U.S. Customs and Border Protection

REVOCATION OF ONE RULING LETTER AND 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 revocation of one ruling letter and of revocation of treatment relating to the tariff classification of polyurethane-coated weft knit fabric materials.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning tariff classification of polyurethane-coated weft knit fabric materials 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. 36, on September 11, 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EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 30, 2024.

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), a notice was published in the *Customs Bulletin*, Vol. 58, No. 36, on September 11, 2024, proposing to revoke one ruling letter pertaining to the tariff classification of polyurethane-coated weft knit fabric materials. 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") N307758, dated April 7, 2020, 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 erroneous. 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, covered 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 revoking NY N307758 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H310888, set forth as an attachment to this notice. Addition-

ally, 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*.

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H310888
October 16, 2024
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.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), notice proposing to revoke NY N087996 was published on September 11, 2024, in Volume 58, Number 36, of the *Customs Bulletin*. No comments were received in response to the notice.

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:

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(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

[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.

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.

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 2024 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.

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 MODIFICATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF WOMEN'S PANTS

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 women's 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 modify one ruling letter concerning tariff classification of women's pants (style GTGH-24388) under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before November 30, 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: Parisa 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 obli-

gation 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 women's pants. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N251623, dated April 16, 2014 (Attachment B), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the 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 N251623, CBP classified women's pants (style GTGH-24388) in heading 6104, HTSUS, specifically in subheading 6104.62.2006, HTSUS, which provides for "Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted: Trousers, bib and brace overalls, breeches and shorts: Of cotton: Other." CBP has reviewed NY N251623 and has determined the ruling letter to be in error. It is now CBP's position that women's pants (style GTGH-24388) are properly classified, in heading 6210, HTSUS, specifically in subheading 6210.50.75, HTSUS, which provides for "Garments, made up of fabrics of heading 5602, 5603, 5903,

5906 or 5907: Other women's or girls' garments: Other: Having an outer surface impregnated, coated, covered or laminated with rubber or plastics material which completely obscures the underlying fabric."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N251623 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H325600, 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

N251623

April 16, 2014
CLA-2–61:OT:RR:NC:N3:361
CATEGORY: Classification
TARIFF NO.: 6104.69.2030; 6104.62.2006

MS. KIM O'BYRNE-ROZMAN
JONES JEANSWEAR GROUP INC.
180 RITTENHOUSE CIRCLE
BRISTOL, PA 19007

RE: The tariff classification of women's pants from China

DEAR MS. O'BYRNE-ROZMAN:

In your letter dated March 18, 2014, you requested a tariff classification ruling. Your samples will be returned.

Style JSWK-10872 is a woman's pant constructed from two different fabrics. The center of the front panels are constructed from 100% polyester knit fabric coated with polyurethane. The back panels are constructed from 70% rayon, 27% nylon, and 3% spandex knit fabric. The pull-on pants extend from the waist to the ankles and feature a flat elasticized waistband and hemmed leg openings.

Style GTGH-24388 is a woman's pant constructed from two different fabrics. The front panels are constructed from 100% cotton woven fabric coated with PVC. The back panels are constructed from 78% cotton, 17% nylon, and 5% spandex knit fabric. The pull-on pants feature a wide elasticized waistband with a button closure and a zipper, six belt loops, two faux front pockets at the sides, two patch pockets in the back, and hemmed leg openings. The garment extends from the waist to the ankles.

The applicable subheading for style JSWK-10872 will be 6104.69.2030, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Trousers...knitted or crocheted: Trousers: Of other textile materials: Of artificial fibers: Trousers: Other. The duty rate will be 28.2% ad valorem.

The applicable subheading for style GTGH-24388 will be 6104.62.2006, HTSUS, which provides for women's or girls' trousers, breeches and shorts, knitted or crocheted, of cotton, other, other, trousers and breeches, girls', other, containing 5 percent or more by weight of elastomeric yarn or rubber thread. The duty rate will be 14.9 percent ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the 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 Kimberly Rackett at *kimberly.rackett@cbp.dhs.gov*.

Sincerely,

GWENN KLEIN KIRSCHNER
Acting Director
National Commodity Specialist Division

HQ H325600
OT:RR:CTF:FTM H325600 PJG
CATEGORY: Classification
TARIFF NO.: 6210.50.75

MS. KIM O'BYRNE-ROZMAN
JONES JEANSWEAR GROUP INC.
180 RITTENHOUSE CIRCLE
BRISTOL, PENNSYLVANIA 19007

RE: Modification of NY N251623; Tariff classification of women's pants

DEAR MS. O'BYRNE-ROZMAN:

This is in reference to New York Ruling Letter ("NY") N251623, dated April 16, 2014, issued to you concerning the tariff classification of two styles of women's pants under the Harmonized Tariff Schedule of the United States ("HTSUS"). Specifically, in NY N251623, U.S. Customs and Border Protection ("CBP") classified styles JSWK-10872 and GTGH-24388. This decision concerns only the tariff classification of style GTGH-24388.

In NY N251623, CBP classified style GTGH-24388 in subheading 6104.62.2006, HTSUS Annotated ("HTSUSA"), which provides for "Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted: Trousers, bib and brace overalls, breeches and shorts: Of cotton: Other." We have reviewed NY N251623 and determined it to be in error with respect to the tariff classification of style GTGH-24388. For the reasons set forth below, we are modifying NY N251623.

FACTS:

In NY N251623, the women's pants style GTGH-24388 is described as follows:

> Style GTGH-24388 is a woman's pant constructed from two different fabrics. The front panels are constructed from 100% cotton woven fabric coated with PVC. The back panels are constructed from 78% cotton, 17% nylon, and 5% spandex knit fabric. The pull-on pants feature a wide elasticized waistband with a button closure and a zipper, six belt loops, two faux front pockets at the sides, two patch pockets in the back, and hemmed leg openings. The garment extends from the waist to the ankles.

ISSUE:

Whether the women's pants (style GTGH-24388) are classified under heading 6104, HTSUS, which provides for "Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted," heading 6204, HTSUS, which provides for "Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear)," or under heading 6210, HTSUS, which provides for "Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907."

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:

6104 Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted:

6204 Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear):

6210 Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907:

GRI 2 provides as follows:

(a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), entered unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

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 7 to Section XI, HTSUS, provides as follows:

7. For the purposes of this section, the expression "made up" means:

(a) Cut otherwise than into squares or rectangles;

(b) Produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, tablecloths, scarf squares, blankets);

(c) Cut to size and with at least one heat-sealed edge with a visibly tapered or compressed border and the other edges treated as described in any other subparagraph of this note, but excluding fabrics the cut edges of which have been prevented from unraveling by hot cutting or by other simple means;

(c) Hemmed or with rolled edges, or with a knotted fringe at any of the edges, but excluding fabrics the cut edges of which have been prevented from unraveling by whipping or by other simple means;

(e) Cut to size and having undergone a process of drawn thread work;

(f) Assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded); or

(g) Knitted or crocheted to shape, whether presented as separate items or in the form of a number of items in the length.

Note 2(a)(1) to Chapter 59, HTSUS, provides as follows:

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 or 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;

Note 1 to Chapter 62, HTSUS, states that "[t]his chapter applies only to made up articles of any textile fabric other than wadding, excluding knitted or crocheted articles (other than those of heading 6212)."

Note 6 to Chapter 62, HTSUS, states that "[g]arments which are, *prima facie*, classifiable both in heading 6210 and in other headings of this chapter, excluding heading 6209, are to be classified in heading 6210."

Additional U.S. Note 3 to Chapter 62, HTSUS, provides, in part, as follows:

(a) When used in a subheading of this chapter or immediate superior text thereto, the term 'recreational performance outerwear' means trousers (including, but not limited to, ski or snowboard pants, and ski or snowboard pants intended for sale as parts of ski-suits), coveralls, bib and brace overalls, jackets (including, but not limited to, full zip jackets, ski jackets and ski jackets intended for sale as parts of ski-suits), windbreakers and similar articles (including padded, sleeveless jackets), the foregoing of fabrics of cotton, wool, hemp, bamboo, silk or manmade fibers, or a combination of such fibers; that are either water resistant within the meaning of additional U.S. note 2 to this chapter or treated with plastics,

or both; with critically sealed seams, and with 5 or more of the following features (as further provided herein):

(i) insulated for cold weather protection;

(ii) pockets, at least one of which has a zippered, hook and loop, or other type of closure;

(iii) elastic, draw cord or other means of tightening around the waist or leg hems, including hidden leg sleeves with a means of tightening at the ankle for trousers and tightening around the waist or bottom hem for jackets;

(iv) venting, not including grommet(s);

(v) articulated elbows or knees;

(vi) reinforcement in one of the following areas: the elbows, shoulders, seat, knees, ankles or cuffs;

(vii) weatherproof closure at the waist or front;

(viii) multi-adjustable hood or adjustable collar;

(ix) adjustable powder skirt, inner protective skirt or adjustable inner protective cuff at sleeve hem;

(x) construction at the arm gusset that utilizes fabric, design or patterning to allow radial arm movement; or

(xi) odor control technology

The term 'recreational performance outerwear' does not include occupational outerwear.

(b) For purposes of this note, the following terms have the following meanings:

(i) the term 'treated with plastics' refers to textile fabrics impregnated, coated, covered or laminated with plastics, as described in note 2 to chapter 59.

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

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.

Examples of the latter category of goods are:

(1) Ashtrays consisting of a stand incorporating a removable ash bowl.

(2) Household spice racks consisting of a specially designed frame (usually of wood) and an appropriate number of empty spice jars of suitable shape and size.

As a general rule, the components of these composite goods are put up in a common packing.

* * *

The EN to 61.03(D) sates that the term "'Trousers' means garments which envelop each leg separately, covering the knees and usually reaching down to or below the ankles; these garments usually stop at the waist; the presence of braces does not cause these garments to lose the essential character of trousers."

The EN to 61.04 states, in relevant part, that "[t]he provisions of the Explanatory Note to heading 61.03 apply *mutatis mutandis* to the articles of this heading."

The EN to 62.04 provides as follows:

The provisions of the Explanatory Note to heading 61.04 apply, *mutatis mutandis*, to the articles of this heading.

However, the heading **does not cover** garments made up of fabrics of heading 56.02, 56.03, 59.03, 59.06 or 59.07 (**heading 62.10**).

The subject garment is constructed of two different fabrics, specifically, the front panels are constructed from 100% cotton woven fabric coated with polyvinyl chloride ("PVC")[1] and the back panels are constructed from 78% cotton, 17% nylon and 5% spandex knit fabric. The EN to 61.03(D) defines the term "trousers" to mean "garments which envelop each leg separately, covering the knees and usually reaching down to or below the ankles." In accordance with the EN to 61.04, this definition applies *mutatis mutandis* to the articles of heading 61.04. The subject garments are trousers because they meet the definition provided in the EN to 61.03(D), in particular, they envelop each leg separately and cover the knees and reach the ankles.

Upon review, we find that the 100% cotton woven front panels of the subject trousers are described by heading 6204, which provides, in relevant part, for

[1] Polyvinyl chloride ("PVC") is a plastic that is classified in heading 3904, HTSUS. Note 1 to Chapter 39, HTSUS, provides as follows: "Throughout the tariff schedule the expression "plastics" means those materials of headings 3901 to 3914 which are or have been capable, either at the moment of polymerization or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticizer) by molding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence."

woven women's trousers. The front panels are also coated with PVC. Textile fabrics, impregnated, coated, covered or laminated with plastics, are classified in heading 5903, HTSUS, provided that they meet the requirements of Note 2(a)(1) to Chapter 59, HTSUS, in particular, that the coating on the textile fabric must be visible with the naked eye, with no account taken of any resulting change of color. Upon review of the photographs of the subject trousers, we have concluded that the front panels are visibly coated with PVC, because the coating can be seen with the naked eye. Therefore, we find that the coated portion of the trousers (the front panels) is composed of fabrics of heading 5903, HTSUS, and as such is also provided for in heading 6210, HTSUS, which covers, in relevant part, garments made up of fabrics of heading 5903. The expression "made up" is applicable in this instance because the trousers are assembled by sewing, pursuant to Note 7(f) to Section XI, HTSUS. The back panels of the trousers, constructed from 78% cotton, 17% nylon, and 5% spandex knit fabric, are described by heading 6104, HTSUS, which provides, in relevant part, for women's trousers, knitted or crocheted.

Based on the forgoing, the trousers are classifiable in three different headings, specifically, heading 6104, HTSUS, which provides, in relevant part, for knitted women's trousers, heading 6204, HTSUS, which provides, in relevant part, for woven women's trousers, and heading 6210, HTSUS, which provides, in relevant part, for garments made up of fabrics of heading 5903, HTSUS. Note 6 to Chapter 62, HTSUS, requires that "[g]arments which are, *prima facie*, classifiable both in heading 6210 and in other headings of this chapter, excluding heading 6209, are to be classified in heading 6210." Accordingly, the subject trousers cannot be classified in heading 6204, HTSUS. The trousers are still classifiable in headings 6210, HTSUS, or heading 6104, HTSUS.

GRI 2(b) states in relevant part that "[t]he classification of goods consisting of more than one material or substance shall be according to the principles of rule 3." GRI 3(a) states that, "[w]hen, 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."

Pursuant to GRI 3(b) "[w]hen, by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows: (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable."

EN (IX) to GRI 3(b) states that "composite goods" means goods made up of different components wherein the "components are attached to each other to form a practically inseparable whole" and goods "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 subject trousers are compos-

ite goods because they are made up of a woven front panel and a knit back panel that are attached to each other by sewing and form the whole trousers. The two panels would not normally be offered for sale in separate parts. As composite goods, the trousers must be classified using GRI 3(b).

When considering the classification of apparel made up of both woven and knit fabrics, guidance may be found in HQ Memorandum 084118 (April 13, 1989), which has been cited in numerous CBP rulings, *see e.g.*, HQ W968350, dated September 28, 2007, and states in pertinent part:

> For upper or lower body garments, if one component exceeds 60 percent of the visible surface area, that component will determine the classification of the garment unless the other component:
>
> (1) forms the entire front of the garment; or
>
> (2) provides a visual and significant decorative effect (e.g., a substantial amount of lace); or
>
> (3) is over 50 percent by weight of the garment; or
>
> (4) is valued at more than 10 times the primary component.
>
> If no component comprises 60 percent of the visible surface area, or if any of the above four listed conditions are present, classification will be according to GRI 3(b) or 3(c), as appropriate.
>
> ...
>
> GRI 3(c) should not be used unless it cannot be clearly determined which component gives the garment its essential character.

In this instance, no component exceeds 60 percent of the visible surface area, and the woven fabric constitutes the entire front of the trousers. Accordingly, consistent with the requirements of GRI 3(b) and the guidance in HQ memorandum 084118, we need to first consider whether the essential character of the garment can be identified.

The EN to GRI 3(b) (VIII) provides that when performing an essential character analysis, the factors that should be considered are the bulk, quantity, weight or value, or the role of a constituent material in relation to the use of the goods. There have been several court decisions on "essential character" for purposes of classification under GRI 3(b). *See Conair Corp. v. United States*, 29 C.I.T. 888 (2005); *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1337–1338 (Ct. Int'l Trade 2005); and *Home Depot USA, Inc.*, 427 F. Supp. 2d at 1295–1356. "[E]ssential character is that which is indispensable to the structure, core or condition of the article, i.e., what it is." *Home Depot USA, Inc.*, 427 F. Supp. 2d at 1293 (quoting *A.N. Deringer, Inc.*, 66 Cust. Ct. at 383). In particular, in *Home Depot USA, Inc.*, the court stated "[a]n essential character inquiry requires a fact intensive analysis." *Id*. at 1284. In the instant case, the front and back panel are equally important with respect to making the lower body garment "what it is," specifically, trousers. However, the PVC coated woven front panel of the trousers gives the garment a faux leather appearance. In several previous classification decisions concerning garments constructed of two different fabrics for the front and back panels, CBP has determined that the front panel imparts the essential character of the garment. *See* HQ 955640 (March 22, 1994) (stating that the front silk panel of the men's vest "has the greatest visual impact and is the primary motivation for the purchasing of [the] particular garment by a consumer"); and HQ 958122 (August 21, 1995) (stating that the woven wool

front panel of an upper body garment determined the essential character rather than the knit wool back portion because "[i]t is the front part of the garment that is instantly visible and is generally the most important feature of a garment"). Similarly, in this instance, the woven front panel of the trousers is instantly visible and has the greatest visual impact by creating a faux leather pant look. Accordingly, the woven front panel imparts the essential character of the trousers. The garment is therefore classified in heading 6210, HTSUS.

At the six-digit subheading level, we must determine if the subject merchandise is "recreational performance outerwear," which is defined by Additional U.S. Note 3(a) to Chapter 62, HTSUS. The front panel is treated with plastics within the meaning of Additional U.S. Note 3(b) to Chapter 62, HTSUS, because the front panel is a textile fabric that is coated with plastics, consistent with Note 2 to Chapter 59, HTSUS, as previously discussed. To be considered "recreational performance outerwear," the garment also needs to meet 5 or more of the features listed in Additional U.S. Note 3(a) to Chapter 62, HTSUS. The subject merchandise does not have any of those listed features. Accordingly, the subject garment cannot be classified as a "recreational performance outerwear."

Since the front panel is constructed of 100% cotton woven fabric, the appropriate subheading for classifying the merchandise is subheading 6210.50.75, HTSUS, which provides for "Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Other women's or girls' garments: Other: Having an outer surface impregnated, coated, covered or laminated with rubber or plastics material which completely obscures the underlying fabric."

HOLDING:

By application of GRI 3(b) and 6, the subject women's pants are classified under heading 6210, HTSUS, and specifically, in subheading 6210.50.75, HTSUS, which provides for "Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Other women's or girls' garments: Other: Having an outer surface impregnated, coated, covered or laminated with rubber or plastics material which completely obscures the underlying fabric." The 2024 column one, general rate of duty is 3.3 percent *ad valorem*.

Duty rates are provided for 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:

NY N251623, dated April 16, 2014, is MODIFIED.

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 INFRARED VIDEO GOGGLES 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 infrared video goggles.

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 infrared video goggles under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before November 30, 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: Michael 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 obli-

gation 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 infrared video goggles. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N308716, dated January 28, 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 N308716, CBP classified infrared video goggles in heading 9018, HTSUS, specifically in subheading 9018.90.20, HTSUS, which provides for "Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: Other instruments and appliances and parts and accessories thereof: Optical instruments and appliances and parts and accessories thereof: Other." CBP has reviewed NY N308716 and has determined the ruling letter to be in error. It is now CBP's position that infrared video goggles are properly classified, in heading 9018, HTSUS, specifically in subheading 9018.19.95, HTSUS, which

provides for "Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: Electro-diagnostic apparatus (including apparatus for functional exploratory examination or for checking physiological parameters); parts and accessories thereof: Other: Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N308716 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H334777, 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.

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

Attachments

N308716
January 28, 2020
CLA-2–90:OT:RR:NC:N3:135
CATEGORY: Classification
TARIFF NO.: 9018.90.2000; 9903.88.01

MS. JOSIE MARIA GONZALEZ
DSV AIR & SEA INC.
21112 72ND AVE S
KENT, WA 98032

RE: The tariff classification of Insight Infrared Video Goggles from China

DEAR MS. GONZALEZ:

In your letter dated January 3, 2020, you requested a tariff classification ruling on behalf of Vestibular First LLC. Additional information was provided from a third party via email on January 14, 2020.

The Insight Infrared Video Goggles resemble a Virtual Reality headset worn by the patient. It consists of a plastic enclosure (body), which goes around the eyes to block out all light, attached with a front panel (cover) and a silicone strap with two strap adapters and two adjusters. The front panel contains two cameras, two switches, a cable assembly, and other components. Each camera has two infrared LEDs and one visible light LED embedded on the chip and can detect both visible and infrared light, which it then captures on the sensor. The visible light LED is only turned on when the switch is enabled on the front of the goggles. The goggles do not have their own power source or software, and rely on the connected computer to provide these. Once the device is connected to an off-the-shelf video viewing software applied with a specific template on a desktop or laptop, the clinician can use the infrared cameras to view the eye movements of the patient. The images can be recorded, displayed, and stored on the software. The videos are used by a trained medical professional, such as audiologists, ENT doctors, physicians, etc., to assist in diagnosing vestibular disorders.

In your letter you believe that the Insight Infrared Video Goggles are classified in subheading 9018.20.00, Harmonized Tariff Schedule of the United States (HTSUS), the provision for "[u]ltraviolet or infrared ray apparatus, and parts and accessories thereof." However, this provision provides for medical apparatus for application of ultra-violet or infra-red rays typically used in actinotherapy. The instant product is not for such use. It will be classified elsewhere.

The applicable subheading for the Insight Infrared Video Goggles will be 9018.90.2000, HTSUS, which provides for "[i]nstruments and appliances used in medical, surgical, dental or veterinary sciences ...: [o]ther instruments and appliances and parts and accessories thereof: [o]ptical instruments and appliances and parts and accessories thereof: [o]ther." The general rate of duty will be free.

Pursuant to U.S. Note 20 to Subchapter III, Chapter 99, HTSUS, products of China classified under subheading 9018.90.2000, 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., 9903.88.01, in addition to subheading 9018.90.2000, 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.

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

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

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

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

HQ H334777
OT:RR:CTF:EMAIN H334777 MFT
CATEGORY: Classification
TARIFF NO.: 9018.19.95

MS. JOSIE MARIA GONZALEZ
DSV AIR & SEA, INC.
21112 72ND AVENUE SOUTH
KENT, WA 98032

Re: Revocation of NY N308716; Classification of Insight Infrared Video Goggles from China

DEAR MS. GONZALEZ:

This letter pertains to New York Ruling Letter (NY) N308716, issued to you on behalf of Vestibular First, LLC, on January 28, 2020. That decision was in response to Vestibular First's request for a ruling on the tariff classification of certain infrared video goggles from China. After review, we find NY N308716 to be in error and are revoking it for the reasons set forth below.

FACTS:

NY N308716 describes the subject merchandise as follows:

> The Insight Infrared Video Goggles resemble a [v]irtual [r]eality headset worn by the patient. [The goggles] consist[] of a plastic enclosure (body), which goes around the eyes to block out all light, attached with a front panel (cover) and a silicone strap with two strap adapters and two adjusters. The front panel contains two cameras, two switches, a cable assembly, and other components. Each camera has two infrared LEDs and one visible light LED embedded on the chip and can detect both visible and infrared light, which it then captures on the sensor. The visible light LED is only turned on when the switch is enabled on the front of the goggles. The goggles do not have their own power source or software[] and rely on the connected computer to provide these.
>
> Once the device is connected to an off-the-shelf video viewing software applied with a specific template on a desktop or laptop, [a] clinician can use the infrared cameras to view the eye movements of the patient. The images can be recorded, displayed, and stored on the software. The videos are used by a trained medical professional, such as audiologists, ENT doctors, physicians, etc., to assist in diagnosing vestibular disorders.[1]

After reviewing the case file for NY N308716, we further note that you explained to U.S. Customs and Border Protection (CBP) the following on January 14, 2020, in a written response to CBP's inquiries regarding the subject merchandise:

> The device [i.e., the infrared video goggles] utilizes infrared and visible light independently to help provide differential diagnosis to a trained clinician. Some abnormal eye movements only occur when there is no visible light present[, and] some abnormal eye movements are suppressed with visible light. The switch on the front of the goggles is controlled by the clinician during their exam to help determine how the eye movements are affected in different lighting scenarios.

[1] NY N308716 (Jan. 28, 2020), https://rulings.cbp.gov/ruling/N308716.

NY N308716 classified the subject merchandise under subheading 9018.90.20 of the Harmonized Tariff Schedule of the United States (HTSUS), which provides for, "Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: Other instruments and appliances and parts and accessories thereof: Optical instruments and appliances and parts and accessories thereof: Other."

NY N308716 further held that the subject merchandise was subject to the additional 25 percent ad valorem rate of duty under subheading 9903.88.01, HTSUS, applicable to products of China and classified under subheading 9018.90.20, HTSUS.

ISSUE:

Whether the subject infrared video goggles are properly classified as "television cameras" under heading 8525, HTSUS, or as "instruments used in medical sciences" under heading 9018, HTSUS.

Whether the subject infrared video goggles are properly classified under subheading 9018.19, HTSUS, as "other electro-diagnostic apparatus" or under subheading 9018.90, HTSUS, as "other instruments and appliances."

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.

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 GRIs 1 through 5, on the understanding that only subheadings at the same level are comparable. For the purposes of GRI 6, the relative section and chapter notes also apply, unless the context otherwise requires.

The HTSUS headings and subheadings under consideration are as follows:

8525	Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders:
	* * * * *
9018	Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof:
	Electro-diagnostic apparatus (including apparatus for functional exploratory examination or for checking physiological parameters); parts and accessories thereof:
9018.19	Other:
	* * * * *

9018.90	Other instruments and appliances and parts and accessories thereof.

The first issue we must address is whether the subject merchandise is properly classified under heading 8525, HTSUS, or alternatively, heading 9018, HTSUS. GRI 1 requires that we look to the terms of both headings and their relative chapter or section notes.

Note 1(m) to Section XVI, HTSUS, provides that articles of Chapter 90 are not covered under Section XVI. In turn, Note 1(h) to Chapter 90, HTSUS, states that Chapter 90 does not cover, inter alia, "television cameras, digital cameras and video camera recorders" of heading 8525, HTSUS. Therefore, if the subject infrared video goggles constitute "television cameras" of heading 8525, HTSUS, they cannot be classified under Chapter 90, which includes heading 9018, HTSUS.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. The ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level.

The EN to heading 8525, HTSUS, gives some guidance as to the scope of the term "television cameras." In particular, the EN provides the following, in pertinent part:

> (B) TELEVISION CAMERAS, DIGITAL CAMERAS AND VIDEO CAMERA RECORDERS
>
> This group covers cameras that capture images and convert them into an electronic signal that is:
>
> (1) transmitted as a video image to a location outside the camera for viewing or remote recording (i.e., *television cameras*); [*emphasis* added] [. . .]
>
> These cameras do not have any inbuilt capability of recording images. Some of these cameras may also be used with automatic data processing machines (e.g., webcams).

The subject infrared video goggles exhibit characteristics and functions beyond those found in "television cameras" of heading 8525, HTSUS. The form factor of the goggles is the first characteristic that distinguishes the subject merchandise from television cameras. Here, the goggles "resemble a [v]irtual [r]eality headset" and are distinctly "*worn* by the patient" as opposed to being, for example, held in the hand or shoulder, mounted on a tripod (e.g., broadcasting cameras) or fitted above a computer screen (e.g., webcams). The goggles also have a plastic enclosure "which goes around the eyes to block out all light," a characteristic that one may consider, at best, atypical of television cameras. The two cameras being pointed towards the patient's eyes enables the clinician to view the patient's eye movements in the first place, thereby signifying the subject merchandise's core function (i.e., "to assist in diagnosing vestibular disorders"). Most notably, the *function* of the infrared and visible light LEDs, as elucidated by your response, is not merely to provide a light source on the camera's subject, but to observe the "abnormal eye movements [which] only occur when there is no visible light present as well as some abnormal eye movements [which] are suppressed with visible light." Taking the entirety of these characteristics and functions together, the subject infrared video goggles fall outside the scope of heading 8525, HTSUS.

The EN to heading 9018, HTSUS, suggests that the "heading covers a very wide range of instruments and appliances which, in the vast majority of cases, are used only in professional practice (e.g., by doctors, surgeons, dentists, veterinary surgeons, midwives), either to make a diagnosis, to prevent or treat an illness or to operate, etc."[2] Additionally:

> The instruments and appliances classified here may be equipped with optical devices; they may also make use of electricity, either as motive power or for transmission, or as a preventive, curative or diagnostic agent. [. . .]
>
> (V) OTHER ELECTRO-MEDICAL APPARATUS
>
> This heading also covers electro-medical apparatus for preventive, curative or diagnostic purposes, other than X-ray, etc., apparatus of heading 90.22. This group includes:
>
> (1) Electro-diagnostic apparatus, which include: [. . .]
>
> (x) Diagnostic apparatus incorporating or operating in conjunction with an automatic data processing machine for processing and visuali[z]ing clinical data, etc.

Neither the HTSUS nor the ENs provide a definition for "electro-diagnostic." In the absence of a definition of a term in the HTSUS or ENs, the term's correct meaning is its common and commercial meaning.[3] Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities, and other reliable sources.[4] In examining subheading 9018.19, HTSUS, we previously consulted dictionary definitions for "diagnostic" and "diagnosis":

> The term "diagnostic" is defined in Webster's II New Riverside University Dictionary 372 (1988) as "1. Of, relating to, or used in a diagnosis. 2. Serving to identify a disease." The same term is defined in Dorland's Illustrated Medical Dictionary 458 (28th ed.) as "pertaining to or subserving diagnosis." The term "diagnosis" is defined in Webster's as "1. Med. The act or process of identifying or determining the nature of a disease by way of examination." The term "diagnosis" is defined in Dorland's as the determination of the nature of a case of disease. 2. the art of distinguishing one disease from another."[5]

The full term "electrodiagnosis" also appears in *Stedman's Medical Dictionary*:

---

[2] We note that the EN to heading 9018, HTSUS, further suggests that the heading does not cover "Spectacles, goggles and the like, corrective, protective or other" of heading 9004, HTSUS. The subject infrared video goggles do not fall under heading 9004, HTSUS. As the EN to heading 9004, HTSUS, states, "goggles" of that heading "usually compris[e] a frame or support with lenses or shields of glass or other material[] for use in front of the eyes," and are generally used to correct vision defects; protect the eyes from contaminants like dust, smoke, and gas, or from dazzle; and for viewing three-dimensional pictures. In contrast, the subject infrared video goggles are not primarily designed for aiding, enhancing, or protecting the wearer's vision. Nor do the subject infrared video goggles contain special lenses for the wearer to see through the goggles. The goggles are designed for the *clinician* to make observations, not for the patient to observe the surroundings through the goggles.

[3] *See* Nippon Kogaku, Inc. v. United States, 69 C.C.P.A. 89, 673 F.2d 380 (1982).

[4] *See* C.J. Tower & Sons v. United States, 69 C.C.P.A. 128, 673 F.2d 1268 (1982).

[5] Headquarters Ruling Letter (HQ) 961998 (May 7, 1999) (blood pressure monitor).

282810 electrodiagnosis

(ē-lek'trō-dī'ag-nō'sis)

1. The use of electronic devices for diagnostic purposes.

2. By convention, the studies performed in the EMG [electromyography] laboratory, i.e., nerve conduction studies and needle electrode examination (EMG proper).

SYN: electroneurography[.][6]

We find that the subject infrared video goggles constitute "instruments used in medical sciences" under heading 9018, HTSUS, and specifically an "electro-diagnostic apparatus" of subheading 9018.19, HTSUS. The facts show that the goggles are designed to be used "by a trained medical professional," including "audiologists, ENT doctors, [and] physicians." Further, the subject merchandise is used "to make a diagnosis," specifically for vestibular disorders. As the goggles "do not have their own power source," they "make use of electricity" in part by pulling electric power from a connected computer, and *importantly*, the electricity is then used to provide an image of the patient's eyes under either infrared or visible light for a clinician to examine. The connection to a computer and the use of the software to generate an image and information useful for making diagnostic assessments demonstrate how the subject merchandise interacts with and "operat[es] in conjunction with an automatic data processing machine for processing and visuali[z]ing clinical data," particularly the image of abnormal eye movements. The goggles, simply put, are "electronic devices" used "for diagnostic purposes." Considering these functions, the subject infrared video goggles meet the terms of subheading 9018.19, HTSUS, as "instruments used in medical sciences" and, more specifically, "other electro-diagnostic apparatus."

We now turn to the conclusion reached in NY N308716, which classified the subject merchandise under subheading 9018.90, HTSUS. As GRI 6 states, the classification of goods at the subheading level must be "on the understanding that only subheadings at the same level are comparable." In this instance, the terms "Electro-diagnostic apparatus (including apparatus for functional exploratory examination or for checking physiological parameters); parts and accessories thereof" found in subheading 9018.19, HTSUS, and "Other instruments and appliances and parts and accessories thereof" of subheading 9018.90, HTSUS, are at the same indentation level. These provisions are directly comparable. The latter subheading's provision for "*other* instruments" indicates that the subject merchandise can be classified therein *only* if it cannot be classified in the preceding provisions. Because, as discussed above, we found the subject goggles to be classifiable as an "electro-diagnostic apparatus" under subheading 9018.19, HTSUS, they cannot be classified under the "other" provision of subheading 9018.90, HTSUS.

HOLDING:

By application of GRIs 1 and 6, the subject infrared video goggles are classified under heading 9018, specifically subheading 9018.19.95, HTSUS, which provides for "Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other

[6] *See electrodiagnosis*, STEDMAN'S MEDICAL DICTIONARY, Westlaw 282810 (database updated Nov. 2014).

electro-medical apparatus and sight-testing instruments; parts and accessories thereof: Electro-diagnostic apparatus (including apparatus for functional exploratory examination or for checking physiological parameters); parts and accessories thereof: Other: Other: Other." The general column one rate of duty is free.

Pursuant to U.S. Note 20 to Subchapter III, Chapter 99, HTSUS, products of China classified under subheading 9018.19.95, 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., 9903.88.01, in addition to subheading 9018.19.95, 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.

EFFECT ON OTHER RULINGS:

NY N308716 (January 8, 2020) is hereby revoked.

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

Sincerely,

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 A PLASTIC RECYCLING PLANT

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 a plastic recycling plant.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning tariff classification of a plastic recycling plant under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before November 30, 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: Patricia Fogle, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0061.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of a plastic recycling plant. Although in this notice, CBP is specifically referring to Headquarters Ruling Letter ("HQ") H322641, (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 HQ H322641, CBP classified a plastic recycling plant in heading 8419, HTSUS, specifically in subheading 8419.89.95, HTSUS, which provides for "Machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 8514), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, vaporizing, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, nonelectric; parts thereof: Other machinery, plant or equipment: Other: Other: Other." CBP has reviewed HQ H322641 and has determined the ruling letter to be in error. It is now

CBP's position that the subject plastic recycling plant consists of two functional units, both of which are properly classified under heading 8419, HTSUS. However, one of the functional units that make up the recycling plant is properly classified under subheading 8419.89.95, HTSUS, *supra*, and the other is properly classified in subheading 8419.40.00, HTSUS, which provides for "Machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 8514), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, vaporizing, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, nonelectric; parts thereof: Distilling or rectifying plant."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke HQ H322641 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H336949, 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.

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

Attachments

HQ H322641
November 9, 2023
OT:RR:CTF:EMAIN H322641 PF
CATEGORY: Classification
TARIFF NO.: 8419.89.95

H. MICHAEL LEIGHTMAN
PARTNER, GLOBAL TRADE PRACTICE
ERNST & YOUNG LLP
5 HOUSTON CENTER, SUITE 2400
1401 MCKINNEY STREET
HOUSTON, TX 77010

RE: Tariff classification of a plastic recycling plant

DEAR MR. LEIGHTMAN:

This is in reply to your letter of May 27, 2021, submitted on behalf of Eastman Chemical Company, requesting a prospective ruling as to the classification of a plastic recycling plant ("the Plant") under the Harmonized Tariff Schedule of the United States (HTSUS). Your request was forwarded by the National Commodity Specialist Division ("NCSD") to this office for a response. Our decision takes into account your May 27, 2021 letter, your responses to questions posed by the NCSD dated September 24, 2021, your responses to questions posed by Headquarters dated August 26, 2022 and March 30, 2023, a meeting held on July 31, 2023 and supplemental information dated August 1, 2023.

FACTS:

The subject merchandise consists of a plastics recycling plant assembled in a foreign trade zone, which will be entered into the U.S. upon completion of the assembly process.[1] Once assembled and operational, the Plant will recycle post-consumer and post-industrial plastics with high levels of polyethylene terephthalate ("PET") by refining and reclaiming chemical products such as polymer-grade ethylene glycol ("EG") and dimethyl terephthalate ("DMT"). The Plant will be constructed using certain domestically sourced and imported components. The facility will subject plastics to a specified series of steps as part of an integrated process to achieve the reclamation of the desired products.

The Plant is an integrated combination of twelve units consisting of individual components connected by piping, wiring and structural steel and operate in a continuous flow. You state that the Plant would not function if any of the units were to be disconnected from the whole and that each individual unit is unable to operate independently. The twelve units are a Mixed Plastics Feed Unit, Dissolver Unit, Methanolysis Unit, Spray Tower Unit, Crystallization Unit, Filtration Unit, DMT Refining Unit, Methanol Refining Unit, Low Boiler Column Unit, EG Refining Unit, Methanol Storage Unit and Heavy Co-Product Handling System.

The entire plant operation and flow was outlined by Eastman as follows:

[1] We note that this ruling does not address whether any of the parts or components of the plant fall under the exceptions provided by the Foreign Trade Zones Act of 1934, as amended (48 Stat. 998; 19 U.S.C. 81a through 81u).

- Trucks from Eastman's preprocessing facility carry pellets, flakes, and shredded chunks of plastic (the "Raw Materials") to the Plant, where those Raw Materials are dumped onto a conveyor belt feeding into the Mixed Plastics Feed Unit's metering device. The metering device regulates the flow of Raw Materials into the Dissolver and provides holdup for a truck's inventory, allowing the next truck time to unload its Raw Materials onto the conveyor. This allows the Plant to have a continuous feed of Raw Materials flowing through the Plant.
- The Mixed Plastics Feed Unit feeds Raw Materials into the Dissolver Unit via an airvey system, which consists of a blower and series of rotary airlocks that moves the materials with high pressure ambient air and filters out organic materials and other impurities.
- In the Dissolver Unit, the Raw Materials melt into a molten liquid that is drained from the bottom of the agitation vessel and pumped via piping into the Dissolver Decanter.
- As the feed is pumped into the decanter, the lighter polyolefins float to the top and rest on the heavier PET. The olefins are removed by suctioning off the top layer while allowing the heavier layer to drain into piping that pumps the feed to the Methanolysis Unit.
- In addition to the PET feed from the Dissolver, recycled methanol (in liquid form) is pumped from the Methanol Storage Unit through a preheater and into the Methanolysis Unit, where the methanol is mixed with the molten PET and a catalyst.
- At this point, the PET breaks down to mostly DMT and EG vapors, which flow out the top of the reactor into the Methanolysis rectifier. The rectifier is used to remove oligomers from the composite stream and does not perform any additional separation. The chemical reaction uses an endothermic reaction in which heat is absorbed during mixing to cause the PET to break down. A sludge of heavy co-products is pumped out of the bottom of the reactor and sent to the Heavy Co-Product Handling System and solidified.
- The feed, composed now of vapors of EG, DMT, methanol, and byproducts, enters the Spray Tower Unit and cools as it rises through the tower. The Spray Tower Unit removes a concentrated stream of components with a boiling point less than Methanol feeding the stream to the Methanol Refining unit. The Spray Tower further refines the stream to control the Crystallizer feed composition by removing refined Methanol to the Methanol Storage Unit as the vapor overhead of the distillation tower. The DMT and EG leave the tower as liquid (still containing some methanol and byproducts) and flow into the Crystallization Unit, while a portion of the methanol remains vapor and is sent back to the Methanolysis Unit.
- In the Crystallization Unit, the liquids are cooled before being drained into the Filtration Unit as a crude slurry of DMT crystals, liquid EG and methanol, and other byproducts. This process is accomplished by changes in temperature and pressure, which cause DMT crystals to form. The pressure is rapidly reduce using vacuum pumps, causing accelerated crystallization of much of the remaining liquid DMT. The vapor methanol is condensed in a condenser and routed back to the

Methanolysis Unit. The remaining liquids from the spray tower, along with the crystallized DMT, are drained from the crystallizer and fed into the filtration unit where the DMT is separated from the liquid.

- The molten crude DMT then is pumped into the DMT Refining Unit, where it is distilled into polymer-grade DMT.
- The DMT is sent to the distillation tower, a melter agitates and heats the slurry which causes the remaining methanol and other lower boiling point contaminants to evaporate. The vapors emitted from the liquid rise through the tower where a reboiler heats the liquid causing it to evaporate. The vapors condense on a series of trays as they cool. The vapor overhead is routed to a scrubber system to distill any remaining useful products. The liquid condensing on the tower trays is liquid, polymer-grade DMT. It is sent to storage vessels to await polymerization. The liquid bottoms are pumped to the Heavy Co-Product Handing System and solidified. The purified recycled DMT content is sent to the DMT storage tanks to be used to create recycle content polymers at a separate facility.
- The liquid discharge from the Filtration Unit flows into the Methanol Refining Unit, which is a distillation column where methanol is separated from the EG as vapor and is fed back to the Methanol Storage Unit. The liquid from the Methanol Refining Unit continues to the Low Boiler Column and is further distilled, producing concentrated, crude EG as the liquid bottoms and "low boilers" as the vapor overhead.
- The liquid bottoms flow into the EG Refining Unit, which is another distillation column with multiple trays. The crude EG enters the column and is heated with a reboiler. The portion that condenses at a certain tray is the polymer-grade EG product, which is passed through Adsorption sieves for additional purification. The remaining liquid bottoms is pumped to the Heavy Co-Product Handling System. The refined EG product is sent to an additional distillation column to create refined grade EG product. An additional adsorption step creates the polymer grade EG product to be solidified and disposed. The purified EG is pumped to Storage tank for future use in the creation of recycled content polymers at a separate facility.

ISSUE:

Whether the Plant is classifiable as a "Distilling or rectifying plant" in subheading 8419.40, HTSUS, or as "Other" machinery, plant or equipment for the treatment of materials by a process involving a change of temperature in subheading 8419.89, HTSUS.

LAW AND ANALYSIS:

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. GRI 6 provides that classification of goods at the subheading level will be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the preceding GRIs on the understanding that only subheadings at the same level are comparable.

The HTSUS provisions under consideration are as follows:

8419	Machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 8514), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, vaporizing, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, non-electric; parts thereof:
8419.40	Distilling or rectifying plant
	* * *
	Other machinery, plant or equipment:
8419.89	Other

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

The EN to heading 84.19 provides, in relevant part:

> [T]the heading covers machinery and plant designed to submit materials (solid, liquid or gaseous) to a heating or cooling process in order to cause a simple change of temperature, or to cause a transformation of the materials resulting principally from the temperature change (e.g., heating, cooking, roasting, distilling, rectifying, sterilising, pasteurising, steaming, drying, evaporating, vaporising, condensing or cooling processes). But the heading **excludes** machinery and plant in which the heating or cooling, even if essential, is merely a secondary function designed to facilitate the main mechanical function of the machine or plant, e.g., machines for coating biscuits, etc., with chocolate, and conches (heading 84.38), washing machines (heading 84.50 or 84.51), machines for spreading and tamping bituminous road-surfacing materials (heading 84.79).
>
> The machinery and plant classified in this heading may or may not incorporate mechanical equipment.

* * * * *

As an initial matter, we agree that the plant is wholly described by heading 8419, HTSUS. The instant matter is governed by GRI 6, which states that:

> For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

Note 4 to Section XVI of the HTSUS states that:

> Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function.

You state that the Plant will be constructed of interconnected units and subunits permanently attached to each other, and that if any particular unit were disconnected from the whole, the plant would cease to function as designed. In addition, you have argued that the plant should be classified in subheading 8419.40, as a "Distilling or rectifying plant." In order for the Plant to be classified in subheading 8419.40, HTSUS, the units and subunits must contribute together to the clearly defined function of distillation. In this case, the Plant satisfies the first portion of Note 4 to Section XVI, as it is a plant consisting of individual components interconnected by piping. Moreover, in order for the Plant to be classified in subheading 8419.40, HTSUS, the units and subunits must contribute together to the clearly defined function of distilling or rectifying.

The HTSUS does not define "distilling" or "rectifying." Therefore, we construe these terms in accordance with their common meanings, ascertained by reference to "dictionaries, scientific authorities, other reliable information sources," "lexicographic and other materials" and to the pertinent ENs. *C.J. Tower & Sons v. United States*, 69 C.C.P.A. 128, 673 F.2d 1268, 1271 (1982); *Simod America Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989); *GRK Can., Ltd. v. United States*, 761 F.3d 1354, 1357 (Fed. Cir. 2014). The Oxford English Dictionary provides the following definitions for "distill" and "rectify:"

> Distill: 4.a. To subject to the process of distillation; to vaporize a substance by means of heat, and then condense the vapour by exposing it to cold, so as to obtain the substance or one of its constituents in a state of concentration or purity. Primarily said of a liquid, the vapour of which when condensed is again deposited in minute drops of pure liquid; but extended also to the volatilizing of solids, the products of which may be gaseous.
>
> * * * * *
>
> Rectify: 3.a. *transitive. Chemistry*. To purify or refine (a substance) by distillation (esp. repeated or continuous distillation) or other chemical treatment; to raise (spirit) to a required strength in this way (*obsolete*). Occasionally also *intransitive*.

"distil | distill, v." *OED Online*, Oxford University Press, March 2020, www.oed.com/view/Entry/55653. Accessed 11 March 2020; "rectify, v." *OED Online*, Oxford University Press, March 2020, www.oed.com/view/Entry/160025. Accessed 11 March 2020.

The Explanatory Notes for heading 8419, HTSUS, offer additional clarity, describing "[f]ractionating or rectifying plant[s]" as:

> ...more complicated continuous installations incorporating vertical fractionating columns which enable complex mixtures to be separated in one operation. The most usual type of column is divided into interconnecting sections by plates fitted with bubbling caps and down-flow tubes. Vapour rising from one section is thus brought into intimate contact with a condensed portion of the vapour in the section above and, since the temperature decreases as the vapours rise in the column, they can be separated at different levels corresponding to their boiling points.

The function of the subject Plant is to recycle plastics and separate EG and DMT from PET plastic. This separation is not accomplished primarily through distillation, but through a series of processes and steps that involve chemical reactions, crystallization, and refining. The units and subunits of the Plant work together toward the function of chemically breaking down the raw material and extracting compounds, which is a distinct process from distillation. In particular, the Methanolysis unit, and the chemical reactions that occur within this unit, are integral to the functioning of the subject Plant. The purpose of the Methanolysis Unit within the Plant is to depolymerize the PET into EG and DMT vapors. The Methanolysis Reactor breaks down the PET into EG and DMT vapors using a chemical reaction that involves mixing vaporized methanol, molten PET, and a catalyst. The vapors flow out of the top of the reactor into the Methanolysis rectifier to separate by-products from the desired stream of EG, DMT, and methanol vapors. The rectifier is used to remove oligomers from the composite stream and does not perform any additional separation. The chemical reaction uses an endothermic reaction in which heat is absorbed during mixing to cause the PET to break down.

The reactor within the Methanolysis Unit performs the initial separation of PET into EG vapors, DMT vapors, and methanol vapors. Without the mixing of catalysts, methanol, and PET, the vapors would not separate. The rectifier is used to remove oligomers from the composite stream and does not perform any additional separation. Its function is subsidiary to the main function of the reactor. Unlike distillation, which relies primarily on heating and condensation, methanolysis uses a chemical reaction to break down the PET.

Eastman asserts that every unit and subunit contributes to the function of distillation. We disagree. While certain units perform a distillation function, they are contributing to the primary function of chemically breaking down the raw material and extracting compounds that occur within the Methanolysis Unit. Any distillation that occurs is secondary in importance to the chemical process that occurs by the Methanolysis Unit.

You rely on Headquarters Ruling ("HQ") H267791, dated January 3, 2017 and HQ H062209, dated August 10, 2009 and claim that the plants in these cases used similar processes to the subject Plant. In HQ H267791, the Plant at issue was an ethane processing plant that produced ethylene and other products from an ethane feedstock. The plant completed an initial separation process and then subjected an ethane stream to a purification process involving distillation, evaporation and condensation. CBP determined that the ethane processing plant had a clearly defined function of fractionation and distillation of gases through changes in temperature. In HQ H062209, the merchandise was a rare gases purification plant. CBP discussed that the plant was comprised of various pieces of equipment and machinery. One of

the machines performed a gas liquification function and another machine was a dryer that removed water. CBP held that the plant performed a clearly defined function of fractionation of gases.

The cited cases are distinguishable because the plants in HQ H062209 and HQ H062209 used different raw materials, produced different end products, and used different processes than the subject Plant. Therefore, since the units and subunits of the subject Plant do not work together to contribute to the clearly defined function of distillation, they cannot be classified under subheading 8419.40, HTSUS, and are classified under subheading 8419.89.95, HTSUS.

HOLDING:

By application of GRIs 1 and 6 (Note 4 to Section XVI) of the HTSUS, the subject plastic recycling plant is classified in heading 8419, specifically subheading 8419.89.95, HTSUS, which provides for: Machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 8514), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, vaporizing, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, nonelectric; parts thereof: Other machinery, plant or equipment: Other: Other: Other. The general column one, rate of duty is 4.2% *ad valorem*.

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

Sincerely,

GREGORY CONNOR,
Chief
Electronics, Machinery, Automotive, and
International Nomenclature Branch

HQ H336949
OT:RR:CTF:EMAIN H336949 PF
CATEGORY: Classification
TARIFF NOs.: 8419.40.00; 8419.89.95

H. MICHAEL LEIGHTMAN
PARTNER, GLOBAL TRADE PRACTICE
ERNST & YOUNG LLP
5 HOUSTON CENTER, SUITE 2400
1401 MCKINNEY STREET
HOUSTON, TX 77010

RE: Revocation of HQ H322641; Classification of a plastic recycling plant

DEAR MR. LEIGHTMAN:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered Headquarters Ruling (HQ) H322641, dated November 9, 2023, in response to your request on behalf of Eastman Chemical Company. In HQ H322641, CBP classified a plastics recycling plant under subheading 8419.89.95, HTSUS, which provides for "Machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 8514), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, vaporizing, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, nonelectric; parts thereof: Other machinery, plant or equipment: Other: Other: Other."

We have reviewed HQ H322641 and found it to be in error based on the revised facts set forth in the request for reconsideration, a meeting held on May 22, 2024, and supplemental information received on June 13, 2024. Accordingly, for the reasons set forth below, CBP is revoking HQ H322641.

FACTS:

In HQ H322641, CBP described the subject plant as follows:

> The subject plastic recycling plant is an integrated combination of twelve units consisting of individual components connected by piping, wiring and structural steel and operate in a continuous flow. You state that the Plant would not function if any of the units were to be disconnected from the whole and that each individual unit is unable to operate independently. The twelve units are a Mixed Plastics Feed Unit, Dissolver Unit, Methanolysis Unit, Spray Tower Unit, Crystallization Unit, Filtration Unit, DMT Refining Unit, Methanol Refining Unit, Low Boiler Column Unit, EG Refining Unit, Methanol Storage Unit and Heavy Co-Product Handling System.

The entire plant operation and flow was outlined by Eastman as follows:

- Trucks from Eastman's preprocessing facility carry pellets, flakes, and shredded chunks of plastic (the "Raw Materials") to the Plant, where those Raw Materials are dumped onto a conveyor belt feeding into the Mixed Plastics Feed Unit's metering device. The metering device regulates the flow of Raw Materials into the Dissolver and provides holdup for a truck's inventory, allowing the next truck time to unload its Raw Materials onto the conveyor. This allows the Plant to have a continuous feed of Raw Materials flowing through the Plant.

- The Mixed Plastics Feed Unit feeds Raw Materials into the Dissolver Unit via an airvey system, which consists of a blower and series of rotary airlocks that moves the materials with high pressure ambient air and filters out organic materials and other impurities.
- In the Dissolver Unit, the Raw Materials melt into a molten liquid that is drained from the bottom of the agitation vessel and pumped via piping into the Dissolver Decanter.
- As the feed is pumped into the decanter, the lighter polyolefins float to the top and rest on the heavier PET. The olefins are removed by suctioning off the top layer while allowing the heavier layer to drain into piping that pumps the feed to the Methanolysis Unit.
- In addition to the PET feed from the Dissolver, recycled methanol (in liquid form) is pumped from the Methanol Storage Unit through a preheater and into the Methanolysis Unit, where the methanol is mixed with the molten PET and a catalyst.
- At this point, the PET breaks down to mostly DMT and EG vapors, which flow out the top of the reactor into the Methanolysis rectifier. The rectifier is used to remove oligomers from the composite stream and does not perform any additional separation. The chemical reaction uses an endothermic reaction in which heat is absorbed during mixing to cause the PET to break down. A sludge of heavy co-products is pumped out of the bottom of the reactor and sent to the Heavy Co-Product Handling System and solidified.
- The feed, composed now of vapors of EG, DMT, methanol, and byproducts, enters the Spray Tower Unit and cools as it rises through the tower. The Spray Tower Unit removes a concentrated stream of components with a boiling point less than Methanol feeding the stream to the Methanol Refining unit. The Spray Tower further refines the stream to control the Crystallizer feed composition by removing refined Methanol to the Methanol Storage Unit as the vapor overhead of the distillation tower. The DMT and EG leave the tower as liquid (still containing some methanol and byproducts) and flow into the Crystallization Unit, while a portion of the methanol remains vapor and is sent back to the Methanolysis Unit.
- In the Crystallization Unit, the liquids are cooled before being drained into the Filtration Unit as a crude slurry of DMT crystals, liquid EG and methanol, and other byproducts. This process is accomplished by changes in temperature and pressure, which cause DMT crystals to form. The pressure is rapidly reduce using vacuum pumps, causing accelerated crystallization of much of the remaining liquid DMT. The vapor methanol is condensed in a condenser and routed back to the Methanolysis Unit. The remaining liquids from the spray tower, along with the crystallized DMT, are drained from the crystallizer and fed into the filtration unit where the DMT is separated from the liquid.
- The molten crude DMT then is pumped into the DMT Refining Unit, where it is distilled into polymer-grade DMT.
- The DMT is sent to the distillation tower, a melter agitates and heats the slurry which causes the remaining methanol and other lower boiling

point contaminants to evaporate. The vapors emitted from the liquid rise through the tower where a reboiler heats the liquid causing it to evaporate. The vapors condense on a series of trays as they cool. The vapor overhead is routed to a scrubber system to distill any remaining useful products. The liquid condensing on the tower trays is liquid, polymer-grade DMT. It is sent to storage vessels to await polymerization. The liquid bottoms are pumped to the Heavy Co-Product Handing System and solidified. The purified recycled DMT content is sent to the DMT storage tanks to be used to create recycle content polymers at a separate facility.

- The liquid discharge from the Filtration Unit flows into the Methanol Refining Unit, which is a distillation column where methanol is separated from the EG as vapor and is fed back to the Methanol Storage Unit. The liquid from the Methanol Refining Unit continues to the Low Boiler Column and is further distilled, producing concentrated, crude EG as the liquid bottoms and "low boilers" as the vapor overhead.
- The liquid bottoms flow into the EG Refining Unit, which is another distillation column with multiple trays. The crude EG enters the column and is heated with a reboiler. The portion that condenses at a certain tray is the polymer-grade EG product, which is passed through Adsorption sieves for additional purification. The remaining liquid bottoms is pumped to the Heavy Co-Product Handling System. The refined EG product is sent to an additional distillation column to create refined grade EG product. An additional adsorption step creates the polymer grade EG product to be solidified and disposed. The purified EG is pumped to Storage tank for future use in the creation of recycled content polymers at a separate facility.

In your June 13, 2024 supplement to your reconsideration request, you stated the following about the crystallization unit:

> The crystallizer functions to remove impurities from within the stream that cannot be separated out using the various distillation columns in the plant. The plant is designed to recycle a wide variety of used plastics, which can have a large number of impurities present based on how each plastic was made. Because the boiling points of some of those impurities can be so similar (and in the case of DMI [1,3-dimethyl-2-imidazolidinone], exactly the same) to the DMT, using distillation processes alone would be economically impractical (and for DMI, impossible) to completely purify the DMT created in the methanolysis unit. The crystallizer uses a change in temperature to render the DMT into crystals while leaving these impurities in liquid that can be filtered out. The crystals themselves can then be distilled in subsequent columns to produce pure DMT.

ISSUE:

Are the units of the subject plant classified under subheading 8419.40.00, HTSUS or 8419.89.95, HTSUS?

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes.

The HTSUS subheadings under consideration are as follows:

8419	Machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 8514), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, vaporizing, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, nonelectric; parts thereof:
8419.40.00	Distilling or rectifying plant
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	Other machinery, plant or equipment:
8419.89	Other.
	Other
8419.89.95	Other

Because there is no dispute that the subject plant is described by heading 8419, HTSUS, the instant matter is governed by GRI 6, which states that:

> For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

Note 4 of Section XVI, HTSUS, in which heading 8419 falls, state:

> Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in chapter 84 or chapter 85, then the whole falls to be classified in the heading appropriate to that function.

In HQ H322641, CBP determined that the entire plant was classified in subheading 8419.89.95, HTSUS. In your request for reconsideration, you request that CBP classify the methanolysis unit of the subject plant under subheading 8419.89.95, HTSUS, and the stages subsequent to the methanolysis unit, including the spray tower unit, crystallization unit, filtration unit, DMT refining unit, methanol refining unit, low boiler column unit, and EG refining unit under subheading 8419.40, HTSUS, as fractionation or distillation machines. Pursuant to Note 4, the spray tower unit, crystallization unit, filtration unit, DMT refining unit, methanol refining unit, low boiler column unit, and EG refining unit are properly classified under subheading 8419.40.00, HTSUS, if the components contribute together to perform the clearly defined function of distillation.

We agree with you that the that the methanolysis unit is classified in subheading 8419.89.95, HTSUS. There is also no dispute that the mixed plastics feed unit and the dissolver unit are classified in subheading 8419.89.95, HTSUS. However, the spray tower unit, crystallization unit, and filtration unit are also classifiable under subheading 8419.89.95, HTSUS, because they contribute to a function other than distillation.

The spray tower unit removes methanol from the stream coming from the methanolysis unit and therefore does not perform or contribute to distillation. The main function of the crystallization unit, which includes the filtration unit, is to use a crystallization process, where liquids are cooled before being drained into the filtration unit as a crude slurry of DMT crystals, liquid EG and methanol, and other byproducts. This process is accomplished by changes in temperature and pressure, which cause DMT crystals to form. The pressure is rapidly reduced using vacuum pumps, causing accelerated crystallization of much of the remaining liquid DMT. The vapor methanol is condensed in a condenser and routed back to the methanolysis unit. The remaining liquids from the spray tower, along with the crystallized DMT, are drained from the crystallizer and fed into the filtration unit where the DMT is separated from the liquid.

Moreover, the supplemental submission noted that the crystallizer "removes impurities from within the stream that cannot be separated out using the various distillation columns in the plants... [and] the crystals themselves then be distilled in subsequent columns to product pure DMT." Therefore, it is apparent that the crystallization unit (along with the spray tower and filtration unit) do not perform or contribute to a distillation function. As a result, the spray tower unit, crystallization unit, and filtration unit are provided for in subheading 8419.89.95, HTSUS.

The DMT refining unit, methanol refining unit, low boiler column unit, and EG refining unit contribute together to the function of distillation. The DMT refining unit distills crude DMT into polymer-grade DMT. The methanol refining unit is a distillation column where methanol is separated from the EG as vapor and fed back to the methanol storage unit. Moreover, the EG refining unit distills the concentrated crude EG to produce polymer-grade EG. The liquid bottoms from the lower boiler column unit flow into a distillation column with multiple trays. As the DMT refining unit, methanol refining unit, the lower boiler column unit, and the EG refining unit contribute to the function of distillation, they are classifiable under subheading 8419.40, HTSUS.

HOLDING:

By application of GRIs 1 and 6 (Note 4 to Section XVI), the DMT refining unit, methanol refining unit, low boiler column unit, and EG refining unit are classified under subheading 8419.40.00, HTSUS which provides for "Machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 8514), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, vaporizing, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, nonelectric; parts thereof: Distilling or rectifying plant." The column one, general rate of duty is free.

By application of GRIs 1 and 6 (Note 4 to Section XVI) of the HTSUS, the mixed plastics feed unit, dissolver unit, methanolysis unit, spray tower unit, crystallization unit, and filtration unit, are classified in heading 8419, specifically subheading 8419.89.95, HTSUS, which provides for: Machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 8514), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, vaporizing, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, nonelectric; parts thereof: Other machinery, plant or equipment: Other: Other: Other. The general column one, rate of duty is 4.2% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

HQ H322641, dated November 9, 2023, is hereby REVOKED.

Sincerely,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF THREE RULING LETTERS, PROPOSED MODIFICATION OF TWO RULING LETTERS, AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF WOOD CHIPPING/SHREDDING MACHINES

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

ACTION: Notice of proposed revocation of three ruling letters, proposed modification of two ruling letters, and proposed revocation of treatment relating to the tariff classification of Wood Chipping/Shredding Machines.

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 and modify two ruling letters concerning tariff classification of Wood Chipping/Shredding Machines under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before November 30, 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: Julio Ruiz-Gomez, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0736.

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 and modify two ruling letters pertaining to the tariff classification of Wood Chipping/Shredding Machines. Although in this notice, CBP is specifically referring to New York Ruling Letters ("NY") N114998, NY 807222, NY 801876, NY N297986, and NY 897172 (Attachments A through E), 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 N114998, NY 807222, NY 801876, NY N297986, and NY 897172, CBP classified Wood Chipping/Shredding Machines in heading 8436, HTSUS, specifically in statistical reporting number 8436.80.0090, HTSUS Annotated, which provides for "Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machin-

ery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders; parts thereof: Other machinery: Other." CBP has reviewed NY N114998, NY 807222, and NY 801876 and has determined the ruling letters to be in error. It is now CBP's position that Wood Chipping/Shredding Machines are properly classified, in heading 8436, HTSUS, specifically in statistical reporting number 8436.80.00, HTSUS Annotated, which provides for "Other agricultural, horticultural, forestry, poultry-keeping or beekeeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders; parts thereof: Other machinery: Forestry Machinery."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N114998, NY 807222, and NY 801876, modify NY N297986, and NY 897172, and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter H302394, set forth as Attachment F to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

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

Attachments

N114998

August 5, 2010
CLA-2–84:OT:RR:NC:N1:106
CATEGORY: Classification
TARIFF NO.: 8436.80.0090

MR. MATTHEW CLARK
SEKO CUSTOMS BROKERAGE
1100 ARLINGTON HEIGHTS RD.
SUITE 600
ITASCA, IL 60143

RE: The tariff classification of garden chipper/shredders from China.

DEAR MR. CLARK:

In your letter dated July 14, 2010, you requested a tariff classification ruling on behalf of your client, Great States Corporation. Literature describing the items was submitted with your request.

The two articles in question are electrically powered machines designed to chip and shred small pieces of garden debris and cuttings. Model GS70014 and QS70020 are both corded devices which are designed for use in home gardens. The primary difference between the two machines is that model QS70020 uses a quieter induction motor.

The applicable subheading for the garden chipper/shredders will be 8436.80.0090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other...horticultural, forestry,...machinery,...: other machinery, forestry machinery. The rate of duty will be free.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mark Palasek at (646) 733–3013.

Sincerely,

ROBERT B. SWIERUPSKI
Director
National Commodity Specialist Division

NY 807222
March 23, 1995
CLA-2–84:S:N:N1:106 807222
CATEGORY: Classification
TARIFF NO.: 8436.80.0090

MR. JOHN J. MARSHALL
"K" LINE AIR SERVICE (USA) INC.
40-A BRODERICK ROAD
BURLINGAME, CA 94010

RE: The tariff classification of shredding machinery from Germany

DEAR MR. MARSHALL:

In your letter dated February 21, 1995, on behalf of LandTek, you requested a tariff classification ruling. Correspondence dated March 14, 1995 from LandTek and descriptive literature are included in the file of this request.

The merchandise under consideration is the 300K Posch Professional Shredder, model numbers B6, B7 and Z, along with an optional towing hitch. The B6 and B7 models are driven by gasoline motors while the Z model operates off the PTO shaft of a tractor. The LandTek correspondence states that the shredders are used for grinding garden clippings, leaves, small branch prunings, plant prunings, end of season plantings, and the like. These materials are placed in the top of the machine where they are drawn in by conveyor and are fed into the shredding compartment which consists of a 27 mallet hammer mill. The mulched material is processed and deposited on the ground, to be ultimately used for composting material. LandTek states that these machines are used widely by farmers, nurseries, vineyards, home gardeners and the like.

The applicable subheading for the Posch 300K Professional Shredders, models B6, B7 and Z, will be 8436.80.0090, Harmonized Tariff Schedule of the United States (HTS), which provides for other agricultural or horticultural machinery. The rate of duty will be free.

Your inquiry does not provide enough information for us to give a classification ruling on the optional towing hitch. Your request for a classification ruling should include a complete description of the article and a statement as to the uses to which it may be put.

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

NY 801876
September 19, 1994
CLA-2–84:S:N:N1:106–801876
CATEGORY: Classification
TARIFF NO.: 8436.80.0090

MR. RICHARD J. HOUSMAN
JAMES J. BOYLE & CO.
371 ALLERTON AVENUE
S. SAN FRANCISCO, CA 94080

RE: The tariff classification of wood chippers from China.

DEAR MR. HOUSMAN:

In your letter dated September 1, 1994, on behalf of Tool Barn Inc., you requested a tariff classification ruling. You included descriptive literature with your request.

The wood chippers in question are the Industrial Wood Chipper Model 4 and the Model 6. The Model 4 can accommodate wood pieces up to 4 inches in diameter while the Model 6 can handle pieces up to 6 inches in diameter. The chippers are designed to operate through the PTO of a tractor and are intended for use in such areas as parks, orchards, vineyards, farms, and large estates. Wood is placed into an infeed chute where a flywheel blade cuts the material in to one-quarter inch pieces. The chips are discharged by the fins on the back of the flywheel due to the blower effect of the design. The chips are frequently used as a bedding material or as cover material.

The applicable subheading for the wood chippers will be 8436.80.0090, Harmonized Tariff Schedule of the United States (HTS), which provides for other agricultural or horticultural machinery. The rate of duty will be free.

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

N297986
July 17, 2018
CLA-2–84:OT:RR:NC:N1:104
CATEGORY: Classification
TARIFF NO.: 8430.69.0100; 8433.20.0020;
8436.80.0090; 9817.00.50; 9903.88.01

MR. KURT M. SCHIE
WOODMAXX POWER EQUIPMENT LTD.
42 JACKSON STREET
AKRON, NY 14001

RE: The tariff classification of various Tractor Implements from China

DEAR MR. SCHIE:

In your letter dated June 18, 2018 you requested a tariff classification ruling.

You requested a tariff classification on three tractor implements. The first tractor implement is referred to as a Backhoe Attachment which is constructed of steel that is powder coated or painted. The backhoe is not self-propelled. It must be attached to a tractor via a self-contained hydraulic system in order to derive its power from the tractor's power take off ("PTO") shaft. The backhoe attachment is used on small farms in agricultural enviroments to dig drainage and irrigation lines, remove rocks and stumps, bury deceased livestock and remove animal waste. In order to operate the attachment, the operator sits in the backhoe's seat and uses the two handles that open or close the hydraulic valves to extend or retract the boom and dipper which allow the user to dig or move the material.

The second tractor implement is described as a Flail Mower, Mulcher and Shredder Attachment. The implement is not self-powered but rather derives its power from a tractor through a Power Take Off (PTO). It is used to mow field grass, weeds and small samplings on farmland. The cuttings are further pulverized by rotary blades. The remaining debris is then ejected and left on the field to decay and enrich the soil.

The third tractor implement is referred to as a Mulcher, Shredder and Chipper Attachment. The implement is not self-powered but rather derives its power from a tractor through a Power Take Off (PTO). It is used to reduce organic debris such as wood, plant clippings and leaves into small pieces in order to create mulch for composting. Vegetation is fed into the machine's hopper where it is pulled into a spinning grinding head. Knives then cut and reduce the vegetation into small pieces which are ejected out through a discharge chute. The resulting compost is used to enrich soil for crop production.

The applicable subheading for the Backhoe Attachment will be 8430.69.0100, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other moving, grading, leveling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, inerals or ores; pile-drivers and pile-extractors; snowplows and snowblowers: Other machinery, not self-propelled: Other". The rate of duty will be free.

The applicable subheading for the Flail Mower, Mulcher and Shredder Attachment will be 8433.20.0020, HTSUS, which provides for "Harvesting or threshing machinery, including straw or fodder balers; grass or hay mowers; machines for cleaning, sorting or grading eggs, fruit or other agricultural produce, other than machinery of heading 8437; parts thereof: Other mowers,

including cutter bars for tractor mounting ... Tractor drawn or for tractor mounting: Rotary cutter type". The rate of duty will be free.

The applicable subheading for the Mulcher, Shredder and Chipper Attachment will be 8436.80.0090, HTSUS, which provides for "Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders; parts thereof: Other machinery. Other: Other: Other". The rate of duty will be free.

In your submission, you inquire about the eligibility of duty-free treatment under subheading 9817.00.50, HTSUS, which applies to machinery, equipment and implements to be used for agricultural and horticultural purposes. The Flail Mower, Mulcher and Shredder Attachment and the Mulcher, Shredder and Chipper Attachment are not eligible for this subheading. The exclusionary language found in Section XXII, Chapter 98, Subchapter XVII, U.S Note 2 (t) excludes articles provided for in headings 8433 and 8436, HTSUS.

You also propose that the subject backhoe be considered for duty-free treatment as agricultural or horticultural machinery under subheading 9817.00.50, HTSUS. Subheading 9817.00.50, HTSUS, is an actual use provision. To fall within this special classification, a three-part test must be met. First, the subject merchandise must not be excluded from the heading under Section XXII, Chapter 98, Subchapter XVII, U.S. Note 2, HTSUS. Secondly, the terms of the headings must be met in accordance with GRI 1, which provides that classification is determined according to the terms of the headings and any relative section or chapter notes. Thirdly, the article must comply with the actual use regulations under Section 10.131 through 10.139, Customs Regulations (19 CFR 10.131 through 10.139).

As stated above, the merchandise is classifiable under subheading 8430.69.0100, HTSUS. This subheading is not excluded from classification in subheading 9817.00.50, HTSUS, by operation of Section XXII, chapter 98, Subchapter XVII, U.S. Note 2, HTSUS. The second part of the test calls for the unit to be included within the terms of subheading 9817.00.50, HTSUS, as required by GRI 1. The unit must be "machinery", "equipment" or "implements" used for "agricultural or horticultural purposes". In this office's opinion, the subject merchandise is "machinery" which fulfills the requirement of an agricultural pursuit.

The three conditions required by 19 CFR 10.133 which must be met to receive duty preference for actual use are:

(a) Such use is intended at the time of importation;

(b) The article is so used; and

(c) Proof of use is furnished within 3 years after the date the article is entered or withdrawn from warehouse for consumption.

The backhoe described above is classifiable in subheading 9817.00.50, HTSUS, if the actual use conditions and requirements of Sections 10.131 through and including 10.139, Customs Regulations, are met.

Effective July 6, 2018, the Office of the United States Trade Representative imposed an additional tariff on certain products of China classified in the subheadings enumerated in Section XXII, Chapter 99, Subchapter III U.S. Note 20(b), HTSUS. For additional information see "Notice of Action and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation" (June 20, 2018,

83 F.R. 28710). Products of China that are provided for in heading 9903.88.01 and classified in one of the subheadings enumerated in U.S. note 20(b) to subchapter III shall continue to be subject to antidumping, countervailing, or other duties, fees and charges that apply to such products, as well as to those imposed by heading 9903.88.01.

Products of China classified under HTSUS subheadings 8430.69.0100; 8433.20.0020 and 8436.80.0090, unless specifically excluded, are subject to the additional 25 percent ad valorem rate of duty. At the time of importation, you must report the Chapter 99 number, i.e., 9903.88.01, in addition to the 8433.20.0020 and 8436.80.0090 numbers listed above, unless specifically excluded.

With regard to the backhoe attachment classified under subheading 8430.69.0100, HTSUS, as stated in Section XXII, Chapter 99, Subchapter III U.S. Note 20(a), HTSUS, the rates of duty imposed by heading 9903.88.01 do not apply to products for which entry is properly claimed under a heading or subheading in chapter 98.

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 number.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Patricia O'Donnell at patricia.k.odonnell@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

NY 897172
May 2, 1994
CLA-2–84:S:N:N1:106–897172
CATEGORY: Classification
TARIFF NO.: 8436.80.0090

MR. RICHARD L. JONES
JOHN S. JAMES, CO.
P.O. BOX 1017
CHARLESTON, SC 29402–1017

RE: The tariff classification of a woodchipper and parts from Finland

DEAR MR. JONES:

In your letter dated April 19, 1994, on behalf of Tri-State Distributors, Statesville, NC, you requested a tariff classification ruling.

You have submitted descriptive literature.

The imported product is the Patu model DC65 woodchipper. The woodchipper has a 3-point hook, and is powered by the power-take-off of a farm tractor. The woodchipper features four knives that will efficiently chip limbs, slabs or whole trees. The knife setting ranges from 1/4 inch to 1/2 inch. The maximum infeed diameter is 6–1/2 inches (170 mm). The feed chute is on the right side of the chipper which enables the operator to work away from the road traffic. The feed chute can be folded up and latched, thus ensuring a safe road transport. The model DC65 also features an adjustable chip length that enables the production of the correct chip size for different purposes. The discharge chute rotates 360 degrees, allowing the chips to be blown in the desired direction. The DC65 woodchipper weighs 650 pounds.

The target group for the sale of this product would be farmers who have small tracts of timber (for the purpose of either lumber or pulpwood).

The applicable subheading for the Patu model DC65 woodchipper will be 8436.80.0090, Harmonized Tariff Schedule of the United States (HTS), which provides for other forestry machinery: other: other. The rate of duty will be free.

You also inquired about the classification of spare parts for this woodchipper. In general, parts which are goods included in any of the headings of chapters 84 and 85 are classified in their respective headings. Other parts, if not excluded from section XVI or chapter 84 and if suitable for use solely or principally with these machines, are classifiable in the provision for parts of forestry machinery in subheading 8436.99.0020, HTS. The rate of duty is also free. Subheading 9817.00.60, HTS, provides for parts to be used in agricultural or horticultural machinery provided for in headings 8432, 8433, 8434 and 8436. As these parts are to be used in an article classifiable in heading 8436, they would be eligible for duty-free treatment under subheading 9817.00.60 if they are alternatively classified in a dutiable provision.

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 H307394
OT:RR:CTF:EMAIN H307394 JRG
CATEGORY: Classification
TARIFF NO.: 8436.80.00; 9903.88.01

MR. MATTHEW CLARK
SEKO CUSTOMS BROKERAGE
1100 ARLINGTON HEIGHTS ROAD, SUITE 600
ITASCA, ILLINOIS 60143

RE : Revocation of NY N114998 (August 5, 2010), NY 807222 (March 23, 1995), and NY 801876 (September 19, 1994), and modification of NY N297986 (July 17, 2018) and NY 897172 (May 2, 1994); Tariff classification of Wood Chipping/Shredding Machines

DEAR MR. CLARK:

This is regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of wood chipping/shredding machines (WCSMs) in New York Ruling Letter (NY) N114998, issued to you on behalf of your client on August 5, 2010. Upon review, we have concluded that NY N114998 is incorrect regarding the ten-digit statistical reporting number referenced in the ruling. We also found that NY 807222, NY 801876, NY N297986 and NY 897172 are erroneous in the same respect.

FACTS:

The facts of NY N114998 are as follows:

> The two articles in question are electrically powered machines designed to chip and shred small pieces of garden debris and cuttings. Model GS70014 and QS70020 are both corded devices which are designed for use in home gardens. The primary difference between the two machines is that model QS70020 uses a quieter induction motor.

The facts of NY 807222 are as follows:

> The merchandise under consideration is the 300K Posch Professional Shredder, model numbers B6, B7 and Z, along with an optional towing hitch. The B6 and B7 models are driven by gasoline motors while the Z model operates off the PTO shaft of a tractor. The LandTek correspondence states that the shredders are used for grinding garden clippings, leaves, small branch prunings, plant prunings, end of season plantings, and the like. These materials are placed in the top of the machine where they are drawn in by conveyor and are fed into the shredding compartment which consists of a 27 mallet hammer mill. The mulched material is processed and deposited on the ground, to be ultimately used for composting material. LandTek states that these machines are used widely by farmers, nurseries, vineyards, home gardeners and the like.

The facts of NY 801876 are as follows:

> The wood chippers in question are the Industrial Wood Chipper Model 4 and the Model 6. The Model 4 can accommodate wood pieces up to 4 inches in diameter while the Model 6 can handle pieces up to 6 inches in diameter. The chippers are designed to operate through the PTO of a tractor and are intended for use in such areas as parks, orchards, vineyards, farms, and large estates. Wood is placed into an infeed chute where a flywheel blade cuts the material in to one-quarter inch pieces. The chips

are discharged by the fins on the back of the flywheel due to the blower effect of the design. The chips are frequently used as a bedding material or as cover material.

The relevant facts of NY N297986 are as follows:

The third tractor implement is referred to as a Mulcher, Shredder and Chipper Attachment. The implement is not self-powered but rather derives its power from a tractor through a Power Take Off (PTO). It is used to reduce organic debris such as wood, plant clippings and leaves into small pieces in order to create mulch for composting. Vegetation is fed into the machine's hopper where it is pulled into a spinning grinding head. Knives then cut and reduce the vegetation into small pieces which are ejected out through a discharge chute. The resulting compost is used to enrich soil for crop production.

The relevant facts of NY 897172 are as follows:

The imported product is the Patu model DC65 woodchipper. The woodchipper has a 3-point hook, and is powered by the power-take-off of a farm tractor. The woodchipper features four knives that will efficiently chip limbs, slabs or whole trees. The knife setting ranges from 1/4 inch to 1/2 inch. The maximum infeed diameter is 6–1/2 inches (170 mm). The feed chute is on the right side of the chipper which enables the operator to work away from the road traffic. The feed chute can be folded up and latched, thus ensuring a safe road transport. The model DC65 also features an adjustable chip length that enables the production of the correct chip size for different purposes. The discharge chute rotates 360 degrees, allowing the chips to be blown in the desired direction. The DC65 woodchipper weighs 650 pounds.

ISSUE:

Whether the subject Wood Chipping/Shredding Machines are "forestry machinery" described by statistical reporting number 8436.80.0020, HTSUS Annotated (HTSUSA).

LAW AND ANALYSIS:

Classification under the HTSUS is determined in accordance with 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 (ARIs). GRI 1 provides that the classification of goods shall be "determined according to the terms of the headings and any relative section or chapter notes." If the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, GRIs 2 through 6 may be applied in order.

The following HTSUSA provisions are under consideration:

8436	Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders; parts thereof:
8436.80.00	Other machinery:
8436.80.0020	Forestry machinery. . .

* * *

8436.80.0090 Other. . .

The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System also support this conclusion. The ENs 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. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989). The ENs to heading 8436, in relevant part, provide:

> The heading covers machinery, not falling in headings 84.32 to 84.35, which is of the type used on farms (including agricultural schools, co-operatives or testing stations), in forestry, market gardens, or poultry-keeping or bee-keeping farms or the like. However, it excludes machines clearly of a kind designed for industrial use. . . .
>
> These [articles of heading 8436] include: . . .
>
> (H) Forestry machines, such as: . . .
>
> (5) Machines for chipping branches, twigs, etc., following pruning, delimbing, etc., using chipping blades. The chips are discharged by a blower unit...

Neither the HTSUS nor the Explanatory Notes (ENs) define the term "forestry." When a tariff term is not defined by the HTSUS or its legislative history, "the term's correct meaning is its common meaning." *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *See Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, U.S. Customs and Border Protection (CBP) may consult "dictionaries, scientific authorities, and other reliable information sources" and "lexicographic and other materials." *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271 (C.C.P.A. 1982); *Simod*, 872 F.2d at 1576.

In its Dictionary of Forestry, the Society of American Foresters defines the term "forestry" as follows:

> ...the profession embracing the science, art, and practice of creating, managing, using, and conserving forests and associated resources for human benefit and in a sustainable manner to meet desired goals, needs, and values —*note* the broad field of forestry consists of those biological, quantitative, managerial, and social sciences that are applied to forest management and conservation; it includes specialized fields such as agroforestry, urban forestry, industrial forestry, nonindustrial forestry, and wilderness and recreation forestry...

See Society of American Foresters, Dictionary of Forestry 74 (Robert Deal, ed., 2d ed. 2018). Furthermore, the U.S. Dept of Agriculture states that the "forestry profession encompasses the science and practice of establishing, managing, using, and conserving forests, trees and associated resources in a sustainable manner to meet desired goals, needs, and values." *See* Forestry, U.S. Dep't of Agriculture, https://www.usda.gov/topics/forestry#:~:text=The%20forestry%20pro -fession%20encompasses%20the,goals%2C%20needs%2C%20and%20values (last accessed Sept. 18, 2024).

The subject WCSMs mechanically convert wood logs and branches into wood chips or strips. Wood chips have a variety of uses, including being placed in planting areas and around trees to inhibit weed growth, regulate soil temperatures, and retain water within the soil. *See* Top 10 Reasons to Choose Wood Chips Over Other Types of Mulch, leaf&limb.com, https://www.leaflimb.com/Top-Ten-Reasons-to-Choose-Wood-Chips/ (last accessed Sept. 18, 2024). Wood chips also allow for cleared trees to be disposed of more easily, boost soil health by absorbing pollutants, reduce soil compaction, and combat soil erosion. *See* Ben Raskin, The Woodchip Handbook: A Complete Guide for Farmers, Gardeners and Landscapers (2021), https://www.resilience.org/stories/2021–10–29/the-woodchip-handbook-a complete-guide-for-farmers-gardeners-and-landscapers-excerpt/ (last accessed Sept. 29, 2023). Thus, the WCSMs use and manage forest resources and, in turn, are forestry machines.

Thus, the above described WCSMs are properly classified under heading 8436, HTSUS, as forestry machines. Moreover, the ENs to heading 8436, HTSUS, support this classification by explicitly stating "[m]achines for chipping branches, twigs, etc.," are classified therein. While the subject rulings all properly classify WCSMs under subheading 8436.80.00, HTSUS, each ruling incorrectly classified WCSMs under statistical reporting number 8436.80.0090, HTSUSA, which is for "Other." Given our finding that WCSMs are forestry machines, the correct statistical reporting number is 8436.80.0020, HTSUSA, which is for "Forestry machinery." Classification of the subject WCSMs in statistical reporting number 8436.80.0020, HTSUSA, is also consistent with prior CBP rulings. Both NY N299893[1], dated September 4, 2018, and NY N108595[2], dated July 1, 2010, classified similar WCSMs under statistical reporting number 8436.80.0020, HTSUSA. Based on the foregoing, NY N114998 (August 5, 2010), NY 807222 (March 23, 1995), and NY 801876 (September 19, 1994) are hereby revoked, and NY N297986 (July 17, 2018) and NY 897172 (May 2, 1994) are hereby modified only with respect to the articles classified under subheading 8436.80.00, HTSUS.

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[1] In NY N299893, the "Wood Chipping Machine" was described as follows:

> The merchandise under consideration, WoodMaxx DC-1260, is identified as a wood chipping machine. It is designed to chip branches and cuttings from trees and shrubs. The wood chipper is powered by a 13.5 horsepower gasoline engine and it weighs approximately 408 pounds. The machine incorporates a 12 inch x 6 inch infeed opening that can handle material up to 4 inches in diameter. Material is inserted into the slopped infeed bin which feeds into the 10 inch diameter, 53 pound, chipper drum. The drum acts as a power feed assist system which pulls the branches in at up to 50 feet per minute. Knives incorporated inside the drum cut the material into small chips, which are then expelled through a discharge chute. The wood chipping machine is balanced on two wheels and includes a trailer hitch for attaching it to an ATV or utility vehicle for transport.

[2] In NY N108595, the "wood chipper" is described as follows:

> The machine in question is the Eliet gas powered chipper. The machine is designed to chip branches and cuttings from trees and shrubs in such a way that it is useable as compost. The rotating blade design is intended to cut with the grain of the wood as it is inserted by the user in the machine. Holes in the base of the cylinder containing the blades only allow the chips to exit when they have reached a small enough size to pass through these holes.

HOLDING:

By application of GRIs 1 and 6, Wood Chipping/Shredding Machines are properly classified under heading 8436, HTSUS, and specifically described by subheading 8436.80.00, HTSUS, which provides for "Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders; parts thereof: Other machinery." The general column one rate of duty for merchandise classified under this subheading is Free. The subject merchandise is described by statistical reporting number 8436.80.0020, HTSUSA, as "forestry machinery."

Pursuant to U.S. Note 20(b) to Subchapter III, Chapter 99, HTSUS, products of China classified under subheading 8436.80.00, HTSUS, unless specifically excluded, were subject to an additional 25 percent ad valorem rate of duty. At the time of importation, an importer was required to report the Chapter 99 subheading, i.e., 9903.88.01, in addition to subheading 8436.80.00, HTSUS, noted above, for products of China.

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

EFFECT ON OTHER RULINGS:

NY N114998, dated August 5, 2010, is hereby REVOKED.

NY 807222, dated March 23, 1995, is hereby REVOKED.

NY 801876, dated September 19, 1994, is hereby REVOKED.

NY N297986, dated July 17, 2018, is hereby MODIFIED only with respect to the articles classified under subheading 8436.80.00.

NY 897172, dated May 2, 1994, is hereby MODIFIED only with respect to the articles classified under subheading 8436.80.00.

Sincerely,
for

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

cc: Mr. John J. Marshall
"K" Line Air Service (USA) Inc.
40-A Broderick Road
Burlingame, CA 94010

Mr. Richard J. Housman
James J. Boyle & Co.
371 Allerton Avenue
South San Francisco, CA 94080

Mr. Kurt M. Schie
WoodMaxx Power Equipment Ltd.
42 Jackson Street
Akron, NY 14001

Mr. Richard L. Jones
John S. James, Co.
P.O. Box 1017
Charleston, SC 29402–1017

NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING SURGICAL TOWELS

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (CBP) has issued a final determination concerning the country of origin of certain surgical towels. Based upon the facts presented, CBP has concluded in the final determination that the country of origin of the surgical towels in question is Bangladesh for purposes of U.S. Government procurement.

DATES: The final determination was issued on October 7, 2024. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination no later than November 14, 2024.

FOR FURTHER INFORMATION CONTACT: Marie Durané, Food, Textiles and Marking Branch, Regulations and Rulings, Office of Trade, at *marie.durane@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that on October 7, 2024, CBP issued a final determination concerning the country of origin of certain surgical towels for purposes of Title III of the Trade Agreements Act of 1979. This final determination, HQ H339826, was issued at the request of Global Resources International, under procedures set forth at 19 CFR part 177, subpart B, which implements title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP has concluded that, based upon the facts presented, the country of origin of the surgical towels is Bangladesh for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

ALICE A. KIPEL,
Executive Director,
Regulations and Rulings, Office of Trade.

HQ H339826
October 7, 2024
OT:RR:CTF:FTM H339826 MJD
CATEGORY: Origin

MS. LISA MURRIN, LCB
SENIOR CONSULTANT, U.S. TRADE ADVISORY SERVICES
EXPEDITORS TRADEWIN, LLC
795 JUBILEE DRIVE
PEABODY, MA 01960

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511); Subpart B, Part 177, CBP Regulations; Country of Origin of Surgical Towels

DEAR MS. MURRIN:

This is in response to your request, dated April 12, 2024, on behalf of your client, Global Resources International ("GRI"), for a final determination concerning the country of origin of surgical towels, pursuant to Title III of the Trade Agreements Act of 1979 ("TAA"), as amended (19 U.S.C. 2511 *et seq.*), and subpart B of Part 177, U.S. Customs and Border Protection ("CBP") Regulations (19 CFR 177.21, *et seq.*). Your request, submitted as an electronic ruling request, was forwarded to this office from the National Commodity Specialist Division. GRI is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and 177.23(a) and is therefore entitled to request this final determination.

FACTS

The subject merchandise consists of blue surgical towels made from 100 percent cotton huckaback weave fabric. The imported towels, measuring either 17 x 24 or 17 x 27 inches, may or may not be sterilized, but are autoclaved. The towels are used during surgery for the absorption of fluids. The cotton fabric used to make the towels is from Bangladesh. In Bangladesh, the fabric is woven and dyed blue. Then the fabric is shipped to Vietnam in rolls, where it is cut to size, sewn, autoclaved, packaged, and shipped to the United States. The surgical towels are classified under subheading 6307.90.89, Harmonized Tariff Schedule of the United States ("HTSUS").

ISSUE

What is the country of origin of the surgical towels for purposes of U.S. Government procurement?

LAW AND ANALYSIS

CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government, pursuant to subpart B of Part 177, 19 CFR 177.21–177.31, which implements Title III of the TAA, as amended (19 U.S.C. 2511–2518).

CBP's authority to issue advisory rulings and final determinations is set forth in 19 U.S.C. 2515(b)(1), which states:

For the purposes of this subchapter, the Secretary of the Treasury shall provide for the prompt issuance of advisory rulings and final determinations

on whether, under section 2518(4)(B) of this title, an article is or would be a product of a foreign country or instrumentality designated pursuant to section 2511(b) of this title.

Emphasis added.

The Secretary of the Treasury's authority mentioned above, along with other customs revenue functions, are delegated to CBP in the Appendix to 19 CFR part 0—Treasury Department Order No. 100–16, 68 FR 28322 (May 23, 2003).

The rule of origin set forth under 19 U.S.C. 2518(4)(B) states:

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 CFR 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulation ("FAR"). *See* 19 CFR 177.21. In this regard, CBP recognizes that the FAR restricts the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR 25.403(c)(1).

The FAR, 48 CFR 25.003, defines "designated country end product" as:

a WTO GPA [World Trade Organization Government Procurement Agreement] country end product, an FTA [Free Trade Agreement] country end product, a least developed country end product, or a Caribbean Basin country end product.

Section 25.003 defines "Least developed country end product" as an article that:

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

As previously noted, the fabric from Bangladesh is cut to size, sewn, autoclaved, and packaged in Vietnam. Bangladesh is a TAA-designated country, and Vietnam is not.

The information submitted indicates that the surgical towels are made of 100% cotton. GRI also indicates that the goods are classified in subheading 6307.90.89, HTSUS, as a textile product. The rules of origin for textile and apparel products for purposes of the customs laws and the administration of quantitative restrictions are governed by 19 U.S.C. 3592, unless otherwise provided for by statute. These provisions are implemented in the CBP Regulations at 19 CFR 102.21. Section 3592 of title 19 has been described as Congress's expression of substantial transformation as it relates to textile

and apparel products. Therefore, the country of origin of the surgical towels for Government procurement purposes is determined by sequential application of the general rules set forth in paragraphs (c)(1) through (c)(5) of 19 CFR 102.21.

Paragraph (c)(1) states: "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 surgical towels are produced by processing in both Bangladesh and Vietnam, they are not wholly obtained or produced in a single country, territory or insular possession. Therefore paragraph (c)(1) of Section 102.21 is inapplicable.

Paragraph (c)(2) states: "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)(1) provides that "The following rules will apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section." The applicable rule, that corresponds to subheading 6307.90.89, HTSUS, states:

6307.90 The country of origin of a good classifiable under subheading 6307.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.

In the instant case, the 100% cotton fabric that is woven and dyed blue in Bangladesh is imported into Vietnam where it is cut to size, sewn, and autoclaved to make surgical towels. Therefore, the country of origin of the surgical towels is Bangladesh, where the 100% cotton fabric that comprises the surgical towel was formed by a fabric-making process. As the surgical towels meet the requirements for goods classified in subheading 6307.90, HTSUS, pursuant to 19 CFR 102.21(c)(2), the country of origin of the surgical towels is Bangladesh.

Based on the analysis above, we find that the country of origin of the subject surgical towels is Bangladesh and, therefore, the surgical towels would be the product of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b)(1).

HOLDING

Based on the facts and analysis set forth above, the country of origin of the instant surgical towels will be Bangladesh.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the U.S. Court of International Trade.

Sincerely,

ALICE A. KIPEL,
Executive Director,
Regulations and Rulings, Office of Trade.

19 CFR CHAPTER I

ARRIVAL RESTRICTIONS APPLICABLE TO FLIGHTS CARRYING PERSONS WHO HAVE RECENTLY TRAVELED FROM OR WERE OTHERWISE PRESENT WITHIN RWANDA

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

ACTION: Announcement of arrival restrictions.

SUMMARY: This document announces the decision of the Secretary of Homeland Security to direct all flights to the United States carrying persons who have recently traveled from, or were otherwise present within, Rwanda to arrive at one of the U.S. airports where the U.S. government is focusing public health resources to implement enhanced public health measures. For purposes of this document, a person has recently traveled from Rwanda if that person has departed from, or was otherwise present within, Rwanda within 21 days of the date of the person's entry or attempted entry into the United States. Also, for purposes of this document, crew and flights carrying only cargo (*i.e.,* no passengers or non-crew) are excluded from the measures herein.

DATES: The arrival restrictions apply to flights departing after 11:59 p.m. Eastern Daylight Time on October 15, 2024. Arrival restrictions continue until cancelled or modified by the Secretary of Homeland Security and notice of such cancellation or modification is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Stephanie Watson, Office of Field Operations, U.S. Customs and Border Protection at 202–255–7018.

SUPPLEMENTARY INFORMATION:

Background

Marburg Virus Disease (MVD), caused by the virus family *Filoviridae,* is a severe and often fatal disease. Disease transmission occurs via direct contact with bodily fluids (*e.g.,* blood, mucus, vomit, urine) from people sick with MVD. The first known MVD cases were initially detected in 1967 after simultaneous outbreaks in Marburg and Frankfurt, Germany and in Belgrade, Serbia. Subsequently, outbreaks and sporadic cases have been reported in Angola, Ghana, Guinea, the Democratic Republic of the Congo, Kenya, South Africa

(in a person with recent travel history to Zimbabwe), and Uganda.[1] Two concurrent but unconnected outbreaks of MVD occurred in Equatorial Guinea and Tanzania in 2023. This was both countries' first MVD outbreak, which resulted in multiple deaths. MVD can have substantial medical, public health, and economic consequences if it spreads to densely populated areas as there are currently no licensed treatments for MVD. As such, MVD may present a threat to U.S. health security given the potentially high public health impact that an MVD outbreak could cause and the interconnectedness of countries through global travel.

On September 27, 2024, Rwanda reported cases of MVD in several provinces around the country, largely related to two hospitals. As of October 8, 2024, a total of 58 confirmed cases with 13 confirmed deaths have been reported from Rwanda. At present, most of the people infected are healthcare workers or their contacts. The Centers for Disease Control and Prevention (CDC) has issued a Travel Health Notice—Level 3, Reconsider Nonessential Travel.[2]

In order to assist in preventing or limiting the introduction and spread of this communicable disease into the United States, the Departments of Homeland Security and Health and Human Services (HHS), including CDC, and other agencies charged with protecting the homeland and the American public, are currently implementing enhanced public health measures at three U.S. airports that receive the largest number of travelers originating from Rwanda. To ensure that all travelers with recent presence in Rwanda arrive at one of these airports, DHS is directing all flights to the United States carrying such persons to arrive at the airports where the enhanced public health measures are being implemented. While DHS, in coordination with other applicable Federal agencies, anticipates working with operators of aircraft to identify potential travelers who have recently traveled from, or were otherwise present within, Rwanda prior to boarding, operators of aircraft will remain obligated to comply with the requirements of this document. Department of Defense (DoD) flights, via either military aircraft or contract flights, will be managed by DoD in accordance with HHS guidelines.

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[1] World Health Organization, Marburg Haemorrhagic Fever, *https://www.afro.who.int/health-topics/marburg-haemorrhagic-fever* (last visited Oct. 7, 2024); and Centers for Disease Control and Prevention, History of Marburg Disease Outbreaks, *https://www.cdc.gov/marburg/outbreaks/index.html* (last visited Oct. 7, 2024).

[2] CDC, Marburg in Rwanda Travel Health Notice—Level 3, Reconsider Nonessential Travel (Oct. 7, 2024), *https://wwwnc.cdc.gov/travel/notices/level3/marburg-rwanda.*

Notice of Arrival Restrictions Applicable to All Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within Rwanda

Pursuant to 6 U.S.C. 112(a), 19 U.S.C. 1433(c), and 19 CFR 122.32, DHS has the authority to limit the locations at which all flights entering the United States from abroad may land. Under this authority and effective for flights departing after 11:59 p.m. Eastern Daylight Time on October 15, 2024, I hereby direct all operators of aircraft to ensure that all flights (with the exception of those operated or contracted by DoD) carrying persons who have recently traveled from, or were otherwise present within, Rwanda only land at one of the following airports:

- Chicago O'Hare International Airport (ORD), Illinois;
- John F. Kennedy International Airport (JFK), New York; and
- Washington-Dulles International Airport (IAD), Virginia.

This direction considers a person to have recently traveled from Rwanda if that person departed from, or was otherwise present within, Rwanda within 21 days of the date of the person's entry or attempted entry into the United States. Also, for purposes of this document, crew and flights carrying only cargo (*i.e.,* no passengers or non-crew) are excluded from the applicable measures set forth in this notification. This direction is subject to any changes to the airport landing destination that may be required for aircraft and/or airspace safety as directed by the Federal Aviation Administration.

This list of designated airports may be modified by the Secretary of Homeland Security in consultation with the Secretary of Health and Human Services and the Secretary of Transportation. This list of designated airports may be modified by an updated publication in the **Federal Register** or by posting an advisory to follow at *www.cbp.gov.* The restrictions will remain in effect until superseded, modified, or revoked by publication in the **Federal Register**.

For purposes of this **Federal Register** document, "United States" means the territory of the several States, the District of Columbia, and Puerto Rico.

ALEJANDRO N. MAYORKAS,
Secretary,
U.S. Department of Homeland Security.

AGENCY INFORMATION COLLECTION ACTIVITIES:

Extension; Collection of Advance Information From Certain Undocumented Individuals on the Land Border

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 December 16, 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 1651–0140 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: Advance Collection of Information from undocumented Individuals on the Land Border.

OMB Number: 1651–0140.

Form Number: N/A.

Current Actions: This submission will extend the expiration date of this information collection, with no change to the burden or information collected.

Type of Review: Extension (without change).

Affected Public: Individuals.

Abstract: Under this collection, CBP collects certain biographic and biometric information from undocumented noncitizens via the CBPOne™ application, prior to their arrival at a Port of Entry (POE), to streamline their processing at the POE. The requested information is that which CBP would otherwise collect from these individuals during primary and/or secondary processing. This information is provided directly by undocumented noncitizens. Providing this information reduces the amount of data entered by CBP Officers (CBPOs) and the corresponding time required to process an undocumented noncitizen at the POE.

The biographic and biometric information being collected in advance, that would otherwise be collected during primary and/or secondary processing at the POEs, includes descriptive information such as: Name, Date of Birth, Country of Birth, City of Birth, Country of Residence, Contact Information, Addresses, Nationality, Employment history (optional), Travel history, Emergency Contact (optional), U.S. and foreign addresses, Familial Information, Marital Status, Identity Document (not a Western Hemisphere Travel Initiative (WHTI) compliant document) (optional), Name and contact information for some-

one who assisted the user (Optional), Gender, Preferred Language, Height, Weight, Eye color and Photograph.

This collection requires the submission of a live facial photograph for all noncitizens who choose to provide advance information to CBP via CBPOne™. The submission of a live photograph in advance provides CBPOs with a mechanism to match a noncitizen who arrives at the POE with the photograph submitted in advance, therefore identifying those individuals, and verifying their identity as well as conducting advance vetting. The live photograph is particularly important for identity verification if an NGO/IO is not assisting an individual in scheduling their presentation at a POE. In addition, the requirement for a live photo that contains latitude and longitude data points allows CBP to ensure the individual is physically located within the designated geofence areas. Creating designated areas allows an individual to secure an appointment without congregating in potentially dangerous conditions at the U.S. Southwest Border; and only traveling to or through Mexico for the intended purpose of presenting themselves to CBP for inspection.

In addition, CBP allows individuals to request to present themselves for processing at a specific POE on a specific day or days, although such a request does not guarantee that an individual will be processed on a given date or at a given time. Individuals also have the opportunity to modify their requests within the CBPOne™ application to an alternate day or time. The functionality to modify their request to an alternative date and time does not require the collection of new Personal Identification Information (PII) data elements.

Noncitizens who use CBPOne™ are processed in a more streamlined manner at the POE than those who do not use CBPOne™, since their advance information is prepopulated into CBP systems, which reduces manual data entry during processing. Noncitizens who did not submit information through CBPOne™ may need to wait to be processed in a separate line from those who used CBPOne™ (reserved for those who submitted their advance information and scheduled a presentation date).

Based on user and stakeholder feedback, CBPOne™ scheduling occurs through a daily appointment allocation process. Noncitizens submit a daily request in the CBPOne™ application, indicating that they would like an appointment within the next 21 days. Each day at 12:00 p.m. Eastern Time, available appointments are allocated to those who requested an appointment. Individuals who are issued an appointment then have a 23-hour period to complete the scheduling process (until 11:00 a.m. Eastern Time the following day), which

includes confirming the appointment time and providing a live facial photograph. By providing a long period of time to complete the scheduling process and confirm the appointment (*i.e.,* 23 hours versus the previous few minutes under a first come, first served scheduling system)), this scheduling feature mitigates certain bandwidth issues that may arise for some users as a result of a large volume of people submitting information during a short window of time. The CBPOne™ application validates the users is within central or northern Mexico, captures a live photo, and matches that photo to the user's registrations photo.

Finally, each day, unconfirmed appointments are reallocated among the current pool of registrations. This process enables noncitizens to request a preferred POE at which to schedule an appointment.

Individuals who use the CBPOne™ application will be able to schedule an appointment to present themselves at the following ports of entry:

- *Arizona:* Nogales;
- *Texas:* Brownsville, Hidalgo, Laredo, Eagle Pass, and El Paso (Paso Del Norte); and
- *California:* Calexico and San Ysidro (Pedestrian West—El Chaparral).

Future and ongoing enhancements to the app are expected based on user and stakeholder feedback to ensure equity in the scheduling process. These enhancements may include expanding appointment slots to additional POEs.

On August 23, 2024, CBP used an emergency revision to this information collection to expand the geofence for Mexican nationals to include all of Mexico and add the Mexican states of Tabasco and Chiapas to the current boundaries for all other nationalities. By adjusting the boundaries, CBP aids the Government of Mexico in its efforts to enforce its immigration laws and regulations and align resources to those areas where migrants are located.

Due to the volume of individuals traveling through Mexico to present at a POE at a designated date and time, CBP has deployed a validation mechanism to assist the Mexican government officials when they encounter an individual or group who claim to have a CBPOne™ appointment. The tool requires the Mexican government official to enter an individual's CBPOne™ confirmation number and date of birth. Once submitted, the tool returns confirmation of any valid CBPOne™ appointment with the appointment date, time, and location, as well as the total number of people in the group.

Type of Information Collection: Advance Information on Undocumented Travelers—Registration.

Estimated Number of Respondents: 500,000.
Estimated Number of Annual Responses per Respondent: 1.
Estimated Number of Total Annual Responses: 500,000.
Estimated Time per Response: 12 minutes.
Estimated Total Annual Burden Hours: 100,000.

Type of Information Collection: Daily Appointment Request.

Estimated Number of Respondents: 500,000.
Estimated Number of Annual Responses per Respondent: 60.
Estimated Number of Total Annual Responses: 30,000,000.
Estimated Time per Response: 1 minute.
Estimated Total Annual Burden Hours: 500,000.

Type of Information Collection: Confirmation of Appointment.

Estimated Number of Respondents: 529,250.
Estimated Number of Annual Responses per Respondent: 1.
Estimated Number of Total Annual Responses: 529,250.
Estimated Time per Response: 3 minutes.
Estimated Total Annual Burden Hours: 26,463.

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

AGENCY INFORMATION COLLECTION ACTIVITIES:

New Collection of Information; Forced Labor Allegation Portal/Forced Labor Portal

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

ACTION: 30-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 November 14, 2024) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Please submit written comments and/or suggestions in English. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (89 FR 24482) on April 08, 2024, allowing for a 60-day comment period. This notice allows for an additional 30

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

Overview of This Information Collection

Title: Forced Labor Allegation Portal/Forced Labor Portal.

OMB Number: 1651–0NEW.

Form Number: N/A.

Current Actions: New collection of information.

Type of Review: New collection of information.

Affected Public: Businesses, Individuals.

Abstract: U.S. Customs and Borders Protection (CBP) has created a new Forced Labor Allegation Portal and Forced Labor Portal. Currently, information regarding potential forced labor and trade violations are electronically submitted via the e-Allegations website at: *https://www.cbp.gov/trade/e-allegations/*.

Submissions from petitioners for revocation and modification requests are submitted by email to *ForcedLabor@cbp.dhs.gov* (and through the BOX program and the Case Management System—CMS). Exception review information is sent to *UFLPAInquiry@cbp.dhs.gov* mailbox via email with multiple zip files.

Applicability review information is sent to various ports of entry or any of the ten Centers of Excellence and Expertise via email with multiple zip files or shared secured folders.

U.S. Customs and Border Protection (CBP) enforces section 307 of the Tariff Act of 1930 (19 U.S.C. 1307), which states that "all goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced

labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited . . ."

In addition, the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (Pub. L. 114–125), signed into law on February 24, 2016, removed the "consumptive demand clause" for the enforcement of 19 U.S.C. 1307, and mandated CBP to create a division to oversee forced labor enforcement and create a process for the investigation of allegations.

CBP also enforces the Countering America's Adversaries Through Sanctions Act (CAATSA) (Pub. L. 115–44 (August 2, 2017), (22 U.S.C. 9241a)) where goods produced by North Korean nationals or citizens are presumed to be produced under forced labor and are prohibited from entering the U.S. commerce under 19 U.S.C. 1307.

Recently, the Uyghur Forced Labor Prevention Act (UFLPA) (Pub. L. 117–78 (December 23, 2021)) established that any goods produced wholly or in part in the Xinjiang Uyghur Autonomous Region (XUAR) of China, or by entities on the UFLPA Entity List are presumed to be made with forced labor and thus prohibited from importation into the U.S. under 19 U.S.C. 1307. This law allows for the collection of supply chain documentation to substantiate that forced labor was not used in the production of imported goods under an exception review or UFLPA does not apply to the detained shipment under an applicability review.

Sections 12.42 through 12.45 of title 19 of the Code of Federal Regulations (CFR) contain methods for CBP to collect information on forced labor, conduct investigations, and initiate withhold release orders (WRO) or findings to enforce 19 U.S.C. 1307 as well as allow for the collection of information from importers on detained shipments for admissibility review under a WRO.

Individuals, companies (domestic and international), civil society organizations, and nongovernmental organizations may submit allegations of forced labor, request for admissibility, applicability, and exception reviews with CBP under these laws and regulations.

The new Forced Labor Allegation Portal and the Forced Labor Portal will consolidate the various above-mentioned methods of submission into one centralized location, increasing efficiency and reducing the burden of collection to both CBP and the public.

Type of Information Collection: Allegations.

Estimated Number of Respondents: 200.
Estimated Number of Annual Responses per Respondent: 1.
Estimated Number of Total Annual Responses: 200.
Estimated Time per Response: 10 minutes.
Estimated Total Annual Burden Hours: 34.

Type of Information Collection: WRO Admissibility Reviews.

Estimated Number of Respondents: 1,900.
Estimated Number of Annual Responses per Respondent: 1.
Estimated Number of Total Annual Responses: 1,900.
Estimated Time per Response: 30 minutes.
Estimated Total Annual Burden Hours: 950.

Type of Information Collection: Modifications/Revocations.

Estimated Number of Respondents: 25.
Estimated Number of Annual Responses per Respondent: 1.
Estimated Number of Total Annual Responses: 25.
Estimated Time per Response: 10 minutes.
Estimated Total Annual Burden Hours: 4.

Type of Information Collection: UFLPA Exception Requests.

Estimated Number of Respondents: 4.
Estimated Number of Annual Responses per Respondent: 1.
Estimated Number of Total Annual Responses: 4.
Estimated Time per Response: 30 minutes.
Estimated Total Annual Burden Hours: 2.

Type of Information Collection: UFLPA Applicability Reviews.

Estimated Number of Respondents: 1,500.
Estimated Number of Annual Responses per Respondent: 10.
Estimated Number of Total Annual Responses: 15,000.
Estimated Time per Response: 30 minutes.
Estimated Total Annual Burden Hours: 7,500.

Type of Information Collection: CAATSA Exception Reviews.

Estimated Number of Respondents: 2.
Estimated Number of Annual Responses per Respondent: 1.
Estimated Number of Total Annual Responses: 2.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 0.33.

Dated: October 9, 2024.

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

U.S. Court of International Trade

Slip Op. 24–113

PT. ASIA PACIFIC FIBERS TBK, Plaintiff, v. UNITED STATES, Defendant, and UNIFI MANUFACTURING, INC. AND NAN YA PLASTICS CORPORATION, Defendant-Intervenors.

Before: Richard K. Eaton, Judge
Court No. 22–00007

[U.S. Department of Commerce's Final Results of Redetermination Pursuant to Court Remand are sustained.]

Dated: October 11, 2024

Lizbeth R. Levinson, Fox Rothschild LLP, of Washington, D.C., for Plaintiff PT. Asia Pacific Fibers Tbk. With her on the brief were *Alexander D. Keyser* and *Brittney R. Powell*.

Collin T. Mathias, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for Defendant the United States. With him on the brief were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director, and *L. Misha Preheim*, Assistant Director. Of counsel was *Leslie Mae Lewis*, Office of Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce, of Washington, D.C.

Julia A. Kuelzow, Kelley Drye & Warren LLP, of Washington, D.C., for Defendant-Intervenors Unifi Manufacturing, Inc. and Nan Ya Plastics Corp. With her on the brief were *Paul C. Rosenthal*, *David C. Smith*, and *Melissa M. Brewer*.

OPINION

Eaton, Judge:

Before the court are the U.S. Department of Commerce's ("Commerce" or the "Department") results of redetermination pursuant to the court's remand order in *PT. Asia Pacific Fibers Tbk v. United States*, 47 CIT __, 673 F. Supp. 3d 1320 (2023) ("*Asia Pacific*"). *See* Final Results of Redetermination Pursuant to Court Remand, ECF No. 58–1 ("Remand Results"). The Remand Results are uncontested, and the parties ask the court to sustain them.[1] *See* Pl.'s Cmts., ECF No. 60; Def.'s Resp., ECF No. 61.

The court will sustain the Remand Results if they comply with the court's remand order, are supported by substantial evidence on the record, and are otherwise in accordance with law. *See* 19 U.S.C. § 1516a(b)(1)(B)(i). For the following reasons, the court sustains the Remand Results.

[1] Defendant-Intervenors Unifi Manufacturing, Inc. and Nan Ya Plastics Corporation did not file comments on the Remand Results.

BACKGROUND

The relevant facts and procedural history are set out in the court's prior Memorandum Opinion and Order, familiarity with which is presumed. *See Asia Pacific*, 47 CIT at __, 673 F. Supp. 3d at 1323–27.

This case involves Commerce's final affirmative antidumping determination in the investigation of polyester textured yarn from Indonesia. *See Polyester Textured Yarn From Indonesia*, 86 Fed. Reg. 58,875 (Dep't of Commerce Oct. 25, 2021) ("Final Determination") and accompanying Issues and Decision Mem., PR 240. Plaintiff PT. Asia Pacific Fibers Tbk ("Plaintiff" or "Asia Pacific") is a manufacturer of the subject yarn and a mandatory respondent in the investigation.

The underlying antidumping investigation took place during the COVID-19 global pandemic. The investigation covered the period October 1, 2019, through September 30, 2020.

Commerce preliminarily determined an individual antidumping duty rate of 9.20% for Asia Pacific based on the company's reported information. *See Polyester Textured Yarn From Indonesia*, 86 Fed. Reg. 29,742, 29,743 (Dep't of Commerce June 3, 2021) ("Preliminary Determination"). Following its Preliminary Determination, Commerce conducted verification by questionnaire in lieu of on-site verification. Before issuing the Final Determination, however, Commerce neither produced a verification report, nor issued a supplemental verification questionnaire to notify Asia Pacific that it had found deficiencies in the company's verification response.[2] *See Asia Pacific*, 47 CIT at __, 673 F. Supp. 3d at 1324–26. Thus, unaware of Commerce's verification findings, Asia Pacific had no reason to believe that its verification response was lacking nor was it afforded the opportunity to correct any deficiencies. Also, Asia Pacific was not provided with the opportunity to argue (in an administrative case brief) against the use of facts available or adverse facts available in the Final Determination. *See* 19 C.F.R. § 351.309(c)(1)-(2) ("Any interested party or U.S. Government agency may submit a 'case brief,'"

[2] Pursuant to 19 U.S.C. § 1677m(d):

> If [Commerce] . . . determines that a response to a request for information . . . does not comply with the request, [Commerce] . . . shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations . . . under this subtitle. If that person submits further information in response to such deficiency and either—
>
> (1) [Commerce] . . . finds that such response is not satisfactory, or
>
> (2) such response is not submitted within the applicable time limits,
>
> then [Commerce] . . . may, subject to subsection (e), disregard all or part of the original and subsequent responses.

19 U.S.C. § 1677m(d).

and "[t]he case brief must present all arguments that continue in the submitter's view to be relevant to the Secretary's final determination"). Ultimately, based on "total adverse facts available"[3] ("AFA"), Commerce determined a final antidumping duty rate for Asia Pacific of 26.07%. *See Polyester Textured Yarn From Indonesia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 86 Fed. Reg. 71,031, 71,032 (Dep't of Commerce Dec. 14, 2021).

Plaintiff appealed the 26.07% rate to this Court, challenging Commerce's verification procedure and its use of AFA as unlawful and unreasonable. *See Asia Pacific*, 47 CIT at __, 673 F. Supp. 3d at 1329.

Taking into account the circumstances presented by the COVID-19 global pandemic when considering the lawfulness and reasonableness of Plaintiff's and Commerce's actions, the court found that "[Commerce's] failure to produce a verification report was unlawful and that the verification procedure employed in this case was unreasonable and an abuse of discretion." *Id.* at __, 673 F. Supp. 3d at 1331. The court remanded the case to Commerce with instructions to

> prepare a verification report of the "methods, procedures, and results" of verification as provided under 19 C.F.R. § 351.307(c), and provide (1) Asia Pacific a reasonable opportunity to place information on the record addressing any deficiencies found by Commerce; and (2) all parties the opportunity to file case briefs that "present all arguments that continue," in the party's view, "to be relevant to the Secretary's final determination," as provided under 19 C.F.R. § 351.309(c)(2); [and to] . . . reconsider its Final Determination, including its finding that the use of adverse facts available was warranted, taking into account any information and arguments that the parties present as relevant to Commerce's Final Determination.

Id. at __, 673 F. Supp. 3d at 1333. Thereafter, Commerce conducted a remand proceeding, the results of which are before the court.

DISCUSSION

In the Remand Results, Commerce described the steps it took to comply with the court's remand order in *Asia Pacific*:

[3] "'Total adverse facts available' is not defined by statute or agency regulation. Commerce uses this term 'to refer to [its] application of adverse facts available . . . to the facts respecting all of [a respondent's] production and sales information that the Department concludes is needed for an investigation or review.'" *BlueScope Steel Ltd. v. United States*, 45 CIT __, __, 548 F. Supp. 3d 1351, 1354 n.2 (2021) (emphasis omitted) (quoting *Nat'l Nail Corp. v. United States*, 43 CIT __, __, 390 F. Supp. 3d 1356, 1374 (2019)). In other words, Commerce assigns an antidumping rate based entirely on facts selected using an adverse inference, ignoring all of a respondent's information.

> Commerce: (1) under respectful protest, issued a notification of deficiencies to PT. Asia Pacific Fibers TBK (Asia Pacific) on February 8, 2024, to identify the specific deficiencies found by Commerce in the company's In Lieu of On-Site Verification Questionnaire (ILOVQ) response and to provide it an opportunity to address those deficiencies; and (2) prepared and issued, a verification report outlining the methods, procedures, and results of Commerce's verification.

Remand Results at 1–2. Moreover, Commerce stated, by way of explanation, that on remand it found that the record evidence did not support the use of AFA, and instead relied on the 9.20% rate that had been determined for Asia Pacific in the Preliminary Determination based on the company's reported information:

> As outlined in the verification report, no noted deficiencies remain with respect to Asia Pacific's ILOVQ Response. Asia Pacific has now provided the information and documentation which is necessary for Commerce to verify its reporting, and Asia Pacific has adequately addressed the concerns listed in the *Final Determination*. Specifically, Asia Pacific provided the requested translations, supporting documentation, and narrative explanation of its reporting methodologies. Asia Pacific also provided a narrative description of how the reported costs were calculated and how these costs tie back to its accounting system by providing the necessary supporting documentation from its accounting and production systems. As a result, Commerce was able to reconcile Asia Pacific's sales and cost reporting. Consequently, on remand, Commerce has verified Asia Pacific's cost and sales data reporting.
>
> Therefore, for these final results of redetermination, we find that the application of AFA to Asia Pacific is not warranted and Commerce has relied on Asia Pacific's information to calculate its weighted-average dumping margin. Commerce has not recalculated Asia Pacific's weighted-average dumping margin for these final results of redetermination. Instead, Commerce relied on the weighted-average dumping margin calculated for Asia Pacific in the *Preliminary Determination*.

Remand Results at 4–5; *id.* at 2 (determining that "the weighted-average dumping margin for Asia Pacific is now 9.20 percent. Commerce has also revised the all-others rate to 8.72 percent.").

There is no dispute among the parties with respect to the manner in which Commerce conducted the remand proceeding or that the Remand Results are supported by substantial evidence and otherwise in accordance with law. *See* Pl.'s Cmts. at 2 ("Commerce's Final Remand Results are consistent with the Court's Remand Order and are in accordance with law. Accordingly, we respectfully request that the Court sustain Commerce's Final Remand Results."); *see also* Def.'s Resp. at 2 ("Because no other comments [besides Plaintiff's] were filed and no party contests Commerce's remand results, it is appropriate for the Court to sustain them and enter judgment accordingly.").

CONCLUSION

Based on the foregoing, the court holds that the Remand Results are in compliance with its remand order, supported by substantial evidence on the record and otherwise in accordance with law, and are thus sustained. Judgment will be entered accordingly.

Dated: October 11, 2024
New York, New York

/*s*/ *Richard K. Eaton*
JUDGE

Slip Op. 24–114

COZY COMFORT COMPANY, LLC, Plaintiff, v. UNITED STATES, Defendant.

Before: Stephen Alexander Vaden, Judge
Court No. 1:22-cv-00173 (SAV)

[Granting in Part two of Plaintiff's Motions *in Limine* and Denying Defendant's Motion *in Limine*.]

Dated: October 15, 2024

Christopher J. Duncan, Stein Shostak Shostak Pollack & O'Hara, LLP of Los Angeles, CA, for Plaintiff Cozy Comfort Company, LLC. With him on the brief were *Elon Pollack* as well as *Gregory P. Sitrick*, *Isaac S. Crum*, and *Sharif S. Ahmed* of Messner Reeves LLP of Phoenix, AZ.

Beverly A. Farrell, Senior Trial Attorney, and *Brandon A. Kennedy*, Trial Attorney, International Trade Field Office, Commercial Litigation Branch, Civil Division, U.S. Department of Justice of New York, NY, for Defendant United States. With them on the brief were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director, *Justin Miller*, Attorney-in-Charge, *Aimee Lee*, Assistant Director, and *Michael Anderson*, Of Counsel, U.S. Customs and Border Protection, Office of the Assistant Chief Counsel.

OPINION

Vaden, Judge:

Plaintiff Cozy Comfort Company, LLC (Cozy Comfort) is suing to challenge the United States Customs and Border Protection's (Customs) tariff classification of The Comfy® under heading 6110, which covers "[s]weaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted." 6110, HTSUS; *see* Compl. ¶ 2, ECF No. 6. On June 12, 2024, the Court denied the Government's Motion for Summary Judgement. *See* Min. Order, ECF No. 47. The Court then issued an order scheduling a bench trial to begin on October 21, 2024. *See* Order at 9, ECF No. 48. At the Court's September 19, 2024 pre-trial conference, the parties indicated that they had objections to the other side's proposed witnesses and exhibits. *See* Revised Pre-Trial Conf. Tr., ECF No. 64. The Court established a briefing schedule for the parties to file motions *in limine* and responses in opposition. S*ee* Min. Order, ECF No. 58. On October 11, 2024, the Court held a hearing on the Motions. *See id.*

Decisions concerning evidentiary matters are within the sound discretion of the trial court. *See N. Am. Processing Co. v. United States*, 22 CIT 701, 703 (1998) (citing *Curtin v. Off. of Pers. Mgmt.*, 846 F.2d 1373, 1378 (Fed. Cir. 1988)). "Generally speaking, *in limine* rulings are preliminary in character because they determine the admissibility of evidence before the context of trial has actually been

developed." *Walter Kidde Portable Equip., Inc. v. Universal Sec. Instruments, Inc.*, 479 F.3d 1330, 1338 (Fed. Cir. 2007). The admissibility of evidence, in turn, is governed by the U.S. Constitution, federal statutes, the Federal Rules of Evidence, and other rules prescribed by the Supreme Court. *See* Fed. R. Evid. 402.

Within that framework, the Court reaches the following conclusions after considering each of the three witness-related motions *in limine* filed by the parties. First, the Court **GRANTS** in part Cozy Comfort's Motion *in Limine* to exclude the testimony of Patricia Concannon. Second, the Court **GRANTS** in part Cozy Comfort's Motion *in Limine* to exclude the testimony of Renee Orsat. Third, the Court **DENIES** the Government's Motion *in Limine* to exclude the testimony of James Crumley. Rulings on the other pending Motions before the Court are reserved for trial.

I. Cozy Comfort's Motion *in Limine* to Exclude the Testimony of Patricia Concannon

Patricia Concannon is a fashion industry professional. *See* Proposed Pre-Trial Order at 35–36, ECF No. 52. She has spent most of her career working on the sale, marketing, and merchandising of apparel at various companies, non-profits, and university departments. *See id.* The Government intends to call Ms. Concannon as an "expert in apparel sales, marketing, and merchandising." *Id.* at 35. According to its pre-trial description of her testimony, Ms. Concannon will testify, "The Comfy® is, by design, physical features, use, and marketing, a garment, and specifically, a pullover or oversized sweatshirt that does not protect from extreme cold." *Id.* at 36. She also will compare The Comfy® to The Snuggie® and a Santa suit jacket. *See id.* These two products were at issue in prior tariff classification disputes. *See Allstar Mktg. Grp., LLC v. United States*, 41 CIT __, 211 F. Supp. 3d 1319, 1337 (2017) (finding that The Snuggie® is a blanket under heading 6301); *Rubies Costume Co. v. United States*, 922 F.3d 1337, 1346 (Fed. Cir. 2019) (finding a Santa suit to be a garment under heading 6110).

Cozy Comfort has filed a Motion *in Limine* to exclude or limit Ms. Concannon's testimony. *See* Pl.'s Mot., ECF No. 54. The Motion raises two legal issues with her proposed expert testimony. First, Cozy Comfort argues that Ms. Concannon's testimony should be excluded because she "is not an expert qualified to opine on ... (1) whether The Comfy® protects against 'extreme cold,' (2) how The Comfy® compares to the Snuggie®, and (3) the use factors identified in *GRK* [.]" *Id.* at 1. Second, Cozy Comfort contends that, even if Ms. Concannon qualifies as an expert, she has "fail[ed] to articulate any recognizable or reproducible methodologies." *Id.* at 5.

The Government disagrees. It argues that it does not "offer Ms. Concannon as an expert in the construction of outerwear; instead, [it] offer[s] her as an expert in apparel sales, marketing, and merchandising." Def.'s Resp. at 4, ECF No. 68. The Government claims that "in order to be able to sell and market apparel, one needs to be knowledgeable to a certain extent about the physical features and design of apparel." *Id.* at 5. Thus, Concannon should also be able to testify as to "how garments are sold and marketed based on their design and physical features." *Id.* In defense of her testimony's reliability, the Government notes how she combined her own experience with an analysis of online websites for The Comfy® and for other outwear garments. *See id.* at 10–15.

Before allowing expert testimony, the Court must find it more likely than not that "the expert's scientific, technical, or other specialized knowledge will help the trier of fact understand the evidence or to determine a fact in issue." Fed. R. Evid. 702(a). Baked into this requirement is an assumption that experts will only testify about matters within the scope of their expertise. "If the court finds a witness is not qualified to testify on a particular field or on a given subject, the court will preclude that witness from testifying on that field or subject." *United States v. Univar USA Inc.*, 42 CIT __, 294 F. Supp. 3d 1314, 1327 (2018) (citing *Wilson v. Woods*, 163 F.3d 935, 937 (5th Cir. 1999)).

The Court agrees with Cozy Comfort that Ms. Concannon lacks the expertise necessary to testify about whether The Comfy® can protect against extreme cold.[1] Any testimony on that topic would require knowledge of material design or material science. Ms. Concannon's education and work experiences, however, almost exclusively involve apparel sales, marketing, and merchandising. Her bachelor's degree is in "[a]pparel [m]erchandising and [m]anagement." Pl.'s Mot., Ex. A at 2 (Expert Report of Patricia Concannon) (Concannon Report), ECF No. 54–2. After receiving this degree, she primarily worked in jobs where she managed fashion non-profits or handled sales, communications, and buyer relations for fashion companies. *See id.* Her responsibility in these roles focused on tasks like "strengthen[ing] and maintain[ing] relationships with high value buyers," "conduct[ing] market research," "coordinat[ing] ... trade show[s]," and organizing "technical training programs for displaced workers in the apparel

[1] The Court is unpersuaded by the Government's account of Ms. Concannon's testimony. The Government's Response characterizes Ms. Concannon's testimony as limited to how "garments are sold and marketed based on their design and physical features." Def.'s Resp. at 5, ECF No. 68. Yet, the Government later says Ms. Concannon will also testify as to why The Comfy® is "a pullover and that it cannot protect from extreme cold." *Id.* at 14. Testimony on that topic would be divorced from her expertise in apparel sales, marketing, and merchandising.

industry." *Id.* at 23–24. Ms. Concannon's only notable experience with material design or material science came during an eight-month employment at a fashion company thirteen years ago. *See id.* at 24. This dated, short-term experience does not make her an expert in material design or material science.

The Court finds that Ms. Concannon's testimony must be limited to topics related to the sale, marketing, and merchandising of apparel. Ms. Concannon should root any discussion of extreme cold-resilient apparel in her marketing expertise. For instance, she may testify about how products that protect against the extreme cold are typically sold, marketed, and merchandised. She may not offer an opinion as to whether The Comfy® can actually protect against the extreme cold.

The Court also agrees in part with Cozy Comfort's argument that Ms. Concannon is not qualified to testify about how The Comfy® compares to The Snuggie®. Ms. Concannon's proposed testimony on that topic includes how the two products compare in design, physical characteristics, and use. *See* Concannon Report at 17–19, ECF No. 54–2. Because Ms. Concannon is only an expert in the sale, marketing, and merchandising of apparel, she lacks the expertise to testify directly about these topics. She may, however, testify as to how a product with The Comfy® or The Snuggie®'s design, physical characteristics, and uses would usually be sold, marketed, or merchandised. *See id.* at 18–19 (discussing the products' "differing marketing"). She also may compare how the two products in fact were sold, marketed, or merchandised. *See id.* And she may testify as to any other relevant marketing-related aspect of the two products.

The Court further agrees with part of Cozy Comfort's argument that Ms. Concannon cannot testify about the use factors outlined in *GRK Canada, Ltd. v. United States*. 761 F.3d 1354 (Fed. Cir. 2014). As the Federal Circuit explained in *GRK Canada*, when use is relevant for tariff classification, the Court's inquiry should include a product's "physical characteristics," "what features the article has for typical users," "how it was designed and for what objectives," and "how it is marketed." *Id.* at 1358. Because use is relevant in this tariff classification case, these factors will weigh on the Court's final decision; and testimony on these factors is relevant. *See* Order at 5–6, ECF No. 48. That testimony, however, must comply with the Federal Rules of Evidence. Ms. Concannon's proposed expert testimony about The Comfy®'s physical characteristics and design falls outside of her expertise. For that reason, the Court rules that such testimony is impermissible. Instead, Ms. Concannon may testify about facts related to how The Comfy® is marketed. She also may testify regarding

her opinions about the product in so far as those opinions stem from her observations about how The Comfy® is sold, marketed, or merchandised.

Cozy Comfort's only remaining argument against permitting Ms. Concannon's testimony hinges on the reliability of her testimony. To be admissible, expert testimony must also be reliable. *See* Fed. R. Evid. 702(b)–(d). Reliability, in this context, should not be confused with credibility. *See i4i Ltd. P'ship v. Microsoft Corp.*, 598 F.3d 831, 852 (Fed. Cir. 2010), *aff'd*, 564 U.S. 91 (2011) ("When [an expert's] methodology is sound, and the evidence relied upon sufficiently related to the case at hand, disputes about the degree of relevance or accuracy (above this minimum threshold) may go to the testimony's weight, but not to its admissibility.") (citations omitted). Instead, reliability deals with whether the expert testimony is "based on sufficient facts or data," is "the product of reliable principles and methods," and "reflects a reliable application of the principles and methods to the facts of the case." Fed. R. Evid. 702(b)–(d); *see also Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 593–94 (1993). For non-scientific experts, reliability inquiries typically focus on "the expert's experience, rather than methodology" because it is usually "impossible to subject nonscientific theories to experimentation." *Univar USA*, 42 CIT __, 294 F. Supp. 3d at 1328 (citing *Amco Ukrservice v. Am. Meter Co.*, No. 00–2638, 2005 U.S. Dist. LEXIS 12992, at *2 (E.D. Pa. June 29, 2005)); *see also Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999).

A significant portion of Cozy Comfort's arguments against the reliability of Ms. Concannon's methods are moot because the Court has limited those aspects of Ms. Concannon's testimony. Cozy Comfort, for instance, argues that Ms. Concannon "fails to describe the methodology she used to 'determine' that The Comfy® does not protect against the 'extreme cold.'" Pl.'s Mot. at 5–6, ECF No. 54. The Court has ruled she cannot testify on this topic.

Cozy Comfort's remaining complaints about Ms. Concannon's reliability generally speak to the weight the Court should give her testimony. These considerations are outside the scope of Rule 702 "reliability" challenges to expert testimony. Cozy Comfort complains about Ms. Concannon's alleged failure to "conduct any market research" on The Comfy®, to "consider[] what consumers thought of The Comfy®," and to "conduct any consumer opinion research on The Comfy®." *Id.* at 6. Even setting aside the Government's objections to this characterization of Ms. Concannon's work, *see* Def.'s Resp. at 11–15, ECF No. 68, these complaints speak to the accuracy of Ms.

Concannon's opinion about The Comfy® rather than her ability to reliably make conclusions about the sale, marketing, and merchandising of The Comfy®.

Ms. Concannon is a non-scientific expert whose reliability should be judged primarily by her experience rather than any assessment about her methods. *See Univar USA*, 42 CIT __, 294 F. Supp. 3d at 1328. As discussed above, Ms. Concannon has extensive experience in the sale, marketing, and merchandising of apparel. She has combined that experience with a "[t]horough" examination of court documents, a "[d]etailed" analysis of Cozy Comfort's website design, and a review of various online sources. *See* Concannon Report at 20–21, ECF No. 54–2. The Court is satisfied that her expert testimony "more likely than not" will be based on sufficient facts or data about The Comfy®; involve the principles of fashion sales, marketing, and merchandising; and will reliably apply those principles to the facts of this case. Fed. R. Evid. 702. For those reasons, the Court rejects Cozy Comfort's reliability arguments.

II. Cozy Comfort's Motion *in Limine* to Exclude the Testimony of Renee Orsat

Renee Orsat is a national import specialist within Customs' National Commodity Specialist Division. *See* Proposed Pre-Trial Order at 33, ECF No. 52. She is responsible for tariff heading 6110, amongst others. *See id.* As part of her responsibilities, she reviewed the subject merchandise at issue in this case, as well as similar merchandise at issue in Cozy Comfort's prior tariff classification protest. *See id.*

The Government intends to call Ms. Orsat to testify "as to her responsibilities generally and as they apply to this matter" as well as "her review of [Cozy Comfort's] submissions concerning the classification of the subject merchandise and her review of the physical sample of the subject merchandise." *Id.* Ms. Orsat will also discuss Cozy Comfort's prior tariff classification protest. *Id.* She will conclude that "based on her knowledge of the product and its features, it functions as a garment and lacks the features to protect from extreme cold." *Id.*

Cozy Comfort filed a Motion *in Limine* to exclude or limit Ms. Orsat's testimony. *See* Pl. Mot., ECF No. 60. That Motion raises four arguments for why this Court should not permit some or all of Ms. Orsat's testimony. The Court addresses each of Cozy Comfort's arguments in turn.

First, Cozy Comfort argues that Ms. Orsat should not be allowed to testify about her "consultations with and advice to other [Customs] personnel regarding the classification of the merchandise" and "her review of [Cozy Comfort's] submissions concerning the classification

of the subject merchandise." *Id.* at 1 (internal quotations omitted). This is because the Government "withheld such testimony and redacted underlying documents on the basis of [the] deliberative process privilege." *Id.* Cozy Comfort insists that permitting Ms. Orsat to testify on these matters would constitute "trial by surprise" and run afoul of "our adversarial system" by allowing parties to leverage "the civil discovery privileges as both a discovery shield and trial sword." *Id.* at 1–2. The Government "agree[s] with the proposition that no privilege may be used as a shield and a sword," but it disagrees with Cozy Comfort's "argument that [the Government] intend[s] to use the deliberative process privilege in that manner[.]" *See* Def.'s Resp. at 8, ECF No. 67. It insists that Ms. Orsat will not "reveal information for which we have asserted the deliberative process privilege." *Id.* at 9. The parties elaborated on these arguments in supplemental briefing submitted pursuant to the Court's October 3, 2024 Order. *See* Order, ECF No. 71; *see also* Pl.'s Suppl. Br., ECF No. 77; Def.'s Suppl. Br., ECF No. 76.

"The deliberative process privilege shields documents that reflect an agency's preliminary thinking about a problem, as opposed to its final decision about it." *U.S. Fish & Wildlife Serv. v. Sierra Club, Inc.*, 592 U.S. 261, 266 (2021). In the underlying dispute, the Government invoked the privilege to shield internal communications at Customs about the tariff classification of The Comfy® from discovery. *See* Pl.'s Mot., Ex. A at 8–34 (Government's Privilege Log), ECF No. 60–1; *see also* Def.'s Br. at 1, ECF No. 76 ("[Customs] asserted the deliberative process privilege with respect to internal pre-decisional written communications leading to [Custom's] official classification[.]"). These non-disclosed documents include numerous e-mails, documents, and discussions that involve Ms. Orsat. *See* Pl.'s Mot., Ex. A at 8–34 (Government's Privilege Log), ECF No. 60–1; Def.'s Suppl. Br. at 1, ECF No. 76 ("Orsat ... is among the [Customs] personnel identified in certain communications that were withheld under the deliberative process privilege.").

Parties may not use a privilege as both a sword and a shield. *See In re EchoStar Commc'ns Corp.*, 448 F.3d 1294, 1303 (Fed. Cir. 2006). A litigant may not waive privilege as to favorable information while simultaneously "asserting privilege to unfavorable advice." *See id.* On similar grounds, courts have also held that a party may not offer trial testimony about matters that it previously kept from the opposing party by invoking privilege during the discovery period. *See Ironburg Inventions Ltd. v. Valve Corp.*, 64 F.4th 1274, 1294 (Fed. Cir. 2023) (affirming the exclusion of testimony because privilege was invoked

on that topic during a deposition); *Energy Heating, LLC v. Heat On-The-Fly, LLC*, 889 F.3d 1291, 1303 (Fed. Cir. 2018) (affirming the exclusion of testimony that had been withheld during a deposition based on attorney-client privilege).

The Government does not dispute this legal framework. *See* Def.'s Suppl. Br. at 2–3, ECF No. 76. Instead, it focuses on the framework's application to Ms. Orsat's testimony, arguing that her testimony "will not involve any information covered by the asserted deliberative process privilege." *Id.* at 2. The Court disagrees.

Ms. Orsat's proposed testimony will touch on aspects of the deliberative process that Customs went through to classify The Comfy®. The Government avers, "Ms. Orsat will testify as to her responsibilities generally and *as they apply to this matter*." *See* Proposed Pre-Trial Order at 33, ECF No. 52 (emphasis added). She also will "testify as to her review of plaintiff's submissions concerning the classification of the subject merchandise and her review of the physical sample of the subject merchandise." *Id.* Any responsibilities Ms. Orsat had in this matter, her review of plaintiff's submissions concerning the classification of The Comfy®, and her review of The Comfy® all fall under the scope of her employment at Customs. All these actions were part of the steps Customs took internally to render a final classification decision about The Comfy®.

Other aspects of the classification process have been shielded from Cozy Comfort and the Court through the Government's invocation of the deliberative process privilege. As the Government's privilege log demonstrates, there was robust internal discussion at Customs about how The Comfy® should be classified. *See* Pl.'s Mot., Ex. A at 8–34 (Government's Privilege Log), ECF No. 60–1. Ms. Orsat was privy to much of this discussion, and she also contributed to it. *See, e.g.*, *id.* at 9 (noting Ms. Orsat authored an e-mail about the classification of the subject merchandise); *id.* at 10 (noting Ms. Orsat authored an e-mail about the CIT's decision in *Allstar* and how it related to the subject merchandise); *id.* at 14 (noting Ms. Orsat received an e-mail concerning the classification of the subject merchandise).

This creates an impermissible, unfair situation for Cozy Comfort. Ms. Orsat's proposed testimony will provide information about Customs' classification process that is favorable to the Government's overall litigation position. *See* Proposed Pre-Trial Order at 33, ECF No. 52 (indicating Ms. Orsat will testify about why "based on her knowledge of the product and its features, it functions as a garment and lacks the features to protect from extreme cold"). Yet, neither Cozy Comfort nor the Court will know any other details about that process, including information that might be disfavorable to the Gov-

ernment's litigation position. For example, Cozy Comfort does not know if Ms. Orsat ever expressed uncertainty over how to classify The Comfy® or if Ms. Orsat faced any internal pressure to classify The Comfy® in a certain manner.

For these reasons, the Court finds it necessary to limit Ms. Orsat's testimony at trial. She may not testify about opinions she formed *during* the Customs' classification process. This limitation means that she may not talk about any opinion she once held about The Comfy®'s tariff classification because such opinions would be part of or informed by otherwise privileged deliberative processes at Customs. She may not discuss "her responsibilities ... as they apply to this matter." *Id.*

Ms. Orsat may only testify on matters outside the scope of the Government's invocation of the deliberative process privilege. She may testify as to "her responsibilities generally" at Customs because those do not relate to the specific actions she took to help classify The Comfy®. *Id.* She also may authenticate and recount the details of the Government's final classification decision because that final decision was not shielded from discovery. However, she may not discuss the details of the specific process Customs employed to classify The Comfy® because of the Government's invocation of the privilege.

Turning to Cozy Comfort's second argument in its Motion *in Limine*, Plaintiff contends that Ms. Orsat should not be able to testify about her opinion on the proper classification of The Comfy® because that testimony would "improperly encroach[] upon this Court's *de novo* review." Pl.'s Mot. at 3, ECF No. 60. The Government disagrees. It argues that Ms. Orsat will not be testifying as to whether the Comfy protects from extreme cold. *See* Def.'s Resp. at 5, ECF No. 67. Instead, she will testify "that the garment lacks features that are generally associated with protection from extreme cold." *Id.* The Court has already ruled that Ms. Orsat cannot testify about her opinion on the proper classification of The Comfy®. That means this argument is moot.

Third, Cozy Comfort insists that Ms. Orsat should be unable to testify about its prior protests because those protests "do not actually concern *the same* merchandise at issue." Pl.'s Mot. at 3, ECF No. 60 (emphasis in original). That, according to Cozy Comfort, renders this aspect of her testimony "irrelevant under Federal Rules of Evidence 401 and 402." *Id.* The Government disagrees. It characterizes these aspects of Ms. Orsat's testimony as "background" testimony that "satisfies the low threshold for relevant evidence." Def.'s Resp. at 4, ECF No. 67. The Government further notes that modifications to The

Comfy® "produce[d] an article virtually identical to the one covered by the entry at issue," making those modifications "pertinent to understanding the true nature of the imported merchandise." *Id.* at 4 n.2.

The Court agrees with the Government. Evidence is relevant if "it has any tendency to make a fact more or less probable" and if that fact "is of consequence in determining the action." Fed. R. Evid. 401. As the Court noted in its June 18, 2024 Order scheduling trial, use is a "relevant consideration" for classifying The Comfy®. *See* Order at 6, ECF No. 48. The Court's determination must take the design and intended use of The Comfy® into account. *See GRK Canada*, 761 F.3d at 1358. Details about how a product was modified over time speak directly to matters regarding a product's design and intended use. As a result, testimony about past protests and past versions of The Comfy® is relevant.

Fourth, Cozy Comfort argues that Ms. Orsat should be barred from testifying in this case because she will offer "expert, rather than lay witness testimony" as to the meaning of the ultimate phrase at issue: "extreme cold." Pl.'s Mot. at 4, ECF No. 60. Cozy Comfort believes this is problematic because the Government did not "adhere to the expert disclosure requirements of USCIT Rule 26(a)(2)" and "never identified Ms. Orsat as an expert nor provided an expert report to [Cozy Comfort]." *Id.* The Government disagrees with Cozy Comfort's description of Ms. Orsat's testimony as expert testimony and instead argues that Ms. Orsat is only serving as a percipient witness. *See* Def.'s Resp. at 5–9, ECF No. 67.

The precise line between expert and lay opinion testimony is not always clear. *See Kahrs Int'l, Inc. v. United States*, 33 CIT 1297, 1302 (2009). In general, fact witnesses may offer their opinions or inferences so long as those opinions or inferences are "rationally based on the witness's perception," "helpful to clearly understanding the witness's testimony or to determining a fact in issue," and "not based on scientific, technical, or other specialized knowledge[.]" Fed. R. Evid. 701. Nonetheless, Courts will permit "specialized opinion testimony, without first qualifying the witness as an expert," when "the particularized knowledge that the witness has [comes] by virtue of his or her position in the business" even if such knowledge is "specialized or technical." *Kahrs*, 33 CIT at 1302 (internal quotations omitted); *see also Union Pac. Res. Co. v. Chesapeake Energy Corp.*, 236 F.3d 684, 693 (Fed. Cir. 2001) (quoting *United States v. Riddle*, 103 F.3d 423, 428 (5th Cir. 1997)) (applying 5th Circuit caselaw that permits lay

witnesses to express opinions that required specialized knowledge if those opinions were "one[s] that a normal person would form from [personal] perceptions").

Kahrs is particularly informative for the Court's assessment of Ms. Orsat's status as a lay witness. In that case, a private party filed a motion *in limine* to exclude the testimony of a national import specialist at Customs because the Government did not identify that witness as an expert and did not prepare an expert report. *See Kahrs*, 33 CIT at 1301. The Government responded by arguing that the witness was not offering expert testimony and instead was offering his "personal knowledge" rather than "any specialized, scientific, or technical knowledge within the scope of [Federal Rule of Evidence] 702." *Id.* The Court agreed with the Government and permitted the testimony because it was "based upon personal knowledge rather than scientific, technical, or other specialized knowledge." *Id.* at 1303 (noting the witness had "seen and examined samples of the merchandise in this case").

The Court agrees with the Government's characterization of Ms. Orsat's testimony. Ms. Orsat is a witness with firsthand knowledge of The Comfy®, how it was classified by Customs, and why it was classified under heading 6110. The Government intends to call her to testify about "her responsibilities generally and as they apply to this matter," "her review of the plaintiff's submissions," "her review of the physical sample of the subject merchandise," "plaintiff's prior protests," and "that based on her knowledge of the product and its features, it functions as a garment and lacks the features to protect from the extreme cold." Proposed Pre-Trial Order at 33, ECF No. 52. The Court has already limited Ms. Orsat's testimony on many of these topics for other reasons. The remaining topics outside of that Court-imposed limitation involve fact-based testimony derived from her personal knowledge of this case as the national import specialist who classified The Comfy®. That kind of personal knowledge-driven testimony does not make Ms. Orsat an expert witness.

III. The Government's Motion *in Limine* to Exclude the Testimony of James Crumley

James Crumley is an "avid hunter, fisherman, and camper" who "has designed and developed patents and trademarks for outerwear, including jackets, sweatshirts, and pullovers, as well as blankets." Proposed Pre-Trial Order, Schedule G-1, ECF No. 52. Mr. Crumley invented the Trebark® camouflage and has worked with numerous major garment and outerwear companies. *See id.* He was qualified as an expert witness in the U.S. District Court for the District of Ari-

zona. *See id.* This expert qualification was related to his testimony in a patent infringement case involving The Comfy® where he offered a "comparison of [the] products" at issue. *See* Pl.'s Resp., Ex. B at 2 (*Top Brand* Case Final Pre-Trial Conference), ECF No. 66–2 (rejecting a motion *in limine* to prevent Mr. Crumley from testifying). Cozy Comfort intends to call Mr. Crumley as an "expert in protection against extreme cold" and in "the design, marketing, and use of garments, blankets, and other textiles." Proposed Pre-Trial Order, Schedule G-1, ECF No. 52.

The Government argues that the Court should exclude Mr. Crumley's testimony because his testimony is unreliable. Its Motion notes five issues with Mr. Crumley's reliability as an expert witness: (1) Mr. Crumley "changed his position, without explanation, on whether The Comfy® is a garment or [a] blanket"; (2) he "relied on an irrelevant version of [T]he Snuggie® for comparison with The Comfy®"; (3) he "failed to consider any facts or documents developed in discovery in this litigation"; (4) he "is relying on his memory concerning information from the *Top Brand* [l]itigation, where such information was burned"; and (5) he "bases his opinion almost entirely on his own experience." Def.'s Mot. at 4, ECF No. 62.

Cozy Comfort disagrees. It argues the Government's contentions on Mr. Crumley's reliability focus on the "weight [that should be] accorded to his testimony" rather than his actual qualification as an expert. Pl.'s Resp. at 3, ECF No. 66. This, it claims, is not the kind of reliability discussed in *Daubert* and embodied in the post-*Daubert* amended Federal Rule of Evidence 702. *See id.* at 4. Cozy Comfort also contests the Government's argument that Mr. Crumley bases his opinion on his own experience, noting that such experience-based testimony is "expressly contemplate[d]" in Rule 702. *Id.* at 10 (citing Fed. R. Evid. 702 advisory committee's notes to 2000 amendments) (emphasis omitted). In the alternative, Cozy Comfort argues that Crumley's testimony involves not only his experience but also his "technical expertise in the textile industry." *Id.*

As the Court has noted, Federal Rule of Evidence 702's discussion of reliability does not involve considerations of a witness's general credibility. Instead, the three reliability prongs in Rule 702 relate to the methodology an expert uses to arrive at his or her opinion. *See* Fed. R. Evid. 702 (b)–(d). These prongs require the Court to determine if an expert's "testimony is based on sufficient facts or data," "is the product of reliable principles and methods," and "reflects a reliable application of the principles and methods to the facts of the case."

Id. "When [an expert's] methodology is sound, and the evidence relied upon sufficiently relate[s] to the case at hand, disputes about the degree of relevance or accuracy (above this minimum threshold) may go to the testimony's weight, but not to its admissibility." *i4i Ltd. P'ship*, 598 F.3d at 852 (citations omitted).

Two of the Government's reliability arguments do not speak to the kind of reliability contemplated by Federal Rule of Evidence 702. *See* Fed. R. Evid. 702 (b)–(d). The Government challenges Mr. Crumley's reliability, in part, because he "changed his position, without explanation" and he "is relying on his memory" for key facts. Def.'s Mot. at 4, ECF No. 62. These two complaints focus on alleged inconsistencies and inadequacies with Mr. Crumley's proposed expert testimony. They speak to the weight the Court should give Mr. Crumley's testimony rather than the actual methodological reliability and admissibility of his expert opinion. The Government is welcome to draw out these problems during its cross-examination of Mr. Crumley, but the Court declines to exclude his testimony on this ground.

Two of the Government's remaining reliability complaints raise colorable attacks on the evidentiary basis of Mr. Crumley's opinion. Specifically, the Government argues that Mr. Crumley did not "consider any facts or documents developed in discovery" and that he "relied on an irrelevant version of [T]he Snuggie®." *Id.* Rule 702(b) requires expert testimony to be "based on sufficient facts or data." If Mr. Crumley did not base his opinion on the facts at issue in this case or relied on irrelevant facts, that would call his methodological reliability into account in a manner contemplated by the Rule. The touchstone for this inquiry is whether the "evidence [he] relied upon sufficiently related to the case at hand." *i4i Ltd. P'ship*, 598 F.3d at 852.

The Court disagrees with the Government's contention that Mr. Crumley did not "consider any facts or documents developed in discovery." Def.'s Mot. at 4, ECF No. 62. This argument is contradicted by the very deposition testimony the Government cites for support. *Id.* Mr. Crumley's deposition transcript shows that he "reviewed" a variety of materials identical to those in discovery, including an assortment of patents listed in Exhibit B of the deposition. See Pl.'s Resp., Ex. D at 110:11- 111:10 (Dep. of James Crumley), ECF No. 66–4. Even if Mr. Crumley had not reviewed the precise documents in discovery, the question for the Court is whether the evidence he relied upon "sufficiently relate[s] to the case at hand." *i4i Ltd. P'ship*, 598 F.3d at 852. It is undisputed that Mr. Crumley has examined The Comfy® and formed an opinion about its physical features, design, and use based on his experience. That examination and those opin-

ions "sufficiently relate[] to the case at hand." *i4i Ltd. P'ship*, 598 F.3d at 852.

The Court also disagrees with the Government's objection to the version of The Snuggie® Mr. Crumley used to form his opinion. *See* Def.'s Mot. at 9, ECF No. 62. Cozy Comfort wants to introduce evidence comparing The Comfy® with The Snuggie® because in *Allstar* this Court held that The Snuggie® is a blanket for tariff classification purposes. *Allstar*, 211 F. Supp. 3d at 1337. If The Comfy® is sufficiently similar to The Snuggie®, that similarity might persuade the Court to rule that The Comfy® is a blanket for tariff classification purposes. The Government argues that any comparison between The Comfy® and The Snuggie® must be based on the precise version of The Snuggie® at issue in the *Allstar* case. *See* Def.'s Mot. at 9, ECF No. 62; *see also Allstar*, 211 F. Supp. 3d 1319. The Court disagrees. The Government has introduced no evidence indicating that the version of The Snuggie® that Mr. Crumley relied on is no longer classified as a blanket for tariff purposes. Consequently, any comparison between this newer version of The Snuggie® and The Comfy® would still be relevant evidence that is "sufficiently related to the case at hand." *i4i Ltd. P'ship*, 598 F.3d at 852. For that reason, the Court does not believe that Mr. Crumley's reliance on this newer version of The Snuggie® renders his testimony unreliable.

The Government's only remaining attack on Mr. Crumley's reliability stems from its contention that "Mr. Crumley's personal experiences and opinions, without more, provide an insufficient basis upon which the Court can conclude that Mr. Crumley's opinions are reliable." Def.'s Mot. at 7, ECF No. 62. This argument misunderstands Federal Rule of Evidence 702. Experience alone is an adequate basis for reliable expertise. As the advisory committee's notes to the 2000 amendments explain:

> Nothing in this amendment is intended to suggest that experience alone – or experience in conjunction with other knowledge, skill, training[,] or education – may not provide a sufficient foundation for expert testimony. To the contrary, the text of Rule 702 expressly contemplates that an expert may be qualified on the basis of experience. In certain fields, experience is the predominant, if not sole, basis for a great deal of reliable expert testimony.

Fed. R. Evid. 702 (advisory committee's notes to the 2000 amendments). Indeed, for non-scientific experts, reliability inquiries typically focus on "the expert's experience, rather than methodology" because it is usually "impossible to subject nonscientific theories to

experimentation." *Univar USA*, 42 CIT __, 294 F. Supp. 3d at 1328 (citing *Amco Ukrservice*, 2005 U.S. Dist. LEXIS 12992, at *2); *see also Kumho Tire*, 526 U.S. at 152.

For that reason, the Court disagrees with the Government's contention that Mr. Crumley is not an expert because he relies on his personal experience. Mr. Crumley has "designed and developed patents and trademarks for outerwear," has "worked with numerous garment and outerwear companies," and has invented his own camouflage pattern. Proposed Pre-Trial Order, Schedule G-1, ECF No. 52. He also is a seasoned hunter and outdoorsman. *See id.* Combined, these experiences make him qualified to offer his opinion about garment design and material, especially as they relate to garments designed for outdoor use during inclement weather.

CONCLUSION

For the foregoing reasons, the Court **GRANTS** in part Cozy Comfort's first motion *in limine* (ECF No. 54), **GRANTS** in part Cozy Comfort's second motion *in limine* (ECF No. 60), and **DENIES** the Government's second motion *in limine* (ECF No. 62). Rulings on all other motions and objections currently before the Court are reserved for trial.[2]

Dated: October 15, 2024
New York, New York

/s/ Stephen Alexander Vaden
STEPHEN ALEXANDER VADEN, JUDGE

[2] The Court also ruled on the admissibility of a patent (No. D905,380) at its October 11, 2024 hearing. The Court found the patent to be admissible even though Cozy Comfort did not produce it during discovery because Cozy Comfort's failure to produce the patent was harmless. *See* USCIT R. 37(c)(1).

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