

# U.S. Customs Service

## *General Notices*

DEPARTMENT OF THE TREASURY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS,  
*Washington, DC, June 26, 2002.*

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,  
*Acting Assistant Commissioner,  
Office of Regulations and Rulings.*

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### PROPOSED REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CURRENT SENSORS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of ruling letter and treatment relating to tariff classification of current sensors.

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 Customs intends to revoke a ruling letter pertaining to the tariff classification of current sensors under the Harmonized Tariff Schedule of the United States (“HTSUS”). Similarly, Customs proposes to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before August 9, 2002.

ADDRESS: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations & Rulings, Attention: Regulations

Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, NW, Washington, D.C during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Tom Peter Beris, General Classification Branch, at (202) 572-8789.

#### SUPPLEMENTARY INFORMATION:

##### BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility.**" These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs 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 provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of current sensors. Although in this notice Customs is specifically referring to one ruling, NY 815901, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or simi-

lar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs 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 this notice.

In NY 815901, dated November 21, 1995, (Attachment A), Customs classified a closed-loop linear current sensor under subheading 8542.19.0090, HTSUS, which provides for electronic integrated circuits and microassemblies: monolithic integrated circuits: other: other: other: other, including mixed signal (analog/digital): other.

It is now Customs position that the current sensor is properly classifiable under subheading 9030.39.00, HTSUS, which provides for other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 9028: other instruments and apparatus for measuring or checking voltage, current resistance or power, without a recording device: other.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY 815901 and any other ruling not specifically identified to the extent that it does not reflect the proper classification of the current sensor pursuant to the analysis set forth in proposed HQ 965698 (*see* "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: June 20, 2002.

JOHN ELKINS,  
(for John Durant, Director,  
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*New York, NY, November 21, 1995.*  
Document No: CLA-2-85:S:N:109 815901  
Category: Classification  
Tariff No. 8542.19.0090

MR. DALE FOLGATE  
HONEYWELL MICROSWITCH  
HONEYWELL INC.  
*11 West Spring Street  
Freeport, IL 61032-4353*

Re: The tariff classification of a current sensor from Scotland.

DEAR MR. FOLGATE:

In your letter dated October 5, 1995, you requested a tariff classification ruling.

The merchandise is described in your letter as a closed-loop linear current sensor. A current sensor is an electronic device that detects or measures the amount of AC or DC current flowing through a wire and provides a digital or analog output. Sensors are used for ground fault detection, control feedback loops, motor overload detection and energy management. Closed loop current sensors are made up of a magnetic core, a secondary coil winding around the core, an analog output Hall-effect integrated circuit (IC), an operational amplifier and supporting electronics and a plastic housing. A wire carrying the to be measured current (primary) is placed through the core of the sensor. The current in the primary generates a magnetic flux field around the wire. The flux is concentrated on the Hall IC by the magnetic core. The Hall IC generates a voltage proportional to the strength of the magnetic field. The operational amplifier creates a current that is passed through the secondary winding to produce a magnetic field with the opposite polarity to the field created by the primary current. Sensors work by the null balance principle which is always driving the total magnetic flux in the core to zero. The current in the secondary winding is therefore a mirror image of the primary current reduced by the number of wire turns in the secondary winding. Passing the secondary current through a precision measuring resistor gives a voltage drop proportional to the current in the primary circuit.

The applicable subheading for the current sensor will be 8542.19.0090, Harmonized Tariff Schedule of the United States (HTS), which provides for "Electronic integrated circuits and microassemblies; Monolithic integrated circuits: other: other: other: other: including mixed signal(analog/digital): other." The rate of duty will be free.

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.

ROGER J. SILVESTRI,  
*Director,*

*National Commodity Specialist Division.*

## [ATTACHMENT B]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
Washington, DC.

CLA-2 RR: CR: GC 965698 TPB  
Category: Classification  
Tariff No. 9030.39.00

MR. DALE FOLGATE  
HONEYWELL MICROSWITCH  
HONEYWELL, INC.  
11 West Spring Street  
Freeport, IL 61032-4353

Re: Current sensor; NY 815901 Revoked.

DEAR MR. FOLGATE:

This concerns NY 815901, dated November 21, 1995, issued to you by the Director, Customs National Commodity Specialist Division, New York, regarding the classification of a closed-loop linear current sensor, under the Harmonized Tariff Schedule of the United States ("HTSUS").

In NY 815901, Customs classified the current sensor under subheading 8542.19.0090, HTSUS, which provides for electronic integrated circuits and microassemblies; monolithic integrated circuits: other: other: other, including mixed signals (analog/digital): other. We have had an opportunity to review that ruling and find it to be inconsistent with the HTSUS requirements for classification of such merchandise. It is now Customs position that the current sensor is properly classified under subheading 9030.39.00, HTSUS, which provides for oscilloscopes, spectrum analyzers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 9028; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionizing radiations; parts and accessories thereof: Other instruments and apparatus, for measuring or checking voltage, current, resistance or power, without a recording device: other. For the reasons stated below, this ruling revokes NY 815901.

*Facts:*

In NY 815901, the current sensor is described as follows:

The merchandise is described as a closed-loop linear current sensor. A current sensor is an electronic device that detects or measures the amount of AC or DC current flowing through a wire and provides a digital or analog output. Sensors are used for ground fault detection, control feedback loops, motor overload detection and energy management. Closed-loop current sensors are made up of a magnetic core, a secondary coil winding around the core, an analog output Hall effect integrated circuit ("IC"), an operational amplifier and supporting electronics in a plastic housing.

A wire carrying the to be measured current (primary) is placed through the core of the sensor. The current in the primary generates a magnetic flux field around the wire. The flux is concentrated on the Hall effect IC by the magnetic core. The Hall effect IC generates a voltage proportional to the strength of the magnetic field. The operational amplifier creates a current that is passed through the secondary winding to produce a magnetic field with the opposite polarity to the field created by the primary current. Sensors work by the null balance principle which is always driving the total magnetic flux in the core to zero. The current in the secondary winding is therefore a mirror image of the primary current reduced by the number of wire turns in the secondary winding. Passing the secondary current through a precision measuring resistor gives a voltage drop proportional to the current in the primary circuit.

*Issue:*

Is the current sensor properly classified under heading 8542, which provides for electronic integrated circuits and microassemblies; and parts thereof \* \* \*, or under heading 9030, which provides for other instruments and apparatus for measuring or checking electrical quantities?

*Law and Analysis:*

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRIs"). GRI 1 provides that the classification of goods shall be determined ac-

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

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

The HTSUS provisions under consideration are as follows:

- |      |  |
|------|--|
| 8542 | Electronic integrated circuits and microassemblies; parts thereof:   |
| 9030 | Oscilloscopes, spectrum analyzers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 9028; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionizing radiations; parts and accessories thereof: |

In its condition as imported, the current sensor is a finished device that measures the amount of AC or DC current flowing through a wire and provides a digital or analog output. Clearly, this merchandise is not a mere integrated circuit. Indeed, the IC is only one part of a complete and finished current sensing device. GRI 1 states, in pertinent part, that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes \* \* \*"

In applying the principals of GRI 1, we find that the terms of heading 9030, HTSUS, provide for the current sensor in its entirety.

Section XVI Note 1(m) reads: "This Section does not cover: Articles of Chapter 90."

Regardless of whether or not the merchandise may be classified under heading 8542 as an integrated circuit, Section XVI Note 1(m) bars classification of the current sensor under that chapter once it has been established that the merchandise can be classified in Chapter 90. See *Sharp Microelectronics Technology, Inc. v. United States*, 122 F.3d 1446, 1450-52 (1997).

Therefore, through application of GRI 1, by the terms of the heading and through application of the relevant Section Notes, the current sensor is classifiable under heading 9030, HTSUS, which provides for other instruments and apparatus for measuring or checking electrical quantities.

*Holding:*

For the reasons stated above the current sensor is classified under subheading 9030.39.00, HTSUS, as: "Oscilloscopes, spectrum analyzers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 9028; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionizing radiations; parts and accessories thereof: Other instruments and apparatus, for measuring or checking voltage, current, resistance or power, without a recording device: other."

*Effect on Other Rulings:*

NY 815901 is revoked.

JOHN DURANT,  
*Director,*  
*Commercial Rulings Division.*

PROPOSED REVOCATION OF RULING LETTER AND  
TREATMENT RELATING TO TARIFF CLASSIFICATION OF A  
TEMPORARY TATTOO SET

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to tariff classification of a temporary tattoo set.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (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 Customs is revoking one ruling letter pertaining to the tariff classification of a temporary tattoo set under the Harmonized Tariff Schedule of the United States ("HTSUS"). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before August 9, 2002.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229. Comments submitted may be inspected at the U.S. Customs Service, 799 9th Street, NW, Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Deborah Stern, General Classification Branch (202) 572-8785.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs 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 provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke one ruling letter pertaining to the tariff classification of a temporary tattoo set. Although in this notice Customs is specifically referring to one ruling (HQ 959232) this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No additional rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or to the importer's or Customs' previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs 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 notice of the proposed action.

In HQ 959232, dated June 2, 1998, Customs classified a temporary tattoo set consisting of six sheets of tattoo designs, four non-toxic, colored markers, thirty sheets of blank tattoo paper, one plastic water applicator bottle, and a sheet of instructions, all of which are imported in a decorative cardboard box as a toy set of heading 9503.70.00, HTSUS, which provides for "Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: other toys, put up in sets or outfits, and parts and accessories thereof." The set is intended for children to apply the temporary tattoos after moistening the skin pressing the paper to the skin, applying pressure, and peeling back to reveal the design. The set is also intended for children to trace and color designs onto tattoo paper, or make their own designs and apply the temporary tattoos they have created to their skin.

According to the Subheading Explanatory Note, a toy set of subheading 9503.70.00, HTSUS, is subject to substantiated classification in



heading 9503. Transfers (decalcomanias), which are provided for *eo nomine* in heading 4908, HTSUS, are excluded from heading 9503 by the Explanatory Notes (ENs) These temporary tattoos are transfers (decalcomanias), and are thus excluded. As the tattoos cannot be classified as a toy of heading 9503, HTSUS, the set cannot be classified as a toy set of subheading 9503.70.00, HTSUS.

Moreover, the ENs suggest that activities such as coloring, drawing, tracing, are excluded from classification in heading 9503, HTSUS, by excluding items such as coloring books, crayons and pastels, slates and blackboards. Further, Customs has ruled that writing, coloring, drawing or painting lack the significant manipulative play value associated with toys. Therefore, the set is not classifiable as a toy set.

Rather, it may be classified according to General Rule of Interpretation (GRI) 3, as goods put up in sets for retail sale. GRI 3(b) directs goods put up in sets for retail sale be classified by the component which imparts the essential character of the set. Customs believes that the transfers impart the essential character. Therefore, the set is classifiable in subheading 4908.90.00, which provides for "Transfers (decalcomanias): other."

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke HQ 959232 and any other ruling not specifically identified, to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analyses set forth in HQ 965703 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Before taking this action, we will give consideration to any written comments timely received.

Dated: June 20, 2002.

JOHN ELKINS,  
(for John Durant, Director,  
Commercial Rulings Division.)

[Attachments]

## [ATTACHMENT A]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*Washington, DC, June 2, 1998.*  
CLA-2 RR:CR:GC 959232 MMC  
Category: Classification  
Tariff No. 9503.70.00

BARRY LEVY, ESQUIRE  
SHARRETT, PALEY, CARTER & BLAUVELT, P.C.  
*67 Broad Street  
New York, NY 10004*

Re: "Tattoo Graphix"; HQ 957894 revoked.

DEAR MR. LEVY:

On December 14, 1995, this office issued to you, on behalf of Toy Max, Headquarters Ruling (HQ) 957894, in which Customs classified an article known as "Tattoo Graphix," under subheading 3926.10.000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subheading 3926.10.000, HTSUS, provides for "[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies." "Tattoo Graphix" is composed of a plastic carrying case/storage case/drawing surface (described as a "creepy crawlers Tattoo machine"), six sheets of Tattoo designs, four non-toxic, colored markers, thirty sheets of blank Tattoo paper, one plastic water applicator bottle, and a sheet of instructions, all of which are imported in a decorative cardboard box. This classification resulted from a determination that "Tattoo Graphix" in its entirety was not a toy set for tariff purposes and, that as a General Rule of Interpretation (GRI) 3(b) set, the carrying case clearly predominated over the other components used to trace, draw, cut and transfer the decal to the user's moistened skin.

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, 2186), notice of the proposed revocation of HQ 957894 was published, on April 15, 1998, in the CUSTOMS BULLETIN, Volume 32, Number 15. No comments were received in response to the notice.

Upon further examination, we are of the opinion that "Tattoo Graphix" is properly classified in heading 9503, HTSUS, which provides for "[o]ther toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof."

*Facts:*

The sample article, identified as item no. 7007, contains the materials needed to "[m]ake lots of cool & creepy tattoos!" The article is composed of a plastic carrying case/storage case/drawing surface (described as a "creepy crawlers Tattoo machine"), six sheets of tattoo designs, four non-toxic, colored markers, thirty sheets of blank tattoo paper, one plastic water applicator bottle, and a sheet of instructions, all of which are imported in a decorative cardboard box. The article is designed for use by children ages five and up. A child chooses a tattoo design to place under the tattoo paper in the case's frame. The design is then traced and colored on the tattoo paper and cut out (scissors not included). After the child's skin is moistened, the tattoo is placed on the skin, pressed or rubbed, then peeled back to reveal the tattoo. A child may also create his/her own designs. The retail package, which is suitable for direct sale without repacking, measures approximately 14 inches in length by 10 inches in height by 2 inches in depth.

*Issue:*

What is the proper classification of "Tattoo Graphix?"

*Law and Analysis:*

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI's). 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 and 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's may

then be applied. The relevant headings and subheadings considered when classifying “Tattoo Graphix” were as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914
9503	Other toys; reduced-size (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof
*	*
*	*
*	*
*	*
*	*
*	*
9503.70	Other toys, put up in sets or outfits, and parts and accessories thereof

The term “toy” is not defined in the HTSUS. However, in understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. See, T.D. 89-90, 54 FR 35127, 35128 (August 23, 1989).

The ENs to Chapter 95 state, in pertinent part, that “[t]his Chapter covers toys of all kinds whether designed for the amusement of children or adults.” Although not set forth as a definition of “toys,” we have interpreted the just-quoted passage from the ENs as equating “toys” with articles “designed for the amusement of children or adults,” although we believe such design must be corroborated by evidence of the articles’ principal use.

When the classification of an article is determined with reference to its principal use, Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that, in the absence of special language or context which otherwise requires, such use is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use. In other words, the article’s principal use at the time of importation determines whether it is classifiable within a particular class or kind.

While Additional U.S. Rule of Interpretation 1(a), HTSUS, provides general criteria for discerning the principal use of an article, it does not provide specific criteria for individual tariff provisions. However, the U.S. Court of International Trade (CIT) has provided factors, which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), cert. denied, 429 U.S. 979.

Tattoo Graphix’s general physical characteristics, mainly its bright colors and wash off tattoos, indicate that it was principally used as a toy. Its manner of advertisement and display further confirms its use as a toy in such phrases like “Make lots of cool & creepy tattoos!” which appear on the box and in the directions. Moreover, “Tattoo Graphix” was principally used in the same manner as toys; meaning it was principally used to employ imagination and to amuse by allowing a child to create and then wear a temporary tattoo.

The ENs for heading 95.03 provide, in pertinent part, that:

[c]ollections of articles, the individual items of which if presented separately would be classified in other headings in the Nomenclature, are classified in this Chapter when they are put up in a form clearly indicating their use as toys (e.g., instructional toys such as chemistry, sewing, etc., sets).

With respect to toy sets, the ENs for subheading 9503.70 provide, in pertinent part, that:

”[s]ets” are two or more different types of articles (principally for amusement), put up in the same packing for retail sale without repacking. Simple accessories or objects of minor importance intended to facilitate the use of the articles may also be included.

It is Customs position that “toys put up in sets or outfits” (subheading 9503.70) is an *en nomine* provision denoting a clearly identifiable class or kind of goods. Consequently, goods may be classified in subheading 9503.70 pursuant to GRI 1, and recourse to the other GRI’s, particularly the provisions of GRI 3 relating to sets, is unnecessary. See, e.g., HQ 086407 of March 22, 1990, HQ 086330 of May 14, 1990, and HQ 950700. Such sets typically contain complementary articles intended for use together, rather than individually, to provide amusement. However, there is no requirement that the component of the set only be capable of use together, and the ability of one or more of the components to be used individ-

ually does not disqualify classification as a toy set. It is sufficient that the components of the toy set possess a clear nexus which contemplates a use together to amuse.

Because Tattoo Graphix's components combine a variety of complete articles which are intended for use together to occupy the user in a pleasant or enjoyable (i.e., amusing) way, "Tattoo Graphix" meets the requirements for classification as a toy, specifically a toy set. We note that in HQ 957894, we indicated that "Tattoo Graphix" was not classifiable as a toy set because a single component of the set, the carrying case, predominated over the other set components. Further review of the HTSUS and the EN's disclose no basis for imposing such a rule. Inasmuch as any finding of a component's predominance would have no impact on a finding that the components together constitute a collection of articles designed and principally used for amusement, we have determined this rule to be inappropriate.

As a result of finding "Tattoo Graphix" to be a toy properly classified in Chapter 95, classification of the articles elsewhere in the HTSUS is precluded. See Note 2(v) to Chapter 39. Additionally, we have previously noted that the manner in which articles are packaged and sold in combination can convert the articles from their design and use as articles classified elsewhere in the HTSUS to toys (see HQ 950700). Such a conversion occurred with respect to the various components in the set at issue, a fact that was overlooked in HQ 957894.

*Holding:*

"Tattoo Graphix" is classifiable as a toy set under subheading 9503.70.00, HTSUS, as [o]ther toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other toys, put up in sets or outfits, and parts and accessories thereof, with a column one free rate of duty.

HQ 957894 is revoked. In accordance with 19 U.S.C. §1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to 19 U.S.C. §1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations [19 C.F.R. §177.10(c)(1)].

JOHN DURANT,  
*Director,*  
*Commercial Rulings Division.*

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[ATTACHMENT B]

DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE,  
*Washington, DC.*  
CLA-2 RR:CR:GC 965703 DBS  
Category: Classification  
Tariff No. 4908.90.00

MR. BARRY LEVY, ESQ.  
SHARRETT, PALEY, CARTER & BLAUVELT, P.C.  
*67 Broad Street*  
*New York, NY 10004*

Re: "Tattoo Graphix"; HQ 959232 revoked.

DEAR MR. LEVY:

On June 2, 1998, this office issued to you Headquarters Ruling (HQ) 959232, classifying "Tattoo Graphix" as a toy set in subheading 9503.70.00 of the Harmonized Tariff Schedule of the United States (HTSUS). HQ 959232 revoked HQ 957894, dated December 14, 1995, in which Customs had classified "Tattoo Graphix" in subheading 3926.10.00, HTSUS. We have reconsidered HQ 959232 and believe that although the revocation of HQ 957894 was proper, classification in subheading 9503.70.00, HTSUS, was not. We are therefore revoking the classification determination made in HQ 959232.

*Facts:*

The facts, as recited in HQ 959232, are as follows:

"["Tattoo Graphix"], identified as item no. 7007, contains the materials needed to "[m]ake lots of cool & creepy tattoos!" The article is composed of a plastic carrying

case/storage case/drawing surface (described as a “creepy crawlers Tattoo machine”), six sheets of tattoo designs, four non-toxic, colored markers, thirty sheets of blank tattoo paper, one plastic water applicator bottle, and a sheet of instructions, all of which are imported in a decorative cardboard box. The article is designed for use by children ages five and up. A child chooses a tattoo design to place under the tattoo paper in the case’s frame. The design is then traced and colored on the tattoo paper and cut out (scissors not included). After the child’s skin is moistened, the tattoo is placed on the skin, pressed or rubbed, then peeled back to reveal the tattoo. A child may also create his/her own designs. The retail package, which is suitable for direct sale without re-packing, measures approximately 14 inches in length by 10 inches in height by 2 inches in depth.”

In HQ 957894, classification of the instant merchandise as a toy set of subheading 9503.70, HTSUS, was dismissed for two reasons. Customs stated that items were principally used for tracing, drawing, cutting and transferring, rather than for amusement. Customs found that the carrying case predominated over the other components because it directly related to the tracing, drawing, cutting and transferring of the decal since it was used as a carrying case, a storage case and a drawing surface. Customs instead classified the merchandise as goods put up in a set for retail sale according to GRI 3(b), which directs that the component that imparts the essential character of the set controls the set’s classification. Customs found that the essential character of the set was the carrying case because it predominated over the other articles in the set by bulk, value and the multiple roles the case played in relation to the use of the set. The set was classified in subheading 3926.10, HTSUS, which at that time provided for plastic office or school supplies.

In HQ 959232, Customs reconsidered HQ 957894, and determined that there was no basis to impose a rule that because the carrying case predominated over the other components, that it could not be a toy set. Customs ruled that because the items in the set were intended for use together to occupy the user in an amusing way, that it met the requirements for a toy, and specifically a toy set, thus classifying “Tattoo Graphix” in subheading 9503.70, HTSUS.

*Issue:*

Whether “Tattoo Graphix” is classifiable as a toy set of subheading 9503.70, HTSUS.

*Law and Analysis:*

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

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs believes the ENs should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

<b>4908</b>	Transfers (decalcomanias)
4908.90.00	Other
*	* * * * *
<b>9503</b>	Other toys; reduced-size (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:
9503.70.00	Other toys, put up in sets or outfits, and parts and accessories thereof:

Subheading 9503.70.00, HTSUS, is an *eo nomine*, or specifically enumerated, provision for a toy set. The Subheading EN for 9503.70, HTSUS, explains that “sets” and “outfits” of the subheading are “[s]ubject to substantiated classification in heading 9503 \* \* \*.” That is, to be a set or outfit of subheading 9503.70, HTSUS, the group of articles put up as a set or outfit must first be classifiable as a toy (or other article) of heading 9503, HTSUS. Therefore, we must determine whether the goods are toys.

The term “toy” is not defined in the HTSUS. However, the general EN for Chapter 95 states that the “Chapter covers toys of all kinds whether designed for the amusement of children or adults.” The court construes heading 9503 as a “principal use” provision, insofar as it pertains to “toys.” See *Minnetonka Brands v. United States*, 110 F. Supp. 2d 1020, 1026 (CIT 2000).

The EN for heading 9503 excludes transfers (decalcomanias) of heading 4908, HTSUS which provides *eo nomine* for transfers. Transfers are described in the ENs, in pertinent part, as follows:

The EN 49.08 states, in pertinent part:

Transfers (decalcomanias) consist of pictures, designs or lettering in single or multiple colours, lithographed or otherwise printed on absorbent, lightweight paper (or sometimes thin transparent sheeting of plastics), coated with a preparation, such as of starch and gum, to receive the imprint which is itself coated with an adhesive \* \* \*.

When the printed paper is moistened and applied with slight pressure to a permanent surface (e.g., glass, pottery, wood, metal, stone or paper), the coating printed with the picture, etc., is transferred to the permanent surface.

The EN also provides: “Transfers produced and supplied mainly for the amusement of children are also covered by this heading.”

Decalcomania is defined in Merriam-Webster’s Collegiate Dictionary, 10<sup>th</sup> ed, as “the art or process of transferring pictures and designs from specially prepared paper (as to glass).” The merchandise at issue includes designs printed on paper that allows transfer to the skin when moistened. It also includes blank paper upon which designs may be drawn, and then transferred to the skin in the same manner as the printed ones. These types of temporary tattoos are transfers (decalcomanias). Moreover, Customs has always classified temporary tattoos that are printed on paper that allows transfer to the skin once moistened under heading 4908, HTSUS. See, e.g., NY 879936, dated November 18, 1992; NY 88605, dated June 1, 1993; NY C89816, dated June 27, 1998; NY G86280, dated January 22, 2001; NY H88827, dated March 4, 2002. Therefore, the type of temporary tattoo that is transferred with moisture and pressure from paper to skin is excluded from classification in heading 9503, HTSUS.

In addition, the Tattoo Graphix set is designed to allow children to create his or her own tattoos with tattoo paper and markers. The ENs exclude from heading 9503, HTSUS, certain articles that are used to draw and color, when those items are individually presented. The ENs state, in part, that heading 9503 excludes:

“(c) Children’s picture, drawing or colouring books of heading 49.03. \* \* \* (h) Crayons and pastels for children’s use, of heading 96.09. \* \* \* (j) Slates and blackboards, of heading 96.10.”

Taken together, these exclusions and the EN for subheading 9503.70, HTSUS, suggest that sets comprised of materials used for drawing are not classifiable as a toy or toy set. Moreover, Customs has never considered writing, coloring, drawing or painting to have significant “manipulative play value,” for purposes of classification as a toy. Nor does Customs classify the tools for writing, coloring, drawing or painting as toys since those tools are not designed to amuse. See HQ 085267, dated May 9, 1990, (ruling “Graffiti Gear” was not a toy set because coloring lacks manipulative play value); HQ 960420, dated July 25, 1997 (determining that a set consisting of washable markers and stuffed textile items printed with designs was not a toy set); and HQ 962355, dated January 5, 2000 (ruling that four types of coloring sets were not classifiable as toy sets but rather as a GRI 3(b) sets classifiable by the article comprising the colored or decorated craft and not the act of drawing).

Given the above, “Tattoo Graphix,” a set of items that includes already-made transfers and supplies to draw/color designs for transfers, neither can be classified as a toy of heading 9503, HTSUS, nor as a toy set of heading 9503.70.00, HTSUS.

As the merchandise is not a GRI 1 toy set classifiable in heading 9503, HTSUS, we turn to GRI 3, which provides for goods that are *prima facie* classifiable under two or more headings. GRI 3(b) instructs that mixtures, composite goods, and goods put up in sets for retail sale shall be classified by the component which gives them their essential character. The components must either be considered as a set or classified individually. The compo-

nents constitute "goods put up in sets for retail sale," if they satisfy the following criteria set forth in EN (X) to GRI 3(b). Goods are classified as sets put up for retail sale if they:

- (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings. Therefore, for example, six fondue forks cannot be regarded as a set within the meaning of this Rule;
- (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
- (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

We find these goods qualify as a set because the articles are classifiable in at least two headings (i.e., transfers in heading 4908, markers in heading 9608, plastic bottle in heading 3923, etc.), they are put up to carry out the specific activity of creating temporary tattoos, and they are packaged together in a manner suitable for sale directly to the user without repacking in a decorative cardboard box.

The EN VIII to GRI 3(b), states, "The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods." The transfers are the purpose of the set. All of the components contribute to making or applying transfers. Therefore, based on the role of the transfers in relation to the use of the goods, the essential character of the set is imparted by the transfers. Accordingly, the set is classifiable in heading 4908, HTSUS.

*Holding:*

"Tattoo Graphix" is classifiable in subheading 4908.90.00, which provides for "Transfers (decalcomanias): other."

*Effect on Other Rulings:*

HQ 959232, dated June 2, 1998, is hereby REVOKED.

JOHN DURANT,  
*Director,*  
*Commercial Rulings Division.*

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PROPOSED MODIFICATION OF RULING LETTER AND  
TREATMENT RELATING TO THE CLASSIFICATION AND  
PREFERENTIAL TREATMENT OF DOWNHILL SKI POLES  
ASSEMBLED IN CANADA

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of ruling letter and treatment relating to the classification and preferential treatment of downhill ski poles assembled in Canada.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the classification and preferential treatment of ski poles assembled in Canada. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before August 9, 2002.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, NW., Mint Annex, Washington, D.C. 20229. Comments submitted may be inspected at the U.S. Customs Service, 799 9th Street, NW., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: T. James Min II, Special Classification and Marking Branch, (202) 572-8839.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility.**" These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs 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 provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the classification and preferential treatment of ski poles assembled in Canada. Although in this notice Customs is specifically referring to one ruling, Headquarters Ruling Letter (HRL) 546534, dated August 21, 1998, this notice covers any rulings on this merchandise which may exist but have not specifically been identified that are based on the same rationale. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice which is contrary to the position set forth in the ruling letter proposing to modify HRL 546534, dated August 21, 1998.



Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)(2)), Customs intends to modify any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the law. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs 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 his agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In Headquarters Ruling Letter (HRL) 546534, dated August 21, 1998, (Attachment A to this document), Customs ruled on whether downhill ski poles assembled in Canada from components of ski poles imported from Italy were eligible for NAFTA preferential treatment.

The process for producing the finished poles in Canada in HRL 546534 was essentially as follows: raw tapered tubes were sized and cleaned, then placed on a silk screening machine which affixed a graphic or logo onto the pole. Following this, the poles were subjected to a baking process for approximately fifteen minutes. The poles were cleaned again, then underwent another round of silk screening. Depending on customer orders, the poles may have been subjected to as many as five silk screenings before this process was completed.

Polyethylene grips were assembled with straps and screws. Fabric was cut to length and folded to form a loop, then a screw was attached to form a strap. The strap was then placed on top of the grip and another screw was attached to hold the strap in place. Once the tube and grip were ready, they were placed on another machine where the grip was mounted on the top of the pole, and an insert to hold the basket was placed on the bottom. The finished pole was then cleaned a final time. The poles were packaged in pairs along with plastic baskets and packaged in vacuum sealed bags. Finally, the poles were boxed according to customer orders and shipped to various destination in the U.S. and Canada.

In HRL 546534, Customs found that the tube component of the ski pole imported into Canada from Italy was classified as a part of a ski pole for which the tariff heading is the same as the ski pole itself. Although this non-originating material did not undergo a change in tariff classification as required by General Note ("GN") 12(b)(ii), pursuant to GN 12(b)(iv)(B), which provides an exception to the tariff shift rule for parts classifiable in the same heading as the goods themselves, the ski pole still qualified for NAFTA preference, provided that the regional value-content requirement stipulated in GN 12(b)(iv) was met.

In the course of ruling on HRL 546534, Customs initiated an audit to determine whether the value content of the finished ski poles met the requirements of NAFTA preference, as specified in GN 12(b)(iv). The audit showed that the regional value-content had been met.

Customs has reconsidered the basis for the determination in HRL 546534 that the ski poles were entitled NAFTA preferential treatment and determined that it is incorrect. It is now Customs position that the ski pole components as imported into Canada were classifiable as the finished good entered unassembled pursuant to General Rules of Interpretation (GRI) 2(a). Therefore, although the determination in HRL 546534 that the ski poles were eligible for NAFTA preference is still valid, the basis under which the ski poles qualify for the preference is being modified. Because the ski pole components imported into Canada from Italy are classifiable as an unassembled good, they are eligible for NAFTA preference subject to GN12(b)(iv)(A) and not GN 12(b)(iv)(B).

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify HRL 546534 and any other rulings not specifically identified, to reflect the proper basis for qualifying the articles for NAFTA preferential treatment pursuant to the analysis set forth in proposed HQ 562427 (see Attachment B to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to modify any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

MYLES HARMON,  
(for John Durant, Director,  
Commercial Rulings Division.)

[Attachments]

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[ATTACHMENT A]

DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE,  
*Washington, DC, August 21, 1998.*  
VAL RR:IT:VA 546534 CRS  
Category: Valuation

PORT DIRECTOR  
U.S. CUSTOMS SERVICE  
*111 West Huron Street  
Buffalo, NY 14202-2378*

Re: AFR of Protest No. 0901-96-100816; NAFTA; regional value content; net cost.

DEAR SIR:

This is in reply to an application for further review (AFR) of the above-referenced protest, filed by the protestant and importer of record, Cataract Customhouse Brokerage, Inc., and forwarded to this office on October 10, 1996. The protest concerns the eligibility for preferential duty treatment under the North American Free Trade Agreement (NAFTA) of certain imported ski poles produced in Canada by G.M. Gabel Enterprises Windsor Inc., of Tecumseh, Ontario. We regret the delay in responding.

*Facts:*

G.M. Gabel Enterprises Windsor Inc. ("Gabel") is a member of the Gabel Group which, in addition to Gabel, includes Gabel s.r.l. (Italy), Gabel Deutschland and Gabel Enterprises Zlin (Czech Republic). Gabel purchases and imports aluminum tubes, polyethylene grips, polyethylene inserts, rolls of polyester fabric, polyethylene baskets and silk screening ink from Gabel s.r.l.<sup>1</sup> At its plant in Tecumseh, Ontario, Gabel uses the imported materials, together with certain originating materials such as packaging, shrink rap, glue, patterns and screws, to produce finished ski poles per customer orders.

The process for producing finished poles is essentially as follows. Raw tapered tubes are sized and cleaned, then placed on a silk screening machine which affixes a graphic or logo onto the pole. Following this, the poles are subjected to a baking process for approximately fifteen minutes. The poles are cleaned again, then undergo another round of silk screening. Depending on customer orders, the poles may be subjected to as many as five silk screenings before this process is completed.

Polyethylene grips are assembled with straps and screws. Fabric is cut to length and folded to form a loop, then a screw is attached to form a strap. The strap is then placed on top of the grip and another screw is attached to hold the strap in place. Once the tube and grip are ready they are placed on another machine where the grip is mounted on the top of the pole, and an insert to hold the basket is placed on the bottom. The finished pole is then cleaned a final time. The poles are packaged in pairs along with plastic baskets and packaged in vacuum sealed bags. Finally, the poles are boxed according to customer orders and shipped to various destination in the U.S. and Canada.

Gabel initially submitted a certificate of origin claiming that the poles imported into the U.S. were entitled to preferential treatment under the NAFTA on the grounds that the poles satisfied the specific rule of origin applicable to their tariff classification (preference criterion B). The claim for NAFTA preference was based on the entered classifications of the imported materials which were as follows: aluminum tubing, subheading 7608.20.9000, Harmonized Tariff Schedule of the United States (HTSUS); polyethylene grips; subheading 3926.90.9000, HTSUS; polyester material, subheading 3920.69.0010, HTSUS; polyethylene inserts, subheading 3926.90.9019, HTSUS; polyethylene baskets, subheading 3926.90.9099, HTSUS; and silk screening ink, subheading 3215.90.0090, HTSUS. Since the finished ski poles are classified in subheading 9506.19.8040, HTSUS, the basis of the claim was that all the non-originating materials used in the production of the poles underwent a change in tariff classification in accordance with the applicable rule of origin.

The claim for NAFTA preference was denied by your office pursuant to a CF 29 dated April 27, 1995. In particular, you determined that the imported materials did not undergo the change in tariff classification required under the applicable rule of origin. For example, your office determined that the imported aluminum tubes are properly classified under the provision for other snow-skis and other snow-ski equipment, and parts and accessories thereof, in subheading 9506.19.8040, HTSUS. Consequently, all the non-originating materials used in the production of the poles did not undergo the required change in tariff classification.

Gabel then submitted additional information and, in an amended certificate of origin, claimed that the poles originated pursuant to preference criterion D2, viz., that the poles did not undergo a change in tariff classification because the relevant heading provided for both the good and its parts, but they had a regional value content of not less than sixty percent under the transaction value method. After reviewing the additional information, this claim was also denied by your office on the basis that the information submitted was insufficient to establish eligibility for NAFTA preference.

The relevant entries were liquidated accordingly (on December 29, 1995 and January 5, 1996) at the higher, non-preferential rate of duty, and Gabel was so advised in a CF 29 dated February 2, 1996. The importer of record filed the instant protest on March 28, 1996, contending that the imported ski poles are originating goods under the NAFTA on the basis that they satisfy the requirement of a regional value content of not less than fifty percent under the net cost method. Additional information, including Gabel's 1994 financial statements, was provided by Gabel in support of the protest. Further information was submitted under cover of letters dated January 29, 1997, June 19, 1997, and November 6,

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<sup>1</sup> Gabel also imports a small number of finished ski poles produced in Italy.

1997. The information submitted by Gabel included calculations which showed a regional value content under the net cost method of well in excess of fifty percent.

After reviewing this information, however, this office requested that an origin verification be undertaken pursuant to section 181.71, Customs Regulations (19 C.F.R. § 181.71). Accordingly, the Regulatory Audit Division, Boston, conducted a verification of Gabel's NAFTA claim at Gabel's offices in Tecumseh, Ontario. A member of my staff participated in and assisted with the verification. The objective of the verification was to verify that Gabel's books and records supported its claim that the regional value of the imported ski poles was not less than fifty percent under the net cost method.

*Issue:*

The issue presented is whether the ski poles assembled by Gabel in Canada have a regional value content of not less than fifty percent under the net cost method such that they qualify as originating goods for purposes of NAFTA.

*Law and Analysis:*

Section 4 of the Appendix to part 181, Customs Regulations, (19 C.F.R. pt. 181 app.; NAFTA Rules of Origin Regulations (the "ROR")), sets forth the rules for determining whether a good originates in the territory of a NAFTA party. A good will originate, for example, if it was "wholly obtained or produced" in accordance with section 4(1) ROR, or if it satisfies the applicable change in tariff classification, the applicable RVC requirement or combination thereof under section 4(2), to cite but a few possibilities set forth in section 4 of the ROR.

In the instant case, the applicable rule of origin for goods of subheading 9506.19.8040, HTSUS (the provision in which the ski poles produced by Gabel are classified), requires that all the non-originating materials used in the production of the good undergo a change to subheading 9506.19, from any other chapter of the HTSUS. Nevertheless, because the unfinished poles imported into Canada are classified in this subheading at the time of importation, the production process undertaken in Canada does not result in a change in tariff classification.

However, section 4(4) of the ROR sets forth two exceptions to the change in tariff classification requirement. Section 4(4)(b) provides in pertinent part, and subject to certain exceptions not here relevant, a good originates in the territory of a NAFTA country where:

- (i) the good is produced entirely in the territory of one or more of the NAFTA countries,
- (ii) one or more of the non-originating materials used in the production of the good do not undergo an applicable change in tariff classification because
  - (A) those materials are provided for under the Harmonized System as parts of the good, and
  - (B) the heading for the good provides for both the good and its parts and is not further subdivided into subheadings, or the subheading for the good provides for both the good and its parts,
- (iii) the non-originating materials that do not undergo a change in tariff classification in the circumstances described in subparagraph (ii) and the good are not both classified as parts of goods under the heading or subheading referred to in subparagraph (ii)(B),
- (iv) each of the non-originating materials that is used in the production of the good and is not referred to in subparagraph (iii) undergoes an applicable change in tariff classification or satisfies any other applicable requirement set out in Schedule I,
- (v) the regional value content of the good, calculated in accordance with section 6, is not less than 60 percent where the transaction value method is used, or is not less than 50 percent where the net cost method is used. \* \* \*

19 C.F.R. pt. 181 app., § 4(4)(b). In the instant case, the poles meet all the requirements of subsections (i)-(iv). Therefore, the only issue to be resolved for purposes of this decision is whether the regional value content of the imported ski poles was not less than fifty percent under the net cost method.

The purpose of the origin verification was to verify that importation from Gabel for the period from January 1994 through December 1994 qualified for preferential duty treatment under the net cost method as claimed by Gabel. The verification disclosed that Gabel made numerous errors in the calculation of the regional value content used to support its claims for duty free treatment under the NAFTA for the period in question. These errors resulted in both overstatements and understatements to the net cost figures on which Ga-

bel's regional value-content calculations were based. Correction of these errors resulted in a regional value content of 51.2 percent in lieu of the figures supplied by the company. Accordingly, the ski poles produced by Gabel in Canada and exported to the U.S. during the period under review qualified for preferential duty treatment under the NAFTA.

Furthermore, it was determined that, subsequent to the period covered by the origin verification, Gabel began to perform certain painting operations in Canada in connection with the production of the finished ski poles. The performance of these operations in Canada will, *ceteris paribus*, increase originating product and period costs thereby increasing the likelihood that Gabel will continue to qualify in the future for preferential treatment under the NAFTA.

*Holding:*

Pursuant to the foregoing the imported ski poles are originating goods under the NAFTA. The protest should be allowed in full.

In accordance with section 3A(11)(b), Customs Directive 099 3550-065, of August 4, 1993, this decision should be mailed by your office to the protestant no later than sixty days from the date of this letter. Any reliquidation of the entry in accordance with the decision must be accomplished prior to the mailing of the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will take steps to make the decision available to customs personnel via the Diskette Subscription Service, the Freedom of Information Act and other public access channels.

*Acting Director,  
International Trade Compliance Division.*

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[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
Washington, DC.

CLA-2 RR:CR:SM 562427 TJM  
Category: Classification  
Tariff No. 9506.19.8040

PORT DIRECTOR  
U.S. CUSTOMS SERVICE  
111 West Huron Street  
Buffalo NY 14202-2378

Re: HRL 546534; Modification of Ruling; 19 USC 1625; NAFTA Rules of Origin; ski poles; parts; unassembled good; tariff shift exceptions; 19 CFR Part 181 Appendix; NAFTA ROR §4(4)(a); NAFTA ROR § 4(4)(b); Gabel Enterprises, Inc.; GN 12(b)(iv)(B), HTSUS; GN 12(b)(iv)(A), HTSUS; GRI 2(a).

DEAR DIRECTOR:

This letter is to inform you that Customs has reconsidered Headquarters Ruling Letter ("HRL") 546534, dated August 21, 1998, addressed to you regarding an application for further review of protest number 0901-96-100816 filed by G.M. Gabel Enterprises Windsor, Inc., ("Gable") through its brokers.

The protest concerned the North American Free Trade Agreement (NAFTA) preference eligibility of downhill ski poles assembled in Canada from components imported from Italy. After review of that ruling, we have determined that although the ruling's conclusion that the affected articles were entitled to NAFTA preference remains valid, the stated basis for that conclusion is incorrect. In HRL 546534, the Italian aluminum tube component was considered a ski pole part in the same provision as the finished ski pole. After consideration, it is now our opinion that the components imported into Canada are classifiable as an unassembled ski pole. Therefore, the proper basis for determining that the articles are entitled to NAFTA preference is General Note ("GN") 12(b)(iv)(A) and not GN 12(b)(iv)(B) (or 19 CFR Part 181, App. § 4(4)(a) as opposed to (b)). For the reasons that follow, this ruling modifies HRL 546534.

*Facts:*

G.M. Gabel Enterprises Windsor Inc. ("Gabel") is a member of the Gabel Group which, in addition to Gabel, includes Gabel s.r.l. (Italy), Gabel Deutschland and Gabel Enterprises Zlin (Czech Republic). Gabel purchases and imports aluminum tubes, polyethylene grips, polyethylene inserts, rolls of polyester fabric, polyethylene baskets and silk screening ink from Gabel s.r.l. At its plant in Tecumseh, Ontario, Gabel uses the imported materials, together with certain originating materials such as packaging, shrink rap, glue, patterns and screws, to produce finished ski poles per customer orders.

The process for producing finished poles is essentially as follows. Raw tapered tubes are sized and cleaned, then placed on a silk screening machine which affixes a graphic or logo onto the pole. Following this, the poles are subjected to a baking process for approximately fifteen minutes. The poles are cleaned again, then undergo another round of silk screening. Depending on customer orders, the poles may be subjected to as many as five silk screenings before this process is completed.

Polyethylene grips are assembled with straps and screws. Fabric is cut to length and folded to form a loop, then a screw is attached to form a strap. The strap is then placed on top of the grip and another screw is attached to hold the strap in place. Once the tube and grip are ready they are placed on another machine where the grip is mounted on the top of the pole, and an insert to hold the basket is placed on the bottom. The finished pole is then cleaned a final time. The poles are packaged in pairs along with plastic baskets and packaged in vacuum sealed bags. Finally, the poles are boxed according to customer orders and shipped to various destinations in the U.S. and Canada.

The facts in HRL 546534 show that Gabel initially submitted a certificate of origin claiming that the poles imported into the U.S. were entitled to preferential treatment under the NAFTA on the grounds that the poles satisfied the specific rule of origin applicable to their tariff classification (preference criterion B). The claim for NAFTA preference was based on the entered classifications of the imported materials which were as follows: aluminum tubing, subheading 7608.20.9000, Harmonized Tariff Schedule of the United States (HTSUS); polyethylene grips; subheading 3926.90.9000, HTSUS; polyester material, subheading 3920.69.0010, HTSUS; polyethylene inserts, subheading 3926.90.9019, HTSUS; polyethylene baskets, subheading 3926.90.9099, HTSUS; and silk screening ink, subheading 3215.90.0090, HTSUS. Since the finished ski poles are classified in subheading 9506.19.8040, HTSUS, the basis of the claim was that all the non-originating materials used in the production of the poles underwent a change in tariff classification in accordance with the applicable rule of origin in GN 12(t).

The claim for NAFTA preference was denied by your office pursuant to a CF 29 dated April 27, 1995. In particular, you determined that the imported materials did not undergo the change in tariff classification required under the applicable rule of origin. For example, your office determined that the imported aluminum tubes are properly classified under the provision for other snow-skis and other snow-ski equipment, and parts and accessories thereof, in subheading 9506.19.8040, HTSUS. Consequently, all the non-originating materials used in the production of the poles did not undergo the required change in tariff classification.

Gabel then submitted additional information and, in an amended certificate of origin, claimed that the poles originated pursuant to preference criterion D2, viz., that the poles did not undergo a change in tariff classification because the relevant heading provided for both the good and its parts, but that they had a regional value content of not less than sixty percent under the transaction value method. After reviewing the additional information, this claim was also denied by your office on the basis that the information submitted was insufficient to establish eligibility for NAFTA preference.

The relevant entries were liquidated accordingly (on December 29, 1995 and January 5, 1996) at the higher, non-preferential rate of duty, and Gabel was so advised in a CF 29 dated February 2, 1996. The importer of record filed a protest on March 28, 1996, contending that the imported ski poles are originating goods under the NAFTA on the basis that they satisfy the requirement of a regional value content of not less than fifty percent under the net cost method. Additional information, including Gabel's 1994 financial statements, was provided by Gabel in support of the protest. Further information was submitted under cover of letters dated January 29, 1997, June 19, 1997, and November 6, 1997. The information submitted by Gabel included calculations which showed a regional value content under the net cost method of well in excess of fifty percent.

After reviewing that information, however, this office requested that an origin verification be undertaken pursuant to section 181.71, Customs Regulations (19 C.F.R. §181.71). Accordingly, the Regulatory Audit Division, Boston, conducted a verification of Gabel's NAFTA claim at Gabel's offices in Tecumseh, Ontario. A member of this office participated in and assisted with the verification. The objective of the verification was to verify that Gabel's books and records supported its claim that the regional value of the imported ski poles was not less than fifty percent under the net cost method.

In HRL 546534, Customs reasoned that subject to Section 4(4)(b)(ii) of the Appendix to Part 181, Customs Regulations (19 CFR Part 181, App.), NAFTA Rules of Origin Regulations ("ROR"), the only remaining question was whether the regional value content of the good is not less than 60 percent where the transaction value method is used, or is not less than 50 percent where the net cost method is used. Customs determined that the regional value content of the ski poles was not less than 50 percent when using the net cost method, subject to NAFTA ROR § 4(4)(b) rather than § 4(4)(a).

*Issue:*

Whether the merchandise described above qualifies for NAFTA preferential treatment under the NAFTA rules of origin exceptions for parts or for unassembled goods.

*Law and Analysis:*

*1. Classification of Ski Pole Components*

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

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. EN, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs believes the EN should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The term "ski pole," found under subheading 9506.19.8040, HTSUS, which provides for other sports equipment, ski poles and parts and accessories thereof, is not defined in the HTSUS or in the ENs. *Merriam-Webster's Collegiate Dictionary, 10<sup>th</sup> Ed.*, defines "ski poles" as, "one of a pair of lightweight poles used in skiing that have a handgrip and usu. a wrist strap at one end and an encircling disk set above the point at the other."

The issue before us is whether the ski pole components imported into Canada from Italy are considered parts of ski poles or if they are, as described in GRI 2(a), considered an unfinished article entered unassembled. GRI 2(a), provides that:

Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also include a reference to that article complete or finished \* \* \*, **entered unassembled or disassembled.** (Emphasis added)

Although the aluminum tube component of the ski pole, which (as imported into Canada) is tapered at the bottom with a tip permanently affixed, comprises the essential character of the ski pole, the other major parts of the ski pole (e.g. basket, grip, strap) are also imported from Italy and are assembled together with the tube in Canada to create the finished article. Our records for HRL 546534 include invoices and airway bills for the importation of Italian ski pole components into Canada. These records show that the ski pole components were imported together.

Therefore, the components of the ski pole imported into Canada from Italy are, pursuant to GRI 2(a), classifiable as a ski pole in subheading 9506.19.8040, HTSUS, entered unassembled.

*II. NAFTA Preferential Treatment*

For determining eligibility of goods for NAFTA preferential treatment, General Note (GN) 12(a), HTSUS, (19 U.S.C. § 1202), states that:

\* \* \* \* \*

Goods originating in the territory of a party to the North American Free Trade Agreement (NAFTA) are subject to duty as provided herein. For the purposes of this note—

- (i) Goods that originate in the territory of a NAFTA party under the terms of subdivision (b) of this note and that qualify to be marked as goods of Canada under the terms of the marking rules \* \* \* are eligible for such duty rate, in accordance with section 201 of the North American Free Trade Agreement Implementation Act.

\* \* \* \* \*

GN 12(b) further provides a hierarchy of rules to determine whether goods are “originating” in the territory of a NAFTA party. It states, in pertinent part, that:

\* \* \* \* \*

- (b) For purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if—

- (i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United State; or  
 (ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—

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

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

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

\* \* \* \* \*

Noting that the major components of ski poles are imported from Italy, GN 12(b)(i) and 12(b)(iii) are not applicable in the instant case. As for GN 12(b)(ii), because the ski poles are classifiable in subheading 9506.19.8040, HTSUS, the non-originating materials must undergo a change in tariff classification as stipulated in GN 12(t)/95.50: “[a] change to subheadings 9506.11 through 9506.29 from any other chapter.” Because the non-originating components in the instant case are in the same chapter heading as the finished article, the non-originating components do not undergo a change in tariff classification as required by GN 12(b)(ii).

#### A. *Exceptions to the Tariff Shift Rule*

However, GN 12(b)(iv) provides two exceptions to the tariff shift rule. GN 12(b)(iv) provides that a good may still qualify as originating in a NAFTA country if:

\* \* \* \* \*

- (iv) they are produced entirely in the territory of Canada, Mexico and/or the United States but one or more of the non-originating materials falling under provisions for “parts” and used in the production of such goods does not undergo a change in tariff classification because—

(A) the goods were imported into the territory of Canada, Mexico and/or the United States in unassembled or disassembled form but were classified as assembled goods pursuant to general rule of interpretation 2(a), or

(B) the tariff headings for such goods provide for and specifically describe both the goods themselves and their parts and is not further divided in subheadings, or the subheadings for such goods provide for and specifically describe both the goods themselves and their parts,

provided that such goods do not fall under chapters 61 through 63, inclusive, of the tariff schedule, and provided further that the regional value content of such goods, determined in accordance with subdivision (c) of this note, is not less than 60 percent where the transaction value method is used, or is not less than 50 percent where the net cost method is used, and such goods satisfy all other applicable provisions of this note. \* \* \*



\* \* \* \* \*

Noting that the major components of ski poles as imported into Canada from Italy are classifiable as an unassembled ski pole pursuant to GRI 2(a), the finished ski poles qualify as NAFTA originating based on HRL 546534's determination that the value-content requirements of GN 12(b)(iv) had been met.

*B. NAFTA Rules of Origin for Marking Purposes*

Furthermore, pursuant to GN 12(a), to qualify for the NAFTA preferential duty rate, the good must also qualify to be marked as a good of Canada. The NAFTA rules of origin for marking purposes are set forth in section 102.11, Customs Regulations (19 CFR § 102.11), which provide a hierarchy of rules as follows:

\* \* \* \* \*

The following rules shall apply for purposes of determining the country of origin of imported goods other than textile and apparel products covered by § 102.21.

(a) The country of origin of a good is the country in which:

- (1) The good is wholly obtained or produced;
- (2) The good is produced exclusively from domestic materials; or
- (3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in § 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

\* \* \* \* \*

For products classifiable in heading 9506.19, HTSUS, 19 C.F.R. §102.20, Section XX: Chapters 94 through 96, 9504.10-9506.29 states the requirement of a change in tariff classification for non-originating materials: "A change to subheading 9504.10 through 9506.29 from any other subheading, including another subheading within that group." In the instant case, because the non-originating unassembled ski pole components are classifiable in the same subheading as the assembled ski pole, a change in tariff classification requirement for marking purposes is not satisfied.

However, section 102.19, Customs Regulations, (19 CFR §102.19), provides a NAFTA preference override. It states, in pertinent part, that:

\* \* \* \* \*

(a) Except in the case of goods covered by paragraph (b) of this section, if a good which is originating within the meaning of § 181.1(q) of this chapter is not determined under § 102.11(a) or (b) or § 102.21 to be a good of a single NAFTA country, the country of origin of such good is the last NAFTA country in which that good underwent production other than minor processing, provided that a Certificate of Origin \* \* \* has been completed and signed for the good.

\* \* \* \* \*

As the ski poles qualify as NAFTA originating for reasons discussed above and the processing in Canada is more than minor processing (*see* 19 CFR § 102.1(m)), the ski poles qualify as products of Canada for marking purposes under 19 C.F.R. § 102.19(a).

*Holding:*

For the foregoing reasons, the ski poles at issue in HRL 546534 qualify for NAFTA preference. However, the proper basis of eligibility for NAFTA preference GN 12(b)(iv)(A), rather than GN 12(b)(iv)(B).

HRL 546534 is hereby modified.

JOHN DURANT,  
*Director,*  
*Commercial Rulings Division.*

PROPOSED REVOCATION OF RULING LETTER AND  
TREATMENT RELATING TO THE CLASSIFICATION AND  
COUNTRY OF ORIGIN OF BLENDED TOBACCO

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of ruling letter and treatment relating to the classification and country of origin marking of blended tobacco.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the classification and country of origin of blended tobacco and to revoke any treatment previously accorded by Customs to substantially identical merchandise. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before August 9, 2002.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, NW, Mint Annex, Washington, D.C. 20229. Comments submitted may be inspected at the U.S. Customs Service, 799 9th Street, NW, Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: T. James Min II, Special Classification and Marking Branch, (202) 927-1203.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs 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 provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the classification and country of origin of imported blended tobacco to be further cut and processed in the U.S. before being used to manufacture cigarettes. Although in this notice Customs is specifically referring to one ruling, New York Ruling Letter (NYRL) C86085, dated April 14, 1998, this notice covers any rulings on this merchandise which may exist but have not specifically been identified that are based on the same rationale. Customs has undertaken reasonable efforts to search existing data-bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice which is contrary to the position set forth in the ruling letter proposing to revoke NYRL C86085, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the law. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs 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 his agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In New York Ruling Letter (NYRL) C86085, dated April 14, 1998, (Attachment A to this document), Customs ruled on whether a blend of various types and grades of unmanufactured, stemmed, threshed burley and flue-cured tobacco, and unmanufactured, unstemmed, unthreshed oriental tobacco is substantially transformed in the country (Italy) where the blending took place. The tobacco was imported into Italy from a variety of countries. After the processing in Italy, the tobacco was further processed in the U.S. before it could be used to make finished cigarette products. Customs held that the country of origin for country of origin marking purposes (19 USC § 1304) of the blended unmanufactured tobacco was the country where the blending took place. Customs further ruled that the proper classification of the tobacco was in heading

2403, Harmonized Tariff Schedule of the United States (HTSUS), which provides, in pertinent part, for other manufactured tobacco.

Customs has reconsidered the country of origin and tariff classification holdings in NYRL C86085 and determined that they are incorrect. It is now Customs position that the blending and other processing performed in Italy as described in NYRL C86085 does not result in a substantial transformation of the tobacco into a new and different article of commerce. Therefore, when imported into the U.S., the tobacco is not considered a product of Italy for purposes of 19 U.S.C. § 1304. It is also Customs position that the imported blended strip tobacco is properly classified in heading 2401, HTSUS, as unmanufactured tobacco.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NYRL C86085 and any other rulings not specifically identified, to reflect the proper country of origin and tariff classification of the merchandise pursuant to the analysis set forth in proposed HQ 562176 (see Attachment B to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: June 20, 2002.

MYLES HARMON,  
(for John Durant, Director,  
Commercial Rulings Division.)

[Attachments]

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[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*New York, NY, April 14, 1998.*  
CLA-2-24:RR:NC:2:231 C86085  
Category: Classification and marking  
Tariff No. 2403.99.3065

MS. TERESA GLEASON, ESQ.  
BAKER AND MCKENZIE  
*815 Connecticut Avenue, N.W.*  
*Washington, DC 20006-4078*

Re: The tariff classification and country of origin marking of tobacco from Italy.

DEAR MS. GLEASON:

In your letter, dated March 13, 1998, you requested a tariff classification ruling on behalf of your client, Brown and Williamson Tobacco Corporation, Louisville, KY. You have also inquired as to the country of origin for Customs marking purposes.

The merchandise, which is called, "ABC Blend," is a blend of various types and grades of unmanufactured, stemmed, threshed burley and flue-cured tobacco, and unmanufactured, unstemmed, unthreshed oriental tobacco. The tobacco will be imported into Italy from a variety of countries, blended in Italy, and imported into the United States for use in the manufacture of Bugler/Kite "Roll-Your-Own" tobacco.

The types of tobacco used to produce “ABC Blend” include predominantly flue-cured and burley tobacco, and a small percentage of oriental tobacco. “ABC Blend” is comprised of three different types of tobacco from nine different countries including Italy.

In Italy the threshed tobacco is placed on a flue-cured line and burley line according to specific blend percentages. These tobaccos proceed through a vertical slicer that cuts the tobacco to facilitate ordering later in the manufacturing process. A small percentage of oriental tobacco is fed into the blend in whole leaf form. During this stage both the flue-cured and burley lines undergo the same processes. Steam and/or water are applied to the tobacco to make it more pliable and to minimize breakage. Then the tobacco proceeds through a system which removes string from the product. The tobacco is then reordered to insure that it has the proper moisture level before it enters the next stage of manufacture. An air-leg removes naked stem and foreign matter. The tobacco is then conveyed to the silos where it is distributed horizontally to maximize the blending of the different types and grades. Once filled, the silo is discharged vertically to maximize further blending. Once the blending process is complete, the tobacco passes over a shaker that removes scrap on its way to the final dryer. The final dryer brings the blended tobacco to a predetermined moisture level for packing.

The applicable subheading for “ABC Blend” tobacco will be 2403.99.3065, Harmonized Tariff Schedule of the United States (HTS), which provides for other manufactured tobacco and manufactured tobacco substitutes; “homogenized” or “reconstituted” tobacco; tobacco extracts and essences, other, other, other, to be used in products other than cigarettes, other, partially manufactured, blended or mixed tobacco. The rate of duty will be 29.3 cents per kilogram.

The marking statute, section 304, Tariff Act of 1930, as amended (19 USC 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

As provided in section 134.41(b), Customs Regulations [19 CFR 134.41(b)], the country of origin marking is considered conspicuous if the ultimate purchaser in the U.S. is able to find the marking easily and read it without strain.

With regard to the permanency of a marking, section 134.41(a), Customs Regulations [19 CFR 134.41(a)], provides that as a general rule, marking requirements are best met by marking that is worked into the article at the time of manufacture. However, section 134.44, Customs Regulations (19 CFR 134.44), generally provides that any marking that is sufficiently permanent so that it will remain on the article until it reaches the ultimate purchaser unless deliberately removed is acceptable.

With regard to the three different types of tobacco from nine different countries that will be transformed into “ABC Blend” tobacco, the country of origin for marking purposes will be Italy. The production process constitutes a substantial transformation.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 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 Ralph Conte at (212) 466-5759.

ROBERT B. SWIERUPSKI,

*Director,*

*National Commodity Specialist Division.*

## [ATTACHMENT B]

DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE,  
Washington, DC.

CLA-2 RR:CR:SM 562176 TJM

Ms. TERESA GLEASON, Esq.  
BAKER AND MCKENZIE  
815 Connecticut Ave, NW  
Washington DC 20006-4078

Re: Revocation of NYRL C86085, dated April 14, 1998; Classification of unmanufactured tobacco; Country of origin marking for unmanufactured tobacco; substantial transformation; cigarettes; tariff rate quota; Brown & Williamson Tobacco Corp.; 19 CFR 134.35(a).

DEAR Ms. GLEASON:

This letter is to inform you that Customs has reconsidered New York Ruling Letter (“NYRL”) C86085, dated April 14, 1998, addressed to you on behalf of Brown & Williamson Tobacco Corp., concerning the classification and country of origin marking of tobacco from Italy. After review of that ruling, we have determined that the country of origin for the “ABC Blend” is not Italy because the tobacco is not substantially transformed in Italy. Additionally, the correct classification of the unmanufactured blended tobacco is in subheading 2401.20, HTSUS, rather than in 2403.99, HTSUS, as stated in NYRL C86085. For the reasons that follow, this ruling revokes NYRL C86085.

*Facts:*

In NYRL C86085, dated April 14, 1998, Customs ruled that the production process of “ABC Blend” in Italy from tobacco imported from various countries constituted a substantial transformation and therefore qualified as a product of Italy. It also ruled that the “ABC Blend” is classifiable in subheading 2403.99.30, HTSUS.

According to the facts of NYRL C86085, the merchandise, which is called, “ABC Blend,” is a blend of various types and grades of unmanufactured, stemmed, threshed burley and flue-cured tobacco, and unmanufactured, unstemmed, unthreshed oriental tobacco. The tobacco is imported into Italy from a variety of countries. The tobacco is blended in Italy and imported into the United States for your client’s (Brown & Williamson Tobacco Corp.) use in the production of Bugler/Kite “Roll Your-Own” tobacco.

The types of tobacco imported into Italy and used to produce “ABC Blend” include predominantly flue-cured and burley tobacco, and a small percentage of oriental tobacco. “ABC Blend” is comprised of three different types of tobacco from nine different countries including Italy.

In Italy, the threshed tobacco is placed on a flue-cured line and burley line according to specific blend percentages. These tobaccos proceed through a vertical slicer that cuts the tobacco to facilitate ordering later in the manufacturing process. A small percentage of oriental tobacco is fed into the blend in whole leaf form. During this stage, both the flue-cured and burley lines undergo the same processes. Steam and/or water are applied to the tobacco to make it more pliable and to minimize breakage. Then the tobacco proceeds through a system which removes string from the product. The tobacco is then reordered to insure that it has the proper moisture level before it enters the next stage of manufacture. An air-leg removes naked stem and foreign matter. The tobacco is then conveyed to the silos where it is distributed horizontally to maximize the blending of the different types and grades. Once filled, the silo is discharged vertically to maximize further blending. Once the blending process is complete, the tobacco passes over a shaker that removes scrap on its way to the final dryer. The final dryer brings the blended tobacco to a predetermined moisture level for packing.

The blend is imported into the U.S. where your client processes it further for use in producing the final product. In the United States, the imported tobacco blend is preconditioned to a specific moisture level, cased, cut, dried, cooled, flavored, and packaged for sale as Bugler/Kite Roll-Your-Own tobaccos.

*Issue:*

What is the proper classification and country of origin marking for the unmanufactured blended tobacco processed in Italy and imported into the United States as described above?

*Law and Analysis:**Classification*

The classification of goods under the Harmonized Tariff Schedule of the United States (HTSUS) is governed by the General Rules of Interpretation (GRIs), taken in order. GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied, taken in order.

Additionally, the Explanatory Notes to the Harmonized Commodity Description and Coding system (EN), although not legally binding, are the official interpretation of the Harmonized System at the international level. While not treated as dispositive, the Explanatory Notes are to be given considerable weight in Customs' interpretation of the HTSUS. See *Guidance for Interpretation of Harmonized System*, T.D. 89-30, 54 F.R. 35127 (1989). In Headquarters Rulings Letter ("HRL") 087511, dated January 14, 1991, we stated that "[i]n the absence of clear and unambiguous statutory language to the contrary it has been the practice of the Customs Service to follow, whenever possible, the terms of the Explanatory Notes when interpreting the HTSUSA." Furthermore, we noted in the *Guidance for Interpretation of Harmonized System*, T.D. 89-30, 54 F.R. 35127 (1989) that "the ENs are a dynamic instrument reflecting the intent of the Contracting Parties to the application and interpretation of the HS. They will be amended from time to time and may thus reflect a change in interpretation. \* \* \* When a decision of the HSC is published \* \* \* it should receive the same weight as ENs. \* \* \*"

Unmanufactured tobacco is classifiable in heading 2401, HTS. Heading 24.01 EN, states that this heading covers:

(1) Unmanufactured tobacco in the form of whole plants or leaves in the natural state or as cured or fermented leaves, whole or stemmed/stripped, trimmed or untrimmed, broken or cut (including pieces cut to shape, but not tobacco ready for smoking).

Tobacco leaves, blended, stemmed/stripped and "cased" ("sauced" or "liquored") with a liquid of appropriate composition mainly in order to prevent mould and drying and also to preserve the flavour are also covered in this heading.

(2) Tobacco refuse, e.g., waste resulting from the manipulation of tobacco leaves, or from the manufacture of tobacco products (stalks, stems, midribs, trimmings, dust, etc.).

On the other hand, manufactured tobacco is classifiable in heading 2403, HTS. Heading 24.03, note 1, EN, states that this heading covers "smoking tobacco, whether or not containing tobacco substitutes in any proportion, for example, manufactured tobacco for use in pipes or for making cigarettes."

In HSC 25 in March 2000 (Doc. NC0288E1), the Harmonized System Committee ("HSC") of the World Customs Organization ("WCO") classified basic blended strip tobacco ("BBS") in heading 2401. BBS was a tobacco mixture consisting of 75 percent by weight of uncut stemmed leaves (i.e., "strips") and 25 percent reconstituted tobacco. The processing steps that the product underwent prior to export from the country of origin were described as including stemming, mixing, moistening, and casing. In its imported condition, BBS is not ready for smoking. It must be further cased, cut and blended with other ingredients to form the processed tobacco "cut filler" that is used in cigarettes. Subsequently, in the country of importation, the product is subjected to the following processes including slicing (horizontal or vertical) of a batch of the BBS and other types of tobacco, moistening in a conditioning cylinder, casing before cutting, blending, cutting, drying, and flavoring. The Harmonized System Committee (HSC) classified BBS as a mixture of products classifiable in two or more headings. By application of GRIs 2(b), 3(b), and 6, the product was classified in heading 2401.

The product at issue (which is a blend of: 1) unmanufactured, stemmed, threshed burley and flue-cured tobacco; and 2) unmanufactured, unstemmed, unthreshed oriental tobacco), in its imported condition, having some similarities to the BBS before the HSC, is not ready for smoking. Your client imports the blend and further processes it (e.g. preconditioning, casing, cutting, and flavoring.) in the U.S. before using it to manufacture the final product. More importantly, the EN for heading 2401 includes "unmanufactured tobacco \* \* \* or cut \* \* \* but not \* \* \* ready for smoking. \* \* \*"

As a distinguishing example, in Headquarters Ruling Letter ("HRL") 560102, dated June 17, 1997, Customs classified imported blended tobacco in heading 2403. In that case,

the cut-filler tobacco was processed in Argentina. In contrast to the instant case, in HRL 560102 all the blending, cutting, conditioning, casing, flavoring, drying, et cetera were completed in Argentina prior to importation into the United States. In other words, the imported product was ready for use by the final user of the tobacco to make cigarettes. In the instant case, the imported ABC blend is not ready for smoking because they must be further preconditioned, cased, cut, and flavored with other ingredients in the U.S. in order to produce the final product—Bugler/Kite Roll-Your-Own tobaccos. Therefore, the imported article (a blend of unmanufactured blended tobacco in heading 2401, HTSUS) in the instant case is properly classifiable in heading 2401, HTS.

Accordingly, if entered under quota, the product at issue will be classifiable under sub-heading 2401.20.8590, HTSUS, which provides for unmanufactured tobacco (whether or not threshed or similarly processed); tobacco refuse, tobacco, partly or wholly stemmed/stripped, threshed or similarly processed, other, other, other, described in additional U.S. note 5 to Chapter 24 and entered pursuant to its provisions, other. If entered outside the quota, the applicable subheading will be 2401.20.8790, HTSUS, which provides for unmanufactured tobacco (whether or not threshed or similarly processed); tobacco refuse, tobacco, partly or wholly stemmed/stripped, threshed or similarly processed, other, other, other, other, other.

#### *Marking Requirements*

As you are aware, Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. § 1304), provides that unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. 19 C.F.R. part 134 implements the country of origin marking requirements of 19 U.S.C. § 1304.

Section 134.1(d), Customs Regulations (19 CFR § 134.1(d)), provides that the “ultimate purchaser” is generally the last person in the United States who will receive the article in the form in which it was imported. Congressional intent in enacting 19 U.S.C. § 1304 was “that the ultimate purchaser should be able to know by an inspection of the marking on imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of the purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will.” *United States v. Friedlander & Co.*, 27 C.C.P.A. 297 at 302; C.A.D. 104 (1940).

The ultimate purchaser in the instant case is the manufacturer in the United States who receives the ABC blend and substantially transforms it to produce the Bugler/Kite “Roll-Your-Own” tobacco. Pursuant to 19 C.F.R. § 134.32(d), the outermost container of the imported blended strip tobacco should be marked with the countries of origin applicable to the specific contents.

#### *Country of Origin*

An article that consists in whole or in part of materials from more than one country is a product of the last country in which it has been substantially transformed into a new and different article of commerce with a name, character, and use distinct from that of the article or articles from which it was so transformed. *See* 19 C.F.R. § 134.1(b); *United States v. Gibson-Thomsen*, 27 C.C.P.A. 267 (1940); *Uniroyal Inc. v. United States*, 542 F. Supp. 1026 (Ct. Int’l Trade 1982), *aff’d*, 702 F.2d 1022 (Fed. Cir. 1983); *Koru North America v. U.S.*, 701 F. Supp. 229 (Ct. Int’l Trade 1988); *National Juice Products Ass’n v. United States*, 628 F. Supp. 978 (Ct. Int’l Trade 1986); *Coastal States Marketing Inc. v. United States*, 646 F. Supp. 255 (Ct. Int’l Trade 1986), *aff’d*, 818 F.2d 860 (Fed. Cir. 1987); *Ferrostaal Metals Corp. v. United States*, 664 F. Supp. 535 (Ct. Int’l Trade 1987).

In *National Juice Products Association v. United States*, 628 F. Supp. 978 (CIT 1986), the Court considered whether foreign manufacturing concentrate processed into frozen concentrated orange juice and reconstituted orange juice in the U.S. was considered substantially transformed. The U.S. processing involved blending the manufacturing concentrate with other ingredients to create the end product. The manufacturing concentrate was mixed with purified and dechlorinated water, orange essences, orange oil, and in some cases, fresh juice. The foreign manufacturing concentrate was blended with domestic concentrate, with ratios of 50/50 or 30/70 (foreign/ domestic).



The court considered that the U.S. processing added relatively minor value to the product and that the manufacturing orange concentrate imparts the essential character to the juice and makes it orange juice. The court concluded that the foreign manufacturing juice concentrate was not substantially transformed in the U.S. when it was blended with other ingredients.

In *Coastal States Marketing, Inc. v. United States*, 646 F. Supp. 255 (Ct. Int'l Trade 1986), *aff'd*, 818 F.2d 860 (Fed. Cir. 1987), the Court held that the blending of No. 2 gas oil from then the Soviet Union with Italian No. 5 fuel oil in Italy did not substantially transform the Soviet oil into a product of Italy. In that case, an oil tanker loaded No. 2 gas oil in the U.S.S.R. The vessel then proceeded to Italy where No. 5 fuel oil was added to the same storage tanks holding the Soviet gas oil. The oils were mechanically mixed. The mixing created an oil with different gravity, sulfur content, flashpoint, pourpoint, and kinematic viscosity than the two oils separately. Regardless, the court opined and affirmed Customs' view that the oils had not been substantially transformed. Although the grade of the mixed oil had changed, the Court opined that the essential character of the Soviet oil, being oil, remained unchanged. The Court also noted that the lack of a tariff shift although not determinative was indicative that the oils had not changed in essential character.

Previous Customs rulings have held that in general mere blending of materials does not constitute a "substantial transformation." In HRL 088799, dated November 20, 1991, Customs ruled that cocoa from various countries blended in Canada with sugar did not constitute a substantial transformation. In HRL 561208, dated March 8, 1999, Customs held that blending foreign crab meat with domestic meat did not constitute a substantial transformation. In HRL 734479, dated January 29, 1993, Customs held that spray dried coffee of Central and South American origin was not substantially transformed in the European Community by blending and agglomeration.

In HRL 560102, dated June 17, 1997, unmanufactured tobaccos from various countries (classified under heading 2401, HTSUS) were imported into Argentina. There, the tobaccos were processed into manufactured cut-filler tobacco, classified in heading 2403, HTSUS. All the processing, including the final delamination, cleaning, conditioning, and top dressing, were conducted in Argentina. The resulting cut filler tobacco imported into the United States was ready to be used to produce cigarettes. Customs held that the tobacco was substantially transformed in Argentina. In determining whether a substantial transformation of an article has occurred, each case must be decided on its own particular set of facts. See *Uniroyal Inc. v. United States*, 542 F. Supp 1026, 1029 (1982); *Grafton Spools, Ltd. v. United States*, 45 Cust. Ct. 16, 23, C.D. 2190 (1960); *United States v. Murray*, 621 F.2d 1163 (1<sup>st</sup> Cir. 1980); *Texas Instruments, Inc. v. United States*, 69 CCPA, (1982), 681 F.2d 778 (1982).

This case is distinguishable from the facts in HRL 560102. In the instant case, unmanufactured tobacco (classifiable in heading 2401, HTS) is imported into Italy. The primary operations in Italy will be cutting, blending and controlling the humidity of the tobacco. Upon importation into the United States, the blended tobacco is further processed as described above. As the Court stated in *Coastal States Marketing Inc. v. U.S.*, a tariff shift although not dispositive, is indicative of a substantial transformation. In the instant case, as discussed above, the product does not undergo a shift in its tariff classification in Italy. Furthermore, unlike the tobacco in HRL 560102 which underwent a tariff shift, the imported tobacco in the instant case is not ready for use upon importation. It requires further processing in the United States, including casing, blending, and flavoring, to obtain its final specific use. Therefore, the imported tobacco does not undergo a substantial transformation in Italy and thereby does not qualify as a product of Italy.

*Holding:*

Unmanufactured tobacco, including a blend of unmanufactured, stemmed, threshed burley and flue-cured tobacco, and unmanufactured, unstemmed, unthreshed oriental tobacco that requires further processing in the country of importation is properly classifiable in heading 2401, HTS. In this case, the applicable subheading for the "ABC Blend" if entered under quota, will be 2401.20.8590, HTSUS. If entered outside the quota, the applicable subheading will be 2401.20.8790, HTSUS.

For reasons stated above, the product at issue is not substantially transformed in Italy and therefore does not qualify as a product of Italy. Therefore, upon importation, the con-

tainer holding the product must be marked with the appropriate countries of origin of the tobacco for the ultimate purchaser—the U.S. manufacturer.

NYRL C86085 is hereby revoked.

JOHN DURANT,  
*Director,*  
*Commercial Ruling Division.*

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### PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF SNAP-OFF BLADES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of a letter and treatment relating to the tariff classification of snap-off blades for a utility knife.

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 Customs intends to revoke a letter pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of snap-off blades for a utility knife and to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before August 9, 2002.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, NW, Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, Commercial Rulings Division, (202) 572-8782.

#### SUPPLEMENTARY INFORMATION:

##### BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"in-**

**formed compliance”** and **“shared responsibility.”** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community’s responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs 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 provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of snap-off blades for a utility knife. Although in this notice Customs is specifically referring to one ruling, NY E89191, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise the Customs Service during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer’s or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer’s failure to advise the Customs Service 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 their agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY E89191, dated October 27, 1999, set forth as “Attachment A” to this document, Customs found that a snap-off blades, sample numbers 11-300 and 11-301, used in standard utility knives were classified in

subheading 8211.94.10, HTSUS, as blades, for knives having fixed blades.

Customs has reviewed the matter and determined that the correct classification of the snap-off blades for utility knives is in subheading 8211.94.50, HTSUS, which provides for other blades.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY E89191 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) 964995 (see "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: June 24, 2002.

JOHN ELKINS,  
(for John Durant, Director,  
Commercial Rulings Division.)

[Attachments]

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[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*New York, NY, October 27, 1999.*  
CLA-2-82:RR:NC:1:115 E89191  
Category: Classification  
Tariff No. 8211.94.1000

MS. SARAH M. NAPPI  
ABLONDI, FOSTER, SOBIN & DAVIDOW  
*1150 Eighteenth Street N.W.*  
*Washington, DC 20036-4129*

Re: The tariff classification of Snap-Off Blades from China.

DEAR MS. NAPPI:

In your letter dated October 25, 1999 you requested a tariff classification ruling on behalf of your client The Stanley Works.

Sample numbers 11-300 and 11-301 are snap-off blades used in standard utility knives. The blades are scored such that when the outermost blade becomes dull, the user simply snaps off the dull blade to expose a new, sharp, blade point.

The applicable subheading for the Snap-Off Blades will be 8211.94.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for Blades: For knives having fixed blades. The rate of duty will be 0.16 cents each + 2.2% ad valorem.

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 Melvyn Birnbaum at 212-637-7017.

ROBERT B. SWIERUPSKI,  
*Director,*  
*National Commodity Specialist Division.*

## [ATTACHMENT B]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
Washington, DC.

CLA-2 RR:CR:GC 964995 KBR  
Category: Classification  
Tariff No. 8211.94.50

MS. SARAH M. NAPPI  
ABLONDI, FOSTER, SOBIN & DAVIDOW  
1150 Eighteenth St., N.W.  
Washington, DC 20036-4129

Re: Reconsideration of NY E89191; Snap-Off Blades for Utility Knives.

DEAR MS. NAPPI:

This is in reference to a reconsideration of New York Ruling Letter (NY) E89191, issued to you on behalf of your client, The Stanley Works, by the Customs National Commodity Specialist Division, on October 27, 1999, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of snap-off blades for utility knives. We have reviewed the prior ruling and have determined that the classification provided is incorrect.

*Facts:*

NY E89191 concerns snap-off blades for standard utility knives. The blades are scored such that when the outermost blade becomes dull, the user simply snaps off the dull blade to expose a new, sharp blade point.

In NY E89191, it was determined that the snap-off utility blades were blades for knives having fixed blades, classifiable under subheading 8211.92.20, HTSUS. We have reviewed that ruling and determined that the classification of the snap-off blades is incorrect. This ruling sets forth the correct classification.

*Issue:*

What is the proper classification under the HTSUS of the subject snap-off blades for utility knives?

*Law and Analysis:*

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The HTSUS provisions under consideration are as follows:

8211	Knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades and other base metal parts thereof:
	Other:
8211.94	Blades:
8211.94.10	For knives having fixed blades
8211.94.50	Other

The snap-off blades are for use in a standard utility knife. Customs has consistently classified these utility knives as knives having other than fixed blades, in subheading 8211.93, HTSUS. *See, e.g.*, NY C83527 (February 6, 1998); NY H80237 (May 3, 2001); NY H87038 (January 16, 2002); HQ 084074 (July 3, 1989); HQ 952988 February 4, 1993). Since the knives are classified as knives having *other than* fixed blades, the blades used in the knives should not be classified as blades for knives *with* fixed blades. Customs has ruled that snap-off blades for utility knives should be classified not as for knives having fixed blades, but in the "other" provision. *See* NY 808354 (April 13, 1995) and NY B88290 (August 22, 1997). We agree with this classification. Therefore, the snap-off blades for use in standard utility knives are classified in subheading 8211.94.50, HTSUS, as blades, other.

*Holding:*

The snap-off blades for use in standard utility knives are classified in subheading 8211.94.50, HTSUS, an blades, other.

*Effect on Other Rulings:*

NY E89191 dated October 27, 1999, is REVOKED. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

JOHN DURANT,  
*Director,*  
*Commercial Rulings Division.*

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REVOCATION OF RULING LETTER AND TREATMENT  
RELATING TO TARIFF CLASSIFICATION OF “GONDOLA”  
HURRICANE CANDLEHOLDERS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letter and treatment relating to the tariff classification of “Gondola” Hurricane Candleholders under the Harmonized Tariff Schedule of the United States (“HTSUS”).

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 Customs is revoking a ruling and any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of “Gondola” Hurricane Candleholders. Notice of the proposed revocation was published on May 15, 2002, in Vol. 36, No. 20 of the CUSTOMS BULLETIN. No comments were received.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 9, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich,  
General Classification Branch: (202) 572-8776.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts, which emerge from the law, are “**informed compliance**” and “**shared responsibility.**” These concepts are premised on the idea that in order to maximize voluntary com-

pliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs 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 provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, notice proposing to revoke NY G85001, dated December 21, 2000, was published on May 15, 2002, in Vol. 36, No. 20 of the CUSTOMS BULLETIN. No comments were received in response to this notice.

As stated in the proposed notice, this revocation action will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to the effective date of this final decision.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking NY G85001, and any other ruling not specifically identified, to reflect the proper classification of the "Gondola" Hurricane Candleholders under subheading 9405.50.40, HTSUS, which provides for, *inter alia*, candleholders, pursuant to the analysis in HQ 964842, which is set forth as the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

Dated: June 25, 2002.

JOHN ELKINS,  
(for John Durant, Director,  
Commercial Rulings Division.)

[Attachment]

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[ATTACHMENT]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*Washington, DC, June 25, 2002.*  
CLA-2 RR:CR:GC 964842 AML  
Category: Classification  
Tariff No. 9405.50.40

MR. PETER J. FITCH  
FITCH, KING AND CAFFENTZIS  
*116 John Street  
New York, NY 10038*

Re: Reconsideration of NY G85001; "Gondola" Hurricane Candleholder; iron and glass candleholder.

DEAR MR. FITCH:

This is in reply to your letter of December 28, 2000, to the Customs National Commodity Specialist Division, New York, on behalf of the Pomeroy Collection, Ltd., requesting reconsideration of New York Ruling Letter ("NY") G85001, dated December 21, 2000, concerning the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of the "Gondola" Hurricane Candleholder (an iron and glass candleholder). NY G85001 classified the article under subheading 7013.99.50, HTSUS, which provides for glassware of a kind used for \* \* \* indoor decoration or similar purposes \* \* \* other glassware: other: other: valued over thirty cents but not over three dollars each. As you know, your request was forwarded to this office for reply. A sample, photograph, packaging materials and descriptive literature were provided for our consideration. We have reviewed NY G85001 and believe that the classification set forth is incorrect.

Pursuant to section 625(c)(1), 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), notice of the proposed revocation of NY F89832 was published on May 15, 2002, in Vol. 36, No. 20 of the CUSTOMS BULLETIN. No comments were received in response to this notice.

*Facts:*

Based upon the information and sample provided, the "Gondola" Hurricane Candleholder consists of four components: a glass article, a pronged metal article, flame retardant, scented "botanicals," and a scented candle. The large glass article resembles a vase and measures approximately 5<sup>3</sup>/<sub>4</sub> inches at the opening and 7 inches at the base. The body constricts to approximately 5 inches in diameter below the opening and increases in diameter toward the base. The glass article is approximately 8<sup>1</sup>/<sub>4</sub> inches in height.

The sample and photograph contain and depict a metal frame candleholder that rests on the lip of the glass article and suspends the candle approximately 6 inches below the opening of the glass article. The sample has two prongs and that depicted in the photograph has three prongs. In your letter, you state that the articles will be packaged together with a candle upon importation and that the metal frame candleholder will be the three-pronged



model. The prongs suspend a candleholder: a concave, metal disk approximately 3/4 inches in diameter and 1/2 inch in depth.

Also contained in the package are “botanicals”—a potpourri of what appear to be dried flowers, buds and leaves which are described as pear scented and treated with a flame retardant chemical.

The final component is a scented candle that measures approximately 2 1/2 inches in height and 2 3/4 inches in diameter. You state that the candle will be packaged and imported with the other components.

In your request for reconsideration, you state that the article, “consisting of a glass container, a cast iron candle support, and a candle,” is packaged, imported and sold as a candleholder.

*Issue:*

Whether the composite article should be classified under subheading 7013.99.50, HTSUS, as a decorative glass article; or subheading 9405.50.40, HTSUS, as a candleholder?

*Law and Analysis:*

Classification of imported merchandise is accomplished pursuant to the Harmonized Tariff Schedule of the United States (HTSUS). Classification under the HTSUS is guided by the General Rules of Interpretation of the Harmonized System (GRIs). GRI 1, HTSUS, states in part that “for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes[.]” GRI 3(b) provides, in pertinent part, that “goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.” GRI 3(c) provides that “when goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.”

The applicable HTSUS provisions under consideration are as follows:

3307	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:
*	* * * * *
3406.00.00	Candles, tapers and the like.
*	* * * * *
7013	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):
	Other glassware:
7013.99	Other:
	Other:
	Other:
7013.99.50	Valued over \$0.30 but not over \$3 each.
*	* * * * *
9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:
9405.50	Non-electrical lamps and lighting fittings:
	Other:
9405.50.40	Other.

The four distinct articles are imported in the same package; hence, we are unable to resolve the classification of the articles at GRI 1. GRI 2 is not applicable here except insofar as it provides that “[t]he classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.”

GRI 3 provides as follows:

When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise. Customs believes the ENs should always be consulted. See T.D. 89-80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN (IX) to GRI 3(b) provides:

For purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, provided these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

EN (VIII) to GRI 3(b) provides:

The factor which determines the essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

Pursuant to GRI 3(a), the article is a composite good *prima facie* classifiable under more than a single heading, *i.e.*, headings 3307 (scented botanicals/potpourri), 3406 (candle), 7013 (the glass container), 8306 (the metal stand) and 9405, HTSUS (as a composite article comprising a candleholder).

Headings 7013 and 9405, HTSUS, as applicable to the merchandise under consideration, are controlled by use (other than actual use) (see *Group Italglass U.S.A., Inc. v. United States*, 17 CIT 1177, 839 F. Supp. 866 (1993); *E.M. Chemicals v. United States*, 923 F. Supp. 202 (CIT 1996); *Stewart-Warner Corp. v. United States*, 3 Fed. Cir. (T) 20, 25, 748 F.2d 663 (1984)). In such provisions, articles are classifiable according to the use of the class or kind of goods to which the articles belong. If an article is classifiable according to the use of the class or kind of goods to which it belongs, Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that:

In the absence of special language or context which otherwise requires—(a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

In other words, the article's principal use in the U.S. at the time of importation determines whether it is classifiable within a particular class or kind (principal use is distinguished from actual use; a tariff classification controlled by the latter is satisfied only if such use is intended at the time of importation, the goods are so used and proof thereof is furnished within 3 years after the date the goods are entered (U.S. Additional Note 1(b); 19 C.F.R. §10.131-10.139)).

The Courts have provided factors, which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: general physical characteristics, expectation of the ultimate purchaser, channels of

trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. See *Lenox Collections v. United States*, 19 CIT 345, 347 (1995); *Kraft, Inc. v. United States*, 16 CIT 483 (1992); *G. Heileman Brewing Co. v. United States*, 14 CIT 614 (1990); and *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), cert. denied, 429 U.S. 979 (1976).

Note 1(e) to Chapter 70, HTSUS, provides that the Chapter does not cover “lamps or light fittings \* \* \* or parts thereof of heading 9405[.]” The General ENs to Chapter 70 contain an identical provision. Thus, if it is determined that the essential character of the article is that of a candleholder, the article cannot be classified under heading 7013, HTSUS.

The EN to heading 9405, HTSUS, states that lamps and light fittings of this group can be composed of any material and use any source of light, including candles. In addition, EN 9405 states that this heading covers “in particular: (6) [c]andelabra, candlesticks, and candle brackets[.]”

We have previously considered the definitions of the terms used in the heading and EN. In Headquarters Ruling Letter (HQ) 957412, dated August 1, 1995, we stated that:

[T]hese rulings (HQ 954308 dated June 6, 1994, HQ 955935 dated May 16, 1994, HQ 953016 dated April 27, 1993, HQ 088742 dated April 22, 1991, and HQ 089054 dated August 2, 1991) held that the terms “candlestick”, “candlestick holder”, and “candle holder” are interchangeable. Candleholder has been defined as a candlestick, *Webster’s II New Riverside University Dictionary*, pg. 224 (1st ed. 1984), and as a holder for a candle; candlestick, *The Random House Dictionary of the English Language*, pg. 216 (1st Ed. 1983). Candlestick has been defined as a utensil for supporting a candle, whether elaborately made or in the common form of a saucer with a socket in the center, *Webster’s New International Dictionary*, pg. 390 (2d ed. 1939). Reference to lexicographic authorities is proper when determining the meaning of a tariff term. *Hasbro Industries, Inc. v. U.S.*, 703 F. Supp. 941 (CIT 1988), aff’d, 879 F.2d 838 (1989); *C.J. Tower & Sons of Buffalo, Inc. v. U.S.*, 69 CCPA 128, 673 F.2d 1268 (1982).

The glass component of the article under consideration resembles a glass container or vase, neither of which is of the forms, shapes or dimensions considered in the March 25, 1998, CUSTOMS BULLETIN. However, it suspends what is designed and manufactured to be a metal candleholder. The promotional literature for the article indicates that the environment of sale of the article is one for candleholders, not general-purpose decorative glassware. Imported separately, the glass article would be classifiable within heading 7013, HTSUS, as a decorative glass article. This determination would hold true as well were the glass article imported as a potpourri vase, see HQ 955857, dated August 11, 1994. The glass component functions in a similar manner to the wrought iron pedestals in the rulings referred to below; its form indicates a use to suspend the candleholder within the article as well as function as a hurricane lamp by preventing wind or breeze from extinguishing the flame of the candle.

The four discrete articles make up a composite article for purposes of GRI 3(b). That is, they are, *prima facie*, classifiable in different headings (see above), they are put together to meet a particular need or carry out a specific activity (that of serving as a decorative candle holder), and they are put up in a manner suitable for sale directly to users without repacking (see, *e.g.*, Headquarters Ruling (HQ) 962090, dated June 11, 1999). Pursuant to GRI 3(b), classification of the composite article is determined on the basis of the component that imparts the essential character to the whole. EN Rule 3(b)(VII) lists as factors to help determine the essential character of such goods the nature of the materials or components, their bulk, quantity, weight or value, and the role of the constituent materials or components in relation to the use of the goods.

Recently, there have been several decisions on “essential character” for purposes of GRI 3(b). These cases have looked primarily to the role of the constituent materials or components in relation to the use of the goods to determine essential character. *Better Home Plastics Corp. v. United States*, 916 F. Supp. 1265 (CIT 1996), affirmed, 119 F.3d 969 (Fed. Cir. 1997); *Mita Copystar America, Inc. v. United States*, 966 F. Supp. 1245 (CIT 1997), motion for rehearing and reconsideration denied, 994 F. Supp. 393 (CIT 1998), and *Vista International Packaging Co. v. United States*, 19 CIT 868, 890 F. Supp. 1095 (1995). See also, *Pilloutex Corp. v. United States*, 983 F. Supp. 188 (CIT 1997), affirmed 171 F.3d 1370 (Fed. Cir. 1999).

Based on the foregoing, we conclude that in an essential character analysis for purposes of GRI 3(b), the role of the constituent materials or components in relation to the use of

the goods is generally of primary importance, but the other factors in EN Rule 3(b)(VII) should also be considered, as applicable. In this case, we are unable to discern the “indispensable function” (*Better Home Plastics, supra*) of the article. While the argument can be made that the essential character of the composite good is to “hold” or “contain” a candle (as shown in the packaging and photograph provided) and that the metal component performs this function, the glass container serves the function of “suspending” the three-pronged, metal candleholder and “housing” the scented, flame retardant botanicals. Imported separately from any other article, the glass container, the glass container or vase would be classifiable under subheading 7013.99, HTSUS. Insofar as the other factors (quantity, bulk, weight and value) are concerned, the available evidence is not definitive. In accordance with GRI 3(b), we conclude that the glass and metal components of the article contribute equally to the essential character of the article, and resort (in accordance with GRI 3(c)) to the heading “which occurs last in numerical order among those which equally merit consideration.” Thus, pursuant to GRI 3(c), we conclude that the article is of the class or kind principally used as a non-electrical lamp and lighting fitting in heading 9405, HTSUS, and is classifiable under that heading.

*Holding:*

Pursuant to GRI 3(c), the composite article will be classified within subheading 9405.50.40, HTSUS, as a candleholder.

*Effect on Other Rulings:*

NY G85001 is revoked. In accordance with 19 U.S.C. §1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

JOHN ELKINS,  
(for John Durant, Director,  
Commercial Rulings Division.)