if complying with both of the following two conditions :

- (a) It must be in the crude state or have not undergone any process beyond that allowed in Note 1 to this Chapter; for this purpose, heat treatment designed solely to facilitate crushing is regarded as a process permitted by Chapter Note 1.
- (b) It must **not** be of a variety and quality suitable for the manufacture of gem-stones (e.g., rock crystal and smoky quartz, amethyst and rose quartz). Such quartz is **excluded (heading 71.03)**, even if intended to be used for technical purposes, e.g., as piezo-electric quartz or for the manufacture of parts of tools.

EN 68.02 provides, in pertinent part, as follows:

This heading covers natural monumental or building stone (**except** slate) which has been worked **beyond** the stage of the normal quarry products of Chapter 25. ....

The heading therefore covers stone which has been **further processed** than mere shaping into blocks, sheets or slabs by splitting, roughly cutting or squaring, or squaring by sawing (square or rectangular faces).

The heading thus covers stone in the forms produced by the stone-mason, sculptor, etc., viz. :

...

(B) Stone of any shape (including blocks, slabs or sheets), whether or not in the form of finished articles, which has been bossed (i.e., stone which has been given a “rock faced” finish by smoothing along the edges while leaving rough protuberant faces), dressed with the pick, bushing hammer, or chisel, etc., furrowed with the drag-comb, etc., planed, sand dressed, ground, polished, chamfered, moulded, turned, ornamented, carved, etc.

...

Articles of worked monumental or building stone are usually obtained from the stones of heading 25.15 or 25.16, but may also be obtained from any other natural stone **except** slate (e.g., quartzite, dolomite, flint, steatite)

EN 71.03 provides, in pertinent part, as follows:

Because of their colour, brilliance, resistance to deterioration, and often also because of their rarity, these stones, which are usually crystalline, are used by jewellers, goldsmiths and silversmiths for making articles of adornment or ornamentation. Some are also used in clocks and watches or in tools or, because of their hardness or other special properties, for other industrial purposes (e.g., ruby, sapphire, agate, piezo-electric quartz).

The provisions of the second paragraph of the Explanatory Note to heading 71.02 apply, *mutatis mutandis*, to this heading.

The stones of this heading are therefore mainly stones intended for mounting or setting in jewellery or goldsmiths’ or silversmiths’ wares; but, **provided they are unmounted**, the heading also covers stones for setting in tools of headings 82.01 to 82.06 or in machinery, etc., of Section XVI (e.g., piezo-electric quartz for high frequency apparatus, etc.).

...

The heading includes the precious or semi-precious stones listed in the Annex to this Chapter, the name of the mineralogical species being given with the commercial names; the heading is, of course, **restricted** to those stones and varieties of a quality suitable for use in jewellery, etc.

This heading also **excludes** :

(a) Certain stones which, although belonging to the mineral species cited above, are of non-precious varieties, or of a quality not suitable for use in jewellery, goldsmiths’ or silversmiths’ wares; such stones are classified in **Chapter 25 , 26 or 68.**

\* \* \* \*

In NY M86055, CBP classified various tumbled and dyed quartz rocks in heading 7103, HTSUS, which provides for precious or semiprecious stones, whether or not worked or graded. The mineralogical names of the precious

and semi-precious stones covered by heading 7103 are listed in the Annex to Chapter 71 of the HTSUS, which includes the following varieties of quartz: Quartz Agate, Fire Agate, Onyx, Sardonyx, Amethyst, Aventurine, Blue Quartz, Chalcedony, Chrysoprase, Citrine, Yellow Quartz, Cornelian, Green Quartz, Prasiollite, Heliotrope, Bloodstone, Jasper, Silex, Morion, Cairngorm, Moss-Agate, Agate Dendritic, Banded Agate, Prase, Quartz Cat's-eye, Quartz Falcon's-eye, Quartz Tiger's-eye, Rock Crystal, Quartz, Rose-Quartz, Smoky Quartz, and Violet Quartz.

There is no indication that the instant quartz rocks pertain to any of the types listed in the Annex. Moreover, the Explanatory Note to heading 71.03 clearly indicates that precious or semiprecious stones of this heading are used either for mounting into articles of jewelry, in watches or clocks, or for certain industrial tools. Excluded from this heading are stones which, even if of a mineral species which can be considered precious or semiprecious, are not of a quality suitable for use in jewelry; such stones are classified in Chapter 68.

Although the instant rocks are quartz, they are not used in either jewelry or in clocks or industrial tools. Furthermore, they are not of a quality suitable for use in such applications; that they are dyed to give them the appearance of a precious or semiprecious stone clearly indicates that they are not of sufficient quality to be considered as such even when worked and polished. Consequently, the instant quartz rocks are excluded from classification in heading 7103, HTSUS.

Depending on whether or not the instant quartz stones are "worked" beyond the level specified in Note 1 to Chapter 25, they may be classified in either Chapter 25 or Chapter 68. Unworked quartz is classified in heading 2506, HTSUS. Pursuant to Note 1 to Chapter 25 as well as the text of heading 2506, such stone is considered "worked" beyond the scope of Chapter 25 if it has been processed in a manner other than crushed, ground, powdered, levigated, sifted, screened, concentrated by flotation, magnetic separation or other mechanical or physical processes, trimmed or cut into blocks or slabs of a rectangular (including square) shape. Here, the stones have been tumbled in a tumbling machine. Tumbling is a technique for smoothing and polishing a rough surface on a stone. Neither tumbling nor polishing are listed as acceptable processes in Note 1 to Chapter 25 or the text of heading 2506.

No explanation is provided in the HTSUS or in EN 25.06 of what "other mechanical or physical processes" (as mentioned in Note 1 to Chapter 25) are permitted; however, the general EN to Chapter 25 indicates that the intent of the exclusionary language is to exclude those products which have been processed into articles by cutting and shaping or by heat treatment. The classification of such articles is directed to later Chapters, such as Chapter 68. Heading 6802, for example, covers natural monumental or building stone which has been worked beyond the stage of the normal quarry products of Chapter 25, including, as discussed in the EN to that heading, "Stone of any shape (including blocks, slabs or sheets), whether or not in the form of finished articles, which has been bossed (i.e., stone which has been given a "rock faced" finish by smoothing along the edges while leaving rough protuberant faces), dressed with the pick, bushing hammer, or chisel, etc., furrowed with the drag-comb, etc., planed, sand dressed, ground, polished, chamfered, moulded, turned, ornamented, carved, etc." Polishing and dyeing the instant stones have therefore resulted in a product of Chapter 68 "worked" beyond the scope of Chapter 25. *See also* HQ H003883, dated June 07, 2007.

Having determined that neither Chapter 25 nor Chapter 71 is applicable to the instant merchandise, we turn to Chapter 68. In Chapter 68, two provisions are at issue: heading 6802 (monumental or building stone; mosaic cubes and the like, of natural stone; artificially colored granules, chippings and powder, of natural stone) or heading 6815 (other articles of mineral substances). Quartz can be used as a component in construction material, as an ingredient in granite and other building stones, and even directly as a building stone. Here, however, we have rocks composed entirely of quartz; the mineral here is not agglomerated or part of a granite or quartzite building stone. Nor are the instant rocks suitable for use as building stones. The quartz rocks are therefore not monumental or building stone of heading 6802. Further, they are not similar to mosaic cubes, and they are not granules, chippings or powder. Thus, they are not described by heading 6802, HTSUS. The instant river rocks are classified in heading 6815, HTSUS, as other articles of mineral substances.

**HOLDING:**

By application of GRIs 1 and 6, the instant river rocks are classified in heading 6815, HTSUS, specifically in subheading 6815.99.4070, HTSUSA, which provides for “Articles of stone or of other mineral substances (including carbon fibers, articles of carbon fibers and articles of peat), not elsewhere specified or included: Other articles: Other: Other: Other.” The 2017 column one, general rate of duty is Free.

**EFFECT ON OTHER RULINGS:**

NY M86055, dated August 21, 2006, is hereby revoked.

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

*Sincerely,*

ALLYSON MATTANAH

*for*

MYLES B. HARMON,

*Director,*

*Commercial and Trade Facilitation Division*



## **MODIFICATION OF ONE RULING LETTER AND REVOCAION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF JIBBITZ CHARMS**

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

**ACTION:** Notice of modification of one ruling letter, and of revocation of treatment relating to the tariff classification of Jibbitz charms.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter concerning tariff classification of Jibbitz charms 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. 51, No. 48, on November 29, 2017. 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 July 9, 2018.

**FOR FURTHER INFORMATION CONTACT:** Reema Radwan, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–7703.

### **SUPPLEMENTARY INFORMATION:**

#### **BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the public and CBP share 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. 51, No. 48, on November 29, 2017, proposing to modify one ruling letter pertaining to the tariff classification of Jibbitz charms. 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") N009740, dated May 8, 2007, CBP classified Jibbitz charms in heading 3926, HTSUS, specifically in subheading 3926.40.0000, HTSUS, which provides for "other articles of plastics and articles of other materials of headings 3901 to 3914." CBP has reviewed NY N009740 and has determined the ruling letter to be in error. It is now CBP's position that Jibbitz charms are properly classified, in heading 7117, HTSUS, specifically in subheading 7117.90.7500, HTSUS, which provides for "imitation jewelry."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying N009740 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H278152, 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: February 7, 2018

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

*Attachment*

HQ H278152

February 7, 2018

OT:RR:CTF:CPM H278152 RGR

CATEGORY: Classification

TARIFF NO.: 7117.90.7500

MS. ALEXANDRA O'LEARY  
JIBBITZ, LLC  
3052 STERLING CIRCLE  
BOULDER, CO 80301

RE: Modification of NY N009740; Tariff classification of plastic bracelets, charms, decorative shoe straps and embellishments from China

DEAR MS. O'LEARY:

This is to inform you that U.S. Customs and Border Protection ("CBP") has reconsidered New York ("NY") Ruling Letter N009740, dated May 8, 2007, regarding the classification under the Harmonized Tariff Schedule of the United States ("HTSUS") of Jibbitz charms from China. The Jibbitz charms were classified under subheading 3926.40.00, HTSUS, as "[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Statuettes and other ornamental articles." After reviewing this ruling in its entirety, we believe that it is partially in error. For the reasons set forth below, we hereby modify NY N009740 with respect to the classification of Jibbitz charms. The remaining analysis of NY N009740 remains unchanged.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Volume 51, No. 48 on November 29, 2017, proposing to modify NY N009740, and any treatment accorded to substantially similar transactions. No comments were received in response to this notice.

**FACTS:**

In NY N009740, we described the products as follows:

Jibbitz charms can be inserted into the holes [of a molded plastic shoe, i.e., Crocs] to enhance the decorative effect.

\* \* \*

The Jibbitz charms consist of three dimensional molded plastic decorative shapes on a short post with a round metal stud on the other end. The charms come in various decorative shapes, such as flowers, sports balls and animals. These charms can be secured to the bracelet straps and shoe straps by pushing the metal studs through the holes.

**ISSUE:**

Whether Jibbitz charms are classified under heading 3926, HTSUS, as "[o]ther articles of plastics and articles of other materials of headings 3901 to 3914" or under heading 7117, HTSUS, as "[i]mitation jewelry"?

**LAW AND ANALYSIS:**

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides, in part, that "for legal purposes, classification shall be determined according to terms of the headings and any relative section or chapter notes..." In the event that the

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

In understanding the language of the HTSUS, the Explanatory Notes (“ENs”) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the Harmonized System 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 HTSUS headings under consideration are as follows:

3926:	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.40.00:	Statuettes and other ornamental articles. . .
***	
7117:	Imitation jewelry:
7117.90:	Other:
	Other:
	Valued over 20 cents per dozen pieces or parts:
	Other:
7117.90.75:	Of plastics. . .
	*        *        *        *

Chapter 39, Note 2(r), excludes imitation jewelry from classification in the chapter.

Note 9(a) to Chapter 71 states as follows:

9. For the purposes of heading 7113, the expression “articles of jewelry” means:
  - (a) Any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia); and

\*        \*        \*        \*

Note 11 to Chapter 71 states as follows:

11. For the purposes of heading 7117, the expression “imitation jewelry” means articles of jewelry within the meaning of paragraph (a) of note 9 above (but not including buttons or other articles of heading 9606, or dress combs, hair slides or the like, or hairpins, of heading 9615), not incorporating natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed) nor (except as plating or as minor constituents) precious metal or metal clad with precious metal.

\*        \*        \*        \*

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP’s

practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN to Heading 71.13 states, in pertinent part:

This heading covers articles of jewellery as defined in Note 9 to this Chapter, wholly or partly or precious metal or metal clad with precious metal, that is:

- (A) Small object of personal adornment (gem-set or not) such as rings, bracelets, necklaces, brooches, ear-rings, neck chains, watch-chains and other ornamental chains; fobs, pendants, tie-pins and clips, cuff-links, dress-studs, buttons, etc.; religious or other cross; medals and insignia; hat ornaments (pins, buckles, rings, etc.); ornaments for handbags; buckles and slides for belts, shoes, etc.; hair-slides, tiaras, dress combs and similar hair ornaments.

(emphasis added).

The EN to Heading 71.17 states, in pertinent part:

For the purposes of this heading, the expression imitation jewellery, as defined in Note 11 to this Chapter, is restricted to small objects of personal adornment, such as those listed in paragraph (A) of the Explanatory Note to heading 71.13, e.g., rings, bracelets (other than wrist-watch bracelets), necklaces, ear-rings, cuff-links, etc., ...

According to Note 2(r) to Chapter 39 of the HTSUS, a product that is properly classified under heading 7117, HTSUS, is precluded from classification under Chapter 39, HTSUS. Thus, we must first consider whether Jibbitz charms can be classified in heading 7117, HTSUS, as imitation jewelry.

The subject merchandise consists of molded plastic decorative charms known as Jibbitz that come in various shapes, such as flowers, sports balls and animals, and which can be inserted into the holes of Crocs shoes as decorations. Jibbitz, which contain a stud to insert into an article worn on the body, are “*ejusdem generis*” or “of the same kind” of articles as the exemplars in Note 9(a), such as dress studs and tie pins. Additionally, the ENs to heading 71.13 include buckles and slides for ... shoes...,” specifically including ornaments to adorn shoes as jewelry. Hence, Jibbitz, which adorn shoes, do not contain any metal, pearls or stone and are *ejusdem generis* with the exemplars of Note 9(a), are described as imitation jewelry under Note 11 to chapter 71.

Moreover, we have previously classified Jibbitz charms in heading 7117, HTSUS. *See, e.g.*, NY N212139, dated May 1, 2012 (classifying Jibbitz charms in heading 7117, HTSUS). In NY N032345, dated July 15, 2008, we also classified the following merchandise in heading 7117, HTSUS:

Shoe charms for use on sport clogs which feature vent holes or openings around the forefoot. The top portion of the charm is composed of 100% PVC with a decorative label in various shapes. The bottom of the decorative top contains a post which attaches to the shoe by placing the small side of the charm lock on the inside portion of the desired hole and locking it into place.

Though the term “Jibbitz” is not used to identify the merchandise in NY N032345, the description of the merchandise identifies them as Jibbitz (decorative shoe charms for use on sport clogs that feature vent holes (i.e., Crocs)

that attach to the shoes by placing the charms in the desired hole and locking into place). There, we also held that the applicable heading for the shoe charms is heading 7117, HTSUS.

In light of the foregoing, we find that the Jibbitz charms at issue are classified in heading 7117, HTSUS, and specifically provided for under subheading 7117.90.75, HTSUS, as “Imitation jewelry: Other: Other: Valued over 20 cents per dozen pieces or parts: Other: Of plastics.”

**HOLDING:**

Pursuant to GRI 1, Jibbitz charms are classified in heading 7117, HTSUS, specifically under subheading 7117.90.75, HTSUS, as “Imitation jewelry: Other: Other: Valued over 20 cents per dozen pieces or parts: Other: Of plastics.” The 2017 column one general rate of duty is “free”.

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

**EFFECT ON OTHER RULINGS:**

New York Ruling Letter N009470, dated May 8, 2007, is hereby MODIFIED as set forth above with regard to the classification of Jibbitz charms described therein.

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****MODIFICATION OF ONE RULING LETTER RELATING TO THE PREFERENTIAL TARIFF TREATMENT UNDER THE NORTH AMERICAN FREE TRADE AGREEMENT AND COUNTRY OF ORIGIN MARKING OF ACUFEX DISPOSABLE KNIFE**

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

**ACTION:** Notice of modification of New York Ruling Letter N284181, dated April 6, 2017.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) is modifying one ruling letter concerning the preferential tariff treatment under the North American Free Trade Agreement (“NAFTA”) and country of origin marking for surgical instruments under the trade name Acufex Disposable Knife. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 51, No. 44, on November 1, 2017. 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 July 9, 2018.

**FOR FURTHER INFORMATION CONTACT:** Kristina Frolova, Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade, at (202) 325–7262.

**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. 51, No. 44, on November 1, 2017, proposing to modify one ruling letter pertaining to the preferential tariff treatment under NAFTA and country of origin marking for surgical instruments under the trade name Acufex Disposable Knife. 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") N284181, dated April 6, 2017, CBP determined the knives qualified for preferential NAFTA treatment pursuant to General Note ("GN") 12(b)(i), and that their origin was the United States for marking purposes pursuant to 19 C.F.R. § 102.19(a). CBP has reviewed N284181, and has determined the ruling letter to be in error. It is now CBP's position that the knives qualify for preferential NAFTA treatment pursuant to GN 12(b)(iii), originate from the United States for marking purposes pursuant to 19 C.F.R. § 102.11(b)(1), and originate from Mexico for Customs duty purposes pursuant to 19 C.F.R. § 102.19(b).

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying N284181 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in H288252, 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: April 9, 2018

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

Attachment



HQ H288252

April 9, 2018

OT:RR:CTF:VS H288252 KF

CATEGORY: Classification

SHANNON BATKIN  
SMITH & NEPHEW, INC.  
130 FORBES BOULEVARD  
MANSFIELD, MA 02048

RE: Modification of New York Ruling Letter (“NY”) N284181; NAFTA Preference; Country of Origin Marking of Acufex Disposable Knives

DEAR MR. BATKIN:

This is in reference to New York Ruling Letter (“NY”) N284181, issued to you on April 6, 2017. NY N284181 held that surgical instruments with the trade name “Acufex Disposable Knife” (“knives”) qualified for preferential treatment under the North American Free Trade Agreement (“NAFTA”) pursuant to General Note (“GN”) 12(b)(i), and their country of origin was the United States pursuant to 19 C.F.R. § 102.19(a). Upon consideration, CBP has determined NY N284181 to be in error. For the reasons set forth below, NY N284181 is hereby modified.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, a notice proposing to revoke NY N284181 was published on November 1, 2017, in Volume 51, Number 44 of the Customs Bulletin. No comments were received in opposition to the proposed action.

**FACTS:**

In your submission, you describe the knives as surgical instruments used mainly in meniscectomy surgeries and also in general surgeries requiring the cutting of suture and soft tissue. You state that the knives are first formed in the United States by stamping stainless steel sheets. You further state the origin of the steel can vary and is unknown. The stamping process which occurs in the United States produces flat blanks, approximately 0.185 inches in width, 0.060 inches in thickness, and 9.0 inches in length. The blanks have an embedded knurled form and ridges. The tip of the blanks at this stage is blunt. Afterwards, the blanks are sent to Mexico for heat treatment, flattening, and the addition (via grinding of the blunt tip) of the hook and sharpened blade end of the tools, to produce finished knives. The finished knives are then packaged and sent to the United States for sterilization, further packaging, and sale.

NY N284181 determined that the tariff classification applicable to the finished knives is subheading 9018.90.8000, Harmonized Tariff Schedule of the United States (“HTSUS”).

**ISSUE:**

1. Whether the knives qualify for preferential tariff treatment under NAFTA.
2. What are the country of origin marking requirements applicable to the knives?

**LAW AND ANALYSIS:**

1. Whether the knives qualify for preferential tariff treatment under NAFTA.

General Note (“GN”) 12(a)(ii) of the HTSUS provides that:

Goods that originate in the territory of a NAFTA party under the terms of subdivision (b) of this note and that qualify to be marked as goods of Mexico under the terms of the marking rules set forth in regulations issued by the Secretary of the Treasury (without regard to whether the goods are marked), and goods enumerated in subdivision (u) of this note, when such goods are imported into the customs territory of the United States and are entered under a subheading for which a rate of duty appears in the “Special” subcolumn followed by the symbol “MX” in parentheses, are eligible for such duty rate, in accordance with section 201 of the North American Free Trade Agreement Implementation Act.

GN 12(b) provides in relevant part:

For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if –

- (i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or
- (ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—
  - (A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivision (r), (s) and (t) of this note or the rules set forth therein, or
  - (B) the goods otherwise satisfy the applicable requirements of subdivision (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note.
- (iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials.

Here, the knives are produced as follows: First, steel of unknown origin is stamped to produce knife blanks within the United States. Second, the knife blanks are produced into finished knives in Mexico via heating, flattening, and grinding to create the hook, and sharpening the blade end. Third, the finished knives are sent to the United States for sterilization, packaging, and sale.

Given that the blanks are produced in the United States from steel that is sourced from unknown countries, which may not be NAFTA parties, the finished knives are ineligible for preferential treatment pursuant to GN 12(b)(i) because it cannot be established that they are wholly obtained or produced entirely within NAFTA territory. However, the steel of unknown origin is stamped in the United States to form blanks which are classifiable under subheading 9018.90.80, HTSUS. The applicable tariff shift rule in Chapter 90(46), GN 12(t), permits a “change to subheading 9018.90 from any other heading.” While insufficient information was provided to ascertain the

precise tariff classification of the steel, because a change from any other heading is permitted we can determine that the applicable tariff shift rule is satisfied. Accordingly, the blanks originate in the United States pursuant to GN 12(b)(ii)(A). The blanks are subsequently produced into finished knives in Mexico. No other materials are used or added to the knives during production in Mexico. The finished knives are therefore goods produced entirely in the territory of Mexico from blanks originating in the United States, and qualify for preferential tariff treatment under NAFTA pursuant to GN 12(b)(iii).

2. What are the country of origin marking requirements applicable to the knives?

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

Section 134.1(b) of the Customs Regulations defines “country of origin” as:

[T]he country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

Section 134.1(j) provides that the NAFTA Marking Rules are promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g) defines a “good of a NAFTA country” as “an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules.” The NAFTA Marking Rules are set forth in Part 102, Customs Regulations (19 C.F.R. § 102). Section 102.11(a) contains the “General rules” for determining country of origin:

(a) The country of origin of a good is the country in which:

- (1) The good is wholly obtained or produced;
- (2) The good is produced exclusively from domestic materials; or
- (3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in § 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

The knives’ country of origin cannot be determined pursuant to 19 C.F.R. § 102.11(a)(1) because they are produced from blanks that are first produced in the United States. Nor can the country of origin be determined pursuant to 19 C.F.R. § 102.11(a)(2) because the knives are not Mexican materials. It is therefore necessary to determine the knives’ country of origin pursuant to 19 C.F.R. § 102.11(a)(3). The applicable tariff shift rule for the knives in 19 C.F.R. § 102.20 permits a “change to subheading 9018.90 from any other subheading, except from subheading 9001.90 or synthetic rubber classified in heading 4002 when resulting from a simple assembly; or [a] change to defibrillators from printed circuit assemblies, except when resulting from a

simple assembly.” Since the blanks are classified under the same subheading as the knives, the rule is not satisfied. Consequently, 19 C.F.R. § 102.11(b) of the hierarchical rules must be applied to determine the knives’ country of origin.

Section 102.11(b) provides that:

Except for a good that is specifically described in the Harmonized System as a set, or is classified as a set pursuant to General Rule of Interpretation 3, the country of origin cannot be determined under paragraph (a) of this section:

- (1) The country of origin of the good is the country or countries of origin of the single material that imparts the essential character to the good.

For purposes of identifying the material that imparts the essential character to a good under section 102.11(b), section 102.18(b) limits consideration to domestic and foreign materials “that are classified in a tariff provision from which a change in tariff classification is not allowed under the § 102.20 specific rule or other requirements applicable to the good.” The only material used in producing the knives for which a change in tariff classification is not allowed are the blanks likewise classified under 9018.90, HTSUS. Accordingly, the blanks’ country of origin is also the knives’ country of origin. As the blanks produced in the United States from steel of unknown origin satisfy the applicable tariff shift rule in the United States, the knives’ country of origin for marking purposes is the United States.

However, pursuant to 19 C.F.R. § 102.19(b):

[I]f the country of origin of a good which is originating within the meaning of § 181.1(q) of this chapter is determined to be the United States and that good has been exported from, and returned to, the United States after having been advanced in value or improved in condition in another NAFTA country, the country of origin of such good for Customs duty purposes is the last NAFTA country in which that good was advanced in value or improved in condition before its return to the United States.

Here, blanks originating in the United States are exported to Mexico to be rendered suitable for sale through production into finished knives. The knives are therefore advanced in value or improved in condition in Mexico. Mexico is thus the knives’ country of origin for Customs duty purposes. Note that 19 CFR § 102.19(b) has no effect on the country of origin for marking purposes, and no marking on the knives is necessary. *See* HQ H046759 (June 29, 2009). Articles originating in the United States are generally not subject to the marking requirements of 19 U.S.C. § 1304. The Federal Trade Commission (“FTC”) has jurisdiction over marking such articles. Any inquiries concerning marking the knives with a phrase such as “Made in the USA” must be directed to the FTC. The FTC may be contacted at the following address: Federal Trade Commission, Division of Enforcement, 6th and Pennsylvania Ave. NW, Washington, DC 20508.

#### **HOLDING:**

We find that the knives are entitled to preferential tariff treatment under NAFTA pursuant to GN 12(b)(iii), the United States is the knives’ country of origin for marking purposes pursuant to 19 C.F.R. § 102.11(b)(1), and that Mexico is the knives’ country of origin for Customs duty purposes pursuant to 19 C.F.R. § 102.19(b).

**EFFECT ON OTHER RULINGS:**

NY N284181, dated April 6, 2017, is hereby MODIFIED. In accordance with 19 U.S.C. §1625(c)(2), this ruling will become effective sixty (60) days after the date of its publication in the Customs Bulletin.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**19 CFR PART 177****MODIFICATION OF ONE RULING LETTER AND  
REVOCACTION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF METAL HAIR SNAP CLIPS**

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

**ACTION:** Notice of modification of one ruling letter, and of revocation of treatment relating to the tariff classification of metal hair snap clips.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter concerning tariff classification of metal hair snap clips 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. 51, No. 48, on November 29, 2017. 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 July 9, 2018.

**FOR FURTHER INFORMATION CONTACT:** Reema Radwan, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–7703.

**SUPPLEMENTARY INFORMATION:****BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share 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. 51, No. 48, on November 29, 2017, proposing to modify one ruling letter pertaining to the tariff classification of metal hair snap clips. 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") N096966, dated April 9, 2010, CBP classified metal hair snap clips in heading 9615, HTSUS, specifically in subheading 9615.90.30, HTSUS, which provides for "Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Other: Hair pins." CBP has reviewed NY N096966 and has determined the ruling letter to be in error. It is now CBP's position that metal hair snap clips are properly classified in heading 9615, HTSUS, specifically in subheading 9615.19.60, HTSUS, which provides for "Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Combs, hair-slides and the like: Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY N096966 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H248338, 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: February 5, 2018

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

*Attachment*



HQ H284338

February 5, 2018

OT:RR:CTF:CPM H248338 RGR

CATEGORY: Classification

TARIFF NO.: 9615.19.6000

MS. SARAH ALBERTINI-BOND  
DOLLAR TREE STORES  
500 VOLVO PARKWAY  
CHESAPEAKE, VIRGINIA 23462

RE: Modification of NY N096966; Tariff classification of metal hair snap clips from China

DEAR MS. ALBERTINI-BOND:

This is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York (“NY”) Ruling Letter N096966, dated April 9, 2010, regarding the classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of metal hair snap clips (“snap clips”) from China. The snap clips, identified in NY N096966 as metal hair clips, were classified under subheading 9615.90.30, HTSUS, as “[c]ombs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Other: Hair pins.” After reviewing this ruling in its entirety, we believe that it is partially in error. For the reasons set forth below, we hereby modify NY N096966 with respect to the classification of snap clips. The remaining analysis of NY N096966 remains unchanged.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Volume 51, No. 48 on November 29, 2017, proposing to modify NY N096966, and any treatment accorded to substantially similar transactions. No comments were received in response to this notice.

**FACTS:**

In NY N096966, we described the products as follows:

Style SKU 16916A consists of four head wraps and hair clips on a card. One head wrap is 1” wide and made of knit polyester fabric. The other three thin head wraps are made of cordage. *Also included on the card are two sets of metal hair clips.*<sup>1</sup>

(Emphasis added). We further note that your ruling request, dated March 4, 2010, regarding the metal hair clips, describes them as “4 snap clips.”

Upon examination of a sample snap clip, we note that it has two prongs, and is shaped like a triangle. The prongs “snap” open and closed when pressure is applied to the middle of the snap clip. When the snap clip is closed, it is used to hold or fasten hair in place for the purpose of securing hair into different hairstyles.

<sup>1</sup> The Ruling also considered the classification of Style SKU 16916B, which consisted of eight pony tail holders and three head wraps made of cordage.

**ISSUE:**

Whether snap clips are classified under subheading 9615.19.60, HTSUS, as “[c]ombs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Combs, hair-slides and the like: Other: Other” or under subheading 9615.90.30, HTSUS, as “[c]ombs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Other: Hair pins.”

**LAW AND ANALYSIS:**

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

The HTSUS subheadings under consideration are as follows:

9615:	Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof:
	Combs, hair-slides and the like:
9615.19	Other:
9615.19.60	Other. . .
* * *	
9615.90:	Other:
9615.90.30	Hairpins. . .

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 Harmonized System 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).

Neither the HTSUS nor the ENs provides a definition for “combs”<sup>2</sup> or “hair-slides.” In the absence of a definition of a term in the HTSUS or ENs, the term’s correct meaning is its common and commercial meaning. *Nippon Kogaku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673, F.2d 1268 (1982).

<sup>2</sup> In NY N137675, dated January 4, 2011, we noted that “the previous tariff schedule (TSUSA) in Subpart A, of Schedule 7, provided ‘the term combs means toothed instruments having not over two rows of teeth, for adjusting, cleaning, or confining hair, or for personal adornment’—see Headquarters Ruling Letter HQ 951234, dated March 11, 1992. Common definitions as found in dictionaries define a ‘comb’ as a toothed instrument used especially for adjusting, cleaning, arranging, or confining hair. . .” As the merchandise at issue does not consist of a toothed instrument, we do not consider whether it is a comb for classification under the HTSUS.

In regards to defining “hair-slides” based on their common or commercial meaning, we turn to the Online Oxford English Dictionary (“OED”) for guidance. The OED uses the definition for “hair” as compounded for the meaning of “hair-slide” and cross referenced to the OED definition of “slide,” at n.6: “a clasp for fastening in the hair.”<sup>3</sup> The Merriam-Webster Online Dictionary defines a “hair slide” as “a clip or bar for holding hair in place.”<sup>4</sup> Moreover, in NY N273821, dated April 11, 2016, we noted that there are “no restrictions in the meaning of hair-slide for the types of ornamentation that can be used in the creating or producing of the hair clasp. The only restrictions in heading 9615, HTSUS, is that the hair-slides be of rigid and semi-rigid construction, and not merely of textile fabric. . .”

Turning to the merchandise at issue, the snap clips are similar to hair-slides because they both hold hair in place by means of clasps or prongs that open and close. The snap clips are in an “open” position when no pressure is applied and a “closed” position when pressure is applied to the middle of the clip to secure hair in place.<sup>5</sup> As metal snap clips are similar to hair slides, they are described by the terms in subheading 9615.19, HTSUS, and cannot be described as something “other” than similar to hair slides in subheading 9615.90, HTSUS.

Moreover, the Random House Dictionary of the English Language, Unabridged (1973) defines “hair pin” as “1. A slender U-shaped piece of wire, shell, etc., used by women to fasten up the hair or hold a headdress.” In past rulings, we have found that hairpins include merchandise such as bobby pins, which only have one position as part of their mechanism for holding hair in place. *See, e.g.*, Headquarters (“HQ”) Ruling Letter 964802, dated April 5, 2001 (holding that bobby pins are a type of hairpin and are classified in subheading 9615.90.30, HTSUS); NY N016359, dated September 5, 2007 (classifying bobby pins as hairpins in subheading 9615.90.30, HTSUS). The

<sup>3</sup> Online Oxford English Dictionary, <http://www.oed.com/view/Entry/181765#eid22219842> (last visited on October 10, 2017).

<sup>4</sup> Merriam-Webster Online Dictionary, <http://www.m-w.com> (last visited on October 3, 2017).

<sup>5</sup> *See, e.g.*, HQ 960976, dated June 24, 1998 (affirming classification of metal hair “Clippees,” which are described as merchandise identical to snap clips, in subheading 9615.19.60, HTSUS, as “combs, hair-slides and the like; other”); NY N006802, dated March 14, 2007 (classifying metal snap clips in subheading 9615.19.60, HTSUS, as “combs, hair-slides and the like: other”); NY M86837, dated September 28, 2006 (classifying plastic covered metal snap clips in subheading 9615.19.60, HTSUS, as “combs, hair-slides and the like: other”); NY J81149, dated February 14, 2003 (classifying plastic covered metal snap clips in subheading 9615.19.60, HTSUS, as “combs, hair-slides and the like: other”); NY J84591, dated May 23, 2003 (classifying textile covered metal snap clips in subheading 9615.19.60, HTSUS, as “combs, hair-slides and the like: other”); NY H88428, dated March 12, 2002 (classifying plastic covered metal snap clips in subheading 9615.19.60, HTSUS, as “combs, hair-slides and the like: other”); NY I81213, dated April 30, 2002 (classifying epoxy covered metal snap clips in subheading 9615.19.60, HTSUS, as “combs, hair-slides and the like: other”); NY H82312, dated June 14, 2001 (classifying metal snap clip hair ornaments in subheading 9615.19.60, HTSUS, as “combs, hair-slides and the like: other”); NY H83200, dated July 12, 2001 (classifying metal snap clips in subheading 9615.19.60, HTSUS, as “combs, hair-slides and the like: other”); NY F85715, dated April 11, 2000 (classifying metal hair snap clips in subheading 9615.19.60, HTSUS, as “combs, hair-slides and the like: other”); NY E86444, dated August 30, 1999 (classifying metal hair snap clips in subheading 9615.19.60, HTSUS, as “combs, hair-slides and the like: other”); NY E86248, dated August 25, 1999 (classifying metal snap clips in subheading 9615.19.60, HTSUS, as “combs, hair-slides and the like: other”).

instant merchandise is unlike a hairpin or bobby pin in that it is always in the “closed” position, in which there is constant pressure by one prong against the other. As noted above, the snap clips can be in either an “open” position or a “closed” position.

**HOLDING:**

Pursuant to GRIs 1 and 6, the snap clips described as “metal hair clips” in NY N096966 are classified in heading 9615, HTSUS, and specifically provided for under subheading 9615.19.6000, HTSUSA (Annotated), as “[c]ombs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Combs, hair-slides and the like: Other: Other.” The 2017 column one general rate of duty is 11% *ad valorem*.

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

**EFFECT ON OTHER RULINGS:**

New York Ruling Letter N096966, dated April 9, 2010, is hereby MODIFIED as set forth above with respect to classification of the metal hair clips described therein, but the classification of the knit polyester head wrap, the cordage head wraps and the ponytail holders remains in effect.

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

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

**ACTION:** Notice of proposed revocation of one ruling letter, and revocation of treatment relating to the tariff classification of Floppets.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning tariff classification of Floppets 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 June 8, 2018.

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

**FOR FURTHER INFORMATION CONTACT:** Reema Radwan, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–7703.

**SUPPLEMENTARY INFORMATION:****BACKGROUND**

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

484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. §1625(c)(1), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of Floppets. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N241384, dated May 29, 2013 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY N241834, CBP classified Floppets in heading 3926, HTSUS, specifically in subheading 3926.40.00, HTSUS, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Statuettes and other ornamental articles.” CBP has reviewed NY N241834 and has determined the ruling letter to be in error. It is now CBP’s position that Floppets are properly classified, in heading 7117, HTSUS, specifically in subheading 7117.90.75, HTSUS, which provides for “Imitation jewelry: Other: Other: Valued over 20 cents per dozen pieces or parts: Other: Of plastics.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N241834 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H249749, 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: January 24, 2018

ALLYSON MATTANAH  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

## ATTACHMENT A

N241384

May 29, 2013

CLA-2-39:OT:RR:NC:N4:421

CATEGORY: Classification

TARIFF NO.: 3926.40.0000

MS. SARA MOFFATT  
PHOENIX INTERNATIONAL  
1501 N. MITTEL BLVD., SUITE A  
WOOD DALE, IL 60191

RE: The tariff classification of plastic "Floppets" from China

DEAR MS. MOFFATT:

In your letter dated April 24, 2013, on behalf of Zydeco Studios LLC, you requested a tariff classification ruling.

A sample was provided with your letter. The Floppets are polyvinyl chloride (PVC) character charms on a hook and loop strip. These charms are available in such forms as hamsters, octopuses and penguins. The Floppets can be used to decorate a wide variety of items such as sunglasses, shoes, backpacks and pencils. As you requested, the sample will be returned.

The applicable subheading for the Floppets will be 3926.40.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of plastics: statuettes and other ornamental articles. The rate of duty will be 5.3 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Joan Mazzola at (646) 733-3023.

*Sincerely,*

THOMAS J. RUSSO

*Director*

*National Commodity Specialist Division*



## ATTACHMENT B

HQ H249749  
OT:RR:CTF:CPMM H249749 RGR  
CATEGORY: Classification  
TARIFF NO.: 7117.90.7500

Ms. SARA M. MOFFATT  
PHOENIX INTERNATIONAL FREIGHT SERVICES, LTD.  
1501 N. MITTEL BLVD., SUITE A  
WOOD DALE, IL 60191

RE: Revocation of NY N241384; Tariff classification of Floppets

DEAR Ms. MOFFATT:

This is in response to your letter, dated August 13, 2013, on behalf of Zydeco Studios LLC, requesting the reconsideration of New York Ruling Letter (“NY”) N241384, dated May 29, 2013. In that decision, U.S. Customs and Border Protection (“CBP”) ruled that character charms marketed as “Floppets” were classified in subheading 3926.40.00, Harmonized Tariff Schedule of the United States (“HTSUS”), as “[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Statuettes and other ornamental articles.” A sample of the subject merchandise was included with the request.

We have reviewed NY N241834 and determined that the classification of the Floppets in subheading 3926.40.00, HTSUS, was incorrect.

**FACTS:**

The subject merchandise consists of cartoon-like plastic characters attached to a textile strap with hook and loop closures that, when closed, are about the size of a ring. Because the closure is flexible, it may also attach to a wide variety of items such as sunglasses, shoes, backpacks and pencils.

In NY N241384, we described the product as follows:

The Floppets are polyvinyl chloride (PVC) character charms on a hook and loop strip. These charms are available in such forms as hamsters, octopuses and penguins. The Floppets can be used to decorate a wide variety of items such as sunglasses, shoes, backpacks and pencils.

According to the Floppets UK website,<sup>1</sup> you can “[w]ear them on your finger, back pack, flip flops, shoe laces, wrists, ankles or add them to your most personal accessories. Floppets allow you to demonstrate how clever you are by ‘wear’ you attach them! You can collect, share, wear, and trade them with everyone!” The webpage entitled “How Do Floppets Work?”<sup>2</sup> explains that the loop side of the strap, which it refers to as a “teather” is “comfortable against the skin, . . . ideal when wearing a Floppet around your finger, as part of a necklace or bracelet, or even on your sandle and attached to clothes!” The hook side of the teather allows it to stay connected. The “eyelet” is a small slit in the strap through which a plastic mushroom shaped protusion on the back of the plastic character is positioned. This allows the wearer to switch plastic characters from one textile strap to another.

<sup>1</sup> As of August 3, 2017, the U.S. website and Facebook page for Floppets were unavailable. The UK website for Floppets is available at <https://floppets.uk.com/> (last visited August 3, 2017).

<sup>2</sup> <https://floppets.uk.com/how-to-flop/> (last visited November 29, 2017).

**ISSUE:**

Whether plastic cartoon-like character charms known as Floppets are classified under heading 3926, HTSUS, as “other articles of plastics,” under heading 7117, HTSUS, as “imitation jewelry” or under heading 9503, HTSUS, as “other toys”?

**LAW AND ANALYSIS:**

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

The HTSUS headings under consideration are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
7117	Imitation jewelry:
9503	Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof.

\*\*\*

Note 9(a) to Chapter 71, HTSUS, states, in pertinent part:

For the purposes of heading 7113, the expression “articles of jewelry” means:

- (a) Any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia).

Note 11 to Chapter 71, HTSUS, states:

For the purposes of heading 7117, the expression “imitation jewelry” means articles of jewelry within the meaning of paragraph (a) of note 9 above (but not including buttons or other articles of heading 9606, or dress combs, hair slides or the like, or hairpins, of heading 9615), not incorporating natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed) nor (except as plating or as minor constituents) precious metal or metal clad with precious metal.

Note 2 to Chapter 39, HTSUS, provides, in pertinent part:

- 2. This chapter does not cover:

\*\*\*

- (y) Articles of Chapter 95 (for example, toys, games, sports equipment)...

\*\*\*

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP’s

practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN 39.26 states, in pertinent part, the following:

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

They include:

(1) Articles of apparel and clothing accessories (**other than** toys) made by sewing or sealing sheets of plastics, e.g., aprons, belts, babies' bibs, raincoats, dress-shields, etc. Detachable plastic hoods remain classified in this heading if presented with the plastic raincoats to which they belong.

\*\*\*

(12) Various other articles such as fasteners for handbags, corners for suit-cases, suspension hooks, protective cups and glides for placing under furniture, handles (of tools, knives, forks, etc.), beads, watch "glasses", figures and letters, luggage label-holders.

The EN to Heading 71.13 states, in pertinent part:

This heading covers articles of jewellery as defined in Note 9 to this Chapter, wholly or partly or precious metal or metal clad with precious metal, that is:

(B) Small object of personal adornment (gem-set or not) such as rings, bracelets, necklaces, brooches, ear-rings, neck chains, watch-chains and other ornamental chains; fobs, pendants, tie-pins and clips, cuff-links, dress-studs, buttons, etc.; religious or other cross; medals and insignia; hat ornaments (pins, buckles, rings, etc.); ornaments for handbags; buckles and slides for belts, shoes, etc.; hair-slides, tiaras, dress combs and similar hair ornaments.

(emphasis added).

The EN to Heading 71.17 states, in pertinent part:

For the purposes of this heading, the expression imitation jewellery, as defined in Note 11 to this Chapter, is restricted to small objects of personal adornment, such as those listed in paragraph (A) of the Explanatory Note to heading 71.13, e.g., rings, bracelets (other than wrist-watch bracelets), necklaces, ear-rings, cuff-links, etc., ...

The EN to heading 95.03 states, in pertinent part, the following:

\*\*\*

(D) **Other toys.**

This group covers toys intended essentially for the amusement of persons (children or adults). However, toys which, on account of their design, shape or constituent material, are identifiable as intended exclusively for animals, e.g., pets, do not fall in this heading, but are classified in their own appropriate heading. This group includes:

All toys **not included** in (A) to (C). Many of the toys are mechanically or electrically operated.

These include:

- (i) Toys representing animals or non-human creatures even if possessing predominantly human physical characteristics (e.g., angels, robots, devils, monsters), including those for use in marionette shows.

The importer asserts that Floppets are classified either in heading 7117, HTSUS, as “imitation jewelry” or in heading 9503, HTSUS, as “other toys” instead of heading 3926, HTSUS, as “other articles of plastic.” Toys of Chapter 95 are excluded from classification in heading 3926, HTSUS, pursuant to Note 2 to Chapter 39. Hence, we must first determine if the subject merchandise constitutes “imitation jewelry” within the scope of heading 7117, HTSUS, or “other toys” within the scope of heading 9503, HTSUS, before considering classification in heading 3926, HTSUS.

The importer also asserts that Floppets are similar to Jibbitz, which were classified in NY N212139, dated May 1, 2012, under heading 7117, HTSUS. Jibbitz are plastic charms that come in various cartoon-like designs and are used to decorate Crocs shoes. Jibbitz are specifically designed to decorate Crocs shoes through insertion into the shoes’ holes rather than by a strap. We have recently proposed revocation of an inconsistent ruling on Jibbitz in favor of classification in heading 7117, HTSUS. See H278152, revoking NY N009740, published in Customs Bulletin Vol. 51, No 48, dated November 29, 2017. We do not believe that occasional use on items not mentioned in the legal text or ENs precludes classification as imitation jewelry. In fact, Floppets are used to adorn more than shoes—they can be worn like rings, pendants from a necklace or charms from a bracelet. They can attach through buttonholes near a shirt collar like a brooch, on belts like a buckle, or on handbags. Hence Floppets, which do not contain any metal, pearls or precious or semiprecious stones, are *ejusdem generis* with the exemplars of Note 9(a), and can be described as imitation jewelry under Note 11 to Chapter 71.

We must also determine whether the article is a toy of heading 9503, and thus excluded from classification in heading 3926. In order to do so, it is necessary to compare whether the primary purpose is to amuse or to provide a utilitarian/functional quality. See HQ 966046, dated May 16, 2003 and HQ 963638, dated November 2, 2001. In *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 33; C.D. 4688 (1977), the court stated that “[W]hen amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose is incidental to the amusement.” Therefore, if the level of play value and amusement of the article is not sufficient to constitute its principal use, the article is not a toy. See *United States v. Topps Chewing Gum, Inc.*, 58 C.C.P.A. 157 (1973); HQ 229863, dated February 10, 2004.

Indeed, the instant merchandise is used to adorn the wearer or the wearer’s personal affects. In so doing, it is not being played with by, or amusing to, the wearer. While Floppets may be traded, this alone does not provide amusement or diversion *per se*. See NY I81353, dated May 10, 2002 and NY J86462, dated July 2, 2003. Furthermore, the provisions for toys representing animals and non-human creatures require that a toy figure must be a full or reasonably full-figured depiction of the animal/creature it seeks to represent and that figure must be a soft, sculptured edition or an articulation in three dimensions of the head, torso, and appendages of the character being portrayed. See HQ 963390, dated November 24, 2000. The instant figure is small

and flat and may only depict the face of the creature. In short, nothing about the instant merchandise leads us to the conclusion that it can be described as a toy of heading 9503.

Floppets are made of a textile strap and a plastic figure. Hence, heading 3926, HTSUS, describes only part only of the good, even though it may be similar in its placement to some of the listed items in EN 39.26 (1) and (12). Therefore, Floppets could only be classified there under GRI 3, whereas the terms to heading 7117 describe the good at GRI 1. Furthermore, even if the merchandise were wholly described by heading 3926, HTSUS, as it is classifiable in heading 7117, HTSUS, it cannot be classified in heading 3926, HTSUS, according to the EN thereto.

In light of the foregoing, Floppets are properly classified in heading 7117, HTSUS, and specifically provided for under subheading 7117.90.75, HTSUS, as “Imitation jewelry: Other: Other: Valued over 20 cents per dozen pieces or parts: Other: Of plastics.”

**HOLDING:**

By operation of GRIs 1 and GRI 6, Floppets are classifiable as “imitation jewelry” in heading 7117, HTSUS, and are specifically provided for in subheading 7117.90.7500, HTSUSA (Annotated), which provides for “Imitation jewelry: Other: Other: Valued over 20 cents per dozen pieces or parts: Other: Of plastics.” The 2017 column one, general rate of duty is free.

**EFFECT ON OTHER RULINGS:**

NY N241384, dated May 29, 2013, is revoked.

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

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**PROPOSED REVOCATION OF ONE RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF A KNIFE CARE SET**

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

**ACTION:** Notice of proposed revocation of one ruling letter, and revocation of treatment relating to the tariff classification of a knife care set

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning tariff classification of knife care sets 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 June 8, 2018.

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

**FOR FURTHER INFORMATION CONTACT:** Reema Radwan, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–7703.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the

importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. §1625(c)(1), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of a knife care set. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N245711, dated September 25, 2013 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY N245711, CBP classified a knife care set in heading 7116, HTSUS, specifically in subheading 7116.20.40, HTSUS, which provides for “articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed).” CBP has reviewed NY N245711 and has determined the ruling letter to be in error. It is now CBP’s position that the knife care set is properly classified, in heading 6815, HTSUS, specifically in subheading 6815.99.20, HTSUS, which provides for “articles of stone or of other mineral substances (including carbon fibers, articles of fibers and articles of peat), not elsewhere specified or included.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N245711 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) 293248, 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: February 27, 2018

ALLYSON MATTANAH  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*



## ATTACHMENT A

N245711

September 25, 2013

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

CATEGORY: Classification

TARIFF NO.: 7116.20.4000

LISA WHILES

NW REGIONAL MANAGER

JAMES J. BOYLE &amp; Co.

7505 NE AMBASSADOR PLACE, SUITE B

PORTLAND, OR 97220

RE: The tariff classification of a knife care kit from China.

DEAR MS. WHILES:

In your letter received by the National Commodity Specialist Division on August 29, 2013, you requested on behalf of Kai USA Ltd., a tariff classification ruling. As requested, the sample submitted will be returned to you.

The sample identifies the merchandise as the Shun Cutlery, 87171-04168, Knife Care Kit. The knife care kit consists of three black micro polishing cloths made from cotton, one Uchiko talc powder ball, one 2-ounce bottle of food grade oil; five polishing sticks (buffing wands), and one wooden storage box. Each polishing stick is composed of three different grits: grey for fine, red for medium and white for coarse. User instructions are included within the kit.

User instructions indicate that the knife care kit is used for removing tarnish and discolorations, or in egregious situations for the removing of surface rust; it is expected with proper care of the knives that rust will never occur. Use of the polishing cloth and talc will enable the purchaser to retain a blade's mirror finish. Instructions state to always diagnose first and start with the least aggressive method.

For removing tarnish and discolorations the following are the abridged steps: (1) working from the spine side of the blade and keeping the sharp edge away from your fingers, use the black polishing cloth to wipe down the blade, (2) rub the blade with the cloth until the tarnish is removed, (3) if you need to polish with more pressure, place the blade flat on a cutting board with handle off the edge of the board and hold the handle securely as you use the cloth to polish the blade, (4) if the tarnish or discoloration cannot be removed with just the polishing cloth, add the talc, (5) hold the talc ball over the blade and tap the handle of the talc ball several times so that a little talc falls on the blade, and (6) place the blade flat on a cutting board and use the polishing cloth to work from spine to edge until tarnish is removed.

For removing surface rust the following are the abridged steps: (1) start with the gray, fine polishing stick, (2) place the blade, with rust spot up flat on a cutting board, with the knife handle off the edge of the board, (3) rub the polishing stick, grey side down, over the rust spot, (3) if the spot is removed with the grey polishing stick, clean and polish, followed by applying oil, as described in the instructions for removing tarnish and discolorations, (4) if the spot is not removed by the fine polishing stick move up to medium polishing stick and use it the same way as the grey polishing stick, followed by cleaning and polishing and applying oil, and (5) if the spot is still not removed by the medium polishing stick move up to the coarse polishing stick

and use it the same way as the grey polishing stick, followed by cleaning and polishing and applying oil. A caution is provided that using the polishing sticks will remove the original polish from the blade and may leave slight scratch marks – exact factory polish cannot be obtained through use of this kit.

The Explanatory Notes (ENs), which constitute the official interpretation of the Harmonized Tariff Schedule at the international level, state in Note X to Rule 3 (b) that the term “goods put up in sets for retail sale” means goods which: (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings; (b) consist of products or articles put up together to meet a particular need and carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repacking. In this instance: the kit, without the wooden box, consists of four different items classified in four different headings of the tariff schedule, is used for cleaning and polishing knives, and is packaged together for retail sales. Accordingly, we find the knife care kit falls within the meaning of a set.

Further, the ENs to the HTSUS, at GRI 3 (b) (VIII), state that the factor which determines essential character will vary between different kinds of goods. It may for example, be determined by the nature of the materials or components, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods. When the essential character of a composite good can be determined, the whole product is classified as if it consisted only of the material or component that imparts the essential character to the composite good. If the essential character of the set cannot be determined, then GRI 3 (c) provides that classification will be determined by the heading which occurs last in numerical order among those headings which equally merit consideration.

We are of the position that the removing of surface rust from knives by use of the abrasive polishing sticks is a secondary consequence of either poorly maintained knives or in rare instances manufacturer’s defect, and therefore, does not equally weigh into the main purpose of the kit, which is the routine cleaning and polishing of knives. Consequently, the polishing sticks cannot impart the essential character to the set. We are further of the position that the food grade cooking oil is merely a protective coating to be applied to the blade, for use in the prevention of spotting, tarnishing and rusting, and therefore, this item cannot impart the essential character to the set.

Both the cloths and Uchiko talc powder ball are need for purposes of routine cleaning and polishing knife blades. If it was not anticipated that knives would require additional cleaning and polishing tools, besides cloths, then the use of the talc ball would be unnecessary. Accordingly, we find the cloths and talc ball to be equally meriting consideration in the classification of the knife care kit. Since the talc ball falls last in numerical order, the classification of the knife care kit falls to subheading 7116.20.4000, HTSUS – *see* annex to ENs 7103 listing talc as a semiprecious stone.

The applicable subheading for the knife care kit will be 7116.20.4000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Of semiprecious stones (except rock crystal): Other.” The rate of duty will be 10.5% *ad valorem*.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Neil H. Levy at (646) 733-3036.

*Sincerely,*

MYLES B. HARMON

*Acting Director*

*National Commodity Specialist Division*

## ATTACHMENT B

HQ H293248  
OT:RR:CTF:CPMM H293248 RGR  
CATEGORY: Classification  
TARIFF NO.: 6815.99.20

LISA WHILES  
NW REGIONAL MANAGER  
JAMES J. BOYLE & Co.  
7505 NE AMBASSADOR PLACE, SUITE B  
PORTLAND, OR 97220

RE: Revocation of NY N245711; Tariff classification of a knife care kit from China

DEAR Ms. WHILES:

This letter is in reference to one ruling letter issued by U.S. Customs and Border Protection (“CBP”) concerning the classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of a knife care kit from China. Specifically, in New York Ruling Letter (“NY”) N245711, dated September 25, 2013, CBP classified a knife care kit in heading 7116.20.4000, HTSUS, where an Uchiko talc powder ball and micro polishing cloths imparted the essential character of the kit. Because the classification of the Uchiko talc powder ball in heading 7116, HTSUS, was last in numerical order pursuant to General Rule of Interpretation (“GRI”) 3(c), the entire kit was classified in that heading. We have reviewed NY N245711 and found it to be in error. For the reasons set forth below, we are revoking NY N245711.

**FACTS:**

In NY N245711, CBP described the merchandise as follows:

The sample identifies the merchandise as the Shun Cutlery, 87171–04168, Knife Care Kit. The knife care kit consists of three black micro polishing cloths made from cotton, one Uchiko talc powder ball, one 2-ounce bottle of food grade oil; five polishing sticks (buffing wands), and one wooden storage box. . .

User instructions indicate that the knife care kit is used for removing tarnish and discolorations, or in egregious situations for the removing of surface rust; it is expected with proper care of the knives that rust will never occur. Use of the polishing cloth and talc will enable the purchaser to retain a blade’s mirror finish. . .

**ISSUE:**

Whether the knife care kit is classifiable under heading 7116, HTSUS, as “articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed),” under heading 6802, HTSUS, as “worked monumental or building stone (except slate) and articles thereof, other than goods of heading 6801,” or under heading 6815, HTSUS, as “articles of stone or of other mineral substances (including carbon fibers, articles of carbon fibers and articles of peat), not elsewhere specified or included.”

**LAW AND ANALYSIS:**

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

GRI 3 provides as follows:

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

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

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

(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

The 2017 HTSUS provisions under consideration are as follows:

6802	Worked monumental or building stone (except slate) and articles thereof, other than goods of heading 6801; mosaic cubes and the like, of natural stone (including slate), whether or not on a backing; artificially colored granules, chippings and powder, of natural stone (including slate): *       *       *
6815	Articles of stone or of other mineral substances (including carbon fibers, articles of carbon fibers and articles of peat), not elsewhere specified or included: *       *       *
7116	Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed): *       *       *

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

According to Note 2 of Chapter 68, “‘worked monumental or building stone’ applies not only to the varieties of stone referred to in heading 2515 or 2516,

but also to all other natural stone (for example, quartzite, flint, dolomite and steatite) similarly worked” (emphasis added).

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

The ENs to heading 6802 state, in relevant part, that heading 6802 “covers stone which has been further processed than mere shaping into blocks, sheets or slabs by splitting, roughly cutting or squaring, or squaring by sawing (square or rectangular faces).” The EN to heading 6802 also states that the heading covers:

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

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

The EN to heading 71.03 states, in pertinent part, that the heading for precious and semi-precious stones excludes “Steatite (unworked, heading 25.26; worked, heading 68.02). Steatite is a compact form of talc.<sup>1</sup> Accordingly, the EN to heading 71.03 also excludes articles of talc.

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

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

Talc is a mineral rich in hydrous magnesium silicate.<sup>2</sup> Talc can be crushed into a powder known as “talcum powder” that has the ability to absorb moisture, absorb oils, absorb odor, serve as a lubricant, and produce an astringent effect with human skin.<sup>3</sup> These properties make talcum powder an important ingredient in everyday products such as baby powder, foot powders, first aid powders, and a variety of cosmetics.<sup>4</sup> Talc’s unique properties

<sup>1</sup> <https://www.britannica.com/science/steatite> (last visited on January 16, 2018).

<sup>2</sup> See EN to heading 25.26.

<sup>3</sup> <https://geology.com/minerals/talc.shtml> (last visited on January 8, 2018).

<sup>4</sup> *Id.*

also make it an important ingredient for making ceramics, paint, paper, roofing materials, plastics, rubber, insecticides, and many other products.<sup>5</sup>

Prior to March 2012, the Annex to the ENs to Chapter 71 listed talc as a precious or semiprecious stone. Noting the discrepancy with the EN to heading 71.03 excluding steatite (a form of talc) from the heading as a semiprecious stone in favor of heading 68.02 in accordance with Note 2 to Chapter 68, the Harmonized System Committee (“HSC”) deleted the term “talc” from the Annex to the ENs to Chapter 71 identifying precious or semiprecious stone. Accordingly, articles of talc are not specifically included in chapter 71 under Note 1(d) to that chapter.

The Uchiko talc powder ball that imparts the essential character of the knife care set in NY N245711 is used for cleaning and polishing knife blades. It is unlike the exemplars of soapstone or talc articles in the EN to heading 68.02, as it is not an article of soapstone or talc that is similarly worked as worked monumental or building stone pursuant to Note 2 of Chapter 68. Nor is there any indication that the talc is artificially colored powder. Instead, the Uchiko talc powder ball in NY N245711 contains talcum powder. As an article of talcum powder, it is classified in heading 6815, HTSUS, which provides for “[a]rticles of stone or of other mineral substances (including carbon fibers, articles of carbon fibers and articles of peat), not elsewhere specific or included.”

In NY N245711, we determined that the polishing cloths and the Uchiko talc powder ball both impart the essential character of the knife care set. Pursuant to GRI 3(c), the talc powder ball is last in numerical order compared to the polishing cloths, and the entire knife care set is classified in heading 6815, HTSUS.

**HOLDING:**

Pursuant to GRIs 1 and 6, the Uchiko talc powder ball and knife care set in NY N245711 is classified in heading 6815, HTSUS, specifically in subheading 6815.99.20, HTSUS, which provides for “[a]rticles of stone or of other mineral substances (including carbon fibers, articles of carbon fibers and articles of peat), not elsewhere specific or included: Other articles: Other: Talc, steatite and soapstone, cut or sawed, or in blanks, crayons, cubes, disks or other forms.” The 2017 column one, general rate of duty is FREE.

**EFFECT ON OTHER RULINGS:**

NY N245711, dated September 25, 2013, is REVOKED.

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

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

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<sup>5</sup> *Id.*

**19 CFR PART 177****MODIFICATION OF ONE RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
COUNTRY OF ORIGIN FOR MARKING PURPOSES OF  
ORTHODONTIC BRACKETS**

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

**ACTION:** Notice of modification of one ruling letter and of revocation of treatment relating to the country of origin for marking purposes of orthodontic brackets.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter concerning the country of origin for marking purposes of orthodontic brackets. Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 50, No. 20, on May 18, 2016. 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 July 9, 2018.

**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. 50, No. 20, on May 18, 2016, proposing to modify one ruling letter pertaining to the country of origin for marking purposes of orthodontic brackets. 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 NY B89079, dated September 26, 1997, CBP determined that the country of origin of the subject orthodontic brackets for marking purposes is Mexico. CBP has reviewed NY B89079 and has determined the ruling letter to be in error. It is now CBP's position that the country of origin for *marking purposes* is the United States (emphasis added). For CBP *duty purposes*, the country of origin of the subject orthodontic brackets is Mexico (emphasis added).

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY B89079 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H274096, 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: January 26, 2018

IEVA K. O'ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

*Attachment*

HQ H274096

January 26, 2018

CLA-2 OT:RR:CTF:TCM H274096 TSM

CATEGORY: Classification; Marking

TARIFF NO: 9021.19.8500; 9802.00.50

MR. DAVID M. MURPHY

GRUNFELD, DESIDEIRO, LEBOWITZ &amp; SILVERMAN LLP

399 PARK AVENUE 25TH FLOOR

NEW YORK, NY 10022-4877

RE: Modification of NY B89079; Tariff classification, country of origin marking and status under the NAFTA of orthodontic brackets from Mexico; Article 509; NAFTA Marking Rules (Final).

DEAR MR. MURPHY:

In NY B89079, dated September 26, 1997, the National Commodity Specialist Division of U.S. Customs and Border Protection (“CBP”) responded to your ruling request on behalf of Ormco Corporation, on the status of orthodontic brackets from Mexico under the North American Free Trade Agreement (“NAFTA”). We have reexamined NY B89079 and have determined that it needs to be modified with respect to the country of origin marking determination. The classification of the orthodontic brackets is not at issue. For the reasons set forth below we hereby modify NY B89079.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published in the *Customs Bulletin*, Volume 50, No. 20, on May 18, 2016, proposing to modify NY B89079 and revoke any treatment accorded to substantially identical transactions. One comment supporting the proposed action was received on June 17, 2016.

**FACTS:**

NY B89079, issued to Ormco Corporation on September 26, 1997, describes the subject merchandise as follows:

The articles to be imported are orthodontic brackets for use as parts of orthodontic braces. You state that the brackets are produced by a process in which acrylic is poured over the wire base and that each bracket is designed for a specific tooth. The brackets are manufactured in the U.S. and sent to Mexico to be color coded with a variety of colors. Each color designates a specific tooth for which the bracket is designed. The color coded brackets are returned to the U.S. in unmarked tubular containers and repacked in small plastic boxes for sale to the ultimate purchaser.

With respect to the country of origin marking, NY B89079 concludes as follows:

We agree that the country of origin marking of the finished brackets is controlled by 19 C.F.R. Section 102.19(b) which states the following:

If, under any other provision of this part, the country of origin of a good which is originating within the meaning of Section 181.1(q) of this chapter is determined to be the United States and that good has been exported from, and returned to, the United States after having been advanced in

value or improved in condition in another NAFTA country, the country of origin of such good for Customs duty purposes is the last NAFTA country in which that good was advanced in value or improved in condition before its return to the United States.

For marking purposes therefore the country of origin of the color coded brackets is Mexico. Since your client plans to repackage the brackets after importation, the certification procedure of 19 C.F.R. Section 134.26 will have to be followed. You did not furnish a sample of the repackaged brackets destined for sale in the U.S., we therefore cannot state if the marking your client intends to use will be in compliance with the Regulations.

We believe that the country of origin marking determination is incorrect.

**ISSUE:**

What is the country of origin for marking purposes of the orthodontic brackets under consideration?

**LAW AND ANALYSIS:**

Article 401 of the NAFTA, is incorporated into General Note 12, HTSUS. General Note 12(b)(iii) provides in pertinent part that:

12. North American Free Trade Agreement.

(b) For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if—

(iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials;

In NY B89079, CBP concluded:

The orthodontic brackets, being made entirely in the territory of the United States and Mexico using materials which themselves were originating, will satisfy the requirements of HTSUSA General Note 12(b)(iii). The merchandise will therefore be entitled to a free rate of duty under the NAFTA upon compliance with all applicable laws, regulations and agreements.

NY B89079 found that the country of origin marking of the finished brackets was controlled by 19 CFR 102.19(b), and applied the NAFTA preference override set forth therein, as required by General Note 12(a)(ii), HTSUS, which requires an origin determination to be made under the NAFTA marking rules of Mexico for a good to be eligible for NAFTA duty preference:

(ii) Goods that originate in the territory of a NAFTA party under the terms of subdivision (b) of this note and that qualify to be marked as goods of Mexico under the terms of the marking rules .... and are entered under a subheading for which a rate of duty appears in the “Special” subcolumn followed by the symbol “MX” in parentheses, are eligible for such duty rate....

We agree that the NAFTA Preference Override set forth in 19 CFR 102.19 is applicable to the subject merchandise. Specifically, 19 CFR 102.19(b) states:

(b) If, under any other provision of this part, the country of origin of a good which is originating ..... is determined to be the United States and that good has been exported from, and returned to, the United States after having been advanced in value or improved in condition in another NAFTA country, the country of origin of such good for Customs duty purposes is the last NAFTA country in which that good was advanced in value or improved in condition before its return to the United States.

Therefore, we find that the orthodontic brackets are an originating good under NAFTA and because they were returned to the U.S. after having been advanced in value or improved in condition in Mexico, the country of origin of the orthodontic brackets for CBP *duty purposes* is Mexico, pursuant to 19 CFR 102.19(b) (emphasis added). Accordingly, the “MX” NAFTA rate will be applicable to the orthodontic brackets. However, the country of origin for CBP *marking purposes* is the U.S. (emphasis added) and the brackets are not subject to the repackaging certification procedures of 19 C.F.R. § 134.26.

**HOLDING:**

For country of origin marking purposes, the country of origin of the orthodontic brackets manufactured in the U.S. and exported to Mexico for color coding operations prior to importation into the United States is the U.S. Therefore, the imported orthodontic brackets are not subject to the marking requirements of 19 U.S.C. 1304.

The orthodontic brackets of U.S. origin which undergo additional processing in Mexico prior to importation into the U.S. will be considered of Mexican origin for purposes of CBP duty pursuant to 19 CFR 102.19(b), inasmuch as the orthodontic brackets qualify as an originating good pursuant to General Note 12, HTSUS, and may be assessed duties at the “MX” NAFTA rate.

**EFFECT ON OTHER RULINGS:**

NY B89079, dated September 26, 1997, is MODIFIED.

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

*Sincerely,*

IEVA K. O’ROURKE  
*for*

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 CERTAIN  
COMMEMORATIVE GOLD ROUNDS**

**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 certain commemorative gold rounds.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking two ruling letters concerning tariff classification of certain commemorative gold rounds under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 50, No. 24, on June 15, 2016. No comments were received in response to that notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 9, 2018.

**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. 50, No. 24, on June 15, 2016, proposing to revoke two ruling letters pertaining to the tariff classification of certain commemorative gold rounds. 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") NY N260757, dated February 2, 2015, CBP classified certain commemorative gold rounds in heading 7115, HTSUS, specifically in subheading 7115.90.30, HTSUS, which provides for "Other articles of precious metal or of metal clad with precious metal: Other: Other: Of gold, including metal clad with gold."

Similarly, in NY N260343, dated January 16, 2015, CBP classified a gold round from Switzerland in subheading 7115.90.30, HTSUS. CBP has reviewed NY N260757 and NY 260343 and has determined the ruling letters to be in error. It is now CBP's position that the commemorative gold rounds are properly classified, in heading 7114, HTSUS, specifically in subheading 7114.19.00, HTSUS, which provides for "Articles of goldsmiths' or silversmiths' wares and parts thereof, of precious metal or of metal clad with precious metal: Of other precious metal whether or not plated or clad with precious metal."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N260757 and NY 260343 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H266605, 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: April 9, 2018

CLAUDIA K. GARVER

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

*Attachment*

HQ H266605

April 9, 2018

OT:RR:CTF:CPMM:ERB/LMH

CATEGORY: Classification

TARIFF NO.: 7114.19.0000

Ms. SHELLEY M. HOOKER  
INTERNATIONAL LOGISTICS MANAGER  
APMEX, INC.  
226 DEAN A. MCGEE AVENUE  
OKLAHOMA CITY, OK 73102

RE: Revocation of NY N206343, Revocation of NY N260757; Tariff classification of gold rounds

DEAR Ms. HOOKER:

U.S. Customs and Border Protection (CBP) issued you New York Ruling Letter (NY) N206343, dated January 16, 2015 and NY N260757, dated January 29, 2015. Both rulings pertain to the tariff classification under the Harmonized Tariff Schedule of the United States, (HTSUS) of gold rounds, from Switzerland and New Zealand, respectively. We have since reviewed these rulings and find them to be in error, which is described in detail herein.

On June 15, 2016, pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1), as amended by section 623 of Title VI, notice of the proposed action was published in the Customs Bulletin Vol. 50, No. 24. No comments were received in response to that notice.

**FACTS:**

NY N260757 states the following, in relevant part:

The item is identified as the New Zealand Mint, “1 oz. Gold Kiwi.” Present on the obverse surface of the round are the four stars of the Southern Cross, the word in all capitalized letters “AOTEAROA” – the traditional Maori name for New Zealand, and the words in all capitalized letters 1 OUNCE FINE GOLD .9999. Present on the reverse side of the round is the [sic] New Zealand’s iconic flightless bird (the Kiwi) with head held high to reflect the nation’s optimistic and proud spirit, NZ representing the New Zealand Mint, 1 oz, and the words in all capitalized letters NEW ZEALAND GOLD KIWI. This round is not legal tender, has no engraved nominal value, and the purchasing and selling price are determined by the current spot price for its metal content.

The applicable subheading for the 1oz. Gold Kiwi will be 7115.90.3000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for, “Other articles of precious metal, or of metal clad with precious metal: Other: Other: Of gold, including metal clad with gold.” The rate of duty will be 3.9% ad valorem.

NY N206343 states the following, in relevant part:

The item is identified as the “Valcambi Suisse Minted Gold Round Bar.” The item is a 1 oz., gold “minted” round, weighting 31.10 grams, having a fineness of 999.9. [sic] Present on the obverse surface of the round is the Valcambi’s Hallmark (logo, weight, metal, name, fineness, essayeur fondeur [the official stamp of the refinery that manufactured the bullion] and



bar number). Present on the reverse surface of the round is the official Valcambi SA Stamp. This round is not legal tender, has no engraved nominal value, and the selling price is determined by the current spot price for its metal content.

Although called a gold round bar, its shape is in the form of a round coin, and is therefore precluded from being classified in subheading 7115.90.0530, of the Harmonized Tariff Schedule of the United States (HTSUS). Consequently, the Valcambi Suisse Minted Gold Round Bar is classified in subheading 7115.90.30000, HTSUS.

The applicable subheading for the Valcambi Suisse Minted Gold Round Bar will be 7115.90.3000, HTSUS, which provides for “Other articles of precious metal or of metal clad with precious metal: Other: Other: Of gold, including metal clad with gold.” The rate of duty will be 2.9% ad valorem.

### ISSUE:

Whether the subject gold rounds are classified as goldsmiths’ wares, of heading 7114, HTSUS, or as other articles of precious metal, in heading 7115, 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:

7114	Articles of goldsmiths’ or silversmiths’ wares and parts thereof, of precious metal or of metal clad with precious metal:
7114.19.00	Of other precious metal whether or not plated or clad with precious metal.
***	
7115	Other articles of precious metal or of metal clad with precious metal:
7115.90.	Other:
7115.90.30	Of gold, including metal clad with gold

Note 4(a) to Chapter 71 states the following:

The expression “*precious metal*” means silver, gold and platinum.

The subject rounds are made of gold, and classification in Chapter 71 is not in dispute.

Note 10 to Chapter 71 states the following:

For purposes of heading 7114, the expression “*articles of goldsmiths’ or silversmiths’ wares*” includes such articles as ornaments, tableware, toilet-ware, smokers’ articles and other articles of household, office or religious use.

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

constitute the official interpretation of the HTSUS at the international level, may be utilized. The ENs, although not dispositive or legally binding, provides a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg 35127 (August 23, 1989).

The EN 71.14, Subpart (E) states the following, in relevant part:

This heading covers articles of goldsmiths' or silversmiths' wares as defined in Note 10 to this Chapter wholly or partly of precious metal or metal clad with precious metal. In general these goods are larger than articles of jewellery of heading 71.13; they include:

\*\*\*

(E) Other articles for domestic or similar use, for example, busts, statuettes and other figures for interior decoration; jewel cases; table centre-pieces, vases, jardinières; picture frames; lamps, candelabra, candlesticks, chandeliers; mantelpiece ornaments, decorative dishes and plates, medals and medallions (other than those for personal adornment); sporting trophies; perfume burners, etc.

The EN 71.15 states the following, in relevant part:

This heading is therefore largely confined to articles for technical or laboratory use such as crucibles, cupels and certain spatulas (e.g. of platinum or metals of the platinum group); platinum or platinum alloy in the form of cloth or grill for use as catalysts, etc.; vessels (whether or not lined or heat-insulated), not fitted nor designed to be fitted with mechanical or thermal equipment; electroplating anodes. Gold anodes may be in the form of sheets of pure gold cut to the required size and drilled at two corners for attachment of hooks for suspending them in the electroplating tank. ...

We note at the outset the rounds at issue are not legal tender. They are not struck by a national issuing authority, they do not have a face value, and they cannot be spent in their country of issue. It is for this reason that heading 7118, HTSUS, which provides for coins, is not being considered. *See* Headquarters Ruling (HQ) H074995, dated July 29, 2010 (classifying gold and silver coins by differentiating legal tender from commemorative coins), and *see* NY N016199, dated September 11, 2007 (classifying silver commemorative coins).

The classification of imported merchandise is determined by its condition as imported. *Amersham Corp. v. United States*, 5 C.I.T. 49, 53 (Ct. Int'l Trade 1982), *citing Mitsubishi International Corp. v. United States*, 78 Cust. Ct. 4, C.D. 4686 (1977). Note 10 to Chapter 71 defines the relevant text of heading 7114, HTSUS. Specifically, it states that articles of goldsmiths' wares includes "ornaments". The term "ornament" is not defined in the tariff, and as such, it must be construed in accordance with its common and commercial meanings. *See Nippon Kogaku (USA) Inc., v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). 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*, 69 C.C.P.A. 128, 673 F.2d 1268, 1271

(CCPA 1982) ; *Simod*, 872 F.2d at 1576. As the Courts are so empowered, it is prudent for CBP to do so as well. Merriam-Webster defines “ornament” as a small fancy object that is put on something else to make it more attractive; a useful accessory; something that lends grace or beauty<sup>1</sup>. Merriam-Webster defines “decorative” as an object which is purely ornamental<sup>2</sup>, as opposed to an object with a utilitarian function.

The ENs to heading 71.14 clarifies the tariff text “other articles for domestic or similar use” as including figures for interior decoration, mantelpiece ornaments, medals and medallions, among other listed articles. The myriad listed articles vary in size, shape, and purpose and so could be challenging to find unifying characteristics beyond aesthetics. However, in this context, the use of the word “etc.” [etcetera] indicates that this list is not exhaustive, but rather is illustrative. Medals and medallions, which are provided for in the ENs share similar characteristics as commemorative coins insofar as they are for decorative or ornamental use, to be viewed and enjoyed by its owner or guests, or could be given as gifts to memorialize a certain event or milestone. They are unlikely to be hoarded to build wealth or maintain oneself in a downward economy. As such, the subject coins are classified alongside medals and medallions, or decorative ornaments, and are properly classified in heading 7114, HTSUS, as an article of goldsmiths’ wares.

This is consistent with prior CBP rulings on commemorative coins. See NY N200016, dated January 24, 2010; NY N200017, dated January 24, 2010; NY N249940, dated February 20, 2014; NY R01031, dated November 15, 2004; NY A86378, dated August 6, 1996.

Furthermore, the tariff text itself, as well as the EN 71.15 clarifies that this heading is reserved for articles for technical or laboratory use, and the subject coins have no technical or laboratory use. See EN 71.15, and see NY N264210, dated May 19, 2015 (classifying 24K gold flakes in a solution of butylene glycol in subheading 7115.90.3000, HTSUSA, because gold flakes in a solution of 99 grams of butylene glycol which is added to a cosmetic lotion post-importation in the manufacture of skincare products is not an article of goldsmiths’ wares). See also *Salem Minerals Inc. v. United States*, 34 Int’l Trade Rep. (BNA) 1747, Slip Op. 12–88 (Ct. Int’l Trade June 26, 2012), where the Court of International Trade found that “gold leaf vials filled with clear liquid” lacked any constituent component that a goldsmith would make and that the goods could not be concluded to be more than the sum of its constituent parts. In other words, “taken as a whole, those gold leaf vials do not reach to the level of the work, or the ware, of a goldsmith within the purview of HTSUS heading 7114.” *Id* \* 21. Consequently, the Court held that the gold leaf vials were properly classifiable under subheading 7115.90.30, HTSUS.

#### **HOLDING:**

By application of GRI 1, the subject “Valcambi Suisse Minted Gold Round Bar” and the New Zealand “1 oz. Gold Kiwi” commemorative coins are classified in heading 7114, HTSUS. They are specifically provided for in subheading 7114.19.00, HTSUS, which provides for, “Articles of goldsmiths’ or silversmiths’ wares and parts thereof, of precious metal or of metal clad

<sup>1</sup> “Ornament.” *Merriam-Webster.com*. Merriam-Webster, n.d. Web. 16 July 2015. <<http://www.merriam-webster.com/dictionary/ornament>>.

<sup>2</sup> “Decorative.” *Merriam-Webster.com*. Merriam-Webster, n.d. Web. 16 July 2015. <<http://www.merriam-webster.com/dictionary/decorative>>.

with precious metal: Of other precious metal whether or not plated or clad with precious metal.” The column one general rate of duty is 7.9% ad valorem.

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

### **EFFECT ON OTHER RULINGS**

NY N206343, dated January 16, 2015, and NY N260757, dated February 2, 2015, 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.

CLAUDIA K. GARVER  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

**PROPOSED MODIFICATION OF THREE RULING LETTERS  
AND REVOCATION OF TREATMENT RELATING TO THE  
COUNTRY OF ORIGIN OF DECORATIVE PILLOWS,  
HEATABLE SAKS, AND STUFFED MATTRESS COVERS**

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

**ACTION:** Notice of proposed modification of three ruling letters and revocation of treatment relating to the country of origin of decorative pillows, heatable saks, and stuffed mattress covers for marking purposes.

**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 three ruling letters concerning the country of origin of decorative pillows, heatable saks, and stuffed mattress covers for marking purposes. 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 June 8, 2018.

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

**FOR FURTHER INFORMATION CONTACT:** Elif Eroglu, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–0277.

**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 three ruling letters pertaining to the country of origin of decorative pillows, heatable saks, and stuffed mattress covers for marking purposes. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N287930, dated August 3, 2017 (Attachment A), Headquarters Ruling Letter (“HQ”) H265611, dated October 21, 2015 (Attachment B), and HQ 963233, dated December 13, 2000 (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 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 the NY N287930, HQ H265611, and HQ 963233, CBP determined that the merchandise classified under subheading 9404.90.20, HTSUS, was subject to 19 C.F.R. § 102.11 rules of origin. CBP has reviewed NY N287930, HQ H265611, and HQ 963233 and has determined the ruling letters to be partially in error. It is now CBP’s position that merchandise classified under subheading 9404.90.20, HTSUS, which is a “textile or apparel product” is subject to 19 C.F.R. § 102.21 rules of origin.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY N287930, HQ H265611, and HQ 963233 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H290258, HQ H293880, and HQ H293881,

set forth as Attachments D, E, and F 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: February 18, 2018

MONIKA R. BRENNER  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

## ATTACHMENT A

N287930

August 3, 2017

CLA-2-94:OT:RR:NC:N4:433

CATEGORY: Classificatio

TARIFF NO.: 9404.90.1000; 9404.90.2000

HUMBERTO F. ORDUNO  
U.S. CUSTOMS BROKER  
R.L. JONES CUSTOMHOUSE BROKER  
8830 SIEMPRE VIVA ROAD, SUITE 100  
SAN DIEGO, CA 92154

RE: The tariff classification of decorative pillows; applicability of the North American Free Trade Agreement (NAFTA) eligibility for the decorative pillows; and country of origin of the decorative pillows.

DEAR MR. ORDUNO:

In your letter dated July 3, 2017, on behalf of Spencer N Enterprises, you requested a tariff classification ruling. No illustrative literature or photographs were presented of the decorative pillows. For purposes of this ruling “feathers” will not be considered of down, either from goose or duck.

Heading 9404 of the Harmonized Tariff Schedule of the United States (HTSUS) in pertinent part reads “articles of bedding and similar furnishings” and as such, we are of the opinion that decorative accent pillows are captured within the term “similar furnishings,” provided those types of pillows are not used as pin cushions, not used as toys, and not used for some other purpose over that of bedding and similar furnishings. *See* Infantino, LLC v. United States, Slip Op. 14-155, dated December 24, 2014 and New York Ruling N281477 dated December 12, 2016.

Scenario 1 – describes decorative pillows constructed from polyester shells (containing a zipper closure) of Chinese origin sent to Mexico for stuffing with inserts of feathers of Chinese origin. The only processing in Mexico is the stuffing of the feathers in the polyester shells and closing the zipper. Both the polyester shells (China) and inserts of feathers (China) are sent In-bond to Mexico.

Scenario 2 – describes decorative pillows (no attached closure) constructed from a polyester shells of Chinese origin sent to Mexico for stuffing with polyester fiber of Chinese origin. In Mexico the polyester fiber is blown into the polyester shells and the shells are finished by sewing the opening closed. Both the polyester shells (China) and polyester fiber (China) are sent In-Bond to Mexico.

Scenario 3 – describes decorative pillows constructed from polyester shells (containing a zipper closure) of Chinese origin sent to Mexico for stuffing with inserts of feathers of Chinese origin. The only processing in Mexico is the stuffing of the feathers in the polyester shells and closing the zipper. We note that the only difference between Scenario 1 and Scenario 3 is that the polyester shells (China) in Scenario 3 entered the United States before being sent to Mexico versus in Scenario 1 both the polyester shells (China) and inserts of feathers (China) were sent together into Mexico via In-bond.

Scenario 4 – describes decorative pillows (no attached closure) constructed from a polyester shells of Chinese origin sent to Mexico for stuffing with polyester fiber of Chinese origin. In Mexico the polyester fiber is blown into



the polyester shells and the shells are finished by sewing the opening closed. We note that the only difference between Scenario 2 and Scenario 4 is that the polyester shells (China) in Scenario 4 entered the United States before being sent to Mexico versus in Scenario 2 both the polyester shells (China) and polyester fiber (China) were sent together into Mexico via In-bond.

Scenario 5 – describes decorative pillows constructed from cotton shells (containing a zipper closure) of Indian (India) origin sent to Mexico for stuffing with inserts of feathers of Chinese origin. The only processing in Mexico is the stuffing of the feathers in the cotton shells and closing the zipper. Both the cotton shells (India) and feathers (China) are sent In-bond to Mexico.

Scenario 6 – describes decorative pillows (no attached closure) constructed from a cotton shells of Indian (India) origin sent to Mexico for stuffing with polyester fiber of Chinese origin. In Mexico the polyester fiber is blown into the cotton shells and the shells are finished by sewing the opening closed. Both the cotton shells (India) and polyester fiber (China) are sent In-Bond to Mexico.

Scenario 7 – describes decorative pillows constructed from cotton shells (containing a zipper closure) of Indian (India) origin sent to Mexico for stuffing with inserts of feathers of Chinese origin. The only processing in Mexico is the stuffing of the feathers in the cotton shells and closing the zipper. We note that the only difference between Scenario 5 and Scenario 7 is that the cotton shells (India) in Scenario 7 entered the United States before being sent to Mexico versus in Scenario 5 both the cotton shells (India) and feathers (China) were sent together into Mexico via In-bond.

Scenario 8 – describes decorative pillows constructed from cotton shells (no attached closure) of Indian (India) origin sent to Mexico for stuffing with polyester fiber of Chinese origin. In Mexico the polyester fiber is blown into the cotton shells and the shells are finished by sewing the opening closed. We note that the only difference between Scenario 6 and Scenario 8 is that the cotton shells (India) in Scenario 8 entered the United States before being sent to Mexico versus in Scenario 6 both the cotton shells (India) and polyester fiber (China) were sent together into Mexico via In-bond.

You suggest that the classification of the decorative pillows is subheading 9404.90.1000 for the pillows having shells made of cotton and 9404.90.2000 for the pillows having shells of polyester. We agree with you on the pillows having shells of cotton, with or without feathers, or filled with polyester fiber, classification 9404.90.1000 (cotton) and the pillows having shells of polyester, with or without feathers, or filled with polyester fiber, 9404.90.2000 (polyester); both types of decorative pillows are classified based on their outer-shell material.

In *Pillowtex Corporation v. United States*, No. 98–1227 decided March 16, 1999, the United States Court of Appeals, Federal Circuit, found that the essential character of [down comforters] with cotton shells was the “insulated quality” of the down filling, and not the cotton shells. This is not the case of non-down feathers that do not provide insulating qualities, but rather are used mainly for support and durability. Accordingly, non-down feather pillows are classified based on their outer-shell material, such as, the case of Scenario 1, Scenario 3, Scenario 5 and Scenario 7.

The applicable subheading for the decorative pillows having cotton shells stuffed with feathers or polyester fiber, scenarios 5 through 8, will be 9404.90.1000, Harmonized Tariff Schedule of the United States (HTSUS),

which provides for “Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: Other: Pillows, cushions and similar furnishings: Of cotton.” The rate of duty will be 5.3% ad valorem.

The applicable subheading for the decorative pillows having polyester shells stuffed with feathers or stuffed with polyester fiber, Scenarios 1 through 4, will be 9404.90.2000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: Other: Pillows, cushions and similar furnishings: Other.” The rate of duty will be 6% ad valorem.

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

NAFTA Preference:

The rules for determining whether the decorative pillows are an “originating good” of Mexico and thus eligible for preferential tariff treatment under the provisions of the NAFTA Act are provided for in General Note 12 of the HTSUS, which provides, in relevant part, as follows:

- (a) Goods in the territory of a party to the NAFTA are subject to duty as provided therein. For the purposes of this note –
  - (a) (ii) Goods that originate in the territory of a NAFTA party under subdivision (b) of this note and that qualify to be marked as goods of Mexico under the terms of the marking rules set forth in regulations issued by the Secretary of the Treasury (whether or not the goods are marked) ..., when such goods are imported into the customs territory of the United States and are entered under a subheading for which a rate of duty appears in the “Special” subcolumn followed by the symbol “MX” in parentheses, are eligible for such duty rate, in accordance with section 201 of the North American Free Trade Implementation Act.
- (b) For purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if:
  - (i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or
  - (ii) they have been transformed in the territory of Canada, Mexico, and/or the United States so that —
    - (A) except as provided in subdivision (f) of this note [de minimis provision], each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or...
    - (iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials....

Thus, by operation of GN 12, the eligibility of an article for NAFTA preferential treatment is predicated upon a finding that the goods are originating in the territory of a NAFTA party under GN 12 (b) and that they are goods of Canada or Mexico under the NAFTA Marking Rules.

The components of the decorative pillows are the outer-shells of cotton or outer-shells of polyester, and the inserts of feathers or polyester fiber. Neither the outer-shells of cotton or outer-shells of polyester fabric, nor the inserts of feathers or polyester fiber are originating material, because those materials are not produced in the NAFTA parties of the United States, Mexico or Canada. Since the outer-shells of cotton are origin India and the outer-shells of polyester are origin China, the decorative pillows cannot be wholly produced in the territory of a NAFTA party. Therefore, the pillows qualify for NAFTA treatment only if the provisions of General Note 12 (b) (ii) (A) are met; i.e., if the merchandise is transformed in the territory of Mexico so that the non-originating materials undergo a change in tariff classification or satisfy the rules set forth in subdivisions (r), (s), and (t) of this note.

Because the decorative pillows are classified in subheading 9404.90, HTSUS, we apply the tariff shift rule for that subheading. General Note 12(t)/94.7 states “A change to subheading 9404.90 from any other chapter, except from headings 5007, 5111, through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408 or 5512 through 5516.” The outer shell fabrics whether cotton or polyester are classifiable in heading 6307, HTSUS, the feather are classifiable in heading 0505, HTSUS, and the polyester fiber fill is classified in heading 5503, HTSUS. The tariff shift rule for subheading 9404.90 is satisfied because the [non-originating materials] are outside the excluded headings for the rule above. Therefore, the decorative pillows meet the tariff shift requirement, and qualify as NAFTA originating goods.

However, to receive the NAFTA preferential duty rate for goods from Mexico, the decorative pillows must be considered a good of Mexico under the NAFTA Marking Rules (Part 102, Customs Regulations). Decorative pillows classified in subheading 9404.90.10, HTSUS (outer-shells of cotton) are subject to the rules of origin for textile and apparel products set forth in 19 CFR 102.21 – see 102.20 “Chapter 94 Note” and 102.21 “subheading 9404.90” governing note, and decorative pillows classified in subheading 9404.90.20, HTSUS (outer-shells of polyester) are subject to the rules of origin set forth in 19 CFR 102.20, for non-textile and apparel products – see 102.20, “sub-headings 9404.30–9404.90” governing note.

The “Rule of Origin” for decorative pillows of cotton, scenarios 5 through 8, set forth in 102.21, 9404.90 reads: “Except for goods of subheading 9404.90 provided for in paragraph (e) (2) of this section, the country of origin of a good classifiable under subheading 9404.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.”

Applying the “Rule of Origin” set forth in 102.21, 9404.90, we find that the only fabric making process for scenarios 5 through 8 occurs in India, and as such the country of origin for the cotton decorative pillows is India.

The “Rule of Origin” for decorative pillows of polyester, scenarios 1 through 4, set forth in 102.20, 9404.30–9404.90 reads: “A change to down-and/or feather-filled goods classified in subheading 9404.30 through 9404.90 from any other heading; or For all other goods classified in subheading 9404.30 through 9404.90, a change from any other heading, except from heading 5007, 5111, through 5113, 5208 through 5212, 5309 through 5311, 5407

through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809 through 5810, 5901, 5903 through 5904, 5906 through 5907, or 6001 through 6006, or subheading 6307.90.”

Regardless of the “Rule of Origin” set forth in 102.20, 9404.30–9404.90, it is our opinion in scenario 1 and scenario 3 that the pillows having polyester outer-shells and filled/stuffed with inserts of feathers and closed by means of zippers are “Non-qualifying operations” in accordance with 102.17; the processing operation is of “simple packing” of the filler material and of “minor processing” of 102.1 (m) (6) “Putting up in measured doses, packing, repackaging and repackaging,” thereby completing the finished decorative pillows. The country-of-origin for the decorative polyester pillows, simply packed in measured amounts in Mexico, is China.

Regardless of the “Rule of Origin” set forth in 102.20, 9404.30–9404.90, it is our opinion in scenario 2 and scenario 4 that the pillows having polyester outer-shells and filled/stuffed with polyester fiber and sewn closed on one side are “Non-qualifying operation” in accordance with 102.17; the processing operation of stuffing and closing one end is merely “a change to end-use,” decorative pillow shells to stuffed decorative pillows, as well as “simple packing” of the filler material and of “minor processing” of 102.1 (m) (6) “Putting up in measured doses, packing, repackaging and repackaging.” The country-of-origin for the decorative polyester pillows, with merely a change in end use and simply packed in measured doses in Mexico, is China.

We further observe that the NAFTA preference override contained in 19 CFR 102.19 (a) states, in relevant part, “... if a good which is originating within the meaning of §181.1 (q) [referring to General Note 12, HTSUS] of this chapter is not determined under §102.11 (a) or (b) or §102.21 to be a good of a single NAFTA country, the country of origin of such good is the last NAFTA country in which that good underwent production other than minor processing, provided that a Certificate of Origin has been completed and signed for the good.” Unlike Headquarters ruling HQ 963233 dated December 13, 2000, in which fabric of Korean origin was cut, formed and sewn into pillow shells (“saks”) of Canadian origin, undergoing production beyond minor processing, we find that the processing operations in Mexico are of non-qualifying operations and do not exceed minor processing, and therefore the decorative pillows are not entitled to the NAFTA “MX” preferential duty rate.

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

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

*Sincerely,*

STEVEN A. MACK

*Director*

*National Commodity Specialist Division*

## ATTACHMENT B

HQ H265611

October 21, 2015

CLA-2 OT: RR: CTF: TCM: H265611ERB

CATEGORY: Classification

TARIFF NO.: 9404.90.2000

MS. JENNIFER DIAZ  
BECKER & POLIAKOFF  
121 ALHAMBRA PLAZA, 10TH FLOOR  
CORAL GABLES, FL 33134

RE: Tariff classification of stuffed mattress covers; NAFTA Country of Origin of the finished stuffed mattress cover imported from Mexico

DEAR MS. DIAZ:

This is in reply to your letter dated April 17, 2015 to the U.S. Customs and Border Protection (CBP) National Commodity Specialist Division (NCS) in New York, on behalf of your client Dolven Enterprises (Dolven), seeking a prospective ruling under the Harmonized Tariff Schedule of the United States (HTSUS) regarding the tariff classification of Dolven's stuffed mattress covers. One complete sample and three sample swatches (the upper-most padded layer, the interlock, and the "sandman" (the side or edges of the mattress cover)) was provided to this office, and are being returned with this ruling. Our analysis also includes information provided in a conference call between you, your client, and this office which took place on August 27, 2015.

**FACTS:**

The subject merchandise is two styles of mattress covers. Each style comes in numerous sizes, (i.e. twin, long twin, double, queen, king, California king, and split c-king), however, the characteristics of both styles and all sizes are the same. There are two separate compartments to this product. The top, upper-most layer has polyester stuffing, permanently sewn into it akin to quilting. This layer is zippered on all sides and attaches to or detaches from the lower compartment and the remainder of the mattress cover. A separate removable pad (not included) could be inserted between the top, upper-most quilted layer, and the lower mattress cover. The lower compartment of the mattress cover is comprised of a polyester and spandex interlock, and a polyester sandman. It is completely sewn together, and has dual zippers that allow the insertion of the mattress (not included). Put simply, there are two zippered compartments: one for an optional pad and one for the mattress.

Post-importation into the United States the mattress cover will fully enclose a mattress in its lower compartment via the double zipper closure. Again, the mattress is not imported with the subject mattress cover. Dolven does not manufacture, produce or sell mattresses. Rather, the fabric and other materials or components are imported into Mexico where they are cut and sewn into the final finished good, that is, the padded mattress cover. Upon importation into the United States, Dolven sells the mattress cover to certain mattress and bed manufacturers, which in turn, cover their own mattresses and sell the combined unit to consumers.

You argue that the instant mattress cover is classified under heading 9404, HTSUS, which provides for, "Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions,

pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered.”

### ISSUE:

Whether merchandise described as a padded, fitted textile mattress cover is classified as a textile of chapter 63, or as stuffed bedding of heading 9404, 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 may then be applied in their appropriate order.

The HTSUS headings under consideration are the following:

- 6302 Bed linen, table linen, toilet linen and kitchen linen:
- 6304 Other furnishing articles, excluding those of heading 9404:
- 6307 Other made up articles, including dress patterns:
- 9404 Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered:

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HS and are thus useful in ascertaining the proper classification of merchandise. *See* T.D. 89–90, 54 Fed. Reg. 35127 (August 23, 1989).

The EN to heading 9404, HTSUS, states, in relevant part:

This heading covers:

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

### *Tariff Classification*

In Headquarters Ruling Letter (HQ) H015427, dated January 5, 2010, classifying electric blankets and seat pads, this office stated that heading 9404, HTSUS, is limited to “Articles of bedding and similar furnishings which are...stuffed or internally fitted with any material.” This highlights the key distinction between bedding of chapter 63 and bedding of chapter 94. Articles of bedding properly classified in heading 9404, HTSUS, are stuffed. Linens and other bedding furnishings classified in chapter 63 are not.

The subject merchandise is a mattress cover, which is certainly an article of bedding. While mattress covers may or may not be stuffed, the instant merchandise is comprised of textiles (of polyester or of polyester and spandex) sized and shaped to a particular mattress size, and the upper-most layer is stuffed with polyester stuffing. When in use by consumers, the mattress cover



will enclose the mattress and will remain there underneath sheets or other bedding. The tariff and the ENs both state that articles of bedding of heading 9404, HTSUS, may be fitted with springs, or stuffed or internally fitted with any material or of cellular rubber or plastics. The ENs continue in this vein, clarifying that goods classified therein may be stuffed with cotton, wool, horsehair, down or synthetic fibers. See EN 94.04. Each of these exemplars of “material” are basic, homogenous, stuffing materials. The polyester used here is a homogenous, synthetic fiber, and it is permanently sewn (or stuffed) into the upper-most layer of the subject mattress cover creating comfortable, padded surface for the slumbering occupant of the bed. Hence, the mattress cover contains a stuffed quilted portion, even though a separate pad is not included.

Thus, the subject polyester stuffed mattress covers are provided for *eo nomine* in heading 9404, HTSUS, because they are described as “articles of bedding, “stuffed” with “any material”. They are beyond the scope of bedding of chapter 63. This is consistent with previous CBP rulings of similar merchandise. See New York Ruling (NY) N140355, dated January 14, 2011, and see NY N222087, dated July 11, 2012.

#### *NAFTA Claim*

The subject finished mattress cover is comprised of component parts which, individually, are classified in different parts of the tariff. The stuffed knit fabric covering is classifiable in subheading 6006.33.0040, which provides for, “Other knitted or crocheted fabrics: Of synthetic fibers: Of yarns of different colors: Of double knit or interlock construction: Of polyester.” The interlock material is classified in subheading 6004.10.0085, which provides for, “Knitted or crocheted fabrics of a width exceeding 30 cm, containing by weight 5 percent or more of elastomeric yarn or rubber thread, other than those of heading 6001: Containing by weight 5 percent or more elastomeric yarn but not containing rubber thread: Warp knit: Other.” Finally, what is called a “sandman” is classified in subheading 5801.36.0010, which provides for, “Woven pile fabrics and chenille fabrics, other than fabrics of heading 5802 or 5806: Of man-made fibers: Chenille fabrics.” The zippers are slide fasteners of chapter 69. The components do not originate within any of the three NAFTA countries: United States, Canada, or Mexico. See 19 CFR § 134.1(i) which states “*NAFTA country*. “NAFTA country” means the territory of the United States, Canada or Mexico as defined in Annex 201.1 of the NAFTA.”

However, the components are shipped into Mexico where they are cut and sewn into the finished good. As such, our analysis starts with HTSUS General Note 12 which provides for the NAFTA. Specifically, General Note 12(b), HTSUS, sets forth the criteria for determining whether a good is originating under the NAFTA. General Note 12(b), 19 U.S.C. § 1202 states, in relevant part, the following:

For purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “**goods originating in the territory of a NAFTA party**” only if -

- (i) They are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or
- (ii) They have been transformed in the territory of Canada, Mexico and/or the United States so that

- (A) Except as provided in subdivision (f) of this note, each of the non-originating material used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein,...

Thus, if the goods are sufficiently transformed in Mexico so that the non-originating materials undergo a change in tariff classification described in subdivision (t) to General Note 12, HTSUS, then they will be eligible for the NAFTA preference. General Note 12(t), Rule 7, which regards the relevant subheadings of Chapter 94 states the following:

7. A change to subheading 9404.90 from any other chapter, except from headings 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408 or 5512 through 5516.

The exceptions noted therein do not apply in this case.

In Mexico, the textiles are cut and sewn into the finished good, the zippers are attached, and it becomes the stuffed mattress cover of heading 9404, HTSUS, which is thereafter imported into the United States. Therefore, the goods have experienced the requisite tariff shift and are entitled to the NAFTA duty preference, under General Note 12.

Our analysis next turns to the goods' country of origin. Part 102 of Customs Regulations regards the Rules of Origin. Specifically, 19 CFR § 102.20 regards specific rules by tariff classification. Therein it states the following:

The following rules are the rules specified in § 102.11(a)(3) and other sections of this part. Where a rule under this section permits a change to a subheading from another subheading of the same heading, the rule will be satisfied only if the change is from a subheading of the same level specified in the rule.

Regarding Section XX, which includes Chapters 94 the following is stated: 9404.30 – 9404.90..... A change to down-and/or feather-filled goods classified in subheading 9404.30 through 9404.90 from any other heading; or

For all other goods classified in subheading 9404.30 through 9404.90, a change from any other heading, **except from heading 5007 ... 5801 through 5804 ... or 6001 through 6006 ...**

[Emphasis added]

The textile components of the subject stuffed mattress cover each fall within the exceptions noted above. As a result, our analysis must consider 19 CFR § 102.19 which provides for the NAFTA preference override. Customs regulations 19 CFR § 102.19 states:

- (a) Except in the case of goods covered by paragraph (b) of this section, if a good which is originating within the meaning of § 181.1(q) of this chapter is not determined under § 102.11(a) or (b) or § 102.21 to be a good of a single NAFTA country, the country of origin of such good is the last NAFTA country in which that good underwent production other than minor processing, provided that a Certificate of Origin (see § 181.11 of this chapter) has been completed and signed for the good.



Paragraph (b) is not applicable here, as the country of origin of all materials is not the United States. The aforementioned § 181.1(q) states:

*Originating.* *Originating*, when used with regard to a good or a material, means a good or material which qualifies as originating in the United States, Canada and/or Mexico under the rules set forth in General Note 12, HTSUS, and in the appendix to this part.

19 CFR § 102.1(m) defines “minor processing” as:

- (1) Mere dilution with water or another substance that does not materially alter the characteristics of the good;
- (2) Cleaning, including removal of rust, grease, paint, or other coatings;
- (3) Application of preservative or decorative coatings, including lubricants, protective encapsulation, preservative or decorative paint, or metallic coatings;
- (4) Trimming, filing or cutting off small amounts of excess materials;
- (5) Unloading, reloading or any other operation necessary to maintain the good in good condition;
- (6) Putting up in measured doses, packing, repacking, packaging, repackaging;
- (7) Testing, marking, sorting, or grading;
- (8) Ornamental or finishing operations incidental to textile good production designed to enhance the marketing appeal or the ease of care of the product, such as dyeing and printing, embroidery and appliques, pleating, hemstitching, stone or acid washing, permanent pressing, or the attachment of accessories notions, findings and trimmings; or
- (9) Repairs and alterations, washing, laundering, or sterilizing.

Cutting and sewing the various polyester materials and fabrics into the finished stuffed mattress cover is more than “minor processing” as referenced in 19 CFR § 102.19(a), and defined in § 102.1(m), listed above.

Therefore, the goods are NAFTA originating by means of General Note 12, Chapter 94, subheading Rule 7, HTSUS. The override provision of § 102.19 is therefore satisfied and the country of origin of the subject finished stuffed mattress cover is Mexico. This determination is consistent with a previous CBP decision on similar merchandise. *See* HQ 956240, dated January 20, 1995, regarding a down comforter shell classifiable in subheading 6307.90, HTSUS, and down feathers of subheading 0505.10, HTSUS.

The finished mattress cover is classifiable in subheading 9404.90, HTSUS, and therefore the requisite tariff classification shift requirement of General Note 12(t) was met. The merchandise may utilize a “Made in Mexico” country of origin statement.

#### **HOLDING:**

By application of GRI 1, the subject stuffed mattress cover is classified in heading 9404, HTSUS. Specifically, it is provided for in subheading 9404.90.2000, HTSUSA (Annotated) which provides for, “Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: Other: Other.” The 2015 column one, general rate of duty for merchandise of this subheading is 6% *ad valorem*.

The subject stuffed mattress cover is eligible for NAFTA preferential duty treatment. Also, in accordance with 19 CFR § 102, it is a product of Mexico for country of origin marking purposes.

Duty rates are subject to change. The text of the most recent HTSUS and the accompany duty rates are provided at *www.usitc.gov* A copy of this ruling letter should be attached to the entry documents filed at the time the goods are entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the CBP officer handling the transaction.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

## ATTACHMENT C

HQ 963233

December 13, 2000

CLA-2 RR:CR:GC 963233ptl

CATEGORY: Classification

TARIFF NO.: 9404.90.10; 9404.90.20

MR. SAMUEL I. HAYES  
NATURE'S WAY THERAPEUTIC PRODUCTS, INC.  
91021-1427 BELLEVUE AVENUE  
WEST VANCOUVER, BC  
CANADA V7V 3N3

RE.: Reconsideration of NY E84744; Heatable Sak, flax-filled pillow  
"Multirest"; HQ 975617.

DEAR MR. HAYES:

This is in response to your letter of October 4, 1999, to the Director, National Commodity Specialist Division, New York, requesting reconsideration of the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of a flax filled article referred to as a heatable sak in New York Ruling Letter (NY) E84744, issued to you on August 3, 1999. Your letter was referred to this office for reply. We regret the delay.

Although NY E84744 classified several articles, you have only requested reconsideration of the heatable sak. In NY E84744, the heatable sak was classified in heading 9404, HTSUS, which provides for articles of bedding and similar furnishing. You contend that the heatable sak is classifiable in heading 1404, HTSUS, which provides for vegetable products not elsewhere specified or included. You also requested a determination whether the article qualifies for preferential treatment under the North American Free Trade Agreement (NAFTA).

We have reviewed NY E84744 and have determined that it is not in error. We affirm the classification of the heatable sak in either subheading 9404.90.1000 or 9404.90.2000, HTSUS, pursuant to the analysis set forth below. This ruling does not affect the classification of the other articles in NY E84744.

**FACTS:**

The "Heatable Sak" is a sealed fabric pouch, measuring approximately 8.5 x 13 inches, loosely filled with flax seeds (3.5 lbs.). The pouch of the sample provided is made of knitted velour fabric. In the original classification request, dated July 8, 1999, the following description of the article was provided: "This Heatable sak provides fully adjustable cervical support, conforming to and supporting the head and neck, while the aroma therapy facilitates a complete relaxation of the body." In the request for reconsideration, the article's primary use is claimed to be as a heating pad and aromatherapy adjunct. However, you have also mentioned its functionality as a pillow. You state that the heatable sak can be "used when traveling as cervical or lumbar support." The article's flax seed filling is claimed to allow the article to retain both heat (from a microwave) and cold (from freezing). In the original submission, the article is said to retain heat for approximately 15 minutes. This period increases to a half-hour in the request for reconsideration as you stress its aromatherapy uses.

The knitted velour fabric forming the shell of the heatable sak is a product of Korea. The fabric is imported in bulk into Canada where it is cut, formed, sewn and filled with Canadian produced flax seed.

**ISSUE:**

Whether a flax filled product identified as a “Heatable Sak” is properly classified in heading 9404, HTSUS, the provision for articles of bedding and similar furnishings, including pillows, or in heading 1404, HTSUS, the provision for other vegetable products not elsewhere specified or included?

**LAW AND ANALYSIS:**

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, 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 in order.

The HTSUS headings under consideration are as follows:

<b>1404</b>	Vegetable products not elsewhere specified or included: * * *
1404.90.00	Other
<b>9404</b>	Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: * * *
9404.90	Other: Pillows, cushions and similar furnishings:
9404.90.10	Of cotton (369)
9404.90.20	Other

Before we ascertain whether the article is eligible for preferential treatment under the NAFTA, we must first determine its classification under the HTSUS.

In support of your contention that the heatable sak should not be classified as a pillow, you state “[U]nder your regulations the minimum size of a pillow is 10” x 10”.” Those dimensions were obtained from a Headquarters Ruling (HQ 957617, dated May 3, 1995) which classified an article of those dimensions as a pillow. In that ruling, a distinction was made, not only of the size of the different exemplars, but also the shapes of other articles (some in the shape of a motorcycle and a punching bag) and the fact that they were not designed to afford support. The “Mud Cloth Pillow” of HQ 957617 was classified in heading 9404, HTSUS, not because of its size, but rather because of its ability to provide support to the user.

In the instant case, your own language in seeking classification states that the person using the heatable sak “places the pillow under their neck and head for shoulder and cervical support”. In the request for reconsideration, you state that the article can be used when traveling as cervical or lumbar

support. Clearly, the article is capable of providing support to various portions of the body while also being used as an aromatherapy prop.

Based on the above analysis of the article, its construction and prospective uses, we determine that the heatable sak does possess the characteristics of a pillow in that it can provide support to the user. Heading 1404, HTSUS, is a basket provision wherein a variety of merchandise is classified when no other heading more specifically provides for the article. That is not the situation in this case. The heatable sak is more accurately described within the provisions of subheading 9404.90, HTSUS, as a pillow and, is therefore classified in that subheading.

### **NAFTA Preference:**

The rules for determining whether the pillow is an “originating good” of Canada and thus eligible for preferential tariff treatment under the provisions of the North American Free Trade Act are provided for in General Note 12 of the HTSUS, which provides, in relevant part, as follows:

(a) Goods in the territory of a party to the North American Free Trade Agreement (NAFTA) are subject to duty as provided therein. For the purposes of this note –

(a)(i) Goods that originate in the territory of a NAFTA party under subdivision (b) of this note and that qualify to be marked as goods of Canada under the terms of the marking rules set forth in regulations issued by the Secretary of the Treasury (whether or not the goods are marked), when such goods are imported into the customs territory of the United States and are entered under a subheading for which a rate of duty appears in the “Special” subcolumn followed by the symbol “CA” in parentheses, are eligible for such duty rate, in accordance with section 201 of the North American Free Trade Implementation Act.

\* \* \*

(b) For purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if:

(i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or

(ii) they have been transformed in the territory of Canada, Mexico, and/or the United States so that —

(A) except as provided in subdivision (f) of this note [de minimis provision], each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or...

(iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials....

Thus, by operation of GN 12, the eligibility of an article for NAFTA preferential treatment is predicated upon a finding that the goods are originating in the territory of a NAFTA party under GN 12(b) and that they are goods of Canada or Mexico under the NAFTA Marking Rules.

The components of the heatable sak are the outer shell knit fabric and the flax seed filler. Because the flax seed is grown in Canada, it qualifies as an

originating material. However, because the knit shell is milled in Korea, the goods are not wholly produced in the territory of a NAFTA party. Therefore the heatable sak qualifies for NAFTA treatment only if the provisions of General Note 12(b)(ii)(A) are met; i.e., if the merchandise is transformed in the territory of Canada so that the non originating materials (Korean velour) undergo a change in tariff classification or satisfy the rules set forth in subdivisions (r), (s), and (t) of this note.

Because the heatable sak is classified in subheading 9404.90, HTSUS, we apply the tariff shift rule for that subheading. General Note 12(t)/94.7 states “A change to subheading 9404.90 from any other chapter, except from headings 5007, 5111, through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408 or 5512 through 5516”. The outer shell fabric is knit in Korea. The tariff shift rule for subheading 9404.90 excludes woven fabrics, but does not exclude knit fiber fabrics. Therefore, as long as the outer fabric shell of the heatable sak is a knit article (a product of Chapter 60), the article will meet the tariff shift requirement. Therefore, the article qualifies as a NAFTA originating good.

However, as indicated earlier, to receive the NAFTA preferential duty rate for goods from Canada, the heatable sak must be considered a good of Canada under the NAFTA Marking Rules (Part 102, Customs Regulations). Heatable saks classified in subheading 9404.90.10, HTSUS (outer shell of cotton), are subject to the rules of origin for textile and apparel products set forth in 19 CFR 102.21. Heatable saks classified in subheading 9404.90.20, HTSUS (outer shell of a fabric other than cotton), are subject to the rules of origin set forth in 19 CFR 102.11. Applying the applicable rules in sections 102.21 and 102.11 to the heatable saks classifiable in subheading 9404.90.10 and 9404.90.21, respectively, results in the articles being considered products of Korea.

However, the NAFTA preference override contained in 19 CFR 102.19(a) states, in relevant part, “... if a good which is originating within the meaning of §181.1(q) [referring to General Note 12, HTSUS] of this chapter is not determined under §102.11(a) or (b) or §102.21 to be a good of a single NAFTA country, the country of origin of such good is the last NAFTA country in which that good underwent production other than minor processing, provided that a Certificate of Origin has been completed and signed for the good”. Because the heatable sak is cut to form, sewn and filled in Canada with Canadian flax seed, it is considered a product of Canada, and is eligible for the NAFTA “CA” preferential duty rate.

#### **HOLDING:**

A flax filled pillow, identified as “Heatable sak” is classified in subheading 9404.90.10, HTSUS, which provides for [m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: [o]ther: [p]illows, cushions and similar furnishings: of cotton, when the outer shell fabric is of cotton and in subheading 9404.90.20, HTSUS, which provides for [m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or

of cellular rubber or plastics, whether or not covered: [o]ther: [p]illows, cushions and similar furnishings: other, when the outer shell fabric is made of a fabric other than cotton.

The “Heatable Sak” with its knit outer shell is eligible for preferential duty treatment under the NAFTA as a good of Canada.

NY E84744 is affirmed.

*Sincerely,*

JOHN DURANT,

*Director*

*Commercial Rulings Division*

## ATTACHMENT D

HQ H290258

OT:RR:CTF:VS H290258 EE

CATEGORY: Classification

ELISE SHIBLES

SANDLER, TRAVIS &amp; ROSENBERG, P.A.

505 SANSOME STREET, SUITE 1475

SAN FRANCISCO, CA 94111

RE: Modification of NY N287930; NAFTA country of origin marking; pillows

DEAR Ms. SHIBLES:

This is in response to your letter dated September 13, 2017, in which you request, on behalf of your client Spencer N Enterprises, Inc. (“Spencer N Enterprises”), reconsideration of New York Ruling Letter (“NY”) N287930, dated August 3, 2017. NY N287930, issued to you by U.S. Customs and Border Protection (“CBP”) concerns the tariff classification of certain decorative pillows and eligibility for preferential tariff treatment under the North American Free Trade Agreement (“NAFTA”). We have reviewed NY N287930 and determined that it is partially incorrect with respect to the country of origin marking. For the reasons set forth below, we are modifying that ruling letter.

**FACTS:**

Spencer N Enterprises is an importer and distributor of soft décor products. The subject merchandise consists of decorative pillows. In NY N287930, the importer presented the following eight scenarios to CBP where pillow components were processed in Mexico and subsequently imported into the United States as finished decorative pillows.

Scenario 1 – decorative pillows constructed from polyester shells (containing a zipper closure) of Chinese origin sent to Mexico for stuffing with inserts of feathers of Chinese origin. The only processing in Mexico is the stuffing of the feathers in the polyester shells and closing the zipper. Both the polyester shells (China) and inserts of feathers (China) are sent in-bond into Mexico.

Scenario 2 – decorative pillows (no attached closure) constructed from polyester shells of Chinese origin sent to Mexico for stuffing with polyester fiber of Chinese origin. In Mexico, the polyester fiber is blown into the polyester shells and the shells are finished by sewing the opening closed. Both the polyester shells (China) and polyester fiber (China) are sent in-bond into Mexico.

Scenario 3 – decorative pillows constructed from polyester shells (containing a zipper closure) of Chinese origin sent to Mexico for stuffing with inserts of feathers of Chinese origin. The only processing in Mexico is the stuffing of the feathers in the polyester shells and closing the zipper. We note that the only difference between Scenario 1 and Scenario 3 is that the polyester shells (China) in Scenario 3 entered the United States before being sent to Mexico, versus in Scenario 1 both the polyester shells (China) and inserts of feathers (China) were sent together in-bond into Mexico.

Scenario 4 – decorative pillows (no attached closure) constructed from a polyester shells of Chinese origin sent to Mexico for stuffing with polyester fiber of Chinese origin. In Mexico, the polyester fiber is blown into the polyester shells and the shells are finished by sewing the opening closed. We



note that the only difference between Scenario 2 and Scenario 4 is that the polyester shells (China) in Scenario 4 entered the United States before being sent to Mexico, versus in Scenario 2 both the polyester shells (China) and polyester fiber (China) were sent together in-bond into Mexico.

Scenario 5 – decorative pillows constructed from cotton shells (containing a zipper closure) from India are sent to Mexico for stuffing with inserts of feathers of Chinese origin. The only processing in Mexico is the stuffing of the feathers in the cotton shells and closing the zipper. Both the cotton shells (India) and feathers (China) are sent in-bond to Mexico.

Scenario 6 – decorative pillows (no attached closure) constructed from cotton shells of Indian origin sent to Mexico for stuffing with polyester fiber of Chinese origin. In Mexico, the polyester fiber is blown into the cotton shells and the shells are finished by sewing the opening closed. Both the cotton shells (India) and polyester fiber (China) are sent in-bond to Mexico.

Scenario 7 – decorative pillows constructed from cotton shells (containing a zipper closure) from India are sent to Mexico for stuffing with inserts of feathers of Chinese origin. The only processing in Mexico is the stuffing of the feathers in the cotton shells and closing the zipper. We note that the only difference between Scenario 5 and Scenario 7 is that the cotton shells (India) in Scenario 7 entered the United States before being sent to Mexico, versus in Scenario 5 both the cotton shells (India) and feathers (China) were sent together in-bond into Mexico.

Scenario 8 – decorative pillows constructed from cotton shells (no attached closure) from India are sent to Mexico for stuffing with polyester fiber of Chinese origin. In Mexico, the polyester fiber is blown into the cotton shells and the shells are finished by sewing the opening closed. We note that the only difference between Scenario 6 and Scenario 8 is that the cotton shells (India) in Scenario 8 entered the United States before being sent to Mexico, versus in Scenario 6 both the cotton shells (India) and polyester fiber (China) were sent together in-bond into Mexico.

In its submission, the importer provided that the polyester shells from China are classified under heading 6304, Harmonized Tariff Schedule of the United States (“HTSUS”); polyester fiber from China is classified under heading 5503, HTSUS; feather insert from China is classified under heading 5503, HTSUS; and the cotton shell from India is classified under heading 6304, HTSUS.

CBP noted that illustrative literature or photographs of the decorative pillows were not presented. Additionally, for purposes of the ruling, “feathers” were not considered of down, either from goose or duck. CBP determined that the applicable subheading for the decorative pillows having cotton shells stuffed with feathers or polyester fiber, in scenarios 5 through 8, was 9404.90.1000, HTSUS, which provides for “[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: [o]ther: [p]illows, [c]ushions and similar furnishings: [o]f cotton.” The applicable subheading for the decorative pillows having polyester shells stuffed with feathers or stuffed with polyester fiber, in scenarios 1 through 4, was 9404.90.2000, HTSUS, which provides for “[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not

covered: [o]ther: [p]illows, cushions and similar furnishings: [o]ther.” Additionally, CBP determined that the decorative pillows classified under subheadings 9404.90.1000 and 9404.90.2000, HTSUS, were not eligible for preferential tariff treatment under NAFTA.

**ISSUE:**

Whether the decorative pillows classified under subheadings 9404.90.1000 and 9404.90.2000, HTSUS, imported into the United States are eligible for preferential tariff treatment under the NAFTA.

What is the country of origin of the decorative pillows for purposes of country of origin marking?

**LAW AND ANALYSIS:**

General Note (“GN”) 12, HTSUS, incorporates Article 401 of the NAFTA into the HTSUS. GN 12(a)(ii), HTSUS, provides that goods are eligible for the NAFTA rate of duty if they originate in the territory of a NAFTA party and qualify to be marked as goods of Mexico. GN 12(b), HTSUS, sets forth the various methods for determining whether a good originates in the territory of a NAFTA party. Specifically, these provisions provide, in relevant part, as follows:

(a) Goods originating in the territory of a party to the North American Free Trade Agreement (NAFTA) are subject to duty as provided herein. For the purposes of this note—

\* \* \* \*

(ii) Goods that originate in the territory of a NAFTA party under the terms of subdivision (b) of this note and that qualify to be marked as goods of Mexico under the terms of the marking rules set forth in regulations issued by the Secretary of the Treasury (without regard to whether the goods are marked), and goods enumerated in subdivision (u) of this note, when such goods are imported into the customs territory of the United States and are entered under a subheading for which a rate of duty appears in the “Special” subcolumn followed by the symbol “MX” in parentheses, are eligible for such duty rate, in accordance with section 201 of the North American Free Trade Agreement Implementation Act.

(b) For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if—

(i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or

(ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or

(B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or

(iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials.

Counsel for the importer provided us with an additional submission for the reconsideration request, elaborating on the production processes of the decorative pillows. Counsel for the importer also provided us with photos and samples of the merchandise.

Counsel for the importer states that in scenarios 1 & 3, pillow components include: chief weight polyester woven pillow covers of Chinese origin with a zipper closure on one edge (heading 6304, HTSUS); chief weight polyester woven internal pillow shells of Chinese origin with one edge partially unfinished (heading 6307, HTSUS); feathers of Chinese origin (heading 0505, HTSUS); and sewing thread of unknown origin (headings 5204, 5401, 5402, 5508, HTSUS). Counsel states that in Mexico, the feathers are stuffed into the unfinished pillow shells and the edge is sewn closed forming a feather insert. The feather inserts are inserted into the pillow covers and the zippers are closed.

Counsel for the importer states that in scenarios 2 & 4, pillow components include: chief weight polyester woven pillow shells of Chinese origin with one edge partially unfinished (heading 6307, HTSUS); polyester staple fiber of Chinese origin (heading 5503, HTSUS); and sewing thread of unknown origin (headings 5204, 5401, 5402, 5508, HTSUS). Counsel claims that in Mexico, the polyester fiber is blown into the pillow shells and the shells are finished by sewing the unfinished portion of the edge closed.

Counsel for the importer states that in scenarios 5 & 7, pillow components include: chief weight cotton woven pillow covers of Indian origin with a zipper closure on one edge (heading 6304, HTSUS); chief weight cotton woven internal pillow shells of Indian origin with one edge partially unfinished (heading 6307, HTSUS); feathers of Chinese origin (heading 0505, HTSUS); and sewing thread of unknown origin (headings 5204, 5401, 5402, 5508, HTSUS). Counsel claims that in Mexico, the feathers are stuffed into the unfinished pillow shells and the edge is sewn closed forming a feather insert. The feather inserts are inserted into the pillow covers and the zippers are closed.

Counsel for the importer states that in scenarios 6 & 8, pillow components include: chief weight cotton woven pillow shells of Indian origin with one edge partially unfinished (heading 6307, HTSUS); polyester staple fiber of Chinese origin (heading 5503, HTSUS); and sewing thread of unknown origin (headings 5204, 5401, 5402, 5508, HTSUS). Counsel claims that in Mexico, the polyester fiber is blown into the pillow shells and the shells are finished by sewing the unfinished portion of the edge closed.

Since the decorative pillows contain non-originating materials, they are not considered goods wholly obtained or produced entirely in a NAFTA party under GN 12(b)(i). We must next determine whether the decorative pillows qualify under GN 12(b)(ii). There is no dispute as to the classification of the pillows in subheadings 9404.90.1000 and 9404.90.2000, HTSUS. The applicable rule of origin for the decorative pillows classified under subheadings 9404.90.1000 and 9404.90.2000, HTSUS, is in GN 12(t)/94.7, HTSUS. Chapter rule 1 provides: “[f]or the purposes of the subdivisions pertaining to this

chapter, whenever the subdivision designation is underscored, the provisions of subdivision (d) of this note may apply to goods for use in a motor vehicle of chapter 87.” Chapter rule 1 does not apply since the applicable tariff shift rule, GN 12(t)/94.7, HTSUS, is not underscored. Similarly, the subheading rule which provides that “[t]he underscoring of the designations in subdivision 1 pertains to goods provided for in subheading 9401.20 for use in a motor vehicle of chapter 87” does not apply since the applicable tariff shift rule is not underscored. GN 12(t)/94.7, HTSUS, provides: “[a] change to subheading 9404.90 from any other chapter, except from headings 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408 or 5512 through 5516.” In its submission for the reconsideration of NY N287930, the counsel for the importer states that the pillow covers are classified under heading 6304, HTSUS; the pillow shells are classified under heading 6307, HTSUS; the polyester stable fiber is classified under heading 5503, HTSUS; the feathers are classified under heading 0505, HTSUS; and the sewing thread is classified under headings 5204, 5401, 5402, 5508, HTSUS. Since these non-originating materials are classified in a chapter other than chapter 94 and in headings which are not excepted, the tariff shift rule is met. Accordingly, we agree with NY N287930 that the decorative pillows classified under subheadings 9404.90.1000 and 9404.90.2000, HTSUS, qualify as NAFTA originating goods.

GN 12(a)(ii), HTSUS, provides that NAFTA-originating goods must also qualify to be marked as products of Mexico under the NAFTA Marking Rules to be eligible for preferential treatment. In this regard, 19 C.F.R. § 134.1(j) provides that “[t]he ‘NAFTA Marking Rules’ are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country.” 19 C.F.R. § 134.1(j) defines a “good of a NAFTA country” as “an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules.”

Chapter 94 Note to 19 C.F.R. § 102.20 (NAFTA Marking Regulations) explicitly provides that the country of origin of goods classified in subheading 9404.90.10, HTSUS, will be determined under the provisions of 19 C.F.R. § 102.21. However, the Chapter Note does not address merchandise classified in subheading 9404.90.20, HTSUS, and a rule for subheading 9404.90.20, HTSUS, is provided for in 19 C.F.R. § 102.20. NY N287930 applied 19 C.F.R. § 102.20 to the decorative pillows classified under subheading 9404.90.2000, HTSUS, to determine their country of origin for marking purposes. However, we find that Section 102.21, Customs Regulations (19 C.F.R. § 102.21) which pertains to textile and apparel products, should have been applied.

Section 334, of the Uruguay Round Agreements Act, codified at 19 U.S.C. § 3592, provides rules of origin for textiles and apparel entered, or withdrawn from warehouse, for consumption, on and after July 1, 1996. 19 C.F.R. § 102.21 implements section 334, and 19 C.F.R. § 102.0 refers to 19 C.F.R. § 102.21 for determining the country of origin of textile and apparel products. A “textile or apparel product” for purposes of these rules of origin is defined in 19 C.F.R. § 102.21(b)(5), in part, as any good classifiable in a number of headings including subheading 9404.90, HTSUS. As such, a good classifiable in subheading 9404.90, HTSUS, should be analyzed to determine if it is a “textile or apparel product” of 19 C.F.R. § 102.21 or other product of 19 C.F.R. § 102.20.

In Headquarters Ruling Letter (“HQ”) 962122, dated October 1, 1998, the importer claimed that because cushions were classified under subheading

9404.90.20, HTSUS, they were not “textile products” as that term was defined in 19 C.F.R. § 102.21(b)(5), and thus were subject to different rules of origin. CBP stated that the statute pertaining to the rules of origin, 19 U.S.C. § 3592, explicitly includes subheading 9404.90, HTSUS, and that the statute takes precedence over the regulation. Accordingly, in determining the country of origin of cushions classified under subheading 9404.90.20, HTSUS, the 19 C.F.R. § 102.21 rules of origin were applicable. As HQ 962122 provides, a pillow classified under subheading 9404.90.20, HTSUS, with a polyester outershell would be considered a textile product which would require the application of 19 C.F.R. § 102.21 rules of origin; however, a pillow classified under subheading 9404.90.20, HTSUS, with a leather or plastic outershell would not be considered a textile product and therefore 19 C.F.R. § 102.20 rules of origin would apply. In the instant case, since the merchandise at issue are decorative pillows with a polyester outershell, they are considered textile products and the 19 C.F.R. § 102.21 rules of origin are applicable.

The country of origin of a textile or apparel product is determined by hierarchical application of the general rules set forth in 19 C.F.R. § 102.21(c)(1) through (c)(5). 19 C.F.R. § 102.21(c)(1) provides: “[t]he country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced.” As the decorative pillows at issue are not wholly obtained or produced in a single country, territory, or insular possession, 19 C.F.R. § 102.21(c)(1) is not applicable.

19 C.F.R. § 102.21(c)(2) provides: “[w]here the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section.”

As previously noted, the decorative pillows are classified under subheadings 9404.90.1000 and 9404.90.2000, HTSUS. The applicable tariff shift rule in 19 C.F.R. § 102.21(e) for merchandise classified under subheading 9404.90, HTSUS, is as follows:

9404.90 Except for goods of subheading 9404.90 provided for in paragraph (e)(2) of this section, the country of origin of a good classifiable under subheading 9404.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.

19 C.F.R. § 102.21(e)(2) is not applicable since it does not cover subheadings 9404.90.1000 and 9404.90.2000, HTSUS. In the instant case, the fabric making process occurs where the polyester and cotton fabric is formed. *See* 19 C.F.R. 102.21(b)(2). Therefore, according to 19 C.F.R. § 102.21(c)(2) and (e)(1), the country of origin for the decorative pillows is the same as the origin of the polyester and cotton fabric, which is China and India, respectively.

However, 19 C.F.R. § 102.19(a) contains a “NAFTA preference override”.

Except in the case of goods covered by paragraph (b) of this section, if a good which is originating within the meaning of § 181.1(q) of this chapter is not determined under § 102.11(a) or (b) or § 102.21 to be a good of a single NAFTA country, the country of origin of such good is the last

NAFTA country in which that good underwent production other than minor processing, provided that a Certificate of Origin . . . has been completed and signed for the good.

19 C.F.R. § 102.19(a).

In HQ 960854, dated April 22, 1998, which involves similar facts as this case, CBP considered four scenarios to determine whether a certain buckwheat hull filled neck pillow, classified under subheading 9404.90.1000, HTSUS, was eligible for preferential tariff treatment under NAFTA and the country of origin of the pillow. Under the first scenario, the buckwheat hulls were sourced in China, and the fabric for the pillow shell and the pillow case were woven, cut and assembled in China. In Mexico, the pillow was filled and packed. CBP found that the pillow shell and cover from China, classified under headings 6307 and 6304, HTSUS, underwent the requisite change in tariff classification and that the pillow was eligible for preferential tariff treatment under NAFTA. The country of origin analysis under 19 C.F.R. § 102.21(e) indicated that since the fabric comprising the merchandise was formed in a single country, China, the country of origin of the pillow would be China. However, in accordance with the NAFTA override (19 C.F.R. § 102.19), CBP determined that the country of origin of the buckwheat hull filled neck pillow was Mexico. *See also* HQ H019439, dated September 5, 2008 (by virtue of the NAFTA override, the bed-in-bag set, classified under subheading 9404.90, HTSUS, must be marked country of origin Mexico in order to receive preferential tariff treatment under NAFTA as claimed).

In the instant case, as determined in NY N287930, the decorative pillows are originating goods under 19 C.F.R. § 181.1(q). Additionally, the decorative pillows are not goods of a single NAFTA country under 19 C.F.R. § 102.21. As such, the decorative pillows are a product of Mexico under the “NAFTA preference override” since they undergo more than “minor processing.”<sup>1</sup> Pursuant to 19 C.F.R. § 102.19(a), the decorative pillows are products of Mexico.

### **HOLDING:**

The decorative pillows having cotton shells stuffed with feathers or polyester fiber in scenarios 5 through 8, are classified under subheading 9404.90.1000, HTSUS, which provides for “[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not

<sup>1</sup> The phrase “minor processing” is defined at 19 C.F.R. §102.1(m) as the following:

- (1) Mere dilution with water or another substance that does not materially alter the characteristics of the good;
- (2) Cleaning, including removal of rust, grease, paint, or other coatings;
- (3) Application of preservative or decorative coatings, including lubricants, protective encapsulation, preservative or decorative paint, or metallic coatings;
- (4) Trimming, filing or cutting off small amounts of excess materials;
- (5) Unloading, reloading or any other operation necessary to maintain the good in good condition;
- (6) Putting up in measured doses, packing, repacking, packaging, repackaging;
- (7) Testing, marking, sorting, or grading;
- (8) Ornamental or finishing operations incidental to textile good production designed to enhance the marketing appeal or the ease of care of the product, such as dyeing and printing, embroidery and appliques, pleating, hemstitching, stone or acid washing, permanent pressing, or the attachment of accessories notions, findings and trimmings; or
- (9) Repairs and alterations, washing, laundering, or sterilizing.



covered: [o]ther: [p]illows, [c]ushions and similar furnishings: [o]f cotton.” The applicable subheading for the decorative pillows having polyester shells stuffed with feathers or stuffed with polyester fiber in scenarios 1 through 4 is 9404.90.2000, HTSUS, which provides for “[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: [o]ther: [p]illows, cushions and similar furnishings: [o]ther.”

Decorative pillows classified under subheadings 9404.90.1000 and 9404.90.2000, HTSUS, are eligible for preferential tariff treatment under NAFTA. The country of origin of the decorative pillows is Mexico for purposes of the marking requirements.

**EFFECT ON OTHER RULINGS:**

NY N287930, dated August 3, 2017, is hereby MODIFIED with respect to the country of origin of the decorative pillows classified under 9404.90.2000, HTSUS, for marking purposes.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

## ATTACHMENT E

HQ H293880

OT:RR:CTF:VS H293880 EE

CATEGORY: Classification

MS. JENNIFER DIAZ  
BECKER & POLIAKOFF  
121 ALHAMBRA PLAZA, 10TH FLOOR  
CORAL GABLES, FL 33134

RE: Modification of HQ H265611; NAFTA country of origin marking; stuffed mattress covers

DEAR MS. DIAZ:

This letter is to inform you of the reconsideration of Headquarters Ruling Letter (“HQ”) H265611 which was issued to you by U.S. Customs and Border Protection (“CBP”) on October 21, 2015. HQ H265611 concerns the tariff classification of certain stuffed mattress covers and eligibility for preferential tariff treatment under the North American Free Trade Agreement (“NAFTA”). We have reviewed HQ H265611 and determined that it is partially incorrect with respect to the country of origin marking analysis. For the reasons set forth below, we are modifying that ruling letter.

**FACTS:**

The subject merchandise consists of two styles of mattress covers. Each style comes in numerous sizes, (i.e. twin, long twin, double, queen, king, California king, and split c-king); however, the characteristics of both styles and all sizes are the same. The mattress covers have two separate compartments. The top, upper-most layer has polyester stuffing, permanently sewn into it akin to quilting. This layer is zippered on all sides and attaches to or detaches from the lower compartment and the remainder of the mattress cover. A separate removable pad (not included) could be inserted between the top, upper-most quilted layer, and the lower mattress cover. The lower compartment of the mattress cover is comprised of a polyester and spandex interlock, and a polyester sandman. It is completely sewn together, and has dual zippers that allow the insertion of the mattress (not included). Essentially, there are two zippered compartments: one for an optional pad and one for the mattress.

Upon importation into the United States, the mattress cover fully encloses a mattress in its lower compartment via the double zipper closure. The mattress is not imported with the subject mattress cover. Rather, the fabric and other materials or components are imported into Mexico where they are cut and sewn into the final finished good, that is, the padded mattress cover. Upon importation into the United States, the importer sells the mattress cover to certain mattress and bed manufacturers, which in turn, cover their own mattresses and sell the combined unit to consumers.

CBP determined the stuffed mattress covers were classified under sub-heading 9404.90.20, HTSUS, which provides for “[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: [o]ther: [p]illows, cushions and similar furnishings: [o]ther.”



Additionally, CBP determined that the stuffed mattress covers were eligible for preferential tariff treatment under NAFTA.

**ISSUE:**

Whether the stuffed mattress covers classified under subheading 9404.90.20, HTSUS, imported into the United States are eligible for preferential tariff treatment under the NAFTA.

What is the country of origin of the stuffed mattress covers for purposes of country of origin marking?

**LAW AND ANALYSIS:**

General Note (“GN”) 12, HTSUS, incorporates Article 401 of the NAFTA into the HTSUS. GN 12(a)(ii), HTSUS, provides that goods are eligible for the NAFTA rate of duty if they originate in the territory of a NAFTA party and qualify to be marked as goods of Mexico. GN 12(b), HTSUS, sets forth the various methods for determining whether a good originates in the territory of a NAFTA party. Specifically, these provisions provide, in relevant part, as follows:

(a) Goods originating in the territory of a party to the North American Free Trade Agreement (NAFTA) are subject to duty as provided herein. For the purposes of this note—

\* \* \* \*

(ii) Goods that originate in the territory of a NAFTA party under the terms of subdivision (b) of this note and that qualify to be marked as goods of Mexico under the terms of the marking rules set forth in regulations issued by the Secretary of the Treasury (without regard to whether the goods are marked), and goods enumerated in subdivision (u) of this note, when such goods are imported into the customs territory of the United States and are entered under a subheading for which a rate of duty appears in the “Special” subcolumn followed by the symbol “MX” in parentheses, are eligible for such duty rate, in accordance with section 201 of the North American Free Trade Agreement Implementation Act.

(b) For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if—

(i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or

(ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or

(B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or

(iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials.

Since the stuffed mattress covers contain non-originating materials, they are not considered goods wholly obtained or produced entirely in a NAFTA party under GN 12(b)(i). We must next determine whether the stuffed mattress covers qualify under GN 12(b)(ii). There is no dispute as to the classification of the stuffed mattress covers in subheading 9404.90.20, HTSUS. The applicable rule of origin for the mattress covers classified under subheading 9404.90.20, HTSUS, is in GN 12(t)/94.7, HTSUS. Chapter rule 1 provides: “[f]or the purposes of the subdivisions pertaining to this chapter, whenever the subdivision designation is underscored, the provisions of subdivision (d) of this note may apply to goods for use in a motor vehicle of chapter 87.” Chapter rule 1 does not apply since the applicable tariff shift rule, GN 12(t)/94.7, HTSUS, is not underscored. Similarly, the subheading rule which provides that “[t]he underscoring of the designations in subdivision 1 pertains to goods provided for in subheading 9401.20 for use in a motor vehicle of chapter 87” does not apply since the applicable tariff shift rule is not underscored. GN 12(t)/94.7, HTSUS, provides: “[a] change to subheading 9404.90 from any other chapter, except from headings 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408 or 5512 through 5516.” You state that the non-originating components of the mattress covers, which are shipped into Mexico where they are cut and sewn into the finished good, are the stuffed knit fabric classified under subheading 6006.33.0040, HTSUS, the interlock material classified under subheading 6004.10.0085, HTSUS, the “sandman” classified under subheading 5801.36.0010, HTSUS, and zippers are slide fasteners classified under chapter 69, HTSUS. Since these non-originating materials are classified in a chapter other than chapter 94 and in headings which are not excepted, the tariff shift rule is met. Accordingly, we agree with HQ H265611 that the stuffed mattress covers classified under subheading 9404.90.20, HTSUS, qualify as NAFTA originating goods.

GN 12(a)(ii), HTSUS, provides that NAFTA-originating goods must also qualify to be marked as products of Mexico under the NAFTA Marking Rules to be eligible for preferential treatment. In this regard, 19 C.F.R. § 134.1(j) provides that “[t]he ‘NAFTA Marking Rules’ are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country.” 19 C.F.R. § 134.1(j) defines a “good of a NAFTA country” as “an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules.”

Chapter 94 Note to 19 C.F.R. § 102.20 (NAFTA Marking Regulations) explicitly provides that the country of origin of goods classified in subheading 9404.90.10, HTSUS, will be determined under the provisions of 19 C.F.R. § 102.21. However, the Chapter Note does not address merchandise classified in subheading 9404.90.20, HTSUS, and a rule for subheading 9404.90.20, HTSUS, is provided for in 19 C.F.R. § 102.20. HQ H265611 applied 19 C.F.R. § 102.20 to the stuffed mattress covers classified under subheading 9404.90.20, HTSUS, to determine their country of origin for marking purposes. However, we find that Section 102.21, Customs Regulations (19 C.F.R. § 102.21) which pertains to textile and apparel products, should have been applied.

Section 334, of the Uruguay Round Agreements Act, codified at 19 U.S.C. § 3592, provides rules of origin for textiles and apparel entered, or withdrawn

from warehouse, for consumption, on and after July 1, 1996. 19 C.F.R. § 102.21 implements section 334, and 19 C.F.R. § 102.0 refers to 19 C.F.R. § 102.21 for determining the country of origin of textile and apparel products. A “textile or apparel product” for purposes of these rules of origin is defined in 19 C.F.R. § 102.21(b)(5), in part, as any good classifiable in a number of headings including subheading 9404.90, HTSUS. As such, a good classifiable in subheading 9404.90, HTSUS, should be analyzed to determine if it is a “textile or apparel product” of 19 C.F.R. § 102.21 or other product of 19 C.F.R. § 102.20.

In Headquarters Ruling Letter (“HQ”) 962122, dated October 1, 1998, the importer claimed that because cushions were classified under subheading 9404.90.20, HTSUS, they were not “textile products” as that term was defined in 19 C.F.R. § 102.21(b)(5), and thus were subject to different rules of origin. CBP stated that the statute pertaining to the rules of origin, 19 U.S.C. § 3592, explicitly includes subheading 9404.90, HTSUS, and that the statute takes precedence over the regulation. Accordingly, in determining the country of origin of cushions classified under subheading 9404.90.20, HTSUS, the 19 C.F.R. § 102.21 rules of origin were applicable. As HQ 962122 provides, a pillow classified under subheading 9404.90.20, HTSUS, with a polyester outershell would be considered a textile product which would require the application of 19 C.F.R. § 102.21 rules of origin; however, a pillow classified under subheading 9404.90.20, HTSUS, with a leather or plastic outershell would not be considered a textile product and therefore 19 C.F.R. § 102.20 rules of origin would apply. In the instant case, since the merchandise at issue are mattress covers comprised of textiles (of polyester or of polyester and spandex), the 19 C.F.R. § 102.21 rules of origin are applicable.

The country of origin of a textile or apparel product is determined by hierarchical application of the general rules set forth in 19 C.F.R. § 102.21(c)(1) through (c)(5). 19 C.F.R. § 102.21(c)(1) provides: “[t]he country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced.” As the stuffed mattress covers at issue are not wholly obtained or produced in a single country, territory, or insular possession, 19 C.F.R. § 102.21(c)(1) is not applicable.

19 C.F.R. § 102.21(c)(2) provides: “[w]here the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section.”

As previously noted, the stuffed mattress covers are classified under subheading 9404.90.20, HTSUS. The applicable tariff shift rule in 19 C.F.R. § 102.21(e) for merchandise classified under subheading 9404.90, HTSUS, is as follows:

- 9404.90 Except for goods of subheading 9404.90 provided for in paragraph (e)(2) of this section, the country of origin of a good classifiable under subheading 9404.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.

19 C.F.R. § 102.21(e)(2) is not applicable since it does not cover subheading 9404.90.20, HTSUS. In the instant case, since the fabric comprising the

stuffed mattress covers was formed by a fabric-making process in China, in accordance with 19 C.F.R. § 102.21(c)(2) and (e)(1), the country of origin for the stuffed mattress covers is China.

However, 19 C.F.R. § 102.19(a) contains a “NAFTA preference override”.

Except in the case of goods covered by paragraph (b) of this section, if a good which is originating within the meaning of § 181.1(q) of this chapter is not determined under § 102.11(a) or (b) or § 102.21 to be a good of a single NAFTA country, the country of origin of such good is the last NAFTA country in which that good underwent production other than minor processing, provided that a Certificate of Origin . . . has been completed and signed for the good.

19 C.F.R. § 102.19(a).

In HQ 960854, dated April 22, 1998, which involves similar facts as this case, CBP considered four scenarios to determine whether a certain buckwheat hull filled neck pillow, classified under subheading 9404.90.1000, HTSUS, was eligible for preferential tariff treatment under NAFTA and the country of origin of the pillow. Under the first scenario, the buckwheat hulls were sourced in China, and the fabric for the pillow shell and the pillow case were woven, cut and assembled in China. In Mexico, the pillow was filled and packed. CBP found that the pillow shell and cover from China, classified under headings 6307 and 6304, HTSUS, underwent the requisite change in tariff classification and that the pillow was eligible for preferential tariff treatment under NAFTA. The country of origin analysis under 19 C.F.R. § 102.21(e), indicated that since the fabric comprising the merchandise was formed in a single country, China, the country of origin of the pillow would be China. However, in accordance with the NAFTA override (19 C.F.R. § 102.19), CBP determined that the country of origin of the buckwheat hull filled neck pillow was Mexico. *See also* HQ H019439, dated September 5, 2008 (by virtue of the NAFTA override, the bed-in-bag set, classified under subheading 9404.90, HTSUS, must be marked country of origin Mexico in order to receive preferential tariff treatment under NAFTA as claimed).

In the instant case, the stuffed mattress covers are originating goods under 19 C.F.R. § 181.1(q). Additionally, the mattress covers are not goods of a single NAFTA country under 19 C.F.R. § 102.21. As such, the stuffed mattress covers are a product of Mexico under the “NAFTA preference override” since they undergo more than “minor processing.”<sup>2</sup> Pursuant to 19 C.F.R. § 102.19(a), the stuffed mattress covers are products of Mexico.

<sup>2</sup> The phrase “minor processing” is defined at 19 C.F.R. §102.1(m) as the following:

- (1) Mere dilution with water or another substance that does not materially alter the characteristics of the good;
- (2) Cleaning, including removal of rust, grease, paint, or other coatings;
- (3) Application of preservative or decorative coatings, including lubricants, protective encapsulation, preservative or decorative paint, or metallic coatings;
- (4) Trimming, filing or cutting off small amounts of excess materials;
- (5) Unloading, reloading or any other operation necessary to maintain the good in good condition;
- (6) Putting up in measured doses, packing, repacking, packaging, repackaging;
- (7) Testing, marking, sorting, or grading;
- (8) Ornamental or finishing operations incidental to textile good production designed to enhance the marketing appeal or the ease of care of the product, such as dyeing and printing, embroidery and appliques, pleating, hemstitching, stone or acid washing, permanent pressing, or the attachment of accessories notions, findings and trimmings; or
- (9) Repairs and alterations, washing, laundering, or sterilizing.

**HOLDING:**

The stuffed mattress covers are classified under subheading 9404.90.20, HTSUS, which provides for “[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: [o]ther: [p]illows, cushions and similar furnishings: [o]ther.”

The stuffed mattress covers classified under subheading 9404.90.20, HTSUS, are eligible for preferential tariff treatment under NAFTA. The country of origin of the mattress covers is Mexico for purposes of the marking requirements.

**EFFECT ON OTHER RULINGS:**

HQ H265611, dated October 21, 2015, is hereby MODIFIED with respect to the country of origin of the stuffed mattress covers classified under 9404.90.20, HTSUS, for marking purposes.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

## ATTACHMENT F

HQ H293881

OT:RR:CTF:VS H293881 EE

CATEGORY: Classification

MR. SAMUEL I. HAYES  
NATURE'S WAY THERAPEUTIC PRODUCTS, INC.  
91021-1427 BELLEVUE AVENUE  
WEST VANCOUVER, BC  
CANADA V7V 3N3

RE: Modification of HQ 963233; NAFTA country of origin marking;  
heatable saks

DEAR MR. HAYES:

This letter is to inform you of the reconsideration of Headquarters Ruling Letter ("HQ") 963233 which was issued to you by U.S. Customs and Border Protection ("CBP") on December 13, 2000. HQ 963233 concerns the tariff classification of certain heatable saks and eligibility for preferential tariff treatment under the North American Free Trade Agreement ("NAFTA"). We have reviewed HQ 963233 and determined that it is partially incorrect with respect to the country of origin marking analysis. For the reasons set forth below, we are modifying that ruling letter.

**FACTS:**

The "Heatable Sak" is a sealed fabric pouch, measuring approximately 8.5 x 13 inches, loosely filled with flax seeds (3.5 lbs). The pouch of the sample that was provided in HQ 963233 was made of knitted velour fabric. In the original classification request, the following description of the article was provided: "this heatable sak provides fully adjustable cervical support, conforming to and supporting the head and neck, while the aroma therapy facilitates a complete relaxation of the body." The article's primary use is claimed to be as a heating pad and aromatherapy adjunct; however, it also functions as a pillow. The heatable sak can be "used when traveling as cervical or lumbar support." The article's flax seed filling is claimed to allow the article to retain both heat (from a microwave) and cold (from freezing). The article is said to retain heat for approximately a half-hour.

The knitted velour fabric forming the shell of the heatable saks is a product of Korea. The fabric is imported in bulk into Canada where it is cut, formed, sewn and filled with Canadian produced flax seed.

CBP determined the heatable saks having an outershell of cotton were classified under subheading 9404.90.10, HTSUS, which provides for "[m]atress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: [o]ther: [p]illows, [c]ushions and similar furnishings: [o]f cotton." The heatable saks having an outershell of a fabric other than cotton were classified under subheading 9404.90.20, HTSUS, which provides for "[m]atress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: [o]ther: [p]illows, cushions and similar furnishings: [o]ther." Additionally, CBP determined that

the heatable saks classified under subheadings 9404.90.10 and 9404.90.20, HTSUS, were eligible for preferential tariff treatment under NAFTA.

**ISSUE:**

Whether the heatable saks classified under subheadings 9404.90.10 and 9404.90.20, HTSUS, imported into the United States are eligible for preferential tariff treatment under the NAFTA.

What is the country of origin of the heatable saks for purposes of country of origin marking?

**LAW AND ANALYSIS:**

General Note (“GN”) 12, HTSUS, incorporates Article 401 of the NAFTA into the HTSUS. GN 12(a)(i), HTSUS, provides that goods are eligible for the NAFTA rate of duty if they originate in the territory of a NAFTA party and qualify to be marked as goods of Canada. GN 12(b), HTSUS, sets forth the various methods for determining whether a good originates in the territory of a NAFTA party. Specifically, these provisions provide, in relevant part, as follows:

(a) Goods originating in the territory of a party to the North American Free Trade Agreement (NAFTA) are subject to duty as provided herein. For the purposes of this note—

\* \* \* \*

(i) Goods that originate in the territory of a NAFTA party under the terms of subdivision (b) of this note and that qualify to be marked as goods of Canada under the terms of the marking rules set forth in regulations issued by the Secretary of the Treasury (without regard to whether the goods are marked), and goods enumerated in subdivision (u) of this note, when such goods are imported into the customs territory of the United States and are entered under a subheading for which a rate of duty appears in the “Special” subcolumn followed by the symbol “CA” in parentheses, are eligible for such duty rate, in accordance with section 201 of the North American Free Trade Agreement Implementation Act.

(b) For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if—

(i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or

(ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or

(B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or



(iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials.

Since the heatable saks contain non-originating materials, they are not considered goods wholly obtained or produced entirely in a NAFTA party under GN 12(b)(i). We must next determine whether the heatable saks qualify under GN 12(b)(ii). There is no dispute as to the classification of the heatable saks in subheadings 9404.90.10 and 9404.90.20, HTSUS. The applicable rule of origin for the heatable saks classified under subheadings 9404.90.10 and 9404.90.20, HTSUS, is in GN 12(t)/94.7, HTSUS. Chapter rule 1 provides: “[f]or the purposes of the subdivisions pertaining to this chapter, whenever the subdivision designation is underscored, the provisions of subdivision (d) of this note may apply to goods for use in a motor vehicle of chapter 87.” Chapter rule 1 does not apply since the applicable tariff shift rule, GN 12(t)/94.7, HTSUS, is not underscored. Similarly, the subheading rule which provides that “[t]he underscoring of the designations in subdivision 1 pertains to goods provided for in subheading 9401.20 for use in a motor vehicle of chapter 87” does not apply since the applicable tariff shift rule is not underscored. GN 12(t)/94.7, HTSUS, provides: “[a] change to subheading 9404.90 from any other chapter, except from headings 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408 or 5512 through 5516.” You state that the components of the heatable saks are the outershell knit fabric and the flax seed filler. Since the flax seed is grown in Canada, it qualifies as an originating material. However, the knit shell is milled in Korea and therefore is a non-originating material. The tariff shift rule for subheading 9404.90 excludes woven fabrics, but does not exclude knit fiber fabrics. Therefore, since the non-originating materials are classified in Chapter 60 which is a chapter other than chapter 94 and in headings which are not excepted, the tariff shift rule is met. Accordingly, we agree with HQ 963233 that the heatable saks classified under subheadings 9404.90.10 and 9404.90.20, HTSUS, qualify as NAFTA originating goods.

GN 12(a)(i), HTSUS, provides that NAFTA-originating goods must also qualify to be marked as products of Canada under the NAFTA Marking Rules to be eligible for preferential treatment. In this regard, 19 C.F.R. § 134.1(j) provides that “[t]he ‘NAFTA Marking Rules’ are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country.” 19 C.F.R. § 134.1(j) defines a “good of a NAFTA country” as “an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules.”

Chapter 94 Note to 19 C.F.R. § 102.20 (NAFTA Marking Regulations) explicitly provides that the country of origin of goods classified in subheading 9404.90.10, HTSUS, will be determined under the provisions of 19 C.F.R. § 102.21. However, the Chapter Note does not address merchandise classified in subheading 9404.90.20, HTSUS, and a rule for subheading 9404.90.20, HTSUS, is provided for in 19 C.F.R. § 102.20. HQ 963233 applied 19 C.F.R. § 102.11 to the heatable saks classified under subheading 9404.90.20, HTSUS, to determine their country of origin for marking purposes. However, we find that Section 102.21, Customs Regulations (19 C.F.R. § 102.21) which pertains to textile and apparel products, should have been applied.

Section 334, of the Uruguay Round Agreements Act, codified at 19 U.S.C. § 3592, provides rules of origin for textiles and apparel entered, or withdrawn from warehouse, for consumption, on and after July 1, 1996. 19 C.F.R. § 102.21 implements section 334, and 19 C.F.R. § 102.0 refers to 19 C.F.R. §



102.21 for determining the country of origin of textile and apparel products. A “textile or apparel product” for purposes of these rules of origin is defined in 19 C.F.R. § 102.21(b)(5), in part, as any good classifiable in a number of headings including subheading 9404.90, HTSUS. As such, a good classifiable in subheading 9404.90, HTSUS, should be analyzed to determine if it is a “textile or apparel product” of 19 C.F.R. § 102.21 or other product of 19 C.F.R. § 102.20.

In Headquarters Ruling Letter (“HQ”) 962122, dated October 1, 1998, the importer claimed that because cushions were classified under subheading 9404.90.20, HTSUS, they were not “textile products” as that term was defined in 19 C.F.R. § 102.21(b)(5), and thus were subject to different rules of origin. CBP stated that the statute pertaining to the rules of origin, 19 U.S.C. § 3592, explicitly includes subheading 9404.90, HTSUS, and that the statute takes precedence over the regulation. Accordingly, in determining the country of origin of cushions classified under subheading 9404.90.20, HTSUS, the 19 C.F.R. § 102.21 rules of origin were applicable. As HQ 962122 provides, a pillow classified under subheading 9404.90.20, HTSUS, with a polyester outershell would be considered a textile product which would require the application of 19 C.F.R. § 102.21 rules of origin; however, a pillow classified under subheading 9404.90.20, HTSUS, with a leather or plastic outershell would not be considered a textile product and therefore 19 C.F.R. § 102.20 rules of origin would apply. In the instant case, since the merchandise at issue are heatable saks with outershell of velour knit fabric, they are considered textile products and the 19 C.F.R. § 102.21 rules of origin are applicable.

The country of origin of a textile or apparel product is determined by hierarchical application of the general rules set forth in 19 C.F.R. § 102.21(c)(1) through (c)(5). 19 C.F.R. § 102.21(c)(1) provides: “[t]he country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced.” As the heatable saks at issue are not wholly obtained or produced in a single country, territory, or insular possession, 19 C.F.R. § 102.21(c)(1) is not applicable.

19 C.F.R. § 102.21(c)(2) provides: “[w]here the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section.”

As previously noted, the heatable saks are classified under subheadings 9404.90.10 and 9404.90.20, HTSUS. The applicable tariff shift rule in 19 C.F.R. § 102.21(e) for merchandise classified under subheading 9404.90, HTSUS, is as follows:

9404.90 Except for goods of subheading 9404.90 provided for in paragraph (e)(2) of this section, the country of origin of a good classifiable under subheading 9404.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.

19 C.F.R. § 102.21(e)(2) is not applicable since it does not cover subheadings 9404.90.10 and 9404.90.20, HTSUS. In the instant case, the fabric making process occurs where knitted velour fabric is formed. *See* 19 C.F.R.

102.21(b)(2). Therefore, according to 19 C.F.R. § 102.21(c)(2) and (e)(1), the country of origin for the heatable saks is the same as the origin of the knitted velour fabric, which is Korea.

However, 19 C.F.R. § 102.19(a) contains a “NAFTA preference override”.

Except in the case of goods covered by paragraph (b) of this section, if a good which is originating within the meaning of § 181.1(q) of this chapter is not determined under § 102.11(a) or (b) or § 102.21 to be a good of a single NAFTA country, the country of origin of such good is the last NAFTA country in which that good underwent production other than minor processing, provided that a Certificate of Origin . . . has been completed and signed for the good.

19 C.F.R. § 102.19(a).

In HQ 960854, dated April 22, 1998, which involves similar facts as this case, CBP considered four scenarios to determine whether a certain buckwheat hull filled neck pillow, classified under subheading 9404.90.1000, HTSUS, was eligible for preferential tariff treatment under NAFTA and the country of origin of the pillow. Under the first scenario, the buckwheat hulls were sourced in China, and the fabric for the pillow shell and the pillow case were woven, cut and assembled in China. In Mexico, the pillow was filled and packed. CBP found that the pillow shell and cover from China, classified under headings 6307 and 6304, HTSUS, underwent the requisite change in tariff classification and that the pillow was eligible for preferential tariff treatment under NAFTA. The country of origin analysis under 19 C.F.R. § 102.21(e), indicated that since the fabric comprising the merchandise was formed in a single country, China, the country of origin of the pillow would be China. However, in accordance with the NAFTA override (19 C.F.R. § 102.19), CBP determined that the country of origin of the buckwheat hull filled neck pillow was Mexico. *See also* HQ H019439, dated September 5, 2008 (by virtue of the NAFTA override, the bed-in-bag set, classified under subheading 9404.90, HTSUS, must be marked country of origin Mexico in order to receive preferential tariff treatment under NAFTA as claimed).

In the instant case, the heatable saks are originating goods under 19 C.F.R. § 181.1(q). Additionally, the heatable saks are not goods of a single NAFTA country under 19 C.F.R. § 102.21. As such, the heatable saks are a product of Canada under the “NAFTA preference override” since they undergo more than “minor processing.”<sup>3</sup> Pursuant to 19 C.F.R. § 102.19(a), the heatable saks are products of Canada.

<sup>3</sup> The phrase “minor processing” is defined at 19 C.F.R. §102.1(m) as the following:

- (1) Mere dilution with water or another substance that does not materially alter the characteristics of the good;
- (2) Cleaning, including removal of rust, grease, paint, or other coatings;
- (3) Application of preservative or decorative coatings, including lubricants, protective encapsulation, preservative or decorative paint, or metallic coatings;
- (4) Trimming, filing or cutting off small amounts of excess materials;
- (5) Unloading, reloading or any other operation necessary to maintain the good in good condition;
- (6) Putting up in measured doses, packing, repacking, packaging, repackaging;
- (7) Testing, marking, sorting, or grading;
- (8) Ornamental or finishing operations incidental to textile good production designed to enhance the marketing appeal or the ease of care of the product, such as dyeing and printing, embroidery and appliques, pleating, hemstitching, stone or acid washing, permanent pressing, or the attachment of accessories notions, findings and trimmings; or
- (9) Repairs and alterations, washing, laundering, or sterilizing.

**HOLDING:**

The heatable saks having an outershell of cotton are classified under subheading 9404.90.10, HTSUS, which provides for “[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: [o]ther: [p]illows, [c]ushions and similar furnishings: [o]f cotton.” The applicable subheading for the heatable saks having an outershell of a fabric other than cotton is 9404.90.20, HTSUS, which provides for “[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: [o]ther: [p]illows, cushions and similar furnishings: [o]ther.”

The heatable saks classified under subheadings 9404.90.10 and 9404.90.20, HTSUS, are eligible for preferential tariff treatment under NAFTA. The country of origin of the heatable saks is Canada for purposes of the marking requirements.

**EFFECT ON OTHER RULINGS:**

HQ 963233, dated December 13, 2000, is hereby MODIFIED with respect to the country of origin of the heatable saks classified under 9404.90.20, HTSUS, for marking purposes.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**ACCREDITATION AND APPROVAL OF CAMIN CARGO  
CONTROL, INC., AS A COMMERCIAL GAUGER AND  
LABORATORY**

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

**ACTION:** Notice of accreditation and approval of Camin Cargo Control, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Camin Cargo Control, Inc., has been approved to gauge and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of July 6, 2017.

**DATES:** The accreditation and approval of Camin Cargo Control, Inc., as commercial gauger and laboratory became effective on July 6, 2017. The next triennial inspection date will be scheduled for July 2020.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Cassata, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Camin Cargo Control, Inc., 1301 Metropolitan Ave., Thorofare, NJ 08086, has been approved to gauge and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Camin Cargo Control, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API Chapters	Title
3 .....	Tank Gauging.
7 .....	Temperature Determination.
8 .....	Sampling.
11 .....	Physical Property.
12 .....	Calculations.
17 .....	Maritime Measurements.

Camin Cargo Control, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petro-

leum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-08.....	ASTM D86	Standard Test Method for Distillation of Petroleum Products.
27-48.....	ASTM D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27-58.....	ASTM D5191	Standard Test Method For Vapor Pressure of Petroleum Products (Mini Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the website listed below for the current CBP Approved Gaugers and Accredited Laboratories List. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

Dated: April 10, 2018.

JAMES D. SWEET,  
*Acting Executive Director,  
 Laboratories and Scientific  
 Services Directorate.*

[Published in the Federal Register, April 17, 2018 (83 FR 16894)]

**APPROVAL OF INTERTEK USA, INC., AS A COMMERCIAL GAUGER**

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

**ACTION:** Notice of approval of Intertek USA, Inc., as a commercial gauger.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc., has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of September 20, 2017.

**DATES:** The approval of Intertek USA, Inc., as commercial gauger became effective on September 20, 2017. The next triennial inspection date will be scheduled for September 2020.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.13, that Intertek USA, Inc., 1020 South Holland Sylvania Rd., Holland, OH 43528, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Intertek USA, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API Chapters	Title
2 .....	Tank Calibration.
3 .....	Tank gauging.
7 .....	Temperature Determination.
8 .....	Sampling.
12 .....	Calculations.
14 .....	Natural Gas Fluids Measurements.
17 .....	Maritime Measurements.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding

the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

Dated: April 10, 2018.

JAMES D. SWEET,  
*Acting Executive Director,  
Laboratories and Scientific  
Services Directorate.*

[Published in the Federal Register, April 17, 2018 (83 FR 16894)]

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**MODIFICATION OF THE NATIONAL CUSTOMS  
AUTOMATION PROGRAM TEST REGARDING SUBMISSION  
OF IMPORT DATA AND DOCUMENTS REQUIRED BY U.S.  
FISH AND WILDLIFE SERVICE THROUGH THE  
AUTOMATED COMMERCIAL ENVIRONMENT**

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

**ACTION:** General notice.

**SUMMARY:** This document announces that U.S. Customs and Border Protection (CBP), in consultation with the U.S. Fish and Wildlife Service (FWS), is modifying and reopening the National Customs Automation Program (NCAP) test pertaining to the submission of certain import data and documents for commodities regulated by FWS (“FWS test”) through the Automated Commercial Environment (ACE). The modifications in this notice apply to the participation and discontinuation of participation in the test, submission options for test participants, and restrictions to the initial participation in the test. Except to the extent expressly announced or modified by this document, all aspects, rules, terms and conditions announced in a previous notice regarding the FWS test remain in effect.

**DATES:** As of May 23, 2018, the modifications to the FWS test will become operational. This test will continue until concluded by way of announcement in the **Federal Register**.

**ADDRESSES:** Comments concerning this notice and any aspect of this test may be submitted at any time during the test via email to Christopher Mabelitini, Trade Transformation Office, Office of Trade, U.S. Customs and Border Protection at (571) 468-5095 or

*Christopher.Mabelitini@cbp.dhs.gov*, with a subject line identifier reading “Comment on FWS Test FRN.”

**FOR FURTHER INFORMATION CONTACT:** For Partner Government Agency (PGA)-related questions, contact Bill Scopa, Trade Policy and Programs, Office of Trade, U.S. Customs and Border Protection at (202) 863-6554 or *William.R.Scopa@cbp.dhs.gov*. For technical questions related to ACE or Automated Broker Interface (ABI) transmissions, contact your assigned client representative. Interested parties without an assigned client representative should direct their questions to Steven Zaccaro, Trade Transformation Office, Office of Trade, U.S. Customs and Border Protection at (571) 358-7809 or *Steven.J.Zaccaro@cbp.dhs.gov* with the subject heading “FWS Test.” For FWS-related questions, contact Tamesha Woulard, Office of Law Enforcement, U.S. Fish and Wildlife Service at (703) 358-1949 or *Tamesha\_Woulard@fws.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*National Customs Automation Program Test*

The National Customs Automation Program (NCAP) was established by Subtitle B of Title VI—Customs Modernization in the North American Free Trade Agreement (NAFTA) Implementation Act (Customs Modernization Act) (Pub. L. 103-182, 107 Stat. 2057, 2170, December 8, 1993) (19 U.S.C. 1411). Through NCAP, the thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS) as the electronic data interchange (EDI) system authorized by U.S. Customs and Border Protection (CBP). ACE is an automated and electronic system for commercial trade processing which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for CBP and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP’s business functions and the information technology that supports those functions.

CBP’s modernization efforts are accomplished through phased releases of ACE component functionality designed to replace specific legacy ACS functions and add new functionality. Section 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)) provides



for the testing of NCAP components. *See* T.D. 95–21, 60 FR 14211 (March 16, 1995).

*The U.S. Fish and Wildlife Service (FWS) Partner Government Message Set (PGA) and Digital Image System (DIS) Test*

On May 5, 2016, CBP published a notice in the **Federal Register** (81 FR 27149) announcing an NCAP test concerning the electronic submission of certain import data and documents for commodities regulated by FWS (“FWS test”). The test notice provided that test participants would electronically submit data contained in FWS’s “Declaration for Importation or Exportation of Fish and Wildlife” (“Declaration” or “FWS Form 3–177”) to ACE using the Partner Government Agency (PGA) Message Set, and any required original permits or certificates, and copies of any other documents required under the FWS regulations (*see* 50 CFR part 14) to ACE via the Document Image System (DIS). Under the test, ACE replaced FWS’s internet-based filing system (“eDecs”) used for the electronic submission of the Declaration and accompanying documents. After receipt in ACE, the data and electronic documents would be sent to FWS for processing. The test notice further stated that original “Convention on International Trade in Endangered Species of Wild Fauna and Flora” (“CITES”) permits and certificates, and foreign-law paper documents would continue to be submitted directly to the FWS office at the applicable port. There was a lack of participation, and on January 12, 2017, the FWS PGA Message Set test was suspended due to concerns raised by the industry regarding the design of the message set. *See* CSMS Message Set 17–000015.

## II. Test Modifications

This document announces the reopening of the FWS test with modifications. Each modification is discussed separately below. Except to the extent expressly announced or modified by this document, all aspects, rules, terms, requirements, obligations and conditions announced in the previous notice regarding the FWS test remain in effect.

### A. *Application for Participation in Test*

The original test notice announced that a party seeking to participate in the test program had to send an email to its CBP client representative, Trade Transformation Office, Office of Trade (formerly known as ACE Business Office, Office of International Trade). This notice announces that applications to participate in the test program should be submitted by email to FWS at *lawenforcement@fws.gov*, with the subject heading “Request to Participate in the FWS Test.” A copy of the application should be sent to the applicant’s CBP client

representative, Trade Transformation Office, Office of Trade. Applications must include the applicant's filer code, the commodities the applicant intends to import, and the intended ports of arrival. Any applicant to the original test notice who wishes to participate in the reopening of the test should apply again pursuant to this notice.

### *B. Discontinuation of Participation in Test*

The original notice was silent as to the discontinuation of participation in the test program. This notice announces that requests to discontinue participation in the test program should be submitted by email to FWS at [lawenforcement@fws.gov](mailto:lawenforcement@fws.gov), with the subject heading "Request to Discontinue Participation in the FWS Test." This process ensures that any future entries submitted by an importer who wishes to discontinue participation will not be rejected by the business rules operating in the test due to missing Declaration data and accompanying documents. A copy of the request to discontinue should be sent to the participant's CBP client representative, Trade Transformation Office, Office of Trade. The request should include the date the participant wishes to end the participation.

### *C. Submission of Data and Documents in ACE*

Under the original test program, test participants were required to submit the Declaration data electronically to ACE when filing an entry, using the PGA Message Set, and the participants had to refrain from filing the Declaration data and accompanying documents in eDecs. This notice announces that CBP established a design that provides participants with different filing options when submitting data, disclaimers or documents in ACE. Participants do not need to notify CBP or FWS about which option they plan on using. Participants may use different filing options for different entries.

(1) *Option 1:* Test participants will file FWS Form 3-177 data in ACE using the PGA Message Set and upload required FWS documents in DIS. This filing option replaces eDecs for those participants filing entries under the auspices of this test program. ACE will send the data and electronic documents to FWS for processing.

(2) *Option 2:* Test participants will file FWS Form 3-177 and required documents directly with FWS. Under this option, test participants will either file the applicable eDecs confirmation number in the PGA Message Set (if FWS clearance was already received via eDecs) or use Disclaimer code "D" ("data filed through paper") to file in the PGA Message Set (if FWS clearance was already received via paper).

DIS will not be used under this option unless further information is requested by CBP or FWS to substantiate a disclaimer on a case-by-case basis.

(3) *Option 3:* Test participants will file in the PGA Message Set using Disclaimer code “C” (“data filed through other agency means”) to indicate that they will follow up with FWS and file in eDecs at a later time. DIS will not be used under this option unless further information is requested by CBP or FWS to substantiate a disclaimer on a case-by-case basis.

(4) *Option 4:* When a Harmonized Tariff code is flagged as “FW1”, participants will file in the PGA Message Set using Disclaimer code “E” (“product does not contain fish or wildlife, including live, dead, parts or products thereof, except as specifically exempted from declaration requirements under 50 CFR part 14”) to disclaim the need to file FWS Form 3–177 and required documents because the commodity does not contain fish or wildlife. However, if a commodity contains both FWS regulated and non-FWS regulated animal components, Disclaimer code “E” should be used in conjunction with one of the above options.

#### *D. Restrictions to Initial Participation in Test*

This test notice announces two restrictions to the initial participation in this reopened test program. Initially, participation will be restricted to certain FWS ports. FWS will notify participants of the ports they may use to enter commodities under the test procedures. In addition, initial participation in the test program will exclude entries of live and perishable commodities. Once FWS determines that a participant has fully tested its software for filing entries in ACE, FWS will notify the participant of its eligibility to file for entries of live and perishable commodities.

### **III. Waiver of Regulation Under the Test**

For purposes of this test, those provisions of 19 CFR parts 10 and 12 that are inconsistent with the terms of this test are waived for the test participants only. *See* 19 CFR 101.9(b). This document does not waive any recordkeeping requirements found in 19 CFR part 163 and the Appendix to part 163 (commonly known as the “(a)(1)(A) list”). This test also does not waive any FWS requirements under 50 CFR part 14.

### **IV. Test Participation and Selection Criteria**

To be eligible to apply for this test, the applicant must:

(1) Be a self-filing importer who has the ability to file ACE entry/cargo release and ACE Entry Summaries certified for cargo release or

a broker who has the ability to file ACE entry/ cargo release and ACE Entry Summaries certified for cargo release;

(2) File Declarations and disclaimers for FWS-regulated commodities; and

(3) Have an FWS eDecs filer account that contains the CBP filer code when filing under Option 1.

Test participants must meet all the eligibility criteria described in this document in order to participate in the test program.

## V. Application Process

As of April 23, 2018, FWS will accept applications throughout the duration of the test. FWS will notify the selected applicants by an email message of their selection and the starting date of their participation. Selected participants may have different starting dates. Anyone providing incomplete information, or otherwise not meeting participation requirements, will be notified by an email message and given the opportunity to resubmit the application. There is no limit on the number of participants.

## VI. Test Duration

The modifications announced in this test will become operational on May 23, 2018. At the conclusion of the test pilot, an evaluation will be conducted to assess the effect that the PGA Message Set has on expediting the submission of FWS importation-related data elements and the processing of FWS-related entries. The final results of the evaluation will be published in the **Federal Register** as required by § 101.9(b)(2) of the CBP regulations (19 CFR 101.9(b)(2)). Any modifications to this test will be announced via a separate **Federal Register** notice.

## VII. Paperwork Reduction Act

The collection of information contained in this FWS PGA Message Set test has been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) and assigned OMB control number 1018-0012. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Dated: April 17, 2018.

BRENDA B. SMITH,  
*Executive Assistant Commissioner,*  
*Office of Trade.*

**RENEWAL OF THE GENERALIZED SYSTEM OF  
PREFERENCES (GSP) AND RETROACTIVE APPLICATION  
FOR CERTAIN LIQUIDATIONS AND RELIQUIDATIONS  
UNDER THE GSP**

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

**ACTION:** General notice.

**SUMMARY:** The Generalized System of Preferences (GSP) is a renewable preferential trade program that allows the eligible products of designated beneficiary developing countries to enter the United States free of duty. The GSP program expired on December 31, 2017, but has been renewed through December 31, 2020, effective April 22, 2018, with retroactive effect between January 1, 2018, through April 21, 2018, by a provision in the Consolidated Appropriations Act, 2018.

This document provides notice to importers that U.S. Customs and Border Protection (CBP) will again accept claims for GSP duty-free treatment for merchandise entered, or withdrawn from warehouse, for consumption and that CBP will process refunds on duties paid, without interest, on GSP-eligible merchandise that was entered during the period that the GSP program was lapsed. Formal and informal entries that were filed electronically via the Automated Broker Interface (ABI) using Special Program Indicator (SPI) Code “A” as a prefix to the tariff number will be automatically processed by CBP and no further action by the filer is required to initiate the refund process. Non-ABI filers, and ABI filers that did not include SPI Code “A” on the entry, must timely submit a duty refund request to CBP. CBP will continue conducting verifications to ensure that GSP benefits are available to eligible entries only.

**DATES:** As of April 22, 2018, the filing of GSP-eligible entry summaries may be resumed without the payment of estimated duties, and CBP will initiate the automatic liquidation or reliquidation of formal and informal entries of GSP-eligible merchandise that was entered on or after January 1, 2018, through April 21, 2018, and filed via ABI with SPI Code “A” notated on the entry. Requests for refunds of GSP duties paid on eligible non-ABI entries, or eligible ABI entries filed without SPI Code “A,” must be filed with CBP no later than September 19, 2018.

**ADDRESSES:** Instructions for submitting a request to CBP to liquidate or reliquidate entries of GSP-eligible merchandise that was entered on or after January 1, 2018, through April 21, 2018

but without the SPI Code “A” are located at <http://www.cbp.gov/trade/priority-issues/trade-agreements/special-trade-legislation/generalized-system-preferences>.

**FOR FURTHER INFORMATION CONTACT:** General questions concerning this notice should be directed to Seth Mazze, Office of Trade, Trade Agreements Branch, 202–863–6567 or at [fta@dhs.gov](mailto:fta@dhs.gov). For operational questions regarding: Formal/Informal Entries and Baggage Declarations: Randy Mitchell, 202–863–6532; Mail Entries: Robert Woods, 202–344–1236; Non-ABI Informal Entries: Contact the appropriate Center of Excellence and Expertise. Questions from filers regarding ABI transmissions should be directed to their assigned ABI client representative.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

Section 501 of the Trade Act of 1974, as amended (19 U.S.C. 2461), authorizes the President to establish a Generalized System of Preferences (GSP) to provide duty-free treatment for eligible articles imported directly from designated beneficiary countries for specific time periods. Pursuant to 19 U.S.C. 2465, as amended by section 201(a) of Pub. L. 114–27, 129 Stat. 371, duty-free treatment under the GSP program expired on December 31, 2017.

On March 23, 2018, President Donald J. Trump signed the Consolidated Appropriations Act, 2018 (Pub. Law 115–141, 132 Stat. 348) (the Act). Section 501 of Title V of the Act pertains to the extension of duty-free treatment and the retroactive application for certain liquidations and reliquidations under the GSP. Section 501(b)(1) provides that GSP duty-free treatment will be applied to eligible articles from designated beneficiary countries that are entered, or withdrawn from warehouse, for consumption on or after April 22, 2018 through December 31, 2020. Section 501(b)(2) provides that for entries made on or after January 1, 2018 through April 21, 2018 (30th day after the date of enactment of the Act), to which duty-free treatment would have applied if GSP had been in effect during that time period (“covered entries”), any duty paid with respect to such entry will be refunded provided that a request for liquidation or reliquidation of that entry, containing sufficient information to enable U.S. Customs and Border Protection (CBP) to locate the entry or to reconstruct the entry if it cannot be located, is filed with CBP no later than September 19, 2018 (180 days after enactment of the Act). Section

501(b)(2)(C) provides that any amounts owed by the United States pursuant to section 501(b)(2)(A) will be paid *without* interest.

Field locations will not issue GSP refunds except as instructed to do so by CBP Headquarters. The processing of retroactive GSP duty refunds will be administered by CBP according to the terms set forth below.

### **Duty-Free Entry Summaries**

As of April 22, 2018, filers may resume filing GSP-eligible entry summaries without the payment of estimated duties.

### **GSP Duty Refunds**

#### *Formal/Informal Entries*

CBP will automatically liquidate or reliquidate formal and informal entries of GSP-eligible merchandise that were entered on or after January 1, 2018 through April 21, 2018, and filed electronically via the Automated Broker Interface (ABI) using Special Program Indicator (SPI) Code “A” as a prefix to the listed tariff number. Such entry filings will be treated as a conforming request for a liquidation or reliquidation pursuant to section 501(b)(2)(A) of the Act, and no further action by the filer is required to initiate a retroactive GSP duty refund. To avoid confusion, importers should not submit post-importation GSP claims on tariff items filed with the SPI “A” at entry summary. CBP expects to begin processing automatic refunds for these entries shortly after April 22, 2018.

CBP will not automatically process GSP duty refunds for formal covered entries that were not filed electronically via ABI, nor for formal and informal covered entries that were filed electronically via ABI with payment of estimated duties, but without inclusion of the SPI Code “A” as a prefix to the listed tariff number. In both situations, requests for liquidation or reliquidation of covered entries must be made no later than September 19, 2018, pursuant to the procedures set forth in <http://www.cbp.gov/trade/priority-issues/trade-agreements/special-trade-legislation/generalized-system-preferences>.

#### *Mail Entries*

For merchandise that was imported via the mail, addressees must request liquidation or reliquidation of covered entries no later than September 19, 2018, pursuant to the procedures set forth in <http://www.cbp.gov/trade/priority-issues/trade-agreements/special-trade-legislation/generalized-system-preferences>.



*Baggage Declarations and Non-ABI Informals*

For non-ABI informal entries and baggage declarations, travelers/importers must request liquidation or reliquidation of covered entries no later than September 19, 2018, pursuant to the procedures set forth in <http://www.cbp.gov/trade/priority-issues/trade-agreements/special-trade-legislation/generalized-system-preferences>.

Dated: April 18, 2018.

BRENDA B. SMITH,  
*Executive Assistant Commissioner,  
Office of Trade.*

[Published in the Federal Register, April 20, 2018 (83 FR 17561)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:****Entry/Immediate Delivery Application and  
Ace Cargo Release**

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

**ACTION:** 60-Day Notice and request for comments; revision and 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 will be accepted (no later than June 18, 2018) 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 1651-0024 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:** Entry/Immediate Delivery Application and ACE Cargo Release.

**OMB Number:** 1651-0024.

**Form Number:** 3461 and 3461 ALT.

**Current Actions:** This submission is being made to extend the expiration date with a change in the data collected. There is an increase to the annual burden hours based on updated agency estimates. Since the last OMB Renewal there have been two submissions for a Non Substantive Change for this information collection. The Non Substantive Changes made are the following:

Change one submitted on February 22, 2018: CBP is submitting this Non Substantive Change to OMB to reflect a change in the

Harmonized Tariff Schedule (HTS) which is maintained by the U.S. International Trade Commission (USITC). HTS data is provided to CBP at entry.

Effective February 7, 2018, the following changes to the Harmonized Tariff Schedule for units of quantity reporting will take effect:

- For HTS 8450.90.20 and 8450.90.60, certain parts of washing machines, the new unit of quantity will be “No.” instead of “X”.
- For HTS 8541.40.6030, solar cells, a second unit of quantity, “W” (for total wattage), will be added.
- For statistical reporting purposes under subheading 8541.40.6030, importers should report the total watts at maximum power based on standard test conditions according to the latest revision of International Electrotechnical Commission (IEC) 60904, “Photovoltaic Devices.”
- These modifications will take effect as announced in Presidential Proclamations 9693 (83 FR 3541) and 9694 (83 FR 3553), of January 23, 2018.

For additional information regarding the HTS please follow this link: <https://hts.usitc.gov/current>

Change two submitted on March 19, 2018: CBP is submitting this Non Substantive change to reflect an adjustment in ACE Cargo due to U.S. Department of Commerce Bureau of Industry and Security (BIS) for Procedures for Submitting Requests for Exclusions from the Section 232 National Security Adjustments of Imports of Steel and Aluminum information collection. Importers who have submitted for exclusion from Section 232 shall submit the BIS exclusion number in the additional importer declaration field. This collection is authorized by 15 CFR 705, <https://www.gpo.gov/fdsys/pkg/CFR-2016-title15-vol2/pdf/CFR-2016-title15-vol2-part705.pdf>

**Type of Review:** Extension and Revision (with change)

**Abstract:** All items imported into the United States are subject to examination before entering the commerce of the United States. There are two procedures available to effect the release of imported merchandise, including “entry” pursuant to 19 U.S.C. 1484, and “immediate delivery” pursuant to 19 U.S.C. 1448(b). Under both procedures, CBP Forms 3461, Entry/Immediate Delivery, and 3461 ALT are the source documents in the packages presented to Customs and Border Protection (CBP). The information collected on CBP Forms 3461 and 3461 ALT allow CBP officers to verify that the information regarding the consignee and shipment is correct and

that a bond is on file with CBP. CBP also uses these forms to close out the manifest and to establish the obligation to pay estimated duties in the time period prescribed by law or regulation. CBP Form 3461 is also a delivery authorization document and is given to the importing carrier to authorize the release of the merchandise.

CBP Forms 3461 and 3461 ALT are provided for by 19 CFR 141 and 142. These forms and instructions for Form 3461 are accessible at: <http://www.cbp.gov/newsroom/publications/forms>

ACE Cargo Release is a program for ACE entry summary filers in which importers or brokers may file Simplified Entry data in lieu of filing the CBP Form 3461. This data consists of 12 required elements: Importer of record; buyer name and address; buyer employer identification number (consignee number), seller name and address; manufacturer/supplier name and address; Harmonized Tariff Schedule 10-digit number; country of origin; bill of lading; house air waybill number; bill of lading issuer code; entry number; entry type; and estimated shipment value. Three optional data elements are the container stuffing location; consolidator name and address, and ship to party name and address. The data collected under the ACE Cargo Release program is intended to reduce transaction costs, expedite cargo release, and enhance cargo security. ACE Cargo Release filing minimizes the redundancy of data submitted by the filer to CBP through receiving carrier data from the carrier. This design allows the participants to file earlier in the transportation flow. Guidance on using ACE Cargo Release may be found at <http://www.cbp.gov/trade/ace/features>.

**Affected Public:** Businesses

*CBP Form 3461 paper form only:*

**Estimated Number of Respondents:** 12,307.

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

**Estimated Total Annual Responses:** 12,307.

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

**Estimated Total Annual Burden Hours:** 3,077.

*ACE Cargo Release to include electronic submission for 3461/3461ALT:*

**Estimated Number of Respondents:** 9,810.

**Estimated Number of Responses per Respondent:** 2,994.

**Estimated Total Annual Responses:** 29,371,140.

**Estimated Time per Response:** 10 minutes.

**Estimated Total Annual Burden Hours:** 4,875,609.

Dated: April 12, 2018.

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

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