U.S. Customs and Border Protection

PROPOSED MODIFICATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF STEEL ASSEMBLY HARDWARE SETS FROM VIETNAM

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

ACTION: Notice of proposed modification of one ruling letter and proposed revocation of treatment relating to the tariff classification of steel assembly hardware sets from Vietnam.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify one ruling letter concerning tariff classification of steel assembly hardware sets from Vietnam 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 October 11, 2024.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Shannon L. Stillwell, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. CBP is also allowing commenters to submit electronic comments to the following email address: *1625Comments@cbp.dhs.gov*. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Arrangements to inspect submitted comments should be made in advance by calling Ms. Shannon L. Stillwell at (202) 325–0739.

FOR FURTHER INFORMATION CONTACT: Nicholas Horne, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325–7941.

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 tariff classification of steel assembly hardware sets from Vietnam. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N331989, dated May 24, 2023 (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 N331989, CBP classified steel assembly hardware sets from Vietnam in heading 7318, HTSUS, specifically in subheading

7318.16.0085, HTSUS, which provides for "Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: Threaded articles: Nuts, Other: Other." CBP has reviewed NY N331989 and has determined the ruling letter to be in error. It is now CBP's position that steel assembly hardware sets from Vietnam are properly classified, in heading 7318, HTSUS, specifically in subheading 7318.15.5056, HTSUS, which provides for "Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: Threaded articles: Other screws and bolts, whether or not with their nuts or washers: Studs; Other: Continuously threaded rod: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N331989 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H332598, 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.

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachments

N331989

April 26, 2023
CLA-2–73:OT:RR:NC:N1:121
CATEGORY: Classification
TARIFF NO.: 7318.15.8045, 7318.16.0085

ANGIE COURTEAU
LA-Z-BOY CASEGOODS, INC.
240 PLEASANT HILL RD.
HUDSON, NC 28638

RE: The tariff classification of steel assembly hardware sets from Vietnam

DEAR MS. COURTEAU:

In your letter dated April 4, 2023, you requested a tariff classification ruling for five different sets of hardware to be used to assemble specific La-Z-Boy furniture.

The first set under consideration is identified as item RP76–065–007. It includes four 5/16" x 3–1/2" bolts, two 5/16" x 2" bolts, four 5/16" nuts, ten 5/16" flat washers, ten 5/16" lock washers, one 4 mm allen wrench, and one 12 mm combination open-end and box wrench. The bolts have socket heads allowing them to be torqued by their head. According to the Informed Compliance Publication Fasteners of Heading 7318, "The term socket screw refers to fasteners with recessed holes in the head design. The hollow indentation in the head may be in the shape of a hex, square or other form." Accordingly, the bolts in this item are classified as socket screws. You state this hardware set is used for assembling finished dining chairs, item numbers 75–065 and 76–065.

The second set under consideration is identified as item RP090–1140–007. It includes eight 1/4" x 1–3/8" bolts, six 1/4" x 2" bolts, fourteen 1/4" lock washers, fourteen 1/4" flat washers, and one 4 mm allen wrench. The bolts have socket heads allowing them to be torqued by their head. According to the Informed Compliance Publication Fasteners of Heading 7318, "The term socket screw refers to fasteners with recessed holes in the head design. The hollow indentation in the head may be in the shape of a hex, square or other form." Accordingly, the bolts in this item are classified as socket screws. You state this hardware set is used for assembling a finished console table, item number 090–1140.

The third set under consideration is identified as item RP95–300–001. It includes eight 5/16" x 88 mm threaded rods with slotted heads, eight 5/16" curved slotted washers, and one 12 mm combination open-end and box wrench. After examination of the photographs of the eight 5/16" curved slotted washers, it is determined that they are a type of wedge nut. Each has a freely rotating nut attached to a flat piece of metal angled at both ends which allows it to anchor in place. You state this hardware set is used for assembling the side rails to the headboard and footboard of a sleigh bed item number 95–150.

The fourth set under consideration is identified as item RP860–744–001. It includes twelve 5/16" flat washers, twelve 5/16" lock washers, twelve 5/16" x 38 mm bolts which have socket heads, one 4 mm allen wrench, four 5/16" x 88 mm threaded rods which have slotted heads, four 5/16" curved slotted washers, and one 12 mm combination open-end and box wrench. After examination of the photographs of the four 5/16" curved slotted washers, it is determined

that they are a type of wedge nut. Each has a freely rotating nut attached to a flat piece of metal angled at both ends which allows it to anchor in place. You state this hardware set is used for assembling finished trestle tables, item numbers 860–744 and 860–745.

The fifth set under consideration is identified as item RP863–910–005. It includes eight 5/16" hex nuts, eight 5/16" lock washers, eight 5/16" flat washers, and one 12 mm combination open-end and box wrench. You state this hardware set is used for assembling a finished coffee table, item number 863–910.

The Explanatory Notes to the Harmonized Tariff System provide guidance in the interpretation of the Harmonized Commodity Description and Coding System at the international level. Explanatory Note X to GRI 3(b) provides that the term "goods put up in sets for retail sale" means goods that: (a) consist of at least two 2 different articles which are, prima facie, classifiable in different headings; (b) consist of articles put up together to meet a particular need or carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repacking. Goods classifiable under GRI 3(b) are classified as if they consisted of the material or component which gives them their essential character, which may be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the article. This office considers the subject hardware sets to be a set for tariff classification purposes.

You proposed that items RP76–065–007, RP090–1140–007 and RP860–744–001 are appropriately classified under 8204.11.0060, Harmonized Tariff Schedule of the United States (HTSUS), which provides for, "Hand-operated spanners and wrenches, and parts thereof: Nonadjustable; Other." Additionally, you proposed that items RP95–300–001 and RP863–910–005 are classified under 8204.11.0030 HTSUS, which provides for, "Hand-operated spanners and wrenches, and parts thereof: Nonadjustable; Open-end, box and combination open-end and box wrenches." We disagree. You suggested, "each component plays a vital role in the proper assembly of the respective finished unit, and the unit will not function as intended if not properly assembled. The wrenches that are included are of equal importance, as the bolts and nuts cannot be torqued and tightened properly without these tools." However, you also stated that each of these sets of hardware are "used for the assembly of specific furniture items" and that each set "includes the exact number of pieces necessary to assemble its respective unit." Because it is the fasteners that makes each set specific for the completion of a specific piece of furniture, it is the opinion of this office that it is the collection of the fasteners (and their specific size, type, and quantity) that provides the essential character of each set.

In the case of RP76–065–007, we find that the four 5/16" x 3–1/2" socket screws provide the essential function and impart the essential character to the set; in the case of RP090–1140–007, we find that the eight 1/4" x 1–3/8" socket screws provide the essential function and impart the essential character to the set; in the case of RP95–300–001 and RP860–744–001, we find that eight 5/16" curved slotted washers provide the essential function and impart the essential character to each set; in the case of RP863–910–005, we find that the eight 5/16" hex nuts provide the essential function and impart the essential character to the set. As such, each set is classified by application of GRI 3(b), according to the item which provides the essential function.

The applicable subheading for RP76–065–007 and RP090–1140–007 will be *7318.15.8045*, HTSUS, which provides for screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: threaded articles: other screws and bolts, whether or not with their nuts or washers: other: having shanks or threads with a diameter of 6 mm or more: other: socket screws: other. The general rate of duty will be 8.5% ad valorem.

The applicable subheading for RP95–300–001, RP860–744–001, and RP863–910–005 will be *7318.16.0085*, HTSUS, which provides for Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: Threaded articles: Nuts, Other: Other. The general duty rate 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 at *https://hts.usitc.gov/current*

This ruling is being issued under the provisions of Part 177 of the Customs and Border Protection 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, please contact National Import Specialist Jennifer Jameson at jennifer.d.jameson@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

HQ H332598
August X, 2024
OT:RR:CTF:CPMMA H332598 NAH
CATEGORY: Classification
TARIFF NO: 7318.15.5056

MS. ANGIE COURTEAU
LA-Z-BOY CASEGOODS, INC.
240 PLEASANT HILL RD.
HUDSON, NC 28638

RE: Modification of NY N331989; tariff classification of steel assembly hardware sets from Vietnam

DEAR MS. COURTEAU:

This letter is in reference to New York Ruling Letter (NY) N331989 issued to you on April 26, 2023, concerning the tariff classification of steel assembly hardware sets from Vietnam. In a letter dated May 24, 2023, you requested partial reconsideration of NY N331989. In NY N331989, U.S. Customs and Border Protection (CBP) classified five different steel assembly hardware sets, identified respectively as item RP76–065–007, RP090–1140–007, RP95–300–001, RP860–744–001, and RP863–910–005, under the Harmonized Tariff Schedule of the United States (HTSUS). Items RP76–065–007 and RP090–1140–007 were classified under subheading 7318.15.8045, HTSUSA (Annotated), which provides for "Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: Threaded articles: Other screws and bolts, whether or not with their nuts or washers: Other: Having shanks or threads with a diameter of 6 mm or more: Other: Socket screws: Other." Items RP95–300–001, RP860–744–001, and RP863–910–005 were classified under subheading 7318.16.0085, HTSUSA, as "Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: Threaded articles: Nuts, Other: Other." We have reviewed NY N331989 and determined that the ruling is partially in error with respect to the tariff classification of items RP95–300–001 and RP860–744–001. Accordingly, for the reasons set forth below, CBP is modifying NY N331989.

FACTS:

Items RP95–300–001 and RP860–744–001 were described in NY N331989 as follows:

> The third set under consideration is identified as item RP95–300–001. It includes eight 5/16" x 88 mm threaded rods with slotted heads, eight 5/16" curved slotted washers, and one 12 mm combination open-end and box wrench. After examination of the photographs of the eight 5/16" curved slotted washers, it is determined that they are a type of wedge nut. Each has a freely rotating nut attached to a flat piece of metal angled at both ends which allows it to anchor in place. You state this hardware set is used for assembling the side rails to the headboard and footboard of a sleigh bed item number 95–150.
>
> The fourth set under consideration is identified as item RP860–744–001. It includes twelve 5/16" flat washers, twelve 5/16" lock washers, twelve 5/16" x 38 mm bolts which have socket heads, one 4 mm Allen wrench,

four 5/16" x 88 mm threaded rods which have slotted heads, four 5/16" curved slotted washers, and one 12 mm combination open-end and box wrench. After examination of the photographs of the four 5/16" curved slotted washers, it is determined that they are a type of wedge nut. Each has a freely rotating nut attached to a flat piece of metal angled at both ends which allows it to anchor in place. You state this hardware set is used for assembling finished trestle tables, item numbers 860–744 and 860–745.

ISSUE:

Whether the specific steel assembly hardware sets from Vietnam, designated as items RP95–300–001 and RP860–744–001, are classified under subheading 7318.15.5056, HTSUSA, which provides for, "Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: Threaded articles: Other screws and bolts, whether or not with their nuts or washers: Studs; Other: Continuously threaded rod: Other." or under subheading 7318.16.0085, HTSUSA, as "Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: Threaded articles: Nuts: Other: Other."

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

GRI 3 provides, in pertinent part, that when goods are prima facie, classifiable under two or more headings, classification shall be effected by the following:

(a) [t]he heading which provides the most specific heading shall be preferred to headings providing a more general description. However, ... when two or more headings each refer to part only of the items in a set, those headings are to be regarded as equally specific, even if one of them gives a more complete or precise description of the goods. (b) ... 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 ... (c) [w]hen 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.

GRI 6 provides that for legal purposes, classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, mutatis mutandis, to the above rules, on the understanding that only subheadings at the same level are comparable.

* * * * * *

The 2024 HTSUS subheadings under consideration are the following:

7318	Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel:
	Threaded articles:
7318.15	Other screws and bolts, whether or not with their nuts or washers:
7318.15.50	Studs:
	Other:
	Continuously threaded rod:
7318.15.5056	Other.
	* * *
7318	Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel:
	Threaded articles:
7318.16.00	Nuts:
	Other:
7318.16.0085	Other.

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

EN VII to GRI 3(b) states that:

> The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

EN 73.18 states, in pertinent part, as follows:

> Bolts and nuts (including bolt ends), screw studs and other screws for metal, whether or not threaded or tapped, screws for wood and coach-screws are threaded (in the finished state) and are used to assemble or fasten goods so that they can readily be disassembled without damage.
>
> **Bolts and screws for metal** are cylindrical in shape, with a close and only slightly inclined thread; they are rarely pointed, and may have slotted heads or heads adapted for tightening with a spanner or they may be recessed. A bolt is designed to engage in a nut, whereas screws for metal are more usually screwed into a hole tapped in the material to be fastened and are therefore generally threaded throughout their length whereas bolts usually have a part of the shank unthreaded.
>
> The heading includes all types of fastening bolts and metal screws regardless of shape and use, including **U-bolts**, **bolt ends** (i.e., cylindrical rods threaded at one end), **screw studs** (i.e., short rods threaded at both ends), and **screw studding** (i.e., rods threaded throughout).
>
> **Nuts** are metal pieces designed to hold the corresponding bolts in place. They are usually tapped throughout but are sometimes blind. The head-

ing includes wing nuts, butterfly nuts, etc. Lock nuts (usually thinner and castellated) are sometimes used with bolts.

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Washers are usually small, thin discs with a hole in the centre; they are placed between the nut and one of the parts to be fixed to protect the latter. They may be plain, cut, split (e.g., Grower's spring washers), curved, cone shaped, etc.

* * * * *

As a preliminary matter, there is no dispute concerning the appropriate classification of items RP95–300–001 and RP860–744–001 under heading 7318, HTSUS. As such GRI 6 directs the GRI analysis be repeated in each subsequent subheading.

In NY N331989, CBP determined items RP95–300–001 and RP860–744–001 were sets relevant for the purposes of tariff classification and required a GRI 3(b) analysis to properly determine the appropriate subheading classifications. In NY N331989, in both sets, the "5/16" curved slotted washers were determined to provide the essential function and impart the essential character to items RP95–300–001 and RP860–744–001 because the curved slotted washers predominated by value. Furthermore, the curved slotted washers were determined to encompass the essential function and character of a "nut," and therefore, pursuant to GRI 3(b) and EN VII to GRI 3(b), items RP95–300–001 and RP860–744–001 were classified in subheading 7318.16, HTSUS, as "Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: Threaded articles: Nuts." In your May 24, 2023, reconsideration request, you note that the number of threaded rods is equal to the number of curved slotted washers in items RP95–300–001 and RP860–744–001. You argue that the curved slotted washers cannot be viewed separately from the threaded rods present when determining which component imparts the essential character of items RP95–300–001 and RP860–744–001. CBP partially agrees. The correct classification of items RP95–300–001 and RP860–744–001 is determined by GRI 3(b) and GRI 3(c).

In Structural Industries, Inc. v. United States, 360 F. Supp. 2d 1330, 1336 (Ct. Int'l Trade, 2005), the Court of International Trade (CIT) noted that the essential character of an article is "that which is indispensable to the structure, core or condition of the article, i.e., what it is." The CIT further explained that the essential character of an item is imparted by the item or component which is indispensable to carrying out the item's primary objective. *Id* at 1338. Similarly, the decision in *Better Home Plastics Corp. v. United States*, 20 CIT 221; 916 F. Supp. 1265 (Ct. Int'l Trade, 1996), found that the essential character is not necessarily the component which creates the item's "retail lure." *In Better Home*, a textile shower curtain which provided the desirable decorative characteristics and thus created the retail lure for the shower curtain set was not the item which imparted the essential character. *Id*. at 1267–1269. Instead, the CIT determined that it was the inner plastic liner which imparted the essential character. The CIT reasoned that it was the inner plastic liner that was indispensable to prevent water from escaping from the shower. *Id*. at 1269.

CBP continues to find the steel assembly hardware sets from Vietnam, designated as items RP95–300–001 and RP860–744–001, are composed of unique items, such as screws, washers, curved slotted washers, box

wrenches, etc., packaged together to assemble a specific and separate product but are not designed for general use in other products or, even, other substantially similar products. Both sets contain the curved slotted washers, threaded rods, and a wrench.

Washers are defined in the EN 73.18 (E) as "small, think discs with a hole in the center; they are placed between the nut and one of the parts to be fixed to protect that latter." Nuts are defined in the EN 73.18 (A) as "metal pieces designed to hold the corresponding bolts in place. They are usually tapped throughout but are sometimes blind." Here the curved slotted washers are placed in a specifically shaped hole in the relevant furniture where it is held in place so that the steel threaded rod, contained in the set, can be fastened into the nut component. The wrench is used to tighten the curved slotted washer to the threaded rod. As such, CBP continues to find that the curved slotted washers function as nuts even though the item contains features not generally found on traditional nuts. *See* HQ H195840, dated August 18, 2015 (affirming the subheading 7318.16, HTSUS, as an *eo nomine* provision per the guidance of *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1379 (Fed. Cir. 1999) and affirming the definition of 'nut' as "a type of fastener which is internally threaded and often but not always used opposite a mating bolt which fastens the materials together").

The definition of fasteners and the myriad forms included in that definition are described in EN 73.18. Here the threaded rods appearing in items RP95–300–001 and RP860–744–001 are threaded across their entire length and intended to have one end anchored or fixed in place, within a component of furniture, to provide a projection to which another component of furniture may be attached and secured by the curved slotted washer/nut. Additionally, the "bolts" also appearing in item RP860–744–001 are fasteners because the "bolts" secure a component of furniture to another component of furniture via preformed holes.[1]

The overarching purpose of items RP95–300–001 and RP860–744–001 is to fasten components of furniture together. As such, the fasteners (the threaded rods and "bolts") impart the essential character to both sets because the fasteners are indispensable to carrying out the items' primary objective. The furniture components may contain slots specifically designed to accommodate the unique shape of the curved slotted washers but the curved slotted washer is not designed to be used in any other way but to ensure specific objects are fastened by the accompanying threaded rods. On the other hand, the threaded rods can still fasten the furniture components together without the curved slotted washers securing them in place. The fastening role of the item sets is even more apparent when considering the components designed to work with the "bolts" in item RP860–744–001, flat washers, lock washers, and an Allen key. Each component in the item sets is included to allow or enhance the function of the fasteners. Therefore, the conclusion of the GRI 3(b) analysis is that the fasteners, not the curved slotted washers, impart the essential character of items RP95–300–001 and RP860–744–001. The correct

[1] Item RP860–744–001 designates the fastener as a bolt. Item RP860–744–001 does not contain corresponding nuts for the fasteners and assembly instructions demonstrate the fastener is intended to be torqued into a preformed hole. The fastener is a screw. The fastener will continue to be described as a "bolt" in this rule to avoid confusion with the items promotional material and to highlight that the fastener is not, strictly speaking, a bolt. The distinction between a bolt and screw has no impact upon the classification of this item.

classification of the items is under subheading 7318.15, HTSUS, "Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: Threaded articles: Other screws and bolts, whether or not with their nuts or washers." *See also* HQ H268650, dated September 18, 2019; HQ 955744, dated May 20, 1994; HQ 951870, dated January 29, 1993; these rulings reflect CBP's consistent determination that the fastener component imparts the essential character to sets designed to join two separate objects.

GRI 6 requires further consideration of the subheadings under 7318.15, HTSUS. EN 73.18 describes screw studs as "short rods threaded at both ends" and screw studding as "rods threaded throughout." Therefore, the threaded rods imparting the essential character of item RP95–300–001 are correctly classified under 7318.15.5056, HTSUSA, which provides for, "Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: Threaded articles: Other screws and bolts, whether or not with their nuts or washers: Studs; Other: Continuously threaded rod: Other." However, item RP860–744–001 contains "bolt" fasteners, which do not meet the definition of "studs,"[2] in addition to the threaded rod fasteners.

In item RP860–744–001 both fastener sets (flat washers, lock washers, bolts, and an Allen key (the bolt fastening) and the threaded rods, curved slotted washers, and combination wrench (the stud fastening)) perform the same fastening function but between different components of the same furniture. As such, both fastening sets are equally essential to item RP860–744–001 and CBP must look to GRI 3(c) to determine the correct classification under subheading 7318.15, HTSUS. *See* HQ H268650, dated September 18, 2019 (relying on a GRI 3(c) analysis where a wood fence post bracket made of steel with corresponding locknut and plastic bobbin, each of which, if imported separately, would be classifiable under different tariff headings, carry equally essential roles to the aggregate composite good.) GRI 3(c) requires "[w]hen 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 applicable subheadings are 7318.15.20, HTSUS, "Bolts and bolts and their nuts or washers entered or exported in the same shipment"; 7318.15.40, HTSUS, "Machine screws 9.5 mm or more in length and 3.2 mm or more in diameter (not including cap screws)"; and 7318.15.50, HTSUS, "Studs." As such, GRI 3(c) requires classification under 7318.15.50, HTSUS, "Studs." The correct classification of item RP860–744–001 is also 7318.15.5056, HTSUSA, which provides for, "Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: Threaded articles: Other screws and bolts, whether or not with their nuts or washers: Studs; Other: Continuously threaded rod: Other."

HOLDING:

By application of GRIs 1, 3(b), 3(c), and 6, the specific steel assembly hardware sets from Vietnam, designated as items RP95–300–001 and RP860–744–001, are classified in heading 7318, HTSUS, and specifically in subheading 7318.15.5056, HTSUSA, which provides for, "Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including

[2] *See supra* Footnote 1.

spring washers) and similar articles, of iron or steel: Threaded articles: Other screws and bolts, whether or not with their nuts or washers: Studs; Other: Continuously threaded rod: Other." The 2024 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 at https://hts.usitc.gov/.

EFFECT ON OTHER RULINGS:

N331989, dated April 26, 2023, is hereby modified.

Sincerely,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF THREE RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF TRAINING PANTS

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

ACTION: Notice of proposed revocation of three ruling letters and proposed revocation of treatment relating to the tariff classification of training pants.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke three ruling letters concerning the tariff classification of training pants 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 October 11, 2024.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Shannon Stillwell Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. CBP is also allowing commenters to submit electronic comments to the following email address: *1625Comments@cbp.dhs.gov*. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number, and date of publication. Arrangements to inspect submitted comments should be made in advance by calling Ms. Shannon Stillwell at (202) 325–0739.

FOR FURTHER INFORMATION CONTACT: Tanya Secor, Food, Textiles and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0062.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke three ruling letters pertaining to the tariff classification of training pants. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N244949, dated August 26, 2013 (Attachment A), NY N237226, dated January 17, 2013 (Attachment B), and NY N212877, dated April 25, 2012 (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 NY N244949, CBP classified training pants in headings 6108 and 6111, HTSUS, depending on the size of the product. Specifically, toddler-sized training pants were classified in subheading 6108.22.90, HTSUS, which provides for "Women's or girls' slips, petticoats, briefs, panties, night dresses, pajamas, negligees, bathrobes, dressing gowns, and similar articles, knitted or crocheted: Briefs and panties: Of man-made fibers: Other," and infant-sized training pants were classified in subheading 6111.30.50, HTSUS, which provides for "Babies' garments and clothing accessories, knitted or crocheted: Of synthetic fibers: Other." It is now CBP's position that the training pants are properly classified in heading 9619, HTSUS, specifically in

subheading 9619.00.64, HTSUS, which provides for "Sanitary pads (towels) and tampons, diapers (napkins), diaper liners and similar articles, of any material: Other, of textile materials: Knitted or crocheted: Of man-made fibers."

In NY N237226, CBP classified training pants in heading 6108, HTSUS, specifically in subheading 6108.21.00, HTSUS, which provides for "Women's or girls' slips, petticoats, briefs, panties, night dresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted: Briefs and panties: Of cotton." It is now CBP's position that the training pants are properly classified in heading 9619, HTSUS, specifically in subheading 9619.00.61, HTSUS, which provides for "Sanitary pads (towels) and tampons, diapers (napkins), diaper liners and similar articles, of any material: Other, of textile materials: Knitted or crocheted: Of cotton."

In NY N212877, CBP classified training pants in heading 6208, HTSUS, specifically in subheading 6208.92.00, HTSUS, which provides for "Women's or girls' singlets and other undershirts, slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles: Other: Of man-made fibers." It is now CBP's position that the training pants are properly classified in heading 9619, HTSUS, specifically in subheading 9619.00.74, HTSUS, which provides for "Sanitary pads (towels) and tampons, diapers (napkins), diaper liners and similar articles, of any material: Other, of textile materials: Other: Of man-made fibers."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N212877, NY N237226, and NY N244949 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H325601, set forth as Attachment D to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachments

N244949
August 26, 2013
CLA-2–61:OT:RR:NC:N3:358
CATEGORY: Classification
TARIFF NO.: 6108.22.9030; 6111.30.5070

MS. SHIRLEY MURDOCK
BUMMIS INC.
4300 BOULEVARD ST. LAURENT
SUITE 200
QUEBEC, H2W 1Z3 CANADA

RE: The tariff classification of training pants from Canada.

DEAR MS. MURDOCK:

In your undated letter received in this office August 7, 2013 you requested a tariff classification ruling. As requested, the sample will be returned to you.

The submitted sample, "Potty Pants" is a pair of X-large (3–4 years) unisex toddler training pants. The potty pants will also be imported in toddler size large (2–3 years) and infant sizes small (12–18 months) and medium (18–24 months).

The item resembles panties and is constructed with four layers. The outer layer or shell has three panels. The middle outer layer panel extends from the front waistband under the crotch to the rear waistband. The outer shell panel is constructed of 100% polyester knit interlock fabric laminated with polyester urethane coating. The side outer shell panels are constructed from the same material as the outer shell except for the inner laminate coating. There are two interior layer absorption materials. One absorbent layer is made of 100% cotton knit terry fabric. The other absorbent layer is made of a 100% knit polyester microfiber. The interior lining is made of knit fabric that is 40% cotton 60% hemp. The item features elasticized waistband and leg openings. The essential character is imparted by the polyester microfiber fabric liner which holds the moisture in.

The applicable subheading for toddler sizes will be 6108.22.9030, Harmonized Tariff Schedule of the United States (HTSUS), which provides for women's or girls' slips, petticoats, briefs, panties, night-dresses,, pajamas, negligees, , bathrobes, dressing gowns, and similar articles, knitted or crocheted: briefs and panties: of man-made fibers: other, girls'. The rate of duty will be 15.6 percent ad valorem.

The applicable subheading for infant's sizes will be 6111.30.5070, Harmonized Tariff Schedule of the United States (HTSUS), which provides for babies' garments and clothing accessories, knitted or crocheted: of synthetic fibers: other, other: other. The rate of duty will be 16 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 Bruce Kirschner at (646) 733–3048.

Sincerely,

MYLES B. HARMON
Acting Director
National Commodity Specialist Division

N237226
January 17, 2013
CLA-2–61:OT:RR:NC:N3:354
CATEGORY: Classification
TARIFF NO.: 6108.21.0020

MS. DEBBIE MAYARD
HAMCO
P.O. BOX 1028
GONZALES, LA 70707

RE: The tariff classification of an undergarment from China.

DEAR MS. MAYARD:

In your letter dated January 8, 2013, you requested a tariff classification ruling. The sample submitted will be returned.

Style 22747–3TB, Stay Dry Training Pants, is a size 3T unisex training pant. It will also be available in sizes 2T, 4T and 6. The outershell is constructed of 100% cotton knit fabric and the lining is constructed of a 100% polyester knit mesh fabric. An absorbent 75% cotton/25% polyester knit terry fabric with a polyurethane coating has been inserted between the outershell and the lining. The undergarment features flatlock stitching at the seams, capped, elasticized leg openings and an enclosed elasticized waistband. The essential character of the garment is imparted by the absorbent knit terry fabric.

The applicable subheading for this style will be 6108.21.0020, Harmonized Tariff Schedule of the United States (HTSUS,) which provides for Women's or girls' slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted: Briefs and panties: Of cotton: Girls'. The duty rate will be 7.6 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist 354 at (646) 733–3054.

Sincerely,

THOMAS J. RUSSO
Director
National Commodity Specialist Division

N212877
April 25, 2012
CLA-2–62:OT:RR:NC:N3:354
CATEGORY: Classification
TARIFF NO.: 6208.92.0040

MS. JOLYNN MITCHELL
g DIAPERS
PO BOX 10106
PORTLAND, OR 97296

RE: The tariff classification of training pants from China.

DEAR MS. MITCHELL:

In your letter dated April 1, 2012, you requested a tariff classification ruling. The sample submitted will be returned.

Style GD303 is a 2T to 4T unisex brief styled training pant. The outer layer is constructed of 92% cotton and 8% spandex knit jersey fabric. The inner layer is constructed of a plastic material and a 100% polyester non woven absorbent pad under a lining at the crotch. The waistband and leg openings are capped and elasticized and there is a triple adjustable hook and eye closure on each side of the training pant. The component which imparts the essential character of the garment is the absorbent non-woven polyester pad.

The applicable subheading for style GD303 will be 6208.92.0040, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Women's or girls' singlets and other undershirts, slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles: Other: Of man-made fibers, Other: Girls'. The duty rate will be 16 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 Robert Ivers at (646) 733–3054.

Sincerely,

THOMAS J. RUSSO
Director
National Commodity Specialist Division

HQ H325601
OT:RR:CTF:FTM H325601 TJS
CATEGORY: Classification
TARIFF NO.: 9619.00.61; 9619.00.64; 9619.00.74

MS. SHIRLEY MURDOCK
BUMMIS INC.
4300 BOULEVARD ST. LAURENT, SUITE 200
QUEBEC, H2W 1Z3 CANADA

RE: Revocation of NY N244949, NY N237226, NY N212877, NY N189364, NY N051615, NY N047756, HQ 965891, HQ 962542, NY E85902, and NY E85172; Modification of NY I89181, NY I83963, HQ 960319, and NY A86147; Revoked or Modified by Operation of Law; Tariff classification of training pants

DEAR MS. MURDOCK:

This is in reference to New York Ruling Letter ("NY") N244949, issued to you on August 26, 2013, concerning the tariff classification of unisex training pants, identified as "Potty Pants", under the Harmonized Tariff Schedule of the United States ("HTSUS"). In that ruling, U.S. Customs and Border Protection ("CBP") classified the training pants depending on the size, under either heading 6108, HTSUS, as girls' garments, or under heading 6111, HTSUS, as babies' garments. We have since reviewed NY N244949 and determined the classification of the training pants to be incorrect. Similarly, we have reviewed NY N237226, dated January 17, 2013, and NY N212877, dated April 25, 2012, and determined them to be in error. It is now CBP's position that the training pants that are the subject of NY N244949, NY N237226, and NY N212877 are classified in heading 9619, HTSUS. For the reasons set forth below, we hereby revoke NY N244949, NY N237226, and NY N212877.

Finally, we are also revoking or modifying eleven additional rulings by operation of law, as discussed below.

FACTS:

The merchandise in NY N244949 was described as follows:

> The submitted sample, "Potty Pants" is a pair of X-large (3–4 years) unisex toddler training pants. The potty pants will also be imported in toddler size large (2–3 years) and infant sizes small (12–18 months) and medium (18–24 months).
>
> The item resembles panties and is constructed with four layers. The outer layer or shell has three panels. The middle outer layer panel extends from the front waistband under the crotch to the rear waistband. The outer shell panel is constructed of 100% polyester knit interlock fabric laminated with polyester urethane coating. The side outer shell panels are constructed from the same material as the outer shell except for the inner laminate coating. There are two interior layer absorption materials. One absorbent layer is made of 100% cotton knit terry fabric. The other absorbent layer is made of a 100% knit polyester microfiber. The interior lining is made of knit fabric that is 40% cotton 60% hemp. The item features elasticized waistband and leg openings. The essential character is imparted by the polyester microfiber fabric liner which holds the moisture in.

In NY N244949, CBP classified the "Potty Pants" that were toddler-sized training pants under heading 6108, HTSUS, and specifically, in subheading 6108.22.90, HTSUS, which provides for "Women's or girls' slips, petticoats, briefs, panties, night dresses, pajamas, negligees, bathrobes, dressing gowns, and similar articles, knitted or crocheted: Briefs and panties: Of man-made fibers: Other." The infant-sized training pants were classified under heading 6111, HTSUS, and specifically, in subheading 6111.30.50, HTSUS, which provides for "Babies' garments and clothing accessories, knitted or crocheted: Of synthetic fibers: Other."

The merchandise in NY N237226 was described as follows:

> Style 22747–3TB, Stay Dry Training Pants, is a size 3T unisex training pant. It will also be available in sizes 2T, 4T and 6. The outershell is constructed of 100% cotton knit fabric and the lining is constructed of a 100% polyester knit mesh fabric. An absorbent 75% cotton/25% polyester knit terry fabric with a polyurethane coating has been inserted between the outershell and the lining. The undergarment features flatlock stitching at the seams, capped, elasticized leg openings and an enclosed elasticized waistband. The essential character of the garment is imparted by the absorbent knit terry fabric.

In NY N237226, CBP classified the training pant under heading 6108, HTSUS, and specifically, in subheading 6108.21.00, HTSUS, which provides for "Women's or girls' slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted: Briefs and panties: Of cotton."

The merchandise in NY N212877 was described as follows:

> Style GD303 is a 2T to 4T unisex brief styled training pant. The outer layer is constructed of 92% cotton and 8% spandex knit jersey fabric. The inner layer is constructed of a plastic material and a 100% polyester non woven absorbent pad under a lining at the crotch. The waistband and leg openings are capped and elasticized and there is a triple adjustable hook and eye closure on each side of the training pant. The component which imparts the essential character of the garment is the absorbent nonwoven polyester pad.

In NY N212877, CBP classified Style GD303 under heading 6208, HTSUS, and specifically, in subheading 6208.92.00, HTSUS, which provides for "Women's or girls' singlets and other undershirts, slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles: Other: Of man-made fibers."

ISSUE:

What is the tariff classification of the training pants at issue under the HTSUS?

LAW AND ANALYSIS:

Classification under the HTSUS is determined in accordance with the General Rules of Interpretation ("GRI"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. Pursuant to GRI 6, classification at the subheading level uses the

same rules, *mutatis mutandis*, as classification at the heading level.

The 2024 HTSUS provisions under consideration are as follows:

6108:	Women's or girls' slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted:
	Briefs and panties:
6108.21.00	Of cotton...
	* * * * *
6111:	Babies' garments and clothing accessories, knitted or crocheted:
6111.30:	Of synthetic fibers:
6111.30.50:	Other...
	* * * * *
6208:	Women's or girls' singlets and other undershirts, slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles:
	Other:
6208.92.00:	Of man-made fibers...
	* * * * *
9619.00:	Sanitary pads (towels) and tampons, diapers (napkins), diaper liners and similar articles, of any material:
	Other, of textile materials:
	Knitted or crocheted:
9619.00.61:	Of cotton...
9619.00.64:	Of man-made fibers...
	Other:
9619.00.74:	Of man-made fibers...
	* * * * *

GRI 3(a) and (b) provide as follows:

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

Note 1(u) to Section XI, HTSUS, provides:

1. This section does not cover:

...

(u) Articles of chapter 96 (for example, brushes, travel sets for sewing, slide fasteners, typewriter ribbons, sanitary pads (towels) and tampons, diapers (napkins) and diaper liners)

* * * * *

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the "official interpretation of the Harmonized System" at the international level. *See* 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989). While not legally binding nor 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." *See id.*

The EN to GRI 3(b) states, in pertinent part:

(VI) This second method relates only to:

(i) Mixtures.

(ii) Composite goods consisting of different materials.

(iii) Composite goods consisting of different components.

(iv) Goods put up in sets for retail sales.

It applies only if Rule 3 (a) fails.

(VII) In all these cases the goods are to be classified as if they consisted of the material or component **which gives them their essential character**, insofar as this criterion is applicable.

(VIII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

(IX) For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, **provided** these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

* * * * *

The EN to heading 96.19 states, in pertinent part:

This heading covers sanitary towels (pads) and tampons, napkins (diapers) and napkin liners and similar articles, including absorbent hygienic nursing pads, napkins (diapers) for adults with incontinence and pantyliners, of any material.

In general, the articles of this heading are disposable. Many of these articles are composed of (a) an inner layer (e.g., of nonwovens) designed to wick fluid from the wearer's skin and thereby prevent chafing; (b) an absorbent core for collecting and storing fluid until the product can be disposed of; and (c) an outer layer (e.g., of plastics) to prevent leakage of fluid from the absorbent core. The articles of this heading are usually shaped so that they may fit snugly to the human body. This heading also includes similar traditional articles made up solely of textile materials, which are usually re-usable following laundering.

> This heading **does not cover** products such as disposable surgical drapes and absorbent pads for hospital beds, operating tables and wheelchairs or non-absorbent nursing pads or other non-absorbent articles (in general, classified according to their constituent material).
>
> * * * * *

Training pants have historically been classified in Chapter 61 or 62, HTSUS, as articles of apparel. *See, e.g.,* NY N189364 (Nov. 4, 2011); NY N051615 (Feb. 12, 2009); NY I83963 (July 22, 2002); NY E85902 (Aug. 20, 1999); and NY E85172 (Aug. 20, 1999). However, heading 9619 was introduced into the HTSUS in 2012, providing for "Sanitary towels (pads) and tampons, diapers and diaper liners for babies and similar articles, of any material."[1] Since Note 1(u) to Section XI, HTSUS, provides that Section XI, which includes Chapters 61 and 62, HTSUS, does not cover articles of Chapter 96, HTSUS, we must first consider whether the training pants at issue are classifiable in Chapter 96, HTSUS.

The training pants at issue are not any of the articles named in heading 9619, HTSUS, (i.e., sanitary pads (towels), tampons, diapers (napkins), or diaper liners). The question therefore is whether the training pants are similar to these named articles. The term "and similar articles" appearing after a list of articles, invokes the rule of *ejusdem generis*, which means "of the same kind." In tariff classification cases, "*ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms." *Sports Graphics, Inc., v. United States*, 24 F.3d 1390, 1392 (Fed. Cir. 1994) (citing *Nissho-Iwai Am. Corp. v. United States*, 10 Ct. Int'l Trade 154, 157, 641 F. Supp. 808, 810 (1986)).

The EN are informative in understanding what constitutes "similar articles" under heading 9619, HTSUS. The EN for heading 9619, HTSUS, explains that many of the articles in this heading are composed of three layers: "(a) an inner layer (e.g., of nonwovens) designed to wick fluid from the wearer's skin and thereby prevent chafing; (b) an absorbent core for collecting and storing fluid until the product can be disposed of; and (c) an outer layer (e.g., of plastics) to prevent leakage of fluid from the absorbent core." The ENs indicate that heading 9619, HTSUS, provides for absorbent articles. Furthermore, articles of heading 9619, HTSUS, are usually shaped so that they may fit snugly to the human body.

We find that the training pants at issue fit the description provided by the EN as articles that are classifiable in heading 9619, HTSUS. First, all three training pants at issue are composed of three layers, including, importantly, an absorbent core. The training pants in NY N244949, "Potty Pants", are constructed with four layers: an outer shell of 100% polyester knit interlock fabric laminated with polyester urethane coating, an absorbent layer of 100% cotton knit terry fabric, another absorbent layer of 100% knit polyester microfiber, and an interior lining of 40% cotton and 60% hemp knit fabric. The training pants in NY N237226, Style 22747–3TB, consist of an outer shell of 100% cotton knit fabric, an inner lining of 100% polyester knit mesh fabric, and an absorbent 75% cotton and 25% polyester knit terry fabric with a polyurethane coating between the lining and outer shell. Lastly, the training pants in NY N212877, Style GD303, consist of an inner layer of a plastic

[1] In 2022, the heading description was changed to "Sanitary pads (towels) and tampons, diapers (napkins), diaper liners and similar articles, of any material."

material, a 100% polyester nonwoven absorbent pad under a lining at the crotch, and an outer layer of 92% cotton and 8% spandex knit jersey fabric. Furthermore, each training pants style has an elastic waistband and elastic leg openings which help the product fit snugly to the wearer. We conclude, therefore, that all three styles are classifiable in heading 9619, HTSUS, as "similar articles."

The eight-digit subheadings within heading 9619, HTSUS, are divided according to material composition. To determine the appropriate subheading for the subject merchandise, GRI 6 refers us to GRI 1 through 5. Since each training pants style is comprised of different materials, specifically various textiles, the appropriate subheading for the subject merchandise cannot be determined pursuant to GRI 1. Per GRI 2(b), "[t]he classification of goods consisting of more than one material or substance shall be according to the principles of rule 3." Applying GRI 3(a) in the context of the subheading, we find that more than two subheadings refer to only part of the materials that comprise the subject merchandise. As such, we refer to GRI 3(b), which states that "[m]ixtures, 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."

In Headquarters Ruling Letter ("HQ") H271286, dated April 4, 2017, we stated that the absorbent component is essential for articles of heading 9619, HTSUS. Further, in HQ H301362, dated April 24, 2019, we confirmed that the essential character of diapers under GRI 3(b) was the material that absorbs the fluids away from the body, i.e., the absorbent core. More recently, in HQ H304671, dated March 28, 2022, we held that the essential character of babies' swimwear of subheading 9619.00, HTSUS, was based on the absorbent component. Likewise, here, the absorbent core imparts the essential character of the training pants at issue and the training pants will therefore be classified at the eight-digit subheading level according to the constituent material of the absorbent component.

In NY N244949, the absorbent component of "Potty Pants" is a layer of 100% cotton knit terry fabric and another layer of 100% knit polyester microfiber. NY N244949 determined that the essential character was imparted by the polyester microfiber fabric liner which holds the moisture in. Accordingly, we find that the toddler-sized and infant-sized "Potty Pants" are classified in subheading 9619.00.64, HTSUS, which provides for "Sanitary pads (towels) and tampons, diapers (napkins), diaper liners and similar articles, of any material: Other, of textile materials: Knitted or crocheted: Of man-made fibers."

In NY N237226, the absorbent component of Style 22747–3TB is 75% cotton and 25% polyester knit terry fabric with a polyurethane coating. The essential character of the training pant is imparted by the absorbent knit terry fabric, which is predominately of cotton. Therefore, Style 22747–3TB is classified in subheading 9619.00.61, HTSUS, which provides for "Sanitary pads (towels) and tampons, diapers (napkins), diaper liners and similar articles, of any material: Other, of textile materials: Knitted or crocheted: Of cotton."

In NY N212877, the component that imparts the essential character of Style GD303 is the absorbent 100% polyester nonwoven pad. Since polyester is a man-made textile material, Style GD303 is classified in subheading

9619.00.74, HTSUS, which provides for "Sanitary pads (towels) and tampons, diapers (napkins), diaper liners and similar articles, of any material: Other, of textile materials: Other: Of man-made fibers."

For the aforementioned reasons, eleven rulings issued prior to the 2012 establishment of heading 9619, HTSUS, and concerning substantially similar articles are revoked or modified by operation of law. The articles in those rulings that are subject to revocation or modification by operation of law included an absorbent core that imparted the essential character of the articles.

HOLDING:

By application of GRI 1, 3(b), and 6, the "Potty Pants" are classified under heading 9619, HTSUS, and specifically, in subheading 9619.00.64, HTSUS, which provides for "Sanitary pads (towels) and tampons, diapers (napkins), diaper liners and similar articles, of any material: Other, of textile materials: Knitted or crocheted: Of man-made fibers." The 2024 column one, general rate of duty is 14.9% *ad valorem*.

By application of GRI 1, 3(b), and 6, Style 22747–3TB is classified under heading 9619, HTSUS, and specifically, in subheading 9619.00.61, HTSUS, which provides for "Sanitary pads (towels) and tampons, diapers (napkins), diaper liners and similar articles, of any material: Other, of textile materials: Knitted or crocheted: Of cotton." The 2024 column one, general rate of duty is 10.8% *ad valorem*.

By application of GRI 1, 3(b), and 6, Style GD303 is classified under heading 9619, HTSUS, and specifically, in subheading 9619.00.74, HTSUS, which provides for "Sanitary pads (towels) and tampons, diapers (napkins), diaper liners and similar articles, of any material: Other, of textile materials: Other: Of man-made fibers." The 2024 column one, general rate of duty is 16% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N244949, dated August 26, 2013, NY N237226, dated January 17, 2013, and NY N212877, dated April 25, 2012, are REVOKED.

NY N189364, dated November 4, 2011, NY N051615, dated February 12, 2009, NY N047756, January 6, 2009, HQ 965891, dated November 6, 2002, HQ 962542, July 9, 2001, NY E85902, August 20, 1999, and NY E85172, dated August 20, 1999, are REVOKED by operation of law.

With respect to the classification of the training pants, NY I89181, dated December 4, 2002, NY I83963, dated July 22, 2002, HQ 960319, dated September 23, 1997, and NY A86147, dated August 23, 1996, are MODIFIED by operation of law.

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

Sincerely,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF TWO RULING LETTERS, MODIFICATION OF THREE RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF SAUCES

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

ACTION: Notice of proposed revocation of two ruling letters, modification of three ruling letters and proposed revocation of treatment relating to the tariff classification of sauces.

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 and modify three ruling letters concerning tariff classification of sauces 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 October 11, 2024.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Shannon Stillwell, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. CBP is also allowing commenters to submit electronic comments to the following email address: *1625Comments@cbp.dhs.gov*. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Arrangements to inspect submitted comments should be made in advance by calling Ms. Shannon Stillwell at (202) 325–0739.

FOR FURTHER INFORMATION CONTACT: Parisa J. Ghazi, Food, Textiles, and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0272.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke two ruling letters and modify three ruling letters pertaining to the tariff classification of sauces. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N195658, dated January 4, 2012 (Attachment A), NY D88850, dated May 12, 1999 (Attachment B), NY 890395, dated October 15, 1993 (Attachment C), Headquarters Ruling Letter ("HQ") 088976, dated January 6, 1992 (Attachment D), NY 856914, dated October 24, 1990 (Attachment E), and HQ 085838, dated December 21, 1989 (Attachment F), 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 five 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 N195658, NY D88850, NY 890395, HQ 088976, NY 856914, HQ 085838, CBP classified sauces in heading 2005 or 2008, HTSUS. CBP has reviewed NY N195658, NY D88850, NY 890395, HQ 088976, NY 856914, and HQ 085838 and has determined the ruling letters to be in error. It is now CBP's position that sauces are properly classified, in heading 2103, HTSUS, which provides for "Sauces and preparations therefore; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY 856914 and HQ 085838 and modify NY N195658, NY D88850, NY 890395, and HQ 088976 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H317626, set forth as Attachment G 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.

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachments

N195658

January 4, 2012
CLA-2–20:OT:RR:NC:2:228
CATEGORY: Classification
TARIFF NO.: 2005.70.9100; 2005.70.9300; 2005.70.9700; 2005.99.9700; 2008.92.1040

MR. AARON BIER IMPORT MANAGER
BRAUNER INTERNATIONAL CORPORATION
66 YORK STREET, SUITE 100
JERSEY CITY, NJ 07302

RE: The tariff classification of food products from the West Bank

DEAR MR. BIER:

In your letter dated November 30, 20011, you requested a tariff classification ruling.

Samples and recipe sheets were submitted with your letter. The samples were open, examined and disposed of. Organic Nabali Olive Tapenade is an oily, light green-colored, finely chopped food preparation composed of approximately 50 percent green nabali olives, 19.5 percent berries capers, 15 percent olive oil, 13 percent blossom capers, 2 percent lemon juice, 0.5 percent mustard seed and an unknown amount of salt. Sun-dried Tomato Caper Spread is an oily, reddish brown-colored, finely chopped food product consisting of 40.4 percent sun dried tomatoes, 40 percent capers and 19.6 percent olive oil. Olive Honey Spread is an oily, soft, dark brown-colored, homogenous spread made from 45 percent black olives, 21.5 percent green olives in a liquid medium of 30 percent honey and 3.5 percent olive oil. Olive Almond Spread is a pale-yellow colored spread composed of 50 percent green olives, 22 percent almonds, 17 percent olive oil, 10 percent capers, 1 percent lemon juice and an unknown amount of salt. Fig Sesame Spread is a light brown-colored spread containing 50 percent dried figs, 32.5 percent sesame seeds and 17.5 percent olive oil. All products are put up for retail sale in glass jars, sealed with metal caps, measuring 6.4 ounces (180 grams) – 7.8 ounces (220 grams). All, except Olive Honey Spread, will be used as spreads or dips. Olive Honey Spread is said be an ideal accompaniment to soft cheese.

The applicable subheading for the Organic Nabali Olive Tapenade and Olive Almond Spread, when the total aggregate quantity imported into the United States in any calendar year is 550 metric tons or less, will be 2005.70.9100, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen...olives... otherwise prepared or preserved...green, in containers each holding less than 13 kg, drained weight...in an aggregate quantity not to exceed 550 metric tons in any calendar year. The rate of duty will be 5.5 cents per kilogram on drained weight. When the total quantity imported into the United States in any calendar year exceeds 550 metric tons, the applicable subheading will be 2005.70.9300, HTSUS, and the rate of duty will be 8.8 cents per kilogram on drained weight.

The applicable subheading for the Olive Honey Spread will be 2005.70.9700, HTSUS, which provides for other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen...olives... otherwise prepared or preserved...other. The rate of duty will be 8.8 cents per kilogram on drained weight.

The applicable subheading for the Sun-dried Tomato Caper Spread will be 2005.99.9700, HTSUS, which provides for other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen...other vegetables and mixtures of vegetables...other. The rate of duty will be 11.2 percent ad valorem.

The applicable subheading for the Fig Sesame Spread will be 2008.92.1040, HTSUS, which provides for fruit, nuts and other edible parts of plants, otherwise prepared or preserved...other, including mixtures other than those of subheading 2008.19...mixtures...in airtight containers and not containing apricots, citrus fruits, peaches or pears...other. The rate of duty will be 5.6 percent ad valorem.

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/.

Articles classifiable under subheading 2005.99.9700, HTSUS, which are products of the West Bank may be entitled to duty free treatment under the Generalized System of Preferences (GSP) or the Andean Trade Preference Act (ATPA) upon compliance with all applicable regulations. The GSP is subject to modification and periodic suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse. To obtain current information on GSP, check our Web site at www.cbp.gov and search for the term "GSP".

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at 301–575–0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

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 Bruce N. Hadley, Jr. at (646) 733–3029.

Sincerely,

THOMAS J. RUSSO
Director
National Commodity Specialist Division

NY D88850

May 12, 1999

CLA-2–20:RR:NC:2:228 D88850

CATEGORY: Classification

TARIFF NO.: 2005.70.9700, 2005.90.5510, 2005.90.9700

MR. WAYNE A. BATWIN
GAEA FOODS U.S.A.
3 BATHESDA METRO CENTER
SUITE 700
BATHESDA, MD 20814

RE: The tariff classification of prepared or preserved vegetables from Greece.

DEAR MR. BATWIN:

In your letter dated February 17, 1999, you requested a tariff classification ruling.

Samples and ingredients breakdowns were submitted with your letter. The samples were forwarded to the U.S. Customs laboratory for analysis. Kalamata Olive Spread is a grayish black colored, soft homogenous spread said to contain 78.30 percent kalamata olives, 12.18 percent extra virgin olive oil, 4.87 percent red wine vinegar, 1.94 percent grape must, 1.95 percent sundried tomato flakes, and less than one percent garlic, herbs and seasoning. Sweet Pepper and Goat Cheese Spread is a red and orange colored, homogeneous spread consisting of 79.24 percent roasted red peppers, 8.10 percent extra virgin olive oil, 5.32 percent red wine vinegar, 3.18 percent Mizithra cheese, 2.26 percent spices and seasonings, and 1.90 percent sugar. Sundried Tomato Marinara contains small pieces of chopped vegetables in oil. It consists of 48.10 percent extra virgin olive oil, 23.77 percent sundried tomatoes, 14.58 percent green olives, 4.37 percent capers, 3.64 percent red wine vinegar, 2.19 percent garlic, 1.45 percent grape must, 1.31 percent lemon juice, and less than one percent spices and seasoning. Roasted Eggplant Spread is chopped roasted vegetables consisting of 68.41 percent smoked eggplant, 15.75 percent roasted red pepper, 7.77 percent extra virgin olive oil, 3.11 percent red wine vinegar, 2.33 percent sugar, 1.24 percent garlic, and 1.39 percent herbs and seasoning. Laboratory analysis found all spreads contained less than 0.5 percent acetic acid.

The applicable subheading for the Kalamata Olive Spread will be 2005.70.9700, Harmonized Tariff Schedule of the United States (HTS), which provides for vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen...olives... otherwise prepared or preserved...other. The rate of duty will be 9.2 cents per kilogram on drained weight.

The applicable subheading for the Sweet Pepper and Goat Cheese Spread will be 2005.90.5510, Harmonized Tariff Schedule of the United States (HTS), which provides for other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen...other vegetables and mixtures of vegetables...fruits of the genus capsicum (peppers)...other...sweet bell-type peppers. The rate of duty will be 15.3 percent ad valorem.

The applicable subheading for the Sundried Tomato Marinara and Roasted Eggplant Spread will be 2005.90.9700, Harmonized Tariff Schedule of the United States (HTS), which provides for other vegetables prepared or pre-

served otherwise than by vinegar or acetic acid, not frozen...other vegetables and mixtures of vegetables...other... other. The rate of duty will be 12.2 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stanley Hopard at 212–637–7065.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

NY 890395
October 15, 1993
CLA-2–7:S:N:N7:228
CATEGORY: Classification
TARIFF NO.: 0711.90.6000; 2005.90.9500

MR. JOHN W. CAIN
CAIN CUSTOMS BROKERS
P.O. BOX 150
HIDALGO, TX 78557

RE: The tariff classification of prepared vegetables from Mexico

DEAR MR. CAIN:

In your letters dated July 5, 1993 and September 8, 1993, on behalf of Ann O'Brien, SA de CV, you requested a tariff classification ruling.

Samples, submitted with your first letter, were examined and disposed of. The sample identified as "brined chilies" consists of sliced jalapeno peppers in a liquid solution. Your letter indicates that the actual product to be imported may be composed of different varieties of chili pepper, and the vegetable may be sliced, diced, or halved. In all scenarios, the chilies will be placed into a liquid solution of water, salt, citric acid, vinegar, and, in some situations, preservatives. The brined chilies are not suitable for consumption as imported, but must be further prepared by washing with fresh water to remove excess salt and chemicals. The ultimate use of these peppers, after processing, will be as an ingredient in a variety of prepared foods. The sample called "salsa base" consists of chopped onions and chili peppers, water, salt, citric acid, vegetable gum, and spices. The chopped vegetables comprise 84 percent of the product, and will vary, depending on customer specifications, from 75 percent chilies and 25 percent onions, to 75 percent onions and 25 percent chilies. The imported base will be combined with chopped tomatoes, cooked, and packaged in hermetically sealed containers.

The applicable subheading for the brined chilies will be 0711.90.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for vegetables provisionally preserved...but unsuitable in that state for immediate consumption...other vegetables...other. The duty rate will be 12 percent ad valorem.

The applicable subheading for the salsa base will be 2005.90.9500, HTS, which provides for other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen...other vegetables and mixtures of vegetables...other. The rate of duty will be 17.5 percent ad valorem.

Articles classifiable under subheadings 0711.90.6000 and 2005.90.9500, HTS, which are products of Mexico are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

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

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

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

HQ 088976
January 6, 1992
CLA-2 CO:R:C:F 088976 RFC
CATEGORY: Classification
TARIFF NO.: 2005.90.95; 2103.20.40

MR. PETER W. KLESTADT
GRUNFELD, DESIDERIO, LEBOWITZ & SILVERMAN
12 EAST 49TH STREET
NEW YORK, NY 10017

RE: Tomato-related products

DEAR MR. KLESTADT:

This letter is in response to your request of March 28, 1991, on behalf of Rienzi & Sons, Inc., concerning the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of certain tomato-related products.

FACTS:

There are three products for which classification rulings are sought. They are identified as follows: Alla Napoletana, Campagnola, and Salsa Sorrentina.

Alla Napoletana

A laboratory analysis of a sample of Alla Napoletana reveals the product to be of uniform texture and containing salt, oil, and a 12.5 percent dry solids content. No acetic acid was found. A visual examination of a sample of Alla Napoletana reveals the product to consist of a tomato concentrate with a thick consistency and containing light amounts of very small pieces of chopped green peppers, olives, and tomato.

Campagnola

A laboratory analysis of a sample of Campagnola reveals the product to be of a heterogeneous texture and containing vegetable parts, spices, salt, oil, and a 11.6 percent dry solids content. No acetic acid was found. A visual examination of a sample of Campagnola reveals the product to consist of a fairly loose tomato concentrate in which are found a considerable number of mushroom pieces, thin onion slices, and tomato pieces. The mushroom pieces range in size from 3/4 inch to 1 and 1/4 inches in length.

Salsa Sorrentina

A laboratory analysis of a sample of Salsa Sorrentina reveals the product to be of a heterogeneous texture and containing parts of various vegetables, spices, oil, and a 11.7 percent dry solids content. No acetic acid was found. A visual examination of a sample of Salsa Sorrentina reveals the product to consist of a tomato concentrate containing many pieces of sliced eggplant, chopped olives, and broken-tomato pieces. The eggplant pieces were in the form of strips ranging in size from 1 and 1/4 to 4 inches in length.

ISSUES:

(1) What is the proper tariff classification of a tomato concentrate containing several large vegetable pieces?

(2) What is the proper tariff classification of a tomato concentrate containing a few very small vegetable pieces?

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUSA. The tariff classification of merchandise under the HTSUSA is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUSA and are to be considered statutory provisions of law for all purposes. See Sections 1204(a) and 1204(c) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 1204(a) and 1204(c)).

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule (i.e., (1) merchandise is to be classified under the 4-digit heading that most specifically describes the merchandise; (2) only 4-digit headings are comparable; and (3) merchandise must first satisfy the provisions of a 4-digit heading before consideration is given to classification under a subheading within this 4-digit heading) and any relative section or chapter notes and, provided such headings or notes do not otherwise require, then according to the other GRIs.

GRI 6 prescribes that, for legal purposes, GRIs 1 to 5 shall govern, mutatis mutandis, classification at subheading levels within the same heading. Therefore, merchandise is to be classified at equal subheading levels (i.e., at the same digit level) within the same 4-digit heading under the subheading that most specifically describes or identifies the merchandise.

The Explanatory Notes to the Harmonized Commodity Description and Coding System (hereinafter "Harmonized System") represent the official interpretation of the Customs Cooperation Council on the scope of each heading. See H.R. Conf. Rep. No. 100–576, 100th Cong., 2d Sess. 549 (1988); 23 Customs Bulletin No. 36, 3 (T.D. 89–90, September 6, 1989), 59 F.R. 35127 (August 23, 1989). Although not binding on the contracting parties to the Harmonized System Convention or considered to be dispositive in the interpretation of the Harmonized System, the Explanatory Notes should be consulted on the proper scope of the Harmonized System. *Id.*

In view of the composition of each of the above-described products, the competing headings in the instant classification analysis are 2005 and 2103. Heading 2103 provides for, among other things, sauces. Guidance concerning what does and does not constitute a "sauce" for purposes of classification under heading 2103 can be found in the Explanatory Notes to that heading. Those notes state, in part, that:

> Sauces are generally in liquid form...[Heading 2103]...includes certain products based on vegetables...but these differ from the preserved products in Chapter 20 (and more especially those under heading 20.01) in that they are mainly liquids, emulsions or suspensions containing very little solid matter, - see the Explanatory Note to heading 20.01 regarding these preparations (underscoring added).

See Explanatory Notes to Heading 21.03 to the Harmonized Commodity Description and Coding System.

Turning to the Explanatory Notes to heading 2001, one finds the following comment on "sauces":

> [S]auces of heading 21.03...are generally liquids, emulsions or suspensions containing practically no pieces of fruit, vegetables or other edible parts of plants (underscoring added).

See Explanatory Notes to Heading 20.01 to the Harmonized Commodity Description and Coding System.

One can only conclude from the above-cited Explanatory Notes that for a product to be classified in heading 2103 as a sauce, it must contain little or no pieces of vegetable; and those pieces that it might contain must be very small in size.

The second heading under consideration in the instant classification analysis is 2005. That heading provides for "other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen." Guidance concerning the coverage of that heading can be found in the Explanatory Notes thereto.

Those notes state, in part, that:

> The term "vegetables" in this heading is limited to the products referred to in Note 3 to this Chapter. These products (other than vegetables prepared or preserved by vinegar or acetic acid of heading 20.01 and frozen vegetables of heading 20.04) are classified in the heading when they have been prepared by processes not provided for in Chapter 7 or 11.
>
> Such products fall in the heading irrespective of the type of container in which they are put up (often in cans or other airtight containers).
>
> These products, whole, in pieces or crushed, may be preserved in water, in tomato sauce or with other ingredients ready for immediate consumption. They may also be homogenised or mixed together (salads) (underscoring added).

See Explanatory Notes to Heading 20.05 to the Harmonized Commodity Description and Coding System.

In view of the above-cited Explanatory Notes and of the above- cited Explanatory Notes to headings 2301 and 2001, one can only conclude that a product consisting of a tomato concentrate with several large vegetable pieces and not prepared or preserved otherwise than by vinegar or acetic acid and not frozen is properly classified in heading 2005.

Alla Napoletana

As Alla Napoletana is a tomato concentrate containing a few very small vegetable pieces, it is properly classified in heading 2103 as a "sauce."

Campagnola

As Campagnola is a tomato concentrate containing several large vegetable pieces and contains no vinegar or acetic acid and is not frozen, it is properly classified in heading 2005 as "other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen."

Salsa Sorrentina

As Salsa Sorrentina is a tomato concentrate containing several large vegetable pieces and contains no vinegar or acetic acid and is not frozen, it is properly classified in heading 2005 as "other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen."

HOLDING:

Alla Napoletana

The product identified above as "Alla Napoletana" is properly classified as follows: If imported in containers holding less than 1.4 kg., then it is classified under the statistical- reporting number 2103.20.4020, HTSUSA, which provides for sauces, tomato ketchup and other tomato sauces, other, in containers holding less than 1.4 kg. On the other hand, if imported in containers holding more than 1.4 kg, then it is classified under the statistical-reporting number 2103.20.4040, HTSUSA, which provides for sauces, tomato ketchup and other tomato sauces, other, other. The general rate of duty for both of those statistical-reporting numbers is 13.6 percent ad valorem.

Campagnola

The product identified above as "Campagnola" is properly classified under the statistical-reporting number 2005.90.9500, HTSUSA, which provides for other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other vegetables and mixtures of vegetables, other. The general rate of duty is 17.5 percent ad valorem.

Salsa Sorrentina

The product identified above as "Salsa Sorrentina" is properly classified under the statistical-reporting number 2005.90.9500, HTSUSA, which provides for other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other vegetables and mixtures of vegetables, other. The general rate of duty is 17.5 percent ad valorem.

Sincerely,

JOHN DURANT,
Director
Commercial Rulings Division

NY 856914
Oct 24, 1990
CLA-2–20:S:N:N1:228
CATEGORY: Classification
TARIFF NO.: 2005.90.9500; 2008.99.9090

MS. CATHERINE WEEKS
CASAS INTERNATIONAL BROKERAGE, INC.
6775 CUSTOMHOUSE PLAZA, SUITE J
OTAY MESA, CA 92073

RE: The tariff classification of salsa from Mexico

DEAR MS. WEEKS:

In your letter dated October 1, 1990, on behalf of Ingro, Inc., you requested a tariff classification ruling.

Ingredient breakdowns and samples of two types of salsa were provided. The samples were examined and disposed of. Mild Jalapeno Red Salsa is composed of red tomatoes, water, onions, jalapeno peppers, coriander, salt, citric acid and sodium benzoate. The product has a fairly loose but lumpy consistency, and contains many small pieces of tomato, tomato seeds, onions and peppers. Mild Jalapeno Green Salsa is made from tomatillos, water, jalapeno peppers, onions, coriander, salt, citric acid and sodium benzoate. This product has a very loose consistency and, like the red salsa, contains a large quantity of tomatillo pieces and seeds, peppers and onions. Both salsas are put up in glass jars containing 18 ounces, net weight.

The applicable subheading for the red salsa will be 2005.90.9500, Harmonized Tariff Schedule of the United States (HTS), which provides for other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen...other vegetables and mixtures of vegetables...other. The duty rate will be 17.5 percent ad valorem.

The applicable subheading for the green salsa will be 2008.99.9090, HTS, which provides for fruit...otherwise prepared or preserved...other...other. The rate of duty will be 7 percent ad valorem.

Articles classifiable under subheadings 2005.90.9500 and 2008.99.9090, HTS, which are products of Mexico are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

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

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

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

HQ 085838
December 21, 1989
CLA-2 CO:R:C:G 085838 SLR
CATEGORY: Classification
TARIFF NO.: 2005.90.9000

MR. AL SHERMAN
JACK R. HULS & CO.
61 12TH STREET
BLAINE, WA 98230

RE: Salsa Sauce

DEAR MR. SHERMAN:

This ruling is in response to your inquiry, on behalf of Pioneer Portion Pak, Ltd., Richmond, B.C., Canada, requesting the proper classification of salsa sauce under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Samples produced in Canada were provided for our examination.

FACTS:

The two submitted samples (a "mild" and "hot" salsa) contain the following ingredients: dried tomatoes, water, onions, tomato paste, green peppers, vinegar, carrots, starch, jalapeno peppers, salt, sugar, spices, and sodium benzoate. The samples were forwarded and later analyzed by the U.S. Customs laboratory. Both were found to be of a thick consistency, containing very large quantities of chopped and sliced vegetables. The acetic acid content of the "mild" salsa registered 0.45 percent. The same test performed on the "hot" salsa revealed 0.46 percent.

In your letter, you maintain that the subject salsa should be classified as an "other tomato sauce" in subheading 2103.20.40, HTSUSA.

ISSUE:

Is the salsa classifiable as an "other tomato sauce" under subheading 2103.20.40, HTSUSA, as requested, and, if not, what classification is appropriate?

LAW AND ANALYSIS:

In the HTSUSA, sauces fall in heading 2103. It appears, however, that this heading does not encompass the products in issue. The Explanatory Notes to heading 2103 indicate that:

> The heading includes certain products based on vegetables or fruit, but these differ from the preserved products of Chapter 20 (and more especially those under heading 20.01) in that they are mainly liquids, emulsions or suspensions containing very little solid matter....

Although not legally binding, the Explanatory Notes do represent the official interpretation of the tariff at the international level.

Here, the two styles of salsa contain very large quantities of chopped and sliced vegetables suspended in a thick, red slurry. Their composition in no way resembles the smooth texture of mustard or mayonnaise. Consequently, these products are not classifiable in heading 2103.

Heading 2001 provides for "vegetables ... and other edible parts of plants, prepared or preserved by vinegar or acetic acid." This heading appears to describe the products in issue. Customs, however, limits those products

deemed "prepared" by acetic acid to those with an acetic acid content of 0.5 percent or above. Since the acetic acid content of both salsas falls below this standard, classification under heading 2001 is precluded.

Heading 2005, HTSUSA, provides for "other vegetables prepared otherwise than by vinegar or acetic acid, not frozen." The Explanatory Notes to heading 2005 indicate that these products "whole, in pieces or crushed, may be preserved in water, in tomato sauce, with other ingredients ready for consumption...." This heading so describes the ″mild" and "hot" salsa.

HOLDING:

The subject salsa is classifiable under 2005.90.9000, HTSUSA, which provides for other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other, other. The General rate of duty is 17.5 percent ad valorem.

Articles classified in subheading 2005.90.9000, HTSUSA, which have originated in the territory of Canada, will be entitled to a reduced duty of 15.7 percent under the United States-Canada Free Trade Agreement upon compliance with all applicable regulations.

Sincerely,

JOHN DURANT,
Director
Commercial Rulings Division

HQ H317626
OT:RR:CTF:FTM H317626 PJG
CATEGORY: Classification
TARIFF NO.: 2103.20.40; 2103.90.90

MS. CATHERINE WEEKS
CASAS INTERNATIONAL BROKERAGE, INC.
6775 CUSTOMHOUSE PLAZA, SUITE J
OTAY MESA, CALIFORNIA 92073

RE: Revocation of HQ H259324, HQ H258812, NY 856914, and HQ 085838; Modification of NY N195658, NY D88850, NY 890395, and HQ 088976; Classification of sauces; Revocation by operation of law; *Mondiv, Div. of Lassonde Specialties Inc. v. United States*, 329 F. Supp. 3d 1331 (Ct. Int'l Trade 2018); Mild Jalapeno Red Salsa and Mild Jalapeno Green Salsa

DEAR MS. WEEKS:

This is in reference to New York Ruling Letter ("NY") NY 856914, dated October 24, 1990, issued to you concerning the tariff classification under the Harmonized Tariff Schedule of the United States ("HTSUS") of two types of salsa, specifically, a Mild Jalapeno Red Salsa and a Mild Jalapeno Green Salsa.

In NY 856914, U.S. Customs (the predecessor to U.S. Customs and Border Protection ("CBP")) classified the Mild Jalapeno Red Salsa in heading 2005, HTSUS, which in the 1990 version of the HTSUS provided for "Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen" and classified the Mild Jalapeno Green Salsa in heading 2008, HTSUS, which provides for "Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included."

We have reviewed NY 856914 and find it to be in error. For the reasons set forth below, we revoke NY 856914 and Headquarters Ruling Letter ("HQ") 085838, dated December 21, 1989, and modify NY N195658, dated January 4, 2012, NY D88850, dated May 12, 1999, NY 890395, dated October 15, 1993, and HQ 088976, dated January 6, 1992, which concern substantially similar merchandise. Furthermore, HQ H259324, dated September 3, 2015, and HQ H258812, dated September 3, 2015, are revoked by operation of law in light of the U.S. Court of International Trade's ("CIT's") decision in *Mondiv, Div. of Lassonde Specialties Inc. v. United States*, 329 F. Supp. 3d 1331 (Ct. Int'l Trade 2018).

FACTS:

In NY 856914, the Mild Jalapeno Red Salsa and Mild Jalapeno Green Salsa were described as follows:

> [the] Mild Jalapeno Red Salsa is composed of red tomatoes, water, onions, jalapeno peppers, coriander, salt, citric acid and sodium benzoate. The product has a fairly loose but lumpy consistency, and contains many small pieces of tomato, tomato seeds, onions and peppers. Mild Jalapeno Green Salsa is made from tomatillos, water, jalapeno peppers, onions, coriander, salt, citric acid and sodium benzoate. This product has a very loose consistency and, like the red salsa, contains a large quantity of tomatillo pieces and seeds, peppers and onions. Both salsas are put up in glass jars containing 18 ounces, net weight.

CBP classified the Mild Jalapeno Red Salsa in subheading 2005.90.95, HTSUS[1], which in the 1990 version of the HTSUS provided for "Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen: Other vegetables and mixtures of vegetables: Other" and classified the Mild Jalapeno Green Salsa in subheading 2008.99.90, HTSUS[2], which in the 1990 version of the HTSUS provided for "Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Other, including mixtures other than those of subheading 2008.19: Other: Other: Other."

ISSUE:

1) Whether the Mild Jalapeno Red Salsa is classified as a sauce in heading 2103, HTSUS, or in heading 2005, HTSUS, which provides for "Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006."
2) Whether the Mild Jalapeno Green Salsa is classified as a sauce in heading 2103, HTSUS, or in heading 2008, HTSUS, which provides for "Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included."

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 GRI may then be applied.

The 2024 HTSUS provisions under consideration are as follows:

2005 Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006:

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

2103 Sauces and preparations therefore; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard:

Note 3 to Chapter 20, HTSUS, provides as follows:

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[1] This subheading does not exist in the current 2024 version of the HTSUS. The comparable subheading in the 2024 version of the HTSUS is subheading 2005.99.97, HTSUS, which provides for "Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006: Other vegetables and mixtures of vegetables: Other: Other."

[2] This subheading does not exist in the current 2024 version of the HTSUS. The comparable subheading in the 2024 version of the HTSUS is subheading 2008.99.91, which provides for "Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Other, including mixtures other than those of subheading 2008.19: Other: Other: Other."

> Heading 2001, 2004 and 2005 cover, as the case may be, only those products of chapter 7 or of heading 1105 or 1106 (other than flour, meal and powder of the products of chapter 8), which have been prepared or preserved by processes other than those referred to in note 1(a).

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

The EN to 21.03(A) provides as follows:

> **(A) SAUCES AND PREPARATIONS THEREFOR; MIXED CONDIMENTS AND MIXED SEASONINGS**
>
> This heading covers preparations, generally of a highly spiced character, used to flavour certain dishes (meat, fish, salads, etc.), and made from various ingredients (eggs, vegetables, meat, fruit, flours, starches, oil, vinegar, sugar, spices, mustard, flavourings, etc.). Sauces are generally in liquid form and preparations for sauces are usually in the form of powders to which only milk, water, etc. need to be added to obtain a sauce.
>
> Sauces are normally added to a food as it cooks or as it is served. Sauces provide flavour, moisture, and a contrast in texture and colour. They may also serve as a medium in which food is contained, for example, the velouté sauce of creamed chicken. Seasoning liquids (soy sauce, hot pepper sauce, fish sauce) are used both as ingredients in cooking and at table as condiments.
>
> The heading also includes certain preparations, based on vegetables or fruit, which are mainly liquids, emulsions or suspensions, and sometimes contain visible pieces of vegetables or fruit. These preparations differ from prepared or preserved vegetables and fruit of Chapter 20 in that they are used as sauces, i.e., as an accompaniment to food or in the preparation of certain food dishes, but are not intended to be eaten by themselves.
>
> * * *
>
> Examples of products covered by the heading are : mayonnaise, salad dressings, Béarnaise, bolognaise (consisting of chopped meat, tomato purée, spices, etc.), soya sauces, mushroom sauce, Worcester sauce (generally made with a base of thick soya sauce, an infusion of spices in vinegar, with added salt, sugar, caramel and mustard), tomato ketchup (a preparation made from tomato purée, sugar, vinegar, salt and spices) and other tomato sauces, celery salt (a mixture of cooking salt and finely ground celery seeds), certain mixed seasonings for sausage making, and products of Chapter 22 (other than those of heading 22.09) prepared for culinary purposes and thereby rendered unsuitable for consumption as beverages (e.g., cooking wines and cooking Cognac). This heading also covers mixtures of plants or parts of plants of heading 12.11 of a kind used for seasoning sauces.

In *Mondiv, Div. of Lassonde Specialties Inc. v. United States*, 329 F. Supp. 3d 1331 (Ct. Int'l Trade 2018), the Court of International Trade ("CIT") considered the tariff classification of an artichoke antipasto and a green olive

tapenade. The court considered the classification of the products in headings 2005, HTSUS, as "[o]ther vegetables prepared or preserved" and heading 2103, HTSUS, as "sauces." For heading 2005, HTSUS, the court stated that the products "must be[:] (1) vegetables listed in Chapter 7; (2) ready for cooking or eating, or treated to prevent its decomposition; (3) preserved by a means other than pickling in vinegar or acetic acid; (4) not frozen; and (5) not preserved with sugar." *Id*. at 1341. The court applied these factors and determined that the products were *prima facie* classifiable in heading 2005, HTSUS. *Id*.

Preceding the *Mondiv* decision, specifically, in *Nestle Refrigerated Food Co. v. United States*, 18 C.I.T. 661 (1994), the CIT considered the common meaning of the term "sauce" in order to understand the meaning of the words "other tomato sauces," which is found in subheading 2103.20.40, HTSUS. In doing so, the court considered the seminal decision of *Bogle v. Malone*, wherein the U.S. Supreme Court determined the following:

> The word "sauce," as commonly used, designates a condiment, generally but not always of liquid form, eaten as an addition to and together with a dish of food, to give it flavor and make it more palatable; and is not applied to anything which is eaten, alone or with a bit of bread, either for its own sake only, or to stimulate the appetite for other food to be eaten afterwards.

Nestle Refrigerated Food Co., 18 C.I.T. at 668 (citing *Bogle v. Malone*, 152 U.S. 623, 625–26 (1894)) (subsequently followed by *Del Gaizo Distrib. Corp. v. United States*, 24 C.C.P.A. 64, T.D. 48376 (1936)). The *Nestle* court concluded that the U.S. Supreme Court's definition "is consistent with the Oxford English Dictionary, which defines 'sauce' as 'any preparation, usually liquid or soft, and often consisting of several ingredients, intended to be eaten as an appetizing accompaniment to some article of food.'" *Id*. at 668 (citing 14 Oxford English Dictionary 512 (2d ed. 1989)). The Nestle court found that there are two prerequisites for "other tomato sauces", specifically: "(1) the product must be a sauce; and (2) tomatoes must be the primary ingredient of that sauce." *Id*. at 669. Moreover, the court stated that this provision may apply to smooth tomato sauces and "other non-standardized tomato-based sauces, such as pasta sauces, chili sauces, barbecue sauces, and pizza sauces." *Id*. The court further indicated that chunky sauces are also encompassed by the term "other tomato sauces." *Id*.

The CIT in *Mondiv* determined that the term "sauces" under heading 2103, HTSUS, is an *eo nomine* provision, and then proceeded to further clarify the scope of the term "sauces" of heading 2103, HTSUS, from what had been previously determined by the CIT in *Nestle* and the U.S. Supreme Court in *Bogle*. *Mondiv*, 329 F. Supp. 3d at 1342. The term "sauce" is not defined in the HTSUS, therefore, the court considered the EN to 21.03 and several reference sources and determined that the term "sauce" as it is used in heading 2103, HTSUS, means "a mixture of ingredients in liquid or semisolid form that adds flavoring to food." *Id*.

The court then turned to the products that were at issue and stated that both products were semisolid in form because they were "chunky mixtures of ingredients with discernible pieces of vegetables." *Id*. at 1342–1343. Next, the court determined that the combination of ingredients in each of the products flavored the food and, therefore, the two products were also *prima facie*

classifiable in heading 2103, HTSUS, as "sauces." *Id*. at 1343. Applying GRI 3(a), the rule of relative specificity, the court concluded that "HTSUS Heading 2103 for sauces is more specific than HTSUS Heading 2005 for prepared and preserved vegetables" and determined that the two products are properly classified under heading 2103, HTSUS, as "sauces." *Id*. at 1343–1344.

Heading 2005, HTSUS, provides for "Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006." The subject Mild Jalapeno Red Salsa meets the requirements of heading 2005, HTSUS, as described by the CIT in *Mondiv*. Specifically, the product is: (1) made from vegetables that are classified in Chapter 7, in particular, tomatoes, onions and jalapeno peppers[3] ; (2) ready for eating; (3) preserved by a means other than pickling in vinegar or acetic acid, in this case, it is preserved by means of sodium benzoate; (4) not frozen; and (4) not preserved with sugar. Therefore, the Mild Jalapeno Red Salsa is classifiable under heading 2005, HTSUS, as "Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006."

NY 856914 determined that the Mild Jalapeno Green Salsa is classifiable in heading 2008, HTSUS. Heading 2008, HTSUS, provides for "Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included." Heading 2008, HTSUS, is a basket provision and therefore, the subject merchandise is classified in heading 2008, HTSUS, by application of GRI 1 only if it meets the terms of the heading and is not *prima facie* classifiable elsewhere. *See R.T. Foods, Inc. v. United States*, 757 F.3d 1349, 1354 (Fed. Cir. 2014) (stating that a provision that contains the terms "not elsewhere specified or included" is a basket provision, in which classification of a given product "is only appropriate if there is no tariff category that covers the merchandise more specifically"). The product does not fall within the scope of heading 2005, HTSUS, because it does not meet the first criteria identified by the *Mondiv* court for products of heading 2005, HTSUS. In particular, the Mild Jalapeno Green Salsa is not made of vegetables listed in Chapter 7, HTSUS, because it includes tomatillos, which are fruit that are classified in Chapter 8, HTSUS.

We must also consider whether the two subject products are classifiable as sauces under heading 2103, HTSUS. In accordance with the *Mondiv* decision, we consider whether they are "a mixture of ingredients in liquid or semisolid form that adds flavoring to food." *Id*. at 1342. Like the artichoke antipasto and a green olive tapenade in the *Mondiv* decision, the two subject products are semisolid in form because they have a loose consistency, but they also have "discernible pieces" of ingredients. *Id*. at 1342–1343. Specifically, the Mild Jalapeno Red Salsa consists of small pieces of tomato, tomato seeds, onions and peppers and the Mild Jalapeno Green Salsa consists of tomatillo pieces and seeds, peppers and onions. Moreover, consistent with the EN to 21.03 and like the sauce products in the *Mondiv* decision, the two subject products contain ingredients that together provide "flavor, moisture, and a

[3] We note that while the Mild Jalapeno Red Salsa also includes water, coriander, salt, citric acid, and sodium benzoate these ingredients do not preclude the product from classification in heading 2005. *See Mondiv* at 1341–1342 (stating that "the cooking, sterilizing, chopping, and adding of vinegar, oil, garlic, salt water, parsley, oregano, basil, and other ingredients provide seasonings and flavors, but do not change their essence from predominantly artichoke and olive products to make them new items").

contrast in texture and [color]" to food. Accordingly, the two subject products are classifiable in heading 2103, HTSUS, as "sauces." Pursuant to GRI 3(a), under the rule of relative specificity, the two products are classified under heading 2103, HTSUS, as sauces, rather than under headings 2005 or 2008, HTSUS.

The Mild Jalapeno Red Salsa, which is made with a base of tomatoes, is classified in subheading 2103.20.40, HTSUS, which provides for "Sauces and preparations therefore; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard: Tomato ketchup and other tomato sauces: Other." *See Nestle Refrigerated Food Co.*, 18 C.I.T. at 669 (finding that "there are only two prerequisites to classification under the HTSUS provision for other tomato sauces; specifically, they are: (1) the product must be a sauce; and (2) tomatoes must be the primary ingredient of that sauce"). This subheading includes all sauces based on tomatoes, including salsas. *See* HQ 962417 (March 3, 1999) (a salsa "consisting of dried tomatoes, water, onions, tomato paste, green peppers, vinegar, carrots, starch, jalapeño peppers, salt, sugar, spices and sodium benzoate, appearing in a thick liquid as large quantities of chopped and sliced vegetables ... sold at retail as a sauce," was classified in subheading 2103.20.40, HTSUS, the provision for other tomato sauces). The Mild Jalapeno Green Salsa, which is made with a base of tomatillos, is classified in 2103.90.90, HTSUS, which provides for "Sauces and preparations therefore; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard: Other: Other: Other."

We also note that we are not revoking or modifying any rulings involving products that are "eaten, alone or with a bit of bread, either for its own sake only" or as an appetizer, consistent with the *Bogle* decision. *See* 152 U.S. 623.

HOLDING:

By application of GRI 1, 3(a) and 6, the Mild Jalapeno Red Salsa and the Mild Jalapeno Green Salsa are classified under heading 2103, HTSUS. The Mild Jalapeno Red Salsa is classified in subheading 2103.20.40, HTSUS, which provides for "Sauces and preparations therefore; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard: Tomato ketchup and other tomato sauces: Other" and the Mild Jalapeno Green Salsa is classified in subheading 2103.90.90, HTSUS, which provides for "Sauces and preparations therefore; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard: Other: Other: Other." The 2024 column one, general rate of duty is 11.6 percent *ad valorem* and 6.4 percent *ad valorem*, respectively.

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 https://hts.usitc.gov/.

EFFECT ON OTHER RULINGS:

HQ H259324, dated September 3, 2015, is REVOKED by operation of law.

HQ H258812, dated September 3, 2015, is REVOKED by operation of law.

NY N195658, dated January 4, 2012, is MODIFIED, only with respect to the Organic Nabali Olive Tapenade and the Sun-dried Tomato Caper Spread.

NY D88850, dated May 12, 1999, is MODIFIED, only with respect to the Sundried Tomato Marinara and the Roasted Eggplant Spread.

NY 890395, dated October 15, 1993, is MODIFIED, only with respect to the Salsa Base.

HQ 088976, dated January 6, 1992, is MODIFIED, only with respect to Law and Analysis section and the tariff classification of the Campagnola and Salsa Sorrentina.

NY 856914, dated October 24, 1990, is REVOKED.

HQ 085838, dated December 21, 1989, is REVOKED.

Sincerely,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

PROPOSED MODIFICATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE COUNTRY OF ORIGIN OF CERTAIN LAMINATED FABRICS

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

ACTION: Notice of proposed modification of one ruling letter and proposed revocation of treatment relating to the country of origin of certain laminated fabrics.

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 certain laminated fabrics. 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 October 11, 2024.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Shannon Stillwell Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. CBP is also allowing commenters to submit electronic comments to the following email address: *1625Comments@cbp.dhs.gov*. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number, and date of publication. Arrangements to inspect submitted comments should be made in advance by calling Ms. Shannon Stillwell at (202) 325–0739.

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), this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the country of origin of certain laminated fabrics. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") F83624, dated April 6, 2000 (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 F83624, CBP determined that the country of origin of the fabrics discussed in scenario # 1 and scenario # 2, is the United States. CBP has reviewed NY F83624 and has determined that ruling to be partially in error with regard to the country of origin marking analysis concerning the fabrics at issue in scenario # 1. Moreover, CBP has determined NY F83624 to be in error with regard to the country of origin of the fabrics at issue in scenario # 2. It is now CBP's position that the country of origin of the fabrics at issue in scenario # 1 is the United States, and the country of origin of the fabrics at issue in scenario # 2 is the foreign country in which those fabrics were manufactured.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY F83624 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H299896, 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.

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

NY F83624

April 6, 2000
CLA-2-RR:NC:TA:350 F83624
CATEGORY: Classification

MS. SANDRA TOVAR
CST, INC.
P.O. BOX 1197
FAYETTEVILLE, GA 30214

RE: Classification and country of origin status for laminated materials produced in the United States from foreign and U.S. components. U.S. 19 CFR §102.21 (c)(3)(ii).

DEAR MS. TOVAR:

This is in reply to your letter dated February 14, 2000, on behalf of Margarita International Trading, Inc., 4480 E. 11th Avenue, Hialeah, FL 33013, which concerns the country of origin and classification of textile fabrics of foreign origin which will be imported into the United States and then laminated with U.S. supplied materials. No samples or specific fabric descriptions were furnished; therefore, we will base this discussion just on what you have stated, and consider that the fabrics involved are either of woven or knit construction and do not involve any fabrics of pile construction.

Additionally, for any future correspondence with the United States Customs Service, please identify the particular source countries of any materials being imported into the United States.

FACTS:

Your correspondence mentions three scenarios as follows:

Scenario #1:

According to your correspondence, a textile fabric (not stated whether knit or woven construction) of unspecified foreign origin will be imported into the United States with duties paid. You indicate in your letter that this fabric may be composed of a cotton, cotton blend, polyester, polyester blend, nylon, nylon blend, or any other fabric made up of natural or man-made fibers. In the United States, the foreign material will be laminated with a U.S. foam and another textile fabric of U.S. manufacture. We will assume the foam is plastics in nature, and will be between the two textile layers and be visible in cross-section.

Scenario #2:

This scenario is similar to the first scenario except that the foreign textile fabric will be laminated to the U.S. supplied foam material on one side only, without any fabric on the other side.

The fabrics of Scenarios 1 and 2 would fall under heading 5903.

Scenario #3:

Foreign fabric, imported into the U.S. with duties paid, laminated to U.S. origin fabric. In this scenario, no foam would be used.

Since the goods of scenario #3, just two unidentified fabrics bonded together, would not be within headings 5901–5903, we are unable to give a definitive answer on the country of origin of this resulting product. A sample or detailed fabric descriptions would have to be furnished.

These laminated materials will be exported to the Dominican Republic where they will be combined with other materials of U.S. origin to produce footwear products for exportation back to the United States. This letter will address only the country of origin of the laminated materials.

Another letter would have to be submitted to the U.S. Customs Service along with representative samples and full manufacturing specifications before we would be able to address the classification of the purported footwear as well as the Caribbean Initiative Status (CBI).

CLASSIFICATION:

The applicable subheading for the foreign procured fabric cannot be accurately determined without a sample or better description. If of woven or knit construction, it will likely fall in heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5803, 5806, 5808, or 6002, Harmonized Tariff Schedules of the United States Annotated (HTSUSA). The laminated material manufactured in the U.S. under either scenario #1 or #2 is likely classifiable in HTS heading 5903....(the textile fabrics are likely woven or knit construction) as textile fabrics laminated, ... with plastic.

ISSUE:

What is the country of origin of the laminated materials as processed in the U.S.?

COUNTRY OF ORIGIN - LAW AND ANALYSIS:

On December 8, 1994, the President signed into law the Uruguay Round Agreements Act. Section 334 of that Act (codified at 19 U.S.C. 3592) provides new rules of origin for textiles and apparel entered, or withdrawn from warehouse, for consumption, on and after July 1, 1996. On September 5, 1995, Customs published Section 102.21, Customs Regulations, in the Federal Register, implementing Section 334 (60 FR 46188). Thus, effective July 1, 1996, the country of origin of a textile or apparel product shall be determined by sequential application of the general rules set forth in paragraphs (c)(1) through (5) of Section 102.21.

Paragraph (c)(1) states that "The 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."

Since the foreign supplied fabrics are further processed in the U.S., paragraph (c) (1) is inapplicable since the material is not produced in a single country or territory, etc.

Paragraph (c)(2) states that "Where 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 of the foreign materials 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:"

Paragraph (e), in pertinent part, states that "the following rules shall apply for the purposes of determining the country of origin of a textile or apparel product under paragraph (c) (2) of this section:"

HTSUS	Tariff shift and/or other requirements
5901 - 5903	A change to heading 5901 through 5903 from any other heading, including a heading within that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5803, 5806, 5808, and 6002, and provided that the change is the result of a fabric-making process.

The foreign supplied fabrics (regardless whether if woven or knit or of fiber content, would be included in the above listing) do not undergo a tariff shift or meet the definition of fabric making process as outlined in CFR§102.21 (b) (2), which states "a fabric making process is any manufacturing operation that begins with polymers, fibers, filaments (including strips), yarns, twine, cordage, rope, or fabric strips and results in a textile fabric." Therefore, no consideration may be given to section (c)(2) of that section.

Section 102.21(c)(3) states that, "Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) or (2) of this section:"

(i) If the good was knit to shape, the country of origin of the good is the single country, territory, or insular possession in which the good was knit; or

(ii) Except for goods of heading 5609, 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6209.20.5040, 6307.10, 6307.90, and 9404.90, if the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled.

While the subject materials are not knit to shape, but were wholly assembled in a single country, i.e., U.S., Section 102.21 (c)(3)(ii) is applicable. The country of origin is the United States. Additionally, as you suggest, this country of origin determination would be applicable to the application of U.S. Note 2(b), Subchapter II Chapter 98, HTSUS, in determining the applicability of heading 9802 to the ultimate importation of footwear from the Dominican Republic made of such materials.

HOLDING:

The country of origin of the laminated materials (scenarios #1 and #2) is the United States. This holding set forth above applies only to the specific factual situation and merchandise identified in the ruling request. .

This position is clearly set forth in section 19 CFR 177.9(b)(1). This sections states that a ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177). Should it be subsequently determined that the information furnished is not complete and does not comply with 19 CFR 177.9(b)(1), the ruling will be subject to modification or revocation. In the event there is a change in the facts previously furnished, this may affect the determination of country of origin. Accordingly, if there is any change in the

facts submitted to Customs, it is recommended that a new ruling request be submitted in accordance with 19 CFR 177.2.

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 George Barth at 212–466–5884.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

HQ H299896
OT:RR:CTF:FTM H299896 TSM
CATEGORY: Origin

MS. SANDRA TOVAR
CST, INC.
P.O. BOX 1197
FAYETTEVILLE, GA 30214

RE: Modification of NY F83624; Country of origin of certain laminated fabrics.

DEAR MS. TOVAR:

This is in reference to New York Ruling Letter ("NY") F83624, issued to CST, Inc. on April 6, 2000, concerning the tariff classification and country of origin of certain laminated fabrics. In that ruling, U.S. Customs and Border Protection ("CBP") determined that the country of origin of the fabrics at issue in scenarios one and two is the United States. Upon additional review, we have found this to be incorrect. For the reasons set forth below, we hereby modify NY F83624 with regard to the country of origin of the fabrics at issue in scenarios one (1) and two (2).[1]

FACTS:

NY F83624 describes the subject merchandise as follows:

Scenario # 1:

> According to your correspondence, a textile fabric (not stated whether knit or woven construction) of unspecified foreign origin will be imported into the United States with duties paid. You indicate in your letter that this fabric may be composed of a cotton, cotton blend, polyester, polyester blend, nylon, nylon blend, or any other fabric made up of natural or man-made fibers. In the United States, the foreign material will be laminated with a U.S. foam and another textile fabric of U.S. manufacture. We will assume the foam is plastics in nature, and will be between the two textile layers and be visible in cross-section.

Scenario # 2:

> This scenario is similar to the first scenario except that the foreign textile fabric will be laminated to the U.S. supplied foam material on one side only, without any fabric on the other side.

> The fabrics of Scenarios # 1 and # 2 would fall under heading 5903.

In NY F83624, CBP stated that since the fabrics at issue are not knit to shape, but were wholly assembled in a single country, the United States, the country of origin of these fabrics is determined pursuant to 19 C.F.R. § 102.21(c)(3)(ii). CBP determined that the country of origin is the United States, the country in which the fabrics at issue were wholly assembled. We have now reconsidered our country of origin determination, as set forth below.

ISSUE:

What is the country of origin of the laminated fabrics at issue?

[1] The tariff classification of any of the fabrics at issue in NY F83624, as well as the country of origin of the fabric discussed in scenario # 3 of that ruling, are not addressed here.

LAW AND ANALYSIS:

The Uruguay Round Agreements Act ("URAA"), particularly Section 334, codified at 19 U.S.C. § 3592, as amended by Section 405 of Title IV of the Trade and Development Act of 2000 ("TDA"), sets forth rules of origin for textile and apparel products. In pertinent part, 19 U.S.C. § 3592 reads:

(b) Principles

(1) In general

Except as otherwise provided for by statute, a textile or apparel product, for purposes of the customs laws and the administration of quantitative restrictions, originates in a country, territory, or insular possession, and is the growth, product, or manufacture of that country, territory, or insular possession, if –

(A) the product is wholly obtained or produced in that country, territory, or possession;

(B) the product is a yarn, thread, twine, cordage, rope, cable, or braiding and —

(i) the constituent staple fibers are spun in that country, territory, or possession, or

(ii) the continuous filament is extruded in that country, territory, or possession;

(C) the product is a fabric, including a fabric classified under chapter 59 of the HTS, and the constituent fibers, filaments, or yarns are woven, knitted, needled, tufted, felted, entangled, or transformed by any other fabric-making process in that country, territory, or possession; or

(D) the product is any other textile or apparel product that is wholly assembled in that country, territory, or possession from its component pieces.

Part 102 of the CBP Regulations (19 C.F.R. § 102) implements the rules of origin for textile and apparel products set forth in 19 U.S.C. § 3592. Section 102.21(c), CBP Regulations (19 C.F.R. § 102.21(c)), provides in pertinent part as follows:

(c) *General rules.* Subject to paragraph (d) of this section, the country of origin of a textile or apparel product will be determined by sequential application of paragraphs (c) (1) through (5) of this section and, in each case where appropriate to the specific context, by application of the additional requirements or conditions of §§ 102.12 through 102.19 of this part.

(1) The 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.

(2) Where 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.

(3) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1) or (2) of this section:

(i) If the good was knit to shape, the country of origin of the good is the single country, territory, or insular possession in which the good was knit; or

(ii) Except for fabrics of chapter 59 and goods of heading 5609, 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6209.20.5040, 6307.10, 6307.90, and 9404.90, if the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled.

(4) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1), (2) or (3) of this section, the country of origin of the good is the single country, territory, or insular possession in which the most important assembly or manufacturing process occurred.

(5) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1), (2), (3) or (4) of this section, the country of origin of the good is the last country, territory, or insular possession in which an important assembly or manufacturing process occurred.

The country of origin of textile and apparel products is determined by the sequential application of paragraphs (c)(1) through (c)(5) of Section 102.21. Paragraph (c)(1) provides that "[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." The components comprising the fabrics at issue were produced in several different countries. Specifically, in scenario # 1 the fabric will be composed of three components: the textile fabric of unspecified foreign origin, the foam of U.S. origin, and another textile fabric of U.S. origin. In scenario # 2, the fabric will be composed of the textile fabric of unspecified foreign origin and the foam of U.S. origin. Therefore, the origin of the finished fabrics cannot be determined by reference to paragraph (c)(1).

Paragraph (c)(2) of Section 102.21 provides that where the country of origin cannot be determined according to paragraph (c)(1), resort should next be to paragraph (c)(2). The country of origin, according to paragraph (c)(2), 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 Section 102.21. In NY F83624, these fabrics were determined to be classified in heading 5903, Harmonized Tariff of the United States ("HTSUS"). Therefore, paragraph (e)(1), as applicable to the instant determination, establishes a tariff shift rule that provides:

HTSUS	Tariff Shift and/or Other Requirement
5901–5903	
	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of heading 5901 through 5903 to finished fabric of heading 5901 through 5903 by both dyeing and printing when accompanied by two or more of the following finishing operations:

bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or

(2) If the country of origin cannot be determined under (1) above, a change to heading 5901 through 5903 from any other heading, including a heading within that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5803, 5806, 5808, and 6002 through 6006, and provided that the change is the result of a fabric-making process.

Upon review, we note that the fabrics at issue do not undergo the change in classification required, because those fabrics were not finished by both dyeing and printing and were not accompanied by any of the various finishing operations detailed in rule (1) noted above.

In addition, we find that rule (2) above is also not satisfied, because according to NY F83624, the change of unspecified foreign origin fabrics at issue in both scenario # 1 and scenario # 2 to heading 5903, was from one of the following headings: 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5803, 5806, 5808, and 6002, which are excluded under rule (2) noted above. Moreover, with regard to the fabrics at issue in scenario # 1, we note that those fabrics also did not undergo a "fabric-making process" within the meaning of 19 C.F.R. § 102.21(b)(2), which provides in relevant part that a "fabric-making process is any manufacturing operation that begins with polymers, fibers, filaments (including strips), yarns, twine, cordage, rope, or fabric strips and results in a textile fabric." The fabrics at issue in scenario # 1 consist of a textile fabric of unspecified foreign origin, a U.S. foam, and another textile fabric of U.S. origin, which will be laminated together in the United States. The fabric-making process occurred in two different countries, a foreign country and the United States, where the two textile fabrics were manufactured. Since the two fabrics underwent the "fabric-making process" in different countries, we find that the country of origin of the laminated fabrics cannot be determined pursuant to 19 C.F.R. § 102.211(c)(2), implementing 19 U.S.C. § 3592(b)(1)(C). With regard to the foam, we note that it is not taken into consideration for fabric-making purposes and therefore does not impact the country of origin determination under 19 U.S.C. § 3592(b)(1)(C). *See* Headquarters Ruling Letter ("HQ") 968229, dated July 18, 2006 (lamination of a single fabric with a GORE-TEX® membrane was not regarded as fabric-making process and therefore was found to not impact the country of origin under 19 U.S.C. § 3592(b)(1)(C); the country of origin was found to be the country in which the "fabric-making process" of the fabric occurred, specifically the country in which the fabric was woven). Thus, we must next turn to 19 C.F.R. § 102.211(c)(3).

Paragraph (c)(3) of Section 102.21 provides that where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) or (2) of this section: (i) If the good was knit to shape, the country of origin of the good is the single country, territory or insular possession in which the good was knit; or (ii) Except for fabrics of chapter 59 and goods of heading 5609, 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6307.10, 6307.90, 9404.90, , and 9619.00.31–33 if the good was not knit to shape and the good was wholly assembled in a single country, territory, or

insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled.

The fabrics under consideration are not knit to shape. Accordingly, rule (c)(3)(i) does not apply. Moreover, the fabrics at issue are classified in heading 5903, HTSUS, and are thus fabrics of chapter 59. Therefore, rule (c)(3)(ii) also does not apply, and we must next turn to 19 C.F.R. § 102.21(c)(4).

Paragraph (c)(4) of Section 102.21 provides that where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1), (2) or (3) of this section, the country of origin is the single country, territory or insular possession in which the most important assembly or manufacturing process occurred. In this case, we find that the most important manufacturing operation occurred at the time of fabric formation. With regard to scenario # 1, we find that the fabric formation occurred in an unspecified foreign country and the United States, the countries in which the textile fabrics were manufactured. With regard to the foam of U.S. origin and the lamination process, we note that those are not "most important processes" for purposes of paragraph (c)(4) of Section 102.21. *See* HQ 959437, dated February 19, 1997 (for purposes of 19 C.F.R. § 102.21(c)(4), the country of origin of a knit lycra material, laminated together with 100 percent polyester foam, is the country in which the lycra material was knitted). Because the component fabrics at issue is scenario # 1 were manufactured in two different countries, we find that 19 C.F.R. § 102.21(c)(4) also does not apply with regard to scenario # 1. However, with regard to scenario # 2, we find that the fabric formation occurred in the unspecified foreign country where the textile fabric was manufactured. Therefore, we find that the foreign country in which the textile fabric was manufactured is the country of origin of the fabric at issue in scenario # 2.

Paragraph (c)(5) of Section 102.21 provides that where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1), (2), (3) or (4) of this section, the country of origin of the good is the last country, territory, or insular possession in which an important assembly or manufacturing process occurred. With regard to the fabric at issue in scenario # 1, we find that the country in which assembly of the three components of the fabric occurred is the United States – the country in which the textile fabric of unspecified foreign origin, the foam of U.S. origin, and another textile fabric of U.S. origin, were laminated together. Accordingly, we find that the country of origin of the fabric in scenario # 1 is the United States.

HOLDING:

Under 19 C.F.R. § 102.21(c)(5), the country of origin of the fabric at issue in scenario # 1 is the United States. Under 19 C.F.R. § 102.21(c)(4), the country of origin of the fabric at issue in scenario # 2 is the foreign country in which the textile fabric was manufactured.

EFFECT ON OTHER RULINGS:

NY F83624, dated April 6, 2000, is hereby MODIFIED with regard to the country of origin of the fabrics at issue in scenario # 1 and scenario # 2.

Sincerely,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF POLYURETHANE-COATED WEFT KNIT FABRIC MATERIALS FROM CHINA

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

ACTION: Notice of proposed revocation of one ruling letter, and proposed revocation of treatment relating to the tariff classification of polyurethane-coated weft knit fabric materials from China.

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 polyurethane-coated weft knit fabric materials 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 October 11, 2024.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Shannon Stillwell Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. CBP is also allowing commenters to submit electronic comments to the following email address: *1625Comments@cbp.dhs.gov*. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number, and date of publication. Arrangements to inspect submitted comments should be made in advance by calling Ms. Shannon Stillwell at (202) 325–0739.

FOR FURTHER INFORMATION CONTACT: Reema Bogin, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at reema.bogin@cbp.dhs.gov.

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 polyurethane-coated weft knit fabric materials from China. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N307758, dated April 7, 2020 (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 N307758, CBP classified polyurethane-coated weft knit fabric materials in heading 3921, HTSUS, specifically in subheading 3921.13.15, HTSUS, which provides for "[o]ther plates, sheets, film, foil and strip, of plastics: [c]ellular: [o]f polyurethanes: [c]ombined with textile materials: [p]roducts with textile components in which man-made fibers predominate by weight over any other single textile fiber: [o]ther." CBP has reviewed NY N307758 and has determined the ruling letter to be in error. It is now CBP's position that polyurethane-coated weft knit fabric materials are properly classified, in heading 5903, HTSUS, specifically in subheading 5903.20.25, HTSUS, which provides for "[t]extile fabric impregnated, coated, cov-

ered or laminated with plastics, other than those of heading 5902: [w]ith polyurethane: [o]f man-made fibers: [o]ther: [o]ther."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N307758 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H310888, 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.

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N307758

April 7, 2020
CLA-2–39:OT:RR:NC:N1:137
CATEGORY: Classification
TARIFF NO.: 3921.13.1500; 9903.88.02

MS. PAULA CONNELLY
100 TRADE CENTER, SUITE G-700
WOBURN, MA 01801

RE: The tariff classification of two imitation leather materials from China

DEAR MS. CONNELLY:

In your request dated November 19, 2019, you requested a tariff classification ruling. Samples were provided and sent for laboratory analysis. The samples will be retained for reference purposes.

The samples, identified as FLEATH01 and FLEATH02, are weft knit fabrics which have been visibly coated on one side with plastics. According to U.S. Customs and Border Protection (CBP) laboratory analysis, FLEATH01 is a weft knit fabric with no surface treatments. The fabric is composed of 95.6 percent rayon and 4.4 percent elastomeric yarns. The fabric was dyed a single uniform color and is coated on one side with polyurethane which is cellular in nature. The fabric weighs 356 g/m^2 and the plastic accounts for 52.3 percent by weight of the material. CBP laboratory analysis indicates that FLEATH02 is a weft knit fabric with no surface treatments. The fabric is composed of 94 percent rayon and 6 percent elastomeric yarns and was dyed a single uniform color. The fabric was dyed a single uniform color and is coated on one side with polyurethane which is cellular in nature. The fabric weighs 381.4 g/m^2 and the plastic accounts for 59.5 percent by weight of the material.

In your letter you suggest classification for both materials under subheading 5903.20.2500, as other coated textile fabrics, Harmonized Tariff Schedule of the United States ("HTSUS"). Further you provide an explanation and several past rulings as "precedence" that the weft knit fabric portion of the material is not "merely for reinforcing purposes."

In your review of N303815 dated May 8, 2019, you indicate that the "imported faux leather material was manufactured in a similar manner." However, the only similarity between the two fabrics is that they have both been visibly coated with plastics. The fabric at issue in N303815 contained additional surface treatments, and was of double-weft knit construction, attributes which are very different than the standard weft knit fabrics of FLEATH01 and FLEATH02.

In your review of N252776, dated March 16, 2018, the fabrics which back the visibly coated plastics are significantly different than FLEATH01 and FLEATH02 in that they are of warp knit or double-weft knit construction and have been brushed.

Lastly, in your review of N202839, dated March 5, 2012, the material at issue in N202839 is a component fabric with a plastic middle layer which is not at all similar to the construction of FLEATH01 and FLEATH02.

According to the General Explanatory Notes to Chapter 39, in the section titled "Plastics and textile combinations," the term "merely for reinforcing purposes" is defined as follows: "In this respect, unfigured, unbleached,

bleached or uniformly dyed textile fabrics, felt or nonwovens, when applied to one face only of these plates, sheets or strip, are regarded as serving merely for reinforcing purposes. Figured, printed or more elaborately worked textiles (e.g., by raising) and special products, such as pile fabrics, tulle and lace and textile products of heading 58.11, are regarded as having a function beyond that of mere reinforcement."

It is the opinion of this office that the simple weft knit backing fabric, which has not been more elaborately worked and which is uniformly dyed, is present merely for reinforcing purposes, as it relates to the HTSUS.

The applicable subheading for FLEATH01 and FLEATH02, plastic coated textile fabric, will be 3921.13.1500, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Other plates, sheets, film, foil and strip, of plastics: cellular: of polyurethane: combined with textile materials: products with textile components in which man-made fibers predominate by weight over any other single textile fiber: other. The general rate of duty will be 6.5 percent ad valorem.

Pursuant to U.S. Note 20 to Subchapter III, Chapter 99, HTSUS, products of China classified under subheading 3921.13.1500, HTSUS, unless specifically excluded, are subject to an additional 25 percent ad valorem rate of duty. At the time of importation, you must report the Chapter 99 subheading, i.e., 9903.88.02, in addition to subheading 3921.13.1500, HTSUS, listed above.

The HTSUS is subject to periodic amendment so you should exercise reasonable care in monitoring the status of goods covered by the Note cited above and the applicable Chapter 99 subheading. For background information regarding the trade remedy initiated pursuant to Section 301 of the Trade Act of 1974, you may refer to the relevant parts of the USTR and CBP websites, which are available at *https://ustr.gov/issue-areas/enforcement/section-301-investigations/tariff-actions* and *https://www.cbp.gov/trade/remedies/301-certain-products-china* respectively.

The tariff is subject to periodic amendment so you should exercise reasonable care in monitoring the status of goods covered by the Notice cited above and the applicable Chapter 99 subheading.

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

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

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 Christina Allen at julie.c.allen@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

HQ H310888
OT:RR:CTF:CPMMA H310888 RRB/BJK
CATEGORY: Classification
TARIFF NO.: 5903.20.25

MS. PAULA CONNELLY, ESQ.
SANDLER, TRAVIS & ROSENBERG, P.A.
100 TRADE CENTER, SUITE G-700
WOBURN, MA 01801

RE: Revocation of NY N307758; Tariff classification of polyurethane-coated weft knit fabric materials from China

DEAR MS. CONNELLY:

On May 7, 2020, you submitted a request for reconsideration, pursuant to 19 C.F.R. § 177.2(b)(2)(ii)(C), of New York Ruling Letter ("NY") N307758, issued to you on behalf of Commando, LLC, on April 7, 2020, regarding the classification of two polyurethane-coated weft knit fabric materials from China, described as imitation leather materials and identified as FLEATH01 and FLEATH02, respectively, under the Harmonized Tariff Schedule of the United States ("HTSUS"). In NY N307758, U.S. Customs and Border Protection ("CBP") classified the polyurethane-coated weft knit fabric materials in subheading 3921.13.15, HTSUS, as "[o]ther plates, sheets, film, foil and strip, of plastics: [c]ellular: [o]f polyurethanes: [c]ombined with textile materials: [p]roducts with textile components in which man-made fibers predominate by weight over any other single textile fiber: [o]ther." Upon receipt of your request for reconsideration and after reviewing the ruling in its entirety, CBP finds it to be in error. For the reasons set forth below, CBP is revoking NY N307758 and reclassifying the fabric materials under heading 5903, HTSUS.

FACTS:

In NY N307758, the subject merchandise is described as follows:

> The samples, identified as FLEATH01 and FLEATH02, are weft knit fabrics which have been visibly coated on one side with plastics. According to U.S. Customs and Border Protection (CBP) laboratory analysis, FLEATH01 is a weft knit fabric with no surface treatments. The fabric is composed of 95.6 percent rayon and 4.4 percent elastomeric yarns. The fabric was dyed a single uniform color and is coated on one side with polyurethane which is cellular in nature. The fabric weighs 356 g/m^2 and the plastic accounts for 52.3 percent by weight of the material. CBP laboratory analysis indicates that FLEATH02 is a weft knit fabric with no surface treatments. The fabric is composed of 94 percent rayon and 6 percent elastomeric yarns and was dyed a single uniform color. The fabric was dyed a single uniform color and is coated on one side with polyurethane which is cellular in nature. The fabric weighs 381.4 g/m^2 and the plastic accounts for 59.5 percent by weight of the material.

In your ruling request, dated November 19, 2019, you described FLEATH01 as an "embossed faux leather material constructed of polyurethane and a knit base fabric consisting of viscose and spandex." Additionally, you described FLEATH02 as a "polished faux leather material which resembles a patent leather" that is also made of polyurethane and a knit base fabric of viscose and spandex. FLEATH01 and FLEATH02 are imported in rolls of various lengths and widths ranging from 52 inches to 54 inches.

In your request for reconsideration, dated May 7, 2020, you explain that the subject merchandise, best described as an imitation/faux leather fabric, is used in manufacturing leggings, skirts, bralettes, and tops, in which the knit fabric side will rest directly against the wearer's skin. You also state that the material is very pliable and has a significant stretch factor due to the textile base. In your reconsideration request, you explain that the "weft material is formulated specifically for use with this type of apparel. The viscose fiber is anti-static, and the smoothness ensures that it [is] comfortable to the skin which is required for the body fitting apparel." Moreover, the material has moisture characteristics to help prevent sweating and is considered a "breathable fabric" with great tensile elastic properties allowing for stretch in both directions.

The information cited in NY N307758 is based on swatch samples that were sent with the underlying ruling request to CBP's Laboratories and Scientific Services ("LSS") for testing. NY N307758 was premised on the findings contained in CBP Lab Report No. NY20200068, dated March 2, 2020, which concerned FLEATH01, and CBP Lab Report No. NY20200070, dated February 25, 2020, which concerned FLEATH02. In the instant reconsideration request, you submitted additional samples of the garments of each material, which were subsequently tested by LSS. According to CBP Lab Report No. NY20200526, dated July 15, 2020, which addressed the fabric swatch claimed to be "FLEATH01" and pants made of the same material, the FLEATH01 fabric swatch weighs 374 grams per square meter, is composed of a weft knit fabric (46.2 percent by weight), and is coated, covered, or laminated on one surface with a cellular polyurethane type of plastic material (53.8 percent by weight). Additionally, the knit fabric portion of the FLEATH01 swatch is composed of 95.4 percent of rayon fibers and 4.6 percent of elastomeric yarn by weight. The knit fabric sample identified as FLEATH01 is dyed a single uniform color and does not have any surface treatments.

According to CBP Lab Report No. NY20200527, dated July 15, 2020, which addressed the fabric swatch claimed to be "FLEATH02" and pants made of the same material, the FLEATH02 fabric swatch weighs 381.8 grams per square meter, is composed of a weft knit fabric (45 percent by weight), and is coated, covered, or laminated on one surface with a cellular polyurethane type of plastic material (55 percent by weight). Additionally, the knit fabric portion of the FLEATH02 swatch is composed of 96.2 percent of rayon fibers and 3.8 percent of elastomeric yarn by weight. The knit fabric sample identified as FLEATH02 is dyed a single uniform color and does not have any surface treatments.

CBP notes that there are slight differences in the swatches that were tested in connection with NY N307758 and those submitted with the instant reconsideration request. This difference could be due, in part, to the fact that only swatches were tested by LSS in the lab reports detailed in NY N307758, whereas the swatches analyzed for purposes of this reconsideration request and subject to CBP Lab Report Nos. NY20200526 and NY20200527 were cut directly from pants that were already manufactured, which may have undergone any number of finishing processes that could have changed the various measurements cited in the ruling. Nevertheless, these slight changes do not affect the analysis and conclusions set forth below.

ISSUE:

Whether polyurethane-coated, weft knit, fabric materials are classified in heading 3921, HTSUS, as "[o]ther plates, sheets, film, foil and strip, of plastics," or in heading 5903, HTSUS, as "[t]extile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902."

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 2024 HTSUS headings under consideration are as follows:

3921	Other plates, sheets, film, foil and strip, of plastics:
	Cellular:
3921.13	Of polyurethanes:
	Combined with textile materials:
	Products with textile components in which man-made fibers predominate by weight over any other single textile fiber:
3921.13.15	Other...
5903	Textile fabric impregnated, coated, covered or laminated with plastics, other than those of heading 5902:
5903.20	With polyurethane:
	Of man-made fibers:
	Other:
5903.20.25	Other...

* * * *

Note 2(p) to Chapter 39, HTSUS, provides as follows:

2. This chapter does not cover:

***

(p) Goods of section XI (textiles and textile articles);

Note 1(h) to Section XI excludes the following from classification under Section XI, "Textiles and Textile Articles": "[w]oven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with plastics, or articles thereof, of chapter 39."

Notes 1, 2, and 3 to Chapter 59, HTSUS, provide in pertinent part, as follows:

1. Except where the context otherwise requires, for purposes of this chapter the expression "textile fabrics" applies only to the woven fabrics of chapters 50 to 55 and headings 5803 and 5806, the braids and ornamental trimmings in the piece of heading 5808 and the knitted or crocheted fabrics of headings 6002 to 6006.
2. Heading 5903 applies to:

(a) Textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square meter and whatever the nature of the plastic material (compact of cellular), other than:

(1) Fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually chapters 50 to 55, 58 or 60); for the purpose of this provision, no account should be taken of any resulting change of color;

***

(5) Plates, sheets or strip of cellular plastics, combined with textile fabric, where the textile fabric is present *merely for reinforcing purposes* (chapter 39) [emphasis added]; . . . .

3. For purposes of heading 5903, "textiles fabrics laminated with plastics" means products made by the assembly of one or more layers of fabrics with one or more sheets or film of plastics which are combined by any process that bonds the layers together, whether or not the sheets or film of plastics are visible to the naked eye in the cross-section.

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

In regard to plastic and textile combinations, the General ENs to chapter 39, HTSUS, provide, in pertinent part, as follows:

The following products are also covered by this Chapter:

***

(d) Plates, sheets and strip of cellular plastics combined with textile fabrics (as defined in Note 1 to Chapter 59), felt or nonwovens, where the textile is present merely for reinforcing purposes.

In this respect, *unfigured*, unbleached, bleached or *uniformly dyed textile fabrics*, felt or nonwovens, *when applied to one face only of these* plates, *sheets* or strip, *are regarded as serving merely for reinforcing purposes*. Figured, printed or *more elaborately worked textiles (e.g., by raising) and special products*, such as pile fabrics, tulle and lace and textile products of heading 58.11, are regarded as having a function beyond that of mere reinforcement [emphasis added].

The ENs to heading 5903, HTSUS, further describe plastic and textile combinations and provide, in relevant part, that:

This heading covers textile fabrics which have been impregnated, coated, covered or laminated with plastics (e.g., poly(vinylchloride)).

Such products are classified here whatever their weight per m^2 and whatever the nature of the plastic component (compact or cellular) . . . .

This heading covers "textile fabrics laminated with plastics" as defined in Note 3 to this chapter. . . .

> In many textile fabrics classified here, the plastic material, usually colored, forms a surface layer which may be smooth or be embossed to simulate, e.g., the grain of leather ("leathercloth").
>
> * * * *

In NY N307758, CBP classified swatches of two imitation leather materials, identified as FLEATH01 and FLEATH02, and consisting of weft knit fabrics, which have been visibly coated on one side with polyurethane plastic, dyed and embossed or polished to imitate leather under subheading 3921.13.15, HTSUS. In NY N307758, CBP applied the General EN to Chapter 39, HTSUS, to the fabric materials at issue and reasoned that because the weft knit backing fabric was uniformly dyed and not "elaborately worked," then pursuant to the General EN to Chapter 39, HTSUS, the textile component was present merely for reinforcing purposes. Therefore, because the fabric materials were a combination of plastic and textile, for which the textile component was "mere reinforcement," CBP classified the fabric materials under subheading 3921.13.15, HTSUS, as cellular plastic combined with textile materials.

The fabric materials at issue here, FLEATH01 and FLEATH02, are plastic and textile combinations. The plastic coating on both materials is visible to the naked eye and detailed (i.e., embossed or polished) to imitate leather. The textile component is a weft knit fabric composed of rayon and elastomeric yarns. Thus, upon reconsideration of NY N307758, CBP first examines whether FLEATH01 and FLEATH02 are properly classified under Chapter 39, HTSUS, as "Plastics and Articles Thereof."

Note 2(p) to Chapter 39, HTSUS, precludes classification of "Goods of section XI (textiles and textile articles)." Alternatively, Note 1(h) to Section XI, HTSUS, excludes the following from classification under Section XI, "Textiles and Textile Articles": "[w]oven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with plastics, or articles thereof, of chapter 39." In determining whether a plastic and textile combination material is an article of plastic of Chapter 39, HTSUS, or a textile article under Section XI, HTSUS, we must determine whether the textile component serves merely for reinforcing purposes. Pursuant to the General ENs to Chapter 39, "[p]lates, sheets and strip of cellular plastics combined with textile fabrics (as defined in Note 1 to Chapter 59), felt or nonwovens, where the textile is present merely for reinforcing purposes" are classifiable under Chapter 39, HTSUS. Here, the weft knit fabric composed of rayon and elastomeric yarns is a textile fabric as described in Note 1 to Chapter 59, HTSUS, which explains that textile fabrics are the woven fabrics of Chapters 50 to 55. Therefore, we now consider whether the weft knit fabric of FLEATH01 and FLEATH02 is "present merely for reinforcing purposes."

In NY N307758, CBP looked at the General ENs to Chapter 39 to determine what is meant by "mere reinforcement." CBP reasoned that because the General EN to Chapter 39 states that "unfigured, unbleached, bleached or uniformly dyed textile fabrics, felt or nonwovens, when applied to one face only of these plates, sheets or strip, are regarded as serving merely for reinforcing purposes," and that "[f]igured, printed or more elaborately worked textiles (e.g., by raising) and special products, such as pile fabrics, tulle and lace and textile products of heading 58.11, are regarded as having a function beyond that of mere reinforcement," the weft knit fabric component of FLEATH01 and FLEATH02 was for mere reinforcement purposes. CBP determined this because the material was uniformly dyed and was not

elaborately worked. Determinations of whether a textile component of a plastic and textile fabric combination is present merely for reinforcing purposes require further consideration.

CBP has previously considered what it means for a textile component to serve a merely reinforcing purpose.[1] In Headquarters Ruling Letter (HQ) H296508, dated September 4, 2020, CBP considered whether a polyester fabric covered with polyvinyl chloride, dyed and embossed to simulate leather, which would be used in automobile seat covers, was classified under heading 3921, HTSUS, or heading 5903, HTSUS. There, too, CBP contemplated whether the knit textile fabric was present merely for reinforcing purposes. In HQ H296508, CBP applied the General ENs to Chapter 39 and considered whether the knit textile fabric with applied plastic plate, sheet, or strip, was "unfigured, unbleached, bleached or uniformly dyed," which per the EN is regarded as serving merely for reinforcing purposes. CBP found that the knit fabric in HQ H296508 was bleached in a uniform color with "no apparent raising, brushing, or other further working." However, this did not conclude CBP's analysis. Indeed, CBP further found that the plastic coating, dyed and embossed to imitate leather, would be the only visible surface of the material as the textile fabric would remain hidden in final production of the automobile seat covers and therefore was present merely to reinforce the polyvinyl chloride (PVC) coating. Thus, CBP concluded that the fabric was classified under heading 3921, HTSUS.

Alternatively, in HQ 960783, dated June 3, 1998, CBP considered whether a nylon tricot knit fabric coated with a cellular PVC sheeting, to be used in the construction of imitation leather golf bags, was classified under heading 3921, HTSUS, or 5903, HTSUS. There, CBP found that "if the textile backing acts as more than 'mere enforcement,' classification in Chapter 39 is not warranted." CBP considered a number of rulings that the Protestant in that ruling had put forth, including HQ 081489, dated March 27, 1989. HQ 081489 concerned a combination plastic and textile material to be used in automobile upholstery. Citing to HQ 081489, in HQ 960783, CBP reasoned that, absent evidence to the contrary, in applications such as automobile upholstery where the textile backing would not be exposed, the textile portion of a combination plastic and textile material serves as mere reinforcement. Conversely, CBP found that the nylon tricot knit fabric at issue in HQ 960783 served an "explicit purpose" as it provided a soft interior lining for the golf bags into which the golf clubs would be positioned. CBP acknowledged that because many golf clubs consist of graphite shafted clubs that are prone to scratching, a soft textile interior would reduce abrasion. Moreover, CBP found that the textile interiors were "tastefully coordinated to match the exterior color, thus providing a visual motivation for the purchase of a particular golf bag." As such, CBP concluded that the nylon tricot knit fabric served more than mere reinforcement, and was thus precluded from classification under Chapter 39, HTSUS, and the fabric was classified under heading 5903, HTSUS.

[1] In your reconsideration request, you identified *Bradford Indus. v. United States*, 968 F.Supp. 732 (Ct. Int'l Trade 1997), *aff'd* 152 F.3d 1339 (Fed. Cir. 1998). While the Court considered whether the fabric material at issue in *Bradford* consisted of a textile component that was used for "mere reinforcing purposes," the Court in *Bradford* was considering a nonwoven textile product and application of Chapter 56, HTSUS. The facts of *Bradford* and the applicable HTS Chapters and headings are distinguishable from the facts and applicable HTS Chapters and headings here due to the differing characteristics of the fabric materials.

Here, FLEATH01 and FLEATH02 are plastic and textile combinations, featuring a rayon and elastomeric knit fabric with polyurethane coating, dyed, and embossed or polished to imitate leather. Based on the information provided, FLEATH01 and FLEATH02 will be used to produce women's apparel. Despite the knit fabric component being uniformly dyed and not being "figured, printed, or more elaborately worked," it cannot be said that the knit fabric in either FLEATH01 or FLEATH02 are for mere reinforcing purposes, as concluded in NY N307758. Instead, the knit fabric clearly serves an "explicit purpose" by being soft and stretchable against a wearer's skin. Unlike the automobile seat covers at issue in HQ H296508, here the knit textile component serves more than a reinforcing role to the polyurethane coating, as it will come into direct contact with the wearer's skin and thus will inform purchasing decisions. The combination of rayon and elastomeric yarns that comprise the knit fabric are designed to provide comfort to the wearer of the apparel that the materials into which FLEATH01 and FLEATH02 will be incorporated. Moreover, the textile component will be visible when produced into apparel and will also likely influence purchasing decisions. Like the fabric that was used to manufacture golf bags in HQ 960783, FLEATH01 and FLEATH02 are constructed textile and plastic combinations for which both sides of the product serve purpose extending beyond reinforcement of one side alone. Specifically, the fabric was used to provide a soft interior lining to protect golf clubs. As the textile component of both FLEATH01 and FLEATH02 serve more than mere reinforcement of the polyurethane coating, both are precluded from classification under Chapter 39, HTSUS.

In examining whether FLEATH01 and FLEATH02 are classifiable instead under heading 5903, HTSUS, CBP looks at whether there are any legal or explanatory notes that would preclude classification. Note 2(a)(4) to Chapter 59, HTSUS, precludes classification of products that are "plates, sheets or strip of cellular plastics, combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (chapter 39)." As noted above, the rayon and elastomeric knit fabric serves more than reinforcing purposes. The knit fabric is designed to be worn against the wearer's skin and provide comfort. Thus, FLEATH01 and FLEATH02 are classified under heading 5903, HTSUS, as "Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902."

Based on the foregoing, we find that the FLEATH01 and FLEATH02 imitation leather materials are properly classified in subheading 5903.20.25, HTSUS, as "[t]extile fabric impregnated, coated, covered or laminated with plastics, other than those of heading 5902: [w]ith polyurethane: [o]f man-made fibers: [o]ther: [o]ther."

HOLDING:

By application of GRI 1, the FLEATH01 and FLEATH02 imitation leather materials are classified in heading 5903, HTSUS, specifically under subheading 5903.20.25, HTSUS, which provides for "[t]extile fabric impregnated, coated, covered or laminated with plastics, other than those of heading 5902: [w]ith polyurethane: [o]f man-made fibers: [o]ther: [o]ther." The 202 column one, general rate of duty is 7.5 percent *ad valorem*.

Pursuant to U.S. note 20(e) and (f) to Subchapter III, Chapter 99, HTSUS, products of China classified under subheading 5903.20.25, HTSUS, unless

specifically excluded, are subject to an additional 25 percent *ad valorem* rate of duty. At the time of importation, you must report the Chapter 99 subheading, i.e., 9903.88.03, in addition to subheading 5903.20.25, HTSUS, listed above.

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 https://hts.usitc.gov/.

EFFECT ON OTHER RULINGS:

NY N307758, dated April 7, 2020, is hereby revoked.

Sincerely,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

19 CFR PART 177

REVOCATION OF FOUR RULING LETTERS, MODIFICATION OF FOUR RULING LETTERS, AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN COMPOSITE GOODS WITH THE ESSENTIAL CHARACTER OF PERMANENT MAGNETS

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

ACTION: Notice of revocation of four ruling letters, modification of four ruling letters, and of revocation of treatment relating to the tariff classification of certain composite goods with the essential character of permanent magnets.

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 four ruling letters and modifying four rulings letters, which concern the classification of certain composite goods with the essential character imparted by permanent magnets 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. 58, No. 26, on July 3, 2024. 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 November 11, 2024.

FOR FURTHER INFORMATION CONTACT: Michael F. Thompson, Electronics, Machinery, Automotive, and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–1917.

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. 58, No. 26, on July 3, 2024, proposing to revoke four ruling letters and modify four ruling letters, all of which pertain to the tariff classification of certain composite goods with the essential character imparted by permanent magnets. 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) J85077, NY N302039, NY N302895, and NY N314064, CBP classified the subject merchandise under subheading 8505.19, HTSUS, which provides for "Electromagnets; permanent magnets and articles intended to become permanent magnets after magnetization; electromagnetic or permanent magnet chucks, clamps and similar holding devices; electromagnetic couplings, clutches and brakes; electromagnetic lifting heads; parts thereof: Other." In NY B84458, NY R03088, NY N289369, and NY N290319, CBP classified the subject merchandise under subheading 8505.11, HTSUS, which provides for "Electromagnets; permanent magnets and articles intended to become permanent magnets after magnetization; electromagnetic or permanent magnet chucks, clamps and similar holding devices; electromagnetic couplings, clutches and brakes; electromagnetic lifting heads; parts thereof: Of metal." CBP has reviewed NY J85077, NY N302039, NY N302895, NY N314064, NY B84458, NY R03088, NY N289369, and NY N290319 and has determined the ruling letters to be in error. It is now CBP's position that composite goods with the essential character of permanent mag-

nets of materials other than metal are properly classified, in heading 8505, HTSUS, specifically in subheading 8505.19.30, HTSUS, which provides for "Electromagnets; permanent magnets and articles intended to become permanent magnets after magnetization; electromagnetic or permanent magnet chucks, clamps and similar holding devices; electromagnetic couplings, clutches and brakes; electromagnetic lifting heads; parts thereof: Permanent magnets and articles intended to become permanent magnets after magnetization: Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY B84458, NY R03088, NY N289369, and NY N290319, modifying NY J85077, NY N302039, NY N302895, and NY N314064, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (HQ) H328977, 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*.

GREGORY CONNOR
for
YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H328977
August 19, 2024
OT:RR:CTF:EMAIN H328977 MFT
CATEGORY: Classification
TARIFF NO.: 8505.19.30

MS. MELISSA CANNON
MASTER MAGNETICS, INC.
1211 ATCHINSON COURT
CASTLE ROCK, CO 80109

RE: Modification of NY J85077, NY N302039, NY N302895, and NY N314064; Revocation of NY B84458, NY R03088, NY N289369, and NY N290319; Classification of certain permanent magnets and articles with the essential character of permanent magnets

DEAR MS. CANNON:

This letter is in response to your request, submitted September 22, 2020, seeking reconsideration of New York Ruling Letter (NY) N314064 (dated September 14, 2020). That ruling considered the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a certain three-in-one magnetic sweeper from China. We have re-examined NY N314064 and find its ultimate classification of the merchandise to be correct; however, we hereby modify that ruling to emend certain dicta expressed therein. Furthermore, after reviewing NY N302039 (dated February 5, 2019) and NY N302895 (dated April 3, 2019), we similarly affirm their ultimate classification determinations but hereby modify those rulings as to certain dicta.

We have also reviewed NY J85077 (dated June 19, 2003); NY B84458 (dated May 15, 1997); NY R03088 (dated February 10, 2006); NY N289369 (dated September 13, 2017); and NY N290319 (dated October 18, 2017). Each of these rulings classified certain permanent magnets of materials other than metal under subheading 8505.11.00, HTSUS, which provides for "Electromagnets; permanent magnets and articles intended to become permanent magnets after magnetization; electromagnetic or permanent magnet chucks, clamps and similar holding devices; electromagnetic couplings, clutches and brakes; electromagnetic lifting heads; parts thereof: Permanent magnets and articles intended to become permanent magnets after magnetization: Of metal." We have determined that the tariff classification of these magnets is incorrect and hereby revoke or modify those rulings, accordingly, as explained below.

Pursuant to Section 625(c)(1) of the Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. No. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed action was published on July 3, 2024, in Volume 58, Number 26, of the Customs Bulletin. No comments were received in response to this notice.

FACTS:

In NY N314064, the merchandise at issue was a three-in-one magnetic sweeper described in the ruling as follows:

> The item under consideration is a 3-in-1 magnetic sweeper, part numbers MS3N1–48, MS3N1–60, MS3N1–72, MS3N1–84, and MS3N1–96, designed to magnetically attract ferrous metal debris, such as nails, screws,

> metal filings, and other metal scrap from floors, walkways, driveways, parking lots, and work areas. The item consists of ceramic magnets (predominantly ferric oxide material) and a steel bar enclosed in a heavy-gauge steel and aluminum housing. Attached is a quick release handle, mounting brackets, removable tow handle, and semi-pneumatic wheels on both sides. As the sweeper moves across the ground, the magnets attract ferrous metal debris. When the quick release handle is pulled, it creates a gap wide enough to dislodge the collected debris, where it can then be cleaned up. The item can be used in several configurations including being pushed or pulled by the handle, mounted using eyebolts on the forks of a forklift, hung from a vehicle, and towed behind a vehicle. Each part number is identical in design with the exception of the sweeping width, which come in 48 inches, 60 inches, 72 inches, 84 inches, or 96 inches.

We noted that the magnetic sweeper was a composite good and that a prior decision classified another composite good under subheading 8505.19.30, HTSUS:

> The 3-in-1 magnetic sweeper is a composite good consisting of steel, aluminum, and rubber materials, which make up components including magnets, wheels, a steel bar, a handle and various hardware to form a complete article. It is the opinion of this office that the article is distinguished by the magnetic component, which allows it to function as a magnet. Accordingly, the magnetic portion appears to be of primary importance to the composite article and the component which imparts its essential character. *Composite goods in which a magnet is used to "sweep" metal articles have previously been classified in subheading 8505.19.3000.* See NY ruling N302895 dated April 3, 2019. [*emphasis* added]
>
> As such, the applicable subheading for the 3-in-1 magnetic sweeper, part numbers MS3N1–48, MS3N1–60, MS3N1–72, MS3N1–84 and MS3N1–96, will be [subheading] 8505.19.3000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Electromagnets; permanent magnets and articles intended to become permanent magnets after magnetization; electromagnetic or permanent magnet chucks, clamps and similar holding devices; electromagnetic couplings, clutches and brakes; electromagnetic lifting heads; parts thereof: Permanent magnets and articles intended to become permanent magnets after magnetization: Other: Other.

The article at issue in NY N302039 is discussed therein as follows:

> The item under consideration is referred to as a Sea Turtle PVC magnet, item number 88277. The item consists of a PVC turtle with a circular magnet affixed to the underside of the turtle. The hard magnet is described as a ceramic (ferrite) magnet that is primarily of iron oxide material. The Sea Turtle PVC magnet allows for notes, pictures, and the like to be secured to metal surfaces. [. . .]
>
> While we agree that the article is classified within heading 8505, we disagree at the subheading level. *The Sea Turtle PVC magnet is a composite good that consists of a PVC turtle with a hard magnet. Such articles have been classified in subheading 8505.19.3000. See* NYR N019818, dated December 11, 2007[,] and NYR N062663, dated June 11, 2009. [*emphasis* added]

> As such, the applicable subheading for the Sea Turtle PVC magnet, item number 88277 will be 8505.19.3000, Harmonized Tariff Schedule of the United States (HTSUS) [Annotated], which provides for Permanent magnets and articles intended to become permanent magnets after magnetization: Other: Other. The rate of duty will be 4.9 percent ad valorem.

In NY N302895, U.S. Customs and Border Protection (CBP) considered the classification of a magnetic floor sweeper from China and described the article as follows:

> The product in question is referred to as the 17" Mini Magnetic Floor Sweeper, item number GRIP 53417. The floor sweeper consists of a ceramic (iron oxide material) magnetic bar that is attached to a steel bar with a rubber grip. Two rubber wheels are attached to the outer sections of the magnetic bar and as the user pushes the steel bar, the floor sweeper rolls over the ground and this allows the magnet, which imparts the essential character, to retrieve metal articles, such as screws and nails.

That ruling similarly considered the fact that the sweeper constituted a composite good and stated as follows:

> The 17" Mini Magnetic Floor Sweeper is a composite good that consists of a handle, rollers and a non-flexible magnet that imparts the essential character. *Composite goods in which a magnet is used to retrieve metal articles have previously been classified in subheading 8505.19.3000.* See NYR N061775 dated May 28, 2009. This office notes that in your letter, you mention that the magnetic floor sweeper is similar to the magnets classified in NYR N289369 and NYR N290319, which classified ceramic magnets in subheading 8505.11.0030. *However, this office does not find any of [the] afor*[e]*mentioned rulings relevant, as the subject floor sweeper is a composite good.* [*emphasis* added]
>
> As such, the applicable subheading for the 17" Mini Magnetic Floor Sweeper, item number GRIP 53417, will be 8505.19.3000, HTSUS, which provides for Permanent magnets and articles intended to become permanent magnets after magnetization: Other: Other. The rate of duty will be 4.9 percent ad valorem.

In NY J85077, the merchandise at issue is described as follows: "The articles in question are described as a sample/addition valve kit, part numbers MCLAVE10X1SAMP and MCLAVE10X10SAMP and a spares [sic] part kit, part number MCLAVE10XSPARES. [. . .] The spare parts kit includes [. . .] 20 stirrer bars, which are essentially Teflon-coated magnets [. . . .]" We classified the stirrer bars under subheading 8505.11.00, HTSUS, as permanent magnets of metal.

In NY B84458, the merchandise under consideration is described as follows:

> As indicated by the submitted samples and descriptive literature, "Bye-Bye Birdie" is a device which claims to be successful in keeping birds away from a specified area through the action of a specialized magnetic system which disturbs the geomagnetic field that birds use to find their direction. There are two basic models identified as the "Wing" and the "Ninja". In both cases, the magnetic system consists of a combination of ferrite magnets and neodymium magnets which are stacked with the magnetic poles in a N-S-N-S orientation.

We found that the "Bye-Bye Birdie" was classifiable under subheading 8505.11.00, HTSUS, as a permanent magnet of metal.

NY R03088 describes the merchandise under consideration as follows:

> The merchandise subject of this ruling is identified in your letter as welding magnets. Pictures of these magnets, with Factory Part #s, were included with your submission. The Factory Part #s are MINI 8LBS, 6001 25LBS, 6002 50LBS, and 6003 75LBS. These magnets are used to hold pieces of pipe together while welding them. The composition of the magnets consists of a ceramic center encased in steel. They are basically functional magnets made of steel.

The magnets in NY R03088 were classified under subheading 8505.11.00, HTSUS, as permanent magnets of metal.

CBP also considered the classification of a certain magnet from Taiwan in NY N289369: "Part number MA-3010 disk magnet is a ceramic (ferrite) magnet primarily composed of iron oxide." We found that the merchandise in that ruling was classified as a permanent magnet of metal under subheading 8505.11.00, HTSUS.

Finally, in NY N290319, the merchandise at issue is described as follows:

> Product number 92500 consists of 30 magnets contained in a plastic tub packaged ready for retail sale. The assorted colored magnets are primarily of isotropic ferrite material embedded in a circular shaped cover of plastic material. The magnets are available in three sizes that measure 5/8", 1 1/8" or 1 1/2" in diameter. The magnets can be used on metal surfaces, such as cabinets and presentation boards.

We held that the thirty magnets were classified under subheading 8505.11.00, HTSUS, as permanent magnets of metal.

ISSUE:

Whether the subject magnets are "of metal," and thus properly classified in subheading 8505.11, HTSUS, or are properly classified under subheading 8505.19, HTSUS, as magnets of materials other than metal.

LAW AND ANALYSIS:

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

The classification of goods consisting of more than one material or substance follows the principles of GRI 3. In relevant part, GRI 3(b) states that composite goods that cannot be classified by reference to GRI 3(a) are to be classified as if they consisted of the component that gives them their essential character.

GRI 6 provides that for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. Although the ENs are not legally binding or dispositive, they provide commentary on the scope of each heading of the HTSUS and generally indicate the proper interpretation of these headings at the international level.[1]

The HTSUS subheadings under consideration are as follows:

8505	Electromagnets; permanent magnets and articles intended to become permanent magnets after magnetization; electromagnetic or permanent magnet chucks, clamps and similar holding devices; electromagnetic couplings, clutches and brakes; electromagnetic lifting heads; parts thereof:
	Permanent magnets and articles intended to become permanent magnets after magnetization:
8505.11	Of metal
	* * * * *
8505.19	Other:

There is no dispute that the magnets identified in the rulings above impart the essential character of the above-described composite goods, and likewise by application of GRI 3(b), are classified as "permanent magnets" of heading 8505, HTSUS. By application of GRI 6, the classification of each of the permanent magnets shall be determined according to the terms of subheadings 8505.11 and 8505.19, HTSUS. The terms of subheading 8505.11, HTSUS, limit classification therein to permanent magnets (and articles intended to become permanent magnets after magnetization) that are "of metal." Therefore, if a permanent magnet of heading 8505, HTSUS, is not "of metal," it does not meet the terms of subheading 8505.11, HTSUS. It follows that permanent magnets of heading 8505, HTSUS, *not* of metal would be *prima facie* classifiable under subheading 8505.19, HTSUS, as "other" permanent magnets.

We previously recognized that iron oxide, also known as "ferrite," is not a metal for purposes of subheading 8505.11, HTSUS.[2] In Headquarters Ruling Letter (HQ) 965543, we considered the tariff classification of a magnetic race car figurine where the article's magnet was composed of anisotropic ferrite. There, the protestant submitted in the alternative that the figurine should be classified under subheading 8505.11, HTSUS, as a metal magnet. After determining that the magnet imparted the essential character of the figurine under GRI 3(b), we reviewed the physical characteristics of ferrite and found it was not a metal:

> The appropriate subheading is 8505.19.00, HTSUS, which provides for permanent magnets made of materials other than metal. Protestant argues that if the subject merchandise is classified under heading 8505, HTSUS, that the appropriate subheading is 8505.11.00, HTSUS, which provides for permanent magnets composed of metal. However, according to protestant's submission, the subject article's magnet is composed of anisotropic ferrite. Webster's II New College Dictionary (Houghton Mifflin Company, 1999), defines ferrite as "[a]ny of a group of nonmetallic, ceramic[-]like, usu. ferromagnetic compounds of ferric oxide with other oxides, esp. such a compound with spinel crystalline structure, marked by

[1] *See* Treasury Decision (T.D.) 89–80, 54 Fed. Reg. 35127, 35127–28 (Aug. 23, 1989).

[2] Magnets containing ferrite are also referred to as "ceramic" magnets.

> high electrical resistivity and used in computer memory elements, permanent magnets, and solid-state devices." Thus, the magnet's ferrite composition excludes the merchandise from classification under subheading 8505.11.00, HTSUS. The articles are properly classified under subheading 8505.19.00, HTSUS, as permanent magnets and articles intended to become permanent magnets after magneti[z]ation: other.

We have also read the EN to heading 8505, HTSUS, as distinguishing permanent magnets of ferrite from those "of metal." The EN provides: "Articles intended to become permanent magnets after magneti[z]ation are recogni[z]able as such by their shape and composition, generally being cubes or discs (tags) of metal *or* of agglomerated ferrite (e.g., barium ferrite)" [*emphasis* added]. Based on this distinction, we previously held that the magnet's composition is the main determinant, and that permanent magnets of ferrite must be classified differently from permanent magnets of metal. For example, in classifying an adhesive magnetic bandage where the permanent magnet imparted the essential character of the good, we stated:

> This provision [i.e., "permanent magnets . . ." under heading 8505, HTSUS] is divided into two categories, "of metal," and "other." The August 19, 1998, letter which requested this ruling does not describe the composition of the magnets. If the magnets are of ferrrite [sic] or some other non-metallic substance, the merchandise is classified as a permanent magnet "other" than of metal. See EN 85.05 (2) (which notes the distinction between metal and ferrite "...of metal or of agglomerated ferrite"). If the magnets are of metal, then the merchandise falls in the provision for permanent magnets of metal.[3]

Accordingly, we have applied this distinction between ferrite and metal in other decisions.[4] For example in NY C81811, we considered the classification of two types of "cow magnets," which were designed to be "ingested by cows and remain in the stomach to attract metal shavings and other metallic object which could harm a cow's intestines if swallowed." One of the magnets was a ceramic magnet, while the other was an "alnico type [. . .] comprised of various metals, with iron the predominant element." The classification of the cow magnets turned on their composition. As such, we held that the ceramic magnet was classified under subheading 8505.19, HTSUS, as a permanent magnet of a material other than metal, while the alnico magnet was classified under subheading 8505.11, HTSUS, as a permanent magnet of metal.

Lastly, we emphasize that the mere fact an article consisting of a permanent magnet and another component may constitute a composite good does *not*, in and of itself, remove the good from the compass of subheading 8505.11, HTSUS. Subject to the relevant facts, rules, and principles of classification – and unless the context otherwise requires – the classification of composite goods consisting of a permanent magnet and another material or substance must follow the principles of GRI 3. If that good cannot be classified by reference to GRI 3(a), then GRI 3(b) instructs that we classify the goods "as

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[3] HQ 962172 (dated May 5, 1999).

[4] *See* HQ 962611 (dated May 4, 1999) ("Within heading 8505, the magnet falls within the provision for permanent magnets of 'other' than metal as it has been permanently magnetized and is of ferrite, not metal. See EN 85.05 (2) (which notes the distinction between metal and ferrite '...of metal or of agglomerated ferrite')"); HQ 962612 (dated May 4, 1999) (same).

if they consisted of the component that gives them their essential character." If the permanent magnet imparts the essential character of a composite good, the good must be classified as if it consisted *solely* of the permanent magnet (even if the composite good consists of other materials besides the magnet). Therefore, as far as subheadings 8505.11 and 8505.19, HTSUS, are concerned, such classification would turn on the composition of the magnet *alone*. Once it is determined that the permanent magnet of heading 8505, HTSUS, imparts the essential character of the composite good, all other materials or components comprising the composite good are irrelevant for purposes of GRI 3(b).[5]

In HQ H217623, we stood for the principle that being a composite good does not necessarily disqualify an article from classification under subheading 8505.11, HTSUS. There, we modified HQ 562821, which wrongly classified certain name badges consisting of "metal magnets encased in plastic" under subheading 8505.19, HTSUS. As we stated:

> The magnets at issue consist of the following components: (1) two metal inflexible magnets and (2) plastic holders, holding the magnets. The function of the magnets encased in plastic is to hold the name badges in place, which is accomplished by the two metal magnets. The plastic holders function as mere casing for the magnets. Applying GRI 2(b), we find that the fact that the magnets are encased in plastic does not deprive the good of having the character of a magnet of metal. See EN XII to GRI 2(b). Accordingly, it follows that the subject magnets encased in plastic are classified in subheading 8505.11.00, HTSUS, which provides for magnets of metal.

I. Modification of NY N302039, NY N302895, and NY N314064

In NY N302039, NY N302895, and NY N314064, we suggested that classification under subheading 8505.19, HTSUS, was appropriate in part because the subject merchandise constituted composite goods. Specifically:

(1) In NY N302039, we stated, "The Sea Turtle PVC magnet is a composite good that consists of a PVC turtle with a hard magnet. Such articles have been classified in subheading 8505.19.3000."

(2) In NY N302895, we stated, "Composite goods in which a magnet is used to retrieve metal articles have previously been classified in subheading 8505.19.3000. This office notes that in your letter, you mention that the magnetic floor sweeper is similar to the magnets classified in NYR N289369 and NYR N290319, which classified ceramic magnets in subheading 8505.11.0030. However, this office does not find any of [the] afor[e]mentioned rulings relevant, as the subject floor sweeper is a composite good [internal citations omitted]."

[5] We stress that this analysis and these conditions are narrow and subject to the specific facts and applicable rules of a particular transaction. As such, the principles set forth in this letter may not apply to distinguishable transactions. See 19 C.F.R. § 177.9(b) on the applicability of rulings to certain transactions: "Each ruling letter is issued on the assumption that all of the information furnished in connection with the ruling request and incorporated in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect. The application of a ruling letter by a [CBP] field office to the transaction to which it is purported to relate is subject to the verification of the facts incorporated in the ruling letter, a comparison of the transaction described therein to the actual transaction, and the satisfaction of any conditions on which the ruling was based."

(3) In NY N314064, we justified classification of the three-in-one magnet sweeper by stating, "Composite goods in which a magnet is used to 'sweep' metal articles have previously been classified in subheading 8505.19.3000."

Although it is true that the merchandise at issue in each ruling constituted composite goods, this fact *alone* does not warrant classification under subheading 8505.19, HTSUS. As we discussed above, if it is determined that a permanent magnet of heading 8505, HTSUS, imparts the essential character of a composite good per GRI 3(b), then the good is to be classified as if it consisted *solely* of the permanent magnet. No other material or component is relevant. To the extent that NY N302039, NY N302895, and NY N314064 expressed dicta suggesting a contrary principle, those rulings are hereby modified.

The watchword here is "dicta": the errant principle opined in NY N302039, NY N302895, and NY N314064 was not necessary in determining that the goods are classifiable under subheading 8505.19, HTSUS. In each case, the permanent magnets at issue consist of ferrite (iron oxide). Ferrite is not a metal, as explained above. Seeing as the permanent magnets in each of the rulings are composed of non-metal material, they cannot be classified as permanent magnets "of metal" under subheading 8505.11, HTSUS. As a result, the merchandise in NY N302039, NY N302895, and NY N314064 is still classifiable under subheading 8505.19, HTSUS, as "other" permanent magnets. Although the aforementioned erroneous dicta does not trigger the notice and comment requirements of 19 U.S.C. 1625(c), we nevertheless are taking the opportunity to clarify the classification.

II. Modification of NY J85077 and Revocation of NY B84458, NY R03088, N289369, and N290319

The permanent magnets in NY B84458, NY J85077, NY R03088, NY N289369, and N290319 each are composed, at least in part, of non-metal material that excludes the respective merchandise from classification under subheading 8505.11, HTSUS. Specifically:

(1) In NY B84458, the "Bye-Bye Birdie" magnetic bird repellant device contained ferrite.

(2) In NY J85077, the stirrer bars were coated with Teflon.

(3) In NY R03088, the welding magnets contained a ceramic magnet center.

(4) In NY N289369, the disk magnet was "primarily composed of iron oxide."

(5) In NY N290319, the thirty magnets were "primarily of isotropic ferrite material."

None of these materials are "of metal" as specified in subheading 8505.11, HTSUS: ferrite (iron oxide) is not a metal, as explained above; neither is Teflon. Thus, each of these magnets are appropriately classified under subheading 8505.19, HTSUS, as "other" permanent magnets. We therefore modify NY J85077 as to its classification of the stirrer bars and revoke NY B84458, NY R03088, NY N289369, and NY N290319.

HOLDING:

By application of GRIs 1, 3(b), and 6, the subject merchandise is classified in heading 8505, HTSUS, specifically in subheading 8505.19.30, HTSUS, which provides for "Electromagnets; permanent magnets and articles intended to become permanent magnets after magnetization; electromagnetic

or permanent magnet chucks, clamps and similar holding devices; electromagnetic couplings, clutches and brakes; electromagnetic lifting heads; parts thereof: Permanent magnets and articles intended to become permanent magnets after magnetization: Other: Other." The general, column one rate of duty is 4.9 percent ad valorem.

Pursuant to U.S. Note 20 to Subchapter III, Chapter 99, HTSUS, products of China classified under subheading 8505.19.30, HTSUS, unless specifically excluded, are subject to an additional 25 percent ad valorem rate of duty. At the time of importation, you must report the Chapter 99 subheading, i.e., 9903.88.03, in addition to subheading 8505.19.30, HTSUS, listed above.

The HTSUS is subject to periodic amendment, so you should exercise reasonable care in monitoring the status of goods covered by the Note cited above and the applicable Chapter 99 subheading. For background information regarding the trade remedy initiated pursuant to Section 301 of the Trade Act of 1974, including information on exclusions and their effective dates, you may refer to the relevant parts of the USTR and CBP websites, which are available at https://ustr.gov/issue-areas/enforcement/section-301-investigations/tariff-actions and https://www.cbp.gov/trade/remedies/301-certain-products-china, respectively.

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 N302039, NY N302895, and NY N314064 are modified as explained above.

NY J85077 is hereby modified as to its classification of stirrer bars.

NY R03088, NY B84458, NY N289369, and NY N290319 are hereby revoked.

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

Sincerely,

GREGORY CONNOR
for
YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

COMMERCIAL CUSTOMS OPERATIONS ADVISORY COMMITTEE

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

ACTION: Committee management; notice of open Federal advisory committee meeting.

SUMMARY: The Commercial Customs Operations Advisory Committee (COAC) will hold its quarterly meeting on Wednesday, September 18, 2024, in Washington, DC. The meeting will be open for the public to attend in-person or via webinar. The in-person capacity is limited to 50 persons for public attendees.

DATES: The COAC will meet on Wednesday, September 18, 2024, from 1:00 p.m. to 5:00 p.m. Eastern Daylight Time (EDT). Please note the meeting may close early if the committee has completed its business. Registration to attend in person and comments must be submitted no later than September 13, 2024.

ADDRESSES: The meeting will be held at the Office of Training and Development, 1717 H Street NW, Washington, DC, in Classroom 7300A. For virtual participants, the webinar information will be posted by 5 p.m. EDT on September 17, 2024, at *https://www.cbp.gov/trade/stakeholder-engagement/coac.* For information or to request special assistance for the meeting, contact Mrs. Latoria Martin, Office of Trade Relations, U.S. Customs and Border Protection, at (202) 344–1440, as soon as possible.

Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for Docket Number USCBP–2024–0021. To submit a comment, click the "Comment" button located on the top-left hand side of the docket page.
- *Email: tradeevents@cbp.dhs.gov.* Include Docket Number USCBP–2024–0021 in the subject line of the message.

Comments must be submitted in writing no later than September 13, 2024, and must be identified by Docket No. USCBP–2024–0021. All submissions received must also include the words "Department of Homeland Security." All comments received will be posted without change to *https://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings* and *www.regulations.gov.* Therefore, please refrain from including any personal information you do not wish to be posted. You may wish to view the Privacy and Security Notice, which is available via a link on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Latoria Martin, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.5A, Washington, DC 20229, (202) 344–1440; or Ms. Felicia M. Pullam, Designated Federal Officer, at (202) 344–1440 or via email at *tradeevents@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the authority of the Federal Advisory Committee Act, title 5 U.S.C. ch. 10. The Commercial Customs Operations Advisory Committee (COAC) provides advice to the Secretary of the Department of Homeland Security, the Secretary of the Department of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within the Department of Homeland Security and the Department of the Treasury.

Pre-Registration: Meeting participants may attend either in person or via webinar. All participants who plan to participate in person must register using the method indicated below:

For members of the public who plan to participate in person, please register online at *https://cbptradeevents.certain.com/profile/17899* by 5:00 p.m. EDT on September 13, 2024. For members of the public who are pre-registered to attend the meeting in person and later need to cancel, please do so by 5:00 p.m. EDT on September 13, 2024, utilizing the following link: *https://cbptradeevents.certain.com/profile/17899.*

For members of the public who plan to participate via webinar, the webinar information will be posted by 5:00 p.m. EDT on September 17, 2024, at *https://www.cbp.gov/trade/stakeholder-engagement/coac.* Registration is not required to participate virtually.

The COAC is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact Mrs. Latoria Martin at (202) 344–1440 as soon as possible. Please feel free to share this information with other interested members of your organization or association.

To facilitate public participation, we are inviting public comment on the issues the committee will consider prior to the formulation of recommendations as listed in the Agenda section below.

There will be a public comment period after each subcommittee update during the meeting on September 18, 2024. Speakers are requested to limit their comments to two minutes or less to facilitate greater participation. Please note the public comment period for speakers may end before the time indicated on the schedule that is

posted on the CBP web page: *http://www.cbp.gov/trade/stakeholder-engagement/coac.*

Agenda

The COAC will hear from the current subcommittees on the topics listed below:

1. The Intelligent Enforcement Subcommittee will provide updates on the work completed and topics discussed in its working groups as well as present proposed recommendations for the COAC's consideration. The Antidumping/Countervailing Duty (AD/CVD) Working Group will provide updates regarding its work and discussions on importer compliance with AD/CVD requirements. The Intellectual Property Rights (IPR) Process Modernization Working Group anticipates providing updates concerning progress associated with its recent recommendations regarding the Trade Seminars Mailbox and enhancements to the CBP Petitions Portal specific to IPR enforcement. The Forced Labor Working Group (FLWG) will provide updates on continued discussions regarding trade outreach, clarification of requirements, and previous recommendations.

2. The Next Generation Facilitation Subcommittee will provide updates on all its existing working groups. The Broker Modernization Working Group (BMWG) plans to present proposed recommendations for the COAC's consideration which aim to improve the end user experience and re-envision the Customs Broker Licensing Exam (CBLE). The Modernized Entry Processes Working Group (MEPWG) will report on the work undertaken regarding Cyber Incident Guidance for Brokers. The Passenger Air Operations (PAO) Working Group has continued to meet to discuss CBP's feedback on past recommendations, landing rights issues, and to plan future goals and/or work for the group. The remaining working groups, the Automated Commercial Environment (ACE) 2.0 Working Group and the Customs Interagency Industry Working Group (CIIWG), were not active this past quarter but will provide a report on topics that each working group will focus on in the coming quarter.

3. The Secure Trade Lanes Subcommittee will provide updates on its seven active working groups: the Centers Working Group, the Cross-Border Recognition Working Group, the De Minimis Working Group, the Export Modernization Working Group, the FTZ Warehouse Working Group, the Pipeline Working Group, and the Trade Partnership and Engagement Working Group. The Centers Working Group created three sub-groups to focus on specific areas of concerns for the trade community: the Operations Sub-Group, the Structure Sub-Group, and the Communications Sub-Group. The Operations

Sub-Group will evaluate the internal structure and operations of the Centers of Excellence and Expertise (Centers) and their interactions with the ports, and with the trade communities in the areas of fines, penalties, forfeitures, drawback, and broker management. The Structure Sub-Group will evaluate the number of Centers, the branches within the Centers, and workload equity amongst the Centers. This includes consideration of potential structural changes to help with the Centers' expanded responsibility in admissibility reviews, Uyghur Forced Labor Prevention Act (UFLPA), and Enforce and Protect Act (EAPA) investigations. This sub-group will also consider how information within Customs Trade Partnership Against Terrorism (CTPAT) may be better leveraged to help the Centers with these reviews. The Communications Sub-Group will focus on IT/ACE solutions, including web pages to facilitate communications for CBP internally and externally with the trade. The Cross-Border Recognition Working Group has continued to discuss best practices at ports of entry on the southern border that facilitate legitimate trade. The De Minimis Working Group has continued discussions on the revised timeframe for submitting Type 86 entries and on potential compliance measurements for de minimis shipments that CBP can communicate to the trade community. The Export Modernization Working Group has continued its work on the Electronic Export Manifest Pilot Program and the effects of progressive filing by the shipper to continuously update export information on successive dates, rather than on a specific date. The Export Modernization Working Group is also working on recommendations regarding the CBP Experience (CBPX) to present to the COAC for consideration. The Drawback Task Force, within the Export Modernization Working Group, has continued discussions around COAC-approved recommendations that are in the process of being implemented from last quarter; is conducting an analysis of program statistics in the areas of streamlining privilege application questions, compliance issues, de minimis amount for drawback claims; and is examining areas to maximize resources. The FTZ/Warehouse Working Group continues to review 19 CFR part 146, expanding the CTPAT program, and modernizing ACE functionality for FTZs, and it anticipates presenting proposed recommendations for the COAC's consideration at the September public meeting. The Pipeline Working Group has continued discussing the most appropriate commodities for and potential users of Distributed Ledger Technology to engage in the contemplated pilot for tracking pipeline-borne goods. The Trade Partnership and Engagement Working Group has continued its work on the elements of the CTPAT security program and the validation process.

Meeting materials will be available on September 9, 2024, at: *http://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings.*

FELICIA M. PULLAM,
Executive Director,
Office of Trade Relations.

AGENCY INFORMATION COLLECTION ACTIVITIES:

New Collection of Information; Russian Diamonds & Seafood E.O. 14114

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

ACTION: 60-Day notice and request for comments.

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

DATES: Comments are encouraged and must be submitted no later than October 25, 2024 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 1651–0NEW in the subject line and the agency name. Please submit written comments and/or suggestions in English. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.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 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: Russian Diamonds & Seafood E.O. 14114.

OMB Number: 1651–0NEW.

Form Number: 3461 & 3461 ALT.

Current Actions: New collection of information.

Type of Review: New collection of information.

Affected Public: Businesses.

Abstract: On December 22, 2023, President Biden issued Executive Order (E.O.) 14114, amending section 1 of E.O. 14068, issued April 15, 2021, to create subsections (a)(i)(A)–(D). Section 1(d) states," The Secretary of Homeland Security, with the concurrence of the Secretary of the Treasury, shall prescribe rules and regulations to collect, including through an authorized electronic data interchange system as appropriate, any documentation or information as may be necessary to enforce subsections (a)(i)(B)–(D) and (c) of this section as expeditiously as possible."[1]

On December 22, 2023, the Department of Treasury's Office of Foreign Assets Control (OFAC) issued a determination defining the scope of E.O. 14114 as it relates to Russian Seafood. This determination authorized CBP's collection of additional data elements required to enforce the E.O.[2]

The E.O. prohibits the importation and entry into the United States, including importation for admission into a U.S. foreign trade zone, of salmon, cod, pollock, or crab that was produced wholly or in part in the Russian Federation or harvested in waters under the jurisdiction of the Russian Federation or by Russia-flagged vessels,

[1] *https://www.federalregister.gov/documents/2023/12/26/2023–28662/taking-additional-steps-with-respect-to-the-russian-federations-harmful-activities.*

[2] *https://ofac.treasury.gov/faqs/1156#:-: text=The%20Seafood%20Determination%20prohibits%20the,product%20in%20a%20third%20country.*

even if such salmon, cod, pollock, or crab has been incorporated or substantially transformed into another product outside of the Russian Federation.

On February 8, 2024, the Department of Treasury's Office of Foreign Assets Control (OFAC) issued a determination defining the scope of E.O. 14114 as it relates to Russian Diamonds and Diamond Jewelry. The determination took effect on March 1, 2024.

The E.O. prohibits importation of these products if they were mined, extracted, produced, or manufactured wholly or in part in the Russian Federation regardless of whether such products have been incorporated or substantially transformed into another product with a country of origin that is not the Russian Federation.

These determinations authorize CBP's collection of additional data elements required to enforce the E.O.[3]

CBP determined the following data elements required are:

(1) *Seafood:*

a. Country of Harvest—of the product, including the country of harvest of any ingredient or component that was incorporated or substantially transformed into the final product.

b. Vessel Name—that harvested the product, including the name of the vessel that harvested any ingredient or component that was incorporated or substantially transformed into the final product.

c. Vessel Flag—Country flag the vessel is registered in.

d. Vessel International Maritime Organization (IMO) number—The unique seven-digit vessel number issued to each vessel.

e. Self-Certification Statement—The document the importer providers verifying the imported goods do not contain Russian inputs. The certification for seafood must contain the following language on official importer letterhead and signed by a representative of the importer:

f. Certification Statement—"I certify that any fish, seafood, or preparations thereof in this shipment were not harvested in waters under the jurisdiction of the Russian Federation or by Russia-flagged vessels, notwithstanding whether such product has been incorporated or substantially transformed into another product outside of the Russian Federation."

(2) *Diamonds and Diamond Jewelry:*

a. Country of Mining—Where the diamonds were mined, extracted, produced, or manufactured wholly or in part.

b. Self-Certification Statement—The document the importer providers verifying the imported goods do not contain Russian inputs.

[3] *https://ofac.treasury.gov/faqs/added/2024–02–23.*

The certification for seafood must contain the following language on official importer letterhead and be signed by a representative of the importer:

c. Certification Statement—

i. For non-industrial diamonds: I certify that the non-industrial diamonds in this shipment were not mined, extracted, produced, or manufactured wholly or in part in the Russian Federation, or exported from the Russian Federation, notwithstanding whether such products have been substantially transformed into other products outside of the Russian Federation.

ii. For diamond jewelry and unsorted diamonds: I certify that the diamond jewelry and unsorted diamonds in this shipment were not mined, extracted, produced, or manufactured wholly or in part in the Russian Federation, or exported from the Russian Federation, notwithstanding whether such products have been substantially transformed into other products outside of the Russian Federation.

These new data elements will be added to the CBP Form 3461 Entry/Immediate Delivery and CBP Form 3461 ALT for submission to Ace Cargo Release.

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 enable 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.

Type of Information Collection: Paper Only Form 3461.

Estimated Number of Respondents: 28.

Estimated Number of Annual Responses per Respondent: 3.

Estimated Number of Total Annual Responses: 84.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 7 hours.

Type of Information Collection: Ace Cargo Release: Electronic Form 3461, 3461ALT.

Estimated Number of Respondents: 549.

Estimated Number of Annual Responses per Respondent: 274.

Estimated Number of Total Annual Responses: 150,426.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 12,536.

Dated: August 21, 2024.

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

U.S. Court of International Trade

Slip Op. 24–98

HYAXIOM, INC., F/K/A DOOSAN FUEL CELL AMERICA, INC., Plaintiff, v. UNITED STATES, Defendant.

Before: Timothy C. Stanceu, Judge
Court No. 21–00057

[Denying each party's motion for summary judgment in action brought to contest the government's tariff classification of imported "PC50 supermodules"]

Dated: August 28, 2024

Christopher M. Loveland, Sheppard, Mullin, Richter & Hampton LLP., of Washington, D.C., for plaintiff. With him on the briefs were *J. Scott Maberry*, *Lisa C. Mays*, and *Jonathan Wang*.

Alexander Vanderweide, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of New York, N.Y., for defendant. With him on the briefs were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director, *Aimee Lee*, Assistant Director, and *Justin R. Miller*, Attorney-In-Charge. Of counsel on the briefs was *Michael A. Anderson*, Office of the Assistant Chief Counsel for International Trade Litigation, U.S. Customs and Border Protection.

OPINION AND ORDER

Stanceu, Judge:

Plaintiff HyAxiom, Inc., formerly known as Doosan Fuel Cell America, Inc. ("HyAxiom"), brought this action to contest the denial of its administrative protest by U.S. Customs and Border Protection ("Customs"). HyAxiom claims that Customs incorrectly determined the tariff classification of its imported merchandise, which it identifies as a "PC50 supermodule," a component of a stationary hydrogen fuel cell generator. Before the court are the parties' cross-motions for summary judgment. Concluding that there remains a genuine dispute as to a fact material to the tariff classification issue presented by this case—specifically, the "principal function" of the imported merchandise—the court denies both summary judgment motions.

I. BACKGROUND

HyAxiom imported two PC50 supermodules on a single entry made on November 2, 2018 at the Port of New York/Newark. Summons (Feb. 12, 2021), ECF No. 1. The entry liquidated by operation of law on November 1, 2019 under a duty-free tariff provision as asserted by HyAxiom and was reliquidated by Customs on January 3, 2020 under

a tariff subheading dutiable at 3% *ad valorem*. HyAxiom filed a protest on April 30, 2020, which Customs denied on August 18, 2020. Plaintiff commenced this action on February 12, 2021, Summons, and filed an amended complaint the next year. First Am. Compl. (Nov. 16, 2022), ECF No. 41.

Plaintiff moved for summary judgment in late 2022. Pl.'s Mot. for Summary J. on Count 1 of First Am. Compl. (Dec. 9, 2022), ECF No. 43 (conf.), 44 (public); Mem. in Support of Pl. HyAxiom, Inc.'s Mot. for Summary J. on Count 1 of the First Am. Compl. (Dec. 9, 2022), ECF No. 43–1 (conf.), 44–1 (public) ("Pl.'s Mem.").

Defendant responded in opposition and cross-moved for summary judgment in March 2023. Defs.' Cross-Mot. for Summary J. and Response in Opp'n to Pl.'s Mot. for Summary J. (Mar. 15, 2023), ECF Nos. 49 (conf.), 50 (public); Defs.' Mem. in Support of their Cross-Mot. for Summary J. and Response in Opp.'n to Pl.'s Mot. for Summary J. (Mar. 15, 2023), ECF Nos. 49 (conf.), 50 (public) ("Def.'s Mem.").

Plaintiff opposed defendant's motion and replied to defendant's opposition. Pl. HyAxiom, Inc.'s Opp'n to Defs.' Cross-Mot. for Summary J. and Reply in Support of its Mot. for Summary J. on Count 1 (May 15, 2023), ECF Nos. 51 (conf.), 52 (public) ("Pl.'s Reply"). Defendant replied to plaintiff's opposition to its cross-motion. Defs.' Reply to Pl.'s Opp'n to Defs.' Cross Mot. for Summary J. (June 20, 2023), ECF No. 55 (conf.), 56 (public) ("Def.'s Reply").

In response to the court's request (Mar. 12, 2024), ECF No. 57, each party filed a supplemental brief addressing two issues identified by the court. Defs.' Suppl. Briefing (Apr. 11, 2024), ECF Nos. 58 (conf.), 59 (public) ("Def.'s Suppl. Br."); Pl. HyAxiom Inc.'s Supplemental Briefing on the Parties' Mot.'s for Summary J. (Apr. 11, 2024), ECF Nos. 60 (conf.), 61 (public) ("Pl.'s Suppl. Br.").

II. DISCUSSION

A. Jurisdiction and Standard of Review

The court exercises jurisdiction according to Section 201 of the Customs Courts Act of 1980, 28 U.S.C. § 1581(a), which grants the court "exclusive jurisdiction of any civil action commenced to contest the denial of a protest, in whole or in part, under section 515" of the Tariff Act of 1930 ("Tariff Act"), *as amended*, 19 U.S.C § 1515.[1] Actions

[1] References to the United States Code and to the Harmonized Tariff Schedule of the United States ("HTSUS") herein are to the 2018 editions. Citations to the Harmonized Tariff Schedule of the United States ("HTSUS") are to the 2018 edition, corresponding to the year in which the entry occurred.

to contest the denial of a protest are adjudicated by the court *de novo*. 28 U.S.C. § 2640(a)(1) ("The Court of International Trade shall make its determinations upon the basis of the record made before the court.").

The court shall grant summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." USCIT R. 56(a). In a tariff classification dispute, summary judgment is appropriate where "there is no genuine dispute as to the nature of the merchandise and the classification determination turns on the proper meaning and scope of the relevant tariff provisions." *Deckers Outdoor Corp. v. United States*, 714 F.3d 1363, 1371 (Fed. Cir. 2013) (citations omitted).

B. Description of the Merchandise

Facts stated herein pertaining to the imported merchandise are taken from the parties' submissions and, except as noted herein, are not in dispute.

Each imported PC50 supermodule ("PC50") was manufactured in Thailand for use by HyAxiom as a component in the manufacturing in the United States of a stationary "hydrogen fuel cell generator," which is "a machine that uses hydrogen as a fuel to produce electricity." Pl.'s Mem. 5. Plaintiff identifies the completed hydrogen fuel cell generator as the "PureCell Model 400 powerplant" ("Model 400"). *Id*. at 2. In addition to electricity, the powerplant produces useable heat. Def.'s Mem. 1.

The PC50, once assembled with other components to form the Model 400, uses methane and steam to produce a hydrogen-rich gas that the powerplant uses as fuel in the production of electricity and heat. The PC50 is itself comprised of several systems of components, as described below.

The "Steam Methane Reformer" ("SMR") within the PC50 performs "steam methane reactions" to generate a hydrogen-rich gas from purified steam and purified methane. Pl.'s R. 56.3 Statement of Material Facts for Which There is No Genuine Issue to be Tried ¶ 29a (Dec. 9, 2022), ECF No. 43–2 (conf.), 44–2 (public) ("Pl.'s R. 56.3 Statement") (citations omitted). The gas output of the Steam Methane Reformer contains hydrogen and carbon monoxide. Pl.'s Reply 10. It also contains steam. Pl.'s Resp. to Def's. R. 56.3 Statement of Undisputed Material Facts ¶ 10 (May 15, 2023), ECF Nos. 51–5 (conf.), 52–5 (public) ("Pl.'s Resp. to Def.'s. R. 56.3 Statement"). Carbon dioxide is present in the Steam Methane Reformer. Pl.'s Reply 10.

The Steam Methane Reformer contains a "burner" to generate heat, which is required for the steam methane reactions to occur. Pl.'s Suppl. Br. 6.

The "Integrated Low Temperature Shift Converter" ("ILS") within the PC50 performs multiple functions. It purifies the natural gas input by removing sulfur compounds before the natural gas input enters the Steam Methane Reformer. *Id*. at 9 (citations omitted). It also performs a process on the gas output of the Steam Methane Reformer that results in a gas that is usable by the "fuel cell stacks" (which are not located on the PC50) of a completed Model 400. Pl.'s R. 56.3 Statement ¶ 45. In this process, the gas output of the Steam Methane Reformer undergoes a water-gas shift reaction, also described as a "Low Temperature Shift Reaction." Def.'s Mem. 7. HyAxiom describes the Steam Methane Reformer and the Integrated Low Temperature Shift Converter as components of a "Fuel Processing System." Pl.'s R. 56.3 Statement ¶ 29b; Pl.'s Resp. to Def.'s R. 56.3 Statement ¶ 5.

The PC50 also contains a Thermal Management System and certain components of a Water Treatment System. Pl.'s Resp. to Def.'s R. 56.3 Statement ¶ 4. In addition, the PC50 includes a frame, wiring and other connections, valves, sensors, and piping. *Id*.

C. Claims of the Parties

Plaintiff claims classification in subheading 8405.10.00, Harmonized Tariff Schedule of the United States ("HTSUS") ("Producer or water gas generators, with or without their purifiers; acetylene gas generators and similar water process gas generators, with or without their purifiers; parts thereof: Producer gas or water gas generators, with or without their purifiers; acetylene gas generators and similar water process gas generators, with or without their purifiers"), free of duty. Pl.'s Mem. 1.

Defendant argues that the classification determined by Customs upon reliquidation, subheading 8503.00.95, HTSUS ("Parts suitable for use solely or principally with the machines of heading 8501 or 8502: Other: Other") dutiable at 3% *ad valorem*, is correct. Def.'s Mem. 2.

D. Tariff Classification under the General Rules of Interpretation of the HTSUS

Tariff classification under the HTSUS is determined according to the General Rules of Interpretation ("GRIs") and, if applicable, the Additional U.S. Rules of Interpretation, both of which are contained in the statutory text of the HTSUS. The GRIs are applied in numerical order, with GRI 1 providing that "for legal purposes, classification

shall be determined according to the terms of the headings and any relative section or chapter notes." GRI 1, HTSUS. GRIs 2 through 5 apply "provided such headings or notes do not otherwise require." *Id*. After determining the correct four-digit heading, the court determines the correct subheading by applying GRI 6, HTSUS (directing determination of the subheading "according to the terms of those subheadings and any related subheading notes and, mutatis mutandis, to the above rules" [GRIs 1 through 5]).

E. Judicial Review in Tariff Classification Disputes

In adjudicating a tariff classification dispute, the court considers whether "the government's classification is correct, both independently and in comparison with the importer's alternative." *Jarvis Clark Co. v. United States*, 733 F.2d 873, 878 (Fed. Cir. 1984) ("*Jarvis Clark*"). The plaintiff has the burden of showing that the government's classification of the subject merchandise was incorrect. *Id.* at 876. Subject to the plaintiff's rebuttal, factual determinations by Customs are presumed correct, *see* 28 U.S.C. § 2639(a)(1), but the presumption of correctness applies to issues of fact and not questions of law, *Goodman Mfg. L.P. v. United States,* 69 F.3d 505, 508 (Fed. Cir. 1995). If the plaintiff satisfies its burden of demonstrating that the government's classification was incorrect, the court must ascertain "the *correct* result, by whatever procedure is best suited to the case at hand." *Jarvis Clark*, 733 F.2d at 878 (footnote omitted).

In determining the correct classification, the court undertakes a two-step analysis. *Faus Grp., Inc. v. United States,* 581 F.3d 1369, 1371 (Fed. Cir. 2009). "The first step addresses the proper meaning of the relevant tariff provisions, which is a question of law. The second step involves determining whether the merchandise at issue falls within a particular tariff provision as construed, which, when disputed, is a question of fact." *Id*. at 1371–72 (citing *Orlando Food Corp. v. United States*, 140 F.3d 1437, 1439 (Fed. Cir. 1998)).

"Absent contrary legislative intent, HTSUS terms are to be construed according to their common and commercial meanings." *La Crosse Tech., Ltd. v. United States*, 723 F.3d 1353, 1358 (Fed. Cir. 2013) (quoting *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1379 (Fed. Cir. 1999)). When interpreting tariff terms in the HTSUS, the court "may consult lexicographic and scientific authorities, dictionaries, and other reliable information sources." *Carl Zeiss*, 195 F.3d at 1379 (citing *Baxter Healthcare Corp. of P.R. v. United States*, 182 F.3d 1333, 1337 (Fed. Cir. 1999)).

Pursuant to the "Harmonized System Convention," to which the United States is a signatory, the HTSUS is organized according to

rules and nomenclature of the Harmonized Commodity Description and Coding System ("Harmonized System" or "HS") developed and maintained by the World Customs Organization. In interpreting the HTSUS, the court consults, in addition to other "reliable information sources," *id*., the World Customs Organization's "Explanatory Notes" ("ENs"). Although not legally binding, the Explanatory Notes "are generally indicative of the proper interpretation of a tariff provision." *Degussa Corp. v. United States*, 508 F.3d 1044, 1047 (Fed. Cir. 2007) (citing *Motorola, Inc. v. United States*, 436 F.3d 1357, 1361 (Fed. Cir. 2006)). In particular, the Explanatory Notes are informative as to the intent of the drafters of the Harmonized System where, as in this case, the dispute involves a legal determination of the scope of the competing headings as determined under the GRIs and the pertinent section notes.

F. Consideration of the Terms of the Competing Headings, and the Relative Section Notes, according to GRI 1

Applying GRI 1, HTSUS, the court first considers the terms of the headings and any relative section and chapter notes. The candidate headings of the HTSUS identified by the parties, with the respective article descriptions, are as follows:

Heading 8405, HTSUS:	Producer gas or water gas generators, with or without their purifiers; acetylene gas generators and similar water process gas generators, with or without their purifiers; parts thereof
Heading 8503, HTSUS:	Parts suitable for use solely or principally with the machines of heading 8501 or 8502

The parties have not advocated, and the court has not identified, any other candidate headings.

As is relevant to the court's consideration of heading 8503, heading 8501 carries the article description "[e]lectric motors and generators (excluding generating sets)," and heading 8502 has the article description "[e]lectric generating sets and rotary converters." The parties agree that the PC50 is a specially-designed component part of the Model 400, a "hydrogen fuel cell generator" that is a generator of electrical power. Defs.' Resp. to Pl.'s R. 56.3 Statement of Material Facts for Which There is No Genuine Issue to be Tried ¶¶ 4, 6 (Mar. 15, 2023), ECF Nos. 49–1 (conf.), 50–1 (public) ("Def.'s Resp. to Pl.'s R. 56.3 Statement"). It is, therefore, a part "suitable for use solely" with

the Model 400, which when assembled to incorporate the PC50 would be classified under heading 8501 or 8502.

The headings under consideration, 8405 and 8503, appear in different, successive chapters of the HTSUS: chapter 84 (which includes, *inter alia*, "machinery and mechanical appliances") and chapter 85 (which includes, *inter alia*, "electrical machinery and equipment and parts thereof"). Both chapters are within section XVI of the HTSUS ("Machinery and mechanical appliances; electrical equipment; parts thereof . . .").

Note 2 to section XVI is relevant generally to the classification of a mechanical or electrical good that is a part of a machine. As it pertains to the issue presented here, the note provides as follows:

> Subject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines . . . 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 heading[ ] . . . 8503* . . .) 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 . . . 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.

Note 2 to section XVI, HTSUS (emphasis added). Note 1 to section XVI, note 1 to chapter 84, and note 1 to chapter 85, HTSUS, list various categories of goods that are excluded from section XVI, chapter 84, and chapter 85, respectively. Because the PC50 does not fall within any of those specified categories, these exclusions are not relevant to the court's inquiry; note 2 to section XVI, HTSUS, therefore, applies to the GRI 1 classification issue presented by this case. Because the PC50 is a part of a Model 400 generator, it is a good "included in" heading 8503 (a "parts" heading). Therefore, by operation of note 2 to section XVI, the government's classification position can prevail only if the PC50 is not a good that is "included in" heading 8405, such that the correct heading would be determined according to subparagraph (b), rather than subparagraph (a), of note 2 to section XVI, HTSUS. In that instance, the result would be classification of the PC50 under heading 8503, HTSUS, which specifically is identified in subparagraph (b).

Although agreeing that the PC50 is a part of a Model 400, the parties disagree on whether the PC50 is a good that is "included in" heading 8405, HTSUS. In approaching that issue, the court is re-

quired by GRI 1 to consider not only the terms of heading 8405 but also any other "relative" section notes. In addition to note 2, the court must decide the issue of whether notes 3 and 5 to section XVI, HTSUS, in particular, are relative, i.e., pertinent to the classification issue presented. Because the parties did not address this issue in their respective summary judgment motions, the court requested supplemental briefing in its letter to the parties (Mar. 12, 2024), ECF No. 57. The parties' supplemental briefs informed the court that the parties disagree as to whether notes 3 and 5 to section XVI are pertinent to this dispute.

Note 3 to section XVI applies a "principal function" analysis to the classification of certain machines, as follows:

> Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

Note 3 to sec. XVI, HTSUS. *See also* EN to HS sec. XVI ("In general, multi-function machines are classified according to the principal function of the machine.").

HyAxiom argues that note 3 to section XVI, HTSUS applies to the issue presented by this case and requires classification according to the principal function of the PC50. Pl.'s Suppl. Br. 2—4. Disagreeing, defendant maintains that note 3, according to its express terms, does not apply where "the context otherwise requires" and submits that the context "otherwise requires" in this case. Def.'s Suppl. Br. 3—4. Defendant argues that "[i]mportantly, Note 2 expressly states that it is subject only 'to note 1 to [Section XVI], note 1 to chapter 84 and to note 1 to chapter 85'" and that "Note 2 is, therefore, not subject to Note 3 or any of the other remaining section and chapter notes." *Id*. 3. Defendant adds that "[i]n other words, Notes 2 and 3 are mutually exclusive of one another." *Id*. Under defendant's interpretation of the notes to section XVI, HTSUS, the court would be required to ignore not only note 3 but also note 5 to that section, which defines the term "machine" for purposes of those notes (and which, as noted *infra*, defendant itself cites in support of its position).

1. A "Principal Function" Analysis is Required for Determining the Correct Heading for Classification of the PC50

The court rejects defendant's position that the court may, or must, ignore notes 3 and 5 to section XVI, HTSUS. Defendant mischaracterizes the introductory language to note 2 by which the note is made "[s]ubject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85 . . . ." While defendant insists that "[n]ote 2 *expressly* states that it is subject *only* 'to note 1 to [section XVI], note 1 to chapter 84 and to note 1 to chapter 85," Def.'s Supp. Br. 3 (emphasis added), neither the word "only," nor other limiting words to that effect, appear in note 2. The introductory phrase to note 2 ("Subject to . . .") does not signify that the notes to section XVI that follow note 2—notes 3 and 5 in particular—are not "relative" section notes within the meaning of GRI 1.

Defendant argues, additionally, that a "principal function analysis would interfere with Note 2's order of operations" and that "[c]onsequently, because the PC50 is a part that is subject to Note 2, then in accordance with GRI 1, and as 'context otherwise requires,' Note 3 does not apply." *Id*. at 4. In defendant's view, the PC50 is a "part" of the Model 400 that cannot function except as a part of the Model 400, which is "a machine 'cited in the headings of chapter 84 or 85' (HTSUS heading 8501), as Note 5 provides." *Id*. at 4—5. Defendant is correct that the PC50 is a "part" and the Model 400 is a "machine." But as the court explains below, the PC50, according to the uncontested facts, is *also* a "machine" as that term is defined by note 5 to section XVI, HTSUS. Defendant's argument impliedly presumes that a "part" of a machine cannot also be a "machine," as defined in note 5, for purposes of applying note 3. But notes 2, 3, and 5 to section XVI, HTSUS, when read together, are to the contrary.

Notes 2 and 3 to section XVI, HTSUS are written such that a "machine" *can* be a part of another machine. In stating that "*[p]arts* which are *goods* included in any of the headings of chapter 84 or 85 . . . are in all cases to be classified in their respective headings," note 2 to sec. XVI, HTSUS (emphasis added), note 2 uses the broad term "goods" in referring to the headings of chapter 84 and 85, which describe, variously, both machines and parts of machines. For purposes of the notes to section XVI, note 5 to the section broadly defines the term "machine" as "any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of chapter 84 or 85." It is undisputed that the PC50, however classified, is, as a factual matter, a "part" suitable for use solely with the machines of heading 8501 or 8502. It is, therefore, "cited in" heading 8503, HTSUS. If

nothing else, the PC50 undisputably is "machinery," "equipment," or an "apparatus" cited in heading 8503. It must be regarded, therefore, as a "machine" that falls within the broad definition of note 5 to section XVI, HTSUS. This is not to suggest that *any* part of a machine, however simple in structure, necessarily is a "machine" for purposes of the notes to section XVI and note 5 in particular: that would be an unreasonably, and in this case unnecessarily, expansive interpretation of the note 5 definition. But it is to conclude that the terms note 5 uses to define "machine"—including "machinery," "equipment," and "apparatus"—must be read to describe a complex assembly of parts and components that are designed and configured to perform one or more defined functions. As the uncontested facts demonstrate, such are the structure and functions of the PC50 supermodule.

Not only is the PC50 a "machine" within the meaning of that term as used in note 5 to section XVI, HTSUS, but also, it is described by the terms of note 3 to that section. Whether or not the PC50 is considered to be a "composite machine," the uncontested facts demonstrate that it answers to the description "machines designed for the purpose of performing two or more complementary or alternative functions." Note 3 to sec. XVI, HTSUS.

In summary, GRI 1 requires the court to give effect to notes 2, 3, and 5 to section XVI, HTSUS, which direct the court to determine the appropriate heading for the PC50 according to a principal function analysis. Therefore, the court next considers the scope of heading 8405, HTSUS and whether an identification of principal function allows classification of the PC50 under that heading.

2. Types of Gases Produced by the Gas Generators of Heading 8405, HTSUS

The article description for heading 8405, HTSUS, which is identical to the article description for HS heading 84.05, includes: "Producer gas or water gas generators, with or without their purifiers; acetylene gas generators and similar water process gas generators, with or without their purifiers." Heading 8405, HTSUS.

The parties agree that the "Fuel Processing System" of the PC50 includes the Steam Methane Reformer ("SMR") and the Integrated Low Temperature Shift Converter ("ILS"). Pl.'s Resp. to Def.'s 56.3 Statement ¶ 5. While the parties agree that the SMR generates a gas and that this gas is further processed into another gas by the ILS for use in the fuel cell stacks of the Model 400, they do not agree as to whether any gas generated by the PC50 is a "water gas" within the meaning of that term as used in heading 8405, HTSUS.

Referring to the finished gas that is provided to the fuel cell stacks, defendant states as an uncontested fact that "the SMR, in combination with the ILS, generates a syngas or synthesis gas through catalytic steam reformation that is not water gas." Def.'s Resp. to Pl.'s R. 56.3 Statement ¶ 29. Defendant would limit the term "water gas" to "a mixture of hydrogen and carbon monoxide produced by passing air and steam over burning fuel." Def.'s Mem. 25. Defendant posits that neither gas produced by the PC50 is a water gas. Def.'s Suppl. Br. 6—7 (arguing that "neither the PC50 in an operational Model 400, nor any of the PC50's constituent components, generate a water gas, let alone generate a water gas in the manner described by the 84.05 EN."). Asserting that "neither the SMR alone nor the PC50 as a whole generate[s] a water gas," defendant states that neither "produce[s] just hydrogen and carbon monoxide by passing air and steam over burning solid fuel in an incomplete exothermic combustion process" and that they do not "burn any fuel at all." Def.'s Repl. To Pl.'s Mem. 7—8. Thus, defendant's classification position is that the PC50 does not generate a water gas or any other gas identified in the article description for heading 8503, HTSUS and, therefore, cannot be classified under that heading.

Disagreeing with defendant, HyAxiom asserts that the Fuel Processing System produces a "water gas." Pl.'s R. 56.3 Statement ¶ 46 ("The gas generated by the FPS is water gas—*i.e.*, a mixture of hydrogen and carbon monoxide having a higher heating power (~80%) than producer gas (~15%)."). *Id*. Plaintiff asserts, further, that "the SMR contains a . . . burner to generate heat, which is required for the primary water gas reaction to occur and tubes . . . to generate water gas." Pl.'s Suppl. Br. 6. Regarding the reference to the "primary" gas reaction, HyAxiom states that a further processing step (i.e, the water-gas shift reaction) occurs in the Integrated Low Temperature Shift Converter (ILS) before the gas generated by the Steam Methane Reformer is provided to fuel cell stacks. *Id*. at 9 ("The water gas shift reaction of the ILS does not eliminate all water gas from the gaseous mixture generated by the SMR . . ."). Pl.'s R. 56.3 Statement ¶ 45 (citations omitted)). Plaintiff argues that "[i]nstead, as its name implies, the water gas shift reaction adjusts or 'shifts' the ratio of hydrogen and carbon monoxide in the water gas to generate a more hydrogen-rich, purified fuel gas for use in the fuel cell stacks of the completed PureCell® Model 400 powerplant." *Id*. (citations omitted).

The court next considers the following terms within the article description for heading 8405, HTSUS: "Producer or water gas generators" and "acetylene gas generators and similar water process gas generators."

The Explanatory Note ("EN") for HS heading 84.05 describes "producer gas generators" as "usually" consisting "of a closed cylinder, generally fitted with a refractory lining or a water-cooled double wall enclosing a grate . . . with provision for passing a current of air (or of air and steam) by suction or blowing." EN 84.05(A). The Explanatory Note further states that "[a] thick bed of fuel is burned on the grate and the flow of air and steam is regulated so that combustion is incomplete. The decomposition of the water and the incomplete combustion of the fuel yield carbon monoxide and hydrogen." *Id*. The EN states, also, that "[t]he resultant mixture of carbon monoxide, hydrogen and nitrogen (producer gas) is drawn off at the top of the apparatus." *Id*.

Common definitions of "producer gas" indicate that it is a gas used as fuel, i.e., a "fuel gas." *See* "Producer Gas" (n.) *Oxford English Dictionary Online* (Aug. 2024), *available at* https://www.oed.com/search/dictionary/?scope=Entries&q=producer+gas (last visited Aug. 28, 2024) ("Gas produced by a producer . . . used as a low-grade but inexpensive fuel and consisting chiefly of nitrogen and carbon monoxide with smaller amounts of hydrogen and carbon dioxide."); "Producer Gas" (n.) *Merriam Webster Online* (Aug. 2024), *available at https://www.merriam-webster.com/dictionary/producer%20gas* (last visited Aug. 28, 2024) ("a fuel gas made by circulating air or a mixture of air and steam through a layer of incandescent fuel and consisting chiefly of carbon monoxide, hydrogen, and nitrogen."). The Oxford English Dictionary defines the term "producer," as "[a] furnace for producing fuel gas by passing a current of air and usually steam through hot solid fuel so that incomplete combustion occurs." "Producer" *Oxford English Dictionary Online* (Aug. 2024) *available at* https://www.oed.com/dictionary/producer_n?tab=meaning_and_use#111137424 (last visited Aug. 28, 2024).

EN 84.05 describes "water gas generators" as "of similar construction" to producer gas generators "but are arranged so that air and a spray of water or steam are blown in alternate phases into the apparatus. The gas resulting from the water phase is a mixture of hydrogen and carbon monoxide (water gas) having a higher heating power than producer gas. It may be collected separately from the producer gas obtained during the air phase or the two gases may be mixed." EN 84.05(B).

Common definitions of the term "water gas," like the discussion in EN 84.05, indicate close similarities with producer gas. "Water Gas" (n.), *Oxford English Dictionary Online* (Aug. 2024), *available at* https://www.oed.com/search/dictionary/?scope=Entries&q=water+gas (last visited Aug. 28, 2024) ("A gas consisting mainly of carbon

monoxide and hydrogen, produced by passing steam over hot carbon (e.g. coke or anthracite."); *see also* "Water Gas" (n.) *Merriam Webster Online* (Aug. 2024) *available at* https://www.merriam-webster.com/dictionary/water%20gas (last visited Aug. 28, 2024) ("A poisonous flammable gaseous mixture that consists chiefly of carbon monoxide and hydrogen with small amounts of methane, carbon dioxide, and nitrogen, is usually made by blowing air and then steam over red-hot coke or coal, and is used as a fuel or after carbureting as an illuminant.").

The court cannot conclude from EN 84.05 or from the various dictionary definitions that the Steam Methane Reformer produces a gas that necessarily is described by the term "producer gas" or the term "water gas."[2] While the gas from the Steam Methane Reformer contains carbon monoxide and hydrogen, it is not made by the process described in EN 84.05 or the common definitions of "producer gas" or "water gas" but instead results from a steam reformation process conducted upon methane. Steam reformation is distinguishable from the process described in common definitions for the generation of water gas.[3]

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[2] HyAxiom points out that defendant admitted in its response to one of its interrogatories that "'[t]he steam methane reformer in the FPS [the "Fuel Processing System" within the PC50] produces the chemical reactions to convert steam and natural gas into a water gas.'" Mem. in Support of Pl. HyAxiom, Inc.'s Mot. for Summary J. on Count 1 of the First Am. Compl. 11 (Dec. 9, 2022), ECF No. 43 (quoting Defs.' Resp. to Pl.'s First Set of Interrogatories, Ex. C.3 to Pl.'s Mot. for S.J. at Interrogatory 1.). According to HyAxiom, this admission is sufficient to establish that the Steam Methane Reformer produces "water gas" and requires classification of the PC50 in heading 8405, HTSUS. The court does not treat defendant's response to the interrogatory as a factual admission that the gas generated by the Steam Methane Reformer is a water gas. Defendant concedes that the Steam Methane Reformer generates a gas, the composition of which is not in dispute, and the issue of whether that gas is a water gas turns on the meaning of the term "water gas" as used in heading 8405, HTSUS, which is an issue of law for the court to decide, not a question of fact.

[3] The following excerpt from the Oxford Dictionary of Chemistry, in defining "water gas," draws a clear distinction between the production of a water gas and a steam reformation process:

> Water gas
>
> A mixture of carbon monoxide and hydrogen produced by passing steam over hot carbon (coke): $H_2O(g)+C(s)\rightarrow CO(g)+H_2(g)$. The reaction is strongly endothermic but the reaction can be used in conjunction with that for producer gas for making fuel gas. The main use of water gas before World War II was in producing hydrogen for the Haber process . . . *Most hydrogen for the Haber process is now made from natural gas by steam reforming*.
>
> "Water Gas" *Oxford Dictionary of Chemistry, 8 ed., Online* (Aug. 2024) (emphasis added) *available at https://www.oxfordreference.com/display/10.1093/acref/9780198841227.001.0001/acref-9780198841227-e4307?rskey=mo9aBV&result=2* (last visited Aug. 28, 2024).
>
> The reference to "Haber process" refers to a process for producing ammonia. "Haber Process" *Oxford Dictionary of Chemistry, 8 ed., Online* (Aug. 2024) *available at https://www.oxfordreference.com/display/10.1093/acref/9780198841227.001.0001/acref-9780198841227-e-1968* (last visited Aug. 28, 2024).

The gas produced by the Integrated Low Temperature Shift Converter is even less similar to a water gas as commonly defined, as it has undergone not only the previously-described steam reformation process but also a water-gas shift reaction, which is recognized as converting a mixture of carbon monoxide and water to carbon dioxide and hydrogen: "The water-gas shift reaction [WGSR] describes the reaction of carbon monoxide and water vapor (steam) at very high temperatures to form carbon dioxide and hydrogen." Kathryn Haas, *14.4.2: Water-Gas Shift Reaction*, Chemistry LibreTexts (Nov. 8, 2020), available at https://chem.libretexts.org/Bookshelves/Inorganic_Chemistry/Inorganic_Chemistry_(LibreTexts)/14%3A_Organometallic_Reactions_and_Catalysis/14.04%3A_Heterogeneous_Catalysts/14.4.02%3A_Water-Gas_Shift_Reaction (last visited Aug. 28, 2024).

That the gas, or gases, produced by the PC50 differ from a commonly-defined "producer gas" or "water gas" does not end the court's inquiry. The article description for heading 8405, HTSUS also contains the term "acetylene gas generators and similar water process gas generators." EN 84.05 describes acetylene gas generators as using one of three processes involving calcium carbide and water.[4] The Explanatory Note also gives guidance on what is meant by the term "*similar* water process gas generators": "These include **oxygen generators** (e.g. those used in submarines) and **ethylene generators** (e.g., those based on the action of water on certain chemicals)." EN 84.05(D) (emphasis added). The court is unable to find a dictionary definition of a "water process gas generator," but EN 84.05 provides two indications of the intended meaning of the term. First, it describes, as an example of a gas generator within the scope of the heading, ethylene generators that are "based on the action of water on certain chemicals." EN 84.05(D). The gas generation processes of the PC50 involve the action of water upon other chemicals. The "steam" reformation process relies on steam, i.e., water vapor, and methane. Pl.'s R. 56.3 Statement ¶ 29a. The water-gas shift reaction also involves steam. Pl.'s Reply 11 ("Subsequently, in the water gas shift reaction, the resulting steam and carbon monoxide are reacted using a catalyst to produce carbon dioxide and more hydrogen.") (citation omitted). Second, the widely varying types of generators given by EN 84.05 as examples (i.e., generators of acetylene gas,

[4] EN 84.05(C) describes "acetylene water process gas generators" as follows:

> These are generally of simple construction, consisting of a water-sealed gas reservoir, the movement of which, as it is charged and discharged, automatically controls the gas-generating device. These are of three types of generating devices:
>
> (1) Producing intermittent immersion of the mass of calcium chloride in the water.
>
> (2) Providing for the gradual addition of carbide to water.
>
> (3) Causing water to be dripped on to the carbide.

oxygen, or ethylene) indicate that the heading includes generators of an extraordinarily wide category of gases. Acetylene is commonly used with oxygen in welding apparatus, *see*, *e.g.*,"acetylene" Britannica.com (Aug. 2024) *available at https://www.britannica.com/science/acetylene* (last visited Aug. 28, 2024). Ethylene can be used to ripen fruit, *see, e.g.*,"ethylene" Britannica.com (Aug. 2024) *available at* https://www.britannica.com/science/ethylene (last visited Aug. 28, 2024). Oxygen, of course, has uses too universally numerous to be summarized here.

The following discussion in EN 84.05 further illustrates the intended breadth of the scope of HS heading 84.05 in encompassing practically any type of gas generator:

> This heading covers self-contained apparatus and plant for generating *any kind of gas* (e.g., producer gas, water gas and mixtures thereof, or acetylene) *whatever the intended use of the gas produced* (lighting, industrial heating, feeding gas engines, welding or cutting metals, chemical synthesis, etc.).

EN 84.05 (emphasis added). The Explanatory Note mentions various gas generators that fall within the scope of the heading, i.e., producer gas generators, water gas generators, generators of mixtures of producer gas and water gas, acetylene gas generators, oxygen gas generators, and ethylene generators. *Id*. By presenting these types of gas generators as examples, rather than an exhaustive list, the Explanatory Note instructs that the scope of the heading is to be interpreted in an extraordinarily broad way, with certain exceptions, not applicable here, for machines that fall within other headings of the HS nomenclature.[5]

Defendant argues that the reference in EN 84.05 to "any kind of gas" must be interpreted as limited to the examples cited therein. Def.'s Suppl. Br. 8 ("Ultimately, the 84.05 EN hews to the tariff terms themselves: generators of producer and water gas, mixtures of such, and acetylene and other water process gas generators."). Defendant

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[5] Excluded from HS heading 84.05 are the following goods:

(a) Free-piston generators for gas turbines (**heading 84.14** [air or other gas compressors]).

(b) Coke ovens (e.g., town gas generators) (heading **84.17** [non-electric furnaces and ovens]).

(c) Ozone generating and diffusing apparatus, electric, designed for non-therapeutic purposes (e.g., for industrial uses, for the ozonisation of premises) and electrolytic gas generators for the generation of, e.g., nitrogen dioxide, hydrogen sulphide or prussic acid (**heading 85.43** [electrical machines not elsewhere specified]) and ozonotherapy apparatus (**heading 90.19** [therapeutic apparatus of various types]).

Explanatory Note ("EN") 84.05.

argues, further, that "[i]t is well-settled that the Explanatory Notes may not expand, contradict, or limit otherwise unambiguous tariff terms, and therefore, the scope of the heading." *Id*. (citing *Airflow Tech., Inc. v. United States*, 524 F.3d 1287, 1293 (Fed. Cir. 2008); *Rubie's Costume Co. v. United States*, 337 F.3d 1350, 1359 (Fed. Cir. 2003)). Defendant concludes from this argument that "neither the PC50, nor any component of the Model 400, can be described by the terms of HTSUS heading 8405 or the 84.05 EN." *Id.* Defendant's argument is flawed in two respects. First, defendant would have the court, when interpreting EN 84.05, ignore the plain meaning of the references to "any kind of gas" that is "for any intended use," and also ignore the overall context of this Explanatory Note, which presents various types of gas generators as examples, not as limitations. Second, the heading term "water process gas generator" is not an "unambiguous" tariff term, and the discussion of the term in EN 84.05 indicates that this term also is to be given a broad meaning. Defendant impliedly would have the court disregard the intended meaning of EN 84.05, but the court declines to interpret the scope of heading 8405, HTSUS, in a way contrary to the intent of the drafters of the Harmonized System as plainly expressed in that Explanatory Note.

Defendant argues, further, that the PC50 does not fall within the scope of heading 8503 because it is not a "self-contained apparatus" as described in EN 85.03 ("This heading covers self-contained apparatus and plant for generating any kind of gas."). Def.'s Mem. 29 ("Furthermore, the PC50 is not closed or a 'self-contained apparatus,' but is inherently open-ended by design so that the balance of the components of the Model 400 can easily connect with the imported PC50 to form a powerplant that ultimately generates and delivers electricity and heat to customers—applications that exceed mere gas generation."). The court is not convinced by this argument. The parties agree that the Fuel Processing System ("FPS") of the PC50 consists of the Steam Methane Reformer ("SMR"), the function of which is to generate a gas, and the Integrated Low Temperature Shift Converter ("ILS"), the function of which is to generate a derivative and further processed gas. Defendant acknowledges that "[l]ike the SMR, the ILS is an integral component of the FPS, that in tandem with the SMR, also generates, via a Water Gas Shift Reaction (WGSR), the hydrogen-rich fuel for the FCS [fuel cell stacks] in a functioning powerplant." Def.'s Mem. 35. According to the uncontested facts, these components of the PC50 together impart to the Model 400 the capability of converting natural gas to the input gas required for the fuel cell stacks.

In summary, as defendant emphasizes, the uncontested facts demonstrate that the PC50 is fully operational, and therefore generates gases, only when incorporated into the Model 400 and when connected to a natural gas supply, but these facts alone do not establish that the PC50 is other than a gas generator of heading 8405, even if considered to be "incomplete." *See* GRI 2; EN to HS Section XVI ("Throughout the Section any reference to a machine or apparatus covers not only the complete machine, but also an incomplete machine (i.e., an assembly of parts so far advanced that it already has the main essential features of the complete machine.")).

From the uncontested facts, the court concludes that the PC50 is designed and configured to generate two types of gases that are not necessarily described as "producer gases" or "water gases" but that do not result in the exclusion of the PC50 from the scope heading 8405, HTSUS. Further to GRI 2 and the guidance in the Explanatory Note to HS Section XVI, the court also concludes that the PC50 is not excluded from heading 8405 by the fact that it is not fully functional until incorporated into an assembled Model 400 and connected to a natural gas supply.

3. Disagreement of the Parties as to the "Principal Function" of the PC50

The parties agree that the PC50 is designed and configured for gas generation; specifically, they agree that the Steam Methane Reformer and the Integrated Low Temperature Shift Converter function together to generate the hydrogen-enriched gas that is required by the fuel cell stacks of the Model 400. *See*, *e.g.*, Def.'s Resp. to Pl.'s 56.3 Statement ¶ 29 (noting "that the SMR, in combination with the ILS, generates a syngas or synthesis gas through catalytic steam reformation . . ."). The issue the court next must consider, then, is whether this gas generation function is the "principal function" of the PC50.

If the gas generating function is the principal function of the PC50, then the uncontested facts would demonstrate that the PC50 is a "machine" that, when incorporated into a Model 400, performs a function that is performed by the "gas generators" of heading 8405, HTSUS. But in their cross motions, the parties do not agree as to the identification of a principal function that the PC50 is designed and configured to perform as a component part of a Model 400 powerplant.

Plaintiff bases its classification position on the assertion that the "principal function" of the PC50 is the generation of a water gas. Pl.'s Suppl. Br. 5—7. Characterizing the gas produced by the Steam Methane Reformer as a "water gas," plaintiff argues that heading 8405,

HTSUS is the correct heading for classification of the PC50. *Id*. at 7 ("The heading describes the exact function of the PC50 supermodule."). (citation omitted).

Defendant, taking the position that a "principal function" analysis is inapplicable, offers no argument in its supplemental brief as to what it considers to be the principal function of the PC50. Instead, defendant seeks summary judgment on the ground that the PC50 is excluded from heading 8405, HTSUS because it produces neither a water gas nor any other gas mentioned in the article description for heading 8405 or EN 84.05. Def.'s Suppl. Br. 6—8. The court is not persuaded by the arguments advanced to support the summary judgment motion of either party.

Plaintiff's classification position is unconvincing because, as the court has discussed, the PC50 does not produce a gas conforming to common definitions of the term "water gas," as that term is used in the article description for heading 8405, HTSUS. Moreover, HyAxiom approaches the "principal function" issue too narrowly, focusing almost entirely on the function of the Steam Methane Reformer. The latter, while producing a gas plaintiff describes as a water gas, does not produce in finished form the gas required by the fuel cell stacks. Rejecting plaintiff's approach, the court concludes that the terms of heading 8405 and notes 2, 3, and 5 to section XVI, HTSUS require a factual determination of whether the "gas generation" function is the principal function of the PC50, considered on the whole. Narrowly focusing on "water gas," plaintiff has not presented its statement of material facts so as to address that specific issue.

Defendant also puts forth an incorrect classification position. Inconsistently with GRI 1, defendant argues that the court is not permitted to apply a "principal function" analysis to determine the correct heading for the PC50. In so doing, defendant would have the court exclude the PC50 from classification under heading 8405 because, as installed in the Model 400, it "possesses features and functions that substantially exceed water gas generators of HTSUS heading 8405." Def.'s Mem. 19. Defendant also errs in relying on an overly narrow interpretation of the scope of heading 8405, HTSUS that is contrary to the intent the HS drafters expressed in EN 84.05.

While not going so far as to assert that the PC50 has no "principal function," defendant argued that the PC50 has multiple functions that are "important," "vital," or "essential." Pointing specifically to the Thermal Management System, which is located within the PC50, and the Water Treatment System, a portion of which is located on the PC50, defendant argued that "HyAxiom fails to explain why one PC50 function is more important or essential than another. Nor can

it, because the PC50's components and systems are all vital and essential." Def.'s Reply 7. Defendant maintains that "[a]ll are required for the PC50 and the Model 400 to function, and no one component or system is more essential than the other." *Id*. But a machine can be designed to perform an "essential" function that is not necessarily the "principal" function.

Thus far, plaintiff has not established the principal function of the PC50 as an undisputed fact. Nor has defendant established as an undisputed fact that the PC50 has no principal function or that it has a principal function that is other than a function of the machines of heading 8405, HTSUS. Identifying that principal function, or the lack thereof, requires a finding of fact, but the meaning of the term "principal function" as used in note 3 to section XVI, HTSUS is a question of law. In approaching that question of law, the court is guided by the terms of heading 8405, under which the heading includes gas-generating machines whether presented "with or without their purifiers." EN 84.05(B) sheds light on the intended meaning of this phrase:

> For certain uses, particularly for supplying gas engines, producer or water gases must be cleaned of impurities such as dust, tars, sulphurous compounds, etc., and sometimes reheated or cooled. For this purpose, the generators are often fitted with purifiers (comprising perforated cones, coke beds, scrubbers, etc.), coolers, dryers, reheaters, etc. Such purifiers and other auxiliary apparatus are classified with the generators when presented therewith, **provided** they are clearly suitable for use together.

EN 84.05(B) (emphasis added). Thus, the classification issue presented by this case requires determining whether the principal function of the PC50 is, or is not, the gas generation function performed by the machines of heading 8405, HTSUS. Going forward, the court, as necessary, will consider that issue based on the guidance that the overall function of a machine of heading 8405, HTSUS may encompass a function, or functions, that may be considered to be related to (i.e., "auxiliary" to) "gas generation" in the narrow sense. The court concludes that approaching the principal function issue in this way is required by the term "with or without their purifiers" as it appears in the article description for that heading.

III. CONCLUSION AND ORDER

For the reasons stated above, the court rules that plaintiff has not demonstrated in support of its motion for summary judgment that

"the government's classification is incorrect." *Jarvis Clark*, 733 F.2d at 876. The court rules, further, that defendant has not demonstrated in support of its cross motion for summary judgment that the classification determined by Customs upon reliquidation is correct. Therefore, upon consideration of all papers and proceedings had herein, and upon due deliberation, it is hereby

ORDERED that plaintiff's motion for summary judgment (Dec. 9, 2022), ECF Nos. 43, 44 be, and hereby is, denied without prejudice; and it is further

ORDERED that defendant's cross-motion for summary judgment (Mar. 15, 2023), ECF Nos. 49, 50 be, and hereby is, denied without prejudice; and it is further

ORDERED that the parties, within 45 days of issuance of this Opinion and Order, shall consult and submit for the court's consideration a status report or agreed-upon schedule for the completion of this litigation.

Dated: August 28, 2024
New York, New York

/s/ Timothy C. Stanceu
TIMOTHY C. STANCEU JUDGE

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