**The Month So Far: March 5 through March 11, 2016**

***As of March 10, 2016, at 12:01 A.M., shipments valued at $800 or less are eligible for release under the same process and with the same restrictions that applied to de minimis shipments of $200 or less.***

***See CSMS 16000181 ****

***ACE ABI CATAIR Entry Summary Draft***

**ANIMAL AND PLANT HEALTH INSPECTION SERVICE**

NOTICES

International Sanitary and Phytosanitary Standard-Setting Activities [TEXT] [PDF]

Agency Information Collection Activities; Proposals, Submissions, and Approvals [TEXT] [PDF]

Environmental Impact Statements; Availability, etc.:

Introduction of the Products of Biotechnology [TEXT] [PDF]

**NEW: Animal Product Manual**

***Complete List of Electronic Manuals***

***NEWS*** ***Import / Export*** ***APHIS FAQs*** ***PPQ FORMS - USDA APHIS | Home***

***Lookup plant genus and species***

**CONSUMER PRODUCT SAFETY COMMISSION**

RULES

Statement of Enforcement Policy:

General Conformity Certificates for Adult Wearing Apparel Exempt from Testing [TEXT] [PDF]

***Quick L inks:*** ***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**

- Z Gallerie Recalls Wall Clocks Due to Fire Hazard
- Liberty Hardware Recalls Decorative Metal Wall Plates
- Pelican Products Recalls Flashlights and Replacement Battery Packs Due to Fire Hazard

**Search the CPSC Recalls and Safety News Page**

**CUSTOMS AND BORDER PROTECTION**

**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)**
**Completing an Annual Review** **C-TPAT Portal Resources**
**e-Allegations Frequently Asked Questions** ***CBP INFO CENTER WHAT'S NEW IN TRADE***
***FOIA ELECTRONIC READING ROOM*** ***WEEKLY EXCHANGE RATE MULTIPLIERS***
***INFORMED COMPLIANCE PUBLICATIONS*** ***Commodity Status Report for Tariff Rate Quotas***

**CBP BULLETIN** ***March 9, 2016***

***General Notices*** ***Page***

***Proposed Revocation of One Ruling Letter and Proposed Revocation of Treatment Relating to the Tariff Classification of Certain Articles of Footwear . . . . . 1***

***DATES: Comments must be received on or before April 8, 2016.***

*In ruling letter NY N239002, CBP determined that the Nike USA, Inc. (Nike) "Studio Wrap Pack," which consists of several articles of footwear and related accessories for the practice of yoga and other exercise activities, was not classifiable pursuant to General Rule of Interpretation (GRI) 3(b), as "goods put up in sets for retail sale." Accordingly, CBP ruled that the articles contained in the StudioWrap Pack should be separately classified, by application of GRI 1, under their respective HTSUS headings.* ***CBP has reconsidered ruling letter NY N239002, and it is now CBP's position that the Studio Wrap Pack is properly classified, by application of GRI 3, in heading 6404, HTSUS, which provides for, "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials****."*

*Nike Studio Wrap Pack, the "Foot Wrap"*

*Nike Studio Wrap Pack, the Foot Wrap with a tied "Strap" around the foot and ankle*

***ISSUE:*** *Whether the Nike Studio Wrap Pack is properly classified, pursuant to General Rule of Interpretation (GRI) 3(b), as goods put up in sets for retail sale, or whether the individual components of the Studio Wrap Pack should be separately classified, by application of GRI 1, in their respective headings.*

*…*

*As an initial matter, CBP observes that the Nike StudioWrap Pack consists of a variety of individual articles (the Foot Wraps, Flats, Straps, Insoles, and Mesh Bag), packaged together for retail sale, that are, prima facie, classifiable in two or more headings. Specifically, there is no dispute that the Foot Wraps are described by heading 6402, HTSUS; the Flats are described by heading 6404, HTSUS; the Straps are described by heading 6307, HTSUS; the Insoles are described by heading 6406, HTSUS; and that the Mesh Bag is described by heading 6307, HTSUS.*

*Consequently, because the Nike Studio Wrap Pack is, prima facie, classifiable under two or more headings, classification shall be effected by application of GRI 3—specifically GRI 3(b), which directs that "[g]oods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character."*

*For purposes of tariff classification under GRI 3(b), the term "sets for retail sale" carries a specific meaning that is defined in detail by EN (X) to GRI 3(b). Specifically, EN (X) to GRI 3(b) states:*

*(X) For the purpose of this Rule, the term 'goods put up in sets for retail sale' shall be taken to mean goods which:*

*(a) consist of at least two different articles which are, prima facie, classifiable in different headings . . . ;*

*(b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and*

*(c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).*

* * * * *

*Upon consideration of whether the component articles of the Nike Studio Wrap Pack are properly classifiable as a "set" under GRI 3, there is no dispute to GRI 3(b). Consistent with EN (X)(a) and (c) to GRI 3(b), the individual component articles of the Studio Wrap Pack are, prima facie, classifiable in different headings; likewise, the articles are packaged together in a retail box that is suitable for sale directly to users without repacking. Consequently, because the Nike StudioWrap Pack satisfies criterion (a) and (c) of the EN (X) to GRI 3(b), the determination as to whether the Studio Wrap Pack is classifiable as "goods put up in sets for retail sale" turns on whether the merchandise is also described by EN(X)(b), which states that "sets" must consist of products or articles put up "to meet a particular need or carry out a specific activity."*

*The courts have provided guidance on the meaning of "products or articles put up together to meet a particular need or carry out a specific activity" for purposes of classification pursuant to GRI 3(b). ...*

*Consistent with the courts' interpretation of the terms "particular need" and "specific activity" in EN (X)(b) to GRI 3(b), CBP finds that the individual component articles of the Nike Studio Wrap Pack are put up together for use in a single purpose or activity. Specifically, they are designed for use in conjunction with one another to provide foot protection and floor traction during yoga, pilates, and barre exercise activities.*

*Moreover, CBP notes that the complementary design of the individual component articles makes it such that a consumer would not purchase the Studio Wrap Pack to use the Foot Wraps or Flats without the other. That the Flats may be used as conventional footwear, independent of the Foot Wraps, does not negate the fact that the Flats are put up with the other component articles for the particular activity of exercising. Consequently, upon consideration of the character and use of the FootWraps, Straps, Flats, Insoles, and Mesh Bag with one another, CBP concludes that the Studio Wrap Pack is fully described by EN(X)(b) to GRI 3, because the merchandise is put up together to provide foot protection and floor traction during yoga, pilates, and barre exercise activities.*

*With respect to the Mesh Bag included with the Studio Wrap Pack to transport, store, and wash the Foot Wraps and Straps, CBP notes that in Estee Lauder, the CIT repeatedly referred to cases and containers, suitable for general use and classifiable elsewhere in the Nomenclature, as nonfunctional set components contemplated under GRI 3(b). Estee Lauder, 815 F. Supp. 2d at 1299–1300 (citing EN (X) to GRI3(b)). In each example, the* ***inclusion of a case or container with a set****, although suitable for general use, did* ***not negate the set's qualification under GRI 3(b)****. Id.*

*Pursuant to the text of GRI 3(b), goods put up in sets for retail sale must be classified as if they consisted of the material or component which "gives them their essential character." The phrase "essential character" carries specific meaning in the context of tariff classification, and the courts have defined "essential character" as, "that which is indispensable to the structure, core or condition of the article, i.e., what it is." Structural Industries v. United States, 360 F. Supp. 2d 1330, 1336 (Ct. Int'l Trade 2005).*

*EN VIII to GRI 3(b) explains that "[t]he factor which determines essential character will vary as between different kinds of goods," and may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods. See EN VIII to GRI 3(b). However, among those factors identified in EN VIII to GRI 3(b),* ***recent court decisions concerning "essential character" analysis under GRI 3(b) have primarily focused on the role of the constituent material in relation to the use of the goods***. [citations omitted].

*Consistent with the guidance provided by the courts and the ENs to GRI 3, CBP evaluates the functional components of a set when determining what article or component imparts a set with its essential character. Relevant to the classification of the instant merchandise, CBP has previously found that the essential character of sets consisting of footwear sold in combination with a bag or pouch is often imparted by the functional article of footwear.* [citations omitted].

*Here, the essential character of the Nike Studio Wrap Pack is imparted by the functional items used to provide foot protection and traction for exercise activities, namely the Foot Wraps and Flats. CBP finds that the Insoles, Straps, and Mesh Bag serve supporting roles in providing foot protection and traction for purchasers. The role of the Insoles is to provide additional cushioning for the foot when used in the Flats and is not essential to the use of the Studio Wrap Pack. Similarly, the relative low bulk and value of the Straps and Mesh Bag, combined with the fact that the components do not provide foot protection or traction when used independently of the Foot Wraps and Flats, are evidence of the components' supportive role in facilitating the use and care of the items that enable the Studio Wrap Pack to fulfill the specific activity that makes it a set. Accordingly, CBP finds that the Insoles, Straps, and Mesh Bag do not impart the Studio Wrap Pack with its essential character.*

*By contrast, it is apparent upon first impression that the Foot Wraps and Flats are functional items of the Studio Wrap Pack. The Foot Wraps and Flats provide foot protection and traction and are necessary for the particular activity of the set. Without either component, a purchaser could not protect his or her feet or gain additional traction as compared to barefoot exercise.*

*In determining whether the Foot Wraps or Flats impart the Studio Wrap Pack with its essential character, CBP observes that the Foot Wraps and Flats are designed to be used, separately or in combination with one another, to provide foot protection and traction for exercise activities. Accordingly, CBP finds that the articles share equal importance in fulfilling the particular need or specific activity associated with the Studio Wrap Pack. See EN(X), GRI 3(b). Similarly, the Foot Wraps and Flats share similar individual unit production costs; the Foot Wraps and Flats account for 43.4% and 32%, respectively, of the total production cost of the Studio Wrap Pack. Consequently, because the specific role, function, and unit production cost of the Foot Wraps and Flats do not distinguish either article as uniquely indispensable to the "structure, core, or condition" of the Studio Wrap Pack, CBP cannot determine whether the Foot Wraps or Flats impart the merchandise with its essential character. See Structural Industries v. United States, 360 F. Supp. 2d at 1336.*

***When goods cannot be classified by reference to GRI 3(a) or 3(b), GRI (c) instructs that they shall be classified "under the heading which occurs last in numerical order among those which equally merit consideration**." Here, CBP has determined that the **Foot Wraps and Flats are equally important** to the **essential character** of the Studio Wrap Pack. The Foot Wraps are classifiable in heading 6402, HTSUS; and the Flats are classifiable in heading 6404, HTSUS. Accordingly, by application of GRI 3(c), CBP finds that the Nike StudioWrap Pack is classifiable in heading 6404, HTSUS, which provides for, "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials."*

***HOLDING: By application of GRI 3(c), the Nike Studio Wrap Pack is classified in heading 6404, HTSUS, specifically subheading 6404.19.39, HTSUS**, which provides for "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: Footwear with outer soles of rubber or plastics: Other: Footwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except footwear of subheading 6404.19.20 and except footwear having a foxing or foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper: Other: Other." The column one, general rate of duty under this provision in 2013 is 37.5%, ad valorem.*



***DATES: Comments must be received on or before April 8, 2016.***

*In the analysis section of HQ H164425, CBP classified all three models of antenna shields in heading*

*9015, HTSUS, which provides for "Surveying, (including photogrammetrical surveying), hydrographic, oceanographic, hydrological, meteorological or geophysical instruments and appliances, excluding compasses; rangefinders; parts and accessories thereof." This was correctly noted on the first page of the ruling. This analysis remains correct.* ***However in the Holding section of HQ H164415, CBP erroneously stated that the goods were classified in subheading 9015.80.80, HTSUS. Pursuant to the analysis, they are correctly classified in subheading 9015.90.0060, HTSUSA*** *(Annotated), as, "Surveying, (including photogrammetrical surveying), hydrographic, oceanographic, hydrological, meteorological or geophysical instruments and appliances, excluding compasses; rangefinders; parts and accessories thereof: Parts and accessories: Of other geophysical instruments and appliances," because the goods are parts of geophysical instruments, they are not geophysical instruments themselves.*

*Further, the column one rate of duty for goods classified under subheading 9015.90.0060, HTSUSA is "equal to the rate applicable to the article of which it is a part or accessory".* ***In the instant case, that is as geophysical instruments and appliances, which are classified in subheading 9015.80.8040, HTSUSA, which is duty free.***

*Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify HQ H164415 as regards the Holding, and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling (HQ)H267349 (Attachment B).*

***Proposed Modification of a Ruling Letter Relating to the Tariff Classification of Certain Woven Fabric . . . . . 31***

***DATES: Comments must be received on or before April 8, 2016.***

*Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625 (c)(1)), as amended by section 623 of Title VI, this Notice advises interested parties that CBP intends to modify a ruling letter pertaining to the tariff classification of woven fabric. In this Notice, CBP is specifically referring to the modification of Headquarters Ruling Letter (HQ) H063618, dated March 27, 2015 (Attachment A).*

*On page six of HQ H063618, the ruling contained the* ***following misstatement*** *of the Explanatory Notes (EN) to heading 59.11 of the international Harmonized System: "Furthermore, the instant fabric is not a square shape." The ENs to heading 59.11 state that bolting cloths "are porous fabrics (for example, with a gauze, leno or plain weave), geometrically accurate as to size and shape (usually square) of the meshes." The ENs do not reference the shape of the cloth; rather, they reference the shape of the cloth's meshes. As such, the above reference to the cloth's shape is a misstatement of the ENs.*

*Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to modify HQ H063618, in order to correctly reflect EN 59.11. The modifications are reflected in proposed Headquarters Ruling Letter (HQ) H266215, set forth as Attachment B to this document.*

***ISSUE:*** *Is the woven fabric classified as a narrow woven fabric of subheading 5806.32, HTSUS, or as bolting cloth of subheading 5911.20, HTSUS?*

*…*

*Heading 5911,* [1] *HTSUS, covers textile products and articles for technical uses which are specified in Note 7 to Chapter 59. Only those textile products described in Note 7 are classifiable in Heading 5911, HTSUS. You assert that the instant woven fabric is bolting cloth, which is listed in Note 7(a)(2). For support, you cite to EN 59.11, which states that bolting cloth must be porous, geometrically accurate as to size and shape of the meshes, and that bolting cloth cannot be deformed by use. Further, you state that the instant woven fabric is uncoated and consists of synthetic filament yarn. You state that the instant woven fabric is physically identical to Sefar item 3B17–0850–158–00, which was classified in subheading*

[1] We note that a recent court case discussed the tariff classification of textile articles for technical uses under heading 5911, HTSUS. Airflow Technology, Inc. v. United States, 524 F.3d 1287 (Fed. Cir. 2008)(Airflow). In Airflow, however, the Federal Circuit examined the definition of "straining cloth" of Note 7(a)(iii), and not "bolting cloth" of Note 7(a)(ii). As the instant ruling only pertains to bolting cloth, we will not apply the analysis therein to the instant merchandise.

*5911.20, HTSUS, in NY N025649, dated May 2, 2008. For all of these reasons, you assert that the instant woven fabric is classifiable as bolting cloth of subheading 5911.20, HTSUS.*

*In Headquarters Ruling Letter (HQ) HQ 950733, dated December 28, 1993, we set forth the following dictionary definitions of the terms "bolt" and "bolting cloth"[2]:*

> *The Century Dictionary and Cyclopedia, The Century Company (1911): bolt1 vt 1: To sift or pass through a sieve or bolter so as to separate the coarser from the finer particles, as bran from flour; sift out: as, to bolt meal; to bolt out the bran; bolt2 n. 1.: A sieve; a machine for sifting flour; bolting-cloth n.: A cloth for bolting or sifting; a linen, silk, or hair cloth, of which bolters are made for sifting meal, etc. The finest and most expensive silk fabric made is bolting-cloth, for the use of millers, woven almost altogether in Switzerland.*
>
> *Funk & Wagnalls New Standard Dictionary of the English Language, (1928): bolting, n. 1: The act or process of sifting, usually in a mill or machine; b. cloth 1: A fabric, usually of unsized silk, for separating the various products of a flouring mill.*
>
> *The Wellington Sears Handbook of Industrial Textiles, Ernest R. Kaswell (1963): bolting cloth: Light weight, finely woven silk and nylon bolting cloths made in precise mesh sizes are extensively used industrially for sifting and screening purposes. These extremely uniform filament yarn constructions in leno weaves are manufactured principally in Switzerland on special looms, requiring a high degree of skill on the part of the operator to achieve weaving perfection.*
>
> *Bolting cloths are designated by the number of interstices or openings per linear inch, in the same manner as fine wire screening. For example, a 200 mesh bolting cloth has 200 openings per inch in both the warp and filling directions. The size of the openings must also be specified, as yarns of different deniers provide different size interstices for a given mesh cloth...*
>
> *Silk bolting cloths are generally used for dry sifting processes, with the filament nylon cloths preferred for wet screening operations such as those employed in starch and flour manufacturing. Both types of fabrics are also widely used by the textile industry in screen printing.*
>
> *Webster's Third New International Dictionary, Merriam-Webster (1986): bolt 1: to sift (as meal or flour) usu. through fine-meshed cloth; also: to refine and purify (as meal or flour) through any process; bolting cloth: a firm fabric now usu. of silk woven in various mesh sizes for bolting (as flour) or for use in screen printing, needlework, or photographic enlargements.*
>
> *Fairchild's Dictionary of Textiles: bolting cloth: A plain weave fabric originally of silk with a fine, uniform mesh; the fabric is woven in the gum and has a high number of threads per inch. The standard width is 40 inches.*
>
> *Fine mesh cotton muslin is also employed. For a time, filament yarn of Vinyon, a copolymer of vinyl acetate and vinyl chloride was used, but when production of this yarn ceased, other synthetic yarns were used.*
>
> *Uses: sifting flour in flour mills and screen printing. Sometimes called banderoles.*

*Hence, by definition, the bolting cloth of Note 7(a)(ii) to Chapter 59 is not just a porous material. It is an article that, although made only of textile fabric, has a mesh that is geometrically accurate as to size and shape, and is used in certain limited ways. According to the ENs, bolting cloth usually has a square mesh. Even if the instant woven fabric has some of the characteristics of bolting cloth, we note that* ***it does not*** *have the same uses as bolting cloth.*

*CBP has only issued four rulings which classify merchandise under subheading 5911.20, HTSUS, as*

[2] When, as in this case, a tariff term is not defined by the HTSUS or its legislative history, "the term's correct meaning is its common meaning." Mita Copystar Am. v. United States, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. Simod Am. 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, 673 F.2d 1268, 1271 (CCPA 1982); Simod, 872 F.2d at 1576.

*bolting cloth. In all of those cases, the merchandise was used for sifting, sieving or screen-printing. See HQ 950733 (filtration medium for blood purification), NY 896117, dated April 7, 1994 (screen-printing), NY 815642, dated October 10, 1995 (screen-printing), and NY N025649, dated May 2, 2008 (sifting/filtering/screening). In NY N025649, the size and shape of the cloth is not stated, but unlike the fabric in NY N025649, your ruling request did not mention any use of the instant woven fabric for sifting, sieving or screen-printing.*

*In HQ 961537, dated November 21, 2000, CBP examined mesh woven fabric used on test strips for a portable blood glucose monitoring system. That requester also asserted that its woven fabric was classifiable as bolting cloth because it shared many of the same physical characteristics of bolting cloth. Like bolting cloth, the mesh woven fabric was made up of synthetic filament yarn, it was porous, and it was designed to prevent deformation by use.*

***However**, **as the mesh woven fabric was not used** for sifting, sieving, or screen printing, CBP determined that **it could not** be classified as bolting cloth. **Similarly, the instant woven fabric is not used** for sifting, sieving or screen-printing. **As such, it cannot be classified as bolting cloth under heading 5911, HTSUS**.*

*In NY N042709, CBP classified the instant woven fabric as narrow woven fabric of heading 5806, HTSUS. Note 5(a) to Chapter 58 states that narrow woven fabrics cover woven fabrics of a width not exceeding 30 cm, which have selvages (woven, gummed or otherwise made) on both edges. The **instant woven fabric is less than 30 cm wide**, **and** it **has selvages formed by cutting with a hot knife** to prevent it from unraveling. **As it meets the definition of a narrow woven fabric, we find that the instant merchandise is properly classified under heading 5806, HTSUS**.*

***HOLDING: By application of GRIs 1 (Note 7(a)(ii) to Chapter 59 and Note 5(a) to Chapter 58) and 6**, Sefar Tetex Mono V-17–2030-W 50 Rayl woven fabric, in a width not exceeding 30 cm and having selvages on both sides, **is classified under subheading 5806.32.20, HTSUS**, which provides, in pertinent part, for "Narrow woven fabrics, other than goods of heading 5807...: Other woven fabrics: Of man-made fibers: Other." The 2015 column one, general rate of duty is 6.2 percent ad valorem.*



***EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 9, 2016.***

*In NY N074315, CBP classified Saytex HP 7010, also known as Brominated Polystyrene (CAS #88497–56–7) in subheading 3824.90, 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."*

*...*

*We have reviewed NY N074315 and find it to be in error. The product was incorrectly described as a mixture in that ruling. For the reasons set forth below, we hereby revoke NY N074315.*

***FACTS:** In NY N074315, CBP described the merchandise as follows:*

*Saytex HP 7010, also known as Brominated Polystyrene, is a mixture composed of 68% bromine and 32% polystyrene. The product is a flame retardant polymeric additive indicated for use in engineering plastic applications.*

*The specification data provided by Albemarle clarifies that the product is not a mixture of two unreacted components with a ratio of 68% bromine and 32% polystyrene. The product is in the form of the reacted product, that is, a chemically modified polymer. It contains by weight 68% of bromine.*

***ISSUE:** Is Saytex HP 7010, also known as brominated polystyrene (CAS #88497–56–7), properly classified in heading 3824, HTSUS, as a "chemical product or preparation. . . not elsewhere specified or included", or in heading 3903, HTSUS, as "polymers of styrene, in primary forms"?*

*LAW AND ANALYSIS:*

*...*

*Heading 3824, HTSUS, provides, in relevant part, for chemical products and preparations which are "not elsewhere specified or included."* ***Therefore, if the merchandise is described by heading 3903, HTSUS, it is not classified in heading 3824, HTSUS***.

*Heading 3903, HTSUS, provides for polymers of styrene, in primary forms. The* ***specification data*** *submitted by Albemarle* ***confirms that Saytex HP 7010****, also known as brominated polystyrene (CAS #88497–56–7),* ***is a chemically modified polymer****.* ***Chemically modified polymers are classified according to their constituent polymeric material – polystyrene****. The* ***merchandise is classified in heading 3903, HTSUS****. As such,* ***it cannot be classified in Heading 3824****, HTSUS.*

***HOLDING:*** *Pursuant to GRIs 1 and 6, Saytex HP 7010, also known as brominated polystyrene (CAS #88497–56–7), is classified in heading 3903, HTSUS, and specifically in subheading 3903.90.50, which provides for "Polymers of styrene, in primary forms: Other: Other." The column one, general rate of duty is 6.5 percent ad valorem.*

***Corrected Proposed Modification and Revocation of Ruling Letters and Proposed Revocation of Treatment Relating to the Tariff Classification of Certain Patient Lifting Devices . . . . . 49***

***DATES: Comments must be received on or before April 8, 2016.***

***Notice of CBP's intent to modify New York Ruling Letters (NY) 865148, NY 868691, NY 871935, NY B87708, NY C81648, and NY D83377, was first published on April 8, 2015. That notice contained typographical and typesetting errors in the names of the rulings and various dates. It also erroneously included NY 865148, and omitted NY N092699. We are issuing this correction to clarify the rulings involved. As such, this notice advises CBP's intention to modify or revoke the following rulings: NY 868691, NY 871935, NY B87708, NY C81648, NY D83377, and NY N092699. In addition, proposed ruling HQ H235507 is substantially revised from the previous notice. Finally, the comment date is 30 days from publication of this corrected notice.***

*In NY 868691, CBP determined that the patient lifts at issue were classified under heading 9402, HTSUS, specifically under subheading 9402.90.00, HTSUS, which provides for, medical surgical, dental or veterinary furniture, and that they were eligible for secondary classification under subheading 9817.00.96, HTSUS, which provides for "Articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons; parts and accessories (except parts and accessories of braces and artificial limb prosthetics) that are specially designed or adapted for use in the foregoing articles: Other".* ***It is now CBP's position that the subject merchandise is properly classified under heading 8428, HTSUS, specifically under 8428.90.02, HTSUS****, which provides for, lifting machinery, by application of GRI 1. However, it is CBP's position that the instant articles remain eligible for secondary classification under subheading 9817.00.96, HTSUS.*

*…*

*In NY N092699, CBP classified the Proxi-Motion patient lift, a mobile device designed to be used by caregivers to assist in moving a patient or disabled person from a bed or a chair in subheading 8428.90.0190, HTSUS. The classification of this subject merchandise is correct. However, this ruling was not issued pursuant to 19 U.S.C. § 1625 and Customs Regulations regarding modification or revocation of interpretive rulings, found in 19 CFR § 177.12.* ***Therefore, CBP is proposing to revoke NY N092699.***

***Pursuant to 19 U.S.C. 1625(c) (1), CBP proposes to modify NY 868691, NY 871935, NY B87708, NY C81648, NY D83377, and revoke NY N092699, and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the patient lifts according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H235507*** *(Attachment G).*

***ISSUE:*** *Whether the instant products are properly classified under heading 8428, HTSUS, which provides for "Other lifting … machinery", or under heading 9402, HTSUS, which provides for "Medical … furniture".*

*…*

*The General EN (A) to Chapter 94 defines furniture as: "[a]ny 'movable' articles … which have the*

*essential characteristic that they are constructed, in some cases, for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings and other places." CBP has previously considered the meaning of the term "equip" as well as the phrase "to equip". In HQ 964352, dated September 11, 2000 CBP cited The Random House Dictionary of the English Language, (1973), which defines the word "equip" as meaning: "To furnish or provide with whatever is needed for service or for any undertaking". There, CBP ultimately determined that waste receptacles were not designed to equip a building, office, or room, but instead were temporary repositories of waste. See also HQ 964053, dated July 27, 2000; and HQ 962658, dated July 18, 2000. By including the words "not included under other more specific headings" in the definition of furniture, the drafters of the ENs intended that Chapter 94 would not cover all "moveable" articles constructed for placing on the floor. A more specific heading which better describes the article is preferable to the more general heading of furniture. While the instant lifts are constructed, in some cases, for placing on the ground, they are not used to equip private dwellings or other places. They do not have a utilitarian purpose of equipping a room.* ***Rather, they are used to transfer a patient*** *to and from a bath or bed. As such, the instant lifts are not "furniture," and are* ***not properly classified as such under chapter 94,*** *specifically, heading 9402, HTSUS.*

***Heading 8428, HTSUS, provides, in pertinent part, for other lifting machinery****. See NY N160936, dated May 2, 2011 (classifying a power lift gate assembly); NY N057959, dated April 27, 2009 (classifying a motorcycle lift). The heading covers specialized lifting machines based on pulley, winch or jacking systems, which often included large proportions of static structural elements. See EN 84.28.*

***In November 2003, Subsection (III)(L) was added to the EN 84.28****, by corrigendum. See Annex D/1 to Doc. NC0796B2 (HSC/32/Nov. 2003), para. 100; Annex L/14 to Doc. NC0796B2.* ***This addition provides specifically for "patient lifts,"*** *described as supporting structure and a seat for the raising and lowering of seated persons, e.g., in a bathroom or onto a bed. See EN(III)(L) to 84.28.*

*The instant lifts are comprised of moveable metal structures that stand on the floor, or are ceiling or wall mounted. A fabric sling hangs down from the arm of the structure by ropes. The sling is designed such that a patient may be seated in it and transferred to and from a bed or a bath.* ***Therefore****, as the subject patient lifts meet the text of heading 8428, HTSUS, and are described by EN (III)(L) to 84.28, the lifts are classifiable under heading 8428, HTSUS. Specifically, the* ***instant lifts are classified under subheading 8428.90.00, HTSUS****, which provides for "Other lifting, handling, loading or unloading machinery (for example, elevators, escalators, conveyors, teleferics): Other machinery".*

*Heading 9817*

*Section 1121 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. No. 100–418, 102 Stat. 1107) and Presidential Proclamation 5978 implemented the Nairobi Protocol by inserting permanent provisions—specifically, subheadings 9817.00.92, 9817.00.94, and 9817.00.96—into the HTSUS. These tariff provisions specifically provide that "[a]rticles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons" are eligible for duty-free treatment.*

*Notes in subchapter XVII of Chapter 98 of the HTSUS define the terms "blind or other physically or mentally handicapped persons" and limit the classification of certain products under subheadings 9817.00.92, 9817.00.94, and 9817.00.96. U.S. Note 4(a), subchapter XVII, Chapter 98, HTSUS, defines the term "blind or other physically or mentally handicapped persons" as "any person suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working." U.S. Note 4(b), subchapter XVII, Chapter 98, HTSUS excludes four categories of goods from subheadings 9817.00.92, 9817.00.94, and 9817.00.96: (1) articles for acute or transient disability; (2) spectacles, dentures, and cosmetic articles for individuals not substantially disabled; (3) therapeutic and diagnostic articles; and (4) medicine or drugs.*

***CBP decides whether a product is "specially designed or adapted for the use or benefit****" of the handicapped* ***on a case-by-case basis****, balancing five factors set forth in Headquarter Ruling Letter*

*("HQ") HQ556449, dated May 5, 1992. Here, persons who are unable to lift or move themselves into or out of a bath or bed, specifically those with severe, chronic mobility issues qualify as "handicapped people" under U.S. Note 4 and the specific exclusions contained in U.S. Note 4(b) do not apply.*

*The physical properties of the subject patient lifting devices clearly distinguish them as those used in hospitals or clinics for patients unable to move themselves, or in some cases, are installed in a user's home in circumstances where the user is unable to move themselves. Use of these patient lifts by the general public is improbable, and there is little evidence such use would be fugitive. The importers of the subject rulings here are recognized manufacturers or distributors of goods for the handicapped, specifically lifting and mobility devices, and the channels of commerce these goods are sold in is highly specialized to serve hospitals or clinics with handicapped patients.*

*Finally, the condition of the articles at the time of importation indicate that these articles are for the handicapped. Therefore, pursuant to the factors stipulated in HQ 556449, the goods which qualified for duty-free treatment under subheading 9817.00.96, HTSUS, in its original ruling (e.g., NY 868691, NY B87708, NY C81648, and NY D83377) will maintain its qualification for duty-free treatment pursuant to the analysis herein. However, all applicable entry requirements must still be met.*

***HOLDING: By application of GRI 1, the patient lifting devices** described in NY 868691, NY 871935, NY B87708, NY C81648, NY D83377, and NY N092699 **are classified under heading 8428, HTSUS, specifically under subheading 8428.90.0290, HTSUSA**, which provides for "Other lifting, handling, loading or unloading machinery (for example, elevators, escalators, conveyors, teleferics): Other machinery".*

*The column one, general rate of duty is free.*

***Modification of Two Ruling Letters, Revocation of One Ruling Letter, and Revocation of Treatment Relating to the Tariff Classification of Tires for use on Dump Trucks . . . . . .70***

***EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 9, 2016.***

*In HQ 958100, HQ 959730, and HQ 966360, CBP determined that certain off-road tires for dump trucks were classified in subheading 4011.20, which provides for: "New pneumatic tires, of rubber: Of a kind used on buses or trucks." **It is now CBP's position that the tires at issue in HQ 958100** (described as off-road tires for dump trucks and bearing the TRA codes E-1/R-5, E-3/G-18, E-3/G-44, E-3/T-331, E-4/ G-18ET, E-4/G-28ET, E-4/G-36ET, E-4/T-431, E-4/T-432, E-4/T-433, E-4/T451, and E-7/D-1) **are classified in subheading 4011.93 or 4011.94, HTSUS**, as "New pneumatic tires, of rubber: Other: Of a kind used on construction or industrial handling vehicles and machines...", **and that the Michelin Earthmover tires (part nos. 248850 and 123475) at issue in HQ 966360 and the Triangle brand tires** (style TL-612, designed for use on earthmoving and loader equipment, and bearing the code "E-3", with or without another code) **at issue in HQ 959730 are classified in subheading 4011.62 or subheading 4011.63, HTSUS**, as "New pneumatic tires, of rubber: Other, having a herringbone or similar tread: Of a kind used on construction or industrial handling vehicles and machines..."*

*Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify HQ 958100 (Attachment A) and HQ 959730 (Attachment B), and to revoke HQ 966360 (Attachment C), and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in Proposed Headquarters Ruling Letter (HQ) H192148, set forth as Attachment D to this notice.*

***ISSUE:** Whether the instant tires are classified in subheading 4011.20, HTSUS, as tires "of a kind used on buses or trucks"; in subheading 4011.6, HTSUS, as "other, having a "herring-bone" or similar tread"; or in subheading 4011.9, HTSUS, as "other" tires.*

*...*

*Heading 40.11 provides for "New pneumatic tires, of rubber." There is no dispute that off-the-road tires for dump trucks are classified therein. The issue arises at the six-digit subheading level.*

*Subheading 4011.20 provides for "New pneumatic tires, of rubber: Of a kind used on buses or trucks." Subheadings 4011.61–4011.69 provide for "New pneumatic tires, of rubber: Other, having a "herring-*

*bone" or similar tread," such as tires of a kind used on agricultural or forestry vehicles and machines (4011.61) or of a kind used on construction or industrial handling vehicles (4011.62–4011.63), and others (4011.69). Finally, subheadings 4011.92–4011.99 provides for "New pneumatic tires, of rubber: Other," (i.e., not having a herring-bone or similar tread), such as tires of a kind used on agricultural or forestry vehicles and machines (4011.92) or of a kind used on construction or industrial handling vehicles (4011.93–4011.94), and others (4011.99).*

*Trucks are motor vehicles for the transport of goods that are classifiable in Chapter 87. Both dumpers and lorries are trucks classifiable in heading 87.04, as motor vehicles for the transport of goods. However, we note that the EN to subheading 8704.10 draws a distinction between "dumpers" and "lorries" (trucks), stating that "These dumpers can generally be distinguished from other vehicles for the transport of goods (in particular, tipping lorries (trucks)) by the following characteristics", such as, i.e., "special earth-moving tires."*

*The CBP Informed Compliance Publication (ICP) on Classification of Tires further notes that "There are numerous machines identified as classifiable in chapter 84 that move on tires but are not trucks. These would include excavating machines of heading 8429, construction machines and snow plows of heading 8430, agricultural machines of heading 8432 and harvesting machines of heading 8433. Although they all may be designed in some instances to roll on tires, they are not trucks, but machines, and their tires would be classifiable further on in heading 4011."*

*Thus, dumpers or dump-body trucks are not trucks (lorries). As such, the off-the-road tires of dumpers or dump-body trucks are not tires "of a kind used on buses or trucks" within the scope of subheading 4011.20, and said tires are not classified therein.*

*The EN to heading 4011 clarifies, with respect to subheadings 4011.62, 4011.63, 4011.93 and 4011.94, that for the purposes of these subheadings, the expression "construction or industrial handling machines" includes vehicles and machines used for mining. The instant tires, per the TRA code and manufacturer information, are designed for use with dumpers and dump trucks, off-road applications such as construction and mining.*

*The TRA Yearbook provides the following description of earthmovers:*

*Earthmover: transportation usually occurs over unimproved surfaces at speeds up to 40 mph and short distances, up to 2.5 miles, one way. Equipment in this category is mainly haulage trucks and scrapers.*

***Thus, dumper truck tires bearing a TRA code "E", are designed primarily for off-road use over unimproved surfaces, and for short distances only. They are used in construction and mining operations**. They are **not of a class or kind used on trucks designed primarily for on-road use**. Dumper tires with characteristics for use other than normal on road use or mixed on-road off-road use should be classified in subheading 4011.6 or 4011.9, depending on whether or not the individual tires have a herring-bone or similar tread.*

*CBP has concluded in prior rulings that "herring-bone" refers to a tread pattern consisting of rows of short slanted parallel lines going in the opposite directions from the center of the tread with the slant alternating row by row. These short slanted rows would meet in the center of the tire tread to form a "V" shape. See HQ 958100, dated March 25, 1997. This is supported by the Explanatory Notes (ENs) heading 40.11, in which tires classified in subheadings 4011.61–4011.69 (having a herringbone or similar tread) are pictured. All the tire treads pictured therein, except for one, have rows of short slanted parallel lines going in opposite directions with the slant alternating row by row, which stop in the center of the tire and form a "V"-like pattern. The remaining tread pattern pictured in the ENs has short slanted parallel lines with the slant alternating row by row which do not meet in the center, but instead extend below the opposite slanted line. This is not a standard herring-bone tread, but an example of a "similar" tread. The tread lugs may be one solid line from sidewall to center, individual raised ridges aligned in a herring-bone pattern, or a combination of a strip of tread and ridges forming the angled line.*

***The tires at issue in HQ 958100** bearing the TRA codes E-1/R-5, E-3/G-18, E-3/G-44, E-3/T-331, E-4/G-18ET, E-4/G-28ET, E-4/G-36ET, E-4/T-431, E-4/T-432, E-4/T-433, E-4/T451, and E-7/D-1, **do not have a***

***herring-bone or similar tread.*** *They* ***do not feature slanted parallel lines with the slant alternating row by row. These tires are thus classified in subheading 4011.93, or 4011.94, HTSUS****.*

***The Triangle brand off-the-road tires style TL-612 at issue in HQ 959730 and the Michelin Earthmover tires*** *(part numbers 248850 and 123475)* ***at issue in HQ 966360 feature tread patterns with slanted, parallel rows with the slant alternating line by line. They therefore have a herringbone tread and are classified in subheadings 4011.62, or 4011.63, HTSUS.***

***HOLDING****:* ***Pursuant to GRIs 1 and 6, the off-the-road tires suitable for dump trucks*** *and bearing the TRA codes E-1/R-5, E-3/G-18, E-3/G-44, E-3/T-331, E-4/G- 18ET, E-4/G-28ET, E-4/G-36ET, E-4/T-431, E-4/T-432, E-4/T-433, E-4/T451 and E-7/D-1****, are classified in heading 4011, HTSUS, and if of a kind used on construction or industrial handling vehicles and machines and having a rim size not exceeding 61 cm, are classified in subheadings 4011.93.4000, HTSUS****, if of radial construction or 4011.93.8000, HTSUS, if of other construction; and if of a kind used on construction or industrial handling vehicles and machines and having a rim size exceeding 61 cm, are classified in subheadings 4011.94.4000, HTSUS, if of radial construction or 4011.94.8000, HTSUS, if of other construction.*** *The 2015 column one, general rates of duty are 4% and 3.4% ad valorem, respectively.*

***Pursuant to GRIs 1 and 6, the Triangle brand off-the-road tires style TL-612 and the Michelin Earthmover tires (part numbers 248850 and 123475) are classified in heading 4011, HTSUS, and as other tires having a "herring-bone" or similar tread in subheading 4011.62.0000, HTSUS, if of a kind used on construction or industrial handling vehicles and machines and having a rim size not exceeding 61cm, or in subheading 4011.63.0000, HTSUS, if of a kind used on construction or industrial handling vehicles and machines hand having a rim size exceeding 61cm.*** *The 2015 column one, general rate of duty is Free.*



***EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 9, 2016.***

*In NY E87234, CBP determined, in relevant part, that various raw nuts of unspecified origins imported into Canada, where they were roasted and blanched or salted, qualified for preferential tariff treatment under the NAFTA when imported into the United States. In NY F88926 and NY H84143, CBP determined, in relevant part, that raw macadamia nuts of Australian origin imported into Canada, where they were roasted and blanched or salted, qualified for preferential tariff treatment under the NAFTA, and were eligible to be marked as goods of Canada when imported into the United States. In NY H82352, CBP determined, in relevant part, that various raw nuts of U.S., Canadian, Indian and Brazilian origin imported into Canada, where they were roasted, salted and mixed with oil qualified for preferential tariff treatment under the NAFTA. In NY R02589, CBP determined, in relevant part, that raw cashew nuts from non-NAFTA countries imported into Canada, where they were roasted and salted and mixed with peanuts of U.S. origin, qualified for preferential tariff treatment under the NAFTA when the mixture was imported into the United States. Further, CBP determined that raw, non-originating cashews and raw, in-shell peanuts of U.S. origin, which were roasted and mixed together in Canada, were eligible to be marked as goods of Canada; while raw, non-originating cashews and raw, shelled peanuts of U.S. origin were eligible to be marked as products of the United States. In NY N228118, CBP determined, in relevant part, that raw cashew nuts from various non-NAFTA countries imported into Canada, where they were heated, polished, cleaned, roasted (with or without oil) and salted, qualified for preferential tariff treatment under the NAFTA.*

***Based on our recent review of NY E87234, NYF88926, NY H84143, NY H82352, NY R02589, and NY N228118, it is now CBP's position that the prepared nuts do not qualify for preferential tariff treatment under the NAFTA and, in applicable cases, do not qualify to be marked as a good of a NAFTA country****.*

*Pursuant to 19 U.S.C. §1625(c)(1), CBP intends to modify NY E87234, NYF88926, NY H84143, NY H82352, NY R02589, and NY N228118, and any other ruling not specifically identified that is contrary to*

*the determination set forth in this notice to reflect the proper requirements for prepared nuts to qualify for preferential tariff treatment under the NAFTA and to be marked as a good of a NAFTA country, pursuant to the analysis set forth in proposed Headquarters Ruling Letters (HQ) H243329 (Attachment A), HQ H256782 (Attachment B), HQ H256783 (Attachment C), HQ H256785 (Attachment D), HQ H256784 (Attachment E), and HQ H256781 (Attachment F).*

*…*

*H243329 [Attachment A]*

*[SAME REASONING IN ALL PROPOSED RULINGS Attachments B, C, D, E and F]*

*…*

***ISSUE:** Whether the nut mixture described in NY E87234 qualifies for preferential tariff treatment under the NAFTA?*

*Pursuant to GN 12, HTSUS, for an article to be eligible for NAFTA preference, two requirements must be satisfied. First, the article in question must be "originating" under the terms of GN 12, HTSUS, **and** second, the article must qualify to be marked as a good of a NAFTA country under the NAFTA Marking Rules contained in 19 CFR § 102.20.*

*With regard to the first requirement, GN 12(b), HTSUS, provides, in pertinent part:*

*For the purposes of this note, goods imported into the customs territory of the United States are **eligible** for the tariff treatment and quantitative limitations set forth in the tariff schedule as "goods originating in the territory of a NAFTA party" **only if** –*

*...*

*ii) they have been **transformed in the territory of** Canada, Mexico and/or the United States **so that—***

***(A)** except as provided in subdivision (f) of this note, each of the nonoriginating materials used in the production of such goods undergoes a change in tariff classification described in subdivision (r), (s) and (t) of this note or the rules set forth therein, or*

***(B)** the goods otherwise satisfy the applicable requirements of subdivision (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note [.]*

*Raw nuts are classified under various headings of Chapter 8, HTSUS. In understanding the language of the HTSUS, the Explanatory Notes ("ENs") of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the Harmonized System at the international level. See T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989). The ENs to Chapter 8, HTSUS, explain that nuts prepared according to Chapter 20, HTSUS, are excluded from Chapter 8, HTSUS. Mixed nut preparations are classified under subheading 2008.19, HTSUS. The ENs to heading 2008, HTSUS, explain that this heading includes oil-roasted nuts whether or not containing or coated with salt. In this case, various types of raw nuts were imported from unspecified countries into Canada, where they were roasted and blanched and/or salted, and thus correctly classified under subheading 2008.19.85, HTSUS.*

*The applicable rule in subdivision (t) provides for "a change to subheadings 2008.19 through 2008.99 from any other chapter." See GN 12(t)/20.4, HTSUS**. However, GN 12(s), Exceptions to Change in Tariff Classification Rules, HTSUS, provides, in relevant part**:*

*(ii) Fruit, nut and vegetable preparations of chapter 20 that have been prepared or preserved merely by freezing, by packing (including canning) in water, brine or natural juices, or by roasting, either dry or in oil (including processing incidental to freezing, packing, or roasting), shall be treated as an originating good **only if the fresh good were wholly produced or obtained entirely in the territory of one or more NAFTA parties**.*

*Accordingly, though the non-originating nuts **appear** to undergo the requisite tariff shift from Chapter 8, HTSUS, to subheading 2008.19.85, HTSUS, it remains to be determined whether they meet the additional test*

*imposed by GN 12(s)(ii), HTSUS. Under this provision, when nut preparations are prepared "merely" by roasting or processing "incidental" to roasting, then the origin of the nuts in their "fresh" state determines the origin of the good. The "fresh" state refers to the state of the nuts before they are roasted or processed in a manner incidental to roasting. Thus, for such nut preparations to be originating, the "fresh" nuts used to make the good must be wholly obtained or produced entirely in the territory of one or more of NAFTA parties (Mexico, Canada, or the United States). That is, non-originating nuts that, while in a NAFTA territory, are merely roasted, or processed in a manner incidental to roasting, will not be treated as originating nuts.*

*The term "merely" is not specifically defined in GN 12, HTSUS, but per its dictionary definition means "only (what is referred to) and nothing more." Read in the context of GN 12, HTSUS, the term "merely" means that the processes listed in GN 12(s)(ii), HTSUS, by themselves, are insufficient to qualify non-originating nuts for preferential tariff treatment under the NAFTA, despite changing tariff classifications per GN 12(b)(ii), HTSUS, and GN 12(t)/20.4, HTSUS.* ***Thus, we find that the purpose of GN 12(s)(ii), HTSUS, is to ensure that goods undergo sufficient processing in a NAFTA country, beyond the listed processes, in order to be considered originating for purposes of GN 12(b)(ii), HTSUS***.

*The term "incidental" is also not specifically defined in GN 12, HTSUS, but per its dictionary definition means "occurring or liable to occur in fortuitous or subordinate conjunction with something else of which it forms no essential part." Applying this definition to GN 12(s)(ii), HTSUS, the term "incidental" indicates a process that may happen with or as a result of roasting, but is secondary to, or of lesser importance than, the process of roasting.*

*We find that "salting" is precisely the type of lesser process contemplated by the note as incidental. Salting often occurs in connection not only with roasting, as in this case, but also with canning or freezing. It is the roasting, canning, or freezing processes which are the means by which the products are principally prepared. By contrast, salting has far less consequences to the essential character of the product. Moreover, the addition of salt like other flavors, spices, or other ingredients is a relatively simply process and does not require a prescribed amount to be added.*

*Given that roasting by itself would not be sufficient to make a nut an originating good per GN 12 (s)(ii), HTSUS, it would defeat the purpose of such note to conclude that "salting" would provide otherwise. Furthermore, the ENs to Chapter 20, HTSUS, state, in relevant part:*

*This heading covers fruits, nuts and other edible parts of plants, whether whole, in pieces or crushed, including mixtures thereof, prepared or preserved otherwise than by any of the processes specified in other Chapters or in the preceding headings of this Chapter.*

*It includes, inter alia:*

*(1) Almonds, ground-nuts, areca (or betel) nuts and other nuts, dryroasted, oil roasted or fat-roasted, whether or not containing or coated with vegetable oil, salt, flavours, spices or other additives.*

*...*

*(9) Fruit, nuts, fruit-peel and other edible parts of plants (other than vegetables), preserved by sugar and put in syrup (e.g. marrons glacés or ginger), whatever the packing.*

*Moreover, while the ENs to Chapter 20, HTSUS, mention "salt," the references to "dry-roasted, oil-roasted or fat-roasted" and "preserved by sugar and put in syrup" indicate the principal processes of preparation or preservation that would change the classification of nuts from Chapter 8, HTSUS, to Chapter 20, HTSUS. The fact that "salt" is mentioned with reference to the types of roasting, but is not specifically mentioned as a process of preparation or preservation, suggests that "salting" is something that may happen with or as a result of roasting nuts, but whether the nuts are salted, or not, is not essential to the preparation;* ***what is essential to the preparation is the roasting****. For all of the foregoing reasons, we find that for purposes of GN 12(s)(ii), HTSUS,* ***the term "processing incidental to freezing, packing, or roasting," includes the process of "salting."***

*This interpretation of GN 12(s)(ii), HTSUS, is further supported by Headquarters Ruling Letter ("HQ") H243328, dated August 19, 2013, which considered "salting" to be a process incidental to roasting with*

*regard to a provision from the United States-Korea Free Trade Agreement ("UKFTA") that is parallel to GN 12(s)(ii), HTSUS. HQ H243328 affirms the decision in HQ H240383, dated May 3, 2013, determining the origin of the nuts from their "fresh" state on the basis that "salting and roasting [...] qualify as 'processing incidental' to roasting."*

*Accordingly, we find that salting is a process incidental to roasting and does not render the product originating. Rather, the origin of the product is determined by the origin of the "fresh" state per GN 12(s)(ii), HTSUS.*

*Given the foregoing, the roasted, blanched and/or salted mixed nuts may not be treated as originating because they do not meet the requirements of GN 12(s)(ii), HTSUS; that is, they were not wholly obtained or produced entirely in Mexico, Canada, or the United States as fresh nuts.* ***Therefore, the prepared mixed nuts imported from Canada do not qualify for preferential tariff treatment under the NAFTA.***

***HOLDING: NY E87234 is modified to reflect that, by application of GN 12(s)(ii), HTSUS, the prepared nut mixture imported from Canada is not eligible*** *for preferential tariff treatment under the NAFTA. The tariff classification of the prepared nut mixture, subheading 2008.19.85, HTSUS, is unchanged.*

*EFFECT ON OTHER RULINGS:*

*NY E87234, dated October 1, 1999, is hereby MODIFIED. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.*

***Proposed Modification of One Ruling Letter and Revocation of Treatment Relating to the Tariff Classification of Cereal Bars . . . . . 124***

***DATES: Comments must be received on or before April 8, 2016.***

*In NY N211715, CBP classified two cereal bars, the Kellogg's Frosted Flakes Bar and the Froot Loops Bar, in heading 1704, HTSUS, specifically in subheading 1704.90.35, HTSUS, which provides for "Sugar confectionery (including white chocolate), not containing cocoa."* ***It is now CBP's position that the Frosted Flakes Bar is properly classified in heading 1806, HTSUS, specifically in subheading 1806.32.90, HTSUS****, which provides for "Chocolate and other food preparations containing cocoa."*

*Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY N211715 and to revoke any other ruling not specifically identified to reflect the tariff classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter ("HQ") H269530, 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.*

***ISSUE:*** *Whether the Frosted Flakes Bar is classified in heading 1704, HTSUS, as sugar confectionery; in heading 1806, HTSUS, as a food preparation containing cocoa; in heading 1904, HTSUS, as a cereal product; or in heading 2106, HTSUS, as a food preparation not elsewhere specified or included.*

*...*

*Heading 1704, HTSUS, provides for "Sugar confectionery (including white chocolate), not containing cocoa" (emphasis added). Note 1 to Chapter 17 reiterates that Chapter 17 does not include "sugar confectionery containing cocoa (heading 18.06)", and the EN to heading 17.04 further elaborates that heading 1704, HTSUS, excludes "Sugar confectionery containing cocoa or chocolate (other than white chocolate) in any proportion, and sweetened cocoa powders (heading 18.06)." (emphasis added). The classification of sugar confectionery containing cocoa is directed to heading 1806, HTSUS. Thus, in order for the Frosted Flakes Bar to be classified in heading 1704, HTSUS, it must be "sugar confectionery" within the meaning of the heading,* ***and it must not*** *contain cocoa or chocolate.*

*The term "confectionery" is not defined in the HTSUS. However, CBP has adopted the meaning of the term given by the United States Customs Court (now the Court of International Trade) in Leaf Brands, Inc. v. United States, ("Leaf Brands") 70 Cust. Ct. 66 (1973).1 The Court defined "confectionery" as the "many kinds of sweet-tasting articles which are eaten as such for their taste and flavor without further preparation and which are usually sold in confectionery outlets." Id. at 71. Further, the Court found that whether an article is confectionery is determined by its chief use as a confection, which may be evidenced by its character and*

*design and the manner in which it is sold (i.e., through candy brokers, in confectionery outlets), rather than by its shape and texture.2 Id. at 72. Following Leaf Brands,* ***CBP has consistently taken the position that a confection is a product that, in its condition as imported, is ready for consumption at retail as a confectionery and is marketed as such; it is not an ingredient of another food product.*** [citations omitted]

*As the instant product is no longer in production, we cannot ascertain the manner in which it is sold or marketed. However, we can ascertain from the ingredients, specifically the high proportion of added sugars, that the Frosted Flakes Bar has the character of confectionery. The aforementioned ingredients collectively comprise more than 26% of the Frosted Flakes Bar, without counting the additional sugar present in the frosted flakes and chocolate coating (Frosted Flakes cereal is stated to contain 10 g of sugar per 29 grams of cereal, but the sugar in the chocolate coating is not broken down by amount). Thus, the Frosted Flakes Bar has the character of a sugar confectionery.*

*The Kellogg's Frosted Flakes Bar contains roughly 1.5% cocoa on a defatted basis. Although the total cocoa content of the bar is low,* ***the heading text and ENs to heading 1704, HTSUS, are clear that any amount of cocoa is sufficient to exclude a product of sugar confectionery from this heading****. Thus, although the Frosted Flakes Bar has the character of sugar confectionery, we agree that because it contains cocoa, it cannot be classified in heading 1704, HTSUS.*

*You suggest that the Frosted Flakes Bar is classified in either heading 1806, HTSUS, heading 1904, HTSUS, or heading 2106, HTSUS.* ***Note 1 to Chapter 17 and Note 2 to Chapter 18 direct the classification of sugar confectionery containing cocoa to heading 1806, HTSUS****. The Frosted Flakes Bar, as a sugar confectionery containing cocoa, is thus classified in heading 1806, HTSUS, and not heading 1904, HTSUS. Note 3 to Chapter 19 confirms that "heading 19.04 does not cover preparations containing more than 6% by weight of cocoa calculated on a totally defatted basis or completely coated with chocolate or other food preparations containing cocoa of heading 18.06 (18.06)" (emphasis added).* ***Thus, because the Frosted Flakes Bar has the character of sugar confectionery, it is excluded from classification as a food preparation of Chapter 19 or heading 1904, HTSUS****. See also, HQ H200575, dated April 16, 2012.* ***Because the Frosted Flakes Bar is specifically provided for in heading 1806, HTSUS, it cannot be classified in heading 2106, HTSUS****.*

*By comparison, CBP has consistently classified snack bars containing cocoa in heading 1806, HTSUS.* [citations omitted]

***HOLDING: Pursuant to GRIs 1 and 6, the Kellogg's Frosted Flakes Bar is classified in heading 1806, HTSUS, specifically subheading 1806.32.90, HTSUS****, which provides for "Chocolate and other food preparations containing cocoa: Other, in blocks, slabs or bars: Not filled: Other: Other." The 2016, column one, general rate of duty is 6% ad valorem.*

***Proposed Modification of Two Ruling Letters and Proposed Revocation of Treatment Relating to the Applicability of Subheading 9801.00.20, HTSUS to Certain Automobile Parts . . . . . .134***

***DATES: Comments must be received on or before April 8, 2016.***

*In NY N263924, CBP found imported products consisting of brake pad hardware kits to be exempt from duties pursuant to subheading 9801.00.20, HTSUS. In NY N260230, CBP determined that certain automobile parts, such as tie rods, slip sleeves, oil seals, brake pad and hub assemblies, were exempt from duties under subheading 9801.00.20, HTSUS.* ***It is now CBP's position that these two decisions are incorrect and that the goods in both decisions are not eligible for duty-free treatment under subheading 9801.00.20, HTSUS.***

*Pursuant to 19 U.S.C. § 1625(c)(1), CBP intends to modify NY N263924 and NY N260230 (set forth in Attachments A and B to this document), and any other ruling not specifically identified in order to reflect the proper tariff treatment of the merchandise pursuant to the analysis in Headquarters Ruling (HQ) H270377, (set forth as Attachment C to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2),*

*CBP intends 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.*

***ISSUE:** Whether the merchandise described in NY N263924 and NY N260230 qualifies for duty-free treatment under subheading 9801.00.20, HTSUS.*

*…*

*Section 10.108 of the U.S. Customs and Border Protection ("CBP") Regulations, 19 C.F.R. § 10.108, provides that free entry shall be accorded under subheading 9801.00.20, HTSUS, whenever it is established to the satisfaction of the port director that the article for which free entry is claimed was duty paid on a previous importation, is being reimported **without having been advanced in value or improved in condition by any process of manufacture or other means**, was exported from the United States under a lease or similar use agreement, and is being reimported by or for the account of the person who previously imported it into, and exported it from the United States. It should be noted that CBP has denied subheading 9801.00.20, HTSUS, treatment in situations where such evidence was not provided. See, e.g., Headquarters Ruling Letters ("HQ") H232917, dated June 27, 2013 (denying protest and finding insulated concrete mold was not entitled to duty-free entry under subheading 9801.00.20, HTSUS because no evidence was provided to establish the previous importation and subsequent importation were by or for the account of the same person).*

*Under the CBP Regulations, an "**importer**" is "**the person primarily responsible for the payment of any duties on the merchandise, or an authorized agent acting on his behalf**." 19 CFR § 101.1. Every importer is required to have an importer identification number. See 19 CFR § 24.5. We reviewed NY N263924 and N260230 and conclude that both decisions are not in conformity with the requirements of 19 C.F.R. § 10.108. The facts in each ruling state that either FMM pays the customs duties on the articles, or FMM **purchases the goods from U.S. distributors** who have already paid the respective duties. The rulings do not indicate that a U.S. distributor acted as an agent "by or for the account of FMM." Subheading 9801.00.20, HTSUS, clearly requires that the re-importation must be by or for the account of the person or entity that imported it into, and exported it from the U.S. Therefore, based on the facts in both rulings, the **U.S. distributor** is the party who imported the parts in the first instance, and this does **not** satisfy the requirement that the parts are reimported by, or for the account of FMM. See HQ H232917, (citing to HQ 560256, dated July 23, 1997, and HQ 561005, dated Aug. 5, 1998). In sum, since both rulings failed to provide evidence that the previous importation or subsequent importation is "by or for the account of FMM", we find the requirements of subheading 9801.00.20, HTSUS, and 19 C.F.R. § 10.108 are not met, to the extent that the parts are acquired by FMM from a U.S. distributor.*

***HOLDING: The merchandise described in New York Ruling Letters (NY) N263924 and N260230 is not entitled to duty-free entry under subheading 9801.00.20, HTSUS**, to the extent that the parts are acquired by FMM from a U.S. distributor.*

***Proposed Modification of Ruling Letter and Revocation of Treatment Relating to the Tariff Classification of a Certain Case for Baby Wipe . . . . . .143***

***DATES: Comments must be received on or before April 8, 2016.***

*In NY N247516, CBP classified a certain fillable plastic case for baby wipes in heading 4202, HTSUS, and specifically in subheading 4202.99.9000 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides, in pertinent part, for other bags and containers, other, other, other. CBP has reviewed NY N247516 and has determined the ruling letter to be in error. **It is now CBP's position that the fillable case for baby wipes are properly classified, by operation of GRIs 1 and 6, in heading 4202, HTSUS, specifically in subheading 4202.92.9060, HTSUSA**, which provides, in pertinent part, for other containers and cases, with outer surface of plastic sheeting or textiles materials, other, other, other.*

*Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N247516 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in proposed Headquarters Ruling*

*Letter H257222, 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.*

***ISSUE:** What is the proper classification under the HTSUS for the subject merchandise?*

*…*

*There is no dispute that the subject merchandise is provided for under heading 4202, HTSUS. Pursuant to GRI 6, each subheading within heading 4202, HTSUS, are considered in order to determine which best describes the merchandise in question.*

*The subheadings under consideration in this case are subheading 4202.92, HTSUS, which provides, in pertinent part, for other containers or cases, with outer surface of sheeting plastics and subheading 4202.99, HTSUS, which covers other containers and cases. There is no dispute that the sample description in ruling NY N247516 was inaccurate. The sample merchandise is not of molded plastic; it is of plastic sheeting. There is no textile in the sample submitted. Furthermore, the sample merchandise is a one-piece case, not a two-piece case.* ***Therefore, the subject merchandise is properly classified under subheading 4202.92, HTSUS, and therefore cannot be classified under the residual subheading 4202.99, HTSUS****.*

***HOLDING: By application of GRIs 1 and 6, the case for baby wipes is classifiable under heading 4202, HTSUS, and specifically provided for in subheading 4202.92.9060, HTSUSA****, which provides, in pertinent part for other containers or cases, with outer surface of sheeting of plastic. The column one, general rate of duty is 17.6 percent ad valorem.*

***Revocation of One Ruling Letter and Revocation of Treatment Relating to the Tariff Classification of Medical Apparatus . . . . . .149***

***EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 9, 2016.***

*In HQ 085366, CBP classified a tube string subassembly of the Vital Vue Irrigation, Suction, and Illumination System Disposable Surgical Instrument ("Vital Vue"), in subheading 9018.90.60, HTSUS, which provides for, "Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: Other instruments and appliances and parts and accessories thereof: Other: Electro-medical instruments and appliances and parts and accessories thereof: Electro-surgical instruments and appliances, other than extracorporeal shock wave lithotripters; all the foregoing and p arts and accessories thereof."*

*…*

***We have reviewed HQ 085366 and find it to be in error. For the reasons set forth below, we hereby revoke HQ 085366****.*

*FACTS: In HQ 085366, the merchandise was described as follows:*

*A tube string subassembly of the Vital Vue Irrigation, Suction, and Illumination System Disposable Surgical Instrument ("Vital Vue"). The subassembly consists of three lengths of plastic tubing bonded together to form separate channels for irrigation, suction, and electrical wires for the light power source. In addition, it contains a threaded suction adapter, a spike connector with protective cap, and a small telephone type electrical connector. The subassembly is also equipped with a small light bulb, which contains a thermistor designed to shut off the bulb when it becomes too hot.*

*The above-described subassembly is part of a single instrument that is used by a doctor to irrigate and/or aspirate the surgical field during a procedure to remove debris or blood. Irrigation (washing out or flushing a wound or body opening with a stream of water or another liquid) and aspiration (removal, by suction, of a gas, fluid, or tissue from a body cavity or organ) augment a variety of medical or dental applications by reducing infection and/or providing the practitioner with a better view of the subject of the given procedure. The electrical connector and light bulb (with thermistor) contribute to the lighting*

*function of the instrument, which allows the doctor to visualize the field without increasing the number of hands/instruments in the field.*

***ISSUE: Whether the medical apparatus are electro-surgical instruments within the meaning of subheading 9018.90.60, HTSUS.***

*There is no dispute that the products at issue are classified in heading 9018, HTSUS. Nor is there a question whether they are "electro-medical instruments or appliances of subheading 9018.90, HTSUS. The issue is whether the instant merchandise falls under the scope of the provision for "electro-surgical instruments and appliances" in subheading 9018.90.60, HTSUS.*

*In order to determine the proper classification at the subheading level, GRI 6 is applied. GRI 6 provides that for legal purposes, classification of goods in the subheading of a heading shall be determined according to the terms of those subheadings and any related subheading notes, and mutatis mutandis to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapters notes also apply, unless the context otherwise requires.*

*The Harmonized Commodity Description and Coding System Explanatory Notes (ENs") constitute the official interpretation of the HTSUS. While not legally binding or 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. 89–90, 54 Fed. Reg. 35127 (August 23, 1989).*

*Explanatory Note 90.18 provides, in relevant part, as follows:*

> *(V) OTHER ELECTRO-MEDICAL APPARATUS*
>
> *This heading also covers electro-medical apparatus for preventive, curative or diagnostic purposes, other than X-ray, etc., apparatus of heading 90.22. This group includes:*
>
> *(7) Electro-surgical apparatus. These utilise high-frequency electric currents, the needle, probe, etc., forming one of the electrodes. They can be employed to cut tissues (electrocutting) with a lancet (electric*
>
> *lancet), or to coagulate the blood (electrocoagulation). Certain combined instruments may, by the use of control pedals, be made to act interchangeably as electrocutters or electrocoagulators. (Emphasis added)*

*The above explanatory note is consistent with the definition of electro-surgical in the Merriam-Webster Dictionary, which defines the term as "surgery by means of diathermy." (2011) available at wwww.merriam-webster.com. The Merriam-Webster Dictionary defines "diathermy" as "the generation of heat in tissue by electric currents for medical or surgical purposes." Id.*

*Based upon these definitions, the term "electro-surgical" means that electric currents are utilized in the surgery, whether for cutting tissue, coagulating blood or for other surgical applications. However, as described above, despite the fact that the instant products differ in the construction and function, the Vital Vue, the Hummer and E1, and the CASPER do not use electric currents to cut tissue or coagulate blood.*

*We note that we have classified other products that do not employ electro-cutting or electrocoagulation in the strictest sense in subheading 9018.90.60, HTSUS. However, the instant products are distinguishable from those rulings. For instance, NY N006383, dated March 6, 2007, and HQ 951871, dated August 18, 1992 covered products that operated by laser or other light or photon beam processes. In NY N006383, CBP classified the Karl Storz Calculase (article number: 27750120–1), a Ho:Yak desktop laser used in lithotripsy surgery in subheading 9018.90.60, HTSUS. The laser energy generated by the machine enables the optimum lithotripsy of small to medium sized calculi in the urinary system. Similarly, in HQ 951871, CBP classified the "Pulsolith" Laser Lithotripter ("laser') in subheading 9018.90.60, HTSUS. Here, the laser is a pulsed dye laser used to fragment ureteral, gallstone and common bile duct stones using a photo acoustic effect.*

*In both cases, access to a body cavity is gained through a body opening to perform a surgical procedure to destroy an internally-located calculus even though such surgery does not entail the cutting of tissue or coagulation of blood.1 In addition, the procedures are performed in an operating room by a surgeon on a patient who is under some form of anesthesia.*

*On the other hand, the apparatus subject to HQ 085366 does not serve to perform a surgical procedure by virtue of its electronic operation. Rather, the subject medical apparatus are properly classified under subheading 9018.90.75, HTSUS.*

***HOLDING: By application of GRIs 1 and 6, the subject medical apparatus are classified in subheading 9018.90.75, HTSUS,*** *which provides for, "Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: Other Instruments and appliances and parts and accessories thereof: Other: Electro-medical instruments and appliances and parts and accessories thereof: Other: Other." The rate of duty is "Free."*

***Revocation of Three Ruling Letters and Revocation of Treatment Relating to the Tariff Classification of Flocked Heat Transfers and Textile/PVC Material Designed for Transferring Images to Fabric or Other Surfaces . . . . . 155***

***EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 9, 2016.***

*In NY J81335 and NY J80560, CBP classified the subject plastic flocked heat transfers in subheading 5601.30.00, HTSUS, which provides for "Wadding of textile materials and articles thereof; textile fibers, not exceeding 5mmin length (flock), textile dust and mill neps: Textile flock and mill neps." In NY E85712, CBP classified the subject textile/PVC material used to heat transfer images to fabric or other surfaces in subheading 5903.10.25, HTSUS, which provides for "Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902: With poly(vinyl chloride): Of man-made fibers: Other: Other."*

*Pursuant to 19 U.S.C. 1625(c)(1),* ***CBP proposes to revoke*** *NY J81335, NY J80560 and NY E85712, as well as any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter ("HQ") H265493.*

***ISSUE: What is the correct classification of the subject flocked heat transfers and textile/PVC material?***

*.. We note that the subject heat transfers could only be classified as textile materials of Chapters 56 or 59 of Section XI, HTSUS, by application of GRI 3(b), which provides, in pertinent part, that composite goods consisting of different materials or made up of different components shall be classified as if they consisted of the material or component which gives them their essential character. However, before a product can be classified as a composite good, we must determine if it is covered by a single heading per GRI 1.*

*We emphasize that, as noted above, the first sentence of GRI 1 explains that the table of contents, alphabetical index, and titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes.*

*Accordingly, the statement in NY J80560 that the subject merchandise is not considered "printed matter" and could thus not fall under heading 4908 is not based on the legal text. Even if the subject merchandise does not have to be considered "printed matter" to be classified under heading 4908, HTSUS, we note that heat transfers of flocking intended to decorate apparel, like the instant merchandise, are manufactured using similar machinery to that used in printing with ink and are used in the same manner as heat transfers made from other media (i.e. ink). Therefore, we consider the subject merchandise to be "printed matter." Moreover, in January of 2007, in an Informed Compliance Publication (ICP), CBP defined "decals" as "printed transfers," stating, in pertinent part, that "decals are specifically provided for, as*

*printed transfers, in heading 4908 of the HTSUS." CBP further noted that "decals may be applied to a variety of objects (e.g., of metal, plastic, wood, paperboard, textile, fabric, etc.), which need not undergo any further processing after the image has been transferred" and that "aside from their carriers, [decals] are nothing more than printed images on extremely thin, nearly invisible coating-material substrates..."*

*General Explanatory Notes to Chapter 49, HTSUS, provide, in pertinent part, the following: "In addition to the more common forms of printed products (e.g., books, newspapers, pamphlets, pictures, advertising matter), this Chapter covers such articles as: printed transfers (decalcomanias)..." ENs to heading 4908, HTSUS, provide, in pertinent part, that "Transfers (decalcomanias) consist of pictures, designs or lettering in single or multiple colours, lithographed or otherwise printed on absorbent, lightweight paper (or sometimes thin transparent sheeting of plastics), coated with a preparation, such as of starch and gum, to receive the imprint which is itself coated with an adhesive. This paper is often backed with a supporting paper of heavier quality."*

***Based on the foregoing, upon review we find that the subject flocked heat transfers and textile/PVC material are specifically provided for in heading 4908, HTSUS, and are classified in subheading 4908.90.00, HTSUS**, which provides for "Transfers (decalcomanias): Other." See NY N246787, dated October 31, 2013; NY A86366, dated August 20, 1996; NY I88275, dated December 2, 2002; and NY 865307, dated September 5, 1991.*

***HOLDING: By application of GRI 1, we find that the subject merchandise is classified under heading 4908, HTSUS. Specifically, it is classified in subheading 4908.90.00, HTSUS**, which provides for "Transfers (decalcomanias): Other." The 2015 column one, general rate of duty is free.*

***Revocation of One Ruling Letter and Revocation of Treatment Relating to the Tariff Classification of Certain Pillowcases . . . . . 162***

***EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 9, 2016.***

*In NY N239270, set forth as Attachment A to this document, CBP determined that certain pillowcases were classified under subheading 6302.31.90, Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for "Bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of cotton: Other: Not napped." **It is now CBP's position that the subject merchandise is properly classified under subheading 6302.31.70, HTSUS, which provides for "Bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of cotton: Other: Napped."***

*...*

***ISSUE: Whether the pillowcases should be classified under subheading 6302.31.70, HTSUS, as "Bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of cotton: Other: Napped," or subheading 6302.31.90, HTSUS, as "Bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of cotton: Other: Not Napped."***

*The determinative issue in this case is whether the subject pillowcases are considered napped or not napped for tariff classification purposes. Statistical Note 1(k) to Chapter 52 of the HTSUS, which provides for cotton, states:*

*The term "napped" means fabrics with a fuzzy, fibrous surface produced by scratching or pricking the surface so that some of the fibers are raised from the body of the yarn. Napped fabrics are not to be confused with pile fabrics. Outing and canton flannel, moleskin, etc. are typical fabrics with a nap.*

*Napped fabrics are processed so that they have either a slight or a dramatic nap on the face or both sides of the fabric. The napping process is accomplished by weaving loosely twisted yarns into the textile, which are then sheared and brushed to create the soft napped surface. Napped fabrics differ from PILE fabrics in that they do not have extra threads incorporated in the textile. Napping is considered a finishing process and is used on many fibers, including manufactured fibers, silk and wool, as well as specialty fibers such*

*as camel hair and mohair. Occasionally the napped effect does not continuously cover the fabric but is executed in stripes or figures. See Encyclopedia of Textiles, Judith Jerde, 157 (1992).*

*"Napped fabrics" can be distinguished from "pile-fabrics." In Tilton Textile Corp. v. United States, 424 F. Supp. 1053, 77 Cust. Ct. 27, C.D. 4670 (1976)aff'd, 565 F.2d 140 (1977), the court stated: "[W]hat is termed a 'nap' or 'napped fabrics' is produced by the raising of some of the fibers of the threads which compose the basic fabric, whereas the 'pile' on 'pile fabrics' must be the raising at intervals, in the form of loops, the entire thickness of extra threads introduced into, but not essential to the basic fabric, which thus form an 'uncut pile.'" See Tilton Textile Corp. v. United States, 424 F. Supp. 1053, 1066 (1976).*

*The Customs Court acknowledged that only some of the fibers must be raised on the fabric to be considered "napped fabric." Furthermore, Statistical Note 1(k) to Chapter 52, HTSUS, which defines "napping" does not require that a specified amount of fibers must be raised in order to qualify as a napped good. Rather, the Note requires that "some of the fibers" are raised.*

***While examination of the subject merchandise sample revealed that only some fibers were raised from the surface of the fabric, the level of napping is still visible to the eye and has been accomplished through the brushing process which is necessary for the formation of all napping. Therefore, the subject merchandise is considered napped for tariff classification purposes**. See Headquarters Ruling Letter (HQ) 964822, dated April 24, 2001. Based on the foregoing, we conclude that the subject pillowcases are classified in subheading 6302.31.70, HTSUS, which provides for "Bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of cotton: Other: Napped."*

***HOLDING: By application of GRIs 1 and 6, the subject pillowcases are classified under subheading 6302.31.70, HTSUS**, as "Bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of cotton: Other: Napped." The general, column one rate of duty is 3.8 percent ad valorem.*



Cargo Systems Messaging Service

CSMS 16000183 **3/14 AES Direct Webinar and Reminder on Transition Dates**
CSMS 16000182 **Updated ACE Development and Deployment Schedule Posted to CBP.gov**
CSMS 16000181 **Notification of the increase in the De Minimis value from $200 to $800** *
CSMS 16000180 **ACE PRODUCTION de minimis value increase to $800**
CSMS 16000179 **FDA ACE/ITDS Pilot Webinars - March 15 & 29, 2016**
CSMS 16000178 **Agency Tariff Code to Agency Program Cross Reference File & ACE Appendix V Updates**
CSMS 16000177 **PGA Message Set Updates**
CSMS 16000176 *[same as above, 16000178]*
CSMS 16000175 **ACE PRODUCTION CQ Deployment Thursday, March 10, 2016 at 0600-0615 ET**
CSMS 16000174 **Updated Draft ACE CATAIR for Future Courtesy Notice capabilities**
CSMS 16000173 *[same as above, 16000174]*
CSMS 16000172 **EPA Webinar on ACE Pilots on 3/8 1-2pm**
CSMS 16000171 **AESDirect Technical Q&A Calls: 3/14, 3/21 and 3/28 at 3pm ET**
CSMS 16000170 **ACE CERTIFICATION de minimis value increase to $800**
CSMS 16000169 **Announcement of Initiation of Antidumping & Countervailing Duty Investigations**
CSMS 16000168 **Instructions for Transitioning to ACE with the PGA Pilots!**

CSMS 16000167 **ACE Certification deployment, Sat. 3/5/16 @1300ET, impact ACE CargoRel & EntrySumm**
CSMS 16000166 **ACE PRODUCTION OUTAGE, Sat. 3/5/16 @ 2200 ET to 0400 ET Sunday, 3/6/16**

**FEDERAL TRADE COMMISSION** **Home**
PROPOSED RULES
Guides for the Jewelry, Precious Metals, and Pewter Industries [TEXT] [PDF]
- *Comment period extended **to June 3, 2016**.*
NOTICES
Proposed Consent Agreement:
Hikma Pharmaceuticals PLC; Analysis to Aid Public Comment [TEXT] [PDF]

**FISH & WILDLIFE** F&W Importing / Exporting Website

**FOOD & DRUG ADMINISTRATION**
***FDA Recalls Market Withdrawals, & Safety Alerts***
● Voluntary Recall of Cheese and Fruit Bistro Box for Undisclosed Allergen
● Voluntary Recall of Non Organic Gogo Squeez Applesauce Pouches
● Progressive Gourment Inc. Issues Alert on Sausage Egg Cheese Muffin Because of Possible Health Risk
FDA Researchers Advance Science for Vaccines to Prevent Mumps and Whooping Cough
● Specialty Commodities, Inc. Issues Allergy Alert on Undeclared Cashew Allergen in Dry Roasted Almonds
● Some Imported Dietary Supplements and Nonprescription Drug Products May Harm You
*Import Alerts* View by ● *Country* ● *Import Alerts by Number* ●*Industry* ● *Last Published Date*

**FOREIGN ASSETS CONTROL OFFICE**
NOTICES
Sanctions Actions Pursuant to Executive Order 13667 [TEXT] [PDF]
Sanctions Actions Pursuant to the Zimbabwe Sanctions Regulations [TEXT] [PDF]
Specially Designated Nationals List **Resource Center** OFAC Recent Actions

**FOREIGN- TRADE ZONES BOARD**
Expanded Subzone Status Approvals:
Black and Decker (U.S.) Inc. Subzone 243A Rialto and Fontana, CA [TEXT] [PDF]
Production Activities; Authorizations:
BMW Manufacturing Co., LLC, Foreign-Trade Subzone 38A, Spartanburg, SC [TEXT] [PDF]

**INTERNATIONAL TRADE ADMINISTRATION**
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea [TEXT] [PDF]
Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China [TEXT] [PDF]
Certain Frozen Warmwater Shrimp from India [TEXT] [PDF]
Certain Frozen Warmwater Shrimp from Thailand [TEXT] [PDF]
Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam [TEXT] [PDF]
Furfuryl Alcohol from the People's Republic of China [TEXT] [PDF]

**OFFICE OF UNITED STATES TRADE REPRESENTATIVE**
NOTICES
Reallocation of Unused Fiscal Year 2016 Tariff-Rate Quota Volume for Raw Cane Sugar [TEXT] [PDF]

**PRESIDENTIAL DOCUMENTS**
ADMINISTRATIVE ORDERS
Iran; Continuation of National Emergency [TEXT] [PDF]

**C A L I F O R N I A** Office of Environmental Health Hazard Assessment
Proposition 65 List dated 08/25/15

***Latest 60 Day Notices***
AG Number 2016-00183(View Details)
Chemical: Di(2-ethylhexyl)phthalate (DEHP)
Source: Well at Walgreens Handheld Shower, UPC No. 311917172248
AG Number 2016-00182(View Details)
Chemical: Carbon monoxide, soots, tar and mineral oils (coal tar)
Source: Coleman Utility Lighter
AG Number 2016-00181(View Details)
Chemical: Carbon monoxide, soots, tar and mineral oils (coal tar)
Source: Scripto Aim n' Flame Lighter
AG Number 2016-00180(View Details)
Chemical: Lead
Source: Brass Cooler Drains
AG Number 2016-00179(View Details)
Chemical: Lead
Source: Ground Clamps
AG Number 2016-00178(View Details)
Chemical: Lead
Source: Gas Test Gauges
AG Number 2016-00177(View Details)
Chemical: Lead
Source: Laundry Faucets
AG Number 2016-00176(View Details)
Chemical: Lead
Source: Brass Y-Hose adapter
AG Number 2016-00175(View Details)
Chemical: Lead
Source: Mortise Cylinders
AG Number 2016-00174(View Details)
Chemical: Lead
Source: Padlocks
AG Number 2016-00173(View Details)
Chemical: Diisononyl phthalate (DINP)
Source: Make-Up Brush Case, UPC No. 054111385
AG Number 2016-00172(View Details)
Chemical: Lead
Source: Sprinkler Heads
AG Number 2016-00171(View Details)

Chemical: Lead
Source: Compression Fittings
AG Number 2016-00170(View Details)
Chemical: Di(2-ethylhexyl)phthalate (DEHP)
Source: Interiors by Design Soft Toilet Seat, UPC No. 032251 033704
Comments: Please be advised that this NOV amends NOV 2015-01309 in order to provide notice to the correct product manufacturer, Howard Berger Co., LLC. All other info. contained herein is otherwise the same.
AG Number 2016-00169(View Details)
Chemical: Di(2-ethylhexyl)phthalate (DEHP), Diisononyl phthalate (DINP)
Source: 6ft. Stereo Coiled Aux Cable, UPC No. 888255121523
AG Number 2016-00168(View Details)
Chemical: Lead
Source: Brass Padlocks
AG Number 2016-00167(View Details)
Chemical: Lead
Source: Ceramic Bathroom Sets
AG Number 2016-00166(View Details)
Chemical: Carbon monoxide, soots, tar and mineral oils (coal tar)
Source: InstaFire Charcoal Starter

AG Number 2016-00165(View Details)
Chemical: Di(2-ethylhexyl)phthalate (DEHP)
Source: Millenium Collection Soft Toilet Seat, UPC No. 738980783308

Canada **What's New** **HEALTH CANADA** Search Database for Notices
**Consumer Product Safety** **Canada Consumer Product Safety Act Page**

***Report an Incident Involving a Consumer Product or a Cosmetic***
*Incident report forms:* **www.healthcanada.gc.ca/reportaproduct** ***Recalls & Safety Alerts*:**

**RECALLS & ALERTS:**

♦ Ruiz Foods brand Cheesy Pepper Jack Wrapped in a Battered Flour Tortilla recalled due to pieces of plastic
♦ Certain Delissio brand frozen pizzas may be unsafe due to the potential presence of pieces of glass
♦ Trader Joe's brand pistachios recalled due to Salmonella
♦ Wonderful brand pistachios recalled due to Salmonella
♦ Bedbugs: Avoid bringing back unwanted vacation souvenirs
♦ Foreign Product Alert: 22 sexual enhancement products
♦ Foreign Product Alert: 27 weight loss products
♦ Foreign Product Alert: 11 Baidyanath brand ayurvedic products
♦ Toshiba of Canada Limited recalls Panasonic Lithium Ion Battery Packs
♦ Vivo Brand Management recalling more natural health products that may contain undeclared drugs that may pose serious health risks

* * *

***BROWSE THE INDIVIDUAL FEDERAL REGISTER PAGES FOR THIS PERIOD:***
Monday March 7, 2016 Tuesday March 8, 2016 Wednesday, March 9, 2016
Thursday, March 10, 2016 Friday, March 11, 2016

***Access Past Issues***