

The Month So Far: October 31 through November 6, 2015

The text of the *Trans-Pacific Partnership (TPP)* agreement was released to the public Thursday 11/05/15

**However, as indicated at the top of each section, the agreement is subject to review and approval:**  
*The product-specific rules of origin (PSR) Annex and its Appendix are subject to transposition and legal verification by the Parties. The only authentic PSR are those that are set out in the PSR Annex and Appendix that accompany the final, signed Agreement.*

**[Trans-Pacific Partnership Text](#)**

*Lists access to text by Sections, e.g.:*

**[Textile and Apparel Product – Specific Rules of Origin](#)**

By letter, President Obama has advised Congress of his intent to enter into the agreement, in part it states: *Consistent with the Trade Priorities Act, I am sending this notification at least 90 days in advance of signing the TPP Agreement. My Administration looks forward to working with the Congress in developing appropriate legislation to approve and implement this TPP Agreement.*

*- Accordingly, the earliest the agreement could be signed is February 3, 2016*

**ANIMAL AND PLANT HEALTH INSPECTION SERVICE**

Notices

Determinations:

Changes to the National Poultry Improvement Plan Program Standards

[\[TEXT\]](#) [\[PDF\]](#)

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Importation of Tomatoes From Certain Central American Countries

[\[TEXT\]](#) [\[PDF\]](#)

Importation of Papaya From Colombia and Ecuador

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Phytosanitary Export Certification

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**[Import / Export](#)**

**[APHIS FAQs](#)** **[PPO FORMS - USDA APHIS / Home](#)**

**[Lookup plant genus and species](#)**

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**CONSUMER PRODUCT SAFETY COMMISSION**

**Quick Links:** **[CPSIA Basics](#)**

**[View Safety Guides](#)**

**[Voluntary Standards](#)**

**Certification Resources for Non-Children's Products:**

**[Model General Conformity Certificate \(GCC\)](#)** **[Testing or Reasonable Testing Program FAQ](#)**

**Related Resources for Non-Children's Products:**

**[Rules Requiring a General Certificate of Conformity](#)**

**[General Certificate of Conformity](#)** **[Sample General Certificate of Conformity \(GCC\)](#)**

**[Third Party Testing FAQ](#)**

*THIRD PARTY TESTING is required to support a certification of compliance to the rules shown below for children's products that are manufactured after the effective dates listed with each rule. The laboratories in this list have been accepted as accredited to test products to one or more of these children's product safety rules, as identified in the accreditation scope for each laboratory. A manufacturer of a children's product that must comply with one or more of these rules must support its certification of compliance with test results from one of these laboratories. -CHECK THE: [List of Accredited Testing Laboratories](#)*

- Search the **[CPSC Recalls and Safety News Page](#)**

**CPSC RECALLS & UPDATES**

- **[T3 Recalls Twirl 360 Curling Irons Due to Burn Hazard](#)**
- **[GE Recalls Air Conditioning and Heating Units Due to Risk of Fire](#)**
- **[Sure Signal Products Recalls Heat-Activated Fire Alarms Due to Failure to Alert Consumers of a Fire](#)**

Search the **[CPSC Recalls and Safety News Page](#)**

**CUSTOMS AND BORDER PROTECTION  
NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

- Application-Permit-Special License Unlading-Lading-Overtime Services [\[TEXT\]](#) [\[PDF\]](#)
- Customs and Border Protection Recordkeeping Requirements [\[TEXT\]](#) [\[PDF\]](#)
- Declaration for Free Entry of Returned American Products [\[TEXT\]](#) [\[PDF\]](#)
- Deferral of Duty on Large Yachts Imported for Sale [\[TEXT\]](#) [\[PDF\]](#)
- Guam-CNMI Visa Waiver Information [\[TEXT\]](#) [\[PDF\]](#)

- » [2015 ACE Customer Satisfaction Survey for the Trade is Now Open and Available](#)
- » [Momentum Continues when Trade Advisory Committee Convenes in Washington](#)
- » [Hazardous Toys Seized by San Juan CBP](#)



**C-TPAT Portal 2.0 Phase II Training Manual**

[Adding a new C-TPAT Point of Contact](#)    [Deleting a C-TPAT Point of Contact](#)

[Exporter Minimum Security Criteria](#) [C-TPAT Exporter Factsheet](#) [C-TPAT Exporter Entity FAQ](#)

[Draft Guide Of Seal Procedure Best Practices](#)

[Adding New Contacts](#)

[Adding New Addresses](#)

[Status Verification \(SVI\)](#)

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[INFORMED COMPLIANCE PUBLICATIONS](#)

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**CBP BULLETIN NOTICES**

*General Notices*

**November 4, 2015**

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***Revocation of One Ruling Letter and Modification of Two Ruling Letters and Revocation of Treatment Relating to the Tariff Classification of Electric Flatiron for Hair . . . . . 1***

***EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 11, 2016. [increase in duty from 2.8% to 3.9% ad valorem]***

*In NY N060719, the merchandise was described as “Convertible, HAI-2, Nustik, Twig and Nano XT” hair irons, which are used to flatten/straighten hair. The irons were electrically heated and operated on 110 volts of alternating current. CBP determined that the merchandise was classified in subheading 8516.40.4000, HTSUSA.*

*In NY N060721, CBP described the merchandise as the “Tong, DraStik, and Digistik” hair irons, which are used to flatten/straighten hair. The “DraStik” and “Digistik” have flat heating plates, while the “Tong” had crescent-shaped plates that allowed for creating semicircular shapes in hair. The irons were electrically heated and operate on 110 volts of alternating current. CBP also determined that the merchandise was classified in subheading 8516.40.4000, HTSUSA. It is now CBP’s position that the merchandise in NY N025515 (the cosmetic hair gel cartridge), N060719, and N060721 (the “DraStik” and “Digistik” hair irons) are classified in subheading 8516.32.0040, HTSUSA.*

***ISSUE: Whether electric irons used for hairdressing are flatirons within the meaning of subheading 8516.40, HTSUS?***

...

*Explanatory Note 85.16 provides, in relevant part, as follows:*

***(C) ELECTRO-THERMICHAIR-DRESSING APPARATUS AND HAND DRYERS***

*These include:*

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- (1) Hair dryers, including drying hoods and those with a pistol grip and built-in fan
- (2) Hair curlers and electrical permanent waving apparatus
- (3) Curling tong heaters
- (4) Hand dryers

(D) **ELECTRIC SMOOTHING IRONS**

*This group covers smoothing irons of all kinds, whether for domestic use or for tailors, dressmakers, etc., including cordless irons. These cordless irons consist of an iron incorporating heating element and a stand which can be connected to the mains. The iron makes contact with the current only when placed in this stand. This group also includes electric steam smoothing irons whether they incorporate a water container or are designated to be connected to a steam pipe.*

*The above explanatory note's reference to tailors and dressmakers in connection with irons indicates that the flatirons of subheading 8416.40 are irons used for pressing cloth. By contrast, the instant merchandise is in the nature of hair dressing apparatus, of the kind described in subheading 8516.32 and Explanatory Note C to heading 8516. Therefore, the subject product is properly classified under subheading 8516.32.00, HTSUS, rather than subheading 8516.40, HTSUS.*

**HOLDING:** *By application of GRI 1, we find the subject flatirons are classified in subheading 8516.32.00, HTSUS, which provides for "Other hairdressing apparatus." The column one, general rate of duty is 3.9 percent ad valorem.*

**Proposed Revocation of a Ruling Letter and Proposed Revocation of Treatment Relating to the Tariff Classification of a Snowman Gift Bag From China . . . . . 6**

***DATES: Comments must be received on or before December 11, 2015. [no duty impact –/ remains FREE]***

*In NY N050455, CBP classified a gift bag in heading 4819, HTSUS, specifically subheading 4819.20.00, HTSUS, which provides for "Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; ...: Folding cartons, boxes and cases, of non-corrugated paper or paperboard." It is now CBP's position that the article is properly classified in subheading 4819.40.00, HTSUS, which provides for "Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; ...: Other sacks and bags, including cones."*

**ISSUE:** *Whether the gift bag is properly classified under (1) subheading 4819.20.00, HTSUS, which covers folding cartons, boxes and cases, of noncorrugated paper or paperboard; (2) subheading 4819.40.00, HTSUS, which covers other sacks and bags, including cones; or (3) subheading 4819.50.40, HTSUS, which covers other packing containers, including record sleeves, other.*

*.. There is no dispute that the item is classified under heading 4819, HTSUS. The issue is the proper classification at the 8-digit subheading level. As a result, GRI 6 applies.*

*you assert that because the gift bag does not possess a lid or cover and has handles, it should not be classified as a folding box under subheading 4819.20, HTSUS.*

**We agree that the instant gift bag is not an item contemplated by subheading 4819.20.00, HTSUS, but for different reasons.** *The reliance upon the definition put forth by Webster's Third New International Dictionary is unnecessary. EN 48.19 specifically defines folding cartons and boxes, in relevant part, as "containers assembled or intended to be assembled by means of glue, staples, etc., on one side only, the construction of the container itself providing the means of forming the other sides, although, where appropriate, additional means of fastening, such as adhesive tape or staples may be used to secure the bottom or lid. There is no indication in the language of heading 4819, HTSUS, nor in EN 48.19, that a box classifiable under subheading 4819.20.00, HTSUS, must contain a lid and cannot possess die-cut handles. [citations omitted] Further, and most importantly, the characteristic of the gift bag that provides its shape and form is the paper bag, and no*

**assembly is needed in order to form the paper bag. Subheading 4819.40.00 covers other sacks and bags, including cones. The terms “sacks” and “bags” are not defined in the tariff. If a tariff term is not defined in either the HTSUS or its legislative history, then “the term’s correct meaning is its common meaning.”** *Mita Copystar America 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.** *Simod America Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). **To ascertain the common meaning of a term, a court may consult “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials.”** *C.J. Tower & Sons v. United States*, 69 C.C.P.A. 128, 673 F.2d 1268, 1271 (1982); *Simod* at 1576. For instance, a **“bag”** is defined by the Oxford English Dictionary as **“A receptacle made of some flexible material closed in on all sides except at the top (where also it generally can be closed); a pouch, a small sack.”** <http://www.oed.com> (last visited June 25, 2015); see also [www.merriam-webster.com/dictionary/bag](http://www.merriam-webster.com/dictionary/bag) (last visited June 26, 2015) (“a container made of thin material (such as paper, plastic, or cloth) that opens at the top and is used for holding or carrying things”). **The gift bag at issue is a flexible paper container used for packing purposes by consumers who purchase them at retail to package and carry gifts. As such, it squarely meets the definition of a “bag” classified in subheading 4819.40.00, HTSUS.**

Subheading 4819.50, HTSUS, covers other packing containers, including record sleeves. Examples of such items are provided within the text of subheadings 4819.50.20, 4819.50.30 and 4819.50.40, HTSUS, to wit: sanitary food and beverage containers, record sleeves, fiber drums, cans, tubes and similar containers, and rigid boxes and cartons. The subject gift bag is clearly not one of those types of merchandise and subheading 4819.50, HTSUS, is not the proper classification for the gift bag.

**HOLDING: By application of GRI 1 (and GRI 6), the gift bag is classified under subheading 4819.40.00, HTSUS, which provides for “Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; box files, letter trays and similar articles, of paper or paperboard of a kind used in offices, shops or the like: Other sacks and bags, including cones.”** The column one general rate of duty is “Free.”

**Proposed Revocation of a Ruling Letter and Proposed Revocation of Treatment Relating to the Tariff Classification of Worked Glass Balls from Germany . . . . .14**

**DATES: Comments must be received on or before December 11, 2015. [duty decrease 6.7% ad valorem to FREE]**

In NY M87022, CBP classified glass balls in heading 7017, HTSUS, specifically subheading 7017.90.50, HTSUS, which provides for “Laboratory, hygienic or pharmaceutical glassware, whether or not graduated or calibrated: Other: Other.” It is now CBP’s position that the article is properly classified in subheading 7020.00.60, HTSUS, which provides for “Other articles of glass: Other.”

...  
Heading 7002, HTSUS, is an eo nomine provision that covers certain unworked glass balls. There is no dispute that the subject article is a “glass ball.” However, the heading, by its text, requires that such a glass ball be “unworked” in order for it to be covered by that heading. The tariff term “worked” is not explicitly defined in Chapter 70, HTSUS. “When a tariff term is not defined in either the HTSUS or its legislative history, the term’s correct meaning is presumed to be its common meaning in the absence of evidence to the contrary.” *Timber Prods. Co. v. United States*, 515 F.3d 1213, 1219 (Fed. Cir. 2008). In discerning this common meaning, dictionaries, encyclopedias, scientific authorities, and other reliable information sources may be consulted to construe the meaning of a statute’s words. See *Len-Ron Mfg. Co. v. United States*, 334 F.3d 1304, 1309 (Fed. Cir. 2003). The Court of International Trade has determined that the common meaning of “work” under the HTSUS is “to form, fashion, or shape an existing product.” *Winter-Wolff, Inc. v. United States*, 22 C.I.T. 70, 78–79 (1998); see also HQ W968361, dated July 14, 2008. An existing product is one that “already exists as a commercial product.” *Winter-Wolff* at 79. Thus, **as a threshold, for an article to be considered “worked,” the “working” process a glass article is subjected to would have to be performed on an existing commercial product.**

In addition, Note 2(a) to Chapter 70 explains that with regard to headings 7003, 7004, and 7005, HTSUS, glass that has undergone any process before annealing is not considered “worked.” See HQ 960274, dated

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October 9, 1997 (stating that polishing or rounding operations listed in heading 70.06 must be limited to those that occur after the annealing stage). Although Note 2(a), to Chapter 70 is not directly applicable to heading 7002, HTSUS, it is useful in providing insights into processes, which, after a glass-ceramic article is subjected to, would be considered “worked.” See HQ W968361, dated July 14, 2008. EN 70.06 provides some examples of processes that, if applied after annealing on an existing commercial product, would be considered “worked” for classification purposes. These processes include, but are not limited to, glass that is bent, curved, worked edges (ground, polished, rounded, notched, chamfered, beveled, profiled, etc.), perforated, fluted, and surface-worked glass (sand-blasted, rendered dull by treatment with emery or acid, frosted, engraved, etc.). However, not every process that an article is subjected to and that occurs after annealing would automatically cause the article to be considered “worked.” The appearance of an article can be evidence of further working, but is not dispositive. The actual test for whether an article has been “worked” requires a factual inquiry into its manufacture and any subsequent processing prior to importation. See HQ W968361, supra.

Here, the glass ball is formed from a larger ball (an existing commercial product) that is subjected to two or three grinding operations to precise size specifications and tolerances, and then cleaned. We find that the grinding operations equate to “working” as contemplated by Chapter 70, HTS, and the instant glass ball is therefore excluded from heading 7002, HTSUS.<sup>1</sup>

Regarding Chapter 90, HTSUS, the requester asserts that the glass ball is properly classified under heading 9018, HTSUS, as “part of an instrument or appliance used in medical science.” The requester notes that 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 an illness or to operate, etc.” EN 90.18. Infusion pumps have been held by CBP as classifiable under heading 9018, HTSUS. See HQ 962361, dated September 28, 1999, and HQ 958098, dated December 1, 1995. The subject glass ball is used in one such infusion pump and Note 2 to Chapter 90, HTSUS, states, in pertinent part, the following:

Subject to [Note 1 to Chapter 90], parts and accessories for machines, apparatus, instruments or articles of this chapter are to be classified according to the following rules:

...

(b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind; ...

The courts have considered the nature of “parts” under the HTSUS and two distinct though not inconsistent tests have resulted. See Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States, 110 F.3d 774 (Fed. Cir. 1997). The first test, articulated in United States v. Willoughby Camera Stores, 21 C.C.P.A. 322 (1933), requires a determination of whether the imported item is “an integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article.” Bauerhin, 110 F.3d at 778 (quoting Willoughby Camera, 21 C.C.P.A. 322 at 324). The second test, set forth in United States v. Pompeo, 43 C.C.P.A. 9 (1955), states that “an imported item dedicated solely for use with another article is a ‘part’ of that article within the meaning of the HTSUS.” Id. at 779 (citing Pompeo, 43 C.C.P.A. 9 at 13). Under either line of cases, **an imported item is not a part if it is “a separate and distinct commercial entity.”** Id. Additionally, we note that the EN to heading 70.02 states, in pertinent part, that “[t]he heading excludes balls, rod and tubing made into finished articles or parts of finished articles recognizable as such; these are classified under the appropriate heading (e.g., heading 70.11, 70.17 or 70.18, or Chapter 90). If worked, but not recognizable as being intended for a particular

<sup>1</sup> Even if the glass ball were to be considered “unworked,” heading 7002, HTSUS, also excludes glass balls made into finished articles or parts of finished articles recognizable as such. Articles such as those are classified under the appropriate heading, e.g., heading 7011, 7017 or 7018, HTSUS, or Chapter 90, HTSUS. But see General Note 1(d) to Chapter 70, HTSUS (Chapter 70, HTSUS, does not cover articles of Chapter 90). Also, if worked, but not recognizable as being intended for a particular purpose, the glass ball may be covered by the residual provision heading 7020, HTSUS, as an “other” article of glass, as explained infra.

purpose, they fall in heading 70.20.” [Emphasis added]. Here, the subject glass ball is worked to a very specific size and to within a precise tolerance, as required by its ultimate consumer for the particular pump for which it will be used. However, the fact that a particular customer requires a particular size of glass ball for its merchandise does not make that purpose recognizable from that size. In other words, it is not readily apparent for what purpose it is used amongst the many applications for glass balls. Further, while the subject glass ball is used to regulate the flow of liquid within an infusion pump, the pump would still function to cause liquid to flow whether or not the glass ball were present.

Lastly, heading 7017 covers laboratory, hygienic or pharmaceutical glassware, whether or not graduated or calibrated. EN 70.17 explains: “This heading covers glass articles of a kind in general use in laboratories (research, pharmaceutical, industrial, etc.) including special bottles (gas washing, reagent, Woulf ’s, etc.), ...” Some examples given include special bottles, special tubes, stirrers, flasks, certain dishes, cylinders, dialysers, condensers, specialized funnels, pipettes, stop-cocks, etc. As discussed in HQ 967268, November 5, 2004, laboratory glassware is that which is used for a variety of scientific purposes, including testing, checking, holding, and production of materials regularly used within a laboratory. Better stated, laboratory glassware is used for furthering scientific processes within a laboratory setting, while the instant merchandise is instead used within a medical device that is designed for the intravenous administration of drugs to patients. Therefore, it is not laboratory glassware within the meaning of heading 7017, HTSUS.

Further, EN 70.17 explains that the expression “‘hygienic or pharmaceutical glassware’ refers to articles of general use not requiring the services of a practitioner. The heading therefore covers, inter alia, irrigators, nozzles (for syringes, enemas, etc.), urinals, bed pans, chamber pots, spittoons, cupping-glasses, breast relievers ... eye-baths, inhalers and tongue depressors. Spools and reels for winding surgical catgut are also included.” In HQ H005541, dated July 5, 2007, CBP noted that the expression “hygienic or pharmaceutical glassware” refers to articles of general use not requiring the services of a practitioner. The subject glass ball does not resemble, in form or function, any of the exemplars put forth in EN 70.17. It is a specialized component that is incorporated into the flow regulator of a section of an infusion pump and it controls the flow of solution by being pressed against a tube in the regulator. As such, we find that the glass ball is not “hygienic or pharmaceutical glassware” covered by heading 7017, HTSUS.

Therefore, we find that heading 7020, HTSUS, describes the merchandise as an article of glass, as it is not properly classifiable under some other heading. See Pomeroy Collection, Inc. v. United States, 26 C.I.T. 624, 631 (2002); see also EN 70.20; HQ 967268, dated November 5, 2004, where glass tubes specially made for hospital and laboratory waste drains were classified in heading 7020, HTSUS.

**HOLDING: By application of GRI 1, the subject worked glass ball is classifiable under heading 7020, HTSUS. Specifically, it is classifiable under subheading 7020.00.60, HTSUS, which provides for “Other articles of glass: Other.” The column one, general rate of duty is 5% ad valorem.**

**Modification of a Ruling Letter and Revocation of Treatment Relating to the Tariff Classification of Unwrought Gold Flakes and Nuggets . . . . . 25**

**EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 11, 2016. [Duty decrease 4.18% ad valorem to FREE]**

In NY N024842, CBP ruled that the unwrought gold flakes and nuggets are to be classified under HTSUS subheading 7108.12.5050, which under the Harmonized Tariff Schedule of the United States provided for “Gold (including gold plated with platinum) unwrought or in semimanufactured forms, or in powder form: Nonmonetary: Other unwrought forms: Other ... Other.” The referenced ruling is incorrect because as unwrought gold in the form of flakes and nuggets, the subject articles are more specifically gold bullion of HTS US subheading 7108.12.10. Thus, the more general classification of “Other” does not apply in this case.

...

Subheading Note 1 to HTSUS Chapter 71 states “[f]or the purposes of subheadings 7106.10, 7108.11, 7110.11, 7110.21, 7110.31 and 7110.41, the expressions “powder” and “in powder form” mean products of which 90 percent or more by weight passes through a sieve having a mesh aperture of 0.5 mm.”

Additional U.S. Note 1 (a) to HTSUS Chapter 71 states the following:

1. For the purposes of subchapter II, unless the context otherwise requires: (a) The term “unwrought” refers to metals, whether or not refined, in the form of ingots, blocks, lumps, billets, cakes, slabs, pigs, cathodes, anodes, briquettes, cubes, sticks, grains, sponge, pellets, shot and similar manufactured primary forms, but does not cover rolled, forged, drawn or extruded products, tubular products or cast or sintered forms which have been machined or processed otherwise than by simple trimming, scalping or descaling;

It has been factually established in NY N024842 that the subject gold flakes and nuggets are not gold powder as defined under subheading note 1 to HTSUS Chapter 71. The gold flakes and nuggets meet the definition of “unwrought” in that they are not machined or processed beyond the trimming, scalping, or descaling process. “Alluvial” as an adjective of “alluvium” refers to the fact that the flakes or nuggets are the product of deposits formed from flowing water such as rivers. See. e.g., Definition of “Alluvium,” [http:// dictionary.reference.com/browse/alluvium](http://dictionary.reference.com/browse/alluvium) (2015); Definition of “Alluvial,” <http://www.merriam-webster.com/dictionary/alluvial> (2015).

As unwrought gold, the flakes and nuggets are nonmonetary in nature. “Monetary gold” is generally defined as gold that is owned by government authorities. See. e.g., Definition of “Monetary Gold,” [http:// financialdictionary.thefreedictionary.com/Monetary+Gold](http://financialdictionary.thefreedictionary.com/Monetary+Gold) (2015); <http://www.likeforex.com/glossary/w/monetary-gold-30302> (2015). Conversely, “nonmonetary gold” is generally defined as a commodity that is traded on the open market and not held for reserve by any government authority. See. e.g., <http://stats.oecd.org/glossary/detail.asp?ID=1817> (2015); [http:// www.likeforex.com/glossary/w/non-monetary-gold-126937](http://www.likeforex.com/glossary/w/non-monetary-gold-126937) (2015). The gold flakes and nuggets at issue are being traded on the open market and are not owned by any government authority.

We have previously examined the meaning of the term “bullion” in a tariff classification context. In CBP Ruling HQ H051895 (November 19, 2009), we classified silver grain under HTSUS subheading 7106.91.10, which provides in relevant part for: “Silver ... unwrought ... : Other: Unwrought: Bullion and dore.” In doing so, we determined the following:

The term “bullion” is not defined in the tariff or in the legal notes. When a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. See *Rockne! Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). “To ascertain the common meaning of a term, a court may consult ‘dictionaries, scientific authorities, and other reliable information sources’ and lexicographic and other materials.” (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271, 69 Cust. Ct. 128 (Cust. Ct. 1982); *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989)). In *Jarell-Ash Co. v. United States*, 60 Cust. Ct. 65 (Cust. Ct. 1968), the U.S. Customs Court considered the classification of, among other items, silver grain described as “extremely small, irregularly shaped pieces of ... silver, which have no uniform longitudinal or latitudinal measurement.” The provision under consideration was paragraph 1638 of the Tariff Act of 1930, which exempted from duty “Bullion, gold or silver.” *Id.* n.2. The Court consulted several dictionary definitions before concluding that the common meaning of the term “bullion” is “uncoined gold or silver in the mass considered as so much metal without regard to any value imparted to it by its form.” *Id.* at 67. The Court further noted that “[n]ormally bullion is in the form of ingots, bars, plates and the like ... [b]ut it may also consist of other forms or shapes so long as the form or shape does not impart value to the mass.” *Id.* Silver grain constitutes silver in the mass, i.e., it has no value imparted to it by its form. (Emphasis added.)

As with the silver grain in HQ H051895, the unwrought gold flakes and nuggets at issue here are not “in the form of ingots, bars, plates and the like” to quote Jarell-Ash, but are “uncoined gold ... in the mass considered as so much metal without regard to any value imparted to it by its form.” See *Jarell-Ash Company v. United*

*States, supra. Thus, as gold in unwrought form that is nonmonetary and meets the definition of “bullion” as legally established in Jarell-Ash and HQ H051895, the subject unwrought gold flakes and unwrought gold nuggets are properly classified under HTS US subheading 7108.12.10 as “Gold (including gold plated with platinum) unwrought or in semimanufactured forms, or in powder form: Nonmonetary: Other unwrought forms: Bullion and dare ....” See also CBP Ruling NY N164118(May13, 2011).*

**HOLDING:** *The unwrought gold flakes and unwrought gold nuggets are properly classified under HTS US subheading 7108.12.10 as “Gold (including gold plated with platinum) unwrought or in semimanufactured forms, or in powder form: Nonmonetary: Other unwrought forms: Bullion and dare ....” The general column one rate of duty, for merchandise classified under this subheading is Free.*

**Proposed Revocation of Three Ruling Letters, Modification of One Ruling Letter and Revocation of Treatment Relating to the Tariff Classification of Luo Han Guo Powder and Liquid Products . . . . . 31**

**DATES: Comments must be received on or before December 11, 2015.**

*[decrease for one” 5% to 3.7% ad valorem and increase for sccond from FREE to 5% ad valorem]*

*In NY K84522, CBP classified a luo han guo powder comprised 80 percent of mogrosides in subheading 3824.90.91, HTSUS (2004), which provided for “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other.”<sup>2</sup> CBP affirmed that ruling in HQ W967214. In HQ H106785, CBP classified a luo han guo liquid comprised 55.90 percent mogrosides in subheading 1302.19.91, HTSUS, which provides for “Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products: Vegetable saps and extracts: Other: Other.” In NY N046672, CBP classified a luo han guo liquid comprised 80 percent of mogrosides in subheading 3824.90.92, HTSUS. It is now CBP’s position that the luo han guo powder of HQ W967214 and NY K84522 and the luo han guo liquid of NY N046672 are properly classified, by operation of GRI 1, in heading 2938, HTSUS, specifically in subheading 2938.90.00, HTSUS, which provides for “Glycosides, natural or reproduced by synthesis, and their salts, ethers, esters and other derivatives: Other.” It is also our position that the luo han guo liquid of HQ H106785 is properly classified, by operation of GRI 1, in heading 3824, HTSUS, specifically in subheading 3824.90.92, HTSUS, which provides for “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other.”*

**ISSUE:** *Whether the subject luo han guo products are classified as extracts in heading 1302, HTSUS, as glycosides in heading 2938, HTSUS, or as other chemical mixtures in heading 3824, HTSUS?*

*...At the outset, we note that the subject products can only be classified in heading 3824, HTSUS, if they are not classifiable in heading 2938, or more specifically classifiable in heading 1302. See Chapter 29, Note 1, HTSUS (“Except where the context otherwise requires, the headings of this chapter apply only to...separate chemically defined organic compounds.”); Chapter 38, Note 1, HTSUS (“This chapter does not cover...separate chemically defined elements or compounds.”); see also *Cargill, Inc. v. United States*, 318 F. Supp. 2d 1279, 1278–88 (Ct. Int’l. Trade 2004) (characterizing heading 3824 as a basket provision). Moreover, the subject products can only be classified in heading 1302, HTSUS, if they are not classifiable in heading 2938. See Chapter 13, Note 2, HTSUS (“The heading does not apply to... Camphor, glycyrrhizin or other products of heading 2914 or 2938.”). Consequently, we first consider whether the subject products are classifiable in heading 2938; if they are not, we will consider heading 1302 before finally considering heading 3824.*

*Heading 2938 describes glycosides and their derivatives. ...*

<sup>2</sup> In accordance with 2007 revisions to the HTSUS, subheading 3824.90.91, HTSUS, has been replaced by subheading 3824.90.92, HTSUS. Subheading 3824.90.92, HTSUS, contains language identical to that of former subheading 3824.90.91, HTSUS.



Per Note 1(a) and the EN to Chapter 29, a substance is classifiable within heading 29 where it is comprised almost entirely by a single molecular structure, so long as any structural deviations, i.e., impurities, are the result of processing. [citations omitted] Note 1(c) and EN 29.38 establish an even broader degree of permissible chemical heterogeneity in specific relation to glycoside products, insofar as they set the scope of heading 2938 to include mixtures consisting of multiple, varying glycosidic structures in addition to any incidental impurities.<sup>3</sup>

Notwithstanding this allowance for impurities, it is CBP's position that there do exist limits to the proportional weights of permissible impurities in a Chapter 29 product. Specifically, any impurities cannot be so prevalent so as to marginalize the product's chemical identity and render it a chemical mixture classifiable elsewhere. Compare HQ 967971, dated March 2, 2006 (classifying extract with 80 percent silymarin content in heading 2932 on the grounds that remaining 20 percent content, comprised of starting material and solvent, constituted permissible impurities) with HQ 966448, dated July 9, 2004 (excluding extracts containing between 6 percent and 30 percent alkaloids as well as maltodextrin and ash from heading 2939); see also HQ W968424, dated December 19, 2006 (excluding from a product containing "proanthocyanidin, in concentrations of 76 percent or greater to the exclusion of other constituents" from Chapter 29); see Hawley's, *supra*, at 685 (defining impurity as "[t]he presence of one substance in another, often in such low concentration that it cannot be measured quantitatively by ordinary analytical methods...").

Here, each of the instant products contains varying amounts of mogrosides, which comprise a group of chemical compounds within the broader glycoside family. Our research indicates that mogrosides in toto encompass several different individual chemical compounds, most commonly mogrosides I-V, each of which bears a unique molecular make-up. See Dr. Subhuti Dharmananda, Luo Han Guo: Sweet Fruit Used as Sugar Substitute and Medicinal Herb, Institute for Traditional Medicine, Jan. 2004, <http://www.itmonline.org/arts/luohanguo.htm>. Our research further indicates that while mogroside V is typically the largest component by weight in luo han guo extracts, these extracts generally contain other mogroside compounds, albeit in much smaller amounts. Id. Even when mixed together, however, these individual mogroside compounds remain classifiable in heading 2938, HTSUS, by operation of Chapter 29, Note 1(c).

In HQ W967214, NY K84522, and NY N046672, unspecified mogrosides account for 80 percent of the respective subject products' chemical compositions, with the remaining 20 percent constituent matter comprised of various undefined materials. Assuming they lack glycosidic content, these 20 percent remainder portions qualify as impurities if they result from processing such as purification. According to CBP's analyses of the manufacturing flowcharts you submitted, the powder at issue in HQ W967214 and NY K84522 is subjected to filtration, centrifugation, and column chromatographic procedures designed to remove certain materials from the substance. Specifically, we noted in HQ W967214 that the ion exchange resin used in the chromatographic procedure enables disposal of unwanted sulfur-containing compounds, and that, additionally, 50 percent of the unwanted methylene chloride extractable volatiles fractions and various off-flavor materials are removed. As a result, the remaining 20 percent constituent matter can be characterized as either unconverted starting materials or impurities in the starting materials. Likewise, CBP concluded in NY N046672 that the luo han guo liquid at issue has been extensively processed; hence, the remaining materials left unaffected by this processing can be considered impurities. Consequently, both the luo han guo powder of HQ W967214 and NY K84522 and the luo han guo liquid of NY N046672 are classifiable in heading 2938, HTSUS, as glycosides not chemically defined containing impurities from the starting material.

In HQ H106785, by contrast, the subject luo han guo liquid contains only 55.90 percent mogrosides as its most predominant chemical constituent, although an additional 37.9 percent of the liquid is comprised by glucose, fructose and sucrose. The presence of a sugar may in some cases be indicative of glycoside content, as the latter by definition includes the former as a constituent part, but it is not necessarily dispositive of such. Hawley's, *supra*, at 616 (defining glycosides as "acetals derived from a combination of various hydroxyl compounds with various

<sup>3</sup> While Note 1(c) does not specifically carve out an allowance for impurities, one can be read in by implication, as the note would otherwise be rendered de facto inoperable. See Hawley's, *supra*, at 685 ("It is impossible to prepare an ideally pure substance").

sugars”). In *HQ H106785*, it is unclear **whether** the constituent sugars are incorporated into glycosides. In addition, the mixture contains other non-glycosidic substances. **Therefore, the presence of glycosides combined with other materials renders the liquid a heterogeneous mixture rather than a mixture of glycosides for classification purposes. As such, it is excluded from Chapter 29 and must be classified elsewhere.**

We accordingly consider **whether the liquid is classifiable in heading 1302, HTSUS, which covers vegetable extracts**. EN 13.02 provides, in relevant part, as follows:

*The heading covers saps and extracts (vegetable products usually obtained by natural exudation or by incision, or extracted by solvents)...*

*The saps and extracts classified here include:*

(1) *Opium, the dried sap of the unripe capsules of the poppy (Papaver somniferum) obtained by incision of, or by extraction from, the stems or seed pods. It is generally in the form of balls or cakes of varying size and shape. However, concentrates of poppy straw containing not less than 50% are excluded from this heading...*

(11) *Quassia amara extract, obtained from the wood of the shrub of the same name (Simaroubaceae family), which grows in South America. Quassin, the principal bitter extract of the wood of the Quassia amara, is a heterocyclic compound of heading 29.32 ...*

(18) *Papaw juice, whether or not dried, but not purified as papain enzyme. (The agglomerated latex globules can still be observed on microscopic examination.). Papain is excluded (heading 35.07)...*

(20) *Cashew nutshell extract. The polymers of cashew nutshell liquid extract are, however, excluded (generally heading 39.11)...*

*The vegetable saps and extracts of this heading are generally raw materials for various manufactured products...*

It is our long-standing position that, consistent with EN 13.02, heading 1302 applies to products that have been created through standard extraction methods, but not to those that have subsequently been enriched, purified, or otherwise refined so as to increase the contents of certain desirable compounds. See *HQ H106785*, dated October 14, 2010 (“CBP has determined that extensive processing can exclude a product from 1302.”); *HQ 959099*, dated May 1, 1998 (“As pointed out in the ENs to heading 1302, what is covered in the heading are vegetable products obtained by natural exudation or by incision or by solvent extraction.”). In *HQ H195716*, dated February 19, 2015, we provided the following justification for this position:

*CBP’s position is supported by the text of EN 13.02. For example, opium is the dried sap of the unripe capsules of the poppy (Papaver somniferum), obtained by incision of or extraction from the stems or seed pods. Opium contains about 10% morphine. However, concentrate of poppy straw is a different product. A procedure for obtaining concentrate of poppy straw was first patented in 1935, and describes a process of drying the stems and pods of the poppy plant, treating them with sodium bisulphite, concentrating the aqueous solution into a paste by application of a vacuum, treating the paste with alcohol, and then precipitating the morphine base by treating the solution with ammonium sulphate and benzene, to yield a product with over 50% morphine. EN(1) to 13.02 (and Note 1(f) to Chapter 13, HTSUS) excludes concentrates of poppy straw containing not less than 50% by weight of alkaloids. In another example, ... .*

See also *HQ H061203*, dated August 12, 2010 (“**There appears to be a limit on the degree and extent of purification that can occur for the product to remain in heading 1302.** For instance, EN 13.02, explicitly excludes certain refined extracts of opium, quassia amara, papaw juice, and cashew nut shell liquid, once the refining process concentrates a certain group of chemical compounds to a particular point. Hence, poppy straw concentrates containing more than 50% alkaloids are excluded from heading 1302. Likewise, quassin, a chemical compound extracted and refined from the quassia amara shrub is classified in Chapter 29. Papain enzyme, once purified from the extraction process of papaw juice, is classified as an enzyme of Chapter [35]. And polymers extracted and refined from cashew nut shell liquid are classified in Chapter 39 as polymers.”); *HQ H237599*, dated May 27, 2015; and *HQ W968424*, dated December 19, 2006.

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Accordingly, we have consistently ruled that products in which certain chemical compounds have deliberately been targeted and enriched cannot be classified in heading 1302. ...

The luo han guo liquid of HQ H106785 is initially extracted with water and ethanol, but is subsequently subjected to additional processes such as centrifugation and decompression. These steps, which are methods of concentrating desired chemical compounds, yield a product that contains 55.90 percent mogrosides among other naturally-occurring materials. See Hawley's at 254. Additionally, our review of patents for the processing of luo han guo plants indicates that a chemical composition in which mogrosides account for as much as 55.90 percent of the constituent content is virtually unattainable but for the application of post-extraction enrichment. U.S. Patent No. 8,449,933 (filed June 30, 2004) (describing process of involving microfiltration of luo han guo fruit juice that yields product containing at most 25 percent mogrosides); U.S. Patent No. 5,411,755 (filed Jan. 26, 1994) (describing process involving fractionalization of Cucurbitaceae fruit juice that yields product containing at most 15 percent mogrosides); U.S. Patent No. 2,425,721 (filed June 30, 2004) (demonstrating use of column separation to increase mogroside content in extracts from 35 percent to 60 to 87 percent). In light of this, we conclude that the luo han guo liquid of HQ H106785 has been deliberately enriched with mogrosides through the use of post-extraction processing. Consequently, like the products of HQ H195716, HQ W968424, HQ H023701, and HQ H056377, the instant liquid cannot be classified in heading 1302.

Having excluded the remaining luo han guo liquid from headings 2938 and 1302, we now consider whether it is classifiable under heading 3824. Heading 3824 provides for "chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included." General Note 1 to Chapter 38 provides, in relevant part, that "[t]his Chapter...does not cover chemically defined elements or compounds (usually classified in Chapter 28 or 29..." Additionally, EN 38.24 states, in pertinent part, as follows:

**(B) CHEMICAL PRODUCTS AND CHEMICAL OR OTHER PREPARATIONS**

*With only three exceptions... this heading does not apply to separate chemically defined elements or compounds.*

*The chemical products classified here are therefore products whose composition is not chemically defined, whether they are obtained as by-products of the manufacture of other substances (this applies, for example, to naphthenic acids) or prepared directly.*

*The chemical or other preparations are either mixtures (of which emulsions and dispersions are special forms) or occasionally solutions...*

Consistent with General Note 1 to Chapter 38 and the EN 38.24, it is CBP's practice to classify products in heading 3824 where they lack the chemical purity to qualify as a product of Chapter 29, yet have been so purified so as to fall outside the scope of heading 1302. See HQ H061203; HQ 959099, dated May 1, 1998. As in our previous cases, the luo han guo liquid of HQ H106785, as a purified chemical product or preparation lacking chemical definition, is classifiable in heading 3824.

**HOLDING:** Under the authority of GRI 1, the luo han guo powder of HQ 967214 and NY K84522 and the luo han guo liquid of NY N046672 are classified in heading 2938, HTSUS, specifically in subheading 2938.90.0000, HTSUSA, which provides for "Glycosides, natural or reproduced by synthesis, and their salts, ethers, esters and other derivatives: Other." The 2015 column one general rate of duty rate is 3.7% ad valorem.

**By application of GRI 1, the luo han guo liquid of HQ H106785 is classified in heading 3824, HTSUS, specifically in subheading 3824.90.9290, HTSUSA, which provides for "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other." The 2015 column one general rate of duty is 5.0% ad valorem.**

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CSMS [15000830](#) ACE Certification OUTAGE, November 5, 2015 from 0600 A.M. until 0800 A.M. ET

CSMS [15000829](#) ACE Production Deployment Tomorrow morning, Thursday, November 5, 2015 0500 to 0700 ET

CSMS [15000828](#) What is a "One USG" Message?

CSMS [15000827](#) Reminder: 2015 ACE Customer Satisfaction Survey for the Trade is Now Open & Available

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CSMS [15000820](#) ACE PRODUCTION Deployment Tomorrow, Saturday, October 31, 2015 at 2200 ET

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Radio Frequency Devices, FCC Form 740 Temporary Suspension

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*Effective December 7, 2015: Temporary waiver of the requirement to file FCC Form 740 concerning imported Radio Frequency (RF) devices. – Due to the transition to the new CBP electronic filing system, which is scheduled to become fully operational by December 2016, parties importing RF devices will lose the ability to electronically file the required FCC information. The Commission does not believe that it would serve the public interest to establish an alternative means for importers to submit this information with us during the pendency of the rulemaking.*

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**Public Health** - [Memo from OEHHA to CDFW Domoic Acid Threat to Public Health](#)

**Proposition 65** - [Public Comments on the Center for Environmental Health Petition](#) Requesting Repeal or Amendment of the **Safe Harbor Level for Lead**

**Synthetic Turf Studies** - OEHHA is convening three in-person public workshops and a webinar to provide input on our study of potential chemical exposures and health impacts from synthetic turf fields. The next workshop is November 12th in San Diego. [Sign up to attend a workshop or webinar.](#)

**Proposition 65** - [Errata for the document.](#) "Diaminotoluene (mixed)" and Nitrapyrin are Under Review for Possible Delisting

**Synthetic Turf Studies** - OEHHA is convening three in-person public workshops and a webinar to provide input on our study of potential chemical exposures and health impacts from synthetic turf fields. The next workshop is November 12th in San Diego. [Sign up to attend a workshop or webinar.](#)

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T3 Micro recalls the T3 Twirl 360 Curling Iron

<http://healthycanadians.gc.ca/recall-alert-rappel-avis/hc-sc/2015/55730r-eng.php>

\* \* \*

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