The Month So Far: May 14 through 20, 2016

*REMINDER: **as of May 28, 2016***
Electronic entry type 11 entries, without PGA data
other than APHIS Lacey Act or NHTSA, will be required to be filed in ACE.

ANIMAL AND PLANT HEALTH INSPECTION SERVICE

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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 Eleanor Rose Recalls Children's Loungewear Due to Violation of Federal Flammability Standard *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*

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CPSC RECALLS & UPDATES

- phil&teds Recalls Dash Strollers Due to Risk of Injury
- Target Recalls Menorahs Due to Fire Hazard
- Pacific Cycle Recalls Infant Bicycle Helmets Due to Choking and Magnet Ingestion Hazards; Sold Exclusively at Target
- SCOTT Recalls Bicycles Due to Fall Hazard
- Rocky Mountain Recalls Bicycles with Front Disc Brakes to Replace Quick Release Lever Due to Crash Hazard
- Digital Clamp Meters Recalled by Klein Tools Due to Shock and Burn Hazards
- Black Diamond Recalls Via Ferrata Climbing Equipment Due to Fall Hazard
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CBP BULLETIN ***May 18, 2016***

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EFFECTIVE DATE: This action is effective July 18, 2016.

In Headquarters Ruling Letter H170624, CBP determined that a PVD process was considered a "use" for purposes of qualifying for same condition drawback pursuant to 19 U.S.C. §1313(j)(1). Pursuant to 19 U.S.C. § 1625(c)(1), ***CBP proposes to revoke Headquarters Ruling Letter H170624 and revoke or modify any other ruling not specifically identified, in order to reflect the proper determination that the described PVD process on chromed brass plumbing fixtures did not qualify as a "use" for purposes of same condition drawback pursuant to 19 U.S.C. § 1313(j)(1).***

ISSUE:

1. Does the application of a PVD coating on brass plumbing fixtures constitute a "use" for purposes of 19 U.S.C. § 1313(j)(1)?

2. Is the merchandise in the "same condition" after the application of a PVD coating for purposes of 19 C.F.R. § 181.45?

LAW AND ANALYSIS:

...

The application of a coating is not listed as one of the operations within 19 U.S.C. § 1313(j)(3) or the regulations that will not be treated as a "use" of that merchandise. However, in HQ 225985, dated November 30, 1995, CBP concluded that the listed operations in 19 U.S.C. § 1313(j)(3) do not impose a

limitation on the qualifying operations, but are illustrative of operations that do not amount to a manufacture or production.

In this case, despite the significant capital and labor expenditure, the operations you listed would not constitute a manufacture or production within the meaning of 19 C.F.R. § 191.2(q). In your recent submission you clarified that the plumbing fixtures, while brass, have already undergone an electroplating process before entry, by which the brass was chrome plated.

This chrome plating makes the plumbing fixtures scratch resistant and anti-corrosive, while the chrome plated surface makes the PVD process work better. In the PVD process, the brass fixtures are placed in a vacuum and a metallic target (titanium, zirconium, or chromium) is exposed to a low voltage-high current arc that vaporizes and ionizes the metal. High purity gases are then introduced into the vacuum and the metallic ions react with the gases on the surface of the merchandise, concurrently bonding to it, and creating a new surface on the plumbing fixtures. Based on CBP's lab research and analysis, this surface is more anti-corrosive, scratch resistant, and harder than the chrome plated surface. It also has the effect of changing the color of the plumbing fixtures. However, the imported plumbing fixtures are not transformed into a new and different product. As noted in Anheuser-Busch, "[t]here must be a transformation; a new and different article must emerge, having a different name, character, or use."

...

Since the merchandise is exported to Canada, the transactions are subject to the North American Free Trade Agreement ("NAFTA") provisions. Section 203 of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2057, 2086; 19 U.S.C. § 3333), provides for the treatment of goods subject to the limitations of NAFTA drawback. Pursuant to 19 U.S.C. § 3333(a) (Section 203(a) of the NAFTA), goods "subject to NAFTA drawback" means any goods other than, among other things:

> *(2) A good exported to a NAFTA country in the same condition as when imported into the United States. For purposes of this paragraph—*
>
> *(A) processes such as testing, cleaning, repacking, or inspecting a good, or preserving it in its same condition, shall not be considered to change the condition of the good[.] . . .*

Therefore, in addition to goods being "unused" per 19 U.S.C. §1313(j)(1), the goods must also be in the "same condition" upon export as they were on import in order not to be subject to the limitations of NAFTA drawback. CBP regulations issued pursuant to the Act provide guidance for implementing the requirement that the imported and exported merchandise be in the "same condition." Under 19 C.F.R. § 181.45(b), the term "same condition" is defined in 19 C.F.R. § 181.45(b)(1) as follows:

> *For purposes of this subpart, a reference to a good in the "same condition" includes a good that has been subjected to any of the following operations provided that no such operation materially alters the characteristics of the good:*
>
> *(i) Mere dilution with water or another substance;*
>
> *(ii) Cleaning, including removal of rust, grease, paint or other coatings;*
>
> *(iii) Application of preservative, including lubricants, protective encapsulation, or preservation paint;*
>
> *(iv) Trimming, filing, slitting, or cutting;*
>
> *(v) Putting up in measured doses, or packing, repacking, packaging or repackaging; or*
>
> *(vi) Testing, marking, labeling, sorting or grading.*

19 C.F.R. § 181.45(b)(1). In HQ 228961, dated Jan. 23, 2002, we stated that the list in 19 C.F.R. § 181.45(b)(1) was not exhaustive and that the analysis should focus on whether the item in question is in the "same condition," which includes the absence of "material alterations to the characteristics of the good" regardless of the processes to which the item was subjected.

CBP has previously considered whether certain operations materially alter the characteristics of a good for purposes of section 181.45(b)(1). In HQ 230166, dated January 29, 2004, CBP determined that repackaging dried fruits and dried vegetables from industrial-sized bulk packages to smaller packages did

not constitute a material alteration. However, HQ 231066 determined that the adding of a desiccant (i.e., silicon dioxide) to dried fruits and vegetables to prevent powdered food from clumping did materially alter the imported merchandise. This increase in pourability was a material alteration of the character of the imported powder resulting in a product that was not in the same condition as the imported product, and therefore not within the scope of 19 C.F.R. § 181.45(b). Therefore, whether an operation materially alters the characteristics of a good is a determination driven by the facts.

Most relevant to the case here, is HQ 225874, dated March 22, 1996, where CBP determined that the painting of John Deere parts with John Deere identifying colors was an operation of greater magnitude than those listed in section 181.45(b)(1). In HQ 225874, we noted that it was:

> *[S]ignificant that "painting" itself is not included in this list. We consider painting to be an operation of greater magnitude than the operations stated in 19 CFR 181.45(b)(1)(iii). Painting is more than the application of preservative, including lubricants, protective encapsulation, or preservation paint. We believe that if painting were intended to be within the scope of 19 CFR 181.45(b)(1), it would have been clear from the language of 19 CFR 181.45(b)(1). This is not the case. [...] Accordingly, because the parts are not exported in the same condition as they were imported, they are not eligible for drawback pursuant to 19 CFR 181.45(b).*

Here, the PVD process is expensive and labor intensive, much more so than the simple painting described in HQ 225874. The PVD process, which imparts a coating that not only changes the fixtures' color, but also makes them more scratch and corrosive resistant, as well as harder, is a more significant process than simply painting. Thus, we find that the PVD process is an operation of greater magnitude than the operations** stated in 19 C.F.R. 181.45(b)(1)(iii). **As a result, the brass fixtures are not in the "same condition" as when they were imported and are subject to the limitations of NAFTA drawback.

***HOLDING:** Upon reconsideration, we find that the application of a PVD coating on chromed brass plumbing fixtures does not constitute a "use" for purposes of 19 U.S.C. § 1313(j). **However, we find that the merchandise is not exported in the "same condition" and is subject to NAFTA limitations on drawback**. We have reached this conclusion based on the very specific set of facts presented. As a result, Headquarters Ruling Letter H170624, dated August 3, 2012, is hereby revoked.*

Proposed Modification of a Ruling Letter and Proposed Revocation of Treatment Relating to the Requirement that an Original Invoice Reflecting the Transaction Under Which Merchandise Actually Began Its Journey to the United States be Provided for Merchandise Entered at Multiple Ports 28

DATES: Comments must be received on or before June 17, 2016.

*In Headquarters Ruling Letter H109795, CBP determined that an importer of record must provide the original invoice reflecting the transaction under which the merchandise actually began its journey to the United States for each subsequent entry of the merchandise at different ports. Pursuant to 19 U.S.C. § 1625(c)(1), **CBP proposes to modify Headquarters Ruling Letter H109795, and modify any other ruling not specifically identified, in order to reflect the proper determination that the original invoice reflecting the transaction under which the merchandise actually began its journey to the United States is only required when merchandise transits from the port of exportation and is entered at the first port of entry**. See Attachment B, proposed Headquarters Ruling Letter H230176. 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 invoice accompanying the warehouse entry summary must include the name and address of the foreign manufacturer or shipper.*

2. Whether the MID must be based upon the foreign manufacturer or shipper.

3. Whether an original invoice is required pursuant to 19 C.F.R. § 141.86(c).

LAW AND ANALYSIS:

In the internal advice request, the Port of Laredo posed specific questions for this office to address. These questions addressed what information is required on the invoices submitted as a part of Baja Duty Free's warehouse entry summaries and how to generate MID's for these entry summaries. In reconsidering the ruling, we continue to find that applicable regulations require that the ***name and address*** *of foreign individuals or firms, usually the manufacturer, who sold, or made available for sale, the merchandise for exportation to the United States,* ***must be included on invoices*** *submitted as a part of warehouse entry summaries. Moreover, MIDs on the warehouse entry summaries* ***must be*** *generated using the foreign party's name and address. We have, however, revisited one decision on the application of 19 C.F.R. § 141.86(c) to the facts presented and concluded that the submission of an original invoice is not required.*

…

3. Whether an original invoice is required pursuant to 19 C.F.R. § 141.86(c).

We have modified our decision regarding the application of 19 C.F.R. §141.86(c). In H109795, we noted that 19 C.F.R. § 141.86(c) states:

> *If the merchandise is sold on the documents while in transit from the port of exportation to the port of entry, the original invoice reflecting the transaction under which the merchandise actually began its journey to the United States, and the resale invoice or a statement of sale showing the price paid for each item by the purchaser, must be filed as part of the entry, entry summary, or withdrawal documentation. If the original invoice cannot be obtained, a pro forma invoice showing the values and transaction reflected by the original invoice must be filed together with the resale invoice or statement.*

(emphasis added). Moreover, based on the requirements of 19 C.F.R. §141.86(c), we concluded in H109795 that the original invoice reflecting the transaction under which the merchandise actually began its journey to the United States must accompany the warehouse entry summary filed by Baja Duty Free. In its request for reconsideration, Fairn argues that the company purchased the alcohol after the merchandise transited from the port of exportation to the port of entry. Therefore, 19 C.F.R. § 141.86(c) does not apply when the alcohol is entered into the duty-free store. We concur. Specifically, we conclude that 19 C.F.R. § 141.86(c) applies to merchandise transiting from the port of exportation to the first port of entry. Here, the alcohol at issue began its journey to the United States from France. Upon arriving in the United States, the alcohol was first entered into a bonded warehouse located at the Port of Miami by Moet Hennessy USA, Inc. Therefore, the warehouse entry filed with the Port of Miami is subject to 19 C.F.R. § 141.86(c) requirements. The ***warehouse entry made by Baja Duty Free constitutes a second entry from Fairn's FTZ, not from the port of exportation****. Therefore, 19 C.F.R.§ 141.86(c) does not apply. Consequently, Baja Duty Free does not need to provide the original invoice reflecting the transaction under which the merchandise actually began its journey to the United States when filing the warehouse entry summary.*

HOLDING: *After reviewing the reconsideration request, we find that the invoice accompanying a warehouse entry summary, CBP Form 7501, must include the name and address of the foreign individual or firm who sold, or made available for sale, the merchandise for exportation to the United States. These parties include the foreign manufacturer, foreign seller, or foreign shipper responsible for introducing the merchandise into the U.S. stream of commerce. Manufacturer Identification Codes required on the entry summary foreign seller, or foreign shipper. Finally, based on the facts presented,* ***the requirement to submit an original invoice under 19 C.F.R. § 141.86(c) does not apply to Baja Duty Free's warehouse entry.*** *Headquarters Ruling Letter H109795, dated May 22, 2012, is hereby modified.*

Revocation of Two Ruling Letters and Revocation of Treatment Related to the Country of Origin Marking of Certain Solar Panels Under the North American Free Trade Agreement 47

DATES: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 18, 2016.

In NY R00721 we held that solar panels assembled in Mexico were products of Mexico. In NY N047417 we held that it was acceptable to mark the solar panels with the proposed wording "Components from Japan, Assembled in Mexico" or "Components from Japan, Manufactured in Mexico." After reviewing these two rulings, ***we found that they are incorrect.***

… For the reasons set forth below, we hereby revoke NY R00721 and NY N047417.

ISSUE: *Whether the finished solar panels are a product of Mexico for country of origin marking purposes.*

LAW AND ANALYSIS:

…

Section 134.1(j), CBP Regulations (19 C.F.R. 134.1(j)), provides that the "NAFTA Marking Rules" are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g), CBP Regulations (19 C.F.R. 134.1(g)), defines a "good of a NAFTA country" as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules, set forth at 19 C.F.R. Part 102.

Section 102.11(a), CBP Regulations (19 C.F.R. 102.11(a)), sets forth the required hierarchy under the NAFTA Marking Rules for determining country of origin for marking purposes. This section states that the ***country of origin of a good is the country in which:***

(1) *The good is wholly obtained or produced;*

(2) *The good is produced exclusively from domestic materials;* ***or***

(3) *Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in [section] 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.*

Since the components of the solar panels are manufactured in both Japan and the United States, they are neither "wholly obtained or produced" in one country nor "produced exclusively from domestic materials." Accordingly, the country of origin of the solar panels may not be determined under the first two steps of the hierarchy in 19 C.F.R. 102.11(a)(1) and (a)(2).

Under the third step of the hierarchy, 19 C.F.R. 102.11(a)(3), the country of origin of a good is the country in which "each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in §102.20 ***and*** *satisfies any other applicable requirements of that section." Section 102.1(e), CBP Regulations (19 C.F.R. 102.1(e)) defines "[f]oreign material" as "a material whose country of origin as determined under these rules is not the same country as the country in which the good is produced." The finished solar panels are classified in subheading 8541, HTSUS. When Kyocera Solar's ruling request was submitted in 2004, the tariff shift rule for subheading 8541, HTSUS required:*

> ***"A change to heading 8541 through 8542 from any other subheading, including another subheading within that group; or***
>
> ***A change to a mounted chip, die or wafer classified in heading 8541 or 8542 from an unmounted chip, die or wafer classified in heading 8541 or 8542; or***
>
> ***A change to a programmed 'read only memory' (ROM) chip from an unprogrammed 'programmable read only memory' (PROM) chip."***

NY R00721 incorrectly concluded that the Japanese solar cells classified under subheading 8541.40.6030 satisfied the tariff shift rule from any other subheading. Because the finished solar panels are classified under subheading 8541.40.6020, HTSUS, there is no "change to heading 8541 through 8542 from any other subheading . . . ." *The 10-digit number is actually the statistical reporting number for an article that is formed by combining the 8-digit subheading number with the appropriate 2-digit statistical suffix. See General Statistical Notes 3(a), HTSUS, which describes the "Statistical Reporting Number."*

Further, there is ***no evidence that the finished solar panels contain any chips, dies, wafers, or "read only memory" chips. Accordingly, the solar panels do not undergo the required change in tariff classification as a result of the operations in Mexico.***

When a good's country of origin cannot be determined under the three methods described in 19 C.F.R. 102.11(a), 19 C.F.R. 102.11(b) provides that "[e]xcept for a good that is specifically described in the Harmonized System as a set, or is classified as a set . . . ***the country of origin of the good is the country or countries of origin of the single material that imparts the essential character to the good."*** *Here, the single material or component that impacts the essential character to the solar panels is the individual solar cell. The individual solar cells allow the solar panels to fulfill their purpose of generating electricity and represent the majority of the finished product's value.* ***Therefore, under 19 C.F.R. 102.11(b), the country of origin for marking purposes of the finished solar panels is Japan, the country of origin of the individual solar cells.*** *We also note that since 2004, another rule was added in 19 CFR 102.20 for goods of heading 8541, HTSUS; however, this rule is not applicable to solar panels.*

Because the panels' country of origin is Japan, they cannot be labeled "Components from Japan, Assembled in Mexico" or "Components from Japan, Manufactured in Mexico." 19 C.F.R. 134.43(e) permits such labeling only when the assembled article's country of origin is "the country in which the article is finally assembled." As noted above, the solar panels are goods of Japan. Accordingly, NY N047417 is also incorrect.

...

As defined in 19 C.F.R. § 181.1(q), "[o]riginating, when used with regard to a good or a material, means a good or material which qualifies as originating in the United States, Canada and/or Mexico under the rules set forth in General Note 12, HTSUS, and in the appendix to this part." Thus, the NAFTA preference override applies only when a good originates in a NAFTA country under GN 12, HTSUS but does not qualify to be marked as a good of the originating country under 19 C.F.R. § 102.11(a) or (b). At the time that NY R00721 and N047417 were issued, Kyocera did not provide evidence that the solar panels originated under GN 12, HTSUS. This is why neither NY R00721 nor N047417 refer to the NAFTA rules of origin in General Note 12, HTSUS or invoke the NAFTA preference. Instead, they address only the country of origin marking of the solar panels under 19 C.F.R. § 102. Therefore, in the absence of evidence that the solar panels originated under GN 12, HTSUS, the NAFTA preference override did not apply, and the analysis in NY R00721 and N047417 on the country of origin marking of the solar panels under 19 C.F.R. § 102 was incorrect.

While Kyocera did not provide evidence that the solar panels originated under GN 12, HTSUS in 2004 and 2009 when NY R00721 and N047417 were issued, it has now provided a completed and signed NAFTA certificate of origin and claims that the solar panels originate under GN 12, HTSUS. Thus, CBP can now consider whether future imports will qualify to be marked as products of Mexico pursuant to the NAFTA preference override.

As explained above, the first requirement of the NAFTA preference override in 19 C.F.R. § 102.19 is that the goods originate under GN 12, HTSUS. GN 12(b) sets forth the methods for determining whether a good originates in the territory of a NAFTA party and provides, in relevant 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:*
>
> *(i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or*
>
> *(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 non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or (B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or*

(iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials.

Here, because the solar panels are neither "wholly obtained or produced entirely in the territory of Canada Mexico and/or the United States" nor "produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials," the solar panels must "have been transformed in the territory of Canada, Mexico and/or the United States so that . . . each of the non-originating materials used in the production of such goods undergoes a change in tariff classification [in General Note 12, HTSUS]." The GN 12, HTSUS tariff shift rule applicable to solar panels classified under subheading 8541.40, HTSUS is: "[n]o required change in tariff classification to any of subheadings 8541.10 through 8542.90." ***Because no tariff shift is required under the GN 12, HTSUS rule and the finished solar modules were "transformed" for the purposes of GN 12, HTSUS when they were assembled in Mexico, the finished solar panels will originate under GN 12, HTSUS.***

The second requirement of the NAFTA preference override in 19 C.F.R. § 102.19 is that the originating good fails to qualify to be marked as a good of the originating country under 19 C.F.R. § 102.11(a) or (b). As explained above, ***under 19 C.F.R. 102.11(b), the country of origin for marking purposes of the finished solar panels is Japan****. Thus, because the finished solar panels originate in the territory of a NAFTA party under GN 12, HTSUS but do not qualify to be marked as a good of the originating country under 102.11(a) or (b), future imports will qualify to be marked as products of Mexico pursuant to the NAFTA preference override.*

HOLDING: *Based on the information available when NY R00721 and NY N047417 were issued, the solar panels' country of origin for marking purposes was Japan pursuant to 19 C.F.R. 102.11(b). Therefore, they did not qualify to be labeled "Components from Japan, Assembled in Mexico" or "Components from Japan, Manufactured in Mexico."* ***However, future imports will qualify to be marked as "products of Mexico" pursuant to the NAFTA preference override if Kyocera continues to meet the requirements in 19 C.F.R. § 102.19.***

Proposed Modification of One Ruling Letter and Revocation of Treatment Relating to the Country of Origin for Marking Purposes of Orthodontic Brackets 54

DATES: Comments must be received on or before June 17, 2016.

In NY B89079, CBP determined that the country of origin of the subject orthodontic brackets for marking purposes is Mexico. CBP has reviewed NY B89079 and has determined the ruling letter to be in error. ***It is now CBP's position that the country of origin for marking purposes is the United States (emphasis added).*** *For* ***CBP duty purposes, the country of origin of the subject orthodontic brackets is Mexico (emphasis added).***

ISSUE: *What is the country of origin for marking purposes of the orthodontic brackets under consideration?*

LAW AND ANALYSIS:

…

Thus, by operation of General Note 12, the eligibility of a particular good for NAFTA duty preference is predicated, in part, upon an origin determination under the NAFTA Marking Rules of either Canada or Mexico.

However, we agree that the NAFTA Preference Override set forth in 19 CFR 102.19 is applicable to the subject merchandise. Specifically, 19 CFR 102.19(b) states:

> *(b) If, under any other provision of this part, the country of origin of a good which is originating ..... is determined to be the United States and that good has been exported from, and returned to, the United States after having been advanced in value or improved in condition in another NAFTA country, the country of origin of such good for Customs duty purposes is the last NAFTA country in which that good was advanced in value or improved in condition before its return to the United States.*

The orthodontic brackets are an originating good under NAFTA and have been determined to be a good of U.S. origin. Therefore, the country of origin for CBP marking purposes is the U.S. (emphasis added). Because the orthodontic brackets were returned to the U.S. after having been advanced in value or improved in condition in Mexico, the country of origin of the orthodontic brackets for CBP duty purposes is Mexico, pursuant to 19 CFR 102.19(b) (emphasis added). Accordingly, the "MX" NAFTA rate will be applicable to the orthodontic brackets.

HOLDING: *For country of origin marking purposes, the country of origin of the orthodontic brackets manufactured in the U.S. and exported to Mexico for color coding operations prior to importation into the United States is the U.S. Therefore, the imported orthodontic brackets are not subject to the marking requirements of 19 U.S.C. 1304.*

The orthodontic brackets of U.S. origin which ***undergo additional processing in Mexico prior to importation into the U.S. will be considered of Mexican origin for purposes of CBP duty pursuant to 19 CFR 102.19(b), inasmuch as the orthodontic brackets qualify as an originating good pursuant to General Note 12, HTSUS, and may be assessed duties at the "MX" NAFTA rate****.*

Proposed Revocation of One Ruling Letter and Revocation of Treatment Relating to the Tariff Classification of Certain Garment Hangers 61

DATES: Comments must be received on or before June 17, 2016.

In NY N255930, CBP classified garment hangers, imported separately, in heading 3923, HTSUS, specifically in subheading 3923.90.00, HTSUS, which provides for "Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics: Other." However, CBP concluded that when imported with garments, the garment hangers at issue were classified together with those garments. CBP has reviewed NY N255930 and has determined the ruling letter to be in error. It is now CBP's position that the garment hangers at issue are properly classified, by operation of GRI 5(b), in heading 3923, HTSUS, specifically in subheading 3923.90.00, HTSUS, whether imported separately or with garments.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N255930 and to revoke any other ruling not specifically identified to reflect the tariff classification of the subject merchandise according to the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H258772, 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 correct classification of the subject plastic garment hangers when imported separately and when imported carrying garments?*

LAW AND ANALYSIS:

…

The HTSUS provisions under consideration are as follows:

> *3923 Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics:*
>
> *3923.90.00 Other*
>
> ** * **

GRI 5(b), HTSUS, provides as follows:

> *(b) Subject to the provisions of rule 5(a) above [which are not pertinent here], packing materials and packing containers entered with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.*

It has long been CBP's position that actual reuse of the imported hangers is not necessary, and is not required, as long as the hangers are of a type suitable for repetitive use. "Suitable for reuse" does not mean merely that the specific hangers are strong enough to be reused, but also that there exists a commercial viability for that reuse. Once it is determined that the particular hanger style is suitable for reuse, there is no need for any importer to provide evidence that hangers of that style are suitable for reuse, and the benefit of separate classification is afforded to all importers of those hangers, even if the hangers are never actually reused. In HQ 964963,161 HQ 964964 and HQ 964948, all dated June 19, 2001, CBP ruled that certain plastic hangers that were of substantial construction and that were used in hanger recovery systems for the repeated international transport of garments, were suitable for repetitive use for the conveyance of goods within the meaning of GRI 5(b). Accordingly, CBP concluded that these hangers could be classified separately in subheading 3923.90.00, HTSUS, even when imported with garments. Documents were provided to verify the claim that a substantial portion of the hangers that were the subject of those rulings were forwarded to a hanger supply company and then sorted, sanitized and sold to garment vendors for use in packing, shipping, and transporting other garments. In HQ 964963, CBP noted that actual reuse of the hangers is not necessary as long as the hangers are substantial and are of the class or kind of goods used repetitively for the conveyance of garments.

…

Upon review, we find that the record supports a finding that the hangers at issue are strong enough to be reused and that there exists a commercial viability for that reuse, and that hangers of similar construction are reused repeatedly for commercial shipment of garments. Accordingly, it is our position that ***the hangers at issue are clearly suitable for repetitive use within the meaning of GRI 5(b). Therefore, we conclude that they are separately classified*** *(whether imported separately or with garments) in subheading 3923.90.00, HTSUS, which provides for "Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics: Other."*

HOLDING: By application of GRI 5(b), we find that the subject hangers are classified under heading 3923, HTSUS. Specifically, they are classified in subheading 3923.90.00, HTSUS*, which provides for "Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics: Other." The 2016 column one, general rate of duty 3% ad valorem.*

Proposed Revocation of a Ruling Letter and Revocation of Treatment Relating to Country of Origin Marking of Bicycles 69

DATES: Comments must be received on or before June 17, 2016.

In NY N269994, CBP determined that (as in a similar case involving the same importer ("Kent"), HQ H253522, dated February 5, 2015), that bicycle components (frames) manufactured abroad and assembled into complete and finished bicycles at Kent's South Carolina facility were substantially transformed, and therefore the country of origin of the complete bicycle was the United States. ***CBP has reviewed NY N269994 and has determined the ruling letter to be in error.*** *CBP has observed that the facts in HQ H253522 were misinterpreted and misapplied in NY N269994 to arrive at the same conclusion.*

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N269994 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H273304, 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 are the country of origin marking requirements for the imported bicycle components (namely frames)?*

LAW AND ANALYSIS:

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will

permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134) implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

Section 134.1(b), Customs Regulations (19 CFR 134.1(b)), defines "country of origin" as:

> *[T]he country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within the meaning of this part; however, for a good of a North America Free Trade Agreement (NAFTA) country, the NAFTA Marking Rules determine the country of origin.*

A substantial transformation occurs when an article emerges from a process with a new name, character or use different from that possessed by the article prior to processing. A substantial transformation will not result from a minor manufacturing or combining process that leaves the identity of the article intact. See United States v. Gibson Thomsen Co, 27 CCPA 267 (1940) and National Juice Products Association v. United States, 628 F. Supp. 978 (Ct. Int'l Trade 1986).

Section 134.35(a), CBP Regulations (19 C.F.R. §134.35(a)), states:

> *Articles other than goods of a NAFTA country. An article used in the United States in manufacture which results in an article having a name, character, or use differing from that of the imported article, will be within the principle of the decision in the case of United States v. Gibson-Thomsen Co., Inc., 27 C.C.P.A. 267 (C.A.D. 98). Under this principle, the manufacturer or processor in the United States who converts or combines the imported article into a different article will be considered the "ultimate purchaser" of the imported article within the contemplation of section 304(a), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)), and the article shall be excepted from marking. The outermost containers of the imported articles shall be marked in accord with this part.*

In NY N269994, the ruling that is being revoked, CBP determined that the imported components (namely frames) were similar to HQ H253522 and, would be substantially transformed into complete and finished bicycles at Kent's South Carolina facility. However, the facts of H253522 were misinterpreted and misapplied in N269994. ***In H253522, the bicycle frames were manufactured in the United States*** *(South Carolina) and combined with imported and domestic parts into a complete bicycle.* ***In contrast, in N269994, the imported bicycle components (namely frames) will be manufactured in an unspecified country and imported into*** *the United States to be assembled with other components into a complete and finished bicycle.*

In HQ 734478, dated June 14, 1993, CBP ruled that bicycle frames imported from Taiwan, which were assembled with other components to make complete bicycles were not substantially transformed. In that ruling, CBP noted that the bicycle frame is the most costly component and is one of the essential components of the bicycle (if not the most essential component) imparting the bicycle with its overall shape, size and character. In this instance, frames made in an unspecified country are assembled with the other components of the bicycles in the United States to make the complete and finished bicycles. Because the bicycle is ***assembled in the United States and one of the bicycle's essential components, the frame, is made outside of the United States, we find that the country of origin of the bicycle would be imparted by the frame****. Accordingly, the bicycle must be marked to indicate the country of origin of the frame.*

HOLDING: *NY N269994, dated November 20, 2015, is hereby revoked.*

Based on the facts provided, imported bicycle frames are not substantially transformed into new and different articles of U.S. origin when assembled with other bicycle components in the United States to make a complete and finished bicycle. Accordingly, the bicycle must be marked to indicate the country of origin of the frame.

Cargo Systems Messaging Service

CSMS 16000411 **ACE CERTIFICATION Outage, Saturday, 5/21/16 from 2200 ET to 0200 ET Sunday, May 22**
CSMS 16000410 **ACE PRODUCTION Outage, Saturday, 5/21/16 @ 2200 to 0400 ET Sunday, May 22**
CSMS 16000409 **Trade Webinar Series: Obtaining ACE Export Reports Authorization - June 2nd**
CSMS 16000408 **CORRECTION - Upcoming ACE PGA Webinars for Software Developers / Programmers on 5/23**
CSMS 16000407 **Upcoming ACE PGA Webinars for Software Developers/Programmers on 5/18**
CSMS 16000406 **ACE Production PGA Maintenance Thurs May 19,2016 @0600ET,impact ACE CargoRel & EntrySumm**
CSMS 16000405 **RESOLVED: Slow ACE Cargo Release SO status notifications**
CSMS 16000404 **Reminder: Sunset of Legacy EDI/VPN and Bulk Upload (EDI Manager) May 20, 2016**
CSMS 16000403 **Updated ACE CATAIR Documentation Posted to CBP.gov**
CSMS 16000402 **Slow ACE Cargo Release SO status notifications**
CSMS 16000401 **FDA Business Rules Deployment May 31, 2016**
CSMS 16000400 **Filing of ATF Forms in DIS During Interim Period Prior to Mandatory Filing**
CSMS 16000399 **Updated Guidance for Vehicle Importations: CBP Stamping Customs Form 7501**
CSMS 16000398 **Legacy Ace Certification Outage, Tuesday & Wednesday evening, 5/16/16 - 5/17/16 @ 1700 ET**
CSMS 16000397 **RESOLVED: Network issues affecting ACE Legacy Portal, Tuesday, May 17, 2016**
CSMS 16000396 **Network issues affecting Legacy ACE Portal, Tuesday, 5/17/2016**
CSMS 16000395 **COMPLETED: Manual Run of ACE Air Manifest General Order (GO) on Tues. 5/17/16**
CSMS 16000394 **Reminder: Legacy AESDirect Shipment Manager and Website**
CSMS 16000393 **ACE Air Manifest General Order (GO) Job to be Run on Tuesday, May 17, 2016 @0800 ET**
CSMS 16000392 **Resolved - ACE Cargo Release issue with FDA Prior Notice**
CSMS 16000391 **Upcoming ACE PGA Webinars for Software Developers/Programmers on 5/18**
CSMS 16000390 **ACE PRODUCTION Deployment Tuesday morning, May 17, 2016 at 0600-0630 ET**
CSMS 16000389 **Useful Tips for AESDirect in ACE**
CSMS 16000388 **New FRN Published Concerning the Mandatory Electronic Filing of FDA Data**
CSMS 16000387 *[same as above, 1600388]*
CSMS 16000386 **ACE PRODUCTION OUTAGE, Saturday, May 14, 2016 @ 2200 to 0400 ET Sunday, May 15**

FEDERAL TRADE COMMISSION **Home**

FISH & WILDLIFE F&W Importing / Exporting Website

FOOD & DRUG ADMINISTRATION

FDA Recalls Market Withdrawals, & Safety Alerts

- Changes to the Nutrition Facts Label
- Lupus Therapies Continue to Evolve
- Well Care Compounding Pharmacy Issues Voluntary Statewide Recall of All Sterile Compounded Products Due to Lack Of Assurance if Sterility Concerns
- The Quaker Oats Company Issues Voluntary Recall of Quaker Quinoa Granola Bars Due to Possible Health Risk
- Dr. Praeger's Sensible Foods, Inc. Announces Voluntary Recall of Various Dr. Praeger's and Ungar's Products Related to CRF Frozen Vegetable Recall for Possible Health Risk
- A Precautionary Recall of Three Cases of The Farmers Market Chopped Asian Salad Kit is Announced Due to Possible Exposure to Allergens
- HMSHost Recalls Multiple Brands of Cape Cod Cranberry Trail Mix Because of Possible Health Risk
- Hy-Vee Voluntarily Recalls Frozen Hy-Vee Vegetable Fried Rice and Frozen Hy-Vee Chicken Fried Rice Due to Possible Health Risk

- Montero Farms Recalls Orange Habanero Peppers Because of Possible Health Risk
- Voluntary Recall on Piggly Wiggly Brand Yellow Cut Corn
- SOS Telecom, Inc. Recalls New Unapproved Drugs Marked as Dietary Supplements

Import Alerts View by ● *Country* ● *Import Alerts by Number* ●*Industry* ● *Last Published Date*

FOREIGN ASSETS CONTROL OFFICE

RULES

Burmese Sanctions Regulations [TEXT] [PDF]

NOTICES

Blocking or Unblocking of Persons and Properties

Publication of the name of one individual whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act [TEXT] [PDF]

Publication of the supplemental information on the *List of Specially Designated Nationals and Blocked Persons (SDN List)* for 57 individuals and 42 entities whose property and interests in property are blocked pursuant to one or more of the following authorities: *Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism*; *Prohibiting Transactions With Terrorists Who Threaten To Disrupt the Middle East Peace Process*; and *Blocking Property of the Government of Syria and Prohibiting Certain Transactions With Respect to Syria*. The *SDN List* entry for each of these individuals and entities has been amended to include the language *Additional Sanctions Information--Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations*. [TEXT] [PDF]

Publication of the name of one individual whose property and interests in property are blocked pursuant to *Blocking Property and Suspending Entry into the United States of Persons Contributing to the Situation in Libya*, and whose name has been added to OFAC's *SDN List* [TEXT] [PDF]

Specially Designated Nationals List **Resource Center** OFAC Recent Actions

FOREIGN- TRADE ZONES BOARD

NOTICES

Applications for Reorganization under Alternative Site Framework:

Foreign-Trade Zone 110; Albuquerque, NM [TEXT] [PDF]

Foreign-Trade Zone 244, Riverside, CA [TEXT] [PDF]

Proposed Production Activities:

Alpha Marketing Network, Inc. d/b/a AMN Distributors; Foreign-Trade Zone 281; Miami, FL [TEXT] [PDF]

Townsend Leather Co., Inc.; Foreign-Trade Zone 121, Albany, NY [TEXT] [PDF]

INTERNATIONAL TRADE ADMINISTRATION

PROPOSED RULES

Word Limits for Case and Rebuttal Briefs in Antidumping and Countervailing Duty Proceedings [TEXT] [PDF]

NOTICES

Antidumping or Countervailing Duty Investigations, Orders, or Reviews:

Aluminum Extrusions from the People's Republic of China; Correction [TEXT] [PDF]

Carbon and Certain Alloy Steel Wire Rod from Mexico [TEXT] [PDF]

Certain Frozen Warmwater Shrimp from Brazil [TEXT] [PDF]

Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China [TEXT] [PDF]

Meetings:

Advisory Committee on Supply Chain Competitiveness [TEXT] [PDF]

INTERNATIONAL TRADE COMMISSION

NOTICES

Complaints:

Certain L–Tryptophan, L–Tryptophan Products, and Their Methods of Production [TEXT] [PDF]

Investigations; Determinations, Modifications, and Rulings, etc.:

1-Hydroxyethylidene-1, 1-Diphosphonic Acid from China [TEXT] [PDF]

Certain Electrical Conductor Composite Cores and Components Thereof [TEXT] [PDF]

Certain Lithium Metal Oxide Cathode Materials, Lithium-Ion Batteries for Power Tool Products Containing Same, and Power Tool Products with Lithium-Ion Batteries Containing Same [TEXT] [PDF]

Certain Quartz Slabs and Portions Thereof [TEXT] [PDF]

Certain Document Cameras and Software for Use Therewith [TEXT] [PDF]

Certain Sleep-Disordered Breathing Treatment Systems and Components Thereof:

- Determination To Suspend Remedial Orders Issued in This Investigation [TEXT] [PDF]
- Institution of Investigation [TEXT] [PDF]

Certain Wireless Headsets [TEXT] [PDF]

Ferrovanadium from Korea [TEXT] [PDF]

Petroleum Wax Candles from China [TEXT] [PDF]

Certain Hybrid Electric Vehicles and Components Thereof

Certain Air Mattress Bed Systems and Components Thereof

1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) from China

Trans-Pacific Partnership Agreement: Likely Impact on the U.S. Economy & on Specific Industry Sectors

PRESIDENTIAL DOCUMENTS

ADMINISTRATIVE ORDERS

Burma; Continuation of National Emergency [TEXT] [PDF]

Iraq; Continuation of National Emergency [TEXT] [PDF]

National Defense Authorization Act for Fiscal Year 2016; Delegation of Authority [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 2016-00467(View Details)
Chemical: Lead
Source: Brass Fittings

AG Number 2016-00466(View Details)
Chemical: Lead
Source: Brass Nozzles

AG Number 2016-00465(View Details)
Chemical: Acrylamide
Source: Coffee products

AG Number 2016-00464(View Details)
Chemical: 3-Monochloropropane-1,2-diol (3-MCDP)
Source: Bragg Liquid Aminos

AG Number 2016-00463(View Details)
Chemical: Di(2-ethylhexyl)phthalate (DEHP)
Source: Commando Saw, UPC No. 056389083042, No. 8304

AG Number 2016-00462(View Details)
Chemical: Lead
Source: Metal wire

AG Number 2016-00461(View Details)
Chemical: Di(2-ethylhexyl)phthalate (DEHP)
Source: Key Safes
AG Number 2016-00460(View Details)
Chemical: Carbon monoxide
Source: wood smoking chips
AG Number 2016-00459(View Details)
Chemical: Carbon monoxide
Source: charcoal lighter fluid
AG Number 2016-00458(View Details)
Chemical: Silica, crystalline (airborne particles of respirable size)
Source: diatomaceous earth filter aid
AG Number 2016-00457(View Details)
Chemical: Lead and lead compounds
Source: Leaded brass tools
AG Number 2016-00456(View Details)
Chemical: Diisononyl phthalate (DINP)
Source: Los Angeles Dodgers Round Floor Mat, UPC No. 846104065244, BBB52869114
AG Number 2016-00455(View Details)
Chemical: Di(2-ethylhexyl)phthalate (DEHP), Diisononyl phthalate (DINP)
Source: Infant shoes
AG Number 2016-00454(View Details)
Chemical: Cadmium and cadmium compounds, Lead and lead compounds
Source: Seaweed
AG Number 2016-00453(View Details)
Chemical: Cadmium and cadmium compounds, Lead and lead compounds
Source: Seaweed
AG Number 2016-00452(View Details)
Chemical: Lead and lead compounds
Source: Seaweed
AG Number 2016-00451(View Details)
Chemical: Di(2-ethylhexyl)phthalate (DEHP)
Source: Padlocks
AG Number 2016-00450(View Details)
Chemical: Cadmium and cadmium compounds, Lead and lead compounds
Source: Seaweed
AG Number 2016-00449(View Details)
Chemical: Cadmium and cadmium compounds, Lead and lead compounds
Source: Seaweed
AG Number 2016-00448(View Details)
Chemical: Di(2-ethylhexyl)phthalate (DEHP), Lead and lead compounds
Source: Steering wheel covers
AG Number 2016-00447(View Details)
Chemical: Di(2-ethylhexyl)phthalate (DEHP)
Source: Recollections Photo Album, UPC No. 886946270567
AG Number 2016-00446(View Details)
Chemical: Lead and lead compounds
Source: Dietary Supplements

AG Number 2016-00445(View Details)
Chemical: Di(2-ethylhexyl)phthalate (DEHP)
Source: Inflatable Vinyl Cushion, UPC No. 050428753866
Comments: This NOV amends prior NOV 2016-00187 in order to provide notice to the correct manufacturer of the product, Medical Depot.
AG Number 2016-00444(View Details)
Chemical: Di(2-ethylhexyl)phthalate (DEHP)
Source: Bath Tub Mat, UPC No. 111114122004
AG Number 2016-00443(View Details)
Chemical: Lead and lead compounds
Source: Leaded brass tools
AG Number 2016-00442(View Details)
Chemical: Lead
Source: Woodstock Farms Organic Goji Berries
AG Number 2016-00441(View Details)
Chemical: Di(2-ethylhexyl)phthalate (DEHP)
Source: Aluminum Adjustable Cane, UPC No. 041298013013

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:

♦ Black Diamond Recalls Black Diamond Brand CamalotsTM and Black Diamond Camalot UltralightsTM
♦ Black Diamond Recalls Black Diamond Brand Index Ascenders (left & right)
♦ SCOTT Sports SA recalls SCOTT Bicycles equipped with SYNCROS FL 1.0 Seatpost
♦ Recall Re-Release: Miniland Educational Corporation recalls Moogy Fastening Toy
♦ Klein Tools recalls Digital Clamp Meters
♦ Raw pork and pork organ products sold in Alberta recalled due to possible E. coli O157:H7 contamination
♦ New Moon Tea Co. brand Sunrise Tea and Turmeric Tonic recalled due to Salmonella
♦ Stile Products Recalls Tern Folding Bicycles
♦ phil & teds USA Inc. recalls V5 Dash Strollers
♦ Canadian Tire Corporation Limited recalls AutoTrends Heated Seat Cushion
♦ Organic Matters brand Organic Hojicha Green Tea recalled due to Salmonella
♦ Sugarfina brand Milk Chocolate Malt Balls recalled due to undeclared peanut
♦ Sea Delight brand Tuna Steaks recalled due to histamine
♦ Quaker Harvest brand Quinoa Granola Bars recalled due to Listeria monocytogenes
♦ Stahlbush Island Farms brand Cut Green Beans recalled due to Listeria monocytogenes
♦ SUBARU issued a recall on the LEGACY, and OUTBACK models
♦ SGLT2 Inhibitors [INVOKANA (canagliflozin), FORXIGA (dapagliflozin), XIGDUO (dapagliflozin/metformin), JARDIANCE (empagliflozin)] - Risk of Diabetic Ketoacidosis
♦ Chongga brand Frozen Fish Cake (Mixed) recalled due to undeclared egg

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