U.S. Customs and Border Protection

19 CFR PART 177

MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE COUNTRY OF ORIGIN OF CERTAIN LAMINATED FABRICS

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

ACTION: Notice of modification of one ruling letter and revocation of treatment relating to the country of origin of certain laminated fabrics.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection ("CBP") is modifying one ruling letter concerning the country of origin of certain laminated fabrics. Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 58, No. 36, on September 11, 2024. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 20, 2025.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 58, No. 36, on September 11, 2024, proposing to modify one ruling letter pertaining to the country of origin of certain laminated fabrics. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In New York Ruling Letter ("NY") F83624, dated April 6, 2000, CBP determined that the country of origin of the fabrics discussed in scenario # 1 and scenario # 2, is the United States. CBP has reviewed NY F83624 and has determined this ruling to be partially in error with regard to the country of origin marking analysis concerning the fabrics at issue in scenario # 1. Moreover, CBP has determined NY F83624 to be in error with regard to the country of origin of the fabrics at issue in scenario # 2. It is now CBP's position that the country of origin of the fabrics at issue in scenario # 1 is the United States, and the country of origin of the fabrics at issue in scenario # 2 is the foreign country in which those fabrics were manufactured.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY F83624, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H299896, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H299896
November 1, 2024
OT:RR:CTF:FTM H299896 TSM
CATEGORY: Origin

MS. SANDRA TOVAR
CST, INC.
P.O. BOX 1197
FAYETTEVILLE, GA 30214

RE: Modification of NY F83624; Country of origin of certain laminated fabrics

DEAR MS. TOVAR:

This is in reference to New York Ruling Letter ("NY") F83624, issued to CST, Inc. on April 6, 2000, concerning the tariff classification and country of origin of certain laminated fabrics. In that ruling, U.S. Customs and Border Protection ("CBP") determined that the country of origin of the fabrics at issue in scenarios one and two is the United States. Upon additional review, we have found this to be incorrect. For the reasons set forth below, we hereby modify NY F83624 with regard to the country of origin of the fabrics at issue in scenarios one (1) and two (2).[1]

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the *Customs Bulletin*, Volume 58, No. 36, on September 11, 2024, proposing to modify NY F83624, and to revoke any treatment accorded to substantially identical transactions. No comments were received in response to the notice.

FACTS:

NY F83624 describes the subject merchandise as follows:

Scenario # 1:

> According to your correspondence, a textile fabric (not stated whether knit or woven construction) of unspecified foreign origin will be imported into the United States with duties paid. You indicate in your letter that this fabric may be composed of a cotton, cotton blend, polyester, polyester blend, nylon, nylon blend, or any other fabric made up of natural or man-made fibers. In the United States, the foreign material will be laminated with a U.S. foam and another textile fabric of U.S. manufacture. We will assume the foam is plastics in nature, and will be between the two textile layers and be visible in cross-section.

Scenario # 2:

> This scenario is similar to the first scenario except that the foreign textile fabric will be laminated to the U.S. supplied foam material on one side only, without any fabric on the other side.

The fabrics of Scenarios # 1 and # 2 would fall under heading 5903.

In NY F83624, CBP stated that since the fabrics at issue are not knit to shape, but were wholly assembled in a single country, the United States, the country of origin of these fabrics is determined pursuant to 19 C.F.R. §

[1] The tariff classification of any of the fabrics at issue in NY F83624, as well as the country of origin of the fabric discussed in scenario # 3 of that ruling, are not addressed here.

102.21(c)(3)(ii). CBP determined that the country of origin is the United States, the country in which the fabrics at issue were wholly assembled. We have now reconsidered our country of origin determination, as set forth below.

ISSUE:

What is the country of origin of the laminated fabrics at issue?

LAW AND ANALYSIS:

The Uruguay Round Agreements Act ("URAA"), particularly Section 334, codified at 19 U.S.C. § 3592, as amended by Section 405 of Title IV of the Trade and Development Act of 2000 ("TDA"), sets forth rules of origin for textile and apparel products. In pertinent part, 19 U.S.C. § 3592 reads:

> (b) Principles
>
> (1) In general
>
> Except as otherwise provided for by statute, a textile or apparel product, for purposes of the customs laws and the administration of quantitative restrictions, originates in a country, territory, or insular possession, and is the growth, product, or manufacture of that country, territory, or insular possession, if –
>
> (A) the product is wholly obtained or produced in that country, territory, or possession;
>
> (B) the product is a yarn, thread, twine, cordage, rope, cable, or braiding and —
>
> (i) the constituent staple fibers are spun in that country, territory, or possession, or
>
> (ii) the continuous filament is extruded in that country, territory, or possession;
>
> (C) the product is a fabric, including a fabric classified under chapter 59 of the HTS, and the constituent fibers, filaments, or yarns are woven, knitted, needled, tufted, felted, entangled, or transformed by any other fabric-making process in that country, territory, or possession; or
>
> (D) the product is any other textile or apparel product that is wholly assembled in that country, territory, or possession from its component pieces.

Part 102 of the CBP Regulations (19 C.F.R. § 102) implements the rules of origin for textile and apparel products set forth in 19 U.S.C. § 3592. Section 102.21(c), CBP Regulations (19 C.F.R. § 102.21(c)), provides in pertinent part as follows:

> (c) *General rules.* Subject to paragraph (d) of this section, the country of origin of a textile or apparel product will be determined by sequential application of paragraphs (c) (1) through (5) of this section and, in each case where appropriate to the specific context, by application of the additional requirements or conditions of §§ 102.12 through 102.19 of this part.

(1) The country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced.

(2) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section.

(3) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1) or (2) of this section:

(i) If the good was knit to shape, the country of origin of the good is the single country, territory, or insular possession in which the good was knit; or

(ii) Except for fabrics of chapter 59 and goods of heading 5609, 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6209.20.5040, 6307.10, 6307.90, and 9404.90, if the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled.

(4) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1), (2) or (3) of this section, the country of origin of the good is the single country, territory, or insular possession in which the most important assembly or manufacturing process occurred.

(5) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1), (2), (3) or (4) of this section, the country of origin of the good is the last country, territory, or insular possession in which an important assembly or manufacturing process occurred.

The country of origin of textile and apparel products is determined by the sequential application of paragraphs (c)(1) through (c)(5) of Section 102.21. Paragraph (c)(1) provides that "[t]he country of origin of a textile or apparel product is the single country, territory or insular possession in which the good was wholly obtained or produced." The components comprising the fabrics at issue were produced in several different countries. Specifically, in scenario # 1 the fabric will be composed of three components: the textile fabric of unspecified foreign origin, the foam of U.S. origin, and another textile fabric of U.S. origin. In scenario # 2, the fabric will be composed of the textile fabric of unspecified foreign origin and the foam of U.S. origin. Therefore, the origin of the finished fabrics cannot be determined by reference to paragraph (c)(1).

Paragraph (c)(2) of Section 102.21 provides that where the country of origin cannot be determined according to paragraph (c)(1), resort should next be to paragraph (c)(2). The country of origin, according to paragraph (c)(2), is "the single country, territory or insular possession in which each foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e)" of Section 102.21. In NY F83624, these fabrics were determined to be classified in heading 5903, Harmonized Tariff of the United States ("HT-

SUS"). Therefore, paragraph (e)(1), as applicable to the instant determination, establishes a tariff shift rule that provides:

HTSUS	Tariff Shift and/or Other Requirement
5901–5903	
	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of heading 5901 through 5903 to finished fabric of heading 5901 through 5903 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or
	(2) If the country of origin cannot be determined under (1) above, a change to heading 5901 through 5903 from any other heading, including a heading within that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5803, 5806, 5808, and 6002 through 6006, and provided that the change is the result of a fabric-making process.

Upon review, we note that the fabrics at issue do not undergo the change in classification required, because those fabrics were not finished by both dyeing and printing and were not accompanied by any of the various finishing operations detailed in rule (1) noted above.

In addition, we find that rule (2) above is also not satisfied, because according to NY F83624, the change of unspecified foreign origin fabrics at issue in both scenario # 1 and scenario # 2 to heading 5903, was from one of the following headings: 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5803, 5806, 5808, and 6002, which are excluded under rule (2) noted above. Moreover, with regard to the fabrics at issue in scenario # 1, we note that those fabrics also did not undergo a "fabric-making process" within the meaning of 19 C.F.R. § 102.21(b)(2), which provides in relevant part that a "fabric-making process is any manufacturing operation that begins with polymers, fibers, filaments (including strips), yarns, twine, cordage, rope, or fabric strips and results in a textile fabric." The fabrics at issue in scenario # 1 consist of a textile fabric of unspecified foreign origin, a U.S. foam, and another textile fabric of U.S. origin, which will be laminated together in the United States. The fabric-making process occurred in two different countries, a foreign country and the United States, where the two textile fabrics were manufactured. Since the two fabrics underwent the "fabric-making process" in different countries, we find that the country of origin of the laminated fabrics cannot be determined pursuant to 19 C.F.R. § 102.211(c)(2), implementing 19 U.S.C. § 3592(b)(1)(C). With regard to the foam, we note that it is not taken into consideration for fabric-making purposes and therefore does not impact the country of origin determination under 19 U.S.C. § 3592(b)(1)(C). *See* Headquarters Ruling Letter ("HQ") 968229, dated July 18, 2006 (lamination of a single fabric with a GORE-TEX® membrane was not regarded as fabric-making process and therefore was found to not impact the country of origin under 19 U.S.C. § 3592(b)(1)(C); the country of origin was found to be the country in which the "fabric-making process" of the fabric occurred, specifically the country in which the fabric was woven). Thus, we must next turn to 19 C.F.R. § 102.211(c)(3).

Paragraph (c)(3) of Section 102.21 provides that where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1)

or (2) of this section: (i) If the good was knit to shape, the country of origin of the good is the single country, territory or insular possession in which the good was knit; or (ii) Except for fabrics of chapter 59 and goods of heading 5609, 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6307.10, 6307.90, 9404.90, , and 9619.00.31–33 if the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled.

The fabrics under consideration are not knit to shape. Accordingly, rule (c)(3)(i) does not apply. Moreover, the fabrics at issue are classified in heading 5903, HTSUS, and are thus fabrics of chapter 59. Therefore, rule (c)(3)(ii) also does not apply, and we must next turn to 19 C.F.R. § 102.21(c)(4).

Paragraph (c)(4) of Section 102.21 provides that where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1), (2) or (3) of this section, the country of origin is the single country, territory or insular possession in which the most important assembly or manufacturing process occurred. In this case, we find that the most important manufacturing operation occurred at the time of fabric formation. With regard to scenario # 1, we find that the fabric formation occurred in an unspecified foreign country and the United States, the countries in which the textile fabrics were manufactured. With regard to the foam of U.S. origin and the lamination process, we note that those are not "most important processes" for purposes of paragraph (c)(4) of Section 102.21. *See* HQ 959437, dated February 19, 1997 (for purposes of 19 C.F.R. § 102.21(c)(4), the country of origin of a knit lycra material, laminated together with 100 percent polyester foam, is the country in which the lycra material was knitted). Because the component fabrics at issue is scenario # 1 were manufactured in two different countries, we find that 19 C.F.R. § 102.21(c)(4) also does not apply with regard to scenario # 1. However, with regard to scenario # 2, we find that the fabric formation occurred in the unspecified foreign country where the textile fabric was manufactured. Therefore, we find that the foreign country in which the textile fabric was manufactured is the country of origin of the fabric at issue in scenario # 2.

Paragraph (c)(5) of Section 102.21 provides that where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1), (2), (3) or (4) of this section, the country of origin of the good is the last country, territory, or insular possession in which an important assembly or manufacturing process occurred. With regard to the fabric at issue in scenario # 1, we find that the country in which assembly of the three components of the fabric occurred is the United States – the country in which the textile fabric of unspecified foreign origin, the foam of U.S. origin, and another textile fabric of U.S. origin, were laminated together. Accordingly, we find that the country of origin of the fabric in scenario # 1 is the United States.

HOLDING:

Under 19 C.F.R. § 102.21(c)(5), the country of origin of the fabric at issue in scenario # 1 is the United States. Under 19 C.F.R. § 102.21(c)(4), the country of origin of the fabric at issue in scenario # 2 is the foreign country in which the textile fabric was manufactured.

EFFECT ON OTHER RULINGS:

NY F83624, dated April 6, 2000, is hereby MODIFIED with regard to the country of origin of the fabrics at issue in scenario # 1 and scenario # 2.

Sincerely,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF SIX RULING LETTERS, PROPOSED MODIFICATION OF TWO RULING LETTERS, AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF METAL AND RUBBER AUTOMOTIVE AIR SPRINGS AND SUSPENSION BUSHINGS

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

ACTION: Notice of proposed revocation of six ruling letters, proposed modification of two ruling letters, and proposed revocation of treatment relating to the tariff classification of metal and rubber automotive air springs and suspension bushings.

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

DATE: Comments must be received on or before December 20, 2024.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Shannon L. Stillwell, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. CBP is also allowing commenters to submit electronic comments to the following email address: *1625Comments@cbp.dhs.gov*. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Arrangements to inspect submitted comments should be made in advance by calling Ms. Shannon L. Stillwell at (202) 325–0739.

FOR FURTHER INFORMATION CONTACT: Suzanne Kingsbury, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at *suzanne.kingsbury@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke six ruling letters, and modify two ruling letters, pertaining to the tariff classification of metal and rubber automotive air springs and suspension bushings. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) N303345, dated March 28, 2019 (Attachment A), NY N303352, dated March 28, 2019 (Attachment B), NYN303355, dated March 28, 2019 (Attachment C), NY N273173, dated March 15, 2016, (Attachment D), NY N165423, dated June 7, 2011, (Attachment E), NY N302641, dated February 22, 2019, (Attachment F), NY N300207, dated September 5, 2018 (Attachment G), and NY 811465, dated July 7, 1995, (Attachment H), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the nine rulings identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY N303345, NY N303352, and NY N303355, CBP classified metal and rubber automotive air springs in heading 4016, HTSUS, specifically in subheading 4016.99.55, HTSUS, which provides for "[O]ther articles of vulcanized rubber other than hard rubber: Other: Other: Other: Other." In NY N273173, NY N302641, and NY N300207 CBP classified metal and rubber suspension bushings in subheading 4016.99.30, HTSUS, which provides for "[O]ther articles of vulcanized rubber other than hard rubber: Other: Other: Other: Of natural rubber." In NY 811465, CBP classified metal and rubber bushings under subheading 4106.99.35, HTSUS, which provides for "[O]ther articles of vulcanized rubber other than hard rubber: Other: Other: Other: Of natural rubber." In In NY N165423, CBP classified metal and rubber elastomeric bushings in either subheading 4016.99.30, HTSUS, or 4016.99.55, HTSUS, and metal and rubber hydraulic bushings in subheading 8487.90.00, HTSUS, which provides for "[M]achinery parts, not containing electrical connectors, insulators, coils, contacts or other electrical features, and not specified or included elsewhere in this chapter: Other." CBP has reviewed NY N303345, NY N303352, NY N303355, NY N273173, NY N302641, NY 811645, NY N165423 and NY N300207 and has determined the ruling letters to be in error. It is now CBP's position that the subject automotive air springs and suspension bushings are properly classified in heading 8708, HTSUS, specifically subheading 8708.99.55, HTSUS, which provides for "[P]arts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N303345, NY N303352, NY N303355, NY N273173, NY N302641, and NY 811645, to modify NY N165423 (limited to hydraulic and elastomeric bushings) and NY N300207 (excluding part #T920H), and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (HQ) H305332, set forth as Attachment I to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

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

Attachments

ATTACHMENT A

N303345

March 28, 2019
CLA-2–40:OT:RR:NC:N1:137
CATEGORY: Classification
TARIFF NO.: 4016.99.5500

ROBERT LEO
MEEKS, SHEPPARD, LEO & PILLSBURY
570 LEXINGTON AVENUE, SUITE 2405
NEW YORK, NY 10022

RE: The tariff classification of a sleeve type air spring from Mexico

DEAR MR. LEO:

In your letter dated March 5, 2019 you requested a tariff classification ruling on behalf of your client, Stemco.

The product under consideration is referred to as a sleeve type air spring. It is a vibration control air spring. It is composed of 30% aluminum, 35% vulcanized synthetic rubber (i.e. EDPM) and 35% composite plastic (nylon and glass fiber mixture). This air spring provides cushion over uneven surfaces and roads. It is not self-inflating and does not contain any inner mechanisms or motor.

Consideration was given to classifying the sleeve type air spring in heading 8716, Harmonized Tariff Schedule of the United States (HTSUS), which provides for trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof, as you suggested. However, though you claim that the rolling lobe air spring is almost exclusively used on trailers, the company markets them for a variety of motor vehicles.

Consideration was also given to classifying the sleeve type air spring in heading 8708, HTSUS, which provides for parts and accessories to motor vehicles. You state that the air spring is not excluded by the legal notes to be classified in Section XVII, and Chapter 87, HTSUS.

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

There is no argument that the air spring under consideration is in fact used in automotive applications. However, we need to determine if the spring is excluded by Section XVII or Chapter 87 notes. Note 2 to Section XVII states, "The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this Section." Note 2(a) excludes joints, washers or the like of any material or other articles of vulcanised rubber other than hard rubber from this Section. This exclusion does not only extend to joints, washers and the like of any material, but also to other articles of vulcanized rubber. The springs under review are made of vulcanized rubber, although not wholly, thus making it a composite good.

GRI 1 further provides that in the event the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. Since the air spring under review is a composite good, we have to resort to GRI 3, which guides us in classification of composite goods. GRI 3(b) states

in pertinent parts "...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."

You state that the function of the rubber material is to contain the compressed air and at the same time provide a flexible material that allows the air spring to move as the vehicle encounters bumps on the road surface. The steel, aluminum, and plastic materials are used to create the rigid end components.

It is the opinion of this office that it is the rubber portion of the spring that allows the spring to act as designed. Therefore, the essential character of the spring is imparted by the rubber component, making it an article of rubber. As a result, classification of the spring in Section XVII is precluded.

The applicable subheading for the rolling lobe air spring will be 4016.99.5500, HTSUS, which provides for Other articles of vulcanized rubber other than fard rubber: Other: Other: Other: Vibration control goods of a kind used in the vehicles of headings 8701 through 8705. The general rate of duty will be 2.5 percent ad valorem.

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

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

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

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

ATTACHMENT B

N303352

March 28, 2019
CLA-2–40:OT:RR:NC:N1:137
CATEGORY: Classification
TARIFF NO.: 4016.99.5500

ROBERT LEO
MEEKS, SHEPPARD, LEO & PILLSBURY
570 LEXINGTON AVENUE, SUITE 2405
NEW YORK, NY 10022

RE: The tariff classification of convoluted/bellows air spring from Mexico

DEAR MR. LEO:

In your letter dated March 5, 2019 you requested a tariff classification ruling on behalf of your client, Stemco.

The product under consideration is referred to as a convoluted/bellows air spring. It is a vibration control air spring. It is composed of 65% metal (steel or iron), 30% vulcanized synthetic rubber (i.e. EDPM) and 5% composite plastic (nylon and glass fiber mixture). This air spring provides cushion over uneven surfaces and roads. It is not self-inflating and does not contain any inner mechanisms or motor.

Consideration was given to classifying the convoluted/bellows air spring in heading 8716, Harmonized Tariff Schedule of the United States (HTSUS), which provides for trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof, as you suggested. However, though you claim that the rolling lobe air spring is almost exclusively used on trailers, the company markets them for a variety of motor vehicles.

Consideration was also given to classifying the convoluted/bellows air spring in heading 8708, HTSUS, which provides for parts and accessories to motor vehicles. You state that the air spring is not excluded by the legal notes to be classified in Section XVII, and Chapter 87, HTSUS.

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

There is no argument that the air spring under consideration is in fact used in automotive applications. However, we need to determine if the spring is excluded by Section XVII or Chapter 87 notes. Note 2 to Section XVII states, "The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this Section." Note 2(a) excludes joints, washers or the like of any material or other articles of vulcanised rubber other than hard rubber from this Section. This exclusion does not only extend to joints, washers and the like of any material, but also to other articles of vulcanized rubber. The springs under review are made of vulcanized rubber, although not wholly, thus making it a composite good.

GRI 1 further provides that in the event the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. Since the air spring under review is a composite good, we have to resort to GRI 3, which guides us in classification of composite goods. GRI 3(b) states

in pertinent parts "...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."

You state that the function of the rubber material is to contain the compressed air and at the same time provide a flexible material that allows the air spring to move as the vehicle encounters bumps on the road surface. The steel, aluminum, and plastic materials are used to create the rigid end components.

It is the opinion of this office that it is the rubber portion of the spring that allows the spring to act as designed. Therefore, the essential character of the spring is imparted by the rubber component, making it an article of rubber. As a result, classification of the spring in Section XVII is precluded.

The applicable subheading for the rolling lobe air spring will be 4016.99.5500, HTSUS, which provides for Other articles of vulcanized rubber other than fard rubber: Other: Other: Other: Vibration control goods of a kind used in the vehicles of headings 8701 through 8705. The general rate of duty will be 2.5 percent ad valorem.

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

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

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

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

ATTACHMENT C

N303355

March 28, 2019
CLA-2–40:OT:RR:NC:N1:137
CATEGORY: Classification
TARIFF NO.: 4016.99.5500

ROBERT LEO
MEEKS, SHEPPARD, LEO & PILLSBURY
570 LEXINGTON AVENUE, SUITE 2405
NEW YORK, NY 10022

RE: The tariff classification of rolling lobe air spring from Mexico

DEAR MR. LEO:

In your letter dated March 5, 2019 you requested a tariff classification ruling on behalf of your client, Stemco.

The product under consideration is referred to as a rolling lobe air spring. It is a suspension and vibration control air spring. It is composed of 25% composite plastic (nylon and glass fiber mixture), 30% vulcanized synthetic rubber (i.e. EDPM), 35% metal (iron or steel) and 10% aluminum. Rolling lobe air springs incorporate a piston which allows the flexible member to roll along the piston's surface as forces change. It is also referred to as a "piston type" air spring.

Consideration was given to classifying the rolling lobe air spring in heading 8716, Harmonized Tariff Schedule of the United States (HTSUS), which provides for trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof, as you suggested. However, though you claim that the rolling lobe air spring is almost exclusively used on trailers, the company markets them for a variety of motor vehicles.

Consideration was also given to classifying the rolling lobe air spring in heading 8708, HTSUS, which provides for parts and accessories to motor vehicles. You state that the air spring is not excluded by the legal notes to be classified in Section XVII, and Chapter 87, HTSUS.

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

There is no argument that the air spring under consideration is in fact used in automotive applications. However, we need to determine if the spring is excluded by Section XVII or Chapter 87 notes. Note 2 to Section XVII states, "The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this Section." Note 2(a) excludes joints, washers or the like of any material or other articles of vulcanised rubber other than hard rubber from this Section. This exclusion does not only extend to joints, washers and the like of any material, but also to other articles of vulcanized rubber. The springs under review are made of vulcanized rubber, although not wholly, thus making it a composite good.

GRI 1 further provides that in the event the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. Since the air spring under review is a composite good, we have to resort

to GRI 3, which guides us in classification of composite goods. GRI 3(b) states in pertinent parts "...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."

You state that the function of the rubber material is to contain the compressed air and at the same time provide a flexible material that allows the air spring to move as the vehicle encounters bumps on the road surface. The steel, aluminum, and plastic materials are used to create the rigid end components.

It is the opinion of this office that it is the rubber portion of the spring that allows the spring to act as designed. Therefore, the essential character of the spring is imparted by the rubber component, making it an article of rubber. As a result, classification of the spring in Section XVII is precluded.

The applicable subheading for the rolling lobe air spring will be 4016.99.5500, HTSUS, which provides for Other articles of vulcanized rubber other than fard rubber: Other: Other: Other: Vibration control goods of a kind used in the vehicles of headings 8701 through 8705. The general rate of duty will be 2.5 percent ad valorem.

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

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

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

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

ATTACHMENT D

N273173

March 15, 2016
CLA-2–40:OT:RR:NC:N2:421
CATEGORY: Classification
TARIFF NO.: 4016.99.3000

R. KEVIN WILLIAMS
CLARK HILL PLC
150 N. MICHIGAN AVENUE, SUITE 2700
CHICAGO, IL 60601

RE: The tariff classification of suspension bushings from Poland

DEAR MR. WILLIAMS:

In your letter dated February 18, 2016, on behalf of the TrelleborgVibracoustic Group, you requested a tariff classification ruling. Samples were provided, and will be returned to you.

The merchandise at issue consists of three models of suspension bushing, identified by the part numbers 725–0427, 725–0435, and U30348–000. You indicate that the bushings are intended for use in the suspension systems of passenger vehicles, and that they are designed reduce noise and control vibration.

Part number 725–0427 consists of an inner core of aluminum alloy, an outer sleeve of non-alloy steel, and a layer of compounded natural rubber between the two metal components. Part number 725–0435 consists of an inner core of non-alloy steel, a rate ring of aluminum alloy, an outer sleeve of aluminum alloy, and layers of compounded natural rubber between each of the metal components. Part number U30348–000 consists of an inner core, rate ring, and outer sleeve constructed of aluminum alloy, with layers of compounded natural rubber between each of the metal components.

As with the elastomeric bushings described in New York Ruling Letter N165423, dated June 7, 2011, it is the rubber component of the subject suspension bushings that serves to reduce noise and vibration. As a result, the essential character of the three suspension bushings covered by your submission is imparted by the natural rubber.

The applicable subheading for part numbers 725–0427, 725–0435, and U30348–000 will be 4016.99.3000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Other articles of vulcanized rubber other than hard rubber: Other: Other: Other: Of natural rubber: Vibration control goods of a kind used in the vehicles of headings 8701 through 8705. The rate of duty will be free.

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

Your submission referenced a fourth item, a hydraulic bushing. We need additional information in order to issue a ruling on that product. Please submit the information described below:

> Is the hydraulic bushing solely used with automobiles? Can it be used in other types of vehicles or machinery? If so, please indicate the types of vehicles or machinery it can be used with.

Can the hydraulic bushing be used in other applications or areas of the vehicle other than the suspension system? If so, please identify all other applications.

If you decide to resubmit your request, please include all of the material that we have returned to you and mail your request to Director, National Commodity Specialist Division, Regulations and Rulings, Office of International Trade, 1100 Raymond Boulevard, Newark, New Jersey 07102, attn: Binding Ruling Request. If your request was submitted electronically and the information required does not involve sending a sample, you can re-submit your request and the additional information electronically.

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

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

Sincerely,

DEBORAH C. MARINUCCI
Acting Director
National Commodity Specialist Division

ATTACHMENT E

N165423

June 7, 2011
CLA-2–84:OT:RR:NC:N1:102
CATEGORY: Classification
TARIFF NO.: 8487.90.0080; 4016.99.3000;
4016.99.5500; 4016.99.3500; 4016.99.6050;
2905.31.0000

MR. GARY J. WIECKOWSKI
ZF GROUP NAO
15811 CENTENNIAL DRIVE
NORTHVILLE, MI 48188

RE: The tariff classification of a hydraulic and an elastomeric bushing and the components used in the manufacture of the bushings

DEAR MR. WIECKOWSKI:

In your letter dated May 11, 2011 you requested a tariff classification ruling. Descriptive literature and illustrations were included with your submission.

The products you plan to import are a hydraulic bushing, an elastomeric bushing and the individual components that make up each complete bushing. The hydraulic and the elastomeric bushing are a type of vibration isolator. They are described as rubber-to-metal structures connected in between two members of a vibration system. The function of the bushings is to dampen the energy as it passes through them, resulting in noise reduction and vibration control. The bushings are principally used in suspension systems for automotive vehicles and trucks.

The hydraulic bushing includes an endcap, a travel limiter, a cage, an inner metal, a rubber component, an outer component and a glycol mixture. These parts can be made of different materials. The endcap and inner metal are made of either steel or aluminum. The travel limiter, the cage and the outer component are made of steel, aluminum or plastic. The rubber component is made from either natural rubber, EPDM (ethylene propylene diene monomer) synthetic rubber, nitrile synthetic rubber (NR) or butyl synthetic rubber (BR) while the glycol mixture consists of Ethylene glycol (80%) and water (20%).

The endcap secures the travel limiter in place and also serves as the interface to the mating part. The travel limiter partly controls the travel/action of the bushing. The cage along with the inner metal acts as a bonding surface for the rubber. The glycol mixture is the interior fluid that provides the hydraulic damping function while the rubber component performs some damping as well. In addition, the rubber component along with the outer component serves as a membrane to seal in the glycol mixture. Based on the information made available, the glycol mixture imparts the essential character to the hydraulic bushing.

The elastomeric bushing, like the hydraulic bushing, consists of an inner metal (steel or aluminum), a rubber component (natural rubber, EPDM synthetic rubber, nitrile synthetic rubber or butyl synthetic rubber) and an optional outer component (steel, aluminum or plastic). This bushing may also be designed or produced with an intermediate component made of steel, aluminum or plastic that acts as a bonding surface for the rubber component.

However, unlike the hydraulic bushing, the elastomeric bushing does not include a glycol mixture which performs the damping function. The rubber component reduces noise, controls vibration and imparts the essential character to the bushing.

The applicable subheading for the hydraulic bushing will be 8487.90.0080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other machinery parts, not containing electrical connectors, insulators, coils contacts or other electrical features, and not specified or included elsewhere in Chapter 84. The rate of duty will be 3.9 percent ad valorem.

The applicable subheading for the elastomeric bushing, when made with natural rubber, will be 4016.99.3000, HTSUS, which provides for other articles of vulcanized rubber other than hard rubber: other: of natural rubber: vibration control goods of a kind used in the vehicles of headings 8701 through 8705. The rate of duty will be free.

The applicable subheading for the elastomeric bushing, when made with synthetic rubber, will be 4016.99.5500, HTSUS, which provides for other articles of vulcanized rubber other than hard rubber: other: other: vibration control goods of a kind used in the vehicles of headings 8701 through 8705. The rate of duty will be 2.5 percent ad valorem.

The applicable subheading for the endcap, the travel limiter, the cage, the inner metal, the intermediate component and the outer component, when imported separately, will be 8487.90.0080, HTSUS, which provides for other machinery parts, not containing electrical connectors, insulators, coils contacts or other electrical features, and not specified or included elsewhere in Chapter 84. The rate of duty will be 3.9 percent ad valorem.

The applicable subheading for the rubber component for both the hydraulic and elastomeric bushing, when made of natural rubber, will be 4016.99.3500, HTSUS, which provides for other articles of vulcanized rubber other than hard rubber: other: of natural rubber: other. The rate of duty will be free.

The applicable subheading for the rubber component for both the hydraulic and elastomeric bushing, when made of synthetic rubber (EPDM, NR or BR), will be 4016.99.6050, HTSUS, which provides for other articles of vulcanized rubber other than hard rubber: other: other: other. The rate of duty will be 2.5 percent ad valorem.

The applicable subheading for the glycol mixture will be 2905.31.0000, HTSUS, which provides for Ethylene glycol (Ethanediol). The rate of duty will be 5.5 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the classification of the hydraulic bushing, contact National Import Specialist Kenneth T. Brock at (646) 733–3009. If you have any questions regarding the classification of the elastomeric bushing, please contact National Import Specialist Joan Mazzola at (646) 733–3023. If you have any questions concerning the classification of the glycol mixture, please contact National Import Specialist Stephanie Joseph at (646) 733–3268.

Sincerely,

ROBERT B. SWIERUPSKI
Director
National Commodity Specialist Division

ATTACHMENT F

N302641
February 22, 2019
CLA-2–40:OT:RR:NC:N1:137
CATEGORY: Classification
TARIFF NO.: 4016.99.3000

MATTHEW MOORE
NISSAN NORTH AMERICA, INC.
ONE NISSAN WAY
FRANKLIN, TN 37067

RE: The tariff classification of three types of bushings from Japan

DEAR MR. MOORE:

In your letter dated January 24, 2019 you requested a tariff classification ruling.

The merchandise at issue consists of three types of bushings, identified by the part numbers 55157EA501, 8200568119, and 551350W000. You indicate that they are intended to absorb vibrations in specified locations within an automobile.

Part # 55157EA501 is described as a Steering Knuckle Bushing. It is comprised of an inner and outer collar of steel with an insulator in the middle composed of a mixture of natural rubber and butadiene rubber where the natural rubber predominates by weight.

Part # 8200568119 is described as a Rear Axle Bushing. It is comprised of an inner collar of steel, outer collar of plastic and an insulator in the middle composed entirely of natural rubber.

Part # 551350W000 is described as a Suspension Link Rod Bushing. It is comprised of an inner collar of steel and an outer insulator composed entirely of natural rubber.

In all three bushings, it is the rubber component that controls the vibrations within an automobile. The steel components are merely there to facilitate contact of the bushing with the frame of the automobile. Therefore, it is the rubber component that imparts the essential character of each of these parts.

The applicable subheading for the bushings will be 4016.99.3000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of vulcanized rubber other than hard rubber: other: of natural rubber: vibration control goods of a kind used in the vehicles of headings 8701 through 8705. The rate of duty will be free.

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

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

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

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

ATTACHMENT G

N300207
September 5, 2018
CLA-2–40:OT:RR:NC:N1:119
CATEGORY: Classification
TARIFF NO.: 4016.99.3000

AMANDA K. BROITMAN
GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN AND KLESTADT LLP
599 LEXINGTON AVENUE, FLOOR 36
NEW YORK, NY 10022–7648

RE: The tariff classification of Five Rubber Automotive Parts from Japan

DEAR MS. BROITMAN:

In your letter dated August 16th, 2018, you requested a tariff classification ruling on behalf of Toyo Automotive Parts, Inc. The samples that you submitted will be retained by this office for reference.

You indicate that the parts are called either bushings, or stoppers. The subject merchandise is as follows:

1. Part K1021H
2. Part P730A
3. Part P500A
4. Part 6108X
5. Part T920H

You indicate that the parts under consideration "function in conjunction with the engine mount and the link arm". You specify that there are distinct specific roles of the engine mount and the link arm. They are in summary: 1) linkage between body frame and engine mount; 2) support for engine weight; 3) motion control; 4) vibration isolation for the engine; 5) linkage between frame and under body parts (i.e.-suspension); 6) vibration isolation for the body; 7) ride comfort and stability.

Part K1021H is a rubber component of a torque rod. You indicate that a torque rod is a type of engine mount. Due to its rubber composition, this part helps control the back and forth motion of the engine.

Part No. P730A is a suspension member mount. This part is located between the body frame and the suspension member. Its main function is the same as the link arm. It provides vibration isolation for the frame body.

Part NO. P500A is a compression rod bushing. Its function is to control the "jerk" motion from the torque, and vibration from the engine.

Part No 6108X is a rubber component of the right engine mount. Part 6108X helps to absorb friction and control vibration.

Part No. T920H is a cushion for a shock absorber. The part is specifically installed in the upper side of the shock absorber. We note that this part appears to be 100% rubber, with no metal component visible.

The instant merchandise is excluded from classification in Chapter 87 because of Section XVII, Note 2 (a), which indicates:

> 2. The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this section:

(a) Joints, washers or the like of any material (classified according to their constituent material or in heading 8484) or other articles of vulcanized rubber other than hard rubber (heading 4016);

You indicate that these products all contain both natural and synthetic rubber, with natural rubber being the majority component.

We note that, other than Part No. T920H, the other parts listed above contain and inner hollow diameter of metal (of varying thickness), with rubber surrounding the inner hollow rod, and encased in a metal housing with the rubber component visible on the top and the bottom. You provided data with your earlier submission that shows the majority of the rubber composition, of these parts, is a "natural rubber". In all of these parts the main function appears to be imparted by the rubber component.

The applicable subheading for Part K1021H, Part P730A, Part P500A, Part 6108X, and Part T920H will be 4016.99.3000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other articles of vulcanized rubber other than hard rubber: Other: Other: Other: Of natural rubber: Vibration control goods of a kind used in the vehicles of headings 8701 through 8705." The rate of duty will be free.

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

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

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

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

ATTACHMENT H

NY 811465

July 7, 1995
CLA-2–40:S:N:N6:221 811465
CATEGORY: Classification
TARIFF NO.: 4016.99.3500

MS. ANNA AUSTIN
THE BINKLEY COMPANY
MAIN & ELM STREETS
P.O. BOX 370
WARRENTON, MO 63383–0370

RE: The tariff classification of a rubber bushing from China.

DEAR MS. AUSTIN:

In your letter dated June 7, 1995, you requested a tariff classification ruling.

The sample submitted with your letter is a bushing used on a trailer suspension. It is designed to reduce the transmission of high frequency vibration and noise from the road to the trailer body. It consists principally of natural rubber, with an inner steel sleeve for support.

The applicable subheading for the bushing will be 4016.99.3500, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of vulcanized rubber other than hard rubber, of natural rubber, other. The rate of duty will be 3.4 percent ad valorem.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

ATTACHMENT I

HQ H305332
OT:RR:CTF:EMAIN H305332 SKK
CATEGORY: Classification
TARIFF NO.: 8708.99.55

ROBERT LEO
MEEKS, SHEPPARD, LEO & PILLSBURY
570 LEXINGTON AVENUE, SUITE 2405
NEW YORK, NY 10022

RE: Revocation of NY N303345, NY N303352; NY N303355; NY N273173; NY N302641; NY 811465; modification of NY N165423 and NY N300207; Tariff classification of metal and rubber air springs; Metal and rubber suspension bushings.

DEAR MR. LEO:

This ruling is in reference to New York Ruling Letters (NY's) N303345, NY N303352 and NY N303355, all issued to you on March 28, 2019, in which U.S. Customs and Border Protection (CBP) classified various styles of metal and rubber air springs under heading 4016, HTSUS, specifically subheading 4016.99.55, HTSUS, which provides for "[O]ther articles of vulcanized rubber other than hard rubber: Other: Other: Other: Other." Upon reconsideration, we have determined that the tariff classification of the merchandise at issue in NY N303345, NY N303352 and NY N303355 is incorrect.

CBP has also reviewed the following rulings pertaining to the tariff classification of automotive vibration control devices made of metal and rubber:

- NY N273173, dated March 15, 2016, in which three models of metal and rubber suspension bushings were classified under subheading 4016.99.30, HTSUS, which provides for "[O]ther articles of vulcanized rubber other than hard rubber: Other: Other: Other: Of natural rubber";
- NY N165423, dated June 7, 2011, in which metal and rubber hydraulic and elastomeric bushings were classified under either subheading 4016.99.30, HTSUS, which provides for "[O]ther articles of vulcanized rubber other than hard rubber: Other: Other: Other: Of natural rubber" or under subheading 4016.99.55, HTSUS, and hydraulic bushings were classified under heading 8487, HTSUS, specifically subheading 8487.90.00, HTSUS, which provides for "[M]achinery parts, not containing electrical connectors, insulators, coils, contacts or other electrical features, and not specified or included elsewhere in this chapter: Other." This ruling does not pertain to the other bushing component parts at issue in NY N165423;
- NY N302641, dated February 22, 2019, in which three styles of metal and rubber bushings were classified under subheading 4016.99.30, HTSUS;
- NY N300207, dated September 5, 2018, in which several styles of metal and rubber bushings and suspension mounts (excluding the all-rubber part #T920H) were classified under subheading 4016.99.30, HTSUS;

- NY 811465, dated July 7, 1995, in which metal and rubber bushings were classified under subheading 4016.99.35, HTSUS (1995), which provides for "[O]ther articles of vulcanized rubber other than hard rubber: Other: Other: Other: Of natural rubber."

Upon reconsideration we have determined that the tariff classification of the merchandise at issue in NY N273173, NY N165423 (as regards the metal and rubber hydraulic and elastomeric bushings), NY N302641, NY N300207(as regards the metal and rubber bushings and suspension mounts), and NY 811465 is also incorrect.

Pursuant to the analysis set forth below, CBP is revoking NY N303345, NY N303352, NY N303355, NY N273173, NY N302641, and NY 811465, as well as modifying NY N165423 and NY N300207.

FACTS:

In NY N30345, dated March 28, 2019, the product under consideration is described as "...a sleeve type air spring. It is a vibration control air spring... composed of 30% aluminum, 35% vulcanized synthetic rubber (*i.e.,* EDPM) and 35% composite plastic (nylon and glass fiber mixture). The air spring provides cushion over uneven surfaces and roads. It is not self-inflating and does not contain any inner mechanisms or motor."

In NY N303352, dated March 28, 2019, the product under consideration is described as ...a convoluted/bellows air spring. It is a vibration control air spring ... composed of 65% metal (steel or iron), 30% vulcanized synthetic rubber (*i.e.*, EDPM) and 5% composite plastic (nylon and glass fiber mixture). This air spring provides cushion over uneven surfaces and roads. It is not self-inflating and does not contain any inner mechanisms or motor." The ruling further describes the subject articles as marketed "for a variety of motor vehicles."

In NY N303355, dated March 28, 2019, the product under consideration is described as "...a rolling lobe air spring. It is a suspension and vibration control air spring, composed of 25% composite plastic (nylon and glass fiber mixture), 30% vulcanized synthetic rubber (*i.e.,* EDPM), 35% metal (iron or steel) and 10% aluminum. Rolling lobe air springs incorporate a piston which allows the flexible member to roll along the piston's surface as forces change. It is also referred to as a 'piston type' air spring."

In NY N273173, dated March 15, 2016, the products under consideration are comprised of three models of suspension bushings, identified by the part numbers 725–0427, 725–0435, and U30348–000. The bushings are described as "...intended for use in the suspension systems of passenger vehicles. Part number 725–0427 consists of an inner core of aluminum alloy, an outer sleeve of non-alloy steel, and a layer of compounded natural rubber between the two metal components. Part number 725–0435 consists of an inner core of non-alloy steel, a rate ring of aluminum alloy, an outer sleeve of aluminum alloy, and layers of compounded natural rubber between each of the metal components. Part number U30348–000 consists of an inner core, rate ring, and outer sleeve constructed of aluminum alloy, with layers of compounded natural rubber between each of the metal components."

In NY N165423, dated June 7, 2011, the products under consideration are comprised of hydraulic bushings, elastomeric bushings and the individual components that make up each complete bushing. Our review of NY N165423 is limited to the hydraulic and elastomeric bushings. They are described as

"...rubber-to-metal structures connected in between two members of a vibration system. The function of the bushings is to dampen the energy as it passes through them, resulting in noise reduction and vibration control. The bushings are principally used in suspension systems for automotive vehicles and trucks.... The glycol mixture is the interior fluid that provides the hydraulic damping function while the rubber component performs some damping as well... the glycol mixture imparts the essential character to the hydraulic bushing..... The elastomeric bushing, like the hydraulic bushing, consists of an inner metal (steel or aluminum), a rubber component (natural rubber, EPDM synthetic rubber, nitrile synthetic rubber or butyl synthetic rubber) and an optional outer component (steel, aluminum or plastic). This bushing may also be designed or produced with an intermediate component made of steel, aluminum or plastic that acts as a bonding surface for the rubber component. However, unlike the hydraulic bushing, the elastomeric bushing does not include a glycol mixture which performs the damping function. The rubber component reduces noise, controls vibration and imparts the essential character to the bushing."

In NY N302641, dated February 22, 2019, the products under consideration are comprised of three styles of bushing, identified by the part numbers 55157EA501, 8200568119, and 551350W000. They are described as "...intended to absorb vibrations in specified locations within an automobile. Part # 55157EA501 is described as a Steering Knuckle Bushing. It is comprised of an inner and outer collar of steel with an insulator in the middle composed of a mixture of natural rubber and butadiene rubber where the natural rubber predominates by weight. Part # 8200568119 is described as a Rear Axle Bushing. It is comprised of an inner collar of steel, outer collar of plastic and an insulator in the middle composed entirely of natural rubber. Part # 551350W000 is described as a Suspension Link Rod Bushing. It is comprised of an inner collar of steel and an outer insulator composed entirely of natural rubber."

In NY N300207, dated September 5, 2018, the products under consideration are comprised of bushings and mounts, identified as parts K1021H, P730A, P500A, 6108X, and T920H. Our review of NY N300207 excludes part T920H. The functions of the subject articles are described as providing: "...1) linkage between body frame and engine mount; 2) support for engine weight; 3) motion control; 4) vibration isolation for the engine; 5) linkage between frame and under body parts (*i.e.*, suspension); 6) vibration isolation for the body; 7) ride comfort and stability." The parts are described as follows: "Part K1021H is a rubber component of a torque rod... a torque rod is a type of engine mount... Part No. P730A is a suspension member mount. This part is located between the body frame and the suspension member. Its main function is the same as the link arm. It provides vibration isolation for the frame body.....Part No. P500A is a compression rod bushing. Its function is to control the "jerk" motion from the torque, and vibration from the engine...Part No 6108X is a rubber component of the right engine mount. Part 6108X helps to absorb friction and control vibration... other than Part No. T920H, the other parts listed above contain and inner hollow diameter of metal (of varying thickness), with rubber surrounding the inner hollow rod, and encased in a metal housing with the rubber component visible on the top and the bottom."

In NY 811465, dated July 7, 1995, the product at issue is a metal and rubber bushing used on a trailer suspension to reduce vibration and noise.

LAW AND ANALYSIS:

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

GRI 6 provides:

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

The HTSUS subheadings under consideration are as follows:

4016 Other articles of vulcanized rubber other than hard rubber:
8487 Machinery parts, not containing electrical connectors, insulators, coils, contacts or other electrical features, and not specified or included elsewhere in this chapter:
8708 Parts and accessories of the motor vehicles of headings 8701 to 8705:

Section XVII Note 2(a) and 3 provide:

> 2. The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this Section:
>
> (a) Joints, washers or the like of any material (classified according to their constituent material or in heading 84.84) or other articles of vulcanised rubber other than hard rubber (heading 40.16)....
>
> 3. References in chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those chapters. A part or accessory which answers to a description in two or more of the headings of those chapters is to be classified under that heading which corresponds to the principal use of that part or accessory.

As heading 8708, HTSUS, falls within Section XVII, the terms of Note 2(a) are applicable. Section XVII Note 2(a) excludes, in pertinent part, "other articles of vulcanized rubber" from heading 8708, HTSUS, and directs their classification to heading 4016, HTSUS. As the subject articles described in the above-cited rulings are made from various combinations of rubber, metal and plastics, they are all composite goods. As such, they are not "of rubber" for purposes of classification in heading 4016, HTSUS, pursuant to GRI 1. Consequently, the subject articles are not excluded from heading 8708, HTSUS, by Section XVII Note 2(a).

Section XVII Note 3 excludes from heading 8708, HTSUS, "parts" or "accessories" that are not suitable for use solely or principally with the articles of chapters 86 to 88. In this regard, we note that the articles at issue, as per the descriptions set forth *supra*, are all intended for use with specific vehicles of headings 8701 to 8708. Specifically, the air springs subject to NY N303345,

NY N303352 and NY N303355, and the bushings subject to NY N273173, NY N165423, NY N302641, NY N300207 (including the metal and rubber mounts), and NY 811465 are used as vibration control devices in vehicles. They are therefore not excluded from Section XVII by operation of Note 3 and are *prima facie* classifiable heading 8708, HTSUS, which provides for "[P]arts and accessories of the motor vehicles of headings 8701 to 8705" by virtue of the fact that they augment the operation of the vehicles into which they are incorporated.

As regards the correct classification at the subheading level per GRI 6, *supra*, whether the subject articles are "parts" of suspension systems classifiable under subheading 8708.80, HTSUS, or "other" parts and accessories of subheading 8708.99, HTSUS, we note that the courts have considered the meaning of the term "parts" for purposes of tariff classification. In *Rollerblade, Inc. v. United States*, 283 F.3d 1349 (Fed. Cir. 2002), the Federal Circuit determined that parts are "an essential element or constituent; integral portion which can be separated, replaced, etc." *Id at* 1353, (citing *Webster's New World Dictionary*, 984 (3d College Ed. 1988)). Although heading 8708, HTSUS, provides for parts and accessories for motor vehicles, subheading 8708.80, HTSUS, only extends to parts of suspension systems. As the function of the subject air springs and bushings is to control vibration to improve vehicle ride and lessen vibration and noise, the articles are not necessary to a motor vehicle in the manner of a "part" as defined by the courts. Therefore, they are not "parts" of subheading 8708.80, HTSUS. The subject articles are properly classified under subheading 8708.99.55, HTSUS, which provides for "[P]arts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other." This conclusion is consistent with NY R01224, dated January 18, 2005, in which CBP classified metal and rubber automotive air springs (specifically the "AIR SPRING-CAB AIR SUSP") under subheading 8708.99.55, HTSUS, NY N274556, dated April 22, 2016, in which CBP classified metal and rubber suspension bushings under subheading 8708.99.55, HTSUS, and NY N274556, dated April 22, 2016, in which CBP classified hydraulic bushings made of metal, rubber, plastic, and glycol under subheading 8708.99.55, HTSUS.

We note that the hydraulic bushing at issue in NY N165423 was classified under heading 8487, HTSUS, specifically subheading 8487.90.00, HTSUS, which provides for "[M]achinery parts, not containing electrical connectors, insulators, coils, contacts or other electrical features, and not specified or included elsewhere in this chapter: Other." As set forth *supra*, the hydraulic bushings at issue in N165423 are not parts and therefore classification under heading 8487, HTSUS, is precluded.

Lastly, as classification under heading 8708, HTSUS, is pursuant to GRI 1, we do not reach the issue of which composite material imparts the essential character to the subject goods pursuant to GRI 3(b).

HOLDING:

By application of GRIs 1 and 6, the articles at issue in NY N303345, NY N303352, NY N303355, NY N273173, NY N165423 (limited to hydraulic and elastomeric bushings), NY N302641, NY N300207 (excluding part #T920H), and NY 811465 are classified in heading 8708, HTSUS, specifically subheading 8708.99.55, HTSUS, which provides for "[P]arts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other:

Other: Other." The applicable rate of duty is 2.5% *ad valorem*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at *www.usitc.gov*.

EFFECT ON OTHER RULINGS:

NY N303345, NY N303352, NY N303355, NY N273173, NY N302641, and NY 811645 are hereby REVOKED. NY N165423 (limited to hydraulic and elastomeric bushings) and NY N300207 (excluding part #T920H) are hereby MODIFIED.

Sincerely,

YULIYA A. GULIS,
Director
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19 CFR PART 177

REVOCATION OF TWO RULING LETTERS, MODIFICATION OF THREE RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF SAUCES

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

ACTION: Notice of revocation of two ruling letters modification of three ruling letters, and of revocation of treatment relating to the tariff classification of sauces.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking two ruling letters and modifying three ruling letters concerning tariff classification of sauces under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 58, No. 36, on September 11, 2024. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 20, 2025.

FOR FURTHER INFORMATION CONTACT: Parisa J. Ghazi, Food, Textiles and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0272.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 58, No. 36, on September 11, 2024, proposing to revoke two ruling letters and modify three ruling letters pertaining to the tariff classification of sauces. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In New York Ruling Letter ("NY") N195658, NY D88850, NY 890395, Headquarters Ruling Letter ("HQ") 088976, NY 856914, HQ 085838, CBP classified sauces in heading 2005 or 2008, HTSUS. CBP has reviewed NY N195658, NY D88850, NY 890395, HQ 088976, NY 856914, and HQ 085838 and has determined the ruling letters to be in error. It is now CBP's position that sauces are properly classified, in heading 2103, HTSUS, which provides for "Sauces and preparations therefore; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY 856914 and HQ 085838 and modifying NY N195658, NY D88850, NY 890395, and HQ 088976, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H317626, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H317626
November 1, 2024
OT:RR:CTF:FTM H317626 PJG
CATEGORY: Classification
TARIFF NO.: 2103.20.40; 2103.90.90

MS. CATHERINE WEEKS
CASAS INTERNATIONAL BROKERAGE, INC.
6775 CUSTOMHOUSE PLAZA, SUITE J
OTAY MESA, CALIFORNIA 92073

RE: Revocation of HQ H259324, HQ H258812, NY 856914, and HQ 085838; Modification of NY N195658, NY D88850, NY 890395, and HQ 088976; Classification of sauces; Revocation by operation of law; *Mondiv, Div. of Lassonde Specialties Inc. v. United States*, 329 F. Supp. 3d 1331 (Ct. Int'l Trade 2018); Mild Jalapeno Red Salsa and Mild Jalapeno Green Salsa

DEAR MS. WEEKS:

This is in reference to New York Ruling Letter ("NY") NY 856914, dated October 24, 1990, issued to you concerning the tariff classification under the Harmonized Tariff Schedule of the United States ("HTSUS") of two types of salsa, specifically, a Mild Jalapeno Red Salsa and a Mild Jalapeno Green Salsa.

In NY 856914, U.S. Customs (the predecessor to U.S. Customs and Border Protection ("CBP")) classified the Mild Jalapeno Red Salsa in heading 2005, HTSUS, which in the 1990 version of the HTSUS provided for "Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen" and classified the Mild Jalapeno Green Salsa in heading 2008, HTSUS, which provides for "Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included."

We have reviewed NY 856914 and find it to be in error. For the reasons set forth below, we revoke NY 856914 and Headquarters Ruling Letter ("HQ") 085838, dated December 21, 1989, and modify NY N195658, dated January 4, 2012, NY D88850, dated May 12, 1999, NY 890395, dated October 15, 1993, and HQ 088976, dated January 6, 1992, which concern substantially similar merchandise. Furthermore, HQ H259324, dated September 3, 2015, and HQ H258812, dated September 3, 2015, are revoked by operation of law in light of the U.S. Court of International Trade's ("CIT's") decision in *Mondiv, Div. of Lassonde Specialties Inc. v. United States*, 329 F. Supp. 3d 1331 (Ct. Int'l Trade 2018).

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. No. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed action was published on September 11, 2024, in Volume 58, Number 36, of the *Customs Bulletin*. No comments were received in response to this notice.

FACTS:

In NY 856914, the Mild Jalapeno Red Salsa and Mild Jalapeno Green Salsa were described as follows:

> [the] Mild Jalapeno Red Salsa is composed of red tomatoes, water, onions, jalapeno peppers, coriander, salt, citric acid and sodium benzoate. The

product has a fairly loose but lumpy consistency, and contains many small pieces of tomato, tomato seeds, onions and peppers. Mild Jalapeno Green Salsa is made from tomatillos, water, jalapeno peppers, onions, coriander, salt, citric acid and sodium benzoate. This product has a very loose consistency and, like the red salsa, contains a large quantity of tomatillo pieces and seeds, peppers and onions. Both salsas are put up in glass jars containing 18 ounces, net weight.

CBP classified the Mild Jalapeno Red Salsa in subheading 2005.90.95, HTSUS[1], which in the 1990 version of the HTSUS provided for "Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen: Other vegetables and mixtures of vegetables: Other" and classified the Mild Jalapeno Green Salsa in subheading 2008.99.90, HTSUS[2], which in the 1990 version of the HTSUS provided for "Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Other, including mixtures other than those of subheading 2008.19: Other: Other: Other."

ISSUE:

1) Whether the Mild Jalapeno Red Salsa is classified as a sauce in heading 2103, HTSUS, or in heading 2005, HTSUS, which provides for "Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006."
2) Whether the Mild Jalapeno Green Salsa is classified as a sauce in heading 2103, HTSUS, or in heading 2008, HTSUS, which provides for "Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included."

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States ("HTSUS") is made in accordance with the General Rules of Interpretation ("GRI"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The 2024 HTSUS provisions under consideration are as follows:

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[1] This subheading does not exist in the current 2024 version of the HTSUS. The comparable subheading in the 2024 version of the HTSUS is subheading 2005.99.97, HTSUS, which provides for "Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006: Other vegetables and mixtures of vegetables: Other: Other."

[2] This subheading does not exist in the current 2024 version of the HTSUS. The comparable subheading in the 2024 version of the HTSUS is subheading 2008.99.91, which provides for "Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Other, including mixtures other than those of subheading 2008.19: Other: Other: Other."

2005 Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006:
2008 Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included:
2103 Sauces and preparations therefore; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard:

Note 3 to Chapter 20, HTSUS, provides as follows:

> Heading 2001, 2004 and 2005 cover, as the case may be, only those products of chapter 7 or of heading 1105 or 1106 (other than flour, meal and powder of the products of chapter 8), which have been prepared or preserved by processes other than those referred to in note 1(a).

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

The EN to 21.03(A) provides as follows:

(A) SAUCES AND PREPARATIONS THEREFOR; MIXED CONDIMENTS AND MIXED SEASONINGS

> This heading covers preparations, generally of a highly spiced character, used to flavour certain dishes (meat, fish, salads, etc.), and made from various ingredients (eggs, vegetables, meat, fruit, flours, starches, oil, vinegar, sugar, spices, mustard, flavourings, etc.). Sauces are generally in liquid form and preparations for sauces are usually in the form of powders to which only milk, water, etc. need to be added to obtain a sauce.
>
> Sauces are normally added to a food as it cooks or as it is served. Sauces provide flavour, moisture, and a contrast in texture and colour. They may also serve as a medium in which food is contained, for example, the velouté sauce of creamed chicken. Seasoning liquids (soy sauce, hot pepper sauce, fish sauce) are used both as ingredients in cooking and at table as condiments.
>
> The heading also includes certain preparations, based on vegetables or fruit, which are mainly liquids, emulsions or suspensions, and sometimes contain visible pieces of vegetables or fruit. These preparations differ from prepared or preserved vegetables and fruit of Chapter 20 in that they are used as sauces, i.e., as an accompaniment to food or in the preparation of certain food dishes, but are not intended to be eaten by themselves.
>
> * * *
>
> Examples of products covered by the heading are : mayonnaise, salad dressings, Béarnaise, bolognaise (consisting of chopped meat, tomato purée, spices, etc.), soya sauces, mushroom sauce, Worcester sauce (generally made with a base of thick soya sauce, an infusion of spices in vinegar, with added salt, sugar, caramel and mustard), tomato ketchup (a preparation made from tomato purée, sugar, vinegar, salt and spices) and other tomato sauces, celery salt (a mixture of cooking salt and finely ground celery seeds), certain mixed seasonings for sausage making, and

> products of Chapter 22 (other than those of heading 22.09) prepared for culinary purposes and thereby rendered unsuitable for consumption as beverages (e.g., cooking wines and cooking Cognac). This heading also covers mixtures of plants or parts of plants of heading 12.11 of a kind used for seasoning sauces.

In *Mondiv, Div. of Lassonde Specialties Inc. v. United States*, 329 F. Supp. 3d 1331 (Ct. Int'l Trade 2018), the Court of International Trade ("CIT") considered the tariff classification of an artichoke antipasto and a green olive tapenade. The court considered the classification of the products in headings 2005, HTSUS, as "[o]ther vegetables prepared or preserved" and heading 2103, HTSUS, as "sauces." For heading 2005, HTSUS, the court stated that the products "must be[:] (1) vegetables listed in Chapter 7; (2) ready for cooking or eating, or treated to prevent its decomposition; (3) preserved by a means other than pickling in vinegar or acetic acid; (4) not frozen; and (5) not preserved with sugar." *Id*. at 1341. The court applied these factors and determined that the products were *prima facie* classifiable in heading 2005, HTSUS. *Id*.

Preceding the *Mondiv* decision, specifically, in *Nestle Refrigerated Food Co. v. United States*, 18 C.I.T. 661 (1994), the CIT considered the common meaning of the term "sauce" in order to understand the meaning of the words "other tomato sauces," which is found in subheading 2103.20.40, HTSUS. In doing so, the court considered the seminal decision of *Bogle v. Malone*, wherein the U.S. Supreme Court determined the following:

> The word "sauce," as commonly used, designates a condiment, generally but not always of liquid form, eaten as an addition to and together with a dish of food, to give it flavor and make it more palatable; and is not applied to anything which is eaten, alone or with a bit of bread, either for its own sake only, or to stimulate the appetite for other food to be eaten afterwards.

Nestle Refrigerated Food Co., 18 C.I.T. at 668 (citing *Bogle v. Malone*, 152 U.S. 623, 625–26 (1894)) (subsequently followed by *Del Gaizo Distrib. Corp. v. United States*, 24 C.C.P.A. 64, T.D. 48376 (1936)). The *Nestle* court concluded that the U.S. Supreme Court's definition "is consistent with the Oxford English Dictionary, which defines 'sauce' as 'any preparation, usually liquid or soft, and often consisting of several ingredients, intended to be eaten as an appetizing accompaniment to some article of food.'" *Id*. at 668 (citing 14 Oxford English Dictionary 512 (2d ed. 1989)). The Nestle court found that there are two prerequisites for "other tomato sauces", specifically: "(1) the product must be a sauce; and (2) tomatoes must be the primary ingredient of that sauce." *Id*. at 669. Moreover, the court stated that this provision may apply to smooth tomato sauces and "other non-standardized tomato-based sauces, such as pasta sauces, chili sauces, barbecue sauces, and pizza sauces." *Id*. The court further indicated that chunky sauces are also encompassed by the term "other tomato sauces." *Id*.

The CIT in Mondiv determined that the term "sauces" under heading 2103, HTSUS, is an *eo nomine* provision, and then proceeded to further clarify the scope of the term "sauces" of heading 2103, HTSUS, from what had been previously determined by the CIT in *Nestle* and the U.S. Supreme Court in *Bogle*. *Mondiv*, 329 F. Supp. 3d at 1342. The term "sauce" is not defined in the HTSUS, therefore, the court considered the EN to 21.03 and several reference

sources and determined that the term "sauce" as it is used in heading 2103, HTSUS, means "a mixture of ingredients in liquid or semisolid form that adds flavoring to food." *Id*.

The court then turned to the products that were at issue and stated that both products were semisolid in form because they were "chunky mixtures of ingredients with discernible pieces of vegetables." *Id*. at 1342–1343. Next, the court determined that the combination of ingredients in each of the products flavored the food and, therefore, the two products were also *prima facie* classifiable in heading 2103, HTSUS, as "sauces." *Id* . at 1343. Applying GRI 3(a), the rule of relative specificity, the court concluded that "HTSUS Heading 2103 for sauces is more specific than HTSUS Heading 2005 for prepared and preserved vegetables" and determined that the two products are properly classified under heading 2103, HTSUS, as "sauces." *Id*. at 1343–1344.

Heading 2005, HTSUS, provides for "Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006." The subject Mild Jalapeno Red Salsa meets the requirements of heading 2005, HTSUS, as described by the CIT in *Mondiv*. Specifically, the product is: (1) made from vegetables that are classified in Chapter 7, in particular, tomatoes, onions and jalapeno peppers[3]; (2) ready for eating; (3) preserved by a means other than pickling in vinegar or acetic acid, in this case, it is preserved by means of sodium benzoate; (4) not frozen; and (4) not preserved with sugar. Therefore, the Mild Jalapeno Red Salsa is classifiable under heading 2005, HTSUS, as "Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006."

NY 856914 determined that the Mild Jalapeno Green Salsa is classifiable in heading 2008, HTSUS. Heading 2008, HTSUS, provides for "Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included." Heading 2008, HTSUS, is a basket provision and therefore, the subject merchandise is classified in heading 2008, HTSUS, by application of GRI 1 only if it meets the terms of the heading and is not *prima facie* classifiable elsewhere. *See R.T. Foods, Inc. v. United States*, 757 F.3d 1349, 1354 (Fed. Cir. 2014) (stating that a provision that contains the terms "not elsewhere specified or included" is a basket provision, in which classification of a given product "is only appropriate if there is no tariff category that covers the merchandise more specifically"). The product does not fall within the scope of heading 2005, HTSUS, because it does not meet the first criteria identified by the *Mondiv* court for products of heading 2005, HTSUS. In particular, the Mild Jalapeno Green Salsa is not made of vegetables listed in Chapter 7, HTSUS, because it includes tomatillos, which are fruit that are classified in Chapter 8, HTSUS.

We must also consider whether the two subject products are classifiable as sauces under heading 2103, HTSUS. In accordance with the *Mondiv* decision, we consider whether they are "a mixture of ingredients in liquid or semisolid form that adds flavoring to food." *Id*. at 1342. Like the artichoke antipasto

[3] We note that while the Mild Jalapeno Red Salsa also includes water, coriander, salt, citric acid, and sodium benzoate these ingredients do not preclude the product from classification in heading 2005. *See Mondiv* at 1341–1342 (stating that "the cooking, sterilizing, chopping, and adding of vinegar, oil, garlic, salt water, parsley, oregano, basil, and other ingredients provide seasonings and flavors, but do not change their essence from predominantly artichoke and olive products to make them new items").

and a green olive tapenade in the *Mondiv* decision, the two subject products are semisolid in form because they have a loose consistency, but they also have "discernible pieces" of ingredients. *Id*. at 1342–1343. Specifically, the Mild Jalapeno Red Salsa consists of small pieces of tomato, tomato seeds, onions and peppers and the Mild Jalapeno Green Salsa consists of tomatillo pieces and seeds, peppers and onions. Moreover, consistent with the EN to 21.03 and like the sauce products in the *Mondiv* decision, the two subject products contain ingredients that together provide "flavor, moisture, and a contrast in texture and [color]" to food. Accordingly, the two subject products are classifiable in heading 2103, HTSUS, as "sauces." Pursuant to GRI 3(a), under the rule of relative specificity, the two products are classified under heading 2103, HTSUS, as sauces, rather than under headings 2005 or 2008, HTSUS.

The Mild Jalapeno Red Salsa, which is made with a base of tomatoes, is classified in subheading 2103.20.40, HTSUS, which provides for "Sauces and preparations therefore; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard: Tomato ketchup and other tomato sauces: Other." *See Nestle Refrigerated Food Co.*, 18 C.I.T. at 669 (finding that "there are only two prerequisites to classification under the HTSUS provision for other tomato sauces; specifically, they are: (1) the product must be a sauce; and (2) tomatoes must be the primary ingredient of that sauce"). This subheading includes all sauces based on tomatoes, including salsas. *See* HQ 962417 (March 3, 1999) (a salsa "consisting of dried tomatoes, water, onions, tomato paste, green peppers, vinegar, carrots, starch, jalapeño peppers, salt, sugar, spices and sodium benzoate, appearing in a thick liquid as large quantities of chopped and sliced vegetables ... sold at retail as a sauce," was classified in subheading 2103.20.40, HTSUS, the provision for other tomato sauces). The Mild Jalapeno Green Salsa, which is made with a base of tomatillos, is classified in 2103.90.90, HTSUS, which provides for "Sauces and preparations therefore; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard: Other: Other: Other."

We also note that we are not revoking or modifying any rulings involving products that are "eaten, alone or with a bit of bread, either for its own sake only" or as an appetizer, consistent with the *Bogle* decision. *See* 152 U.S. 623.

HOLDING:

By application of GRI 1, 3(a) and 6, the Mild Jalapeno Red Salsa and the Mild Jalapeno Green Salsa are classified under heading 2103, HTSUS. The Mild Jalapeno Red Salsa is classified in subheading 2103.20.40, HTSUS, which provides for "Sauces and preparations therefore; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard: Tomato ketchup and other tomato sauces: Other" and the Mild Jalapeno Green Salsa is classified in subheading 2103.90.90, HTSUS, which provides for "Sauces and preparations therefore; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard: Other: Other: Other." The 2024 column one, general rate of duty is 11.6 percent *ad valorem* and 6.4 percent *ad valorem*, respectively.

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

EFFECT ON OTHER RULINGS:

HQ H259324, dated September 3, 2015, is REVOKED by operation of law.

HQ H258812, dated September 3, 2015, is REVOKED by operation of law.

NY N195658, dated January 4, 2012, is MODIFIED, only with respect to the Organic Nabali Olive Tapenade and the Sun-dried Tomato Caper Spread.

NY D88850, dated May 12, 1999, is MODIFIED, only with respect to the Sundried Tomato Marinara and the Roasted Eggplant Spread.

NY 890395, dated October 15, 1993, is MODIFIED, only with respect to the Salsa Base.

HQ 088976, dated January 6, 1992, is MODIFIED, only with respect to Law and Analysis section and the tariff classification of the Campagnola and Salsa Sorrentina.

NY 856914, dated October 24, 1990, is REVOKED.

HQ 085838, dated December 21, 1989, is REVOKED.

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

Sincerely,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

CONTINUING EDUCATION REQUIREMENT FOR LICENSED CUSTOMS BROKERS

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

ACTION: General notice.

SUMMARY: This document announces that individual customs broker license holders may begin completing qualified continuing broker education courses on January 1, 2025 (compliance date) and, accordingly, 20 credits as the prorated number of required credit hours for the triennial period beginning on February 1, 2024, and ending on January 31, 2027. Further, this notice announces the criteria that U.S. Customs and Border Protection (CBP) used to select qualified accreditors, the list of CBP-selected qualified accreditors, and the period of award for these accreditors.

DATES: Individual brokers may begin completing qualified continuing broker education courses on January 1, 2025. The initial three-year period of award for CBP-selected qualified accreditors will be from June 2, 2024, through June 1, 2027.

FOR FURTHER INFORMATION CONTACT: Elena D. Ryan, Special Advisor, Broker Continuing Education, Trade Policy and Programs, Office of Trade, U.S. Customs and Border Protection, at (202) 302–2426 or *CONTINUINGEDUCATION@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that individuals and business entities must hold a valid customs broker's license and permit to transact customs business on behalf of others. The statute also sets forth standards for the issuance of broker licenses and permits, provides for disciplinary action against customs brokers in the form of suspension or revocation of such licenses and permits, and provides for the assessment of monetary penalties against customs brokers. The statute also provides for the assessment of monetary penalties against persons for conducting customs business without the required broker's license.

Based upon 19 U.S.C. 1641, U.S. Customs and Border Protection (CBP) has promulgated regulations setting forth additional obligations of customs brokers pertinent to the conduct of their customs business, in part 111 of title 19 of the Code of Federal Regulations (19 CFR part 111). Part 111 provides the regulations regarding the licensing and granting of permits to persons desiring to transact cus-

toms business as customs brokers. These regulations also include the qualifications required of applicants, the procedures for applying for licenses and permits, the duties and responsibilities of individual brokers, the grounds and procedures for disciplining individual brokers, including the assessment of monetary penalties, and the revocation or suspension of licenses and permits. CBP has also updated part 111 to require individual brokers to satisfy a continuing education requirement.

CBP believes that maintaining current knowledge of customs laws and procedures is essential for customs brokers to meet their legal duties. Requiring a customs broker to fulfill a continuing education requirement is the most effective means to ensure that the customs broker keeps up with an ever-changing customs practice after passing the broker exam and subsequently receiving the license. Therefore, on October 28, 2020, CBP published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** (85 FR 68260), soliciting comments on a potential framework of continuing education requirements for licensed customs brokers. On September 10, 2021, CBP published a notice of proposed rulemaking (NPRM) in the **Federal Register** (86 FR 50794), in which CBP responded to the 29 comments it received in response to the ANPRM, and adopted some of the suggestions proposed by the commenters. CBP thus drafted the NPRM accordingly and announced proposed regulatory amendments to include a proposed framework for individual customs broker license holders (individual brokers) to administratively maintain their license through completion of qualified continuing broker education.

On June 23, 2023, CBP published a final rule in the **Federal Register** (88 FR 41224). In the final rule, CBP responded to the 70 comments it received in response to the NPRM, and adopted as final, with changes, the proposed amendments. The final rule added a new subpart F in part 111, requiring continuing education for individual brokers and setting forth the framework for administering the requirement. In addition, CBP stated that it would announce, in a **Federal Register** notice following publication of the final rule, the date on which individual brokers may begin completing qualified continuing broker education courses and the prorated number of required continuing broker education credit hours for the triennial period beginning on February 1, 2024, and ending on January 31, 2027 (the 2024–2027 triennial period). The final rule also noted that CBP will announce the date on which qualified continuing broker education courses will be available to individual brokers to begin meeting the requirement and will publish an initial list of available qualified continuing broker education opportunities on *CBP.gov.* Lastly, CBP will periodically publish notices in the **Federal Register** announcing the criteria that CBP will use to select an accreditor, the

period during which CBP will accept applications by potential accreditors, and the period of award for CBP-selected accreditors.

II. CBP Implementation of the Continuing Education Requirement for Licensed Customs Brokers

A. Compliance Date and Prorated Number of Required Continuing Broker Education Credit Hours for the 2024–2027 Triennial Period

CBP has now completed full implementation of the framework for administering the new continuing broker education requirement. Thus, CBP is ready to announce that individual brokers may begin completing qualified continuing broker education courses on January 1, 2025 (compliance date). On this same date, qualified continuing broker education courses will be made available to individual brokers to begin meeting the requirement. The initial list of available qualified continuing broker education opportunities, as well as free qualified continuing broker education activities available to individual brokers through CBP and other U.S. government agency offerings, may be found at *CBP.gov.* CBP believes that individual brokers will be able to fulfill the continuing broker education requirement through the free, online-based trainings that CBP and other U.S. government agencies offer, alone.

The CBP regulations in section 111.102(b) require individual brokers to complete at least 36 continuing education credits of qualifying continuing broker education per triennial period, with limited exceptions. In the final rule, CBP announced that, to allow for full implementation of the continuing education requirement, CBP would reduce the 36 continuing education credits required to be completed for the 2024–2027 triennial period by six (6) credit hours for approximately every six (6) months that elapse between February 1, 2024, and the compliance date on which individual brokers may begin completing qualified continuing broker education courses. To give individual brokers additional time to prepare for the new continuing education requirement, CBP is reducing the number of required credit hours that individual brokers must earn to 20 credit hours for the 2024–2027 triennial period (with certification of completion of the credits by February 1, 2027). This reduced number of credits applies to the 2024–2027 triennial period only. Individual brokers are required to earn the full 36 credit hours for all triennial periods following the 2024–2027 triennial period.

B. CBP-Selected Accreditors

In order to supplement the available trainings offered by CBP and other U.S. government agencies, CBP selected accreditors to administer the accreditation of additional broker training and educational activities offered by providers other than by a U.S. government agency.

Section 111.103(c) sets forth the process used by CBP for selection of accreditors, based on a Request for Information (RFI) and a Request for Proposal (RFP) announced through the System for Award Management (SAM) or any other electronic system for award management approved by the U.S. General Services Administration, in accordance with the Federal Acquisition Regulation (48 CFR 1.000 *et seq.*), for a specific period of award, subject to renewal. On August 29, 2023, CBP announced through SAM an RFI (Notice ID 201400XX) seeking information from organizations interested in establishing a relationship with CBP to review and accredit commercial training, programs, course materials, and other activities relating to the new continuing education requirement for licensed customs brokers. CBP received replies from 11 organizations expressing such interest. In response to the replies CBP received, on February 6, 2024, CBP announced through SAM a non-traditional RFP (Notice ID 70B06C24R00000030) to solicit applications to become approved accreditors of qualifying continuing customs broker education. The RFP set forth the following criteria to be used for the selection of accreditors:

- Identification of at least one key official in the applicant's organization that holds an individual customs broker license.
- Demonstration of knowledge of international trade laws, customs laws and regulations, and general customs practices for imported goods and goods subject to drawback.
- Demonstration of knowledge of other U.S. Government agencies that are involved in transactions of international trade.
- A description of the applicant's process for handling accreditation requests, beginning with how an individual submits a training or educational activity proposed for credit to the applicant, including detail on electronic and online methods for submitting materials for consideration.
- Confirmation that the applicant's process for handling accreditation requests uses a secure online (web-based) repository and an overview of the basic functionality of the envisioned online repository, and confirmation that the applicant can protect any business sensitive or proprietary information collected in the requests.

- Identification of up to five (5) professional references with contact information, who should be familiar with the applicant's relevant professional history, job performance, and have the knowledge to determine if the applicant is capable of conducting the kind of complex work described in this RFP. Additionally, the applicant was required to provide contact information that included an individual's full name, entity employing the individual (if applicable), email address, and telephone number.
- Disclosure of any known potential organizational or personal conflicts of interest, any applicant personnel who have previously been employed by CBP, and any applicant personnel who perform critical functions for one or more other applicants applying to be approved accreditors under this RFP.
- Demonstration of the applicant's ability and commitment to complete the accreditation process, resulting in transmission of an approval or denial of credit to the requestor, within four (4) business days of request submission.

CBP evaluated the applications received in response to the RFP based on the above-mentioned criteria and selected the following accreditors:

- E-Merchants Trade Council Inc. (EMTC)–Global Trade Professionals Alliance (GTPA)–Practera
- International Compliance Professionals Association (ICPA)
- National Customs Brokers and Forwarders Association of America (NCBFAA)
- Sandler Travis & Rosenberg, P.A.
- TrüTrade Solutions, Inc.

The initial three-year period of award for CBP-selected accreditors will be from June 2, 2024, through June 1, 2027. The list of CBP-selected accreditors may be found at *CBP.gov*.

Dated: October 11, 2024.

ANNMARIE R. HIGHSMITH,
Executive Assistant Commissioner,
Office of Trade.

AGENCY INFORMATION COLLECTION ACTIVITIES:

Extension; Transportation Entry and Manifest of Goods Subject to U.S. Customs and Border Protection Inspection and Permit (CBP Form 7512, 7512A)

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

ACTION: 30-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than December 2, 2024) to be assured of consideration.

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the

Federal Register (89 FR 65640) on August 12, 2024, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit.

OMB Number: 1651–0003.

Form Number: 7512, 7512A.

Current Actions: This submission is being made to extend the expiration date with an increase to the estimated annual burden hours. No change to the information collected or method of collection.

Type of Review: Extension (with change).

Affected Public: Businesses.

Abstract: Title 19 U.S.C. 1552–1554 authorizes the movement of imported merchandise from the port of importation to another Customs and Border Protection (CBP) port prior to release of the merchandise from CBP custody. Forms 7512, "Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit," and 7512A, "Continuation Sheet," allow CBP to exercise control over merchandise moving in-bond (merchandise that has not entered the commerce of the United States). Forms 7512 and 7512A are filed by importers, brokers, or carriers, and they collect information such as the names of the importer and consignee, a description of the imported merchandise, and the ports of lading and unlading. Use of these forms is provided for by various

provisions in 19 CFR to include 19 CFR 10.60, 19 CFR 10.61, 19 CFR 123.41, 19 CFR 123.42, 19 CFR 122.92, and 19 CFR part 18. These forms are accessible at: *http://www.cbp.gov/xp/cgov/toolbox/forms/*.

Type of Information Collection: Forms 7512 and 7512A.

Estimated Number of Respondents: 6,200.

Estimated Number of Annual Responses per Respondent: 871.

Estimated Number of Total Annual Responses: 5,400,200.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 900,033.

Dated: October 29, 2024.

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

Slip Op. 24–120

RETRACTABLE TECHNOLOGIES, INC., Plaintiff, v. UNITED STATES ET AL., Defendant.

Before: Claire R. Kelly, Judge
Court No. 24–00185
PUBLIC VERSION

[Denying in part and granting in part Plaintiff's motion for a temporary restraining order and preliminary injunction.]

Dated: October 28, 2024

Lawrence M. Friedman, Barnes, Richardson, & Colburn, LLP, of Chicago, IL and *Siddartha Rao,* Romano Law PLLC, of New York, NY, argued for plaintiff Retractable Technologies, Inc. Also on the briefs were *Curtis H. Fuller*, and *Danielle Yurkew,* Romano Law PLLC, of New York, NY.

Emma E. Bond, Lead Attorney, U.S. Department of Justice, Commercial Litigation Branch, Civil Division, of Washington D.C., for defendant United States et al. Also on the briefs were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director. Of counsel were *Megan M. Grimball* and *Philip A. Butler*, Office of the United States Trade Representative, and *Emma L. Tiner*, Office of the Assistant Chief Counsel, U.S. Customs and Border Protection.

OPINION AND ORDER

Kelly, Judge:

Before the Court is Plaintiff Retractable Technologies, Inc.'s, ("Plaintiff") motion for a temporary restraining order ("TRO") and preliminary injunction ("Preliminary Injunction Motion"). *See generally* [Pl. Mot.], Sept. 26, 2024, ECF No. 5. Plaintiff challenges the United States Trade Representative's ("USTR") imposition of 100% tariffs on syringes and needles from China in its Notice of Modification: *China's Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation* ("*September 18 Modification Notice*"), 89 Fed. Reg. 76,581–02 (Sept. 18, 2024), and its motion seeks injunctive relief to prevent the collection of those tariffs, or alternatively enjoin liquidation of its entries subject to the tariffs. *See generally* Compl., Sept. 26, 2024, ECF No. 4. Defendant filed its Motion to Dismiss and Opposition to Preliminary Injunction ("Def. MTD") on October 11, 2024. *See generally* Def. Mot. Dismiss and Opp. [Prelim. Inj.], Oct. 11, 2024, ECF No. 33. The Court held an evidentiary

hearing on October 17, 2024, *see* ECF No. 46, and now rules solely on Plaintiff's Preliminary Injunction Motion.[1]

BACKGROUND

Plaintiff states that Retractable Technologies, Inc., founded in 1997, is a small company based in Little Elm, Texas. Compl. at ¶ ¶ 18, 29, 37, 39. Plaintiff explains that it partners with Chinese manufacturers to produce its syringes and needles. Id. at ¶ ¶ 54–56.

On August 14, 2017, the President of the United States directed the USTR to determine whether it should initiate an investigation under Section 302(b) of the Trade Act of 1974 (as amended 19 U.S.C. § 2412(b) into China's practices relating to intellectual property, innovation, and technology. *Addressing China's Laws, Policies, Practices, and Actions Related to Intellectual Property, Innovation, and Technology*, 82 Fed. Reg. 39,007 (Aug. 14, 2017). On August 24, 2017, the USTR formally initiated an investigation to determine whether "acts, policies, and practices" of the Chinese government related to "technology transfer, intellectual property, and innovation" were actionable under the Trade Act of 1974. *Initiation of Section 301 Investigation; Hearing; and Request for Public Comments: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 82 Fed. Reg. 40,213 (Aug. 24, 2017). On March 22, 2018, the USTR published its findings in the Section 301 investigation and found that certain actions by the Chinese government are "unreasonable or discriminatory." OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, *Findings of the Investigation into China's Acts, Policies, And Practices Related to Technology Transfer, Intellectual Property, and Innovation* Under Section 301 of the Trade Act of 1974 at 153 (Mar. 22, 2018) (https://ustr.gov/sites/defualt/files/Section%20301%20FINAL.PDF) ("*Section 301 Investigation Findings*").

Also on March 22, 2018, the President ordered the USTR to publish a proposed list of products and intended tariff increases on the products, to be followed by a period of notice and comment and then a final list and implementation of the tariffs imposed. *Actions by the United States Related to the Section 301 Investigation of China's Laws, Policies, Practices, or Actions Related to Technology Transfer, Intellectual Property, and Innovation*, 83 Fed. Reg 13,099 (Mar. 22, 2018). On April 3, 2018, the USTR announced a proposed list of products on which to impose an additional duty of 25 percent and sought comments from interested parties on the list. *See generally* OFFICE OF THE

[1] Plaintiff's Response to Defendant's Motion to Dismiss is not due until November 19, 2024. *See* ECF No. 39; USCIT R. 7(d).

UNITED STATES TRADE REPRESENTATIVE, *Notice of Determination and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation* (Apr. 3, 2018) (https://ustr.gov/sites/default/files/files/Press/Releases/301FRN.pdf) ("April 2018 Notice").

In response to the April 2018 Notice, Plaintiff submitted comments opposing tariffs on syringes and needles. Compl. at ¶ ¶ 69–70. On June 15, 2018, the USTR released its list of products subject to additional tariffs under the Section 301 action against China, which did not include additional tariffs on syringes and needles under HTSUS subheadings 90183100 and 90183200. *See Notice of Action and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301:* China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual *Property, and Innovation*, 83 Fed. Reg. 28,710 (Jun. 15, 2018).

On May 5, 2022, the USTR initiated a review of the Section 301 actions, allowing for parties who benefit from the actions to submit requests to continue the action as well as detailing the next steps for review if an interested party does request a continuance of the action. *See Initiation of Four-Year Review Process: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 87 Fed. Reg 26,797 (May 5, 2022). On September 8, 2022, the USTR announced that the Section 301 actions would not terminate and would remain in effect, "subject to possible further modifications, including any modifications resulting from the statutory four-year review. *Continuation of Actions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 87 Fed. Reg. 55,073–01 (Sept. 8, 2022). On October 17, 2022, the USTR sought public comments "on the effectiveness of the actions in achieving the objectives of the investigation, other actions that could be taken, and the effects of such action on the United States, including consumers" and "the effects of the actions on U.S. supply chain resilience." *Request for Comments in Four-Year Review of Actions Taken in the Section 301 Investigation: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation* ("*October 17 Request for Comment*"), 87 Fed. Reg. 62,914–02 (Oct. 17, 2022). Plaintiff alleges that in the "nearly 1,500" comments that the USTR received, none referenced syringes or needles. Compl. at ¶¶ 98–99.

On March 7, 2024, the USTR requested comment on objectives and strategies to advance United States Supply chain resilience, specifi-

cally requesting comment on "examples of trade and investment policy tools that potentially could be deployed in the following sectors to enhance supply chain resilience." *Request for Comments on Promoting Supply Chain Resilience*, 89 Fed. Reg. 16,608–02 (Mar. 7, 2024) ("*Supply Chain Notice*"). The *Supply Chain Notice* explicitly mentioned the "pharmaceutical and medical goods" sector. *See id.* According to Plaintiff, the USTR received comments, as well as testimony relating to the imposition of additional tariffs on syringes and needles. Compl. at ¶¶ 110–111; ("*Supply Chain Comments*"). On May 14, 2024, the USTR reported to the President that "increasing section 301 duties on syringes and needles, which are critical to U.S. preparedness and response to public health emergencies, will help maintain alternative sources." OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, *Four-Year Review Of Actions Taken In The Section 301 Investigation: China's Acts, Policies, And Practices Related To Technology Transfer, Intellectual Property, And Innovation*, at 86 (May 14, 2024) (https://ustr.gov/sites/default/files/USTR%20Report%20Four%20Year%20Review%2 0of%20China%20Tech%20Transfer%20Section%20301.pdf) ("*Four-Year Report*").

On the same day the USTR issued its Four-Year Report to the President, May 14, 2024, the President directed the USTR to increase rate to no less than 50 percent in 2024 on syringes and needles. *Actions by the United States Related to the Statutory 4-Year Review of the Section 301 Investigation of China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation* ("*May 14 Presidential Directive*"), 89 Fed. Reg. 44,541 (May 14, 2024). On May 28, 2024, the USTR requested public comments on the tariffs relating to "facemasks, medical gloves, syringes and needles, whether the tariff rates should be higher than the proposed rates." *Request for Comments on Proposed Modifications and Machinery Exclusion Process in Four-Year Review of Actions Taken in the Section 301 Investigation: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation ("May 28 Request for Comment*"), 89 Fed. Reg. 46,252 (May 28, 2024). Plaintiff submitted comments explaining that the "fifty percent tariff would devastate" it. Compl. at ¶¶ 134–135. On September 18, 2024, the USTR imposed a one hundred percent tariff on syringes and needles to take effect on September 27, 2024. *September 18 Modification Notice*, 89 Fed. Reg. 76,58102 (Sept. 18, 2024) ("301 Tariffs"). Plaintiff commenced this action on September 26, 2024. *See generally* Compl.; Preliminary Injunction Motion.

JURISDICTION AND STANDARD OF REVIEW

Plaintiff commenced this action pursuant to 28 U.S.C. § 1581(i)(1)(B) (2018), which grants the court "exclusive jurisdiction of any civil action commenced against the United States ... that arises out of any law of the United States providing for ... tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue."[2] The Court has "all the powers in law and equity of, or as conferred by statute upon, a district court of the United States." 28 U.S.C. § 1585.

The Court may issue injunctive relief in the form of a preliminary injunction or temporary restraining order pursuant to United States Court of International Trade Rule 65. USCIT R. 65; *see also Harmoni Int'l Spice, Inc. v. United States*, 211 F. Supp. 3d 1298, 1306 (Ct. Int'l Trade 2017). Injunctive relief is "an extraordinary remedy never awarded as of right." *Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). To obtain injunctive relief a party must demonstrate: "(1) likelihood of success on the merits, (2) irreparable harm absent immediate relief, (3) the balance of interests weighing in favor of relief, and (4) that the injunction serves the public interest." *Silfab Solar, Inc. v. United States*, 892 F.3d 1340, 1345 (Fed. Cir. 2018) (citing *Winter*, 555 U.S. at 20).

DISCUSSION

Plaintiff seeks to enjoin the imposition of the 301 Tariffs on its entries, or alternatively to enjoin liquidation of its entries, claiming that (1) it will likely succeed in its suit to challenge the 301 Tariffs because "the USTR improperly exercised its statutory authority when imposing a one hundred percent tariff on syringes and needles under Section 301 of the Trade Act," (2) without an injunction it will suffer irreparable harm, and (3) the injunctive relief is in the public interest and the harm it will suffer without injunctive relief outweighs the harm the Defendant will suffer if the relief is granted. Preliminary

[2] Defendant asserts defenses upon which there will be further briefing, namely: that the Court lacks jurisdiction because the USTR's determination is unreviewable, that the President is not subject to the Administrative Procedure Act; that the determination falls under the foreign affairs exemption to the APA; and that the Plaintiff has failed to state a claim; and. Def. MTD at 15–28. At this stage of the litigation none of these defenses is so clear cut as to undermine Plaintiff's fair chance of success. Moreover, this Court has recently ruled under similar circumstances that the USTR's Section 301 determination is both reviewable and not subject to the APA's foreign affairs exemption. *In Re Section 301 Cases II*, 570 F.Supp.3d at 1323–26, 1335–37 (discussing that the bar on judicial review in *Franklin* is limited to instances where the President has constitutional or statutory responsibility for the final step necessary for agency action to affect the parties and that the APA's foreign affairs exemption does not apply to USTR action where it is not invoked in a final rule and where the manner in which the USTR conducts its proceedings does not make clear the USTR's intent to invoke the exemption).

Injunction Motion at 10–26. Defendant responds that Plaintiff "fails to establish irreparable harm or likelihood of success on the merits, and the remaining equitable factors–balancing of the harms and the public interests—favor denying the requested relief." Def. MTD at 28. For the following reasons, Plaintiff's Preliminary Injunction Motion is denied in part and granted in part.

I. Likelihood of Success on the Merits

Plaintiff asserts that it is likely to succeed on its claims that the USTR's actions were ultra vires. Compl. at ¶¶ 174–78; *see also* Preliminary Injunction Motion at 11– 21. Plaintiff also argues that it will succeed on its claim that the USTR's determination violated the procedural protections of the Administrative Procedure Act ("APA"). *Id.*; *see also* Preliminary Injunction Motion at 22–24. Defendant responds that Plaintiff misunderstands the nature of the Section 301 inquiry, and that the USTR complied with the requirements of the statute as well as the requirements of the APA. Def. MTD at 36–41.

A movant's likelihood of success is viewed on a sliding scale, i.e., the greater the potential harm, the lesser the burden required for the likelihood of success on the merits. *See Ugine & Alz Belgium v. United States*, 452 F.3d 1289, 1293 (Fed.Cir.2006); *see also In re Section 301 Cases*, 524 F. Supp. 3d 1355, 1367 (Ct. Int'l Trade 2021) ("*In re Section 301 Cases I*") (discussing the sliding scale approach). Thus, the Court may reasonably consider not only whether a movant is likely to prevail on the merits, but whether the issue to be appealed constitutes a "substantial case on the merits." *See Hilton v. Braunskill*, 481 U.S. 770, 778 (1987); *In re Section 301 Cases I*, 524 F. Supp. 3d at 1366 (examining whether the plaintiffs had raised sufficiently serious and substantial questions as to the proper interpretation of the statute because the danger of irreparable harm was great).

Here, while at this stage of the litigation the Court cannot say that the Plaintiff is likely to succeed, the Plaintiff raises serious and substantial questions. Section 301 of the Trade Act authorizes the President and the USTR to take action to eliminate certain acts, policies, or practices of a foreign government that burden U.S. commerce. *See* 19 U.S.C. § 2411. The USTR exercises discretionary authority when it determines "an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce" and action by the United States is appropriate. 19 U.S.C. § 2411(b)(1). Additionally, Section 307(a)(1) of the Trade Act allows the USTR to "modify" an action commenced under Section 301:

(a) In general

> (1) The Trade Representative may modify or terminate any action, subject to the specific direction, if any, of the President with respect to such action, that is being taken under section 2411 of this title if—
>
> (A) any of the conditions described in section 2411(a)(2) of this title exist,
>
> (B) the burden or restriction on United States commerce of the denial rights, or of the acts, policies, and practices, that are the subject of such action has increased or decreased, or
>
> (C) such action is being taken under section 2411(b) of this title and is no longer appropriate.
>
> (2) Before taking any action under paragraph (1) to modify or terminate any action taken under section 2411 of this title, the Trade Representative shall consult with the petitioner, if any, and with representatives of the domestic industry concerned, and shall provide opportunity for the presentation of views by other interested persons affected by the proposed modification or termination concerning the effects of the modification or termination and whether any modification or termination of the action is appropriate.

19 U.S.C. § 2417(a)(1). An action will terminate at the end of four years unless there is a request to continue it in writing from the petitioner or domestic industry. 19 U.S.C. § 2417(c) (1). Where there is such a request, the USTR conducts a review of necessity:

> (3) If a request is submitted to the Trade Representative under paragraph (1)(B) to continue taking a particular action under section 2411 of this title, or if a request is submitted to the Trade Representative under section 2416(c)(2) of this title to reinstate action, the Trade Representative shall conduct a review of—
>
> (A) the effectiveness in achieving the objectives of section 2411 of this title of—
>
> (i) such action, and
>
> (ii) other actions that could be taken (including actions against other products or services), and
>
> (B) the effects of such actions on the United States economy, including consumers.

19 U.S.C. § 2417(c)(3). Before the USTR takes any action to modify it must both consult with the domestic industry and provide the opportunity for those affected to comment:

> (2) Before taking any action under paragraph (1) to modify or terminate any action taken under section 2411 of this title, the Trade Representative shall consult with the petitioner, if any, and with representatives of the domestic industry concerned, and shall provide opportunity for the presentation of views by other interested persons affected by the proposed modification or termination concerning the effects of the modification or termination and whether any modification or termination of the action is appropriate.

19 U.S.C. § 2417(a)(2).

The APA requires that agencies engage in reasoned decision-making, meaning that upon review courts will consider whether the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or [the decision] is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Alabama Aircraft Indus., Inc. v. United States*, 586 F.3d 1372, 1375 (Fed. Cir. 2009) (internal quotation marks omitted) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

Here, Plaintiff claims that the USTR failed to consult with it as required by 19 U.S.C. § 2417(a)(2). Preliminary Injunction Motion at 19–22. The question of whether there was a proper consultation under Section 2417(a)(2) is a serious and substantial one, as it implicates both the President's and the USTR's authority under Sections 307(a)(1)(B)–(C) of the Trade Act. *In re Section 301 Cases I*, 524 F. Supp. 3d at 1366–67.[3] Defendant points to the USTR's October 2022 and May 2024 notices as sufficient consultation. Def. MTD at 24. The October 17, 2022, notice invited comment on inter alia, the effectiveness of the actions, in achieving the objectives of the investigation, the effect of such actions on U.S. supply chain resilience, and the possibility of other actions that would be more effective in achiev-

[3] In that case, this Court concluded that an injunction against liquidation was warranted. Ultimately, the Court subsequently found that the USTR did not exceed its modification authority under Section 307, *In re Section 301 Cases II*, 570 F. Supp. 3d 1306, 1334–35 (Ct. Int'l Trade 2022), and that the USTR complied with the Court's remand order and supplied the necessary explanations supporting the imposition of additional duties. *In re Section 301 Cases*, 628 F. Supp. 3d 1235, 1250 (Ct. Int'l Trade 2023) (*In re Section 301 Cases III*). *In re Section 301 Cases III* is currently on appeal, (Fed. Cir. No. 23–1891).

ing the goals of the investigation. *October 17 Request for Comment*, 87 Fed. Reg. 62,914–02 (Oct. 17, 2022). The May 2024 Notice asked for comments on "whether the tariff rates should be higher than the proposed rates" for syringes and needles. *See May 28 Request for Comment*. There is a serious and substantial question as to whether these two notices satisfy the requirements of 19 U.S.C. § 2417 (a)(2) in this case.

Defendant also contends that Plaintiff is unlikely to succeed on its claims that the USTR failed to engage in reasoned decision-making. Compl. at ¶ 167. Plaintiff argues that the USTR provided interested parties with the opportunity to express views with its October 17, 2022, notice for comment, but failed to consult the interested parties until after it proposed adding tariffs on syringes and needles to the President. Preliminary Injunction Motion at 20, 22. Plaintiff also argues that the *Supply Chain Comments* improperly influenced the ultimate determination.[4] Preliminary Injunction Motion at 20–21. The President directed the USTR to raise tariffs on syringes and needles to no less than 50 percent in 2024, prior to the USTR requesting comment on tariff increases specifically related to syringes and needles. *See May 14 Presidential Directive*, 89 Fed. Reg. 44,541 (May 14, 2024); *see also May 28 Request for Comment*, 89 Fed. Reg. 46,252 (May 28, 2024). Although it is unclear whether Plaintiff will prevail on its claims, at this stage in the litigation Plaintiff establishes sufficiently serious questions as to whether the requirements regarding reasoned decision-making have been met. *See State Farm*, 463 U.S. at 52.

II. Irreparable Harm.

Plaintiff asserts that it will suffer irreparable harm absent an injunction because it will have to make the "impossible choice" between stopping all orders of syringes from its suppliers or ordering and selling syringes at a loss. Compl. ¶¶ 159– 60. Defendant responds that Plaintiff merely alleges the "possibility of garden variety economic loss" which fails to satisfy the irreparable harm requirement

[4] In its recommendation to the President to impose tariffs on needles and syringes the report provides:

> Increasing the section 301 duties on critical medical supplies, including certain personal protective equipment, will help protect recent investments to increase domestic production and U.S. preparedness and as a result of those investments, the United States has, or is expected to have, sufficient domestic capacity. These products include medical/surgical gloves and face masks, including N95s. Similarly, increasing section 301 duties on syringes and needles, which are critical to U.S. preparedness and response to public health emergencies, will help maintain alternative sources.

Four-Year Report at 86.

for injunctive relief. Def. MTD at 30. Further, Defendant states it will agree to not oppose a court order for reliquidation, which it claims will remove any danger posed by the possible liquidation of entries. *Id.* at 30–31 (citing Joint Proposed Stipulation in *Auxin Solar, Inc. et al. v. United States et al.*, Ct. Int'l Trade No. 23–274, Jan. 25, 2024, ECF No. 19). For the reasons that follow, the Court finds that Plaintiff has not demonstrated it will suffer irreparable harm absent injunctive relief other than the harm that could result from the liquidation of its entries which the Court will enjoin.

Irreparable harm is serious injury which cannot be undone. *Zenith Radio Corp. v. United States*, 710 F.2d 806, 809 (Fed. Cir. 1983) (citing *S.J. Stile Assoc. Ltd. v. Snyder*, 646 F.2d 522, 525 (C.C.P.A. 1981)). This Court has long recognized that a movant's burden to prove irreparable harm is "extremely heavy." *See Queen's Flowers de Colombia v. United States*, 947 F. Supp. 503, 506 (Ct. Int'l Trade 1996); *see also Shandong Huarong Gen. Group Corp. v. United States*, 122 F.Supp.2d 1367, 1369 (Ct. Int'l Trade 2000); *see also Int'l Fresh Trade Corp. v. United States*, 26 F.Supp.3d 1363, 1367 (Ct. Int'l Trade 2014). A movant will not be able to obtain an injunction by pointing to an injury which is merely possible, even when the potential level of harm is high. *Zenith*, 710 F.2d at 809. "A presently existing, actual threat must be shown." *Id.; see e.g., Shree Rama Enter. v. United States*, 983 F. Supp. 192, 194–95 (Ct. Int'l Trade 1997) (citing *Zenith*, 710 F.2d at 809). A movant must show that the harm is certain to occur and that it is a direct result of the action it is challenging. *See e.g. Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) ("the movant must show that the alleged harm will directly result from the action which the movant seeks to enjoin"). Allegations only of what is "likely" to occur are of "no value." *See Wisconsin Gas Co.*,758 F.2d at 674.

In general, claims of financial loss do not constitute irreparable harm. *Sampson v. Murray*, 415 U.S. 61, 90 (1974). However, bankruptcy or a substantial loss of business may constitute irreparable harm because those events render a final judgment ineffective and deprive movant of "meaningful judicial review." *Harmoni Int'l Spice, Inc.*, 211 F.Supp.3d at 1307 (citing *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 923 (1975)). "Price erosion, loss of goodwill, damage to reputation, and loss of business opportunities" may also constitute irreparable harm in some circumstances. *Celsis In Vitro, Inc. v. CellzDirect, Inc.*, 664 F.3d 922, 930 (Fed. Cir. 2012); *see e.g., Confederación de Asociaciones Agrícolas del Estado de Sinaloa, A.C. v. United States*, 389 F.Supp.3d 1386, 1398 (Ct. Int'l Trade 2019).

The liquidation of entries, which may preclude judicial review, is an irreparable harm. As this Court recently explained:

> Liquidation, as the final computation of duties, will constitute irreparable harm unless an importer can obtain refunds or reliquidation because it cuts off judicial review and eliminates any chance of recovery of unlawful exactions. See *Zenith*, 710 F.2d at 810. In *Zenith*, the Court of Appeals held that liquidation of entries moots the action with respect to those entries and constitutes irreparable harm. *Id.* The Court of Appeals explained that liquidation would not only involve economic harm, but also the "statutory right to obtain judicial review of the determination." *Id.*

In re Section 301 Cases I, 524 F. Supp. 3d at 1362–63. In that case, this Court acknowledged that "despite the broad statutory language granting the Court authority to order whatever relief is appropriate" the Court of Appeals had cast doubt on this Court's ability to order refunds or reliquidation of goods subject to 301 tariffs. *In re Section 301 Cases I*, 524 F. Supp. 3d at 1365–66.

Here, although Plaintiff would suffer irreparable harm should its entries liquidate during the pendency of this action, Plaintiff fails to establish that it will suffer irreparable harm as a direct result of the collection of Section 301 Tariffs on syringes and needles. The liquidation of Plaintiff's entries during the pendency of this action would cause irreparable harm. *See In re Section 301 Cases I*, 524 F.Supp.3d 1355 at 1362–63. The Defendant offers to "enter into a stipulation to not oppose the Court's authority to order reliquidation of entries that remain unliquidated as of the date when the Court rules on the proposed stipulation." Def. MTD at 30–31. Defendant indicates that it would "reserve the right" to make any arguments concerning whether the court should reorder liquidation should the Plaintiff prevail. *Id.* Defendant's offer falls short. Suspending liquidation subject to the Defendant's willingness to stipulate to the refund of illegally paid duties should the Plaintiff prevail better preserves the status quo. *See In re Section 301 Cases I*, 524 F.Supp.3d at 1371 ("it is within the court's power to issue an injunction that requires the Government to suspend liquidation for each entry unless the Government opts to stipulate that it will refund the unlawfully collected duties for that specific entry"). The Court may, and here will, enjoin liquidation to prevent such a harm.

Plaintiff fails to demonstrate that it will suffer irreparable harm absent an injunction against imposition and collection of the duties. Despite arguing that the immediate threat of non-recoverable finan-

cial losses, the threat of business disruption, and loss of business and goodwill are all present in this case, Pl. Post- Hearing Br. at 2–4, Oct. 22, 2024, ECF No. 54, Plaintiff offers no evidence that any of these harms are imminent as a result of the Section 301 Tariffs. *See generally* Pl. Post-Hearing Brief. For example, Plaintiff's chief executive officer states that a "100% tariff rate would force Retractable to sell some of these syringes and needles at a loss" and "may" force it to cut overhead because it "cannot afford to pay 100% tariffs and be competitive." Shaw Decl. at ¶¶ 89, 93, 95–96, Sept. 27, 2024, ECF No. 18 ("Shaw Decl."). Plaintiff's chief financial officer also projects that it will be able to "develop a domestic manufacturing operation" in 2025, Fort Decl. ¶ 32, Sept. 27, 2024, ECF No. 20 ("Fort Decl."), that it has a strong balance sheet, and that if it were required to pay the additional tariff, it would not become insolvent in 2025. Evidentiary Hearing Transcript ("Tr.") at 36:19–24, Oct. 21, 2024, ECF No. 52. Similarly, although bankruptcy can be, but does not always constitute irreparable harm, here Plaintiff does not allege or offer any evidence bankruptcy is certain or imminent. Tr. at 38:16–20 (discussing Plaintiff's investments)[5]. Indeed, the evidence put forth reveals Plaintiff would not become insolvent in the near future. See Plaintiff's 2024 Q2 Financial Statements ("DX-8") at 1, 3, October 16, 2024, ECF No. 45–5 (showing Plaintiff's cash and cash equivalents); *see also* Tr. 36:22–24 (indicating that Plaintiff has a strong balance sheet because its assets exceed its liabilities); Tr. 38:21–24 (discussing the strength of Plaintiff's balance sheet).

III. The Balance of Equities.

Plaintiff argues that the balance of the equities favors it over the Defendant because it will suffer irreparable harm absent an injunction, while the Defendant will "merely suffer a delay in collecting tariffs." Compl. at ¶168; Preliminary Injunction Motion at 25. The Defendant responds that Plaintiff's requested relief would "undermine the effectiveness" of the USTR's action to eliminate China's unfair trade practices. Def. MTD at 43. The Court "must balance the competing claims of injury and must consider the effect on each party" of granting or denying the relief requested. *Winter*, 555 U.S. at 24 (internal quotation marks omitted) (quoting *Amoco Production Co. v. Village of Gambell, AK*, 480 U.S. 531, 542 (1987)). The balance of the equities favors Defendant. The relief sought is not narrow. Plaintiff asks the Court to enjoin the imposition on the Section 301 Tariffs and "waive a security or bond before entering a restraining order and

[5] Plaintiff testified that its investments [[
]]

injunction." Preliminary Injunction Motion at 24, n. 4. Consequently, given the amount of Plaintiff's imports, if it were not required to pay the 301 Tariffs on its imports during the pendency of this case, the United States would be at risk of losing millions of dollars if Plaintiff were to lose this case. *See* Amstutz Decl. at 2, Oct. 11, 2024, ECF No. 34.[6] This possibility, coupled with Plaintiff's failure to show it will suffer irreparable harm absent injunctive relief tips the balance of the equities in favor of the Defendant and against enjoining collection of the Section 301 Tariffs.[7]

IV. Public Interest.

Plaintiff contends that the public interest supports granting an injunction to preserve its business and "government-funded, patented technology," as well as allow for affordable syringes and needles, and maintain a diverse and competitive market for essential medical supplies. Compl. at ¶ 169; Preliminary Injunction Motion at 25–26. Defendant responds that the relief requested by Plaintiff is not in the public interest in part because of uncertainty as to whether Plaintiff could pay the duties at the end of the case, as well as the broader implications if other companies subject to these tariffs requested the same relief. Def. MTD at 42.

The Court pays special attention to the public consequences when deciding whether to grant injunctive relief. *Winter*, 555 U.S. at 24. Customs must protect the revenue of the United States. *See generally Carolina Tobacco Co., Inc. v. United States*, 402 F.3d 1345 (Fed. Cir. 2005). The United States has a legitimate interest in the imposition and collection of Section 301 duties. *See generally Section 301 Investigation Findings; In re Section 301 Cases I*, 524 F.Supp.3d 1355. Finally, Plaintiff itself argues that its financial situation in the next three to five years is precarious. Tr. at 39:12–23. Thus, protection of the United States' revenue weighs more heavily in favor of the denying an injunction regarding the collection of the Section 301 Tariffs. However, "preserving judicial review of the application of the underlying legislation fosters the public interest in the lawful application of that legislation" which weighs in favor of enjoining liquidation of Plaintiff's entries. *In re Section 301 Cases I*, 524 F.Supp.3d at 1372.

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[6] Plaintiff has imported merchandise with an approximate value of [[ ]] between January 1, 2024 and October 3, 2024.

[7] Nonetheless, it would be inequitable if the liquidation of entries precluded review of Plaintiffs claims. *See In re Section 301 Cases I*, 524 F. Supp. 3d at 1371, and therefore, as already discussed, the Court will enjoin liquidation of Plaintiff's entries.

CONCLUSION

Despite raising serious and substantial questions as to the legality of the USTR's actions in making its determination, Plaintiff fails to demonstrate that it will suffer irreparable harm should an injunction against collection of the Section 301 Tariffs not issue. Further, the balance of the equities and the public interest both weigh against issuing an injunction against the imposition and collection of the Section 301 Tariffs. Finally, the Court will eliminate irreparable harm that would flow from the liquidation of entries that are currently unliquidated during the pendency of this suit by enjoining liquidation of Plaintiff's entries.

In light of the foregoing, it is

ORDERED that Plaintiff's application for temporary restraining order and motion for preliminary injunction enjoining the collection of Section 301 Tariffs, *see* ECF No. 5, are denied; and it is further

ORDERED that Plaintiff's motion for preliminary injunction, *see* ECF No. 5, enjoining liquidation of Plaintiff's entries during the pendency of this litigation is granted; and it is further

ORDERED that Defendants, together with their delegates, officers, agents, and servants, including employees of U.S. Customs and Border Protection, are enjoined during the pendency of this litigation, including any appeals, from liquidating any entry for which they receive a request for suspension of liquidation pursuant to this order, unless, within 14 calendar days from the date Defendants receive a request for suspension of liquidation of such entry, Defendants, at their option, stipulate to refund any duties found to have been illegally collected for that specific entry and notify Plaintiff of such stipulation promptly in writing.

Dated: October 28, 2024
New York, New York

/*s*/ *Claire R. Kelly*
CLAIRE R. KELLY, JUDGE

Slip Op. 24–123

ILDICO INC., Plaintiff, v. UNITED STATES, Defendant.

Before: Jane A. Restani, Judge
Consol. Court No. 18–00136

[In a Customs classification matter, the plaintiff's motion for summary judgment is denied and the defendant's motion for summary judgment is granted.]

Dated: November 1, 2024

Mandy E. Kirschner, Stein Shostak Shostak Pollack & O'Hara, LLP, of Los Angeles, CA, argued for the plaintiff Ildico Inc.

Mathias Rabinovitch, International Trade Field Office, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of New York, NY, argued for the defendant. On the brief were *Marcella Powell*, Senior Trial Counsel, *Brian M. Boynton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director, *Justin R. Miller*, Attorney-in-Charge, and *Aimee Lee*, Assistant Director. Of counsel on the brief was *Fariha B. Kabir*, Office of Assistant Chief Counsel, International Trade Litigation, U.S. Customs and Border Protection of New York, NY.

OPINION AND ORDER

Restani, Judge:

Before the court are cross-motions for summary judgment. Pl.'s Mot. for Summ. J., ECF No. 35 (Mar. 12, 2024) ("Pl. MSJ"); Def.'s Mem. in Supp. of Cross-Mot. for Summ. J. and Opp'n to Pl.'s Mot. for Summ. J., ECF No. 42 (May 30, 2024) ("Def. Cross MSJ"). Plaintiff Ildico Inc. ("Ildico") challenges the United States Customs and Border Protection's ("Customs") classification of certain luxury watches under heading 9102 of the Harmonized Tariff Schedule of the United States ("HTSUS"). At issue is whether the cases of the watches imported by Ildico are "wholly of" precious metal. Broadly, Ildico argues that because the principal parts of the case are made of eighteen-karat gold, the watch and its requisite components are properly classified under subheading 9101, HTSUS. Pl. MSJ at 3. The government contends that the HTSUS uses a broad definition of case; thus, because the cases include parts not made of precious metals such as the sapphire crystal backs or screws, heading 9102 is appropriate.[1] Def. Cross MSJ at 5–6. For the reasons laid out below, the court concludes that the watches are watches with cases of material other than precious metal classified in heading 9102, HTSUS.

[1] There is no dispute as to the proper subheadings. Only the headings are in dispute.

BACKGROUND

I. Procedural Background

There are no material factual disputes in this case.[2] Pl. MSJ at 1; Def. Cross MSJ at 1. The subject merchandise in question is thirty-five styles of Richard Mille brand wrist watches manufactured in Switzerland and imported by plaintiff Ildico Inc. Def.'s Rule 56.3 Statement of Material Facts Not in Dispute, ¶¶ 2, 5, ECF No. 42–2 (May 30, 2024) ("Def.'s SMF"); Pl.'s Rule 56.3 Resp. to Def.'s SMF, ¶¶ 2, 5, ECF No. 46–6 (July 12, 2024); Decl. of Anton Rubianto ("Rubianto Decl."), ¶¶ 9, 17, ECF No. 35–1 (Mar. 12, 2024). Ildico does business as Richard Mille Americas and is the exclusive importer and distributor of Richard Mille brand watches in North America. Rubianto Decl., ¶ 7. Ildico imported the merchandise in multiple entries made in 2015 and 2016. Summons, ECF No. 1 (June 14, 2018). In 2016, Customs completed a classification audit of Ildico's imported Richard Mille watches and informed Ildico that the watches it audited were classified incorrectly under heading 9101 as watches with cases of gold. Pl.'s Rule 56.3 Statement of Undisputed Material Facts, ¶ 4, ECF No. 35–5 (Mar. 12, 2024) ("Pl.'s SMF"); Def.'s Resp. to Pl.'s SMF, ¶ 4, ECF No. 42–1 (May 30, 2024). Customs instructed Ildico to classify the watches under heading 9102 as "other" watches. Def.'s Resp. to Pl.'s SMF, ¶ 4.

Customs classified the subject watches under three subheadings of heading 9102.[3] *Id.* Ildico timely protested the liquidations and argued that the watches were properly classified under heading 9101 as watches with a case of precious metal. Pl.'s SMF, ¶ 5; Def.'s Resp. to Pl.'s SMF, ¶ 5. On December 19, 2017, and February 14, 2018, Customs denied the protests. Pl.'s SMF ¶¶ 6, 7; Def.'s Resp. to Pl.'s SMF, ¶¶ 6, 7. Ildico commenced this action to challenge this classification issue.

II. Description of Subject Merchandise

The subject merchandise is thirty-five styles of Richard Mille watches. Def.'s SMF, ¶¶ 2, 5; Pl.'s Rule 56.3 Resp. to Def.'s SMF, ¶¶ 2, 5. Each watch in the litigation has three parts made of eighteen-karat gold – the bezel (also known as the front), middle case, and case back. Supp. Decl. of Michelle Shipley, ¶ 6, ECF No. 46–2 (July 12, 2024)

[2] Although the government originally challenged plaintiff's proof as to its imports as incomplete, it appears to have abandoned that challenge. Def.'s Resp. to Pl.'s SMF at 10; Oral Argument at 2:29. The court agrees that plaintiff's affidavits describing the imports seem complete and are not contradicted.

[3] Subheadings 9102.21.70, 9102.21.90, and 9102.29.60, HTSUS (2015, 2016).

("Supp. Shipley Decl."). Eighteen-karat gold is comprised of seventy-five percent metal alloy by weight and twenty-five percent of other metals, such as palladium, nickel, silver, or copper, by weight. Pl. MSJ, Ex. 13, at 398. Each watch has mechanical movement with over seventeen jewels in the movement. Rubianto Decl., ¶¶ 24, 25.

On the front and back of each watch, the case contains a transparent synthetic sapphire crystal. Decl. of Michelle Shipley, ¶¶ 33, 42 ECF No. 35–2, (Mar. 12, 2024) ("Shipley Decl."). The crystal on the front sits above the watch dial, revealing the hands and protecting the watch from damage. *Id.* at ¶ 35. The crystal on the back sits below the dial, revealing the movement and protecting the watch from damage. *Id.* at ¶¶ 33, 42.

The front crystal is secured to the top of the bezel with a plastic gasket. Shipley Decl., ¶ 38. A rubber o-ring gasket is placed inside the case to seal the bezel and middle cases.[4] *Id.* The o-ring gasket is held in place with a stainless-steel sealing flange.[5] *Id.* at ¶¶ 38–39. Titanium screws fasten the bezel and case back to the middle case, and rubber washer gaskets provide a cushion between the watch movement and middle case. *Id.* at ¶ 40. A winding stem attaches to the movement of the case through an eighteen-karat gold crown tube mounted on the middle case to wind the watch's mainspring and set the time. *Id.* at ¶¶ 59–60. Several styles have eighteen-karat gold pushers (buttons) with a guard of titanium on the middle case to serve a stopwatch timing function.[6] *Id.* at ¶ 61; Pl. MSJ at 23.

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction under 28 U.S.C. § 1581(a) (2018). The court will grant summary judgment if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." USCIT Rule 56(a). Summary judgment is appropriate in tariff classification cases where "there is no genuine dispute as to the nature of the merchandise and the classification turns on the

[4] A gasket creates a seal between different parts of the watch, such as between the front crystal and the bezel, to create water resistance and to protect the watch from debris. Shipley Decl. at ¶ 38.

[5] A flange is a "projecting flat rim, collar, or rib, used to strengthen an object, to guide it, to keep it in place, to facilitate its attachment to another object, or for other purposes." *Flange*, Oxford English Dictionary, https://www.oed.com/dictionary/flange_n?tab=meaning_and_use#4326306 (last visited Sept. 13, 2024).

[6] The pushers on the watch are buttons that allow the user to perform a function on the motion. Shipley Decl., ¶ 61. They are a control mechanism commonly found on chronograph watches, which are watches with the added capability of measuring elapsed time with precision. *What is a Chronograph Watch?*, Invicta Stores, https://invictastores.com/glossary/term/chronograph/ (last visited Sept. 9, 2024). A titanium guard protects these pushers from damage. Shipley Decl., ¶ 61.

proper meaning and scope of the relevant tariff provisions." *Deckers Outdoor Corp. v. United States*, 714 F.3d 1363, 1371 (Fed. Cir. 2013). The court decides classification de novo. *See* 28 U.S.C. § 2640(a)(1); *Telebrands Corp. v. United States*, 865 F. Supp. 2d 1277, 1279–80 (CIT 2012).

DISCUSSION

I. Legal Framework

In a tariff classification dispute, the plaintiff has the burden of demonstrating that the government's classification is incorrect but does not bear the burden of establishing the correct classification. *Jarvis Clark Co. v. United States*, 733 F.2d 873, 876 (Fed. Cir. 1984). Independent of the arguments presented, the court has a statutory mandate to "reach a correct result." *Id.* at 878; *see* 28 U.S.C. § 2643(b). The court "first considers whether 'the government's classification is correct, both independently and in comparison with the importer's alternative.'" *Shamrock Building Materials, Inc. v. United States*, 619 F. Supp. 3d 1337, 1342 (CIT 2023) (quoting *Jarvis Clark*, 733 F.2d at 878).

The court determines the meaning of the tariff term as a matter of law and whether the subject merchandise is properly defined by that term as a question of fact. *Wilton Indus. v. United States*, 741 F.3d 1263, 1266 (Fed. Cir. 2013) (citations omitted). To determine the meaning of and apply a tariff term to the facts, the court applies the General Rules of Interpretation ("GRIs") and, if applicable, the Additional U.S. Rules of Interpretation. *Id.* The court applies the GRIs in numerical order and only continues to a subsequent GRI if "proper classification of the imported goods cannot be accomplished by reference to a preceding GRI." *Id.* GRI 1 requires classification to "be determined according to the terms of the headings and any relative section or chapter notes." GRI 1, HTSUS.

The HTSUS chapter and section notes are considered binding statutory law. *See BenQ Am. Corp. v. United States*, 646 F.3d 1371, 1376 (Fed. Cir. 2011) (citation omitted). The HTSUS is derived from the international Harmonized Commodity Description and Coding System ("HTS"), which "provides a common core language for trade." *Marubeni Am. Corp. v. United States*, 35 F.3d 530, 533 (Fed. Cir. 1994). When "a tariff term is not defined in either the HTSUS or its legislative history, the term's correct meaning is its common or dictionary meaning in the absence of evidence to the contrary." *Russell Stadelman & Co. v. United States*, 242 F.3d 1044, 1048 (Fed. Cir. 2001) (citations omitted). When determining the common meaning of

tariff terms, the court may "consult lexicographic and scientific authorities, dictionaries, and other reliable information" or may rely on its "own understanding of the terms used." *Baxter Healthcare Corp. v. United States*, 182 F.3d 1333, 1338 (Fed. Cir. 1999) (citation omitted). The court will also consider the Explanatory Notes ("ENs") to the HTS in interpreting the HTSUS terms. *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1378 n.1 (Fed. Cir. 1999). Although the ENs are not dispositive of the meaning of the tariff terms, they are "generally indicative of [the] proper interpretation of the various provisions" and so are persuasive on the international meaning of the tariff terms. *Id.* When interpreting the terms of the HTSUS, the court aims to identify what the tariff would mean if used as part of the "common core language of trade" and where appropriate consider the British definition of the term. *Blue Sky Color of Imagination, LLC v. United States*, 698 F. Supp. 3d 1243, 1248 (CIT 2024). The court presumes that the terms of the HTSUS may encompass both the British and American definitions of the terms. *Id.*

The court reads the HTSUS as a comprehensive document, the provisions of which should be read consistently and complementary to one another. *See Toy Biz, Inc. v. United States*, 22 CIT 831, 834–35, 19 F. Supp. 2d 1128, 1131–32 (1998) (agreeing that "the entire context of the [HTSUS] must be considered and every effort made to give full force and effect to all language contained therein"). By considering the common and commercial meanings of tariff terms, the court construes the meaning of the HTSUS in the light of commercial realities and the real-world context of the industries in which the subject merchandise exists.

II. Competing Tariff Provisions

Customs classified the Richard Mille watches under heading 9102, HTSUS. The relevant portion of Chapter 91 of the HTSUS reads:

Heading 9102	Wrist watches, pocket watches and other watches, including stop watches, other than those of heading 9101:

Ildico contends that the watches should enter under heading 9101, HTSUS, as:

Heading 9101	Wrist watches, pocket watches and other watches, including stop watches, with case of precious metal or of metal clad with precious metal:

Chapter 91, Note 2 elaborates on the scope of heading 9101 and how it can be differentiated from subject merchandise classified under heading 9102. It states that "heading 9101 covers only watches with case wholly of precious metal or of metal clad with precious metal, or of the same materials combined with natural or cultured pearls, or precious or semi precious stones (natural, synthetic or reconstructed)." HTSUS. The key language here is that the heading is defined by the makeup of the case, limiting heading 9101 to cases made "wholly of precious metal." The fundamental dispute is thus whether the cases of the watches imported by Ildico are "wholly of precious metal."

III. The Watches Properly Fall Under Heading 9102 of the HTSUS

In its briefing the government made many arguments, at least two of which were not tenable in any way. First, that eighteen-karat gold is not pure gold and therefore the watch cases are not "wholly of" precious metal. The court will not discuss this argument further as the government now has rightly abandoned it.[7] Oral Argument at 31:26. Second, it also asserted that certain parts that operate the watch are part of the case. The government has also correctly abandoned that argument. Oral Argument at 2:36, 40:00. Another argument no longer pressed is that certain case sealing features such as the rubber sealing gasket and the steel flange that hold it renders the case not of precious metal. *Id.* The impracticality of a seal of precious metal makes this an unlikely feature on which the HTSUS headings would distinguish between cases of precious or base metal. While not as untenable as the first two arguments, it is also properly set aside. This leaves two case features that arguably must be of precious metal for classification under heading 9101: the watch back crystal and the visible screws that fasten the front and body of the case together. The court will address both parts.

a. The Synthetic Sapphire Crystal Back is Part of the Watch Case

Ildico argues specifically that the synthetic sapphire crystals on the back of the Richard Mille watches are not part of the watch case because they are functionally and materially the same as the watch glasses on the front of the watches, which are not part of the watch case. Pl. MSJ at 31–32. The government contends that Note 1(b)'s definition of "cases," while not expressly including watch glasses,

[7] Plaintiff should refrain from gloating as it also made several arguments, particularly with regard to the minor parts issue, that resulted in unnecessary extra briefing.

encompasses the synthetic sapphire crystal case back because the definition of a watch back is not contingent on the material of the back. Def. Cross MSJ at 24; Oral Argument at 42:00. This issue turns on whether the sapphire crystal backs of the Richard Mille watches are a separate component of the watch, i.e. watch glasses, or whether they are merely the back of the watches and therefore part of the watch case, rendering the watch case not "wholly of precious metal."

Each Richard Mille watch is equipped with a rectangular-shaped case back made of eighteen-karat gold. The case back has an open center which is designed to hold the back watch crystal, which is a transparent synthetic sapphire that is covered on the back with the same Blue-Violet ARdur® antiglare coating as on the front.[8] Shipley Decl., ¶¶ 33–34, 41–42. The transparent synthetic sapphire fitted to the case back allows a viewer to observe the inner workings of the watch. *Id.* at ¶ 43. In the industry, case backs with open centers that are fitted with a crystal, like the watches in this action, are called exhibition or open case backs.[9] *Id.* at ¶¶ 49–50.

The court begins its analysis under GRI 1. GRI 1 requires classification to "be determined according to the terms of the headings and any relative section or chapter notes." GRI 1, HTSUS. Heading 9101 of the HTSUS includes "wrist watches, pocket watches and other watches, including stop watches, *with case of precious metal* or of metal clad with precious metal." Chapter 91, HTSUS (2015, 2016) (emphasis added). Chapter 91, Note 2 of the HTSUS expands on the meaning of "case of precious metal," stating:

> Heading 9101 covers only watches with case *wholly of* precious metal or of metal clad with precious metal, or of the same materials combined with natural or cultured pearls, or precious or semiprecious stones (natural, synthetic or reconstructed) of headings 7101 to 7104. Watches with case of base metal inlaid with precious metal fall in heading 9102.

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[8] Although heading 9101 allows a precious metal case to be combined with a synthetic precious or semiprecious stone of heading 7101 to 7104, the synthetic crystal backs do not fall into this category. Chapter 91, Note 2, HTSUS (2015, 2016). The Explanatory Note to heading 9101 states that "watches of this heading . . . may be set with gem stones or with natural or cultured pearls . . ." This suggests that the drafters of the HTS contemplated a watch *set* with natural, synthetic, or reconstructed precious or semiprecious stones. The synthetic sapphire crystals at issue do not match this description, and plaintiff does not allege otherwise. Therefore, the issue is only whether or not they are a part of the watch case.

[9] The sapphire crystal backs of the watches in question make up a substantial part of the back of the watch cases. They clearly serve a protective function because they are virtually identical in shape and size to the watch glass on the front of the watch, which serve a protective function. The court does not address the question of whether a smaller sapphire crystal making up an insubstantial part of the watch back would be part of a watch case.

Chapter 91, Note 2, HTSUS (2015, 2016) (emphasis added). General Note 3(h(v)) to the HTSUS defines "wholly of":

> The terms "*wholly of*", "*in part of*", and "*containing*", when used between the description of an article and a material (e.g. "woven fabrics, *wholly of* cotton"), have the following meanings: (A) "*wholly of*" means that the goods are, except for negligible or insignificant quantities of some other material or materials, composed completely of the named material[.]

General Note 3, HTSUS (2015, 2016). Subpart (v) of General Note 3(h) goes on to note that "with regard to the application of the quantitative concepts specified above, it is intended that the de minimis rule apply." Additional U.S. Note 1(b) defines the term "cases" as:

> The term "*cases*" embraces inner and outer cases, containers and housings for movements, together with parts or pieces, such as, but not limited to, rings, feet, posts, bases and outer frames, and any auxiliary or incidental features, which (with appropriate movements) serve to complete the watches, clocks, time switches, and other apparatus provided for in this chapter.

Chapter 91, Additional U.S. Note 1(b), HTSUS (2015, 2016).

The court will consider whether the sapphire crystal backs are watch glasses, as alleged by plaintiff, and, if so, whether satisfying the definition of "watch glass" renders the crystal backs separate from "watch cases."

Neither the HTSUS nor the Explanatory Notes define "watch glass." As indicated, when the HTSUS does not define terms, they are "construed according to their common and commercial meanings, which are presumed to be the same absent contrary legislative intent." *Len-Ron Mfg. Co. v. United States*, 334 F.3d 1304, 1309 (Fed. Cir. 2003); *see also Chemtall Inc. v. United States*, 179 F. Supp. 3d 1200, 1203 (CIT 2016). To establish the common and commercial meanings of the words of the HTSUS, the court consults dictionaries, encyclopedias, and other lexicographical sources. *Former Emps. of Murray Eng'g, Inc. v. Chao*, 346 F. Supp. 2d 1279, 1285 n.14 (CIT 2004). The court may rely on its own understanding of the terms used in construing HTSUS headings and subheadings. *Specialty Commodities Inc. v. United States*, 190 F. Supp. 3d 1277, 1283 (CIT 2016) (citing *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1379 (Fed. Cir. 1999)).

The Oxford English Dictionary defines "watch-glass" as a "thin piece of glass, usually concavo-convex in form, fitted into the case of

a watch over dial plate."[10] According to the Oxford English Dictionary, the "dial plate" is "the faceplate of a dial, esp. that of a clock, watch, or sundial, on which the hours are marked."[11] Similarly, the Merriam Webster dictionary defines "watch crystal"[12] as "a concavo-convex glass covering the dial of a watch."[13] Other sources more specific to the watch industry define "watch glass" more broadly. For example, the FH Professional Dictionary of Horology defines "watch-glass" as a "thin plate of mineral glass or transparent synthetic material . . . which protects the internal contents of watches and clocks. Fitted to the front *or back* of time-keeping instruments to allow the time to be read and the inner workings to be viewed."[14] Yet, some industry-specific sources differ. For example, Windgate's Watch Dictionary defines the "crystal" as "the transparent part *over the dial used to protect the dial and hands of the watch*."[15]

Nonetheless, the sources that define "watch glass" as covering the front of a watch do not limit them to covering *only* the face of the watch, whereas other definitions noted above explicitly state that a watch glass may be on *either* the front or back of a watch. The more detailed definitions of "watch glass" stating that a watch glass may be on either side of a watch should control in the absence of any sources limiting a watch glass to the front of the watch. Further, the front and back watch crystals are made of the same materials and are virtually indistinguishable to the naked eye. The sapphire crystal backs are therefore "watch glasses."

Turning to the next issue, if the back crystal is a watch glass, is it still part of the case? The government, while arguing that the watch back crystal is part of the watch case, concedes that the watch glass covering the face of the watch is not part of the case. Oral Argument

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[10] *Watch-glass*, Oxford Eng. Dictionary, https://www.oed.com/dictionary/watch-glass_n?tab=meaning_and_use#15022414 (last visited Sept. 9, 2024).

[11] *Dial plate*, Oxford Eng. Dictionary, https://www.oed.com/dictionary/dial-plate_n?tab=meaning_and_use#6925372 (last visited Sept. 9, 2024).

[12] Some dictionaries use the term "watch crystal" instead of "watch glass." The two terms are synonymous. "A watch glass is an industry term that is synonymous with a watch crystal." Shipley Decl., ¶ 55. The Watch Pages glossary defines watch "crystal" as "[t]he glass covering the face or back of a watch protecting it from dirt, water, and other elements." Pl. MSJ, Ex. 13 at 398. The government does not dispute that these terms are synonymous.

[13] *Watch crystal*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/watch%20crystal (last visited Sept. 9, 2024).

[14] *Watch-glass*, Dictionary of Horology, https://dictionary.fhs.swiss/?l=en (last visited Sept. 9, 2024); *see also* Susanne Samuelsson, *Watch Anatomy – Know the Lingo*, The Watch Pages, https://www.thewatchpages.com/watch-anatomy/ (last visited Sept. 9, 2024) (emphasis added).

[15] *Crystal*, Windgate's Watch Dictionary, https://www.tic-tock.com/watch-dictionary (last visited Sept. 9, 2024) (emphasis added).

at 40:22. Practical considerations support this concession. Including a watch glass covering the face of the watch in the definition of a watch case would mean that, for a watch to be properly classified under heading 9101 as a watch having a case "wholly of" precious metal, the watch would either need to have no watch glass protecting the face at all or a watch "glass" made of gold, silver, or platinum. This would defeat the entire purpose of having a watch as the viewer would not be able to tell the time. There is no doubt, therefore, that the watch glass covering the watch face is not part of the watch case.

It does not necessarily follow, however, that a watch glass on the back of the watch is not part of the case. The watch glass on the back is of the same material as the front watch glass and serves a similar function to the watch glass on the front in that it allows the watch parts to be seen. Yet, to find that the watch glass on the back is part of the case would not lead to the same absurd results as defeating the claimed classification because the watch has a glass front. Finding the back watch glass to be part of the case would merely mean that, for a watch to be classified in heading 9101, it would need a precious metal back, which is the norm. Otherwise, it would be classified under heading 9102. In this scenario, a watch could still be classified under heading 9101 and still be a watch because it could still be used to tell the time.

Of course, there are aesthetic characteristics of watches apart from their time-telling functions that some would argue are "essential" to the Richard Mille watches in question. Yet, the aesthetic value merely adds to the essential purpose of a watch. While finding that a watch back must be made entirely of precious metal to be classified under heading 9101 may interfere with these aesthetic considerations, it does not impede the essential function of a watch.

The HTS Explanatory Notes and Richard Mille's own inventory also supports classification in heading 9102. The EN to heading 9111, which covers watch cases specifically, states that "[w]atch cases and parts thereof may be of any material. They are mainly made of base metal . . . or of precious metal, or of metal clad with precious metal, or sometimes of plastics, ivory, agate, mother-of-pearl or tortoise shell." This suggests that the kind of material is not the determining factor for whether a component is part of the watch case. Therefore, the fact that the backs of the watches are partly made of sapphire crystal does not mean that the sapphire crystal is no longer part of the back. It merely means that the back is no longer "wholly of" precious metal. Richard Mille's own inventory reinforces this inference. Richard Mille sells a watch with a case made entirely of sap-

phire crystal.[16] One would not conclude that just because this watch is made of sapphire crystal, it does not have a case. Rather, the sapphire crystal makes up the case and serves the same function of housing the movements of a watch that a metal case would. This logic extends to the sapphire crystal backs. While this example is not determinative of the issue, it is consistent with the conclusion that the material of the watch back does not control whether the back is part of the case.

Finally, although Customs ruled previously that a Swiss-Made Patek Philippe watch with a "sapphire crystal" on the back was classified under heading 9101, this ruling does not persuade the court that the watches in question therefore fall under heading 9101.[17] Customs Ruling NY 268252. Customs Rulings are not binding on the court but rather may be persuasive. *See United States v. Mead Corp.*, 533 U.S. 218, 235 (2001). While the watch in question had a similar sapphire crystal back to the ones on the Richard Mille watches, the Ruling does not discuss the sapphire crystal back. Further, Ildico presented no evidence that the photos of the watch that Customs considered when making the ruling revealed that the watch actually had a sapphire crystal back. Pl. MSJ, Ex. 7 at 236–37. Given some doubt as to what Customs was considering and given the absence of reasoning on the crucial point, this Ruling does not persuade the court that a watch with a sapphire crystal back is within heading 9101.

Based on all the foregoing reasons, the court finds that, while a watch glass on the front of a watch is not part of the case, a watch glass on the back of a watch is part of the case and renders the case not "wholly of" precious metal.

b. The Court Does Not Resolve the Issue of Whether Titanium Screws Render the Watch Case not "Wholly of" Precious Metal

The court does not resolve whether various other parts need to be of precious metal as the crystal back watch glass defeats classification in heading 9101. For the sake of completeness, however, and because the parties briefed this issue extensively, the court will discuss the issue in brief. The question before the court is whether these watch subcomponents are included in the definition of a watch "case" and

[16] Calibre RM56–01, Richard Mille, https://www.richardmille.com/historical-models/rm-56–01-tourbillon-sapphire (last visited Oct. 7, 2024).

[17] Patek Philippe Complications Chronograph White Gold Mens Watch 5170, SwissWatch Expo, https://www.swisswatchexpo.com/watches/patek-philippe-complications-chronograph-white-gold-mens-watch-5170–60833/ (last visited Sept. 10, 2024).

therefore render the case not "wholly of precious metal."[18] Ildico argues that a watch case is made up of only the bezel, middle, and case back. It argues that the case screws, among other minor parts, are not parts of the watch cases because they are parts of general use or are "de minimis" components of the watches.[19] Pl. MSJ at 23–24, 32–33. The government contends that the definition of case, as defined in Additional U.S. Note 1(b) to Chapter 91, is broad enough to include screws holding the front and back of the case together. Def. MSJ at 14–15, 18. Thus, the government concluded that the watch cases are not "wholly of precious metal" as various components including screws are not made of a precious metal. *Id.* at 2.

Each watch in question has a bezel, middle, and case back made of eighteen-karat gold. Supp. Shipley Decl., ¶ 6. The crown tubes, pushers, and some of the crowns are made of eighteen-karat gold. Shipley Decl., ¶¶ 60–61; Pl. MSJ at 23. The winding stem, pusher guards, case screws, washers, sealing gaskets, sealing flange, and some of the crowns are made of materials other than eighteen-karat gold.[20] Shipley Decl., ¶¶ 39–40, 60–62. Richard Mille chooses materials such as titanium, plastic, or rubber for these components because those materials are more properly suited for ensuring that the watches are durable and water resistant. *See* Shipley Decl., ¶ 59 ("The case parts are fastened together by titanium screws with a stainless-steel washer placed between the screw and case. Titanium screws are used rather than gold because they are more difficult to break and [gold screws] are not suitable to ensure water resistance.").

The court first considers the scope of the definition of watch "case" as outlined in Additional Note 1(b). As noted previously, Additional U.S. Note 1(b) defines the term "cases" as:

> The term "*cases*" embraces inner and outer cases, containers and housings for movements, together with parts or pieces, such as, but not limited to, rings, feet, posts, bases and outer frames, and any auxiliary or incidental features, which (with appropriate

[18] For the purpose of Chapter 91, "precious metal" is defined by Chapter 71, Note 4 as "silver, gold, and platinum." Chapter 71, HTSUS (2015, 2016).

[19] Ildico extrapolates from General Note 3(h(v)) that because the "de minimis" rule applies when interpreting quantitative concepts, only the "principal parts" of the watch cases must be made "wholly of" precious metals. Pl. MSJ at 18. Neither the HTSUS nor any Explanatory Notes include this concept of "principal parts" in the definition of "cases." Rather, Ildico reasons that "principal parts" can be applied because "de minimis" means "insignificant," and the opposite of "insignificant" is "principal." Pl. MSJ at 18–19. The court need not resolve this today. Further, plaintiff argues that the parts of general use, if imported separately, are classified elsewhere. Pl. MSJ at 24. While true, it answers nothing because the parts at issue are imported as watches, not as separate parts.

[20] As indicated previously, these parts, other than the case screws, are not at issue, whether "minor" or not.

> movements) serve to complete the watches, clocks, time switches, and other apparatus provided for in this chapter.

Chapter 91, Additional U.S. Note 1(b), HTSUS (2015, 2016).

The government is correct that Additional Note 1(b) defines watch cases broadly. Other provisions of the HTSUS, however, support a somewhat narrower reading of Additional Note 1(b) than asserted by the government. In particular, heading 9111 pertains specifically to "watch cases and parts thereof." This heading, though not specifically at issue in this case, provides valuable context for the meaning of the terms in headings 9101 and 9102 as the Additional and Explanatory Notes for these headings are unclear. ENs A and B of heading 9111 state that the heading covers "cases for watches of heading 91.01 or 91.02" and "parts of these cases, including: (1) the case body . . . (2) the pendant . . . (3) the dome . . . (4) the bezel . . . (5) the bottom." While the note does not state that this list of components of a case is exhaustive, it suggests that the HTSUS does not contemplate including the sealing and binding components of a watch, such as screws, as parts of the watch case.

The purpose of a watch case is to "house, contain and protect the parts of the movement, dial and hands."[21] Shipley Decl., ¶ 18. The case screws are made of titanium and, along with stainless steel washers, fasten case parts together. Shipley Decl., ¶ 59. The rubber or crystal sealing gaskets together with the stainless-steel sealing flanges serve the function of sealing the watch together to achieve water resistance.[22] Shipley Decl., ¶ 38. As indicated, the government does not press the argument that the sealing components must be of precious metal for obvious practical reasons. The government's reading, however, somewhat contradictorily, would require the screws holding together the components of the watch case to be made of "precious metal" even though gold, silver, and platinum may not be suited to construct a structurally sound watch. *See* Pl. Resp. to OA Questions, ECF No. 58 (Sept. 30, 2024). It would not be the intent of the drafters of the HTSUS to make selection among headings based on features that cannot exist.

Although at times, luxury items are less durable than their non-luxury counterparts, the government has presented no evidence to

[21] This proposition is supported by the Oxford English Dictionary's definition of "watch-case" as "a hinged case or cover of an old-fashioned watch, enclosing the watch proper; now, the metal cover enclosing the works of a watch." *Watch-case*, Oxford English Dictionary, https://www.oed.com/dictionary/watch-case_n?tab=meaning_and_use#15020101 (last visited Sept. 12, 2024).

[22] There is no real dispute that gaskets could not be made of precious metal. Pl. Resp. to OA Questions at 3; Def. Resp. to OA Questions at 3.

suggest that such a practice is common in the watch industry. It did present one example of screws said to be of eighteen-karat gold, sold online. Def. Resp. to OA Questions at 1, ECF No. 57 (Sept. 30, 2024). Similarly, the government provided an example of a watch with "eighteen-karat gold screws." *Id.* at 2. At this stage, the court does not know the composition of the screws. To resolve the issue of the status of screws as part of the case, the court would wish to hear evidence on what the industry considers a watch case or watch case body to be and whether precious metal screws are successfully used in watches. The court need not resolve this issue as the watch back crystal as a part of the case adequately determines the result here.

CONCLUSION

For the foregoing reasons, the court denies Ildico's motion for summary judgment, grants the government's cross-motion for summary judgment, and holds that the subject merchandise is properly classifiable under heading 9102, HTSUS. Judgment will be entered accordingly.

Dated: November 1, 2024
New York, New York

/s/Jane A. Restani
JANE A. RESTANI, JUDGE

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