U.S. Customs and Border Protection

RECEIPT OF APPLICATION FOR "LEVER-RULE" PROTECTION

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

ACTION: Notice of receipt of application for "Lever-Rule" protection.

SUMMARY: Pursuant to 19 CFR 133.2(f), this notice advises interested parties that CBP has received an application from Kymdan America, Inc., seeking "Lever-Rule" protection for the federally registered and recorded "KD KYMDAN SINCE 1954 (STYLIZED)" and "KD SINCE 1954 KYMDAN 100% NATURAL LATEX MATTRESSES INTERNATIONAL QUALITY YOUR COMFORT IS OUR BUSINESS & DESIGN" trademarks.

FOR FURTHER INFORMATION CONTACT: Lauren Phillips, Intellectual Property Rights Branch, Regulations & Rulings, (202) 325–0349.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 CFR 133.2(f), this notice advises interested parties that CBP has received an application from Kymdan America, Inc. seeking "Lever-Rule" protection. Protection is sought against importations of mattresses intended for sale in countries outside the United States that bear the "KD KYMDAN SINCE 1954 (STYLIZED)" mark, U.S. Trademark Registration No. 4,658,540/ CBP Recordation No. TMK 19–00410, and the "KD SINCE 1954 KYMDAN 100% NATURAL LATEX MATTRESSES INTERNATIONAL QUALITY YOUR COMFORT IS OUR BUSINESS & DESIGN" mark, U.S. Trademark Registration No. 4,662,195/ CBP Recordation No. TMK 19–00411. In the event that CBP determines that the mattresses under consideration are physically and materially different from the mattresses authorized for sale in the United States, CBP will publish a notice in the Customs Bulletin, pursuant 19 CFR 133.2 (f), indicating that the above-referenced trademarks are entitled to "Lever-Rule" protection with respect to those physically and materially different mattresses.

Dated: April 17, 2019

CHARLES R. STEUART
Chief,
Intellectual Property Rights Branch
Regulations and Rulings,
Office of International Trade

19 CFR PART 177

PROPOSED REVOCATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE INSTRUMENT OF INTERNATIONAL TRAFFIC DESIGNATION OF CERTAIN PLASTIC GARMENT HANGERS

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 instrument of international traffic ("IIT") designation of certain plastic garment hangers.

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 the duty and entry-free treatment of certain plastic garment hangers as instruments of international traffic. Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the proposed actions are invited.

DATES: Comments must be received on or before May 31, 2019.

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

FOR FURTHER INFORMATION CONTACT: Austen Walsh, Cargo Security, Carriers, and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, at (202) 325–0030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the IIT designation of certain plastic garment hangers. Although in this notice, CBP is specifically referring to HQ H058876, dated May 14, 2009 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP proposes to replace this ruling letter with Headquarters Ruling Letter ("HQ") H300587 (Attachment B). CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one ruling identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this comment period. A party'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 party subsequent to the effective date of the final decision on this notice.

In HQ H058876, CBP designated certain plastic garment hangers as instruments of international traffic pursuant to 19 U.S.C. § 1322

and 19 C.F.R. § 10.41a, which enables the items to be released without entry or the payment of duty. In order to qualify as an IIT pursuant to 19 U.S.C. § 1322(a) and 19 C.F.R. § 10.41a(a)(1), CBP has traditionally held that an article must be: used as a container or holder in international traffic, substantial, suitable for and capable of repeated use, and used in significant numbers in international traffic. CBP has reviewed its prior rulings and determined this ruling letter to be in error. It is now CBP's position that plastic garment hangers cannot be granted IIT status when they are not used to physically suspend garments during transportation in international traffic. The proposed revocation does not foreclose the possibility that CBP will grant IIT status to certain plastic garment hangers in response to future ruling requests that satisfy this analysis, however.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke HQ H058876 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in HQ H300587, set forth in Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: April 12, 2019

CRAIG T. CLARK
Director
Border Security and
Trade Compliance Division

Attachments

ATTACHMENT A

HQ H058876

May 14, 2009
BOR-4–07-RR-BSTC:CCI H058876 GOB
CATEGORY: Carriers

LYNNE W. WENDT, ESQ.
WENDT & TEMPLES LLC
WESTPARK POINTE, SUITE 200
401 WESTPARK COURT
PEACHTREE CITY, GA 30269

RE: Instruments of international traffic; 19 U.S.C. 1322; 19 CFR 10.41a; Hangers

DEAR MS. WENDT:

This is in response to your ruling request of April 21, 2009 on behalf of Braiform, which is a division of Spotless Enterprises, Inc. Our ruling is set forth below.

FACTS:

You request a ruling that certain Braiform garment hangers in a "Re-Use Program" be designated as instruments of international traffic within the meaning of 19 U.S.C. § 1322(a) and 19 CFR § 10.41a.

Braiform is a manufacturer and provider of customized garment hanging and packaging solutions to niche and mass retailers and garment manufacturers. There are two Braiform facilities in the United States where previously-used hangers are received, inspected, sorted, cleaned, and packaged for shipment to foreign distribution centers.

You state that the subject hangers are molded from a resin that produces a premium garment hanger. There are approximately 40 Braiform styles, including hangers for adult, child, and pet garments. The styles include hangers for tops, coordinate bottom hangers (for ensembles, suits, etc.), bottom hangers, and jacket hangers. Some top and jacket hangers are padded, some have a non-slip application, and others are notched for hanging dresses and tops. One style is a heavyweight hanger for coats. The hangers are of various sizes. Certain styles have nail head wire hooks that swivel while others have a molded head construction. You have provided a complete list of the hangers, including product identification numbers, descriptions, and thumbnail photographs. You have also provided samples of almost all of the hangers.

You state that the hangers are of durable construction and that hangers in a Re-Use Program must be durable as they are expected to have multiple uses during their life spans. A Braiform hanger will be reused numerous times until it is rejected as defective.

Braiform enters into a program contract with an apparel manufacturer/retailer for the exclusive supply of customized hangers. Initially, new hangers are provided to the client's manufacturing locations for hanging garments after manufacture. After production, the apparel is hung on the appropriate hangers for transportation to the U.S. After receipt in the U.S., the apparel is removed from its packaging while still hanging and moved to display racks on the retail floor. When a retail client selects the garment and takes it to the register for payment, the hanger is removed and placed in a hanger collection

box at the register. The collection boxes are later taken to a central site where the contents are unloaded into a larger collection box called the "Hanger Big Box," or HBB, that is provided by Braiform for this purpose. The HBBs are later transported to one of the two Braiform re-use facilities in the U.S. for re-use processing, which includes sorting, inspection and removal of the damaged hangers for regrinding, which involves melting the plastic to produce resin that will be used in the production of new hangers. After the final inspection, the hangers are packed into boxes and moved to finished inventory. The used hangers are then shipped to Braiform distribution centers in the U.S. and abroad. Approximately 12 percent of the hangers are shipped to the U.S. distribution center and approximately 88 percent are shipped to foreign distribution centers. You state that Braiform believes that certain of the hangers shipped to its U.S. distribution center will be shipped to foreign manufacturing locations for use in transporting foreign-origin apparel to the U.S.

You state that the hangers are substantial in construction and will all be reused, except for those removed from the program due to damage. You further state that they will be used in substantial numbers in international trade as the hangers are used exclusively by clients of Braiform to transport all of their foreign-manufactured garments to the U.S. You state that each of the hanger styles will be used in a quantity significantly exceeding 1,000 per style per year and that each hanger will be used between four and seven times before being discarded.

ISSUE:

The issue presented is whether the subject items may be designated as instruments of international traffic within the meaning of 19 U.S.C. § 1322(a) and 19 CFR § 10.41a.

LAW AND ANALYSIS:

Title 19, United States Code, section 1322(a) (19 U.S.C. § 1322(a)) provides in pertinent part, that "[v]ehicles and other instruments of international traffic ... shall be excepted from the application of the customs laws to such extent and subject to such terms and conditions as may be prescribed in regulations or instructions ..."

The CBP Regulations issued under the authority of 19 U.S.C. § 1322(a) are contained in 19 CFR § 10.41 *et seq*. Section 10.41a(a)(1), CBP Regulations (19 CFR § 10.41a(a)(1)) designates lift vans, cargo vans, shipping tanks, skids, pallets, caul boards, and cores for textile fabrics as instruments for international traffic. Section 10.41a(a)(1), CBP Regulations (19 CFR § 10.41a(a)(1)) also authorizes the Commissioner of CBP to designate as instruments of international traffic such additional articles or classes of articles as he shall find should be so designated. Instruments so designated may be released without entry or the payment of duty, subject to the provisions of 19 CFR § 10.41a.

To qualify as an instrument of international traffic within the meaning of 19 U.S.C. § 1322(a) and 19 CFR § 10.41a, an article must be used as a container or holder. Further, the article must be substantial, suitable for and capable of repeated use, and used in significant numbers in international traffic. *See*, *e.g.*, Headquarters rulings ("HQ") 108084, 108658, 109665, and 109702.

In *Holly Stores, Inc. v. U.S.*, 697 F.2d 1387, 1388 (Fed. Cir. 1982), *aff'g* 534 F. Supp. 818 (Ct. Int'l Trade 1981), the court stated with respect to former General Headnote 6(b):

> "Reuse" in this context has been consistently interpreted to mean practical, commercial reuse, not incidental reuse. *Fontana Hollywood Corp. v. United States*, 64 Cust. Ct. 204, C.D. 3981 (1970), relying on Tariff Classification Study, Seventh Supplemental Report (Aug 14, 1963) at 99.

The court in *Holly Stores* rejected the concept of reuse with respect to the hangers at issue there based upon the lower court's finding that only about one percent of the hangers were reused in any manner at all, and that those uses were noncommercial. The court did accept the facts that the hangers were of fairly durable construction and that it would be physically possible to reuse them.

Within the context of 19 CFR § 10.41a and instruments of international traffic, we have held that "repeated use" means "more than twice." *See, e.g.*, HQ 108658, dated November 21, 1986.

Our examination of the hangers submitted as samples reveals that they are of durable construction. We therefore conclude that they are physically capable of, and suitable for, reuse or repetitive use. You state that the hangers in each style will be used between four and seven times before being discarded.

The hangers will be used in significant numbers in international traffic – each hanger style will be used in a quantity significantly exceeding 1,000 per year.

The reuse which Braiform describes and proposes is a "commercial reuse," *i.e.*, the hangers will continue to be used in the commercial transportation of garments.

CBP has previously ruled on the instruments of international traffic status of hangers of similar material and purpose. In HQ 115684, dated August 5, 2002, CBP held that plastic garment hangers with wire swivel hooks that are used to package garments for exportation to the U.S. are substantial, suitable for repeated use, used in significant numbers in international traffic and therefore qualify as instruments of international traffic. Furthermore, CBP has previously held that hangers that are part of a hanger recovery program qualify as instruments of international traffic. *See* HQ 114360, dated June 18, 1998, which involved used clear plastic garment hangers that were acquired in the U.S. from clothing retailers, sorted, sanitized, packaged and exported to garment manufacturers worldwide and then were used in the packaging of garments to be exported to the U.S. *See also* HQ H042107, dated November 24, 2008, where CBP held that plastic garment hangers used in a hanger recovery program qualify as instruments of international traffic and H050604, dated March 18, 2009, where CBP held that plastic garments hangers designated as instruments of international traffic.

After a review of the information submitted, we determine that the subject hangers are used as holders, are substantial, are suitable for and capable of repeated use, and are used in significant numbers in international traffic. Thus, they meet the criteria for designation as instruments of international traffic within the meaning of 19 U.S.C. § 1322(a) and 19 CFR § 10.41a(a)(1) and are so designated. Because the subject items are designated as instruments of international traffic, they are not subject to entry or the payment of duty pursuant to the aforementioned statutory and regulatory authority. It should be noted that if the subject hangers are diverted from international

traffic, they will cease to be considered instruments of international traffic and will therefore not receive the treatment accorded to such articles.

HOLDING:

The subject hangers are hereby designated as instruments of international traffic within the meaning of 19 U.S.C. 1322(a) and 19 CFR § 10.41a(a)(1) and are therefore not subject to entry or the payment of duty.

Sincerely,

GLEN E. VEREB
Chief Cargo Security,
Carriers and Immigration Branch

ATTACHMENT B

HQ H300587
OT:RR:BSTC:CCR H300587 AMW
CATEGORY: Carriers

MS. LYNNE W. WENDT, ESQUIRE
WENDT & TEMPLES, LLC
401 WESTPARK COURT
PEACHTREE CITY, GEORGIA 30269

RE: Instruments of International Traffic; 19 U.S.C. § 1322(a); 19 C.F.R. § 10.41a; Subheading 9803.00.50, HTSUS; Plastic Garment Hangers; Revocation of HQ H058876 (May 14, 2009)

DEAR MS. WENDT:

This is in response to your correspondence, dated August 22, 2018, and follow-up information submitted on September 30, 2018, on behalf of Braiform Enterprises, LLC ("Braiform"). In your submission, you requested a ruling regarding whether certain styles of plastic garment hangers qualify as "instruments of international traffic" ("IITs") within the meaning of 19 U.S.C. § 1322(a) and 19 C.F.R. § 10.41a and may be released without entry or the payment of duty. Our ruling is set forth below.

FACTS:

Braiform is a producer and provider of hanging and packaging solutions to garment manufacturers and retailers. U.S. Customs and Border Protection ("CBP") has previously designated 40 different styles of Braiform plastic garment hangers as IITs. *See* HQ H058876 (May 14, 2009). You have requested that CBP issue an IIT designation for approximately 40 new hanger styles, which are designed to "enhance functionality, garment retention and retail display."

Each of the subject hangers is made of Polypropylene or Polystyrene plastic and consists of a molded, one-piece construction. The subject styles include hangers of various sizes for children and adults. The styles include hangers for tops, bottoms, and intimate garments. Many of the hangers have recessed spaces on their hooks intended to carry a size cap. Most styles possess plastic hooks, although your request also includes several modular hangers without hooks, which attach to hangers with hooks to combine multiple garments. You have provided a complete list of the subject hangers, including product identification numbers, descriptions, and photographs. You have also provided samples of several of the hangers and technical specifications for the remaining hangers.

Your submission indicates that the primary purpose of the subject hangers is to display garments in a retail setting:

> Braiform clients set high standards for the hangers in the program as the quality of the hanger is the most significant impact on the presentation of the garments to the customer. Garments must stay on the hangers while they are being displayed, and the hangers must hold the garment in such a way that it can be fully viewed by the customer. The hangers must also have an attractive design.

You state that the subject hangers will be used exclusively by [ ] ("Retailer") and will join Braiform's existing closed-loop hanger "Re-Use Program."[1] Under this program, Braiform sells hangers to Retailer's foreign manufacturers, who place garments on the hangers and fold the combined garments and hangers into cartons for shipment. The garments on hangers are then sold to Retailer and are transported to the United States. After arriving in the United States, the garments on hangers are distributed to Retailer's stores, where they are hung for display. After the garments are sold, Retailer employees retain the hangers and place them into a collection box. The hanger collection boxes are taken to a central site where the hangers are loaded into a larger box called the "Hanger Big Box" ("HBB"). The HBBs are transported to a Braiform facility for re-use processing, which includes sorting, inspection, and removal of damaged hangers. You state that Retailer returns approximately 80% of its hangers for reuse.

Below are images you provided that depict how the garments on hangers typically arrive at Retailer's locations in the United States.

ISSUE:

Whether the subject plastic garment hangers are instruments of international traffic pursuant to 19 U.S.C. § 1322(a) and 19 C.F.R. § 10.41a.

LAW AND ANALYSIS:

Pursuant to 19 U.S.C. § 1322(a), "[v]ehicles and other instruments of international traffic...shall be excepted from the application of the customs laws to such extent and subject to such terms and conditions as may be prescribed in regulations...." The relevant CBP regulations implementing this statute are found at 19 C.F.R. § 10.41a, which authorizes the CBP Commissioner to designate as IITs such additional articles not specifically noted in that section. Once designated as such, an IIT may be released without entry or payment of duty.

[1] You have asked this office for confidential treatment of the name of Braiform's customer. If this office receives a Freedom of Information Act request for your submission, CBP Regulations (19 C.F.R. § 103.35, *et seq*.) regarding the disclosure of business information provide that the submitter of business information will be advised of receipt of a request for such information whenever the business submitter has in good faith designated the information as commercially or financially sensitive information. We accept your request for confidential treatment as a good faith request.

Subheading 9803.00.50, Harmonized Tariff Schedule of the United States ("HTSUS") provides, in pertinent part, for the duty free treatment of:

> *Substantial containers and holders*, if products of the United States . . . , or if of foreign production and previously imported and duty (if any) thereon paid, or *if of a class specified by the Secretary of the Treasury*[2] *as instruments of international traffic*, repair components for containers of foreign production which are instruments of international traffic, and accessories and equipment for such containers, whether the accessories and equipment are imported with a container to be reexported separately or with another container, or imported separately to be reexported with a container . . . (footnote and emphasis supplied).

Subchapter 98 of the HTSUS only applies to:

> (a) Substantial containers or holders which are subject to tariff treatment as imported articles and are:
>
> (i) Imported empty and not within the purview of a provision which specifically exempts them from duty; or
>
> (ii) Imported containing or holding articles, and which are not of a kind normally sold therewith or are entered separately therefrom; and
>
> (b) Certain repair components, accessories and equipment.

See U.S. Note 1, *et seq.*, Chapter 98, HTSUS.

CBP has held in its published decisions that in order to qualify as an IIT pursuant to 19 U.S.C. § 1322(a) and 19 C.F.R. § 10.41a(a)(1), an article must be used as a container or holder in international traffic. *See* 19 C.F.R. 10.41a ("in use or to be used in the shipment of merchandise in international traffic"); s*ee also, e.g.*, HQ H016491 (Oct. 1, 2007); HQ 114150 (Dec. 12, 1997); and HQ 107545 (May 7, 1985). Next, the article must be substantial, suitable for and capable of repeated use, and used in significant numbers in international traffic. *See, e.g.*, HQ H016491 (Oct. 1, 2007); HQ 114150 (Dec. 12, 1997); HQ 107545 (May 7, 1985); Treas. Dec. 71–159, Cust. B. & Dec. 296 (June 18, 1971); 99 Treas. Dec. 533, No. 56247 (Aug. 26, 1964). CBP has interpreted "reuse" in this context to mean practical, commercial reuse, not incidental reuse. *See Holly Stores, Inc. v. United States*, 697 F.2d 1387, 1388 (Fed. Cir. 1982), *aff'g* 534 F. Supp. 818 (Ct. Int'l Trade 1981). We have, furthermore, held that "repeated use" means "more than twice." *See, e.g.*, HQ 108658 (Nov. 21, 1986).[3] CBP has previously designated certain plastic garment hangers as IITs pursuant to this framework. *See* HQ H217477 (Dec. 11, 2012); HQ H183436 (Jan. 19, 2012); HQ H117917 (Oct. 13, 2010); HQ H079697 (Oct. 26, 2009); HQ H064655 (June 16, 2009); HQ H058876 (May 14, 2009); HQ H050604 (Mar. 18, 2009); HQ H042107 (Nov. 24, 2008); and HQ 115684 (Aug. 5, 2002).

In order to be used as a container or holder pursuant to the IIT criteria outlined above, the plain meaning of the term "hanger" and prior precedent indicate that a garment hanger must physically suspend the underlying

[2] This function has been delegated to the Commissioner of CBP pursuant to 31 U.S.C. § 321(b) and Treas. Dep't Order 100–16 (May 15, 2003).

[3] Because this ruling analyzes Braiform's application for IIT status on the basis below, we do not reach the question of whether the remaining IIT criteria are met (*i.e.*, whether the subject hangers are of durable construction, capable of repeated use, and used in significant numbers in international traffic).

garment during transportation. Merriam-Webster Dictionary, for example, defines "clothes hanger" as, "a curved piece of metal, plastic, or wood that is used for hanging clothing."[4] The word "hang," in turn, is defined as follows: "to fasten to some elevated point without support from below."[5] As such, it is clear that a garment hanger must physically suspend (*i.e.*, hang) clothing in order to be used as a holder. This interpretation is consistent with *Holly Stores*, 697 F.2d 1387, 1388, in which the U.S. Court of Appeals for the Federal Circuit examined whether garment hangers should be treated as separate articles for duty purposes under Headnote 6(b), HTSUS. Although the court in *Holly Stores* did not specifically analyze how the hangers and garments were placed during transit, the court referenced garment hangers as "shipping holders" when they are imported with clothing "hung on them." This also comports with our analysis in HQ H286142 (July 6, 2017) in which we declined to grant IIT status to "engine hooks" used to load engines on and off of steel engine racks for transportation, but did not attach to the racks in which the engines were transported, on the basis that such hooks "neither contain nor hold anything."

The subject garment hangers cannot be classified as IITs because they do not hold the garments during transportation. According to your follow-up submission, manufacturers typically use Braiform's hangers "to hang the garments, then packs [sic] the garments, mostly in cartons, for transport." The photographs you provided further show that the subject hangers are combined with the corresponding garments and folded into cardboard boxes for shipment to Retailer's stores.[6] Instead of being suspended by the subject hangers during transportation, the movement of the subject garments through international traffic is affected by the cartons into which they are placed. And, although your submission specifies that the subject hangers' design will improve the retail display of garments, you have provided no evidence that the hangers have been specially designed for use in hanging garments in international traffic. *See* HQ H266818 (May 23, 2016) ("The onus is on the importer to provide that evidence. For example, an importer could provide evidence that the hangers are made of durable molded plastic and *are specially designed by the manufacturer for international transit*)(emphasis added).

Finally, based on the additional information now supplied to us, it is clear that the Braiform hanger models previously designated as IITs in HQ H058876 (May 14, 2009) are also not used to contain or hold garments during shipment. In granting IIT status to these hangers, we described their role during transportation as follows: "the apparel is *hung* on the appropriate hangers for transportation to the U.S. After receipt in the U.S., the apparel is removed from its packaging while still *hanging* and moved to display racks on the retail floor." HQ H058876 (May 14, 2009) (emphasis added). Nevertheless, your follow-up submission indicates that the word "hang" as used in HQ H058876 imprecisely referred to the mere combination of hangers and garments. Instead of suspending garments during transportation, you state

[4] https://www.merriam-webster.com/dictionary/clothes%20hanger (Oct. 5, 2018).

[5] https://www.merriam-webster.com/dictionary/hang (Oct. 11, 2018).

[6] We note here that, in a follow-up communication you stated that Retailer occasionally transports hanging garments in "garment on hanger" shipping containers, "but not often." You provided no assertion that the subject hangers would be used to transport garments in this fashion.

that the hangers are packed "mostly in cartons" for transportation. In addition, photographs you have provided clearly show Braiform's current IIT hangers being folded into boxes for transportation rather than being used to vertically suspend garments.

As a result, the subject garment hangers do not qualify for IIT designation because they are not used as holders in international traffic. This ruling also revokes HQ H058876 (May 14, 2009), which grants IIT status to several models of Braiform hangers, to the extent that those hangers are also not used to hang garments in international traffic.

HOLDING:

The subject plastic garment hangers are not "instruments of international traffic" within the meaning of 19 U.S.C. § 1322(a) and 19 C.F.R. § 10.41a insofar as they are not used as holders in international traffic.

EFFECT ON OTHER RULINGS:

This ruling revokes HQ H058876 (May 14, 2009), which grants IIT status to several models of Braiform garment hangers, to the extent that those hangers are also not used to hang garments in international traffic.

Sincerely,

CRAIG T. CLARK
Director
Border Security and Trade Compliance Division

PROPOSED MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF THE "THERMO ACTION" DIETARY SUPPLEMENT

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

ACTION: Notice of proposed modification of one ruling letter and revocation of treatment relating to the tariff classification of the "Thermo Action" dietary supplement.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection ("CBP") intends to modify one ruling letter concerning the tariff classification of the "Thermo Action" dietary supplement 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 May 31, 2019.

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

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to 19 U.S.C. §1625(c)(1), this notice advises interested parties that CBP is proposing to modify two ruling letters pertaining to the tariff classification of the "Thermo Action" dietary supplement. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) N293615, dated February 9, 2018 (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 N293615, dated February 9, 2018, CBP classified the "Thermo Action" dietary supplement in heading 2101, HTSUS, and specifically in subheading 2101.20.90, HTSUS, providing for "Extracts, essences and concentrates, of coffee, tea or mate and preparations with a basis of these products or with a basis of coffee, tea or maté; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof: Extracts, essences and concentrates, of tea or maté, and preparations with a basis of these extracts, essences or concentrates or with a basis of tea or maté: Other: Other: Other." CBP has reviewed NY N293615, and has determined this ruling letter to be in error. It is now CBP's position that the "Thermo Action" dietary supplement at issue is properly classified

in subheading 2106.90.98, HTSUS, which provides for "Food preparations not elsewhere specified or included: Other: Other: Other: Other: Other: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY N293615 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H295066, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 19, 2019

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N293615

February 9, 2018
CLA-2–21:OT:RR:NC:2:228
CATEGORY: Classification
TARIFF NO.: 2101.20.9000, 2106.10.0000,
2106.90.9898

MR. JOSEPH WALTER
LIVINGSTON INTERNATIONAL
670 YOUNG STREET
TONAWANDA, NY 14150

RE: The tariff classification of dietary supplements from Canada

DEAR MR. WALTER:

In your letter dated January 17, 2018, you requested a tariff classification ruling on behalf of your client, Immunotec, Inc., Canada.

Ingredients breakdowns, manufacturing flowcharts, narrative descriptions of the manufacturing process, and the product labels accompanied your inquiry.

The first product, " Probio 3+", is said to contain approximately 51 percent modified potato starch, 21 percent cranberry powder, 18 percent hydroxypropyl methylcellulose, 4 percent inulin, 4 percent bifidobacterium and lactobacillus cultures, 1 percent skim milk powder, and a trace of ascorbic acid. The product is said to function as a dietary supplement that provides digestive health. The directions instruct the user to consume 1 capsule daily with water. The product is imported for retail sale in bottles containing 30 capsules.

The second product, "Omega Gen V", is said to contain approximately 60 percent fish oil, 17 percent gelatin, 8 percent glycerin, 7 percent yellow beeswax, 3 percent ubiquinone0, 2 percent turmeric root extract, 2 percent lecithin, 1 percent vitamin E oil, and a trace amount of piperine. The product is said to function as a dietary supplement that provides heart and brain health. The product is imported for retail sale in bottles containing 120 capsules.

The third product, "Thermo Action", is said to contain approximately 59 percent green tea extract, 24 percent vegetable capsule containing magnesium stearate, microcrystalline cellulose, hydroxypropyl methyl cellulose, 18 percent guarana, and a trace amount of chromium. The product is said to function as a dietary supplement that provides weight management. The product is imported for retail sale in bottles containing 120 capsules.

The fourth product, "Seren-T200", is said to contain approximately 53 percent milk protein hydrolysate, and 47 percent sodium caseinate. The product is said to function as a dietary supplement that provides stress relief. The product is imported for retail sale in bottles containing 30 capsules.

The applicable subheading for the "Thermo Action" product is 2101.20.9000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Extracts, essences and concentrates of coffee, tea or mate and preparations with a basis of these products or with a basis of coffee, tea or mate; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof: Extracts, essences and concentrates, of

tea or mate, and preparations with a basis of these extracts, essences or concentrates or with a basis of tea or mate: Other: Other: Other. The rate of duty will be 8.5 percent ad valorem.

The applicable tariff provision for the "Seren-T200" product will be 2106.10.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for food preparations not elsewhere specified or included... protein concentrates and textured protein substances. The rate of duty will be 6.4 percent ad valorem.

The applicable subheading for the "Probio 3+" product, and the "Omega Gen V" product will be 2106.90.9898, Harmonized Tariff Schedule of the United States (HTSUS), which provides for food preparations not elsewhere specified or included . . . other . . . other . . . other . . . other . . . other . . . other. The general rate of duty will be 6.4 percent ad valorem.

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

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, for subheading 2101.20.9000, contact National Import Specialist Frank Troise at frank.l.troise@cbp.dhs.gov, and for subheadings 2106.90.9898 and 2106.10.0000, contact National Import Specialist Bruce N. Hadley, Jr. at bruce.hadleyjr@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

ATTACHMENT B

HQ H295066
CLA-2 OT:RR:CTF:FTM H295066 TSM
CATEGORY: Classification
TARIFF NO.: 2106.90.98

MR. JOSEPH WALTER
LIVINGSTON INTERNATIONAL
670 YOUNG STREET
TONAWANDA, NY 14150

RE: Proposed modification of New York Ruling Letter (NY) N293615; The tariff classification of the "Thermo Action" dietary supplement.

DEAR MR. WALTER:

This is in reference to NY N293615, dated February 9, 2018, issued to you on behalf of Immunotec, Inc., concerning the tariff classification of the "Thermo Action" dietary supplement. In that ruling, U.S. Customs and Border Protection ("CBP") classified the "Thermo Action" product under heading 2101, HTSUS, which provides for "Extracts, essences and concentrates, of coffee, tea or mate and preparations with a basis of these products or with a basis of coffee, tea or maté; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof." Upon additional review, we have found this classification to be incorrect. For the reasons set forth below we hereby modify NY N293615 with regard to the tariff classification of the "Thermo Action" product.

FACTS:

NY N293615 states that the "Thermo Action" product contains approximately 59 percent green tea extract and 18 percent guarana. The remaining ingredients are magnesium stearate, microcrystalline cellulose, vegetable capsule (hydroxyropyl methyl cellulose), and a trace amount of chromium. The product is said to function as a dietary supplement that provides weight management. The product is imported for retail sale in bottles containing 120 capsules.

ISSUE:

What is the tariff classification of the "Thermo Action" product at issue?

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

2101 Extracts, essences and concentrates, of coffee, tea or mate and preparations with a basis of these products or with a basis of coffee, tea or maté; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof

* * *

2106 Food preparations not elsewhere specified or included

* * *

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

* * *

Explanatory Note to heading 21.01 provides as follows:

The heading covers:

(1) Coffee extracts, essences and concentrates. These may be made from real coffee (whether or not caffeine has been removed) or from a mixture of real coffee and coffee substitutes in any proportion. They may be in liquid or powder form, usually highly concentrated. This group includes products known as instant coffee. This is coffee which has been brewed and dehydrated or brewed and then frozen and dried by vacuum.

(2) Tea or maté extracts, essences and concentrates. These products correspond, *mutatis mutandis*, to those referred to in paragraph (1).

(3) Preparations with a basis of the coffee, tea or maté extracts, essences or concentrates of paragraphs (1) and (2) above. These are preparations based on extracts, essences or concentrates of coffee, tea or maté (and not on coffee, tea or maté themselves), and include extracts, etc., with added starches or other carbohydrates.

* * *

These products may be presented in lump, granular or powder form, or as liquid or solid extracts. They may also be mixed either with one another or with other ingredients (e.g., salt or alkaline carbonates), and may be put up in various types of containers.

* * *

Explanatory Note to heading 21.06 provides, in relevant part, as follows:

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

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

The heading includes, *inter alia*:

(16) Preparations, often referred to as *food supplements*, based on extracts from plants, fruit concentrates, honey, fructose, etc. and containing added vitamins and sometimes minute quantities of iron compounds.

> These preparations are often put up in packagings with indications that they maintain general health or well-being. Similar preparations, however, intended for the prevention or treatment of diseases or ailments are **excluded** (**heading *30.03*** or ***30.04***).
>
> * * *

Upon additional review, we find that the "Thermo Action" dietary supplement is covered by heading 2106, HTSUS.[1] According to the ENs cited above, this heading provides for preparations, often referred to as food supplements, based on extracts from, among others, plants, and containing mixtures of chemicals (organic acids, calcium salts, etc.) and foodstuffs, for incorporation in food preparations either as ingredients or to improve some of their characteristics (appearance, keeping qualities, etc.)

The "Thermo Action" is a dietary supplement based on tea extract, which is a plant extract, and also contains guarana, a plant ingredient, along with several ingredients intended to improve the supplement's characteristics, such as: (1) magnesium stearate, which functions to prevent capsule contents from sticking; (2) microcrystalline cellulose, which functions as a texturizer, an anti-caking agent, an emulsifier and a bulking agent; and (3) hydroxypropyl cellulose, which is used as a binder, a thickening agent, and a viscosity increasing agent. In addition, the "Thermo Action" supplement is imported in capsule form. *See* HQ 956890, dated December 12, 1994 (classifying food supplements in tablet and capsule forms in heading 2106, HTSUS).

Although in NY N293615, dated February 9, 2018, the "Thermo Action" product was classified in heading 2101, HTSUS, we find this classification to be incorrect. According to the ENs to heading 21.01, this heading provides for preparations based on extracts of coffee, tea or maté, with added starches or other carbohydrates, and presented in lump, granular or powder form. While the "Thermo Action" product is based on tea extract, it also contains other ingredients that are not "added starches or other carbohydrates." Finally, the "Therma Action" product is not imported in lump, granular or powder form.

Based on the foregoing, we find that the "Thermo Action" product is classified in heading 2106, HTSUS, and specifically in subheading 2106.90.98, HTSUS, which provides for "Food preparations not elsewhere specified or included: Other: Other: Other: Other: Other: Other."

HOLDING:

By application of GRIs 1 and 6, we find that the "Thermo Action" product is classified under heading 2106, HTSUS, and specifically in subheading 2106.90.98, HTSUS, which provides for "Food preparations not elsewhere specified or included: Other: Other: Other: Other: Other: Other." The 2018 column one, general rate of duty is 6.4% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N293615, dated February 9, 2018, is hereby MODIFIED.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

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[1] Food supplements are also called dietary or nutritional supplements. *See https://www.eufic.org/en/healthy-living/article/food-supplements-who-needs-them-and-when.*

PROPOSED REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF WOMEN'S FOOTWEAR FASHION BOOTS WITH A FOLD-DOWN FLEECE-LIKE LINING

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

ACTION: Notice of proposed revocation of one ruling letter and revocation of treatment relating to the tariff classification of women's footwear.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke a ruling letter concerning tariff classification of women's lace front fashion boots with a fold-down fleece-like lining 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 May 31, 2019.

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

FOR FURTHER INFORMATION CONTACT: John Rhea, Food, Textiles and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0035.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to 19 U.S.C. §1625(c)(1), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of women's lace front fashion boots with a fold-down fleece-like lining. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N196436, dated December 30, 2011 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one ruling identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY N196436, CBP classified women's lace front fashion boots with a fold-down fleece-like lining in heading 6402, HTSUS, specifically in subheading 6402.91.40, HTSUS, which provides for "Other footwear with outer soles and uppers of rubber or plastics: Other: Covering the ankle: Other." CBP has reviewed NY N196436 and has determined the ruling letter to be in error. It is now CBP's position that footwear is properly classified, in heading 6402, HTSUS, specifically in subheading 6402.91.70, HTSUS, which provides for "Other footwear with outer soles and uppers of rubber or plastics: Other: Covering the ankle: Other: Other, Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N196436 and to revoke or modify any other ruling not specifically

identified to reflect the analysis contained in the proposed HQ H207579, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: April 12, 2019

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N196436
December 30, 2011
CLA-2–64:OT:RR:NC:N4:447
CATEGORY: Classification
TARIFF NO.: 6402.91.4050

MR. DENNIS AWANA
INTER-ORIENT SERVICES
1455 MONTEREY PASS RD., #205
MONTEREY PARK, CA 91754

RE: The tariff classification of footwear from China

DEAR MR. AWANA:

In your letter dated November 30, 2011 you requested a tariff classification ruling on behalf of your client, Super Star International. Inc.

The submitted sample identified by you as style "Helen 04," is a women's size 6 lace-up "fashion" boot with a rubber or plastics outer sole and upper. The boot measures approximately nine inches in height and is partially lined with a fleece-like material. It neither has a foxing or a foxing-like band nor is it "protective."

The applicable subheading for the women's "fashion" boot, style "Helen 04" will be 6402.91.4050, Harmonized Tariff Schedule of the United States (HTSUS), which provides for footwear with outer soles and uppers of rubber or plastics: other footwear: covering the ankle: other: in which the upper's external surface area measures over 90% rubber and/or plastics (including accessories or reinforcements) which does not have a foxing-like band; which is not designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold inclement weather: for women: other. The rate of duty will be 6% ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at 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 Stacey Kalkines at (646) 733–3042.

Sincerely,

ROBERT B. SWIERUPSKI
Director
National Commodity Specialist Division

ATTACHMENT B

HQ H207579
CLA-2 OT:RR:CTF:FTM H207579 JER
CATEGORY: Classification
TARIFF NO.: 6402.91.70

MR. DENNIS AWANA
INTER-ORIENT SERVICES
1455 MONTEREY PASS RD # 205
MONTEREY PARK, CA 91754

RE: Proposed Revocation of NY N196436; tariff classification of women's lace front fashion boots with fold down fleece-like lining

DEAR MR. AWANA:

This letter is to inform you that U.S. Customs and Border Protection ("CBP") has reconsidered New York Ruling Letter ("NY") N196436, dated December 30, 2011, issued to you on behalf of Inter-Orient Services. In NY N196436, CBP classified the subject women's lace front fashion boot, style "Helen 04" in subheading 6402.91.40, HTSUS, which provides for: "Footwear with outer soles and uppers of rubber or plastics: Other footwear: Covering the ankle: Other: In which the upper's external surface area measures over 90% rubber and/or plastics (including accessories or reinforces) which does not have a foxing-like band; which is not designed to be worn over or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold inclement weather: For women: Other." It has come to our attention that our decision in NY N196436 was incorrect.

FACTS:

In NY N196436, the women's lace front fashion boot, style "Helen 04" was described as having an inner shaft lined with a fleece-like textile material and an outer sole made up of a rubber or plastic material. The decorative portion of the shaft was designed to be exposed when the shaft is cuffed. The boot features metal snap buttons which connect the upper portion of the shaft to the mid quarter of the boot. Once folded down the approximately three (3) inch exposed shaft is secured in place by the metal snap buttons. Additionally, the "Helen 04" boot presents as being slightly above the ankle when the shaft is cuffed down and far below the calf when not cuffed. The boot does not feature any accessories, foxing or foxing-like bands and therefore is not considered to be protective against cold or inclement weather.

ISSUE:

Whether the subject fashion boot has an external surface area composed of over ninety (90) percent rubber or plastic such that is classifiable in subheading 6402.91.40, HTSUS, or whether the external surface area of the upper is composed of more than 10 percent of a textile material such that the merchandise is classifiable in subheading 6402.91.70, HTSUS.

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States ("HTSUS") is made in accordance with the General Rules of Interpretation ("GRI"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative

Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The 2011 HTSUS provisions under consideration are as follows:

6402	Other footwear with outer soles and uppers of rubber or plastics:	
	Other:	
6402.91	Covering the ankle:	
	Other:	
6402.91.40		Having uppers of which 90 percent of the external surface area (including any accessories or reinforces such as those mentioned in note 4(a) to this chapter) is rubber or plastics except (1) footwear having a foxing or foxing-like band applied or molded at the sole and overlapping the upper...[.]
* * *		
6402.91	Covering the ankle:	
		Other:
6402.91.70		Valued over $3 but not over $6.50/pair

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

The EN to 64.02 states, in pertinent part:

(D)

* * *

If the upper consists of two or more materials, classification is determined by the constituent material which has the greatest external surface area. The constituent material of the outer sole shall be taken to be the material having the greatest surface, no account being taken of accessories or reinforcements such as ankle patches, protective or ornamental strips or edging, other ornamentation (e.g., tassels, pompons or braid), buckles, tabs, eyelet stays, laces or side fasteners. The constituent material of any lining has no effect on classification.

Additionally, Note 4 to Chapter 64 provides, in relevant, part:

4. Subject to note 3 to this chapter:

(a) The material of the upper shall be taken to be the constituent material having the greatest external surface area, no account being taken of accessories or reinforcements such as ankle patches, edging, ornamentation, buckles, tabs, eyelet stays or similar attachments;

(b) The constituent material of the outer sole shall be taken to be the material having the greatest surface area in contact with the ground, no account being taken of accessories or reinforcements such as spikes, bars, nails, protectors or similar attachments.

Our decision in NY N196436 incorrectly concluded that the external surface of the upper ("esau") for the "Helen 04" was made up of over 90 percent rubber or plastics. More specifically, NY N196436 incorrectly reasoned that the upper portion of the "Helen 04" was not designed to be cuffed and therefore concluded that the textile materials constituted less than 10 percent of the esau. Upon further review, it is now our position that the "Helen 04" boot was designed to be cuffed and therefore more than 10 percent of the external surface area of the upper is comprised of textile material.

It is well settled that when determining the constituent material having the greatest external surface area of a boot, the inner lining is generally not calculated in that analysis. However, certain boot styles are designed to be worn in a cuffed condition with the top shaft rolled or bent downward exposing the inner lining. Such is the case with the Helen 04.

CBP has previously stated that a boot is intended to be "cuffed" when one or more of the factors set forth below are present:

(1) The country of origin/size label is located far down inside the shaft and will not be visible when the boot is cuffed. OR, the country of origin/size label is easily removed without damaging the underlying material. OR, it is an attractive label and does not detract from the appearance of the boot if exposed. OR, it is an attractive label and sewn into the shaft upside down.

(2) The top part of the shaft is a poor match (color, design, material) for the lower part of the shaft, thereby indicating that portion will be hidden when the boot is cuffed.

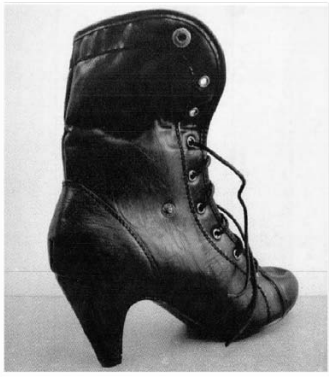
(3) There is a split at the top rear area of the shaft that facilitates cuffing the boot so that the back edges of the cuff lay flat and not flare out from the shaft.

(4) The lining at or near the top of the boot shaft is made of a different material than that of the lower part of the shaft, and is equally or more attractive as a cuff than the lower lining material.

What Every Member of the Trade Community Should Know About: Footwear, CBP Informed Compliance Publication, April 2012 ("Footwear ICP"); *See also*, Headquarters Ruling Letter ("HQ") 088353, dated March 12, 1991 (Wherein CBP applied the aforementioned factors in determining whether a boot was intended to be cuffed); *Cf.* with HQ 960940, dated July 21, 1998 (CBP found that a ladies cold weather boot was not designed or intended to be cuffed as it did not meet any of the criteria set forth above).

In the instant case, the Helen 04 meets three of the four factors set forth above. For instance, the top half of the inner lining of the boot does not match the bottom half of the inner lining. Moreover, the top half of the inner lining is made up of a fleece-like textile material which is more attractive than the lower portion of the inner lining. The distinguishable composition of the fleece-like material and the non-fleeced portion of the inner lining indicates that the lower portion is not intended to be exposed. Furthermore, the retail

labeling is located far down the inner lining lip and is placed on the unattractive non-fleeced material. Lastly, the tongue and front quarter of the Helen 04 boot are constructed in a manner which facilitates cuffing the boot without any flaring from the shaft.



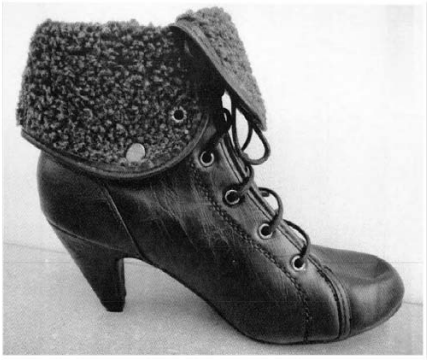


Image A. The subject Helen 04 Boot featuring metal snap buttons. **Image B.** The subject Helen 04 Boot in its "cuffed" position; with exposed fleece-like textile material.

As the images above demonstrate, the Helen 04 features metal snap buttons on each side of the boot. The metal snap buttons are located on the top of the shaft with a connecting snap button located near the mid quarter of the boot. The snap buttons facilitate the folding over of the top half of the shaft exposing the fleece-like textile material while holding the shaft in a cuffed position. As such, more than any other indicator, the snap button feature establishes that the Helen 04 boot is designed and intended to be cuffed.

Similarly, CBP has previously determined that where textile material comprises more than 10 percent of the esau and the rubber or plastic material comprises less than 90 percent of the esau, that the footwear was properly classifiable in subheading 6402.91.70, HTSUS rather than subheading 6402.91.40, HTSUS. For example, in HQ 088353 CBP determined that, based upon its conformity with the definition of a cuffed boot, that a boot with a "Fur Cuff Fold Down" was classified as having a textile material comprising more than 10 percent of the esau. Likewise, in HQ 088403, dated March 22, 1991, CBP found that a fleece lined boot with snaps which held the cuff in place was intended to be cuffed and did not have an esau of more than 90 percent rubber or plastic. Accordingly and based on all of the aforementioned, it is our position that the subject Helen 04 boot is properly classifiable in subheading 6402.91.70, HTSUS.

HOLDING:

Under the authority of GRIs 1 and 6, and by application of Note 4 to Chapter 64, the women's lace front fashion boot with fleece-like cuffed lining is classified in heading 6402, HTSUS, specifically in subheading 6402.91.70, HTSUS, which provides for: "Other footwear with outer soles and uppers of rubber or plastics: Other: Covering the ankle: Other: Other: Other: Valued over $3 but not over $6.50/pair." The 2011 column one, general rate of duty was 90¢ + 37/5%.

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

EFFECT ON OTHER RULINGS:

NY N196436 is hereby revoked

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division