

U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, August 7, 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,
(for Michael T. Schmitz, Assistant Commissioner,
Office of Regulations and Rulings.)

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF LOUDSPEAKERS

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 certain loudspeakers.

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 certain loudspeakers under the Harmonized Tariff Schedule of the United States ("HTSUS"). Customs also intends 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 September 20, 2002.

ADDRESS: Written comments (preferably in triplicate) 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. Comments submitted may be inspected at the U.S. Customs Service, 799 9th Street, N.W., 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: Gerry O'Brien, General Classification Branch, (202) 572-8780.

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 tariff classification of loudspeakers. Although in this notice Customs is specifically referring to one ruling, NY H87555, 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 person-

nel 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. 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 this proposed action.

In NY H87555 dated February 20, 2002, set forth as Attachment A to this document, Customs classified certain loudspeakers in subheading 8518.29.80, HTSUS, as: "Loudspeakers, whether or not mounted in their enclosures: * * * Other: * * * Other." It is now Customs position that the loudspeakers are classified in subheading 8518.22.00, HTSUS, as: "Loudspeakers, whether or not mounted in their enclosures: * * * Multiple loudspeakers, mounted in the same enclosure." Proposed HQ 965538, revoking NY H87555, for the reasons set forth therein, is set forth as Attachment B to this document.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY H87555 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 965538. 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: August 1, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, February 20, 2002.
CLA-2-85:RR:NC:MM:109 H87555
Category: Classification
Tariff No. 8518.29.8000

MR. DENNIS HECK
CORPORATE IMPORT COMPLIANCE MANAGER
YAMAHA CORPORATION OF AMERICA
6600 Orangethorpe Avenue
P.O. Box #6600
Buena Park, CA 90622-6600

Re: The tariff classification of Yamaha Speaker sets from Indonesia.

DEAR MR. HECK:

In your letter dated January 17, 2002, you requested a tariff classification ruling.

The merchandise is described in your letter as three Home Theater Speaker Sets.

The NS-P60 Home Theater Speaker Set—is designed to be sold as a three piece set to be added to an already existing right and left channel stereo speaker system in order to give surround sound capability. The set consists of two Surround (rear) speakers containing one 4" woofer and one 7/8" tweeter; one Center Channel speaker containing two 5" woofers and one 7/8" tweeter.

The NS-P220 Home Theater Speaker Set—is designed to be sold as a six-piece surround sound speaker system. This set consists of Five identical Surround speakers containing one 3" woofer and one 1/2" tweeter; one powered subwoofer containing one 6.5" woofer.

The NS-P610 Home Theater Speaker Set—is designed and sold as a high end Cherry finished six-piece surround sound speaker system. The set consists of Four identical Surround speakers containing one 3" woofer and one 1" tweeter; One center Channel Speaker containing two 3" woofer and one 1" tweeter; One Powered Subwoofer containing one 8" woofer.

The applicable subheading for the NS-P60, NS-P220 and NS-P610 Home Theater Speaker Sets will be 8518.29.8000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Loudspeakers, whether or not mounted in their enclosures: Other: Other." The duty rate will be 4.9 percent ad valorem.

Articles classifiable under subheading 8518.29.8000, HTS, which are products of Indonesia may be entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. The GSP is subject to modification and periodic suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse. To obtain current information on GSP, check the Customs Web site at www.customs.gov. At the Web site, click on "CEBB" and then search for the term "T-GSP".

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 Linda M. Hackett at 646-733-3015.

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 965538 GOB
Category: Classification
Tariff No. 8518.22.00

DENNIS HECK
CORPORATE IMPORT COMPLIANCE MANAGER
YAMAHA CORPORATION OF AMERICA
6600 Orangethorpe Avenue
P.O. Box 6600
Buena Park, CA 90622-6600

Re: NY H87555 Revoked; Loudspeakers.

DEAR MR. HECK:

This is in reply to your letter of March 6, 2002, to the Director, National Commodity Specialist Division, New York, requesting reconsideration of NY H87555 dated February 20, 2002. In NY H87555, certain loudspeakers were determined to be classified under subheading 8518.29.80, HTSUS, Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for other loudspeakers. We have reviewed the classification determinations in that ruling and have determined that they are incorrect. This ruling sets forth the correct classification.

Facts:

The following goods were at issue in NY H87555: the NS-P60 speaker system; the NS-P220 speaker system; and the NS-P610 speaker system.

The goods were described as follows in NY H87555:

The NS-P60 Home Theater Speaker Set—is designed to be sold as a three piece set to be added to an already existing right and left channel stereo speaker system in order to give surround sound capability. The set consists of two surround (rear) speakers containing one 4" woofer and one 7/8" tweeter; one center channel speaker containing two 5" woofers and one 7/8" tweeter.

The NS-P220 Home Theater Speaker Set—is designed to be sold as a six-piece surround speaker system. This set consists of five identical surround speakers containing one 3" woofer and one 1/2" tweeter; one powered subwoofer containing one 6.5" woofer.

The NS-P610 Home Theater Speaker Set—is designed and sold as a high end cherry finished six-piece surround sound speaker system. The set consists of four identical surround speakers containing one 3" woofer and one 1" tweeter; one center channel speaker containing two 3" woofers and one 1" tweeter; one powered subwoofer containing one 8" woofer.

In NY H87555, Customs classified all three speaker systems (NS-P60; NS-P220; and NS-P610) in subheading 8518.29.80, HTSUS, as: "Loudspeakers, whether or not mounted in their enclosures: * * * Other: * * * Other."

In your letter of March 6, 2002, you request reconsideration of the classification of the NS-P60 speaker set. You propose that it is classified in subheading 8518.22.00, HTSUS.

Issue:

What is the classification under the HTSUS of the above-described speaker systems?

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 or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied. GRI 2 is not applicable here.

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.

GRI 6 provides in pertinent part that “* * * the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable.”

The Harmonized Commodity Description and Coding System Explanatory Notes (“EN’s”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN’s 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.

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

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.

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

For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:

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

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

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

The HTSUS provisions under consideration are as follows:

8518	* * * loudspeakers, whether or not mounted in their enclosures * * * :
	Loudspeakers, whether or not mounted in their enclosures:
8518.21.00	Single loudspeakers, mounted in their enclosures:
8518.22.00	Multiple loudspeakers, mounted in the same enclosure:
8518.29	Other:
8518.29.80	Other

NS-P60 Speaker System

Each of the speakers in the NS-P60 speaker set is a multiple loudspeaker, mounted in the same enclosure. Therefore, at GRI 1, we find that the NS-P60 speaker system is classified in subheading 8518.22.00, HTSUS, as: “Loudspeakers, whether or not mounted in their enclosures: * * * Multiple loudspeakers, mounted in the same enclosure.”

NS-P220 Speaker System and NS-P610 Speaker System

It is our determination that the NS-P220 and NS-P610 speaker systems constitute “goods put up in sets for retail sale” within the meaning of GRI 3(b) and GRI 6. Each of these systems consists of articles which are *prima facie* classifiable in two subheadings at the same level of subdivision; they are put up together to carry out a specific activity, i.e., the projection of sound; and they are put up in a manner suitable for sale directly to users without repacking.

The NS-220 and the NS-P610 speaker systems both contain one single loudspeaker and several multiple loudspeakers. If imported separately, the single loudspeakers would be classified in subheading 8518.21.00, HTSUS, and the multiple loudspeakers would be classified in subheading 8518.22.00, HTSUS.

Pursuant to GRI 3(a) and GRI 6, two subheadings each refer to part only of the items in a set put up for retail sale. Therefore, those headings are to be regarded as equally specific in relation to the items.

At GRI 3(b), it is our belief that no one item in the set gives the set its essential character. Accordingly, we are unable to classify the merchandise pursuant to GRI 3(b).

Therefore, we proceed to GRI 3(c), i.e., the goods shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

Pursuant to GRI 3(c), the NS-220 and the NS-P610 speaker systems are classified in subheading 8518.22.00, HTSUS, as: "Loudspeakers, whether or not mounted in their enclosures: * * * Multiple loudspeakers, mounted in the same enclosure."

Holding:

At GRI 1, the NS-P60 speaker system is classified in subheading 8518.22.00, HTSUS, as: "Loudspeakers, whether or not mounted in their enclosures: * * * Multiple loudspeakers, mounted in the same enclosure."

At GRI 3(c), the NS-220 and the NS-P610 speaker systems are classified in subheading 8518.22.00, HTSUS, as: "Loudspeakers, whether or not mounted in their enclosures: * * * Multiple loudspeakers, mounted in the same enclosure."

Effect on Other Rulings:

NY H87555 is revoked.

MYLES B. HARMON,
 Acting Director,
 Commercial Rulings Division.

WITHDRAWAL OF EARLIER NOTICE NEW PROPOSED
MODIFICATION OF RULING LETTER AND TREATMENT
RELATING TO THE CLASSIFICATION OF "SWIFFER"[™]
CLOTHS

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

ACTION: Withdrawal of earlier notice and republication of a new notice of proposed modification of a ruling letter and revocation of treatment relating to the classification of the "Swiffer"[™] Floor Sweeper package and cloths.

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 modify a ruling letter relating to the tariff classification of the "Swiffer"[™] cloths under the Harmonized Tariff Schedule of the United States (HTSUS), and is revoking any treatment previously accorded by the Customs Service to substantially identical merchandise.

DATE: Comments must be received September 20, 2002.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Textile Branch, (202) 572-8822.

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. section 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 modify a ruling letter pertaining to the tariff classification of the "Swiffer"™ cloths. Although in this notice, Customs is specifically referring to one ruling, New York Ruling (NY) D82572 dated September 29, 1998, 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 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 the 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 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 Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during the 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 the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY D82572, Customs ruled that the subject merchandise, identified as the “Swiffer”™ Floor Sweeper package consisting of ten chemically treated cloths, handle, and plate was classified, pursuant to GRI 3(b), in subheading 9603.90.8050, HTSUSA, which provides for other brooms, brushes * * * mops and feather dusters. The “Swiffer”™ cloths which are packaged and sold separately were classified under subheading 6307.10.2030, HTSUSA, which provides for other made up articles, including dress patterns: floorcloths, dishcloths, dusters and similar cleaning cloths: other, other. Since the issuance of this ruling, Customs has reviewed the classification of these items and has determined that the cited ruling is in error. On May 16, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 20, we published a proposed revocation of NY D82572, dated September 29, 1998. At this time, we are withdrawing the previous notice pursuant to an internal review and issuing, for a solicitation of comments, a new proposed modification of NY D82572 with a new classification for the subject merchandise. As such, this new ruling now modifies NY D82572 by providing the correct classification for the separately packaged “Swiffer”™ cloths. Accordingly, we are modifying NY D82572, only with respect to the separately packaged cloths, to reflect proper classification of the goods within subheading 5603.92.0010, HTSUSA, which provides for “Nonwovens, whether or not impregnated, coated, covered or laminated: Other: Weighing more than 25 grams per square meter but not more than 70 grams per square meter, Impregnated, coated or covered with material other than or in addition to rubber, plastics, wood pulp or glass fibers; ‘imitation suede’.”

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify NY D82572 (see “Attachment A” to this document) and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 964578 (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: August 5, 2002.

JOHN ELKINS,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, September 29, 1998.
CLA-2-96:RR:NC:SP:233 D82572
Category: Classification
Tariff No. 9603.90.8050 and 6307.10.2030

MR. ROGER J. CRAIN
CUSTOMS SCIENCE SERVICES, INC.
3506 Frederick Place
Kensington, MD 20895-3405

Re: The tariff classification of the "Swiffer" Floor Sweeper from China and the Netherlands.

DEAR MR. CRAIN:

In your letter dated September 16, 1998, on behalf of Procter & Gamble Co., you requested a tariff classification ruling.

The submitted sample is the "Swiffer" floor sweeper, consisting of a handle and a plate (which together comprise the "implement") which is made in China, and a chemically treated dust cloth which is made in the Netherlands. Ten dust cloths are packaged with the implement in a retail-sale package. The handle of the implement consists of three sections of aluminum pipe and a fourth hand-grip section of plastic which screw together. The lowest section of the handle screws into a fitting which, in turn, screws into a plastic plate. Mechanical grippers on the plastic plate seize the dust cloth to complete the Swiffer. The Swiffer may be assembled full-length for use like a floor sweeper, or the hand-grip handle may be screwed directly into the plate for use like a hand duster.

The disposable dust cloths for use with the Swiffer are of man-made nonwoven fabric coated/impregnated with a mixture of mineral oil and paraffin wax. Additional dust cloths in packages of 10 or 20 cloths per package will be imported and sold separately.

The Swiffer is considered a composite good for classification purposes. GRI 3(b) states in part that "goods made up of different components 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." The essential character of the subject article is imparted by the Swiffer sweeper.

Your sample is being retained for training purposes.

The applicable subheading for the Swiffer will be 9603.90.8050, Harmonized Tariff Schedule of the United States (HTS), which provides for other brooms, brushes * * * mops and feather dusters. The rate of duty will be 3.4% ad valorem.

The applicable subheading of the dust cloths, if imported and sold separately, will be 6307.10.2030, HTS, which provides for other made up articles, including dress patterns: floorcloths, dishcloths, dusters and similar cleaning cloths: other, other. The rate of duty will be 8.4% 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 Lawrence Mushinske at 212-466-5739.

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

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
 U.S. CUSTOMS SERVICE,
 Washington, DC.
 CLA-2 RR:CR:TE 964578 ASM
 Category: Classification
 Tariff No. 9603.90.8050 and 5603.92.0010

MS. ALICIA G. CALLAHAN
 PROCTER & GAMBLE
 THE PROCTER & GAMBLE DISTRIBUTING COMPANY
 U.S. CUSTOMER SERVICES/LOGISTICS CENTER
 8500 Governor's Hill Drive
 Cincinnati, OH 45249

Re: Request for reconsideration and Modification of NY D82572: Tariff classification of the "Swiffer"™ Floor Sweeper package consisting of cloths, handle, and plate; Tariff classification of the "Swiffer"™ Floor Sweeper cloths packaged and sold separately; Nonwoven cloth impregnated with mineral oil and paraffin wax

DEAR MS. CALLAHAN:

This is in response to a letter, dated July 7, 2000, requesting reconsideration of Customs New York Ruling (NY) D82572, dated September 29, 1998, which classified the above-captioned merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). A sample was submitted to this office for examination.

Facts:

The subject merchandise is the "Swiffer"™ Floor Sweeper, imported unassembled as a handle and plate, and packaged with ten chemically treated cloths. The "Swiffer"™ Floor Sweeper cloths will also be imported separately in packages of 10 or 20 cloths. The "Swiffer"™ cloths are constructed of man-made nonwoven polyester fabric cut to 8 inch x 11 inch rectangles which have been impregnated with a mixture of mineral oil and paraffin wax. Individually, the cloths weigh 68g per square meter. The edges of the cloths have not been finished or hemmed.

In NY D82572, dated September 29, 1998, the merchandise identified as the "Swiffer"™ Floor Sweeper package consisting of cloth, handle, and plate was classified pursuant to GRI 3(b) in subheading 9603.90.8050, HTSUSA, which provides for other brooms, brushes * * * mops and feather dusters. The current duty rate for this provision under the general column one rate is 2.8 percent *ad valorem*. The "Swiffer"™ cloths which are packaged and sold separately were classified under subheading 6307.10.2030, HTSUSA, which provides for other made up articles, including dress patterns: floorcloths, dishcloths, dusters and similar cleaning cloths: other, other. The current duty rate for this provision under the general column one rate is 6.3 percent *ad valorem*.

You disagree with this classification and claim that all the articles subject to NY D82572, i.e., the individually packaged cloths and the floor sweeper set with non-woven cloths, are classifiable under subheading 5603.12.0010, HTSUSA, which provides for nonwovens, whether or not impregnated, coated, covered or laminated. Currently, this provision is duty free under the general column one rate. The textile quota category is 223.

Issue:

What is the proper classification for the merchandise?

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRI 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, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

In correspondence dated October 2, 2000, you provided additional information indicating that the method of manufacture for the “Swiffer”™ cloth is described as “hydroentangled”. Furthermore, you state that most of the “Swiffer”™ cloth is now made of fibers of U.S. origin and the fabric is manufactured in the U.S. The fabric is sent to Canada in rolls where it is cut to size and impregnated with a mixture of mineral oil and paraffin wax. You further note that, occasionally, the fabric is sourced from Germany and Italy.

The “Swiffer”™ Floor Sweeper package, which contains 10 cloths, handle, and plate, consists of components which are *prima facie* classifiable in separate headings. Thus, we have found that the goods cannot be classified solely on the basis of GRI 1. GRI 2(b) governs the classification of goods when there are mixtures and combinations of materials or substances, and when goods consist of two or more materials or substances. In relevant part, GRI 2(b) states that “The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.” GRI 3 states:

(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.

In this case, the headings 5603 and 9603, HTSUS, each refer to only part of the materials that make up this product. Thus, pursuant to GRI 3(a), we must consider the headings equally specific in relation to the goods. Accordingly, the goods are classifiable pursuant to GRI 3(b).

It is important to note, however, that in classifying the “Swiffer”™ Floor Sweeper package, the merchandise is correctly characterized as a “set”. Explanatory Note (X) for GRI 3(b) states that “goods put up in sets for retail sale” are goods which “(a) consist of at least two different articles which are *prima facie*, classifiable in different headings. * * *; (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repacking (e.g. in boxes or cases or on boards) * * *”. As applied to the “Swiffer”™ Floor Sweeper package, we have already determined that the articles are *prima facie* classifiable in different headings. Furthermore, the set consists of articles which are intended for the activity of cleaning and dusting. Finally, it is our understanding that the packaged product has been put up in a manner suitable for sale directly to users without repacking.

With respect to determining the essential character of the set, the EN to GRI 3(b) provides the following guidance:

(VII). In all these cases the goods are to be classified as if they consisted of the material or component **which gives them their essential character**, insofar as this criterion is applicable.

(VIII). 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.

Recently, there have been several Court decisions on “essential character” for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine essential character. See, *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, *Pillowtex Corp. v. United States*, 98-1227, CAFC, 171 F.3d 1370; 1999 U.S. App. LEXIS 4371.

The essential character of the subject merchandise can be determined by comparing each component as it relates to the use of the product. Clearly the plastic handle and plate serve the important and primary function of attaching the “Swiffer”™ cloth in such a way that it can be more conveniently used to clean floors, ceilings and other hard to reach places. Moreover, when assembled, it is a floor sweeper within the scope of heading 9603,

HTSUSA. Thus, it is our determination that the handle and plate impart the essential character to this retail set.

In view of the foregoing, it is our determination that NY D82572, correctly classified the “Swiffer”™ Floor Sweeper package, with handle plate and cloths, under heading 9603, HTSUSA, pursuant to a GRI 3(b) analysis.

With respect to the individually packaged “Swiffer”™ cloths, Section XI, Note 7, of the HTSUSA, governs classification of goods which are classifiable as other “made up” articles of heading 6307, and provides in pertinent part, as follows:

7. For the purposes of this section, the expression “made up” means:

- (a) Cut otherwise than into squares or rectangles;
- (b) Produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, tablecloths, scarf squares, blankets);

The “Swiffer”™ cloths are rectangular shaped and have raw/unfinished edges. Thus, these cloths are not produced in the finished state or otherwise within the meaning of Note 7. The EN to Section Note 7(b) indicates that rectangular articles simply cut from larger pieces are not made-up. Further the EN to heading 5603, HTSUSA, explains that the heading includes “nonwovens in the piece, cut to length or simply cut to rectangular * * * shape from larger pieces without other working, whether or not presented folded or put up in packings (*e.g.*, for retail sale).” As such, they are not classifiable under subheading 6307.10.2030, HTSUSA, as other “made up” articles.

Heading 5603, HTSUSA, covers nonwovens, whether or not impregnated, coated, covered or laminated. In addition to the above, the EN to 5603 provides that “A nonwoven is a sheet or web of predominately textile fibres oriented directionally or randomly and bonded. These fibers may be of natural or man-made origin. They may be staple fibres (natural or man-made) or man-made filaments or be formed in situ. Nonwovens can be produced in various ways and production can be conveniently divided into the three stages: web formation, bonding and finishing.” The EN to 5603 further states that “Nonwovens may be * * * impregnated, coated, covered or laminated” and that the heading covers “* * * nonwovens in the piece, cut to length or simply cut to rectangular * * * shape * * *”.

The “Swiffer”™ cloths are “nonwovens” within the meaning of the EN to 5603 because the process of “hydroentanglement” involves a method by which a straight line of fibers are hit with high velocity water jets causing the fibers to entangle or form a web. Also, the EN to 5603 notes that the nonwovens covered by this heading may be cut to rectangular shape, as are the “Swiffer”™ cloths. Furthermore, heading 5603, HTSUSA, specifically provides for nonwovens which have been impregnated with materials “* * * other than or in addition to rubber, plastics, wood pulp or glass fibers.” In this case, the “Swiffer”™ cloths have been impregnated with mineral oil and paraffin wax. Finally, the subject cloths are provided for at subheading 5603.92.00, HTSUSA, in that they are within the requisite size range of this provision because, individually, the cloths weigh 68g per square meter, which is more than 25g per square meter but not more than 70g per square meter.

Customs has previously classified nonwoven cleaning cloths in heading 5603, HTSUSA. Headquarters Ruling (HQ) 089058, dated July 25, 1991 classified a nonwoven cloth wipe of man-made fibers under subheading 5603.00.9090, HTSUSA. In this ruling, the article was precluded from classification in heading 6307, HTSUSA, because it was cut in a square or rectangular shape and did not meet the definition of a “made-up” article within the meaning of heading 6307. HQ 950786, dated January 28, 1992, classified a rectangular cleaning cloth made from a synthetic nonwoven fabric and impregnated with polyvinyl alcohol under the provision for nonwovens in 5603.00.9090, HTSUSA. In NY F84069, dated March 13, 2000, nonwoven wiping cloths of man-made fibers, unhemmed, not impregnated, coated, covered or laminated, and weighing 40 grams per square meter, were found to be classifiable as “Other” nonwovens in subheading 5603.12.0090, HTSUSA. Although the cloths in this ruling had no chemical coating, they are otherwise similar to the “Swiffer”™ cloths in that they are nonwoven, unhemmed wiping cloths of man-made fibers, which can be used as dust mop wipes, or replacement parts.

Headquarters Ruling (HQ) 951372, dated April 24, 1992, in applying Section Note 7 to Section XI, determined that “rectangular (including square) articles simply cut from larger pieces without other working * * * are not regarded as ‘produced in the finished state’ within the meaning of this Note [EN to Section Note 7, Section XI].” Recently, Customs affirmed this interpretation of “made up” per Note 7, Section XI, in HQ 962371, dated

March 12, 1999, when it determined that the merchandise was precluded from classification in heading 6307, HTSUSA, because it was cut into a rectangular shape after weaving and the cut edges were merely "selvages" to prevent unraveling and not "Hemmed or with rolled edges, * * *" within the meaning of Note 7, Section XI, (c). Thus, Customs has consistently held that merchandise which is substantially similar to the subject "Swiffer"™ cloths are precluded from classification under heading 6307, HTSUSA.

In view of the foregoing, we find that NY D82572, incorrectly classified the separately packaged "Swiffer"™ cloths which are properly classifiable in accordance with GRI 1, under subheading 5603.92.00, HTSUSA, as "Other" nonwovens.

Holding:

NY D82572, dated September 29, 1998, is hereby modified.

The "Swiffer"™ Floor Sweeper package, pursuant to a GRI 3(b) analysis, is correctly classified in subheading 9603.90.8050, HTSUSA, which provides for "Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorized, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees): Other: Other, Other." This provision is dutiable under the general column one rate at 2.8 percent *ad valorem*.

The separately packaged "Swiffer"™ cloths, in accordance with GRI 1, are correctly classified in subheading 5603.92.0010, HTSUSA, which provides for "Nonwovens, whether or not impregnated, coated, covered or laminated: Other: Weighing more than 25g per square meter but not more than 70g per square meter, Impregnated, coated or covered with material other than or in addition to rubber, plastics, wood pulp or glass fibers; 'imitation suede'." This provision is duty free at the general column one rate. The textile category is 223.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

**PROPOSED MODIFICATION OF RULING LETTER
RELATING TO VALUATION OF ASSISTS**

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

ACTION: Notice of proposed modification of ruling letter.

SUMMARY: 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 Implementation Act (Pub. L. 103-182, 107 Stat. 2057) this notice advises interested parties that Customs intends to modify one ruling pertaining to the valuation of certain assists. Comments are invited on the correctness of the proposed modification.

DATE: Comments must be received on or before September 20, 2002.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Value Branch, 1300 Pennsylvania Avenue, NW, U.S. Mint Annex, 5th Floor, Washington, D.C. 20029. Comments may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Laurie E. Ross, Value Branch, Office of Regulations and Rulings (202) 572-8740.

SUPPLEMENTAL INFORMATION:

BACKGROUND

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), this notice advises interested parties that Customs intends to modify one ruling pertaining to the valuation of certain assists within the meaning of 19 U.S.C. 1401a(h)(1)(A)(iv). Customs invites comments on the correctness of the proposed modification.

19 U.S.C. 1401a(h)(1)(C)(i) provides that for purposes of determining the value of assists, if the production of an assist occurred in the United States and one or more foreign countries, the value of the assist is the value thereof that is added outside the United States.

In Headquarters ruling letter (HRL) 547808, dated December 19, 2001, Customs determined that the value of the films and transparencies provided free of charge by the buyer to the manufacturer of the imported goods included certain royalty payments made by the buyer to an artist pursuant to the terms of a licensing agreement between the two parties. In HRL 547808 Customs also determined that certain payments made by the buyer to a third party in the Netherlands were not part of the value of the assist. HRL 547808 is set forth as Attachment A to this document.

Upon further review of HRL 547808, we have concluded that pursuant to 19 U.S.C. 1401a(h)(1)(C)(ii) the value of the assist should be de-

terminated based on the value of the assist that is added outside the United States in the Netherlands by the third party. However, because the work performed by the artist is not part of the production process of the assist, the royalty payments made by the buyer for the right to use the artist's work are not part of the value of the assist.

Customs, therefore, intends to modify HRL 547808 such that the value of the assist will be determined based on the work performed by the third party in the Netherlands, as reflected by the payments from the buyer to the third party. Proposed HRL 548097 is set forth in Attachment B to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: July 31, 2002.

VIRGINIA L. BROWN,
Chief,
Value Branch.

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, December 19, 2001.

RR:IT:VA 547808 KDW
Category: Valuation

PORT DIRECTOR
U.S. CUSTOMS SERVICE
477 Michigan Ave., Rm. 200
Detroit, MI 48226

Re: Internal Advice Request # 2000-3801-300374; assists; design work; artwork.

DEAR PORT DIRECTOR:

This is in response to your memorandum dated August 24, 2000, requesting internal advice as to the dutiability of certain artwork and original digital color separations that Hallmark Cards, Inc. ("Hallmark") sent to foreign vendors for production of imported merchandise. Our response is based on your memorandum, letters from Hallmark dated December 5, 2000, and July 17, 2001, October 16, 2001, and our meeting with Hallmark representatives and counsel on March 30, 2001. We regret the delay in response.

Facts:

Hallmark imports a line of products containing certain design work it provides to its foreign vendors free of charge. Hallmark ships the design work to the manufacturers as either a transparency or as a film depending on the item to be produced. The design work is derived in part from artwork created by a Dutch artist that is scanned in the Netherlands by Repro Wes. Repro Wes creates a digital library and catalog of the artist's work. Hallmark designers in the United States use the catalog to incorporate pieces of the artist's work into a line of products. The designers cut pieces from the artwork in the catalog and paste them into product designs.

Once the product design is created, the designers make a tight layout of the finished product and send it to Repro Wes. Hallmark pays Repro Wes to combine the culled images,

resize, and reposition them as directed by Hallmark designers and place them into a CMYK file (a four color separation file) and proof. The file and proof are then sent to Hallmark who uses them in finalizing its pictorial design for the product, clean up the digital file, and manipulate, add, or delete some design components. Once finalized, the file is adjusted to conform to the ink sets used by Hallmark. The design process separates at this point into two separate processes depending upon whether the finished items will be printed products or specialty products.

For specialty products, Hallmark converts the adjusted CMYK file into a RGB file (a tri-color separation file) and transfers it to a CD using an IRIS system. The CD is used to make a transparency of the RGB file. The transparency is sent to Hallmark's foreign vendors, who make a color separation to use in the final production process.

For printed products, Hallmark stores the adjusted CMYK file on the digital library. The finishing department then creates a Quark template that enables its system to incorporate all the design elements in one file. Using this file Hallmark creates a film color separation of the completed design, and sends it to its foreign vendors for production of the finished product.

Hallmark states that it does not believe the digital color separation created by Repro Wes constitutes an assist. You state that the adjusted digital color separation that Hallmark ships to its vendors for use in the production of the imported merchandise is not a new item, but simply a modification of the original digital color separation. You conclude that the digital color separations produced by Repro Wes, plus the modifications described above constitute part of the value of the imported merchandise as an assist under 19 U.S.C. 1401a(h)(1)(A)(iv).

In addition to the technical information concerning its design process, Hallmark, at our request, submitted a copy of its licensing agreement with the Dutch artist. Hallmark entered into the licensing agreement with the artist in 1992. The agreement provides that Hallmark has the exclusive right worldwide, except the Netherlands "to utilize and sublicense to third parties all designs and characters * * * owned by" the artist together with the artist's name, likeness, biographical information, and trademark(s) in connection with the manufacture, distribution, promotion, and sale of products. Under the terms of the original agreement, Hallmark agreed to pay a royalty to the artist calculated as a percentage of the sale price to Hallmark customers on all sales of all licensed articles sold by it. In addition, Hallmark agreed to furnish the artist with its "rough art" and "final art" for each licensed product for approval before manufacture, distribution or sale. The artist may disapprove the contemplated use or art.

In an April 1996 amendment the terms of payment were changed to provide that Hallmark pay a set guaranteed amount for the time period January 1, 1998 through December 31, 2002. If that amount has not been paid in royalties by the end of the time period, Hallmark is to remit the difference to the artist to meet the guaranteed amount. Hallmark claims that the royalty payments made to the artist are not part of the price actually paid or payable, because they are not linked to individual sales agreements or purchase contracts with the Asian vendors for the imported merchandise.

Issues:

Is the art and design work Hallmark supplies to its foreign manufacturers considered an assist?

Law and Analysis:

Merchandise imported into the United States is appraised in accordance with section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA). Transaction value, the preferred method of appraisement, is defined in section 402(b) of the TAA as the "price actually paid or payable for the merchandise when sold for exportation to the United States," plus certain enumerated additions. The enumerated additions include the value, apportioned as appropriate, of any assists. 19 U.S.C. § 1401a(b)(1). Assists are specifically defined in section 402(h)(1)(A) of the TAA as:

any of the following if supplied directly or indirectly, and free of charge or at a reduced cost, by the buyer of imported merchandise for use in connection with the production or of the sale for export to the United States of the merchandise:

- (i) Materials, components, parts, and similar items incorporated in the imported merchandise;
- (ii) Tools, dies, molds, and similar items used in the production of the imported merchandise;

- (iii) Merchandise consumed in the production of the merchandise;
- (iv) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and necessary for the production of the imported merchandise.

Hallmark does not dispute that the transparencies and film color separations it ships to its foreign vendors constitute design work. Thus, the only issue before us is whether that design work constitutes an assist.

To be included in the transaction value, design work must be undertaken elsewhere than in the United States and it must be necessary for the production of the imported items. *Id.* Accordingly, any design work undertaken in the United States by Hallmark would not be considered an assist. However, the work undertaken by the artist and Repro Wes in the Netherlands does not occur in the United States, and thus we turn our analysis to whether those portions of the work are dutiable as an assist in accordance with section 402(h)(1)(A)(iv) of the TAA.

Although the transparencies and film that comprise the final design work are completed in the United States, they are not **wholly** undertaken in the United States. In a similar case we have found that portions of design work undertaken in another country and provided to the seller free of charge or at reduced cost are considered assists, and part of the transaction value. See HRL 545341, dated August 3, 1994.

The work undertaken by Repro Wes is similar to that in Headquarters Ruling Letter (HRL) 546720, dated June 21, 1999. In HRL 546720, we found that certain CAD-generated prints supplied by the buyer to the overseas manufacturer did not constitute design work due to the level of skill involved in creating the prints. In that case, we found that the person producing the prints merely input data provided by the buyers and did not have any discretion in creating or arranging color schemes. We concluded that the computer generated printing had no artistic value, and therefore was not an assist.

Similarly, Repro Wes scans the artist's work and provides Hallmark with a digital library of the artwork. From the digital library, Hallmark artists create new layouts and patterns, and designs for products. Hallmark then directs Repro Wes to cull the digital images from various files in the library to match the layout composed by the Hallmark artists. Repro Wes submits a proof to Hallmark in the United States, who uses it to create the final design scheme sent to the manufacturers. Based on this description, it does not appear that Repro Wes participates in the creative process or has any discretion in choosing images or color. The coloring and images are the same in the final product as designated by Hallmark and the artist. Also, it does not appear that Repro Wes performs any work in the development, engineering, planning or sketching of the product to be manufactured. Accordingly, we find that the digital reproductions and design proofs provided by Repro Wes do not constitute assists within the meaning of 19 U.S.C. §1401a(h)(1)(A)(iv).

In contrast, however, the original artwork that is created in Denmark and supplied to Hallmark pursuant to the licensing agreement is part of the creative process. The artist has discretion in creating the images, including their shape and color. The coloring and images are the same in the final product shipped to the manufacturers as in the original artwork. As explained by the Hallmark representatives, the artist is very particular about the colors used for her work. In some cases an image from the artist's sketchbook may be inverted or separated from its original companion images, but the lines, shapes, and colors of the images remain the same. Further, the artwork plays a key role in the design product. While the artwork constitutes only a portion of the whole design, it is not "incidental" to the other design work performed by Hallmark in the United States. Without the work by the artist, Hallmark cannot perfect its transparencies or films to send to its foreign vendors. Hallmark disputes this conclusion by stating that the file produced by Repro Wes of the artist's work is in a different format than that used by Hallmark and that it doesn't contain all of the elements of the design. These facts are immaterial to the determination that the original artwork is in fact used in and necessary for the creation of the transparencies and films Hallmark produces for use by its foreign vendors. Without the original artwork, Hallmark has no design.

Further, we distinguish this case from HRL 547578, dated January 18, 2000. In that case, the fabric purchased by the importer was strictly used for inspiration as demonstrated by the samples submitted. The patterns and colors of the original fabric were significantly changed and were not clearly evident in the final design work. Customs determined that the original design work was transformed into new U.S. designed work and therefore, was not an assist. In contrast, the original artwork at issue here is not sig-

nificantly changed and the final product clearly embodies the artist's well-known work. Thus, we find that the artwork performed by the original artist and furnished by Hallmark free of charge to its foreign manufacturers as part of the final design is necessary for the production of the imported merchandise. It is, therefore, an assist within the meaning of 19 U.S.C. §1401a(h)(1)(A)(iv).

In valuing the artwork, we note that section 152.103(d)(1) of the Customs Regulations (19 CFR §152.103(d)(1)), provides that the value of the assist acquired by the buyer from an unrelated seller is the cost of its acquisition including transportation costs to the place of production. Further, section 152.103(e)(1) of the Customs Regulations provides that the value of the assist is to be apportioned to the imported merchandise in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

The only information we have concerning the valuation of the artwork is contained in the licensing agreement between Hallmark and the artist. It is our position that a value for the artwork may be based on royalty payments made in exchange for that artwork which is incorporated into the final design for the products imported. In HRL 544459, dated May 30, 1991, Customs determined that royalty payments could be used to value the design and development assist acquired by the buyer from a third party, and supplied free of charge to the seller for use in the production of the imported merchandise.

Holding:

The portion of the design work performed by Hallmark in the United States is not considered an assist. Also, the work performed by Repro Wes although undertaken abroad, does not constitute an assist, because it is not design work. However, the artwork performed by the artist in Denmark is part of the design work necessary for the production of the imported merchandise. Accordingly, that portion of the design work supplied by Hallmark free of charge to the manufacturer, therefore, constitutes an assist. The value of the artwork must be added to the PAPP for the imported merchandise.

This decision should be mailed by your office to the party requesting internal advice no later than sixty days from the date of this letter. On that date the Office of Regulations & Rulings will take steps to make the decision available to Customs personnel via the Customs Rulings Module in ACS and the public via the Diskette Subscription Service, Freedom of Information Act, and other public access channels.

VIRGINIA L. BROWN,
Chief,
Value Branch.

[ATTACHMENT B]

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

RR:IT:VA 548097er
Category: Valuation

HARVEY B. FOX, ESQ.
GREGORY C. ANTHES, ESQ.
ADDUCI, MASTRIANI & SCHAUMBERG, L.L.P.
1200 Seventh Street, NW
Washington, DC 20036

DEAR MESSRS. FOX AND ANTHES:

This is in response to your requests for reconsideration, dated January 15 and April 17, 2002 of HRL 547808, dated December 19, 2001, regarding the determination that certain design work provided free of charge by your client, Hallmark Cards, Inc. ("Hallmark"), to foreign manufacturers constitutes an assist within the meaning of 19 U.S.C. 1401a(h). Your request for confidential treatment of the contents of the license agreements, and amendments thereto, as well as certain proprietary information identified within brack-

ets in your request, is granted. Accordingly, all proprietary information in this decision appears within brackets and will be redacted from the public version.

Facts:

Hallmark provides design work, free of charge, to the foreign producers of imported products. The imported products consist of a wide range of items including greeting cards, guest books, diaries, gift bags, tins, ceramics, photo albums and Christmas ornaments. The design work consists of transparencies and films sent by Hallmark to foreign manufacturers for use in manufacturing the imported merchandise. The transparencies are used in the production of specialty products and the films are used in the production of printed products.

In HRL 547808 this office made the determination that the transparencies and films provided by Hallmark free of charge to the foreign manufacturers constituted assists within the meaning of 19 U.S.C. 1401a(h). The value of the assists was determined to be royalty payments made by Hallmark to a Dutch artist pursuant to a license agreement between the two parties.

Subsequent to counsel's request for reconsideration, representatives from this office met with you and representatives from Hallmark. At the meeting, you provided additional examples of the design work and provided us with further explanations regarding how the design work is produced.

The Production of the Design Work

According to your submissions, the design process begins when Hallmark designers in the U.S. look through catalogs of the artist's works and use the works as inspiration to design new products ranging from greeting cards to three-dimensional sculptures. Hallmark's designers conceive a general design intent for a particular product format (e.g., a winter theme with birds for plates and cups or a box and candle set which incorporates a winter theme). The designers review catalogs of the artist's original paintings to find various images or portions of images that may be used to construct the Hallmark design. The designers cut and paste parts of these images and apply some or all of the following additional steps in order to complete the design: [] Once this portion of the design work is completed, Hallmark's designers create a tight layout that contains the specifications, including dimensions, shape and format, of the finished product. The tight layout is sent to Repro Wes in the Netherlands.

At this point, the second stage of the design work begins. It is our understanding that Repro Wes is the only company that maintains a digital library of the artist's original works. Therefore, in order for Hallmark to obtain the digital files of the artist's works it must work in conjunction with Repro Wes. [] This process results in the production of digital files, proofs (wet or Iris) and/or film. The proofs are used by Repro Wes to validate color, integrity and placement. The tight mechanical layout is returned to Hallmark along with the newly created digital file.

The Hallmark designers complete the third and final stage of the production of the design work, creating a new digital file that contains all elements of the new product's design. [] New proofs (Iris/Fiji) are created. Hallmark stores the color correct files into Hallmark's digital library. These new files are used to create the separations or transparencies supplied to the foreign manufacturers of the imported products.

HRL 547808 dated December 19, 2001.

As noted above, in HRL 547808 this office made the determination that the transparencies and films provided by Hallmark to the foreign manufacturers, free of charge, constitute assists within the meaning of 19 U.S.C. 1401a(h). As stated in HRL 547808, in order for design work to be included in transaction value as an assist, the design work must be undertaken elsewhere than in the U.S. and it must be necessary for the production of the imported merchandise. 19 U.S.C. 1401a(h)(1)(A). In the past, this office has excluded from the value of an assist that portion of the assist undertaken in the U.S. (See, HRL 545341, dated August 3, 1994). Accordingly, in HRL 547808, the value of the design work undertaken by Hallmark designers in the U.S. was not included in the value of the transparencies and films.

In HRL 547808 this office also made the determination that the work undertaken by Repro Wes is not dutiable. Customs reasoned that because Repro Wes does not participate in the creative process or exercise discretion in choosing images or color, nor does it perform any work in the development, engineering, planning or sketching of the product to be manufactured, the work it performs is not an assist.

The remaining portion of the design work examined in HRL 547808 was the artist's work. Customs ruled in HRL 547808 that the artist's work is an assist because her artwork is part of the creative process in that she had discretion in creating the images, including their shape and color. Further, the coloring and images are the same in the assist sent to the manufacturers as in the original artwork. Moreover, the artist retained the right to approve or disapprove the use of her artwork. The value of the artwork assist was determined based on the royalty payments made by Hallmark to the artist.

Issue:

Whether the transparencies and films provided free of charge by Hallmark to the foreign manufacturers constitute assists? If so, how should the assists be valued?

Law and Analysis:

Merchandise imported into the United States is appraised in accordance with section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA). Transaction value, the preferred method of appraisement, is defined in section 402(b) of the TAA as the "price actually paid or payable for the merchandise when sold for exportation to the United States," plus certain enumerated additions. One of the additions includes the value, apportioned as appropriate, of any assists. 19 U.S.C. 1401a(b)(1)(C).

Are the transparencies and films assists?

The first issue to be resolved is whether the transparencies and film constitute assists. The term "assist" refers to an item that is supplied directly or indirectly by the buyer free of charge or at a reduced cost, for use in connection with the production or sale for export of the imported merchandise. The type of assist at issue in this case is "engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise." 19 U.S.C. 1401a(h)(1)(A)(iv).

The transparencies and films that are provided free of charge by the buyer to the foreign manufacturers of the imported products constitute design work and fall within the scope of the elements described by section 402(h)(1)(A)(iv). The transparencies and films impart the essence of the product design to the imported merchandise, without which the manufacturers could not produce the imported merchandise. Accordingly, we find that the design work is "necessary for the production of the imported merchandise" within the meaning of 19 U.S.C. 1401a(h)(1)(A)(iv). To the extent that part of the production of the transparencies and films occurs in the Netherlands, the design work is "undertaken elsewhere than in the United States". Accordingly, it is our determination that the design work meets the definition of an assist. The remaining question, therefore, is how to value the transparencies and films.

As described above, transparencies and films are produced in three stages. One stage is undertaken in the Netherlands and the other two are undertaken in the United States. In the past, Customs has ruled that in such circumstances, only the portions of the design work undertaken outside the U.S. are dutiable. See HRL 545341, dated August 3, 1994. Accordingly, in HRL 547808, we ruled that the portion of the design work undertaken in the United States, *i.e.*, the work performed by the Hallmark designers, is not a dutiable portion of the assist provided to the foreign manufacturers. We believe that this determination was correctly reached in HRL 547808.

In HRL 547808 we ruled that the artist's work is an assist because her artwork is part of the creative process in that she had discretion in creating the images, including their shape and color. Further, the coloring and images are the same in the assist sent to the manufacturers as in the original artwork. Moreover, the artist retained the right to approve or disapprove the use of her artwork. In HRL 547808, we also ruled that the work performed by Repro Wes, even though undertaken elsewhere than in the U.S., is not an assist as the involvement of Repro Wes does not involve creative process or the exercise of discretion in choosing images or color. As you have requested a *de novo* review of the ruling, we will reexamine both of these two determinations reached in HRL 547808.

Valuing the transparencies and films.

The valuation statute addresses valuing assists that are produced in the United States and elsewhere than in the United States. Specifically, for purposes of determining the value of assists described in 19 U.S.C. 1401a(h)(1)(A)(iv) the valuation statute provides:

If the production of an assist occurred in the United States and one or more foreign countries, the value of the assist is the value thereof that is added outside the United States.

19 U.S.C. 1401a(h)(1)(C)(ii).

Upon reconsideration, we find that it was incorrect in HRL 547808 for this office to subject each stage of the assist's production process to a separate assist analysis, as though each stage of production results in the creation of a separate assist. The statute does not provide that each stage of the production of the assist must individually meet the definition of an assist; only that the value of the assist is the value thereof that is added outside the U.S.

In HRL 547808 we specifically analyzed whether the work performed by Repro Wes constituted an assist. This analysis is incorrect as it centers upon whether Repro Wes' work meets the definition of an assist instead of focusing on whether the work performed by Repro Wes constitutes a dutiable portion of the completed design work provided to the manufacturers—*i.e.* the completed transparencies and films.¹ Likewise, we made the same error in our analysis of the artist's work, concentrating on whether her artwork is an assist, instead of whether her artwork is a dutiable portion of the assist provided to the sellers.

As set forth under 19 U.S.C. 1401a(h)(1)(C)(ii), quoted above, the issue with which we need to be concerned is whether the work performed by each party is part of the production process of the assist, and if so, *where* each stage of the assist production was performed, such that the value of the finished assist is determined based on its production elsewhere than in the U.S.

According to counsel's submissions, the design process begins when Hallmark designers in the U.S. look through catalogs of the artist's works and use the works as inspiration to design new products ranging from greeting cards to three-dimensional sculptures. Given the fact that the artist's work precedes the inception of the production of the assist and is the result of her own artistic endeavors, undertaken without knowledge of or regard for the imported products, we find her work to be outside the scope of the assist production process. This artwork is the inspiration from which the design work is conceived and is not part of production process of the assist itself. Accordingly, the royalty payments made by Hallmark to the artist pursuant to the license agreement between the two parties are not a dutiable portion of the assist.

Unlike the artist's work, however, the work performed by Repro Wes begins after the inception of the assist production process by Hallmark, and precedes the final steps performed by Hallmark to fully complete the transparencies and films. As Repro Wes is the only company that maintains the digital files of the artist's work, Hallmark must contract with Repro Wes. However, Repro Wes' digital color separation is not compatible to Hallmark's production systems without further manipulations in the U.S. Nor does the digital file supplied by Repro Wes contain all the essential elements of the design. Repro Wes' contribution is a middle step in the production of the assist, with Hallmark's designers completing the process upon receipt of the digital file. Accordingly, because Repro Wes' contribution is part of the assist production process and because it occurs in the Netherlands, pursuant to 19 U.S.C. 1401a(h)(1)(C)(ii), the payments made to Repro Wes's by Hallmark represent the value of the assist added outside the United States, and are dutiable.

¹ In HRL 547808 we compared the work undertaken by Repro Wes to that in HRL 546720, dated June 21, 1999 and concluded that it was similar. In HRL 546720 the CAD-generated prints supplied by the buyer to the overseas manufacturer did not constitute design work due to the level of skill involved in creating the prints. We found that the person producing the prints merely input data provided by the buyers and did not have any discretion in creating or arranging color schemes. Accordingly, we concluded that the computer generated printing had no artistic value and was not an assist. Upon reconsideration, we find that HRL 546720 is not relevant for comparison purposes to the work performed by Repro Wes. In HRL 546720 the color prints were created solely by data entry personnel reproducing color specifications previously communicated to them via e-mail. Conversely, as explained above, Repro Wes is not the sole creator of assists, but rather performs a stage in the production process of the assist.

Holding:

Upon reconsideration of HRL 547808 we find that the design work was properly determined to constitute an assist within the meaning of 19 U.S.C. 1401a(h)(1)(A)(iv). However, HRL 547808 is modified to the extent that the value of the assist is determined based on the payments made by Hallmark to Repro Wes and not based on the royalty payments made by Hallmark to the Dutch artist.

LARRY BURTON,
Acting Director,
International Trade Compliance Division.

PROPOSED REVOCATION OF RULING LETTER AND
TREATMENT RELATING TO THE TARIFF CLASSIFICATION
OF FRUCTOOLIGOSACCHARIDE MIXTURES FOS AND FOS-P

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

ACTION: Notice of proposed revocation of tariff classification ruling letter and treatment relating to the classification of fructooligosaccharide mixtures FOS and FOS-P.

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 concerning the tariff classification of fructooligosaccharide mixtures FOS and FOS-P, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before September 20, 2002.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulation and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the U.S. Customs Service, 799 9th Street, N.W., 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: Allyson Mattanah, General Classification Branch, (202) 572-8784.

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 (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 pertaining to the tariff classification of fructooligosaccharide mixtures FOS and FOS-P. Although in this notice Customs is specifically referring to New York Ruling Letter (NY) 854467, dated August 1, 1990, 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 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 advise Customs 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 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 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 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 this notice.

In NY 854467, Customs ruled that fructooligosaccharide mixtures FOS and FOS-P were classified in heading 2309, HTSUS, the provision for “[P]reparations of a kind used in animal feeding,” because they were described as being used in chicken feed. NY 854467 is set forth as Attachment “A” to this document.

It is now Customs position that these substances were not correctly classified in NY 854467 because fructooligosaccharides are also prepared for human consumption. By operation of Explanatory Note 23.09, which excludes products used both in animal feed and prepared for human consumption from heading 2309, HTSUS, and also by operation of Additional U.S. Rule 1(a), HTSUS, which dictates the administration of principal use provisions, fructooligosaccharide mixtures FOS and FOS-P are correctly classified in subheading 2106.90, HTSUS, as “[F]ood preparations not elsewhere specified or included: [O]ther.” Fructooligosaccharides which can be described as a separate chemically defined organic compound are sugar ethers of subheading 2940.00.60, HTSUS, the provision for “[S]ugars, chemically pure, other than sucrose, lactose, maltose, glucose and fructose; sugar ethers, sugar acetals and sugar esters, and their salts, other than products of heading 2937, 2938, or 2939: [S]ugar ethers, sugar acetals and sugar esters, and their salts, other than products of heading 2937, 2938, or 2939: [O]ther.” Not enough information is supplied in the ruling to determine classification at the 10 digit level. If needed, a ruling may be requested from the National Commodity Specialist Division, U.S. Customs Service, One Penn Plaza, 10th Floor, New York, N.Y. 10119.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY 854467 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) 965518. (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: July 31, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, August 1, 1990.

CLA23:S:N:N1:231
Category: Classification
Tariff No. 2309.90.9000

MR. STUART M. PAPE
PATTON, BOGGS & BLOW
2550 M Street, N.W.
Washington, DC 20037

Re: The tariff classification of Fructooligosaccharide (sugar compound) from Canada.

DEAR MR. PAPE:

In your letter dated July 10, 1990, on behalf of Coors BioTech, Inc., 12200 North Pecos Street, Westminster, Colorado you requested a tariff classification ruling.

The product at issue is a variable mixture of three fructooligosaccharides which are saccharide polymers comprised of a single glucose molecule to which one, two, or three fructose units have been linked in an enzyme-catalyzed reaction. It will be sold to the animal feed industry as "FOS" and "FOS-P". Both products are added to chicken feed to improve feed utilization. These products are said to improve the activity of benign intestinal flora and may have some fiberlike properties. They are also said to be effective in the reduction of incidence and level of salmonella infections in broilers when included in the feed of the animals.

The applicable subheading for these products, "FOS" and "FOS-P", will be 2309.90.9000, Harmonized Tariff Schedule of the United States (HTS), which provides for preparations of a kind used in animal feeding: other: other. The rate of duty will be 3 percent ad valorem.

Goods classifiable under subheading 2309.90.9000, HTS, which have originated in the territory of Canada, will be entitled to a free rate of duty under the United States-Canada Free Trade Agreement (FTA) upon compliance with all applicable regulations.

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.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

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

CLA-2 RR:CR:GC 965518 AM
Category: Classification
Tariff No. 2106.90

MR. STUART M. PAPE
PATTON, BOGGS & BLOW
2550 M Street, N.W.
Washington, DC 20037

Re: NY 854467 revoked; fructooligosaccharide mixtures FOS and FOS-P.

DEAR MR. PAPE:

This is in reference to New York Ruling Letter (NY) 854467 issued to you on behalf of Coors Bio Tech, Inc., on August 1, 1990, by the Director, Customs National Commodity Specialist Division, concerning the classification, under the Harmonized Tariff Schedule of the United States, (HTSUS), of fructooligosaccharide mixtures FOS and FOS-P. We have reviewed that ruling and determined that the classification set forth is incorrect.

Facts:

Fructooligosaccharides are saccharide polymers comprised of a single glucose molecule to which one, two, or three fructose units have been linked in an enzyme-catalyzed reaction.

The products at issue in NY 854467 were stated to be added to chicken feed to improve feed utilization. These products are said to improve the activity of benign intestinal flora and may have some fiber-like properties. They are also said to be effective in the reduction of incidence of salmonella infections in broilers when included in the feed of the animals.

According to information now available, FOS is also prepared for human consumption. FOS is a carbohydrate that is not hydrolyzed in the human intestinal tract. FOS has a chemical link (β -2-1-glycosidic linkage) between the fructose units in the chains that are not digestible by human enzymes. FOS passes unchanged into the colon, where it serves as a substrate for colonic bacteria. It is used alone as a nutritional supplement or in foods as a bulking agent, humectant, dietary fiber source and to promote the growth of bifidobacteria. It is used in products such as Ensure[®] Fiber with FOS, infant formula, biscuits, cereals, etc.

Issue:

What is the classification of fructooligosaccharide FOS and FOS-P under the HTSUS?

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. Additional U.S. Rule of Interpretation 1(a) states that "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 interpreting 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 HTSUSA. See T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

The following HTSUS headings are relevant to the classification of this product:

- 2106 Food preparations not elsewhere specified or included:
- 2309 Preparations of a kind used in animal feeding:
- 2940 Sugars, chemically pure, other than sucrose, lactose, maltose, glucose and fructose; sugar ethers, sugar acetals and sugar esters, and their salts, other than products of heading 2937, 2938, or 2939:

Chapter note 1 to Chapter 29, HTSUS, states, in pertinent part, the following: “[E]xcept where the context otherwise requires, the headings of this Chapter apply only to: (a) [S]eparate chemically defined organic compounds, whether or not containing impurities.

* * *

EN 23.09 states, in pertinent part, the following:

The heading excludes:

- (c) Preparations which, when account is taken, in particular, of the nature, purity and proportions of the ingredients, the hygiene requirements complied with during manufacture and, when appropriate, the indications given on the packaging or any other information concerning their use, can be used either for feeding animals or for human consumption (headings 19.01 and 21.06, in particular).

In NY 854467 the merchandise was classified in heading 2309, HTSUS, the provision for “[P]reparations of a kind used in animal feeding,” because it was described as being used in chicken feed. However, we are now aware that fructooligosaccharides are also used in products for human consumption. Fructooligosaccharides are therefore excluded from classification in heading 2309, HTSUS, by EN 23.09 exclusionary note (c), HTSUS, *supra*.

Moreover, both headings 2106 and 2309, HTSUS, are principal use provisions governed by Additional U.S. Rule 1(a), *supra*. “The principal use of the class or kind of goods to which an import belongs is controlling, not the principal use of the specific import.” *Group Italglass U.S.A., Inc. v. United States*, 17 C.I.T. 1177, 1177, 839 F. Supp. 866, 867 (1993). At the time of importation, the principal use was such that the merchandise belonged to the class of “nutritional supplements for human consumption” rather than to the class of “animal feed.” Therefore, under *Group Italglass U.S.A., supra*, the merchandise may be correctly classified under the provision for “food preparations,” heading 2106, HTSUS, even though the particular shipments were stated to be used in chicken feed.

However, heading 2106, HTSUS, is not applicable if the merchandise is specified in another provision. Heading 2940, HTSUS, the provision for sugar ethers describes FOS and FOS-P that is a separate chemically defined compound. FOS and FOS-P that does not reach this level of purity is classified in heading 2106, HTSUS, as noted above. Since FOS and FOS-P are used as an ingredient in human foods, the applicable six digit subheading is 2106.90, HTSUS, the provision for other food preparations.

The sucrose contained in FOS and FOS-P is derived from sugar cane or sugar beets and, on a dry weight basis, may contain over 10 percent of such sugars. Therefore, the ten digit classification can be determined using the following principles. If containing 10 percent or less, by dry weight, of sugar derived from sugar cane or beets, it will be classified in subheading 2106.90.9997, HTSUS. If containing over 10 percent, by dry weight, of sugar derived from sugar cane or sugar beets, it will be subject to the tariff rate quota for articles containing over 10 percent by dry weight of sugars derived from sugar cane or sugar beets, in subheadings 2106.90.9500 and 2106.90.9700, HTS. If classified in 2106.90.9700, HTS, the additional safeguard duties of subheading 9904.17.49 to 9904.17.56, HTS, will apply.

Holding:

Depending upon exact composition, Fructooligosaccharide mixtures FOS and FOS-P are classified either in subheading 2106.90, HTSUS, the provision for “[F]ood preparations not elsewhere specified or included: [O]ther,” or in subheading 2940.00.60, HTSUS, the provision for “[S]ugars, chemically pure, other than sucrose, lactose, maltose, glucose and fructose; sugar ethers, sugar acetals and sugar esters, and their salts, other than products of heading 2937, 2938, or 2939: [S]ugar ethers, sugar acetals and sugar esters, and their salts, other than products of heading 2937, 2938, or 2939: [O]ther.”

Not enough information is supplied in the ruling to determine classification at the 10 digit level. If needed, a new ruling may be requested from the National Commodity Specialist Division, U.S. Customs Service, One Penn Plaza, 10th Floor, New York, N.Y. 10119.

Effect on Other Rulings:

NY 854467 is revoked.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

MODIFICATION AND REVOCATION OF RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO TARIFF
CLASSIFICATION OF BRIDAL HEADPIECE MERCHANDISE

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

ACTION: Notice of modification and revocation of eighteen ruling letters and revocation of treatment relating to the tariff classification of bridal headpieces.

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 modifying and revoking eighteen ruling letters relating to the tariff classification of bridal headpiece merchandise under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 21, 2002.

FOR FURTHER INFORMATION CONTACT: Teresa Frazier, Textile Branch (202) 572-8821.

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. According-

ly, 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.

Previously, Customs has issued at least 18 rulings classifying bridal headpieces in at least 10 different subheadings throughout the tariff. There appears to be no clear, consistent method for the classification of these articles. At the urging of the National Commodity Specialist Division, Customs recently reexamined the rulings on bridal headpieces and determined that a more reasoned and simplified approach to the classification of these articles exists as set forth in the attached rulings HQ 963885, HQ 963889 and HQ 963902 (Attachments A, B and C, respectively).

Pursuant to Customs obligations, a notice of proposed modification and/or revocation of the eighteen ruling letters was published in the *CUSTOMS BULLETIN* of June 19, 2002, Volume 36, Number 25. No comments were received.

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 is modifying and/or revoking eighteen ruling letters relating to the classification of bridal headpiece merchandise. Although in this notice Customs is specifically referring to the eighteen New York Ruling Letters listed in the table below, this notice covers any rulings on such 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 ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the issues subject to this notice, should have advised Customs during the 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 is revoking any treatment previously accorded by Customs to substantially identical merchandise. 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 have advised Customs during the notice period. An importer's failure to advise Customs of the substantially identical transactions or

of a specific ruling not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

Dated: August 5, 2002.

JOHN ELKINS,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

<i>Ruling Number</i>	<i>Issue Date</i>	<i>Type of Customs Action</i>	<i>Style # of Merchandise</i>	<i>Correct HTSUSA Classification</i>
NY B86926	7/3/97	Revocation	CB 632	9615.19.6000
NY B86924	7/3/97	Revocation	AB-609	9615.19.6000
NY B87108	7/3/97	Modification	TR-615 (item 2) and CR-625	9615.19.6000
NY B86777	7/8/97	Modification	AB-707RP/IV (item 3) and VB-652 (item 4)	9615.19.6000
NY B88340	8/27/97	Modification	CR-777 and CR-702 (items 1 & 2)	9615.19.6000
NY B88339	8/27/97	Modification	CR-770 (item 5)	9615.19.6000
NY B88327	8/27/97	Modification	BA-757 (item 3) and HC-631 (item 5)	9615.19.6000
NY B88333	8/27/97	Modification	AB-766	9615.19.6000
NY B88330	9/8/97	Revocation	HW-817	9615.19.6000
NY B88332	9/8/97	Modification	AB-752, AB-762, FH-794 and CR-751	9615.19.6000
NY B88334	9/8/97	Modification	VB-816, VB-834, VB-807 and CA-803	9615.19.6000
NY B88335	9/8/97	Modification	CR-633, WR-758, VB-764	9615.19.6000 (not including SP 763);
			SP-763	9615.19.2000 9615.19.4000 (depending on value of comb)
NY B88336	9/8/97	Modification	TR-820, HC-811 and CR-836	9615.19.6000
NY B88337	9/8/97	Modification	TR-714, BA-618, AB-701, CR-729	9615.19.6000
NY B88341	9/8/97	Modification	AB-822, AB-813, CR-801, TR-832	9615.19.6000
NY B88338	9/9/97	Modification	FH-847, BP-821, CR-828, FH-846 and HC-830	9615.19.6000
NY E86508	9/2/99	Modification	B-8851MBE-IV	9615.19.2000, 9615.19.4000 (depending on value of comb)
NY A86037	4/15/96	Revocation	AK-7022ASO and K-8911PK/WH	9615.19.6000

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, August 5, 2002.
CLA-2 RR:CR:TE 963885 TF
Category: Classification
Tariff No. 9615.19.2000,
9615.19.4000, and 9615.19.6000

MS. QUNCIE AKINS,
CIRCLE INTERNATIONAL, INC.
*4711 LeBourget Drive
St. Louis, MO 63134*

Re: Classification of bridal headpieces; Combs, hair-slides and the like; Heading 9615, HTSUSA.

DEAR MS. AKINS:

Pursuant to your classification requests, Customs has previously issued sixteen New York Ruling Letters ("NY") to your company regarding the tariff classification of various bridal hair ornaments and headpieces. These products were originally classified within the following subheadings of the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"):

3926.20.9050, which provides for: "Other articles of plastics and articles of other materials of headings 3901 to 3914: Articles of apparel and clothing accessories (including gloves, mittens and mitts): Other: Other: Other."

3926.90.3500, which provides for: "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Beads, bugles and spangles, not strung (except temporarily) and not set; articles thereof, not elsewhere specified or included: Other."

6117.80.9540, which provides for: "Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories: Other Accessories: Other * * * Other."

6702.10.2000, which provides for: "Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: Of plastics: Assembled by binding with flexible materials such as wire, paper, textile materials, or foil or by gluing or by similar methods."

6702.90.3500, which provides for: "Artificial flowers, foliage and fruits and parts thereof: articles made of artificial flowers, foliage or fruit: Of other materials: Other: Of man-made fibers."

6217.10.9530, which provides for: "Other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212: Accessories: Other, Other: Of man-made fibers."

9615.11.1000, which provides for: "Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: combs, hair-slides and the like: of hard rubber or plastics: combs: valued not over \$4.50 per gross."

9615.11.3000, which provides for: "Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: combs, hair-slides and the like: of hard rubber or plastics: combs: valued over \$4.50 per gross: other."

9615.19.6000, which provides for: "Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Combs, hair-slides and the like: Other: Other"

Upon review, Customs has determined that these articles were erroneously classified. The correct classification for the articles should be under the following subheadings:

9615.19.6000, HTSUSA, which provides for "Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Combs, hair-slides and the like: Other: Other."

9615.19.2000, HTSUSA, which provides for "Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading

8516, and parts thereof: Combs, hair-slides and the like: Other: Combs that are valued not over \$4.50 per gross.”

9615.19.4000, HTSUSA, which provides for “Combs, hair-slides and the like; hair-pins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Combs, hair-slides and the like: Other: Combs valued over \$4.50 per gross.”

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation and/or modification of the eighteen rulings was published on June 19, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 25. No comments were received in response to the notice.

Four rulings are hereby revoked and thirteen rulings are modified for the reasons set forth below.

Facts:

Forty-one samples were submitted to Customs for review in the sixteen rulings under review.

Sample 1 (style CB 632) is a textile covered headpiece. The headpiece is circular in shape and is decorated with a large textile bow, plastic pearls, sequins and lace. Two small plastic combs are attached to the sides of the headpiece for securing the item to the hair. After the headpiece is imported into the United States, a veil will be attached to it, forming a complete bridal veil. The sample was originally the subject of NY B86926, dated July 3, 1997.

Sample 2 (style AB-609) is a man-made fiber textile covered headpiece. The headpiece, which is semi-rigid and semicircular in shape, is decorated with plastic pearls and textile flowers and leaves. After the headpiece is imported into the United States, a veil will be attached to it, forming a complete bridal veil. The sample was originally the subject of NY B86924, dated July 3, 1997.

Sample 3 (style TR-615 (item 2)) is a circular-shaped headpiece. The front portion of the headpiece is decorated with plastic pearls and beads strung and shaped in arcs, giving the appearance of a crown or tiara. The back portion is decorated with textile flowers and plastic pearls and beads strung on nylon threads. A small comb is attached to the underside of the headpiece for securing the item to the hair. Sample 4 (style CR-625) is a circular-shaped headpiece. The front portion of the headpiece is decorated with rows of beaded lace, intertwined with plastic pearls and beads strung and shaped in arcs, giving the appearance of a crown or tiara. The back portion is decorated with textile flowers along with plastic pearls and beads strung on nylon threads. A small comb is attached to the underside of the headpiece for securing the item to the hair. Both samples 3 and 4 were originally subjects of NY B87108, dated July 3, 1997.

Sample 5 (style AB-707RP/IV (item 3)), is a semicircular-shaped headpiece. It is decorated with man-made fiber textile flowers and leaves, and plastic pearls strung on nylon threads. A small comb is attached to the underside of the headpiece for securing the item to the hair. Sample 6 (style VB-652 (item 4)) is a circular-shaped headpiece. It is decorated with two large textile flowers, textile leaves covered with plastic pearls, plastic pearls strung on nylon threads, and plastic pearls strung around the frame. The frame is semi-rigid in construction. Both samples 5 and 6 were originally subjects of NY B86777, dated July 8, 1997.

Sample 7 (style CR-777, item 1) is a circular-shaped headpiece. The front portion of the headpiece is decorated with plastic pearls and plastic beads sewn onto textile fabric flowers. A small comb is attached to the underside of the headpiece for securing the item to the hair. Sample 8 (style CR-702 (item 2)), is a circular-shaped headpiece. The front portion of the headpiece is covered with textile fabric which is decorated with plastic pearls strung and shaped in patterns of flowers, covering the entire surface. A small comb is attached to the underside of the headpiece for securing the item to the hair. Both samples 7 and 8 were originally subjects of NY B88340, dated August 27, 1997.

Sample 9 (style CR-770) is a circular-shaped headpiece. The front portion is decorated with white textile components and small plastic pearls. The narrower back portion of the headpiece is covered with small plastic pearls strung on nylon thread, woven with strips of textile fabric. A small comb is attached to the underside of the headpiece for securing the item to the hair. Sample 9 was originally the subject of NY B88339, dated August 27, 1997.

Sample 10 (style BA-757) is an arc-shaped headpiece. It is decorated with white textile flowers and leaves, sequins and small plastic pearls strung on nylon thread. A small comb is attached to the underside of the headpiece for securing the item to the hair. Sample 11 (style HC-631 (item 5)), is a circular-shaped headpiece. It is decorated with plastic pearls

strung and shaped like flowers and white textile flowers and leaves. Two small combs are attached to the underside of the front of the headpiece for securing the item to the hair. Both samples 10 and 11 were originally subjects of NY B88327, dated August 27, 1997.

Sample 12 (style AB-766) is a semicircular-shaped headpiece. It is decorated with ivory colored textile components and plastic pearls strung and shaped in arcs. Sample 12 was originally the subject of NY B88333, dated August 27, 1997.

Sample 13 (style HW-817) is stated to be a man-made fabric covered head piece which after arriving in the United States will be combined with a veil to make a wedding veil. The item is a circular double wire frame approximately 7/8 inch wide with a diameter of approximately 6 inches with an outer surface of netting. Elastic loops are placed inside this wire frame where a small comb will be placed to affix the headpiece to the hair of the wearer. On to this outer netting surface is affixed a band of woven textile decorations of man-made fiber that resemble bows and lace circles. Sample 13 was originally the subject of NY B88330, dated September 8, 1997.

Samples 14, 15, 16 and 17 (styles AB-752, AB-762, FH-794 and CR-751) are circular headpieces worn as a wreath on top of the head. They are constructed of primarily textile components with plastic beads. These samples were originally the subjects of NY B88332, dated September 8, 1997.

Samples 18 and 19 (styles VB-816 and VB-834) are circular headpieces worn on top of the head like a wreath and are constructed of man-made woven textile components that resemble flowers. Sample 20 (style VB-807) is a circular headpiece worn on top of the head made up of beaded components that resemble flowers. Sample 21, style CA-803, is a semi-circular headpiece that is made up of three 3/8 inch narrow textile bands decorated with textile in a figure eight pattern and mounted on top of a 2 inch high frame with a textile crisscross pattern. Atop this frame is a grouping of textile components that resemble artificial flowers. These samples were originally the subjects of NY B88334, dated September 8, 1997.

Sample 22, style (CR-633) is a circular headpiece of decorative plastic beads and sequins and plastic which is shaped into flowers. Samples 23 and 24 (style WR-758 and VB-764) are circular headpieces worn on top of the head like a wreath and are constructed of man-made woven textile components that resemble flowers. Sample 25 (style SP-763) is fashioned like a sprig decorated with flower-like textile adornments and leaves made up of beads and sequins on a stiffened textile backing. A comb is attached at the rear. While a veil can be attached to this item, it is principally used as a hair ornament and to hold the hair in place. Samples 22, 23, 24 and 25 were originally the subjects of NY B88335, dated September 8, 1997.

Sample 26 (style TR-820) is a circular headpiece made up of decorative plastic pearls, beads and glass rhinestones that form the crown of the article. Sample 27 (style HC-811) is a circular headpiece worn on top of the head like a wreath and is constructed of a front crown of man-made woven textile components that resemble flowers. The back part of the headpiece is covered with intertwining glass beads and plastic pearls. Sample 28 (style CR-836) is a circular headpiece made up of textile covered concentric wire loops that form the crown of the article. There are three textile ornaments that resemble small flowers at the bottom of the crown. Samples 26, 27 and 28 were originally the subjects of NY B88336, dated September 8, 1997.

Sample 29 (style TR-714) is a circular headpiece made up of decorative plastic beads in the shape of intertwined strands of pearls. Sample 30 (style BA-618) and sample 31 (style AB-701) are semi-circular headpieces worn on top of the head like a wreath and are constructed of man-made woven textile components that resemble flowers. Sample 32 (style CR-729) is a semi-circular headpiece made up of three layered overlapping woven man-made textile pointed ovals with a row of plastic pearls at the bottom and other plastic pearls dispersed throughout the item. Sample 29, 30, 31 and 32 were originally the subjects of NY B88337, dated September 8, 1997.

Sample 33 (style AB-822) is circular and sample 34 (AB-813) is a semi-circle and both are headpieces that are worn as a wreath on top of the head. They are constructed of textile components that resemble flowers and with plastic beads. Samples 35 and 36 (styles CR-801 and TR-832 respectively) are circular headpieces worn on top of the head like a wreath and are constructed of decorative elements that are made up of plastic pearls. In style CR-801, the plastic pearls are affixed to a textile base while in style TR-832 the plastic pearls are not. Samples 33, 34, 35 and 36 were originally the subjects of NY B88341, dated September 8, 1997.

Sample 37 (style FH-847) is a circular headpiece of wire loops which has been covered with woven textile of man-made fiber. The front of the headpiece features a design of half circles with a circle of plastic pearls at the bottom with five small clusters of plastic beads. Sample 38 (style BP-821) is a semi-circular wreath and Sample 39 (CR-828) is a circular wreath. Both are worn on top of the head and are constructed of fabric covered wire frames which feature textile components that resemble flowers. Sample 40 (style FH-846) is a sprig or cluster of textile components that resemble flowers. Although this item can accommodate a veil by means of Velcro® attachments, we believe that its principal use is that of a hair ornament. Sample 41 (style HC-830) is a hair ornament consisting of textile components that resemble flowers. Samples 37, 38, 39, 40 and 41 were originally the subjects of NY B88338, dated September 9, 1997.

Issue:

What is the proper classification of the bridal headpieces under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

Law and Analysis:

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (“GRIs”). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

Customs has issued at least 18 rulings classifying bridal headpieces in at least 10 different subheadings throughout the tariff. There appears to be no clear, consistent method for the classification of these articles. At the urging of the National Commodity Specialist Division, Customs recently reexamined the rulings on bridal headpieces and determined that a more reasoned and simplified approach to the classification of these articles exists as set forth below. In HQ 963482, dated December 28, 2001, Customs reexamined the classification of bridal headpieces and crafted a more reasoned and simplified approach to the classification of these articles. This ruling letter follows the analysis of HQ 963482 as set forth below.

Heading 9615, HTSUSA, provides for, among other things, combs, hair-slides and the like. The Explanatory Notes to heading 9615, HTSUSA, state that the heading covers, *inter alia*:

- (1) **Toilet combs of all kinds**, including combs for animals.
- (2) **Dress combs of all kinds**, whether for personal adornment or for keeping the hair in place.
- (3) **Hair-slides and the like** for holding the hair in place or for ornamental purposes. These articles are usually made of plastics, ivory, bone, horn, tortoise-shell, metal, etc.

* * * * *

The instant samples are similar to dress combs and hair-slides in that they are worn primarily for personal adornment and for ornamental purposes. The EN also states that textile headbands of Section XI are excluded from heading 9615, HTSUSA. However, in Treasury Decision (T.D.) 96-24, dated February 16, 1996, Customs stated that the EN only excludes headbands made entirely of textile materials.¹ The heading text to be interpreted is “combs, hair-slides and the like.” Those articles similar to, or of the same class or kind as, combs and hair-slides are clearly within the scope of the heading. As noted above, the supporting EN states that dress combs and hair-slides may have the dual nature of holding the hair in place and adorning the hair. Bridal headpieces fit this dual nature and therefore are classifiable within heading 9615, HTSUSA, as similar to combs and hair-slides. *See also* HQ 087667, dated November 13, 1990.

Further support for the classification of bridal headpieces in heading 9615, HTSUSA, is found in the EN to heading 7113, HTSUSA. Heading 7113, HTSUSA, covers articles of

¹ T.D. 96-24 also addressed the classification of headbands, ponytail holders and similar articles of mixed construction. However, Customs finds that bridal headpieces are distinguishable from the types of hair holders covered by the decision. Thus, bridal headpieces are beyond the scope of T.D. 96-24.

jewellery of precious metal or metal clad with precious metal. The EN to heading 7113, HTSUSA, states that the heading covers, among other things, articles of jewellery wholly or partly of precious metal or metal clad with precious metal that are:

(1) **Small objects of personal adornment** (gem-set or not) such as rings, bracelets, necklaces, brooches, ear-rings, neck chains, watch-chains and other ornamental chains; fobs, pendants, tie pins and clips, cuff-links, dress-studs, buttons, etc.; religious or other crosses; medals and insignia; hat ornaments (pins, buckles, rings, etc.); ornaments for handbags; buckles and slides for belts, shoes, etc.; **hair-slides, tiaras, dress combs and similar hair ornaments.** (second emphasis added).

Customs believes that the bridal headpieces are similar in nature to tiaras, as well as hair-slides, tiaras and dress combs. Thus, the fact that tiaras and similar hair ornaments are classified with hair-slides and dress combs when made of precious metal, supports the conclusion that bridal headpieces should be classified with hair-slides and dress combs, in heading 9615, HTSUSA, when made of materials other than precious metal.

Furthermore, Customs has consistently classified a variety of hair ornaments, such as barrettes, hair clips and hair clippees, under heading 9615, HTSUSA. See HQ 733603, dated October 15, 1991; HQ 556608, dated June 24, 1992; HQ 950700, dated August 25, 1993; HQ 950614, dated November 21, 1991; HQ 951234, dated March 11, 1992; HQ 956774, dated November 17, 1994; HQ 559737, dated June 27, 1997; HQ 959187, dated December 9, 1997; HQ 960976, dated June 24, 1998; and HQ 962134, dated October 6, 1998. Accordingly, we find that the bridal headpieces are classifiable pursuant to GRI 1 under heading 9615, HTSUSA.

Next, by application of GRI 6, we must determine classification at the subheading level. Subheadings 9615.11 and 9615.19, HTSUSA, specifically provide for combs, hair-slides and the like. Classification at this six-digit subheading level is divided into two categories:

- 1) combs, hair-slides and the like of hard rubber or plastics; and
- 2) combs, hair-slides and the like of other materials.

Since the bridal headpieces are composite goods of plastic, textile and wire components, classification is governed by GRI 3(b) which states that composite goods are classified as if they consisted of the component or material which gives them their essential character.

Thus, the first step in the analysis is to determine what material or component imparts the essential character to the bridal headpieces. In this particular case, given the highly ornamental nature of the articles, we focus on the exterior decorations rather than the bases. In HQ 963482, Customs found that the articles' textile components provided the outstanding visual impact as they covered a majority of the surface area on each of the bridal headpieces. Customs also determined that although plastic pearls and rhinestones were present, they were not in sufficient quantity to stand out as the predominant material or component. Consequently, in HQ 963482, Customs found that the bridal headpieces are classifiable under subheading 9615.19, HTSUSA, as combs, hair-slides or the like of materials other than hard rubber or plastic.

At the eight-digit level, Customs determined in HQ 963482 whether the bridal headpieces were combs or other articles. In HQ 963482, a "comb" was defined as "a thin, toothed strip for smoothing, arranging or fastening the hair." WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 284 (1984). We have ten samples which have at least one comb for attaching the headpiece to the head. Customs believes that they are different types of hair ornaments. These ten bridal headpieces (which are substantially similar to the merchandise of HQ 963482) are distinguishable from dress combs in terms of shape and size. The large circular and semi-circular decorative portions of the headpieces weigh in favor of finding that the headpieces are hair ornaments other than dress combs. Accordingly, we find that these are bridal headpieces and are classifiable as other articles under subheading 9615.19.6000, HTSUSA.

The remaining thirty-one samples which do not contain a comb (nor are combs) are also substantially similar to the merchandise of HQ 963482. Therefore, they are also classifiable as other articles under subheading 9615.19.6000, HTSUSA.

Please find attached the above-cited ruling letter for your reference.

Holding:

The following four rulings are hereby revoked:

- NY B86926, dated July 3, 1997
- NY B86924, dated July 3, 1997

NY B88330, dated September 8, 1997
 NY A86037, dated April 15, 1996

The following rulings are hereby modified:

NY B87108, dated July 3, 1997
 NY B86777, dated July 8, 1997
 NY B88340, dated August 27, 1997
 NY B88339, dated August 27, 1997
 NY B88327, dated August 27, 1997
 NY B88333, dated August 27, 1997
 NY B88332, dated September 8, 1997
 NY B88334, dated September 8, 1997
 NY B88335, dated September 8, 1997
 NY B88336, dated September 8, 1997
 NY B88337, dated September 8, 1997
 NY B88341, dated September 8, 1997
 NY B88338, dated September 9, 1997

All of the forty-one samples are classifiable in subheading 9615.19.6000, HTSUSA, which provides for "Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Combs, hair-slides and the like: Other: Other." The general column one duty rate is eleven percent *ad valorem*.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification), you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

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

JOHN ELKINS,
 (for Myles B. Harmon, Acting Director,
 Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
 U.S. CUSTOMS SERVICE,
 Washington, DC, August 5, 2002.

CLA-2 RR:CR:TE 963889 TF
 Category: Classification
 Tariff No. 9615.19.6000

MR. TERRANCE S. LISOSKI,
 TERRANCE INTERNATIONAL SERVICES
 Cargo Bldg. 80 Rm. 220
 JFK International Airport
 Jamaica, NY 11430

Re: Classification of bridal headpieces; Combs, hair-slides and the like; Heading 9615, HTSUSA.

DEAR MR. LISOSKI:

Pursuant to your classification request, Customs has previously issued NY A86037, dated April 15, 1996 to you regarding the tariff classification of bridal headpieces. These products were originally classified in subheadings 3926.20.9050, HTSUSA, which provides for "other articles of plastics and articles of other materials of headings 3901 to 3914: Articles of apparel and clothing accessories (including gloves): Other: Other" and subheading 6702.90.3590, HTSUSA, which provides for "artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: Of other materials: Other: Of man-made fibers."

Upon review, Customs has determined that this merchandise was erroneously classified. The correct classification should be within subheading 9615.19.6000, HTSUSA, which provides for "Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Combs, hair-slides and the like: Other: Other."

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of NY A86037, dated April 15, 1996 was published on June 19, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 25. No comments were received in response to the notice.

NY A86037 is hereby revoked for the reasons set forth below.

Facts:

Style AK-7022ASO is a headpiece with a textile leaf design covered with plastic pearls and sequins. Style K-8911PK/WH is a headpiece consisting of textile flowers in the design of rosebuds and leaves with imitation pearls. Both headpieces have a textile covered wire which enables the headpiece to fit comfortably on the head. Both samples were originally the subject of NY A86037, dated August 15, 1996.

Issue:

What is the proper classification of the bridal headpieces (styles AK-7022ASO and K-8911PK/WH) under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

Law and Analysis:

The classification of substantially similar merchandise is addressed in HQ 963482, dated December 28, 2001 and HQ 963885. In HQ 963482, it was determined that bridal headpieces were properly classifiable in subheading 9615.19, HTSUSA, which provides for "Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Combs, hair-slides and the like."

As the subject merchandise is substantially similar to the merchandise addressed in the aforementioned rulings, styles AK-7022ASO and K-8911PK/WH should be classified accordingly in subheading 9615.19.6000, HTSUSA, dutiable at 11 percent *ad valorem*. A copy of HQ 963482 is attached for your reference.

Holding:

NY A86037, dated April 15, 1996 is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

The bridal headpieces (styles AK-7022ASO and K-8911PK/WH) are classifiable under subheading 9615.19.6000, HTSUSA, which provides for "Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Combs, hair-slides and the like: Other: Other." The general column one duty rate is eleven percent *ad valorem*.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service which is updated weekly and is available for inspection at your local Customs office. The *Status Report on Current Import Quotas (Restraint Levels)* is also available on the Customs Electronic Bulletin Board (CEBB) which can be found on the U.S. Customs Service Website at www.customs.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN ELKINS,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, August 5, 2002.
CLA-2 RR:CR:TE 963902 TF
Category: Classification
Tariff No. 9615.19.2000 and 9615.19.4000

MS. REGINA H. HWANG,
APEX TK CORPORATION
4095 Schaefer Avenue
Chino, CA 91710

Re: Classification of bridal headpieces; Combs, hair-slides and the like; Heading 9615, HTSUSA.

DEAR MS. HWANG:

Pursuant to your classification request, Customs has previously issued NY E86508, dated September 2, 1999 to you on behalf of an unidentified client regarding the tariff classification of bridal hair ornaments. These products were originally classified within subheading 9615.11.1000, HTSUSA, which provides for: "combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: combs, hair-slides and the like: of hard rubber or plastics: combs: valued not over \$4.50 per gross."

Upon review, Customs has determined that one item of this merchandise was erroneously classified. The correct classification should be within one of the following subheadings:

9615.19.2000, HTSUSA, which provides for "Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Combs, hair-slides and the like: Other: Combs that are valued not over \$4.50 per gross."

9615.19.4000, HTSUSA, which provides for "Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Combs, hair-slides and the like: Other: Combs valued over \$4.50 per gross."

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed modification of NY E86508 was published on June 19, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 25. No comments were received in response to the notice.

NY E86508 is hereby modified for the reasons set forth below.

Facts:

Style B-8851MBE-IV is a bridal hair ornament composed of sprigs of white artificial flowers, imitation pearls, and plastic beads affixed to a plastic comb. The merchandise was originally the subject of NY E86508, dated September 2, 1999.

Issue:

What is the proper classification of the bridal headpiece (B-8851MBE-IV) under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

Law and Analysis:

The classification of substantially similar merchandise is addressed in HQ 963482, dated December 28, 2001 and HQ 963885. In HQ 963482, it was determined that bridal headpieces were properly classifiable in subheading 9615.19, HTSUSA, which provides for "Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Combs, hair-slides and the like."

However, unlike the articles in HQ 963482, which were circular headpieces, the instant merchandise is a decorative hair ornament with a comb. Hair combs are provided in subheading 9615.19.2000 and 9615.19.4000, HTSUSA. Combs that are valued less than \$4.50 per gross are classified in subheading 9615.19.2000, HTSUSA, dutiable at 9.7 cent/gross + 1.3%. Combs valued greater than \$4.50 per gross are classified in subheading 9615.19.4000, HTSUSA, dutiable at 28.8 cent/gross + 4.6%.

Attached you will find the above-cited HQ 963482 for your reference. As the subject merchandise is substantially similar to the merchandise addressed in the aforementioned rulings, the subject merchandise should be classified accordingly in subheading 9615.19, HTSUSA.

Holding:

NY E86508, dated September 2, 1999 is hereby modified. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

The bridal headpiece (style B-8851MBE-IV) is classifiable under subheading 9615.19.2000 or 9615.19.4000, HTSUSA. As we do not have information related to the value of the comb, we are providing you with both subheadings which may be applicable for classification of the hair comb. Subheading 9615.19.2000, HTSUSA, provides for "Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Combs, hair-slides and the like: Other: Combs: Valued not over \$4.50 per gross." The general column one duty rate is 9.7 cent/gross + 1.3% *ad valorem*. Subheading 9615.19.4000, HTSUSA, provides for "Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Combs, hair-slides and the like: Other: Combs: Valued over \$4.50 per gross." The general column one duty rate is at 28.8 cent/gross + 4.6% *ad valorem*.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service which is updated weekly and is available for inspection at your local Customs office. The *Status Report on Current Import Quotas (Restraint Levels)* is also available on the Customs Electronic Bulletin Board (CEBB) which can be found on the U.S. Customs Service Website at www.customs.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN ELKINS,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)