

U.S. Customs and Border Protection



PROPOSED REVOCATION OF TWO RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF DECORATIVE BRIDAL ACCESSORIES

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

ACTION: Notice of proposed revocation of two ruling letters, and revocation of treatment relating to the tariff classification of decorative bridal accessories consisting of imitation pearl stamens and paper stems held together with a twist-tie.

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 two ruling letters concerning tariff classification of decorative bridal accessories 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 November 16, 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 two ruling letters pertaining to the tariff classification of decorative bridal accessories. Although in this notice, CBP is specifically referring to New York Ruling Letters ("NY") H84824, dated August 10, 2001 (Attachment A) and NY E80988, dated April 20, 1999 (Attachment B), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the two 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 H84824 and NY E80988, CBP classified decorative bridal accessories, consisting of imitation pearl stamens and paper stems held together with a twist-tie, in heading 7116, HTSUS, specifically in subheading 7116.20.40, HTSUS, which provides for "articles of natural or cultured pearls, precious or semi-precious stones (natural,

synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Of semiprecious stones (except rock crystal): Other.” CBP has reviewed NY H84824 and NY E80988, and has determined the ruling letters to be in error. It is now CBP’s position that the decorative bridal accessories are properly classified, in heading 6702, HTSUS, specifically in subheading 6702.90.65, HTSUS, which provides for “Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers foliage or fruit: Of other materials: Other: Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY H84824 and NY E80988, and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H293469, set forth as Attachment C to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: September 17, 2018

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

NY H84824

August 10, 2001

CLA-2-71:RR:NC:SP:233 H84824

CATEGORY: Classification

TARIFF NO.: 7116.20.4000

Ms. JULIE SCOGGAN
EVANS AND WOOD & Co., INC.
612 E. DALLAS RD., SUITE 200
GRAPEVINE, TX 76051

RE: The tariff classification of decorative bridal accessories from Korea.

DEAR Ms. SCOGGAN:

In your letter dated August 1, 2001, on behalf of Hobby Lobby, you requested a ruling on tariff classification.

The submitted samples are two styles of decorative bridal accessories consisting of imitation pearl stamens made of talc, dextrine and water, which are attached to paper stems. The stamens are held together with a twist-tie and packaged in a plastic bag. Talc is considered a semiprecious stone by Customs.

Your samples are being returned as requested.

The applicable subheading for the decorative bridal accessories will be 7116.20.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of precious or semiprecious stones (natural, synthetic or reconstructed). The rate of duty will be 10.5% ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lawrence Mushinske at 212-637-7061.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT B

NY E80988

April 30, 1999

CLA-2-71:RR:NC:SP:233 E80988

CATEGORY: Classification

TARIFF NO.: 7116.20.4000

MS. RUBY L. WOOD
EVANS AND WOOD & Co., INC.
P.O. BOX 610005
DFW AIRPORT, TX 75261

RE: The tariff classification of a pearl stamen bunch from Korea.

DEAR MS. WOOD:

In your letter dated April 20, 1999, on behalf of Hobby Lobby Stores, you requested a tariff classification ruling.

The submitted sample, Item #614065 Pearl Stamen Bunch, consists of imitation pearl stamens made of powder of talc which are attached to paper stems at both ends. Each stamen measures approximately 2 1/2 inches in length. The stamens are held together with a twist-tie and packaged in a plastic bag. Powder of talc is considered a semiprecious stone by Customs.

Your sample is being returned as requested.

The applicable subheading for the pearl stamen bunch will be 7116.20.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of precious or semiprecious stones (natural, synthetic or reconstructed). The rate of duty will be 10.5% ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lawrence Mushinske at 212-637-7061.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT C

HQ H293469
OT:RR:CTF:CPMM H293469 RGR
CATEGORY: Classification
TARIFF NO.: 6702.90.65

Ms. JULIE SCOGGAN
EVANS AND WOOD & Co., INC.
612 E. DALLAS RD., SUITE 200
GRAPREVINE, TX 76051

RE: Revocation of NY H84824 and NY E80988; tariff classification of decorative bridal accessories

DEAR Ms. SCOGGAN:

This letter is in reference to two ruling letters issued by U.S. Customs and Border Protection (“CBP”) concerning the classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of decorative bridal accessories under heading 7116, HTSUS. Specifically, in New York Ruling Letter (“NY”) H84824, dated August 10, 2001, CBP classified decorative bridal accessories consisting of imitation pearl stamens and paper stems held together with a twist-tie in subheading 7116.20.40, HTSUS. We have reviewed NY H84824 and find it to be incorrect. We have also reviewed NY E80988, dated April 30, 1999, concerning substantially similar merchandise. For the reasons set forth below, we are revoking NY H84824 and NY E80988.

FACTS:

In NY H84824, CBP described the merchandise as follows:

The submitted samples are two styles of decorative bridal accessories consisting of imitation pearl stamens made of talc, dextrine and water, which are attached to paper stems. The stamens are held together with a twist-tie and packaged in a plastic bag. Talc is considered a semiprecious stone by Customs.

In NY E80988, CBP described the merchandise as follows:

The submitted sample, Item #614065 Pearl Stamen Bunch, consists of imitation pearl stamens made of powder of talc which are attached to paper stems at both ends. Each stamen measures approximately 2 ½ inches in length. The stamens are held together with a twist-tie and packaged in a plastic bag. Powder of talc is considered a semiprecious stone by Customs.

ISSUE:

Whether the decorative bridal accessories are classifiable under heading 6702, HTSUS, as “artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit,” or under heading 7116, HTSUS, as “articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed).”

LAW AND ANALYSIS:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (“GRI”). GRI 1 provides, in part, that “for legal purposes, classification shall be determined according to terms of the

headings and any relative section or chapter notes...” In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

The 2018 HTSUS provisions under consideration are as follows:

6702 Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit:

* * *

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.

The notes to chapter 67 state, in pertinent part, the following:

3. Heading 6702 does not cover:

* * *

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

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 6702 state, in relevant part that the heading covers:

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

* * *

The articles of this heading are mainly used for decoration (e.g., in houses or churches), or as ornaments for hats, apparel, etc.

* * *

The ENs to heading 71.03 state, 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.¹ Accordingly, the EN to heading 71.03 also excludes articles of talc.

The ENs to heading 71.16 state, 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).

Prior to March 2012, the Annex to the ENs for chapter 71 listed talc as a precious or semiprecious stone. Noting the discrepancy with the ENs to heading 71.03 excluding steatite (a form of talc) from the heading as a

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

semi-precious 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 and semiprecious stone. Accordingly, articles of talc are not included in chapter 71. Thus, the subject merchandise is not classifiable in heading 7116, HTSUS, as “articles of natural or culture pearls, precious or semiprecious stones (natural, synthetic or reconstructed).”

Heading 6702, HTSUS, provides for “artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage and fruit.” The subject merchandise, consisting of imitation pearl stamens and paper stems with a twist-tie, is assembled by binding, gluing and fitting, all processes permitted by note 3(b) to chapter 67. It falls squarely within the meaning of parts of artificial flowers or foliage in heading 6702, HTSUS, as the ENs to heading 67.02 specifically identify “stamens” and “stems,” as parts of artificial flowers, foliage and fruit falling under this heading. Lastly, the merchandise is used in bridal ornaments, a use mentioned in EN 67.02. Therefore, pursuant to GRI 1, the merchandise is described, *eo nomine*, in heading 6702, HTSUS, as parts of artificial flowers. At the subheading level, the merchandise is classified pursuant to GRIs 1 and 6 in subheading 6702.90.65, HTSUS, as “[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [of] other materials: [o]ther: [o]ther.”

HOLDING:

Pursuant to GRIs 1 and 6, the subject decorative bridal accessories are classified in heading 6702, HTSUS, specifically in subheading 6702.90.65, HTSUS, which provides for “Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers foliage or fruit: Of other materials: Other: Other.” The 2018 column one, general rate of duty is 17% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY H84824, dated August 10, 2001, and NY E80988, dated April 30, 1999, are revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Cc: Ms. Ruby Wood
Evans and Wood & Co., Inc.
P.O. Box 610005
DFW Airport, TX 752621

PROPOSED REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A CLOTHES STEAMER

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 clothes steamer.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning tariff classification of a clothes steamer 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 November 16, 2018.

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

FOR FURTHER INFORMATION CONTACT: Patricia Fogle, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0061.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of a clothes steamer. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N258858, dated November 21, 2014 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the 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 N258858, CBP classified a clothes steamer in heading 8516, HTSUS, specifically in subheading 8516.10.00, HTSUS, which provides for “Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof: Electric instantaneous or storage water heaters and immersion heaters.” CBP has reviewed NY N258858 and has determined the ruling letter to be in error. It is now CBP’s position that the clothes steamer is properly classified, in heading 8516, HTSUS, specifically in subheading 8516.79.00, HTSUS, which provides for “Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electro-

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

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N258858 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H300545, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: October 2, 2018

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N258858

November 21, 2014

CLA-2-85:OT:RR:NC:N4:110

CATEGORY: Classification

TARIFF NO.: 8516.10.0080

MR. SCOTT LEONARD

HSN

1 HSN DRIVE

ST. PETERSBURG, FL 33729

RE: The tariff classification of a clothes steamer from China

DEAR MR. LEONARD:

In your letter dated October 27, 2014, you requested a tariff classification ruling.

The sample under consideration is the Joy Mangano My Little Steamer w/Storage Bag, HSN Item Number 357-752. This product is an electric hand-held clothes steamer with a water reservoir and a cap with ten steam outlet holes. The steamer has an 8-foot retractable power cord with a two-prong plug, designed for a standard 120-volt polarized AC outlet. The steamer is intended for steaming fabrics only. It is powered by a 900 watt immersion heating element and produces steam within 2-3 minutes. The body of the steamer is made of plastic material, and measures approximately 12 inches high. The steamer is recommended for home and travel use. A drawstring bag is included for the convenience of storage and travel. The sample will be returned as requested.

The applicable subheading for the clothes steamer will be 8516.10.0080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other instantaneous electric water heaters and immersion heaters. The 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

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

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

Sincerely,

GWENN KLEIN KIRSCHNER

*Director**National Commodity Specialist Division*

ATTACHMENT B

HQ H300545
CLA-2 OT:RR:CTF:EMAIN H300545 PF
CATEGORY: Classification
TARIFF NO.: 8516.79.00

MR. SCOTT LEONARD
HSN
P.O. Box 9090
CLEARWATER, FL 33758

RE: Revocation of NY N258858; tariff classification of a clothes steamer

DEAR MR. LEONARD:

On November 21, 2014, U.S. Customs and Border Protection (“CBP”) issued to you New York Ruling Letter (“NY”) N258858. It concerned the tariff classification of the Joy Mangano My Little Steamer (“clothes steamer”) under the Harmonized Tariff Schedule of the United States (“HTSUS”). We have reviewed NY N258858 and determined that it is incorrect. For the reasons set forth below, we are revoking that ruling.

FACTS:

In NY N258858, the subject clothes steamer was described as follows:

The sample under consideration is the Joy Mangano My Little Steamer w/Storage Bag, HSN Item Number 357–752. This product is an electric hand-held clothes steamer with a water reservoir and a cap with ten steam outlet holes. The steamer has an 8-foot retractable power cord with a two-prong plug, designed for a standard 120-volt polarized AC outlet. The steamer is intended for steaming fabrics only. It is powered by a 900 watt immersion heating element and produces steam within 2–3 minutes. The body of the steamer is made of plastic material, and measures approximately 12 inches high. The steamer is recommended for home and travel use. A drawstring bag is included for the convenience of storage and travel. The sample will be returned as requested.

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

Online marketing materials for the clothes steamer describes the device as a “lightweight, compact, steamer that gets the job done without the ironing board.”¹ In addition, a website selling the clothes steamer notes that the device “[u]ses the power of steam to easily remove wrinkles” and that it is a “[g]reat alternative to ironing.”² Moreover, another website that markets the

¹ <http://joymangano.com/shop/care-for-your-clothes/> (last visited September 6, 2018).

² <https://www.amazon.com/Joy-Mangano-900-Watt-Little-Steamer/dp/B0024W9SUU> (last visited September 6, 2018).

clothes steamer also states that the device “easily remove[s] wrinkles and leave[s] your favorite garments looking fresh.”³

ISSUE:

Whether the subject clothes steamer is classified in subheading 8516.10.00, HTSUS, as an immersion heater or in subheading 8516.79.00, HTSUS, as an other electrothermic appliances of a kind used for domestic purposes.

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

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

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

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

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

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

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

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

This group includes:

³ <https://www.hsn.com/products/joy-supreme-steam-my-little-steamer-and-go-mini-set/8056984> (last visited September 6, 2018).

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

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

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

* * *

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

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

* * *

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

Our initial determination that the subject clothes steamer was classified in heading 8516, HTSUS, was correct because this device is an electrothermic appliance used for domestic purposes. Specifically, it is used in the household and powered by electricity to heat water and produces steam, which is then applied to clothing or other fabric to reduce the occurrence of wrinkles. See *United States v. Carborundum Co.*, 63 C.C.P.A. 98, 102, 536 F.2d 373, 377 (1976). Therefore, the issue in this case is the proper classification at the subheading level. As a result, GRI 6 applies.

We originally determined that the subject clothes steamer was classified in subheading 8516.10.00, HTSUS, which provides for, *inter alia*, “Electric instantaneous or storage water heaters and immersion heaters.” While the clothes steamer contains an immersion element that heats water to produce steam, we are of the view that the clothes steamer as a whole is not within the scope of subheading 8516.10, HTSUS, because it is not used as a water or immersion heater.

The clothes steamer is an appliance that produces steam by heating water in a tank and directing that steam to a specific, useful and separate purpose. The clothes steamer features a number of components, including a water reservoir and a cap with ten steam outlet holes that together produce and direct steam for the purpose of removing wrinkles from fabric. Therefore, since the primary function of the clothes steamer is the application of steam to fabric and not the heating of water, we find that the clothes steamer is not a water or immersion heater, and cannot be classified in subheading 8516.10.00, HTSUS.

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

CBP has classified electric steam cleaners under subheading 8516.79.00, HTSUS, in NY K84905, dated April 23, 2004, NY L82254, dated February 16, 2005 and NY N168881, dated June 24, 2011. In NY K84905, CBP described the merchandise as a clothes steamer with a water reservoir with a plastic cap or nozzle with five steam outlet holes whose function was to steam wrinkles from hanging fabrics, such as clothing or curtains. In NY L82254, CBP described the subject merchandise as a hand-held, pressurized steam cleaner with attachments that was designed to steam clean surfaces. The attachments included a jet nozzle, scrub brush, squeegee, angled head, fabric steamer and cloth, flexible extension hose, and a measuring cup for water. Moreover, in NY N168881, CBP classified a steam cleaner which had a boiler that heated water from the reservoir to create steam to clean and sanitize surfaces, windows, and clothing under subheading 8516.79.00, HTSUS. Similar to the fabric steamers in NY K84905, NY L82254, and NY N168881, the subject clothes steamer has a number of components, whose principal use is applying steam to fabric. Therefore, we find that the clothes steamer is properly classified under subheading 8516.79.00, HTSUS.

HOLDING:

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

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

EFFECT ON OTHER RULINGS:

NY N258858, dated November 21, 2014, is REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A MEN'S JACKET**

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 men's jacket.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) intends to revoke one ruling letter concerning tariff classification of a men's jacket 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 November 16, 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: Yuliya A. Gulis, Food, Textiles and Marking Branch, Branch, Regulations and Rulings, Office of Trade, at (202) 325–0042.

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 men's jacket. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N288630, dated November 30, 2017 (Attachment 1), this notice also covers any rulings on this merchandise, which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one ruling identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY N288630, CBP classified a men's garment in heading 6110, HTSUS, specifically in subheading 6110.30.3053, HTSUS, which provides for "sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: of man-made fibers: other: other: other: other: men's or boys': other." CBP has reviewed NY N288630 and has determined the ruling letter to be in error. It is now CBP's position that the men's garment in question is properly classified, in heading 6101, HTSUS, specifically in subheading 6101.30.2010, HTSUS, which provides for "men's or boys' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers, and similar articles, knitted or crocheted, other than those of heading 6103: Of man-made fibers: Other: Other: Men's."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N288630 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H296342, set forth as Attachment 2 to this

notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: October 2, 2018

LEVA K. O'ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT 1

N288630

November 30, 2017

CLA-2-61:OT:RR:NC:N3:356

CATEGORY: Classification

TARIFF NO.: 6110.30.3053

Ms. ANH HALLIBURTON
DESIGN RESOURCES, INC.
7007 COLLEGE BOULEVARD
SUITE 700
OVERLAND PARK, KS 66211

RE: The tariff classification of a men's cardigan from China

DEAR Ms. HALLIBURTON:

In your letter dated July 21, 2017, you requested a tariff classification ruling. Our response was delayed due to laboratory analysis. The sample garment was destroyed during this analysis and will not be returned.

The submitted sample, Style J17-00014, is a men's cardigan constructed from a bonded fabric consisting of an outer layer of 100% polyester, knit fabric that measures 16 stitches per two centimeters counted in the horizontal direction, a middle layer of polyurethane film, and an inner layer of 100% polyester, microfleece knit fabric that measures 25 stitches per two centimeters counted in the horizontal direction and is brushed on its inner surface. The polyurethane film is not visible in cross section. Style J17-00014 has a self fabric stand-up collar bordered with elasticized edging, a full front opening with a storm flap and a zippered closure, a zippered pocket on the right chest, long sleeves with elasticized edging on the cuffs, zippered side entry pockets below the waist, mesh knit pocket bags, a small heat seal logo on the bottom right front panel, and a hemmed bottom with a curved tail.

The sample garment lacks the character of an outerwear jacket. The styling, cut, and features do not support a finding that this item is an outerwear jacket that is designed for wear over all other clothing for protection against the weather.

U.S. Customs and Border Protection laboratory analysis has determined that the inner surface of Style J17-00014 is of weft knit sinker loop pile construction. Following Chapter 60, Note 1(c), Harmonized Tariff Schedule of the United States (HTSUS), classification is determined by the knit pile component of a laminated or bonded fabric, regardless of whether the knit pile component is used as the inside or the outside surface of the fabric.

You state in your letter that Style J17-00014 is water resistant. However, the garment cannot be classified as water resistant because there are no provisions for water resistant knitted garments in the tariff schedule. Consequently, the applicable subheading for Style J17-00014 will be 6110.30.3053, HTSUS, which provides for sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: of man-made fibers: other: other: other: other: men's or boys': other. The rate of duty is 32% ad valorem.

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

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

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

Sincerely,

STEVEN A. MACK

Director

National Commodity Specialist Division

ATTACHMENT 2

HQ H296342
OT:RR:CTF:FTM H296342 YAG
CATEGORY: Classification
TARIFF NO.: 6101.30.20

MS. ANH HALLIBURTON
DESIGN RESOURCES, INC.
7007 COLLEGE BLVD., SUITE 700
OVERLAND PARK, KS 66211

RE: Revocation of NY N288630; Classification of men's jacket

DEAR MS. HALLIBURTON:

This letter is to inform you that U.S. Customs and Border Protection ("CBP") has reconsidered New York Ruling Letter ("NY") N288630, issued to Design Resources, Inc. on November 30, 2017. In NY N288630, CBP classified a men's garment under subheading 6110.30.3053, Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for "sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: of man-made fibers: other: other: other: other: other: men's or boys': other." We have reviewed NY N288630 and found it to be incorrect. For the reasons set forth below, we are revoking this ruling. The sample will be returned to you.

FACTS:

In NY N288630, the garment was described as follows:

The submitted sample, Style J17-00014, is a men's cardigan constructed from a bonded fabric consisting of an outer layer of 100% polyester, knit fabric that measures 16 stitches per two centimeters counted in the horizontal direction, a middle layer of polyurethane film, and an inner layer of 100% polyester, microfleece knit fabric that measures 25 stitches per two centimeters counted in the horizontal direction and is brushed on its inner surface. The polyurethane film is not visible in cross section. Style J17-00014 has a self-fabric stand-up collar bordered with elasticized edging, a full front opening with a storm flap and a zippered closure, a zippered pocket on the right chest, long sleeves with elasticized edging on the cuffs, zippered side entry pockets below the waist, mesh knit pocket bags, a small heat seal logo on the bottom right front panel, and a hemmed bottom with a curved tail.

In classifying the garment in question, CBP stated that the sample garment lacked the character of an outerwear jacket. In CBP's view, the styling, cut, and features of the garment did not support a finding that this item was an outerwear jacket that was designed for wear over other clothing for protection against the weather. Since CBP's laboratory analysis revealed that the inner surface of Style J17-00014 was of weft knit sinker loop pile construction, CBP indicated that following Chapter 60, Note 1(c), HTSUS, classification was determined by the knit pile component of a laminated or bonded fabric, regardless of whether the knit pile component was used as the inside or the outside surface of the fabric. Consequently, CBP classified the garment under subheading 6110.30.3053, HTSUS.

In your February 27, 2018 request for reconsideration of NY N288630, you opine that the garment should be classified in 6101.30.2010, HTSUS, based on the following factors: (1) the garment is marketed as a jacket, and the

construction and composition of the garment is almost identical to NY M83936 and NY N008918; and (2) the garment meets six characteristics of a jacket, specified in the Informed Compliance Publication (“ICP”), entitled “Classification: Apparel Terminology under the HTSUS,” (in your view, these characteristics include the heavy weight shell fabric (10 oz or heavier), a full or partial lining, pockets at or below the waist, heavy-duty zipper or other heavy-duty closure, a tightening element as the cuffs, and a tightening element at the waist or bottom of the garment).

ISSUE:

Whether the garment is classified as knitted outerwear under subheading 6101.30, HTSUS, or as a knitted garment under subheading 6110.30, HTSUS.

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (“GRIs”) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provision of law for all purposes. GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order.

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 HTSUS and are thus useful in ascertaining the proper classification of merchandise. It is CBP’s practice to follow, whenever possible the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions at issue are as follows:

6101 Men’s or boys’ overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6103.

* * *

6110 Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted.

The issue in this case is the proper classification of the garment as either a knitted outerwear jacket or similar article, or a sweater or similar article. You suggest that the garment is a knitted outerwear jacket and properly classified in heading 6101, HTSUS. The ENs to 61.01 provide that “this heading covers a category of knitted or crocheted garments for men or boys, characterized by the fact that they are generally worn over all other clothing for protection against the weather.”

In NY N288630 at issue, CBP examined heading 6110, HTSUS. EN 61.10 provides that the heading “covers a category of knitted or crocheted articles,

without distinction between male or female wear, designed to cover the upper parts of the body (jerseys, pullovers, cardigans, waistcoats and similar articles).”

In determining the identity of the garment, CBP references a number of sources of information. In this ruling, in addition to the ENs, we also consider CBP’s ICP, entitled “Classification: Apparel Terminology under the HTSUS (June 2008). This ICP, although provided to the trade community for general information purposes only, represents the considered thought and expertise of CBP concerning the classification of apparel in Chapter 61, HTSUS. The definition of “jackets” is under the category for “anoraks, windbreakers and similar articles (6101, 6102, 6113, 6201, 6202, 6210).” According to the ICP, anoraks, windbreakers, jackets and similar articles include the following:

Jackets, which are garments designed to be worn over another garment, for protection against the elements. Jackets cover the upper body from the neck area to the waist area, but are generally less than mid-thigh length. They normally have a full front opening, although some jackets may have only a partial front opening. Jackets usually have long sleeves. Knit jackets (due to the particular character of knit fabric) generally have tightening elements at the cuffs and at the waist or bottom of the garment, although children’s garments or garments made of heavier material might not need these tightening elements. This term excludes knit garments that fail to qualify as jackets because they do not provide sufficient protection against the elements. Such garments, if they have full-front openings, may be considered cardigans of heading 6110 (other).

* * *

Shirt-Jackets, which are hybrid garments that could be classified as either jackets or shirts. For garments that present characteristics of both jackets and shirts, the presence of three or more of the following ten criteria would generally indicate a jacket (if the result is not unreasonable):

- Heavy weight shell fabric (for example, 10 ounce or heavier denim).
- A full or partial lining.
- Pockets at or below the waist.
- Back vents or pleats (also side vents in combination with back seams).
- A belt or simulated belt or elasticized waist on hip length or longer shirt-jackets.
- Large jacket or coat style buttons, toggles or snaps, a heavy-duty zipper or other heavy-duty closure, or buttons fastened with reinforcing thread for heavy-duty use.
- Lapels.
- Long sleeves without cuffs.
- A tightening element at the cuffs.
- A tightening element at the waist or bottom of the garment.

In NY L84458, dated August 1, 2005, CBP classified a men’s jacket constructed from a tri-laminate fabric consisting of an outer layer of 100 percent

polyester, brushed pile knit fabric bonded to an inner layer of 100 percent polyester, finely knit mesh fabric with a middle layer of a plastic film. The jacket featured a self-fabric stand up collar; a full front opening with a zippered closure; two large zippered pockets on the mid-chest extending below the waist; long sleeves with elasticized capping at the cuffs; a rubberized logo on the left arm; and a straight bottom finished with elasticized capping. CBP determined that the garment was classified under subheading 6101.30.2010, HTSUS.

Similarly, in NY N182124, dated September 1, 2011, CBP considered classification of a men's jacket constructed from a bonded fabric consisting of an outer layer of 41% wool, 38% polyester, 21% nylon knitted fabric that is bonded to a 100% polyester knit pile fabric. The jacket, in a regular size medium, had a self-fabric stand-up collar; a full front opening with a zipper closure; an embroidered logo on the left chest; long, tapered raglan sleeves; two zippered pockets below the waist; and a straight, close fitting bottom. CBP opined that the garment was designed for outdoor wear over other clothing to provide protection against the elements and classified the garment under subheading 6101.30.2010, HTSUS.

This instant garment is similar to the garments in NY L84458 and NY N182124, which were classified under 6101.30.2010, HTSUS. Considering the reasoning set forth in the above referenced rulings, the ENs, and the applicable ICP, in this case, Style J17-00014 features three jacket attributes: a heavy weight shell fabric (a 12-ounce shell fabric), pockets below the waist, and a heavy-duty zipper (with a storm flap that provides wind resistance). Moreover, the garment has a stand-up collar, bordered with elasticized edging, which provides additional warmth and protection from cold and wind. We note that although the garment at issue has no tightening at the hem and only marginal tightening at the wrist by way of a thin elastic binding, the sample provides a snug fit.¹ Additionally, in your request for reconsideration of NY N288630, you claim that the garment is marketed as a jacket and is comprised of water resistant fabric. CBP's laboratory confirmed the water resistant properties of the fabric. Thus, the garment provides some additional protection against the weather. Finally, we find that the level of protection from the weather offered by the garment is further reinforced by the middle layer of polyurethane film (though not visible in cross-section), which rises to the level of warmth and protection afforded by garments of heading 6101, HTSUS. *See* Headquarters Ruling Letter ("HQ") 965880, dated December 20, 2002. Accordingly, based on the factors above, the garment is more accurately described as an outerwear jacket under heading 6101, HTSUS.

HOLDING:

Based on the information submitted, we find that the garment at issue (Style J17-00014) in NY N288630 has features of an outerwear garment of heading 6101, HTSUS. In view of the foregoing, we find that the garment is properly classified under subheading 6101.30.2010, HTSUS, which provides for "men's or boys' overcoats, carcoats, capes, cloaks, anoraks (including

¹ Initially, Design Resources, Inc. provided a size large garment, which fit loosely on the size medium mannequin, and with the lack of tightening elements, did not conform to the definition of a jacket. When Design Resources, Inc. submitted the sample for reconsideration, it provided a size medium, which offered a snug fit on the size medium mannequin.

ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6103: of man-made fibers: other: other: men's.”

EFFECT ON OTHER RULINGS:

NY N288630, dated November 30, 2017, is hereby **REVOKED** in accordance with the above analysis.

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

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED MODIFICATION OF ONE RULING LETTER
AND REVOCATION OF TREATMENT RELATING TO THE
COUNTRY OF ORIGIN OF SOLAR PANELS**

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

ACTION: Notice of proposed modification of one ruling letter and revocation of treatment relating to the country of origin of solar panels.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify one ruling letter concerning the country of origin of solar panels. 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 November 16, 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: Yuliya A. Gulis, Food, Textiles and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0042.

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 one ruling letter pertaining to the country of origin of solar panels. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) N227976, dated August 22, 2012 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one ruling identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In the ruling to be modified, CBP determined China to be the country of origin of the finished solar panels. CBP has reviewed the ruling to be modified and has determined the ruling letter to be partially in error. It is now CBP's position that the solar panels are not substantially transformed in China, and the country of origin of the solar panels is Germany. CBP's analysis of appropriate marking in NY N227976 remains unchanged.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY N227976 and to revoke or modify any other ruling not specifically identified to reflect the country of origin analysis contained in the proposed Headquarters Ruling Letter (HQ) H298653, 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: September 6, 2018

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N227976

August 22, 2012

MAR-2 OT:RR:NC:N1:112

CATEGORY: Marking

Ms. LAURA CALLESANO
CBC AMERICA CORP.
55 MALL DRIVE
COMMACK, NY 11725

RE: Country of Origin and Marking of Solar Panels from China

DEAR Ms. CALLESANO:

This is in response to your letter dated July 25, 2012, requesting a country of origin and marking determination on solar panels imported into the United States.

The items concerned are solar panels which are assembled in China using both Chinese and non-Chinese components. There are 5 different sized solar panels concerned (GSP-6, GSP-12, GSP-30, GSP-40, GSP-55). The polycrystalline solar cells are manufactured in Germany. The front sheet is manufactured Japan. The remainder of the parts; Ethylene Vinyl Acetate copolymer (EVA), anodized aluminum back board, edge protector, grommet, junction box, cable protection, output cable, inter connector, buss bar, insulation tape, blocking diodes, fuse and ring terminals are all stated to be products of China. All the parts are sent to an assembler in China for assembly into a finished solar panel.

These particular solar panels are for off-grid usage only. They are described as semi-flexible solar panels. They use a semi-flexible aluminum backing and an unbreakable protective plastic film coating. They are used on boats and in RV's. Typical applications for these solar panels include, trickle charging 12V batteries, maintenance charging for boats at moorings, maintenance charging for emergency vehicles and sole source charging for auxiliary recreational equipment (RV's, jet skis, traffic signs, small appliances & other electronics). These solar panels are not made of glass and cannot be installed on a roof top to produce solar energy for homes.

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

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. Section 134.41(b), Customs Regulations (19 CFR 134.41(b)), mandates that the ultimate purchaser in the U.S. must be able to find the marking easily and read it without strain. Section 134.1(d), defines the ultimate purchaser as generally the last person in the U.S. who will receive the article in the form in which it was imported.

The country of origin for marking purposes is defined at section 19 CFR 134.1(b), to mean the country of manufacture, production, or growth of any article of foreign origin entering the U.S. 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 the meaning of Part 134. A substantial transformation is effected when a manufacturer or processor converts or combines an article into a new and different article resulting in a change in name, character, or use.

Based on the submitted literature, we find that the processing performed in China substantially transforms all of the non-Chinese components (solar cells and front sheet) into a new and different article when they are transformed into the finished solar panels. We consider the finished solar panels to be products of China and as such should be marked accordingly.

We have reviewed the submitted samples and the proposed marking. Due to the fact that a U.S. reference appears on the imported solar panels when they are imported into the U.S., it is necessary to consider the necessity for additional marking. Section 134.46, Customs Regulations (19 CFR 134.46), deals with cases in which the words “United States,” or “American,” the letters “U.S.A.,” any variation of such words or letters, or the name of any city or locality in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced, appears on an imported article or its container, and those words, letters or names may mislead or deceive the ultimate purchaser as to the actual country of origin. In such a case, there shall appear, legibly and permanently, in close proximity to such words, letters, or name, and in at least a comparable size, the name of the country of origin preceded by “Made in,” “Product of,” or other words of similar meaning. The purpose of this requirement is to prevent the possibility of misleading or deceiving the ultimate purchaser of an article as to the actual origin of the imported good. Section 134.47, Customs Regulations (19 CFR 134.47), deals with cases in which as part of a trademark or trade name or as part of a souvenir marking the name of a location in the United States or “United States” or “America”, appear, the article shall be legibly, conspicuously, and permanently marked to indicate the name of the country of origin of the article preceded by “Made in,” “Product of,” or other similar words, in close proximity or in some other conspicuous location.

The proposed marking of the solar panel boxes does not satisfy the marking requirements of 19 CFR 134.46 or CFR 134.47. The solar panel boxes have U.S. addresses printed in one location and a trade name incorporating the word “AMERICA” printed in another location. Based on 19 CFR 134.46 and 19 CFR 134.47, the country of origin marking is not in close proximity to the trade name and the font used for the country of origin marking is not of a comparable size when compared to the U.S. addresses or the trade name.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR Part 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 Steven Pollichino at (646) 733-3008.

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

ATTACHMENT B

HQ H298653
OT:RR:CTF:FTM H298653 YAG
CATEGORY: Origin

Ms. LAURA CALLESANO
CBC AMERICA CORP.
55 MALL DRIVE
COMMACK, NY 11725

RE: Modification of NY N227976; Country of Origin Marking; Solar panels

DEAR Ms. CALLESANO:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has partially reconsidered New York Ruling Letter (“NY”) N227976, issued to CBC America Corp. on August 22, 2012. In NY N227976, CBP found that the processing performed in China substantially transformed all of the Chinese and non-Chinese components into solar panels. Therefore, CBP determined that China was the country of origin of the finished solar panels. We have reviewed NY N227976 and found the country of origin determination to be incorrect. For the reasons set forth below, we are modifying this ruling. CBP’s analysis of appropriate marking requirements pursuant to 19 C.F.R. § 134.46 and 19 C.F.R. § 134.47 in NY N227976 remains unchanged.

FACTS:

In NY N227976, CBP described the solar panels as follows:

The items concerned are solar panels, which are assembled in China using both Chinese and non-Chinese components. There are 5 different sized solar panels concerned (GSP-6, GSP-12, GSP-30, GSP-40, GSP-55). The polycrystalline solar cells are manufactured in Germany. The front sheet is manufactured in Japan. The remainder of the parts, such as Ethylene Vinyl Acetate copolymer (“EVA”), anodized aluminum back board, edge protector, grommet, junction box, cable protection, output cable, inter connector, buss bar, insulation tape, blocking diodes, fuse and ring terminals, are all stated to be products of China. All the parts are sent to an assembler in China for assembly into a finished solar panel.

These particular solar panels are for off-grid usage only. They are described as semi-flexible solar panels. They use a semi-flexible aluminum backing and an unbreakable protective plastic film coating. They are used on boats and in RV’s. Typical applications for these solar panels include, trickle charging 12V batteries, maintenance charging for boats at moorings, maintenance charging for emergency vehicles and sole source charging for auxiliary recreational equipment (RV’s, jet skis, traffic signs, small appliances & other electronics). These solar panels are not made of glass and cannot be installed on a roof top to produce solar energy for homes.

Based on the information submitted in NY N227976, CBP found that the processing performed in China substantially transformed all of the components into a new and different article (solar panels). CBP considered the finished solar panels to be products of China and determined that they should be marked accordingly. We have now reconsidered our country of origin determination. However, we also find the analysis of the proposed marking in

NY N227976 to be correct. Accordingly, we are only modifying the country of origin determination, as reflected in NY N227976.

ISSUE:

What is the country of origin of solar panels for country of origin marking purposes?

LAW AND ANALYSIS:

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. § 1304) provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. § 1304 was “that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will.” *United States v. Friedlaender & Co. Inc.*, 27 CCPA 297, 302, C.A.D. 104 (1940).

Part 134, Customs Regulations (19 C.F.R. Part 134), implements the country of origin marking requirements and the exceptions of 19 U.S.C. § 1304. Section 134.1(b), Customs Regulations (19 C.F.R. § 134.1(b)), defines “country of origin” as the 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 the meaning of the marking laws and regulations.

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of the operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 6 C.I.T. 204, 573 F. Supp. 1149 (1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). If the manufacturing or combining process is a minor one that leaves the identity of the imported article intact, a substantial transformation has not occurred. *Uniroyal, Inc. v. United States*, 3 C.I.T. 220, 542 F. Supp. 1026 (1982).

In *Energizer Battery, Inc. v. United States*, 190 F. Supp. 3d 1308 (2016), the Court of International Trade (“CIT”) interpreted the meaning of “substantial transformation.” *Energizer* involved the determination of the country of origin of a flashlight, referred to as the Generation II flashlight. All of the components of the Generation II flashlight were of Chinese origin, except for a white LED and a hydrogen getter. The components were imported into the United States where they were assembled into the finished Generation II flashlight.

The court reviewed the “name, character and use” test utilized in determining whether a substantial transformation has occurred and noted, citing *Uniroyal, Inc. v. United States*, 3 C.I.T. at 226, 542 F. Supp. at 1031, *aff'd*, 702 F.2d 1022 (Fed. Cir. 1983), that when “the post-importation processing consists of assembly, courts have been reluctant to find a change in character, particularly when the imported articles do not undergo a physical change.”

Energizer at 1318. In addition, the court noted that “when the end-use was pre-determined at the time of importation, courts have generally not found a change in use.” *Energizer* at 1319, citing as an example, *National Hand Tool Corp. v. United States*, 16 C.I.T. 308, 310, *aff’d*, 989 F.2d 1201 (Fed. Cir. 1993).

In reaching its decision in *Energizer*, the court expressed the question as one of whether the imported components retained their names after they were assembled into the finished Generation II flashlights. The court found “[t]he constitutive components of the Generation II flashlight do not lose their individual names as a result [of] the post-importation assembly.” The court also found that the components had a pre-determined end-use as parts and components of a Generation II flashlight at the time of importation and did not undergo a change in use due to the post-importation assembly process. Finally, the court did not find the assembly process to be sufficiently complex as to constitute a substantial transformation. Thus, the court found that *Energizer*’s imported components did not undergo a change in name, character, or use as a result of the post-importation assembly of the components into a finished Generation II flashlight. The court determined that China, the source of all but two components, was the correct country of origin of the finished Generation II flashlights under the government procurement provisions of the TAA.

In Headquarters’ Ruling Letter (“HQ”) H095409, dated Sept. 29, 2010, a U.S. manufacturer produced finished solar panels in California. Forty three percent of the cost content of the parts originated from the United States and all research and development took place in California. Key to CBP’s finding that a substantial transformation had taken place in the United States was the complex manufacturing process of the solar cells themselves. This process—which involved depositing thin films of chemicals on the inside of glass tubes—took five of the six and a half days it took to manufacture the finished solar panels. CBP found that turning bare glass tubes into functional solar cells in the United States constituted making a product with a new name, character, and use such that a substantial transformation had occurred.

However, in HQ H261693, dated September 16, 2015, CBP determined that the assembly processes fell short of those described in HQ H095409. In HQ H261693, solar panels were manufactured in Korea and Poland from solar cells (product of Malaysia or Korea), glass (China), frames (China/Belgium), junction box, cable, and connector (China/Czech Republic), back sheets (China/Germany), EVA (Korea/Japan), and interconnect ribbons. In addition to considering the country of origin of all of the components, CBP stated that the most important aspect of the case was the fact that the solar cells were produced in Malaysia or Korea and not in the countries where the solar panels were put together. Therefore, CBP found that assembling solar cells into finished solar panels did not result in a product with a new name, character, and use. CBP opined that solar cells imparted the essential character of the solar panels. Accordingly, where Malaysian solar cells were used, the country of origin was Malaysia, and in the scenario where Korean solar cells were used, the country of origin was Korea.

We find that this case is similar to HQ H261693. In this case, solar panels are assembled in China using both Chinese and non-Chinese components. However, the polycrystalline solar cells, which constitute the very essence of the solar panels, are entirely manufactured in Germany. Solar cells do not lose their identity and become an integral part of the solar panels when they

are combined with other components during the processing in China. The end-use of the solar cells and other components was pre-determined before the components were imported into China, and the solar cells (and other components) remained solar cells during processing in China. Therefore, in accordance with CBP's decision in HQ H261693 and the judicial precedent cited above, we find that the solar cells and other components are not substantially transformed by the processing in China, and thus the country of origin of the solar panels is Germany.

HOLDING:

Based on the facts provided, the solar cells from Germany are not substantially transformed into the solar panels by the processes that take place in China. As such, the country of origin of solar panels at issue is Germany.

EFFECT ON OTHER RULINGS:

NY N227976, dated August 22, 2012, is hereby **MODIFIED** in accordance with the above analysis.

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

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

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

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

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

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted no later than November 1, 2018 to be assured of consideration.

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 83 FR Page 26072) on June 5, 2018, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four

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

Overview of This Information Collection:

Title: Ship's Stores Declaration.

OMB Number: 1651-0018.

Form Number: CBP Form 1303.

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

Type of Review: Extension (without change).

Affected Public: Businesses.

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

Estimated Number of Respondents: 8,000.

Estimated Number of Responses per Respondent: 13.

Estimated Number of Total Annual Responses: 104,000.

Estimated Total Annual Burden Hours: 26,000.

Dated: September 27, 2018.

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