

U.S. Customs Service

General Notices

WOOL MANUFACTURER PAYMENT CLARIFICATION AND TECHNICAL CORRECTIONS ACT

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: On August 6, 2002, President Bush signed into law the Trade Act of 2002. Section 5101 of the Trade Act of 2002 amends section 505 of the Trade and Development Act of 2000, which entitled U.S. manufacturers of certain wool articles to a limited refund of duties paid on imports of select wool products. The amendments concern the maximum amount manufacturers are eligible to receive and include a definition of the term “manufacturer” for purposes of determining eligibility. The amendments also authorize a new class of claimants as being eligible to receive a payment, establish new deadlines for the submission and payment of claims for all claimants, and generally simplify the claims process. Section 5102 of the Trade Act of 2002 authorizes Customs to make two additional payments to eligible manufacturers. As sections 5101 and 5102 are self-effectuating, Customs will not be issuing regulations to implement the program as amended. Manufacturers are directed to follow the statutory procedures to claim a payment. For ease of reference, this document describes the changes to the wool duty payment program as set forth in section 505 of the Trade Act of 2002, as amended. The document also sets forth the address to which all wool duty payment documentation should be sent.

DATES: Claims by eligible U.S. manufacturers of men’s or boys’ suits, suit-type jackets and trousers, and by eligible U.S. importing-manufacturers of wool fabric and wool yarn, must be submitted to Customs post-marked no later than August 21, 2002. Claims by eligible U.S. non-importing manufacturers of wool fabric and wool yarn must be received by Customs no later than September 20, 2002.

ADDRESS: Claims for payments pursuant to section 505 of the Trade and Development Act, as amended, should be sent to the U.S. Customs Service, Office of Field Operations, Wool Duty Payment Unit, 5th Floor, Attention: Debbie Scott, 1300 Pennsylvania Avenue, N.W., 5th Floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Debbie Scott (202) 927-1962 or Sherri Lee Hoffman (202) 927-0542.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On May 18, 2000, President Clinton signed into law the Trade and Development Act of 2000 ("the Act"), Public Law 106-200, 114 Stat. 251. Title V of the Act concerns imports of certain wool articles and sets forth provisions intended to provide tariff relief to U.S. manufacturers of specific wool products. Within Title V, section 505 permits eligible U.S. manufacturers to claim a limited refund of duties paid on imports of select wool articles.

Section 505 was implemented in the Customs Regulations at § 10.184 (19 CFR 10.184).

On August 6, 2002, President Bush signed into law the Trade Act of 2002, H.R. 3009 (the Public Law citation is unavailable at the time of this document's filing for public inspection at the Office of the Federal Register). Division E of the Trade Act of 2002 contains miscellaneous provisions. Within Division E, Title L sets forth miscellaneous trade benefits with Subtitle A pertaining specifically to wool provisions. Within Subtitle A, section 5101, entitled the "Wool Manufacturer Payment Clarification and Technical Corrections Act," amends section 505. Specifically, section 5101 amends section 505 regarding the maximum payment amount manufacturers are eligible to receive, defines the term "manufacturer" for purposes of section 505, authorizes a new class of claimants as eligible to receive a payment, establishes new deadlines for the submission and payment of claims, and simplifies the claims process. Section 5102(c) is a related statutory provision that authorizes Customs to make two additional payments to eligible manufacturers in years 2004 and 2005.

EXPLANATION OF AMENDMENTS TO SECTION 505
EFFECTED BY SECTION 5101

Section 5101 amends 505 in several key aspects, as discussed below.

I. Payment amounts and simplified claim procedures

The original terms of section 505 authorized certain manufacturers to claim a limited refund of duties paid in each of calendar years 2000, 2001 and 2002 on imports of select wool products. The maximum amount eligible to be refunded in each claim year was limited to an amount not to exceed one-third of the amount of duties actually paid on such wool products imported in calendar year 1999. In order to receive a refund, manufacturers had to substantiate their claim to Customs by submitting relevant entry summary documentation.

Section 5101 amends section 505 regarding the amount of payment an eligible manufacturer may receive. Specifically, section 5101 authorizes eligible manufacturers to receive a *pro rata* share of a statutorily designated amount. Section 5101(2) appropriates \$36,251,000 out of

amounts in the General Fund of the Treasury to carry out the amendments to section 505 made by section 5101(1). This amount is divided into six separate accounts which are established for the purposes of funding payments to different types of eligible manufacturers.

A claimant is no longer required to submit entry summary documentation to substantiate a claim. Rather, a claimant must make a claim for each claim year by submitting a signed affidavit to Customs, with return address clearly marked, that attests to the affiant's status as an eligible manufacturer. Claimants must submit affidavits by specific dates designated in the statute. Eligible U.S. manufacturers of men's or boys' suits, suit-type jackets and trousers, and eligible U.S. importing-manufacturers of wool fabric and wool yarn, must submit their claims to Customs postmarked so that they are received by Customs no later than August 21, 2002. Eligible U.S. non-importing manufacturers of wool fabric and wool yarn must submit their claims so that Customs receives them no later than September 20, 2002.

II. Definition of "manufacturer" added to section 505

Section 5101 adds a new paragraph (g) to section 505 that sets forth the definition of manufacturer for purposes of the statute. The definition authorizes the party that owns specified types of wool imports at the time the imports are processed into designated products in the United States to be eligible to receive a payment. This definition permits manufacturers who either import the specified wool products directly or purchase the specified imports to be eligible. Additionally, the definition includes manufacturers who perform their own processing operations in the United States, as well as manufacturers who contract the work out to a U.S. processing facility, so long as in both instances the manufacturer retains ownership of the wool imports at the time of processing.

III. New class of manufacturer eligible to receive payment

The original terms of section 505(b) and (c) required that a manufacturer of wool fabric or yarn be the importer of the wool inputs used in the manufacturer of the finished product in order to receive a refund. Therefore, non-importing manufacturers of wool fabric and yarn were ineligible for a refund.

Pursuant to section 505(g)(2) and (3), *non-importing* manufacturers of wool fabric and yarn are now eligible to receive a payment. In order to be eligible to claim a payment, Customs must receive documentation from a non-importing manufacturer of wool fabric or yarn by September 20, 2002, that establishes the amount the manufacturer paid for eligible wool products in 1999. This information will be used by Customs to determine the non-importing manufacturer's *pro rata* share of the fund established for this class of claimant.

NEW ADDRESS TO SEND DOCUMENTATION PERTAINING TO WOOL PAYMENTS

As sections 5101 and 5102 are detailed and clear, Customs will not issue regulations to implement the wool duty payment program as

amended (and 19 CFR 10.184 is superseded by statute). Accordingly, manufacturers are directed to follow the statutory procedures to claim a payment. While self-effectuating, section 505, as amended, does not state where claims and other documentation are to be sent. This document provides notice that claimants must send all statutorily required documentation pertaining to wool duty payments, including any additional information deemed necessary by Customs, to the U.S. Customs Service, Office of Field Operations, Wool Duty Payment Unit, 5th Floor, Attention: Debbie Scott, 1300 Pennsylvania Avenue, N.W., 5th Floor, Washington, D.C. 20229.

ADDITIONAL WOOL DUTY PAYMENTS

Section 5102(c) of the Trade Act of 2002 authorizes Customs to pay each eligible manufacturer that receives a payment for calendar year 2002 under section 505, as amended, two additional payments. To claim the additional payments, a manufacturer must submit a signed affidavit to the U.S. Customs Service, Office of Field Operations, Wool Duty Payment Unit, 5th Floor, Attention: Debbie Scott, 1300 Pennsylvania Avenue, N.W., 5th Floor, Washington, D.C. 20229, for each additional claim year, attesting that the affiant remains a manufacturer in the United States as of January 1 of the additional claim year for which a payment is being sought. Each additional payment will be in an amount equal to the amount received by the claimant for calendar year 2002. The additional payments will be paid out in two installments: the first installment will be made by Customs after January 1, 2004, but on or before April 15, 2004, and; the second installment will be paid by Customs after January 1, 2005, but on or before April 15, 2005.

THE STATUTE AS AMENDED

Section 505, as amended, is set forth below in its entirety for ease of reference.

SEC. 505.

(a) **WORSTED WOOL FABRICS.**—For each of the calendar years 2000, 2001, and 2002, a manufacturer of men's or boys' suits, suit-type jackets, or trousers (not a broker or other individual acting on of the manufacturer to process the import) of imported worsted wool fabrics of the kind described in heading 9902.51.11 or 9902.51.12 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(1).

(b) **WOOL YARN.**—(1) *Importing Manufacturers.*—For each of the calendar years 2000, 2001, and 2002, a manufacturer of worsted wool fabrics who imports wool yarn of the kind described in heading 5107.10 or 9902.51.13 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(2).

(2) *Nonimporting Manufacturers.*—For each of the calendar years 2001 and 2002, any other manufacturer of worsted wool fabrics of imported wool yarn of the kind described in heading 5107.10

or 9902.51.13 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(2).

(c) **WOOL FIBER AND WOOL TOP.**—(1) *Importing Manufacturers.*—For each of the calendar years 2000, 2001, and 2002, a manufacturer of wool yarn or wool fabric who imports wool fiber or wool top of the kind described in heading 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21, 5105.29, or 9902.51.14 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(3).

(2) *Nonimporting Manufacturers.*—For each of the calendar years 2001 and 2002, any other manufacturer of wool yarn or wool fabric of imported wool fiber or wool top of the kind described in heading 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21, 5105.29, or 9902.51.14 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(3).

(d) **AMOUNT OF ANNUAL PAYMENTS TO MANUFACTURERS.**—

(1) *Manufacturers of men's suits, etc., of imported worsted wool fabrics.*—

(A) *Eligible to receive more than \$5,000.*—Each annual payment to manufacturers described in subsection (a) who, according to the records of the Customs Service as of September 11, 2001, are eligible to receive more than \$5,000 for each of the calendar years 2000, 2001, and 2002, shall be in an amount equal to one-third of the amount determined by multiplying \$30,124,000 by a fraction—

(i) The numerator of which is the amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by the manufacturer making the claim, and

(ii) The denominator of which is the total amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by all the manufacturers described in subsection (a) who, according to the records of the Customs Service as of September 11, 2001, are eligible to receive more than \$5,000 for each such calendar year under this section as it was in effect on that date.

(B) *Eligible wool products.*—For purposes of subparagraph (A), the term 'eligible wool products' refers to imported worsted wool fabrics described in subsection (a).

(C) *Others.*—All manufacturers described in subsection (a), other than the manufacturers to which subparagraph (A) applies, shall each receive an annual payment in an amount equal to one-third of the amount determined by dividing \$1,665,000 by the number of all such other manufacturers.

(2) *Manufacturers of worsted wool fabrics of imported wool yarn.*—

(A) *Importing manufacturers.*—Each annual payment to an importing manufacturer described in subsection (b)(1) shall be in an amount equal to one-third of the amount determined by multiplying \$2,202,000 by a fraction—

(i) The numerator of which is the amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by the importing manufacturer making the claim, and

(ii) The denominator of which is the total amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by all the importing manufacturers described in subsection (b)(1).

(B) *Eligible wool products.*—For purposes of subparagraph (A), the term ‘eligible wool products’ refers to imported wool yarn described in subsection (b)(1).

(C) *Nonimporting manufacturers.*—Each annual payment to a nonimporting manufacturer described in subsection (b)(2) shall be in an amount equal to one-half of the amount determined by multiplying \$141,000 by a fraction—

(i) The numerator of which is the amount attributable to the purchases of imported eligible wool products in calendar year 1999 by the nonimporting manufacturer making the claim, and

(ii) The denominator of which is the total amount attributable to the purchases of imported eligible wool products in calendar year 1999 by all the nonimporting manufacturers described in subsection (b)(2).

(3) *Manufacturers of wool yarn or wool fabric of imported wool fiber or wool top.*—

(A) *Importing manufacturers.*—Each annual payment to an importing manufacturer described in subsection (c)(1) shall be in an amount equal to one-third of the amount determined by multiplying \$1,522,000 by a fraction—

(i) The numerator of which is the amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by the importing manufacturer making the claim, and

(ii) The denominator of which is the total amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by all the importing manufacturers described in subsection (c)(1).

(B) *Eligible wool products.*—For purposes of subparagraph (A), the term ‘eligible wool products’ refers to imported wool fiber or wool top described in subsection (c)(1).

(C) *Nonimporting manufacturers.*—Each annual payment to a nonimporting manufacturer described in subsection (c)(2) shall be in an amount equal to one-half of the amount determined by multiplying \$597,000 by a fraction—

(i) The numerator of which is the amount attributable to the purchases of imported eligible wool products in calendar year 1999 by the nonimporting manufacturer making the claim, and

(ii) The denominator of which is the amount attributable to the purchases of imported eligible wool products in calendar year 1999 by all the nonimporting manufacturers described in subsection (c)(2).

(4) *Letters of intent.*—Except for the nonimporting manufacturers described in subsections (b)(2) and (c)(2) who may make claims under this section by virtue of the enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act, only

manufacturers who, according to the records of the Customs Service, filed with the Customs Service before September 11, 2001, letters of intent to establish eligibility to be claimants are eligible to make a claim for a payment under this section.

(5) *Amount attributable to purchases by nonimporting manufacturers.*—

(A) *Amount attributable.*—For purposes of paragraphs (2)(C) and (3)(C), the amount attributable to the purchases of imported eligible wool products in calendar year 1999 by a nonimporting manufacturer shall be the amount the nonimporting manufacturer paid for eligible wool products in calendar year 1999, as evidenced by invoices. The nonimporting manufacturer shall make such calculation and submit the resulting amount to the Customs Service, within 45 days after the date of enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act, in a signed affidavit that attests that the information contained therein is true and accurate to the best of the affiant's belief and knowledge. The nonimporting manufacturer shall retain the records upon which the calculation is based for a period of five years beginning on the date the affidavit is submitted to the Customs Service.

(B) *Eligible wool product.*—For purposes of subparagraph (A)—

(i) The eligible wool product for nonimporting manufacturers of worsted wool fabrics is wool yarn of the kind described in heading 5107.10 or 9902.51.13 of the Harmonized Tariff Schedule of the United States purchased in calendar year 1999; and

(ii) The eligible wool products for nonimporting manufacturers of wool yarn or wool fabric are wool fiber or wool top of the kind described in heading 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21, 5105.29, or 9902.51.14 of such Schedule purchased in calendar year 1999.

(6) *Amount attributable to duties paid.*—For purposes of paragraphs (1), (2)(A), and (3)(A), the amount attributable to the duties paid by a manufacturer shall be the amount shown on the records of the Customs Service as of September 11, 2001, under this section as then in effect.

(7) *Schedule of payments; Reallocations.*—

(A) *Schedule.*—Of the payments described in paragraphs (1), (2)(A), and (3)(A), the Customs Service shall make the first and second installments on or before the date that is 45 days after the date of enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act, and the third installment on or before April 15, 2003. Of the payments described in paragraphs (2)(C) and (3)(C), the Customs Service shall make the first installment on or before the date that is 120 days after the date of enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act, and the second installment on or before April 15, 2003.

(B) *Reallocations.*—In the event that a manufacturer that would have received payment under subparagraph (A) or (C) of paragraph (1), (2), or (3) ceases to be qualified for such payment as such a manufacturer, the amounts otherwise payable to the remaining manufacturers under such subparagraph shall be increased on a

pro rata basis by the amount of the payment such manufacturer would have received.

(8) *Reference.*—For purposes of paragraphs (1)(A) and (6), the ‘records of the Customs Service as of September 11, 2001’ are the records of the Wool Duty Unit of the Customs Service on September 11, 2001, as adjusted by the Customs Service to the extent necessary to carry out this section. The amounts so adjusted are not subject to administrative or judicial review.

(e) *Affidavits by Manufacturers.*—(1) *Affidavit Required.*—A manufacturer may not receive a payment under this section for calendar year 2000, 2001, or 2002, as the case may be, unless that manufacturer has submitted to the Customs Service for that calendar year a signed affidavit that attests that, during that calendar year, the affiant was a manufacturer in the United States described in subsection (a), (b), or (c).

(2) *Timing.*—An affidavit under paragraph (1) shall be valid—

(A) In the case of a manufacturer described in paragraph (1), (2)(A), or (3)(A) of subsection (d) filing a claim for a payment for calendar year 2000 or 2001, or both, only if the affidavit is postmarked no later than 15 days after the date of enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act; and

(B) In the case of a claim for a payment for calendar year 2002, only if the affidavit is postmarked no later than March 1, 2003.

(f) *Offsets.*—Notwithstanding any other provision of this section, any amount otherwise payable under subsection (d) to a manufacturer in calendar year 2001 and, where applicable, in calendar years 2002 and 2003, shall be reduced by the amount of any payment received by that manufacturer under this section before the enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act.

(g) *Definition.*—For purposes of this section, the manufacturer is the party that owns—

(1) Imported worsted wool fabric, of the kind described in heading 9902.51.11 or 9902.51.12 of the Harmonized Tariff Schedule of the United States, at the time the fabric is cut and sewn in the United States into men’s or boys’ suits, suit-type jackets, or trousers;

(2) Imported wool yarn, of the kind described in heading 5107.10 or 9902.51.13 of such Schedule, at the time the yarn is processed in the United States into worsted wool fabric; or

(3) Imported wool fiber or wool top, of the kind described in heading 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21, 5105.29, or 9902.51.14 of such Schedule, at the time the wool fiber or wool top is processed in the United States into wool yarn.

Dated: August 8, 2002.

JAYSON P. AHERN,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, August 12, 2002 (67 FR 52520)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, August 14, 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.

MICHAEL T. SCHMITZ,
*Assistant Commissioner,
Office of Regulations and Rulings.*

REVOCATION OF RULING LETTERS AND REVOCATION OF
TREATMENT RELATING TO THE TARIFF CLASSIFICATION
OF TIN-PLATED CONTAINERS WITH HANDLES AND HINGES
NOT DESIGNED TO BE USED PRIMARILY AS SALES PACKING
NOR DESIGNED AS TABLE, KITCHEN OR OTHER
HOUSEHOLD ARTICLES OF IRON OR STEEL

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

ACTION: Notice of revocation of tariff classification ruling letters and revocation of treatment relating to the classification of tin-plated containers with handles and hinges, not designed to be used primarily as sales packing nor designed as table, kitchen or other household articles of iron or steel.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking two rulings relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of tin-plated containers with handles and hinges, not designed to be used primarily as sales packing nor designed as table, kitchen or other household articles of iron or steel. Customs is also revoking any treatment previously accorded by it to substantially identical merchandise.

Notice of the proposed action was published in the CUSTOMS BULLETIN, Volume 36, Number 25, on June 19, 2002. The Customs Service received no comments in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 28, 2002.

FOR FURTHER INFORMATION CONTACT: J. Steven Jarreau, Textiles Classification Branch: (202) 572-8817

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, a notice was published in the CUSTOMS BULLETIN Volume 36, Number 25, on June 19, 2002, proposing to revoke Headquarters Ruling Letters (HQ) 961707 (Mar. 19, 1999) and HQ 964234 (April 23, 2001) relating to the tariff classification of tin-plated containers with handles and hinges, not designed to be used primarily as sales packing nor designed as table, kitchen or other household articles of iron or steel. The Customs Service received no comments in response to this notice.

The Customs Service in HQ 961707 and HQ 964234 classified tin-plated containers with handles and hinges, not designed to be used primarily as sales packing nor designed as table, kitchen or other household articles of iron or steel, pursuant to General Rule of Interpretation 1, in subheading 4202.19.0000, HTSUSA.

It is now Customs determination that tin-plated containers with handles and hinges, not designed to be used primarily as sales packing nor designed as table, kitchen or other household articles of iron or steel are properly classified, pursuant to General Rule of Interpretation 1, in subheading 7326.90.1000, HTSUSA. Headquarters Ruling Letter 965554, revoking HQ 961707, is set forth as "Attachment A" and Headquarters Ruling Letter 965555, revoking HQ 964234, is set forth as "Attachment B" to this document.

Although in this notice Customs is specifically referring to two Headquarters Ruling Letters, this notice covers any rulings on this merchan-

dise that may exist, but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to those 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, which classified the merchandise contrary to this notice, should have advised Customs during the comment 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 HTSUSA. Any person involved with substantially identical merchandise should have advised Customs during the comment period. An importer's failure to have advised Customs of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care, on the part of the importers or their agents for importation of merchandise, subsequent to the effective date of the final decision on this notice.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking HQ 961707 and HQ 964234 and any other rulings not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 965554 and HQ 965555. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise.

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

Dated: August 12, 2002.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, August 12, 2002.
CLA-2 RR:CR:TE 965554 jsj
Category: Classification
Tariff No. 7326.90.1000

MR. DAVID M. RICKERT
E. BESLER & COMPANY
P.O. Box 66361
Chicago, IL 60666-0361

Re: Revocation of HQ 961707 (Mar. 19, 1999); Lunch Box Style Metal Container; With or Without a Roughneck Thermos®; Tin-plated Iron or Steel; Set; Subheading 7326.90.1000, HTSUSA.

DEAR MR. RICKETT:

The purpose of this correspondence is to advise you that the Customs Service has reconsidered Headquarters Ruling Letter (HQ) 961707 (Mar. 19, 1999) which was issued to you as a revocation of Port Decision C85024 (Mar. 31, 1998).

Headquarters Ruling Letter 961707 classified a metal container in the shape of traditional school lunch box in subheading 4202.19.0000, HTSUSA. We have reviewed that ruling and found it to be in error. The Customs Service is reclassifying the merchandise in subheading 7326.90.1000, HTSUSA. This ruling, therefore, revokes HQ 961707.

Pursuant to section 625 (c), Tariff Act of 1930, as amended, 19 U.S.C. 1625 (c), notice of the proposed revocation of HQ 961707 was published on June 19, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 25.

Facts:

The article subject to this reconsideration is a container that has the shape of a traditional school lunch box. It measures nine (9) inches in height, seven (7) inches in length and four (4) inches in width. It is composed of metal. Customs is issuing this revocation on the assumption that the article is tin-plated. No laboratory analysis has been performed to determine its precise composition.

The item has a secured top closure and a single carrying handle. It is not insulated. Customs is advised that it may be imported with or without a ten ounce "roughneck bottle" inside. No details regarding the construction of the bottle have been provided. Customs is advised that the country of manufacture is China.

Issue:

What is the classification, pursuant to the Harmonized Tariff Schedule of the United States Annotated, of the above-described lunch box style metal container with a handle and a latch, imported with or without a bottle?

Law and Analysis:

The federal agency responsible for initially interpreting and applying the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is the U.S. Customs Service.¹ The Customs Service, in accordance with its legislative mandate, classifies imported merchandise pursuant to the General Rules of Interpretation (GRI) and the Additional U.S. Rules of Interpretation.²

General Rule of Interpretation 1 provides, in part, that classification decisions are to be "determined according to the terms of the headings and any relative section or chapter notes." *General Rule of Interpretation 1*. General Rule of Interpretation 1 further states that merchandise which cannot be classified in accordance with the dictates of GRI 1

¹ See 19 U.S.C. 1500 (West 1999) (providing that the Customs Service is responsible for fixing the final appraisement, classification and amount of duty to be paid); See also Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 100-576, at 549 (1988) reprinted in 1988 U.S. Code Cong. and Adm. News 1547, 1582 [hereinafter Joint Explanatory Statement].

² See 19 U.S.C. 1202 (West 1999); See generally, *What Every Member of The Trade Community Should Know About: Tariff Classification*, an Informed Compliance Publication of the Customs Service available on the World Wide Web site of the Customs Service at www.customs.gov, search "Importing & Exporting" and then "U.S. Customs Informed Compliance Publications."

should be classified pursuant to the other General Rules of Interpretation, provided the HTSUSA chapter headings or notes do not require otherwise. According to the Explanatory Notes (EN), the phrase in GRI 1, “provided such headings or notes do not otherwise require,” is intended to “make it quite clear that the terms of the headings and any relative Section or Chapter Notes are paramount.” *General Rules for the Interpretation of the Harmonized System, Rule 1, Explanatory Note (V)*.

The Explanatory Notes constitute the official interpretation of the Harmonized System at the international level. See Joint Explanatory Statement *supra* note 1, at 549. The Explanatory Notes, although neither legally binding nor dispositive of classification issues, do provide commentary on the scope of each heading of the HTSUS. The EN are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989); *Lonza, Inc. v. United States*, 46 F.3d 1098, 1109 (Fed. Cir. 1995).

Commencing classification of the metal container in accordance with the dictates of GRI 1, the Customs Service examined the headings of Chapter 73, *Articles of Iron or Steel*, of the HTSUSA. Customs concludes the lunch box style container subject to this reconsideration is properly classified in heading 7326, HTSUSA, pursuant to GRI 1. Heading 7326, HTSUSA, more specifically than any other heading in the tariff schedule, describes the container.

Customs notes that heading 7326, HTSUSA, which covers “Other articles of iron or steel,” is a residual or basket provision into which merchandise of iron or steel not described by any other heading of Chapter 73 is classified. Although the classification decision arrived at by this office relies on General Rule of Interpretation 1, this determination was made by a process of elimination, only subsequent to considering all of the other headings of Chapter 73, particularly headings 7310, HTSUSA, and 7323, HTSUSA.

Heading 7310, HTSUSA, provides for “Tanks, casks, drums, cans, boxes and similar containers, for any material (other than compressed or liquefied gas), of iron or steel, of a capacity not exceeding 300 liters, whether or not lined or heat insulated, but not fitted with mechanical or thermal equipment.” The EN to heading 7310, HTSUSA, Explanatory Note 73.10, provides an illustrative list of “larger containers,” as well as “smaller containers” that are properly classified in heading 7310, HTSUSA. *Explanatory Note 73.10*. The smaller containers “include boxes, cans, tins, etc.” and are “mainly used as sales packings for butter, milk, beer, preserves, fruit or fruit juices, biscuits, tea, confectionery, tobacco, cigarettes, shoe cream, medicaments, etc.” (Emphasis added) *Explanatory Note 73.10*.

Although the container subject to this reconsideration falls within the EN description of “boxes, cans, tins, etc.,” it is not “mainly used as sales packings.” *Explanatory Note 73.10*. The container in issue, although it may be used as packing for candy or other merchandise, has uses beyond sales packing. Customs will not suggest the numerous uses to which this container may be put, but is of the conclusion that this container is significantly distinct from sales packing, precluding its classification in heading 7310, HTSUSA. See generally HQ 963670 (April 12, 2002) (discussing merchandise classified in heading 7310, HTSUSA, and providing a list of precedential Customs Service ruling letters).

Heading 7323, HTSUSA, provides, in pertinent part, for the classification of “Table, kitchen or other household articles and parts thereof, of iron or steel.” The Explanatory Notes to heading 7323, HTSUSA, state that this group “comprises a wide range of iron or steel articles used for table, kitchen or other household purposes * * *.” *Explanatory Note 73.23*. The EN further provides an extensive list of articles considered being for kitchen, table and other household uses. See *Explanatory Note 73.23*. Kitchen articles include items “such as saucepans, steamers * * *, frying pans * * *, kettles; colanders; * * * jelly or pastry moulds; * * * kitchen storage tins and canisters * * * funnels.” *Explanatory Note 73.23(A)(1)*. Articles for table use include “trays, dishes, plates * * * sugar basins, butter dishes * * * coffee pots * * * tea pots; cups, mugs * * * cruets; knife-rests; * * * serviette rings, table cloth clips.” *Explanatory Note 73.23(A)(2)*. Items enumerated as “other household articles” encompass articles such as “wash coppers and boilers; dustbins, buckets * * * watering-cans; ash-trays; * * * baskets for laundry, fruit, vegetables, etc.; letter-boxes * * * luncheon boxes.” *Explanatory Note 73.23(A)(3)*.

It is the conclusion of the Customs Service, subsequent to a review of this list, that the container subject to this reconsideration, a school lunch box, is not analogous to the articles enumerated in EN 73.23. Merchandise properly classified in heading 7323, HTSUSA, is limited in scope to table, kitchen or other household articles made of iron or steel. The container under review in this reconsideration may not reasonably be described as a table, kitchen or household article. See generally HQ 956218 (Aug. 23, 1994), New York

Ruling Letter (NY) C88472 (June 24, 1998), NY 813291 (Aug. 23, 1995) and NY 808180 (Mar. 24, 1995). The container subject to this reconsideration may be used around the home, but it is not designed nor specifically intended for table, kitchen or household use, precluding classification in heading 7323, HTSUSA.

It is Customs determination that the heading that is most descriptive of the lunch box container is heading 7326, HTSUSA. Heading 7326, HTSUSA, provides very simply for "Other articles of iron or steel." Heading 7326, HTSUSA, as previously stated is a residual provision and encompasses the classification of "all iron or steel articles * * * **other than** articles included in the preceding headings of this Chapter or * * * more specifically covered elsewhere in the Nomenclature." *Explanatory Note 73.26*.

Understanding that heading 7326, HTSUSA, is a residual or basket provision into which all merchandise properly classified in Chapter 73, HTSUSA, falls by default when a more descriptive heading in the chapter does not exist, the variety of iron or steel merchandise that is properly classified in heading 7326, HTSUSA, is broad. This is confirmed by a further reading of the Explanatory Notes. The Explanatory Note that corresponds to heading 7326, HTSUSA, Explanatory Note 73.26, offers an extensive listing of merchandise that is classified in heading 7326, HTSUSA.

Explanatory Note 73.26 (3) provides that heading 7326, HTSUSA, covers "Certain boxes and cases, *e.g.*, tool boxes or cases, not specially shaped or internally fitted to contain particular tools with or without their accessories (see the Explanatory Note to heading 42.02); botanists', *etc.*, collection or specimen cases, trinket boxes; cosmetic or powder boxes and cases; cigarette cases, tobacco boxes, cachou boxes, *etc.*, but **not including** containers of **heading 73.10**, household containers (**heading 73.23**), nor ornaments (**heading 83.06**)." (Emphasis added). The container subject to this reconsideration is not easily analogized to the "boxes and cases" specifically identified in the EN, but this is not necessary. The drafters of the EN, by employing the abbreviations "*e.g.*" and "*etc.*" in EN 73.26, exhibited an intent that the identified articles were only intended to be representative or illustrative.

It is the conclusion of the Customs Service that the lunch box container in issue and the articles identified by example in EN 73.26 share enough common features to warrant the classification of it in heading 7326, HTSUSA. The container in issue is essentially a metal box, the size of which according to a reading of EN 73.26 may vary significantly. The container is larger than trinket and cachou boxes, but smaller than tool boxes. It is not specially shaped nor is it internally fitted. The possible uses of the container are similar to the anticipated uses of the containers referenced in the EN. It may carry a variety of items, none of which fall into any particular category that might preclude classification in heading 7326, HTSUSA. As should be appreciated, there is no single example provided for in EN 73.26 to which Customs may point as the perfect example of a container similar to the one subject to this reconsideration. Customs has, however, demonstrated that there are a significant number of common characteristics between the container in issue and the "boxes and cases" illustrated in Explanatory Note 73.26 to warrant classification in heading 7326, HTSUSA.

Although Customs has discussed the similarities between the relevant merchandise and the items identified in the Explanatory Notes to heading 7326, HTSUSA, it is important to remember that since heading 7326, HTSUSA, is a basket or residual provision it is only necessary to determine that the Thermos® merchandise is not excluded from heading 7326, HTSUSA, nor specifically provided for elsewhere in the tariff schedule. Customs concludes that the merchandise is not precluded from classification in heading 7326, HTSUSA, nor is it specifically provided for in another tariff schedule heading.

Continuing the classification of the school lunch box style container at the subheading level, the container is classified in subheading 7326.90.1000, HTSUSA. *See generally* NY H81764 (June 19, 2001), NY F81395 (Jan. 13, 2000) and NY B80840 (Jan. 10, 1997). Subheading 7326.90.1000, HTSUSA, provides for the classification of

7326	Other articles of iron or steel:
7326.90	Other:
7326.90.1000	Of tinplate.

The Customs Service specifically notes for the attention of the importer and the customs broker that Customs has not undertaken a laboratory analysis to confirm that the container in issue is tin-plated. Should the container not prove to be tin-plated, this would significantly impact the classification and rate of duty of this merchandise. *See* HQ 965063

(April 12, 2002) (a binding classification ruling classifying similar merchandise said to be tin-plated).

Should this container not be tin-plated, it would be classified in subheading 7326.90.8586, HTSUSA. Subheading 7326.90.8586, HTSUSA, provides for:

7326	Other articles of iron or steel:
7326.90	Other:
	Other:
	Other:
7326.90.85	Other,
7326.90.8586	Other.

It is noted that Customs, in PD C85024 and HQ 961707, classified this item in heading 4202, HTSUSA. Heading 4202, HTSUSA, provides for the classification of:

Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly of mainly covered with such materials or with paper.

Customs, during the course of this reconsideration, determined that the merchandise in issue was not similar to the items designated by name in the first part of heading 4202, HTSUSA, that aspect which precedes the semi-colon. It was also determined that consideration of the items listed in the second part of the heading was unnecessary because those articles must be made of specific materials and iron and steel, of which the instant merchandise is composed, are not enumerated materials. Since Customs determined that the metal container imported by Thermos® is not similar to the containers designated *eo nomine* in heading 4202, HTSUSA, Customs re-examined the headings of the HTSUSA and has concluded that the lunch box style container is properly classified in heading 7326, HTSUSA.

The Customs Service, in addition to having been requested to provide a binding classification ruling for the lunch box style container, was also requested to provide a ruling on the container when imported with the “roughneck” bottle. Customs, in examining this question, considered whether the container and the bottle were a “set” pursuant to GRI 3.

An examination of GRI 3 becomes appropriate when goods are *prima facie* classifiable under two or more headings. The container is classified in heading 7326, HTSUSA, and although the ruling request did not provide sufficient information to classify the bottle, Customs will assume that the bottle is classifiable in a different heading.

Continuing with the application of General Rule of Interpretation 3, GRI 3(a) provides that the articles should be classified according to the heading which affords the most specific description, unless the multiple headings under consideration refer to only part of the materials or substances contained in goods that are mixed or composite, or to only part of “items in a set put up for retail sale.” The container and the bottle are not mixed or composite goods, warranting inquiry into the issue of whether they cumulatively constitute “items in a set put up for retail sale.”³ *General Rule of Interpretation 3*.

The General Rules of Interpretation do not define the phrase “items in a set put up for retail sale.” The Explanatory Notes do, however, offer guidance. The precise phrase in GRI 3(a) “items in a set put up for retail sale” is not addressed in the EN. The EN do, however, address a similar phrase employed in GRI 3(b). The phrase employed in GRI 3(b) and discussed in the EN is “goods put up in sets for retail sale.” *General Rules for the Interpretation of the Harmonized System, Rule 3(b), Explanatory Note (X)*. It is the conclusion of the Customs Service that the two phrases address the same issue.

³ See generally, *What Every Member of The Trade Community Should Know About: Classification of Sets Under the HTS*, an Informed Compliance Publication of the Customs Service available on the World Wide Web site of the Customs Service at www.customs.gov, search “Importing & Exporting” and then “U.S. Customs Informed Compliance Publications.”

Explanatory Note (X) to GRI 3(b) provides three factors to be considered when determining whether goods have been put up in sets for retail sale. The term is taken to mean goods which:

- (a) consist of at least two different articles that are, *prima facie*, classifiable in different headings * * *.
 - (b) consist of * * * 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 * * *.
- [*General Rules for the Interpretation of the Harmonized System, Rule 3(b), Explanatory Note (X) (a)-(c)*].

A review of the HTSUSA and an examination of the container and the bottle establish that they are *prima facie* classifiable in different headings and are packaged in a manner suitable for sale directly to users. The issue that remains, the second of the three factors, is whether the articles as put up together “meet a particular need or carry out a specific activity.” *General Rules for the Interpretation of the Harmonized System, Rule 3(b), Explanatory Note (X)(b)*.

The Explanatory Notes do not define the phrase “meet a particular need or carry out a specific activity.” *Id.* The EN do, however, offer examples of items put up together for sale directly to the user which constitute sets. The initial example consists of “a sandwich made of beef, with or without cheese, in a bun * * * packaged with potato chips (French Fries) * * *.” *General Rules for the Interpretation of the Harmonized System, Rule 3(b), Explanatory Note (X)(1)(a)*. The second example consists of items to be used together to prepare a spaghetti meal. The components include: (1) A packet of uncooked spaghetti; (2) A sachet of grated cheese; and (3) A small tin of tomato sauce, put up in a carton. *See General Rules for the Interpretation of the Harmonized System, Rule 3(b), Explanatory Note (X)(1)(b)*. The third example is a hairdressing set. The items in this set include: (1) A pair of electric hair clippers; (2) A comb; (3) A pair of scissors; (4) A brush; (5) A towel of textile material; and (6) A leather case to store and carry the items. *See General Rules for the Interpretation of the Harmonized System, Rule 3(b), Explanatory Note (X)(2)*. The final example of a set is a drawing kit. The drawing kit includes five items put up together in a case of plastic sheeting. The items are: (1) A ruler; (2) A disc calculator; (3) A drawing compass; (4) A pencil; and (5) A pencil-sharpener, put up in a case of plastic sheeting. *See General Rules for the Interpretation of the Harmonized System, Rule 3(b), Explanatory Note (X)(3)*.

A review of each of the examples of sets in EN (X) indicates that components of sets share at least one common trait. *See HQ 953472* (Mar. 21, 1994). The fact that the drafters of EN (X) did not explain when goods put up together “meet a particular need or carry out a specific purpose” suggests that resolution of the issue must be determined by analogy on a case-by-case basis.

The items that comprise each example of a set in EN (X) are related to one another in such a fashion that they interact together to serve a distinct purpose or function to enable a singular result to be achieved. The items in examples one and two are used in conjunction with one another to complete a sandwich meal and prepare a spaghetti meal. The articles in example three are used together for the purpose of hair grooming and the items in example four function with one another to enable the user to draw.

The Explanatory Notes, in addition to offering examples of items that constitute sets, also provides examples of collections of articles which do not function with one another to the degree necessary to establish a set. The initial accumulation of items in EN (X) consists of a can of shrimp, a can of *pate de foie*, a can of cheese, a can of sliced bacon and a can of cocktail sausages. *See General Rules for the Interpretation of the Harmonized System, Rule 3(b), Explanatory Note (X)(1)*. The second example includes a bottle of spirits and a bottle of wine. *See id.* The items in the first example, although related to one another and usable together, do not “interact with one another so as to comprise a single dish.” *HQ 953472 supra*. It was concluded in *HQ 953472* that the wine and spirits example did not constitute a set because the items would not be used together for the mixing of a single drink nor be suitable for serving together on a particular occasion.⁴ *See HQ 953472 Id.*

The issue in the instant ruling is whether the container has a nexus with the bottle such that both are intended to be used together or in conjunction with one another to meet a

⁴ It should be noted that the Explanatory Notes of the Harmonized Commodity Description and Coding System are an international document that employs words, phrases and understandings which are intended to have a universal international meaning that may be different from the domestic meaning or understanding of a particular member-country or member-countries of the World Customs Organization.

particular need or carry out a specific activity. It is the conclusion of the Customs Service that the metal container and the bottle will be used together or in conjunction with one another to meet a particular need or carry out a specific activity. The container provides a means of packing and transporting food and snacks and will be used with the bottle that will enable the user to store and transport a beverage. Customs understands that the food and beverage will be enjoyed at the same time and the container accompanied by the bottle facilitates this enjoyment. The container and the bottle function together to further a specific activity, the storage, transportation and enjoyment of food and beverage. They are a "set" pursuant to General Rule of Interpretation 3(b). See *Generally* HQ 088134 (Sept. 22, 1989) and HQ 959305 (Sept. 20, 1996).

General rule of interpretation 3(b) additionally provides that goods put up in sets for retail sale shall be classified as if they consisted of that component of the set that gives the set its "essential character." The General Rules of Interpretation do not define the phrase "essential character," but the Explanatory Notes offer a non-exhaustive list of factors which may be considered. The factors include: (1) The nature of the component; (2) Its bulk; (3) Its quantity; (4) Its weight; (5) Its value; and (6) The role of the component in relation to the use of the goods. See *General Rules for the Interpretation of the Harmonized System, Rule 3(b), Explanatory Note (VIII)*. Explanatory Note (VIII) to GRI 3(b) specifically states that the essential character of a set will "vary between different kinds of goods." *Id.*

It is the conclusion of Customs that the lunch box style container provides the set with its essential character. The role of the lunch box is more fundamental to the set than the bottle. The container enables both the food items stored in the container and the beverage stored in the bottle to be transported. The role of the lunch box container, as previously stated in HQ 961707, is paramount to the overall use of both the container and the bottle.

Holding:

Headquarters Ruling Letter 961707 is hereby revoked.

The tin-plated container with a hinge and a handle in the shape of a school lunch box, when imported separately, is classified in subheading 7326.90.1000, Harmonized Tariff Schedule of the United States Annotated.

The tin-plated container with a hinge and a handle in the shape of a school lunch box, when imported with the roughneck bottle, is classified as a set pursuant to General Rule of Interpretation 3(b).

The container provides the set with its essential character and the container and bottle set is classified in subheading 7326.90.1000, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty for merchandise classified in subheading 7326.90.1000, HTSUSA, is FREE.

This ruling, in accordance with 19 U.S.C. 1625 (c), will become effective sixty (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 12, 2002.
CLA-2 RR:CR:TE 965555 jsj
Category: Classification
Tariff No. 7326.90.1000

MS. KATHY M. BELAS
JAMES G. WILEY CO.
P.O. Box 90008
Los Angeles, CA 90009-0008

Re: Revocation of HQ 964234 (April 23, 2001); "Lunch Tote"; Lunch Box Style Metal Container; Tin-plated Iron or Steel; Subheading 7326.90.1000, HTSUSA.

DEAR MS. BELAS:

The purpose of this correspondence is to advise you that the Customs Service has reconsidered Headquarters Ruling Letter (HQ) 964234 (April 23, 2001) issued to you as the customhouse broker of Dorothy Thorpe/Christmas Corner.

Headquarters Ruling Letter 964234 classified a metal container in the shape of traditional school lunch box, only smaller, in subheading 4202.19.0000, HTSUSA. We have reviewed that ruling and found it to be in error. The Customs Service is reclassifying the merchandise in subheading 7326.90.1000, HTSUSA. This ruling, therefore, revokes HQ 964234.

Pursuant to section 625 (c), Tariff Act of 1930, as amended, 19 U.S.C. 1625 (c), notice of the proposed revocation of HQ 964234 was published on June 19, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 25.

Facts:

The article subject to this reconsideration is a container that has the shape of a traditional school lunch box, only smaller. It measures seven and one-half (7-1/2) inches in length, three and one-eighth (3-1/8) inches in width and five and one-eighth (5-1/8) inches in height. It is composed of metal believed by the Customs Service to be sheet steel. The initial ruling request indicates that the item is made of tin. Customs is issuing this revocation on the assumption that the article is tin-plated. No laboratory analysis has been performed to determine its precise composition.

The item, described by the broker as a "lunch tote," has a plastic handle on top that swivels side to side. One side of the item opens and may be secured closed by a latch on the top. Attachments for a shoulder strap are located on the narrow or width sides, one and one-half (1-1/2) inches from the top. No shoulder straps accompanied the sample. It is not insulated and does not have an accompanying container or interior attachment designed to facilitate the transportation and storage of liquids. The Customs Service has not been advised of the country of manufacture.

Issue:

What is the classification, pursuant to the Harmonized Tariff Schedule of the United States Annotated, of the above-described, tin-plated, steel container with a handle and a latch?

Law and Analysis:

The federal agency responsible for initially interpreting and applying the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is the U.S. Customs Service.¹ The Customs Service, in accordance with its legislative mandate, classifies imported mer-

¹ See 19 U.S.C. 1500 (West 1999) (providing that the Customs Service is responsible for fixing the final appraisement, classification and amount of duty to be paid); See also Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 100-576, at 549 (1988) *reprinted in* 1988 U.S. Code Cong. and Adm. News 1547, 1582 [hereinafter Joint Explanatory Statement].

chandise pursuant to the General Rules of Interpretation (GRI) and the Additional U.S. Rules of Interpretation.²

General Rule of Interpretation 1 provides, in part, that classification decisions are to be “determined according to the terms of the headings and any relative section or chapter notes.” *General Rule of Interpretation 1*. General Rule of Interpretation 1 further states that merchandise which cannot be classified in accordance with the dictates of GRI 1 should be classified pursuant to the other General Rules of Interpretation, provided the HTSUSA chapter headings or notes do not require otherwise. According to the Explanatory Notes (EN), the phrase in GRI 1, “provided such headings or notes do not otherwise require,” is intended to “make it quite clear that the terms of the headings and any relative Section or Chapter Notes are paramount.” *General Rules for the Interpretation of the Harmonized System, Rule 1, Explanatory Note (V)*.

The Explanatory Notes constitute the official interpretation of the Harmonized System at the international level. See Joint Explanatory Statement *supra* note 1, at 549. The Explanatory Notes, although neither legally binding nor dispositive of classification issues, do provide commentary on the scope of each heading of the HTSUS. The EN are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989); *Lonza, Inc. v. United States*, 46 F.3d 1098, 1109 (Fed. Cir. 1995).

Commencing classification of the tin-plated metal container in accordance with the dictates of GRI 1, the Customs Service examined the headings of Chapter 73, *Articles of Iron or Steel*, of the HTSUSA. Customs concludes the lunch box shaped container subject to this reconsideration is properly classified in heading 7326, HTSUSA, pursuant to GRI 1. Heading 7326, HTSUSA, more specifically than any other heading in the tariff schedule, describes the container.

Customs notes that heading 7326, HTSUSA, which covers “Other articles of iron or steel,” is a residual or basket provision into which merchandise of iron or steel not described by any other heading of Chapter 73 is classified. Although the classification decision arrived at by this office relies on General Rule of Interpretation 1, this determination was made by a process of elimination, only subsequent to considering all of the other headings of Chapter 73, particularly headings 7310, HTSUSA, and 7323, HTSUSA.

Heading 7310, HTSUSA, provides for “Tanks, casks, drums, cans, boxes and similar containers, for any material (other than compressed or liquefied gas), of iron or steel, of a capacity not exceeding 300 liters, whether or not lined or heat insulated, but not fitted with mechanical or thermal equipment.” The EN to heading 7310, HTSUSA, Explanatory Note 73.10, provides an illustrative list of “larger containers,” as well as “smaller containers” that are properly classified in heading 7310, HTSUSA. *Explanatory Note 73.10*. The smaller containers “include boxes, cans, tins, etc.” and are “mainly used as sales packings for butter, milk, beer, preserves, fruit or fruit juices, biscuits, tea, confectionery, tobacco, cigarettes, shoe cream, medicaments, etc.” *Explanatory Note 73.10*.

Although the container subject to this reconsideration falls within the EN description of “boxes, cans, tins, etc.,” it is not “mainly used as sales packings.” *Explanatory Note 73.10*. The container in issue, although it may be used as packing for candy or other merchandise, has uses beyond sales packing. The broker’s submission that accompanied the initial ruling request indicates that the item will function as a lunch box. Customs will not suggest the numerous uses to which this container may be put, but is of the conclusion that this container is significantly distinct from sales packing, precluding its classification in heading 7310, HTSUSA. See generally HQ 963670 (April 12, 2002) (discussing merchandise classified in heading 7310, HTSUSA, and providing a list of precedential Customs Service ruling letters).

Heading 7323, HTSUSA, provides, in pertinent part, for the classification of “Table, kitchen or other household articles and parts thereof, of iron or steel.” The Explanatory Notes to heading 7323, HTSUSA, state that this group “comprises a wide range of iron or steel articles * * * used for table, kitchen or other household purposes * * *.” *Explanatory Note 73.23*. The EN further provides an extensive list of articles considered being for kitchen, table and other household uses. See *Explanatory Note 73.23*. Kitchen articles include items “such as saucepans, steamers * * *, frying pans * * *, kettles; colanders; * * * jelly or pastry moulds; * * * kitchen storage tins and canisters * * * funnels.” *Explanatory*

² See 19 U.S.C. 1202 (West 1999); See generally, *What Every Member of The Trade Community Should Know About: Tariff Classification*, an Informed Compliance Publication of the Customs Service available on the World Wide Web site of the Customs Service at www.customs.gov, search “Importing & Exporting” and then “U.S. Customs Informed Compliance Publications.”

Note 73.23(A)(1). Articles for table use include “trays, dishes, plates * * * sugar basins, butter dishes * * * coffee pots * * * tea pots; cups, mugs * * * cruets; knife rests; * * * serviette rings, table cloth clips.” *Explanatory Note 73.23(A)(2)*. Items enumerated as “other household articles” encompass articles such as “wash coppers and boilers; dustbins, buckets * * * watering cans; ash-trays; * * * baskets for laundry, fruit, vegetables, etc.; letter-boxes * * * luncheon boxes.” *Explanatory Note 73.23(A)(3)*.

It is the conclusion of the Customs Service, subsequent to a review of this list, that the “lunch tote” container subject to this reconsideration is not analogous to the above articles. Merchandise properly classified in heading 7323, HTSUSA, is limited in scope to table, kitchen or other household articles made of iron or steel. The container under review in this reconsideration may not reasonably be described as a table, kitchen or household article. See generally HQ 956218 (Aug. 23, 1994), New York Ruling Letter (NY) C88472 (June 24, 1998), NY 813291 (Aug. 23, 1995) and NY 808180 (Mar. 24, 1995). The container subject to this reconsideration may be used around the home, but it is not designed nor specifically intended for table, kitchen or household use, precluding classification in heading 7323, HTSUSA.

It is Customs determination that the heading that is most descriptive of the lunch box style container is heading 7326, HTSUSA. Heading 7326, HTSUSA, provides very simply for “Other articles of iron or steel.” Heading 7326, HTSUSA, as previously stated is a residual provision and encompasses the classification of “all iron or steel articles * * * **other than** articles included in the preceding headings of this Chapter or * * * more specifically covered elsewhere in the Nomenclature.” *Explanatory Note 73.26*.

Understanding that heading 7326, HTSUSA, is a residual or basket provision into which all merchandise properly classified in Chapter 73, HTSUSA, falls by default when a more descriptive heading in the chapter does not exist, the variety of iron or steel merchandise that is properly classified in heading 7326, HTSUSA, is broad. This is confirmed by a further reading of the Explanatory Notes. The Explanatory Note that corresponds to heading 7326, HTSUSA, Explanatory Note 73.26, offers an extensive listing of merchandise that is classified in heading 7326, HTSUSA.

Explanatory Note 73.26 (3) provides that heading 7326, HTSUSA, covers “Certain boxes and cases, *e.g.*, tool boxes or cases, not specially shaped or internally fitted to contain particular tools with or without their accessories (see the Explanatory Note to heading 42.02); botanists’, *etc.*, collection or specimen cases, trinket boxes; cosmetic or powder boxes and cases; cigarette cases, tobacco boxes, cachou boxes, *etc.*, but **not including** containers of **heading 73.10**, household containers (**heading 73.23**), nor ornaments (**heading 83.06**).” (Emphasis added). The container subject to this reconsideration is not easily analogized to the “boxes and cases” specifically identified in the EN, but this is not necessary. The drafters of the EN, by employing the phrases abbreviated “*e.g.*” and “*etc.*” in EN 73.26, exhibited an intent that the identified articles were only intended to be representative or illustrative.

It is the conclusion of the Customs Service that the container in issue and the articles identified by example in EN 73.26 share enough common features to warrant the classification of the “lunch tote” in heading 7326, HTSUSA. The container in issue is essentially a steel box, the size of which according to a reading of EN 73.26 may vary significantly. The container is larger than trinket and cachou boxes, smaller than tool boxes, but is about the size of powder or tobacco boxes. It is not specially shaped nor is it internally fitted. The possible uses of the container are similar to the anticipated uses of the containers referenced in the EN. It may carry a variety of items, none of which fall into any particular category that might preclude classification in heading 7326, HTSUSA. As should be appreciated, there is no single example provided for in EN 73.26 to which Customs may point as the perfect example of a container similar to the one subject to this reconsideration. Customs has, however, demonstrated that there are a significant number of common characteristics between the container in issue and the “boxes and cases” illustrated in Explanatory Note 73.26 to warrant classification in heading 7326, HTSUSA.

Although Customs has discussed the similarities between the relevant merchandise and the items identified in the Explanatory Notes to heading 7326, HTSUSA, it is important to remember that since heading 7326, HTSUSA, is a basket or residual provision it is only necessary to determine that Dorothy Thorpe/Christmas Corner’s merchandise is not excluded from heading 7326, HTSUSA, nor specifically provided for elsewhere in the tariff schedule. Customs concludes that the merchandise is not precluded from classification in

heading 7326, HTSUSA, nor is it specifically provided for in another tariff schedule heading.

Continuing the classification of the traditional school lunch box shaped tin-plated container at the subheading level, the container is classified in subheading 7326.90.1000, HTSUSA. See generally NY H81764 (June 19, 2001), NY F81395 (Jan. 13, 2000) and NY B80840 (Jan. 10, 1997). Subheading 7326.90.1000, HTSUSA, provides for the classification of

7326 Other articles of iron or steel:
 7326.90 Other:
 7326.90.1000 Of tinplate.

The Customs Service specifically notes for the attention of the importer and the customs broker that Customs has not undertaken a laboratory analysis to confirm that the container in issue is tin-plated. Customs has relied on the statements of the customhouse broker indicating that the item is "made of tin" or "comprised mostly of tin." Should the container not prove to be tin-plated, this would significantly impact the classification and rate of duty of this merchandise and, additionally, bear negatively on the importer's obligation to use reasonable care in the classification, value and entry of its merchandise. See HQ 965063 (April 12, 2002) (a binding classification ruling classifying similar merchandise said to be tin-plated).

Should this container not be tin-plated, it would be classified in subheading 7326.90.8586, HTSUSA. Subheading 7326.90.8586, HTSUSA, provides for:

7326 Other articles of iron or steel:
 7326.90 Other:
 Other:
 Other:
 7326.90.85 Other,
 7326.90.8586 Other.

Although not raised as an issue in the initial ruling request, substantially similar containers are frequently imported with edibles or other merchandise. Headquarters Ruling Letter 963670 addressed the classification of a container and other merchandise when imported together.

It is noted that Customs, in HQ 964234, initially classified this item in heading 4202, HTSUSA. Heading 4202, HTSUSA, provides for the classification of:

Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly of mainly covered with such materials or with paper.

Customs, during the course of this reconsideration, determined that the merchandise in issue was not similar to the items designated by name in the first part of heading 4202, HTSUSA, that aspect which precedes the semi-colon. It was also determined that consideration of the items listed in the second part of the heading was unnecessary because those articles must be made of specific materials and sheet steel, of which the "lunch tote" is believed to be composed, is not an enumerated material. Since Customs determined that the metal container imported by Dorothy Thorpe/Christmas Corner is not similar to the containers designated *eo nomine* in heading 4202, HTSUSA, Customs re-examined the headings of the HTSUSA and has concluded that the "lunch tote" is properly classified in heading 7326, HTSUSA.

Holding:

Headquarters Ruling Letter 964234 is hereby revoked.

The tin-plated container with a hinge and a handle in the shape of a school lunch box, only smaller, not designed to be used principally as sales packing nor designed as a table, kitchen or other household article, is classified in subheading 7326.90.1000, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty is FREE.

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

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

REVOCATION OF RULING LETTER AND REVOCATION OF
TREATMENT RELATING TO THE TARIFF CLASSIFICATION
OF BOWLING BALL CARRIER COMPONENTS OF MAN-MADE
TEXTILE FIBERS IMPORTED WITHOUT BOTTOM PANELS

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

ACTION: Notice of revocation of tariff classification ruling letter and revocation of treatment relating to the classification of bowling ball carrier components of man-made textile fibers imported without bottom panels.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, 19 U.S.C. 1625(c), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking one ruling relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of bowling ball carrier components of man-made textile fibers imported without bottom panels. Customs is also revoking any treatment previously accorded by it to substantially identical merchandise.

Notice of the proposed action was published in the CUSTOMS BULLETIN, Volume 36, Number 24, on June 12, 2002. The Customs Service received no comments.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 28, 2002.

FOR FURTHER INFORMATION CONTACT: J. Steven Jarreau, Textiles Classification Branch: (202) 572-8817.

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, notice proposing to revoke New York Ruling Letter (NY) E81303 (May 18, 1999) was published in the CUSTOMS BULLETIN, Volume 36, Number 24, on June 12, 2002. No comments were received in response to the notice of proposed action. As was stated in the notice of proposed revocation, the notice covered any rulings which may have existed but which had not specifically been 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, which classified the merchandise contrary to this notice, should have advised 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 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 importation of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUSA. Any person involved with substantially identical merchandise should have advised Customs during the comment period. An importer's failure to have advised Customs of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importers or their agents for importation of merchandise subsequent to the effective date of this notice.

The Customs Service in NY E81303 (May 18, 1999) classified what was described as unfinished bowling ball bags of man-made textile fibers imported without bottom panels, pursuant to General Rule of Interpretation 2(a), in subheadings 4202.92.3031 and 4202.92.2000, HTSUSA. It is now Customs position that the bowling ball carrier components of man-made textile fibers imported without bottom panels are properly classified, pursuant to General Rule of Interpretation 1, in subheading 6307.90.9889, HTSUSA.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY E81303 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 965448 (attached). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise.

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

Dated: August 8, 2002.

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

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, August 8, 2002.
CLA-2 RR:CR:TE 965448 jsj
Category: Classification
Tariff No. 6307.90.9889

MR. HERB LEVISON
PATRICK POWERS CUSTOMS BROKERS, INC.
*Post Office Box 300155
JFK Airport
Jamaica, NY 11430*

Re: Textile Bowling Ball Carrier Components Without Bottom Panels; Revocation of NY E81303; Subheading 6307.90.9889, HTSUSA; HQ 964717 (Jan. 28, 2002).

DEAR MR. LEVISON:

The purpose of this correspondence is to advise you that the Customs Service has reconsidered New York Ruling Letter (NY) E81303 (May 18, 1999) issued to you as the customhouse broker of Tai Wah USA, Inc.

New York Ruling Letter E81303 classified bowling ball carrier components of man-made textile material, imported without bottom panels, in subheadings 4202.92.3031 and 4202.92.2000, HTSUSA. We have reviewed that ruling and found it to be in error. This ruling revokes NY E81303.

Pursuant to section 625 (c), Tariff Act of 1930, as amended, 19 U.S.C. 1625(c), notice of the proposed revocation of NY E81303 was published on June 12, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 24.

Facts:

The articles in issue are the textile components of three separate bowling ball carriers. The components of a large and a medium sized carrier are made of a textile fabric of one hundred (100) percent polyester, and those of a small carrier are composed of a fabric of fifty-five (55) percent ramie and forty-five (45) percent polyester. The components will be imported into the United States without bottom panels.

The Customs Service is advised that the country of manufacture of the textile components of the bowling ball carriers is China.

Issue:

What is the classification, pursuant to the Harmonized Tariff Schedule of the United States Annotated, of the above-described man-made textile components of the large, medium and small bowling ball carriers imported without bottom panels?

Law and Analysis:

The federal agency responsible for initially interpreting and applying the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is the U.S. Customs Service.¹ The Customs Service, in accordance with its legislative mandate, classifies imported merchandise pursuant to the General Rules of Interpretation (GRI) and the Additional U.S. Rules of Interpretation.²

General Rule of Interpretation 1 provides, in part, that classification decisions are to be “determined according to the terms of the headings and any relative section or chapter notes * * *.” *General Rule of Interpretation 1*. General Rule of Interpretation 1 further states that merchandise which cannot be classified in accordance with the dictates of GRI 1 should be classified pursuant to the other General Rules of Interpretation, provided the HTSUSA chapter headings or notes do not require otherwise. According to the Explanatory Notes (EN), the phrase in GRI 1, “provided such headings or notes do not otherwise require,” is intended to “make it quite clear that the terms of the headings and any relative Section or Chapter Notes are paramount * * *.” *General Rules for the Interpretation of the Harmonized System, Rule 1, Explanatory Note (V)*.

The Explanatory Notes constitute the official interpretation of the Harmonized System at the international level. See Joint Explanatory Statement *supra* note 1, at 549. The Explanatory Notes, although neither legally binding nor dispositive of classification issues, do provide commentary on the scope of each heading of the HTSUS. The EN are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989); *Lonza, Inc. v. United States*, 46 F. 3rd 1098, 1109 (Fed. Cir. 1995).

Commencing classification of the man-made textile components of the bowling ball carriers to be imported without bottom panels in accordance with the dictates of GRI 1, the Customs Service examined the headings of the HTSUSA. Customs review of the headings of the HTSUSA led it to heading 6307, HTSUSA. Heading 6307, HTSUSA, provides for “Other made up articles, including dress patterns.” It is Customs determination that this heading most accurately describes the merchandise in issue. See HQ 964717 (Jan. 28, 2002).

Completing the classification of the man-made textile components of the bowling ball carrier components, the articles are classified in subheading 6307.90.9889, HTSUSA. Subheading 6307.90.9889, HTSUSA, provides for:

6307	Other made up articles, including dress patterns:
6307.90	Other:
	Other:
6307.90.98	Other:
	Other,
6307.90.9889	Other.

The Customs Service, prior to deciding that this classification question should be resolved pursuant to GRI 1, contemplated whether the merchandise in issue was an incomplete or unfinished article classified pursuant to GRI 2. General Rule of Interpretation 2 (a) provides that any reference in an HTSUSA heading to an article “shall be taken to include a reference to that article incomplete or unfinished * * *.” GRI 2 (a) requires, however, that the incomplete or unfinished article have the “essential character” of the complete or finished article.

The issue Customs had to resolve was whether the articles imported by Tai Wah have the “essential character” of complete or finished products and whether they should, therefore, be classified pursuant to GRI 2(a) as if they were goods in their complete or finished state. The General Rules of Interpretation do not, however, define the phrase “essential character.” Its meaning may be understood from an examination of the Explanatory Notes to GRI 2(a).

The EN to GRI 2 (a) draw a distinction between a “blank” which possesses the essential character of a finished article and a “semi-manufacture[d]” item that does not have the

¹ See 19 U.S.C. 1500 (West 1999) (providing that the Customs Service is responsible for fixing the final appraisement, classification and amount of duty to be paid); See also Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 100-576, at 549 (1988) reprinted in 1988 U.S. Code Cong. and Adm. News 1547, 1582 [hereinafter Joint Explanatory Statement].

² See 19 U.S.C. 1202 (West 1999); See generally, *What Every Member of The Trade Community Should Know About: Tariff Classification*, an Informed Compliance Publication of the Customs Service available on the World Wide Web site of the Customs Service at www.customs.gov, search “Importing & Exporting” and then “U.S. Customs Informed Compliance Publications.”

essential character of a finished article. A “blank,” as defined in the EN, is an article “not ready for direct use, having the approximate shape or outline of the finished article or part * * *.” The EN continues stating that a “blank” is an article “which can only be used, other than in exceptional cases, for completion into the finished article or part * * *.” A plastic bottle preform is offered in the EN as an example of a blank. Bottle preforms of plastic are “intermediate products having tubular shape, with one closed end and one open end threaded to secure a screw type closure, the portion below the threaded end being intended to be expanded to a desired size and shape.”

“Semi-manufactures” are items that do not yet have the essential shape or character of the finished articles. Examples of semi-manufactures set forth in the EN are: “bars, discs, tubes, etc.” Semi-manufactures are specifically not regarded as “blanks.”

Completed bowling ball carriers are classified in heading 4202, HTSUSA. Heading 4202, HTSUSA, provides for the classification of:

Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, **sports bags**, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper. [Emphasis added.].

Additional U.S. Note 1 to Chapter 42 allows Customs to infer a definition of the phrase “sports bags.” The note states that the expression “*travel, sports and similar bags*” means “goods * * * of a kind designed for carrying clothing and other personal effects during travel, including backpacks and shopping bags of this heading, but does not include binocular cases, camera cases, musical instrument cases, bottle cases and similar containers.” *Chapter 42, HTSUSA, Additional U.S. Note 1.*

An examination of the instant large, medium and small bowling ball carrier components, in the condition in which they are imported, reveals articles that do not yet have the essential character of complete or finished goods of a kind designed for carrying clothing and other personal effects during travel.

The Customs Service, following a line of reasoning employed for many years, concludes that the merchandise in issue lacks the essential character of “sports bags” of heading 4202, HTSUSA, because the goods cannot yet function as containers. The bowling ball carrier components, which do not have bottom panels, do not, in the condition in which they will be imported, have the capability of carrying clothing and other personal effects. See HQ 958915 (Feb. 27, 1996), HQ 959178 (June 24, 1996) and HQ 960883 (April 27, 1998). Since the textile components of the bowling ball carriers do not have the essential character of complete or finished “sports bags,” they can not be classified pursuant to GRI 2(a) in heading 4202, HTSUSA.

Holding:

New York Ruling Letter E81303 (May 18, 1999) has been reconsidered and is hereby revoked.

The man-made textile components of the large, medium and small bowling ball carriers, imported without bottom panels, are classified in subheading 6307.90.9889, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty is seven (7) percent, *ad valorem*.

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

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

PROPOSED REVOCATION OF RULING LETTERS AND
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
SPOONS

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

ACTION: Notice of proposed revocation of ruling letters relating to the tariff classification of spoons.

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 three ruling letters pertaining to the tariff classification of spoons and any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before September 27, 2002.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: General Classification 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: Bill Conrad, Regulations Branch, (202) 572-8764.

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 us-

ing reasonable care to enter, classify, and value imported merchandise, and to 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)) by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke three ruling letters pertaining to the classification of spoons. Although in this notice, Customs is specifically referring to three New York Ruling Letters, NY D86420, NY E86257, and NY E88103, 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 three identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject of this notice should advise the Customs Service during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)) by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling letter issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise the Customs Service of substantially identical transactions, or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to this notice.

In NY D86420, dated January 7, 1999, and NY E86257, dated September 9, 1999, Customs classified certain spoons made of base metal with plastic or rubber handles in subheading 8215.99.4500, HTSUS, which provides for: Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs, and similar kitchen tableware; * * *: Other: Other: Spoons and ladles: Other. In NY E88103, dated December 20, 1999, Customs classified similar spoons in subheading 8215.99.5000, HTSUS, which provides for: Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs, and similar kitchen tableware; * * *: Other: Other: Other (including parts). Since their issuance, Customs has reconsidered the rulings and determined that the classification set forth in each is incorrect. It is now Customs position that all of the spoons are classifiable under subheading 8215.99.4060, HTSUS,

which provides for: Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs, and similar kitchen or tableware; * * *: Other: Other: Spoons and ladles: With base metal (except stainless steel) or nonmetal handles * * * Other.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY D86420, NY E86257, and NY E88103 (*see* Attachments A, B, and C to this document) and any other ruling not specifically identified to reflect the proper classification of the subject merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letters (HQ) 965794 and (HQ) 965032 (*see* Attachments D and E to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: August 13, 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, January 7, 1999.
CLA-2-82:RR:NC:115 D86420
Category: Classification
Tariff No. 8215.99.4500

MR. ROBERT L. GARDENIER
M.E. DEY & CO.
5007 South Howell Avenue
P.O. Box 37165
Milwaukee, WI 53237-0165

Re: The tariff classification of spoons from the United Kingdom.

DEAR MR. GARDENIER:

In your letter dated December 29, 1998 you requested a tariff classification ruling on behalf of your client Smith & Nephew Inc. Rehab Div.

The samples submitted (style A703-205) is a Supergrip Bendable Utensil, (style A703-200) is a Supergrip Utensil, Teaspoon. The spoons are made of base metal with large rubber grip handles. The spoons are specially designed for people with physical disabilities or blindness.

The applicable subheading for the Supergrip spoons will be 8215.99.4500, Harmonized Tariff Schedule of the United States (HTS), which provides for Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware; and base metal parts thereof: Other, Other, Spoons and Ladles, Other. The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Melvyn Birnbaum at 212-466-5487.

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

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, September 9, 1999.
CLA-2-82:RR:NC:1:115 E86257
Category: Classification
Tariff No. 8215.99.4500

MR. PHILIP KWOK
LIFETIME HOAN CORPORATION
One Merrick Avenue
Westbury, NY 11590-6601

Re: The tariff classification of Spoons from China.

DEAR MR. KWOK:

In your letter dated August 24, 1999 you requested a tariff classification ruling.

Two samples were submitted Item #83364 is a slotted spoon and Item #83715 is a basting spoon. Both spoons are made of stainless steel and both have handles made of solid plastic material with partial stainless steel covering both sides. Non-slip grips of Santoprene rubber are added to both sides.

The samples will be returned as per your request.

The applicable subheading for the Spoons will be 8215.99.4500, Harmonized Tariff Schedule of the United States (HTS), which provides for Spoons and ladles: Other. The rate of duty will be Free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Melvyn Birnbaum at 212-637-7017.

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

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, December 20, 1999.

CLA-2-82:RR:NC:1: 115 E88103
Category: Classification
Tariff No. 8215.99.4060

MR. PHILIP KWOK
LIFETIME HOAN CORPORATION
One Merrick Avenue
Westbury, NY 11590-6601

Re: The tariff classification of Spoons from China.

DEAR MR. KWOK:

As per your telephone call of October 6, 1999 you requested a tariff classification review of NY ruling E86257.

Two spoons were submitted Item #83364 is a slotted spoon and Item #83715 is a basting spoon. Both spoons are made of stainless steel and both have handles made of solid plastic material with partial stainless steel covering both sides. Non-slip grips of Santoprene rubber are added to both sides.

Both spoons were classified under subheading 8215.99.4500, HTS. Upon further review the classification for the Spoons of stainless steel with handles of solid plastic material will be 8215.99.5000.

The applicable subheading for the Spoons will be 8215.99.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware, and base metal parts thereof: Other: Other(including parts. The rate of duty will be 5.3% ad valorem.

The samples will be returned as per your request.

In your telephone call of December 17, 1999 you inquired under what circumstances would the classification of the spoons fall under the subheading for stainless steel. If the handles are of stainless steel and valued under 25 cents each the subheading would be 8215.90.3000 and over 25 cents each the subheading would be 8215.35.0000. When the handles are a mixture of plastic and stainless steel the classification may have to be determined by value. E86257 is null and void and should not be used for entry purposes.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Melvyn Birnbaum at 212-637-7017.

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

[ATTACHMENT D]

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

CLA-2 RR:CR:GC 965794 bc
Category: Classification
Tariff No. 8215.99.4060

ROBERT L. GARDENIER
M.E. DEY & Co.
5007 South Howell Avenue
P.O. Box 37165
Milwaukee, WI 53237-0165

Re: Spoons; NY D86420 revoked.

DEAR MR. GARDENIER:

This concerns NY D86420, issued to you on January 7, 1999, on behalf of Smith & Nephew Inc. Rehab Div., by the Director, Customs National Commodity Specialist Division, New York, regarding the classification of certain spoons under the Harmonized Tariff Schedule of the United States (HTSUS).

As further explained below, in NY D86420, Customs classified the subject spoons under subheading 8215.99.4500, HTSUS, as spoons with handles made of something other than stainless steel, other base metals, or nonmetals. Customs has had the chance to review that ruling and finds it to be inconsistent with the HTSUS requirements for classification of such merchandise. It is now Customs position that the spoons at issue are properly classifiable under subheading 8215.99.4060, HTSUS, as spoons with nonmetal handles. For the reasons stated below, this ruling revokes NY D86420.

Facts:

In NY D86420, Customs described the spoons as made of base metal with large rubber grip handles, specially designed for people with physical disabilities or blindness. The samples submitted were for two styles: Style A703-205, the "Supergrip Bendable Utensil" and Style A703-200, the "Supergrip Utensil, Teaspoon." Based on this description, Customs classified the spoons under subheading 8215.99.4500, HTSUS, which provides for: Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs, and similar kitchen or tableware; and base metal parts thereof: Other: Other: Spoons and ladles: Other.

Issue:

Whether the spoons are classifiable under subheading 8215.99.4500, HTSUS, or subheading 8215.99.4060, HTSUS?

Law and Analysis:

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

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

The relevant HTSUS provisions under consideration are as follows:

8215	Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs, and similar kitchen or tableware; and base metal parts thereof:
*	* * * * *
8215.99	Other:
*	* * * * *

	Spoons and ladles:
	With stainless steel handles:
8215.99.30	Spoons valued under 25 cents each
8215.99.35	Other
8215.99.40	With base metal (except stainless steel) or nonmetal handles
8215.99.45	Other
8215.99.50	Other (including parts)

Spoons (not plated with precious metal) are classifiable at the eight-digit level according to the composition of the handles. (Individual spoons, forks, etc., that are plated with precious metal are classifiable under subheading 8215.91, HTSUS.) Spoons with stainless steel handles are classifiable, depending on their value, under subheadings 8215.99.30 and 8215.99.35, HTSUS. Spoons with handles of base metal (except stainless steel) or non-metal are classifiable under subheading 8215.99.40, HTSUS. Spoons with handles consisting of something other than stainless steel, other base metals, or non-metal, such as precious metal, are classifiable in subheading 8215.99.45, HTSUS. As the spoons at issue have rubber handles and rubber is a nonmetal, they are not classifiable at the eight-digit level as spoons with handles of other than stainless steel, other base metals, or nonmetal in subheading 8215.99.45, HTSUS. Instead, they are classifiable as spoons with nonmetal handles (of rubber) in subheading 8215.99.40, HTSUS.

Holding:

The base metal spoons with rubber handles are classifiable as spoons, other than table-spoons, with nonmetal handles in subheading 8215.99.4060, HTSUS.

Effect on Other Rulings:

NY D86420 is revoked.

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

[ATTACHMENT E]

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

CLA-2 RR:CR:GC 965032 bc
Category: Classification
Tariff No. 8215.99.4060

PHILIP KWOK
LIFETIME HOAN CORPORATION
One Merrick Avenue
Westbury, NY 11590-6601

Re: Spoons; NY E86257 and NY E88103 revoked.

DEAR MR. KWOK:

This concerns NY E86257, dated September 9, 1999, and NY E88103, dated December 20, 1999, both issued to you by the Director, Customs National Commodity Specialist Division, New York, regarding the classification of certain spoons under the Harmonized Tariff Schedule of the United States (HTSUS).

In NY E86257, Customs classified two types of spoons under subheading 8215.99.4500, HTSUS. In NY E88103, Customs reclassified the same spoons under subheading 8215.99.5000, HTSUS. The latter ruling was issued as a reconsideration of the former ruling. (Customs notes a typographical error in NY E88103 that shows subheading 8215.99.4060, HTSUS, in the "Tariff No." line of the header.) Customs has had the chance to review these rulings and finds them to be inconsistent with the HTSUS requirements

for classification of such merchandise. It is now Customs position that the spoons at issue are properly classifiable under subheading 8215.99.4060, HTSUS. For the reasons stated below, this ruling revokes NY E86257 and NY E88103.

Facts:

In NY E86257 and NY E88103, Customs described the two types of spoons there classified as a slotted spoon (Item #83364) and a basting spoon (Item #83715), both made of stainless steel with plastic handles. The handles also have stainless steel sides and rubber non-slip grips (attached to the sides of the handle). In NY E86257, Customs classified both spoons in subheading 8215.99.4500, HTSUS, as: Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs, and similar kitchen or tableware; and base metal parts thereof: Other: Other: Spoons and ladles: Other. In NY E88103, Customs reclassified both spoons in subheading 8215.99.5000, HTSUS, as: Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs, and similar kitchen or tableware; and base metal parts thereof: Other: Other: Other (including parts).

Customs, as explained below, now believes that the spoons are classifiable under subheading 8215.99.4060, HTSUS, as spoons (not plated with precious metal), other than tablespoons, with nonmetal handles. (Individual spoons, forks, etc, that are plated with precious metal are classifiable under subheading 8215.91, HTSUS.)

Issue:

Whether the spoons are classifiable under subheading 8215.99.3000, 8215.99.3500, 8215.99.4060, 8215.99.4500, HTSUS, or 8215.99.5000, HTSUS?

Law and Analysis:

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

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

The relevant HTSUS provisions under consideration are as follows:

8215	Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs, and similar kitchen or tableware; and base metal parts thereof:
*	* * * * *
8215.99	Other:
*	* * * * *
	Spoons and ladles:
	With stainless steel handles:
8215.99.30	Spoons valued under 25 cents each
8215.99.35	Other
8215.99.40	With base metal (except stainless steel) or nonmetal handles
8215.99.45	Other
8215.99.50	Other (including parts)

Initially, classification in subheading 8215.99.5000, HTSUS, is readily disposed of by recognition of the fact that the spoons at issue are classifiable only under a subheading that provides for spoons, i.e., at the eight-digit level, 8215.99.30, 8215.99.35, 8215.99.40, or 8215.99.45, HTSUS. An article classified in subheading 8215.99.5000, HTSUS, must be something other than a spoon or a ladle, such as a butter-knife, sugar tong, or similar kitchen or tableware. Thus, we conclude that the spoons are not classifiable in subheading 8215.99.5000, HTSUS.

Determining which of the remaining subheadings provides for the classification of the spoons requires an examination of the composition of the spoon handles. Spoons with han-

dles of stainless steel are classifiable, depending on their value, in subheadings 8215.99.30 or 8215.99.35, HTSUS. Spoons with handles of base metal (except stainless steel) or nonmetal are classifiable under subheading 8215.99.40, HTSUS. Spoons with handles consisting of something other than stainless steel, other base metals, or nonmetal, such as precious metal, are classifiable in subheading 8215.99.45, HTSUS. As the handles of the spoons consist of plastic, stainless steel, and rubber, application of GRI 3, applicable at the subheading level through application of GRI 6, is called for.

Before applying GRI 3, classification of the spoons under subheading 8215.99.30, HTSUS, can be disposed of without further consideration. The subheading provides for spoons with stainless steel handles valued under 25 cents each, and the spoons at issue are valued in excess of 25 cents each. This fact eliminates the subheading as a classification possibility and leaves subheading 8215.99.35, HTSUS, as the only possibility for classifying the spoons as spoons with stainless steel handles. Also, classification in subheading 8215.99.4500, HTSUS, can be disposed of without further consideration by recognition of the fact that this subheading provides for classification of spoons with handles made of materials other than stainless steel, other base metals, or nonmetals. As the handles of the spoons at issue consist of plastic (nonmetal), stainless steel, and rubber (nonmetal), the spoons cannot be classified in subheading 8215.99.4500, HTSUS. This leaves only subheadings 8215.99.35 and 8215.99.40, HTSUS, as classification possibilities.

Under GRI 3(a), in pertinent part, and GRI 6, classification is appropriate in the subheading that provides the most specific description of the article or component under consideration. In this case, the description referred to is the composition of the spoon handles which determines classification of the spoons at the eight-digit level. However, when two or more subheadings each refer to part only of the materials or substances contained in mixed or composite goods, those subheadings are to be regarded as equally specific, and consideration of the article or component for classification purposes will proceed under GRI 3(b). As subheading 8215.99.35, HTSUS, refers to stainless steel handles and subheading 8215.99.40, HTSUS, refers to handles of base metal (except stainless steel) and nonmetal (here, the plastic and rubber), these subheadings are regarded as equally specific, and classification of the spoons will be considered under GRI 3(b).

Under GRI 3(b), as applied to the facts of this case, classification is determined by ascertaining which of the materials of the spoon handles, the plastic, stainless steel, or rubber, imparts to the spoon handle its essential character. Classification in subheading 8215.99.35, HTSUS, will follow if the essential character of the handles is imparted by the stainless steel component. Classification in subheading 8215.99.40, HTSUS, will follow if the essential character of the handles is imparted by the plastic or the rubber component.

Based on the description of the spoons provided by Lifetime Hoan Corporation, we find that the plastic and rubber materials are the primary materials of the spoon handles, as the plastic represents the essential form and substance of the handle and the rubber provides the important non-slip gripping feature. Thus, we conclude that the essential character of the handles is not imparted by the stainless steel component. As between the plastic and rubber components of the handles, both nonmetal materials, we submit that an essential character determination is not necessary, since classification will be the same under subheading 8215.99.40, HTSUS, regardless of which of these two components is said to impart essential character.

Holding:

Based on the foregoing, the spoons with handles of plastic, rubber, and stainless steel are classifiable as spoons, other than tablespoons, with nonmetal handles in subheading 8215.99.4060, HTSUS.

Effect on Other Rulings:

NY E86257 and NY E88103 are revoked.

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

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

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of snap-off blades for a utility knife and revoking any treatment previously accorded by the Customs Service to substantially identical transactions. Notice of the proposed action was published in the CUSTOMS BULLETIN on July 10, 2002. No comments were received in response to this notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 28, 2002.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**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, a notice was published on July 10, 2002, in the CUSTOMS BULLETIN, Vol. 36, No. 28, proposing to revoke ruling letter NY E89191, dated October 27, 1999, and revoke the tariff classification of snap-off blades used in utility knives. No comments were received in response to this notice.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's failure to have advised the Customs Service of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of this final notice.

In NY E89191, dated October 27, 1999, Customs found that snap-off blades, sample numbers 11-300 and 11-301, used in standard utility knives were classified in subheading 8211.94.10, HTSUS, as blades, for knives having fixed blades. Customs has reviewed the matter and determined that the correct classification of the snap-off blades for utility knives is in subheading 8211.94.50, HTSUS, which provides for other blades.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY E89191 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 964995. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. HQ 964995, revoking NY E89191, is set forth as the "Attachment" to this document.

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

Dated: August 13, 2002.

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

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, August 13, 2002.
CLA-2 RR:CR:GC 964995 KBR
Category: Classification
Tariff No. 8211.94.50

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

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

DEAR Ms. NAPPI:

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published on July 10, 2002, in Vol. 36, No. 28 of the CUSTOMS BULLETIN, proposing to revoke NY E89191. No comments were received in response to this notice. This ruling revokes NY E89191 by providing the correct classification for the snap-off blades for utility knives.

Facts:

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

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

Issue:

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

Law and Analysis:

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

GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The HTSUS provisions under consideration are as follows:

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

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

Holding:

Snap-off blades for use in standard utility knives are classified in subheading 8211.94.50, HTSUS, as blades, other.

Effect on Other Rulings:

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

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

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

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification of current sensors under the Harmonized Tariff Schedule of the United States (“HTSUS”). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed revocation was published on July 10, 2002, in the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 28, 2002.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility.**" These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, a notice was published on July 10, 2002, in Vol. 36, No. 28 of the CUSTOMS BULLETIN, proposing to revoke a ruling letter pertaining to the tariff classification of current sensors. No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on

a specific ruling concerning the merchandise covered by this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY 815901 to the extent that it does not reflect the proper classification of the current sensor pursuant to the analysis in HQ 965698, which is set forth as the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

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

Dated: August 13, 2002.

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

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, August 13, 2002.

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

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

Re: Current sensor; NY 815901 Revoked.

DEAR MR. FOLGATE:

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

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

Pursuant to 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, 2186 (1993), notice of the proposed revocation of NY 815901 was published on July 10, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 28. No comments were received in response to that notice.

Facts:

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

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

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

Issue:

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

Law and Analysis:

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

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

The HTSUS provisions under consideration are as follows:

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

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

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

Therefore, through application of GRI 1, by the terms of the heading and through application of the relevant Section Notes, the current sensor is classifiable under heading

9030, HTSUS, which provides for other instruments and apparatus for measuring or checking electrical quantities.

Holding:

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

Effect on Other Rulings:

NY 815901 is revoked.

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

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

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking one ruling letter pertaining to the tariff classification of a temporary tattoo set under the Harmonized Tariff Schedule of the United States ("HTSUS"). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed revocation was published on July 10, 2002, in the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 28, 2002.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057), (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community’s responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published on July 10, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 28, proposing to revoke HQ 959232, dated June 2, 1998, which classified a temporary tattoo set in subheading 9503.70.00, Harmonized Tariff Schedule of the United States (HTSUS), as other toys put up in sets or outfits. No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover 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. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period.

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

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

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

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

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

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking HQ 959232, and any other ruling not specifically identified, to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analyses set forth in HQ 965703, which is attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical merchandise.

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

Dated: August 13, 2002.

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

[Attachments]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, August 13, 2002.
CLA-2 RR:CR:GC 965703 DBS
Category: Classification
Tariff No. 4908.90.00

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

Re: "Tattoo Graphix"; HQ 959232 revoked.

DEAR MR. LEVY:

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

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, 2186 (1993), notice of the proposed revocation of the above identified ruling was published on July 10, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 28. No comments were received in response to the notice.

Facts:

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

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

In HQ 957894, classification of the instant merchandise as a toy set of subheading 9503.70, HTSUS, was dismissed for two reasons. Customs stated that items were princi-

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

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

Issue:

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

Law and Analysis:

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

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

The HTSUS provisions under consideration are as follows:

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

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

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

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

The EN 49.08 states, in pertinent part:

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

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

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

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

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

"(c) Children's picture, drawing or colouring books of heading 49.03. * * * (h) Crayons and pastels for children's use, of heading 96.09. * * * (ij) Slates and blackboards, of heading 96.10."

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

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

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

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

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

The EN VIII to GRI 3(b), states, "The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constit-

uent material in relation to the use of the goods.” The transfers are the purpose of the set. All of the components contribute to making or applying transfers. Therefore, based on the role of the transfers in relation to the use of the goods, the essential character of the set is imparted by the transfers. Accordingly, the set is classifiable in heading 4908, HTSUS.

Holding:

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

Effect on Other Rulings:

HQ 959232, dated June 2, 1998, is hereby REVOKED. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

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

PROPOSED REVOCATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO TARIFF
CLASSIFICATION OF MOTOR VEHICLE PLASTIC SEAT KNOB

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

ACTION: Notice of proposed revocation of a ruling letter and revocation of treatment relating to the tariff classification of motor vehicle plastic seat knob.

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, under the Harmonized Tariff Schedule of the United States (HTSUS), of motor vehicle plastic seat knobs and to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before September 27, 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. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, NW, Washington, D.C during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility.**" These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of motor vehicle plastic seat knobs. Although in this notice Customs is specifically referring to one ruling, NY G80939, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise the Customs Service during this notice period.

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

transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY G80939, dated August 18, 2000, set forth as "Attachment A" to this document, Customs found that the subject motor vehicle plastic seat knob was classified in subheading 9401.90.1080, HTSUS, as seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof, parts, of seats of a kind used for motor vehicles, other. Customs has reviewed the matter and determined that the correct classification of the motor vehicle plastic seat knobs are in subheading 3926.30.10, HTSUS, as other articles of plastics, fittings for furniture, coachwork or the like, handles and knobs.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY G80939 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) 965482 (see "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: August 9, 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 18, 2000.
CLA-2-94:RR:NC:SP 233 G80939
Category: Classification
Tariff No. 9401.90.1080

MR. ROBERT J. RESETAR
PORSCHE CARS NORTH AMERICA, INC.
*980 Hammond Drive Suite 1000
Atlanta, GA 30328*

Re: The tariff classification of a motor vehicle plastic seat knob from Germany.

DEAR MR. RESETAR:

In your letter dated August 8, 2000, you requested a tariff classification ruling.

The submitted diagrams depict a motor vehicle seat knob made of injection molded plastic. The knob attaches onto a lever that connects to a mechanical cable that activates a latch, which holds the seat backrest in place. When moved upward, the lever/cable disen-

gages the backrest latch and allows the backrest to be moved forward for access to the back seat space. The knob is designed for and can only be used on the motor vehicle seat.

The applicable subheading for the motor vehicle plastic seat knob will be 9401.90.10807 Harmonized Tariff Schedule of the United States (HTS), which provides for seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: parts: of seats of a kind used for motor vehicles, other. The rate of duty will be free.

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 212-637-7061.

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 965482 KBR
Category: Classification
Tariff No. 3926.30.10

MR. ROBERT RESETAR
PORSCHÉ CARS NORTH AMERICA, INC.
980 Hammond Drive, Suite 1000
Atlanta, GA 30328

Re: Reconsideration of NY G80939; motor vehicle plastic seat knobs.

DEAR MR. RESETAR:

This is in reference to New York Ruling Letter (NY) G80939, issued to you by the Customs National Commodity Specialist Division, dated August 18, 2000, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a motor vehicle plastic seat knob from Germany. We have reviewed that ruling and determined that the classification set forth is in error.

Facts:

NY G80939 concerned a motor vehicle plastic seat knob made of injection molded plastic. The knob attaches onto a lever that connects to a mechanical cable that activates a latch, which holds the seat backrest in place. When moved upward, the lever/cable disengages the backrest latch and allows the backrest to be moved forward for access to the back seat of the motor vehicle. The knob is dedicated for and can only be used on the motor vehicle seat. The ruling classified the seat knob in subheading 9401.90.1080, HTSUS, which provides for seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof, parts, of seats of a kind used for motor vehicles, other.

Issue:

What is the classification of the motor vehicle plastic seat knob?

Law and Analysis:

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

In interpreting the headings and subheadings, Customs looks to the Harmonized Commodity Description and Coding System Explanatory Notes (EN). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUS. It is Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.30	Fittings for furniture, coachwork or the like:
3926.30.10	Handles and knobs
8302	Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal; and base metal parts thereof:
8302.30	Other mountings, fittings and similar articles suitable for motor vehicles; and parts thereof:
9401	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof:
9401.90	Parts:
9401.90.10	Of seats of a kind used for motor vehicles

NY G80939 classified the motor vehicle seat knob in subheading 9401.90.10, HTSUS. However, Chapter 94 Note 1(d), HTSUS, states that the chapter does not cover “[p]arts of general use as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39), or safes of heading 8303”. Included within this definition of “parts of general use” are articles within heading 8302, HTSUS. The ENs for heading 8302 at paragraph (E)(5) state that this heading includes as mountings and fittings and similar articles suitable for furniture, “handles and knobs” (emphasis added). The ENs at (C) specifically states that articles within this heading include parts for automobiles, and in its preliminary paragraph also states that “[g]oods within such general classes remain in this heading even if they are designed for particular uses (e.g., door handles or hinges for automobiles).” *See* HQ 962183 (June 2, 1999), HQ 962046 January 13, 1999).

NY C89088 (August 8, 1998), found that a plastic knob for an automobile sunroof was a “parts of general use” and therefore the exclusionary note applied. The plastic knob was found to be a similar good to that included in heading 8302, HTSUS, but because it was plastic, the knob should therefore be classified in subheading 3926.30.10, HTSUS. *See also* NY H88198 (February 13, 2002) (involving a lumbar adjuster knob).

Therefore, Customs finds that Note 1(d) excludes the instant plastic motor vehicle seat knob from classification in Chapter 94. The classification in NY G80939 is, therefore, incorrect. Customs finds that the correct classification for the plastic motor vehicle seat knob is in subheading 3926.30.10, HTSUS, as other articles of plastics and articles of other materials of heading 3901 to 3914, fittings for furniture, coachwork and the like, handles and knobs.

Holding:

In accordance with the above discussion, the correct classification for the plastic motor vehicle seat knob is in subheading 3926.30.10, HTSUS, as other articles of plastics and articles of other materials of heading 3901 to 3914, fittings for furniture, coachwork and the like, handles and knobs.

NY G80939 dated October 9, 1997, is revoked.

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

PROPOSED REVOCATION OF RULING LETTER AND
TREATMENT RELATING TO TARIFF CLASSIFICATION OF A
FORTIFIED OAT CEREAL PRODUCT

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

ACTION: Notice of proposed revocation of classification ruling letter relating to the classification of a fortified oat cereal product.

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 a fortified oat cereal product and any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before September 27, 2002.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: General Classification 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: Bill Conrad, Regulations Branch, (202) 572-8764.

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 to 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)) by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the classification of a fortified oat cereal product. Although in this notice, Customs is specifically referring to one ruling, New York Ruling Letter NY H81626, 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. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject of this notice should advise the Customs Service during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)) by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling letter issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise the Customs Service of substantially identical transactions, or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to this notice.

In NY H81626, dated May 30, 2001, Customs classified a product referred to as a cereal product from Ireland in subheading 1904.90.0040, HTSUS, which provides for prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, cornflakes); cereals (other than corn (maize)) in grain form or in the form of flakes or other worked grains (except flour, groats, and meal), pre-cooked or otherwise prepared, not elsewhere specified or included: Other: Other. This ruling letter is set forth in "Attachment A" to this document. Since the issuance of that ruling, Customs has reconsidered the ruling and determined that the classification should be changed. It is now Customs position that the subject article is classifiable under subheading 1104.22.0000, HTSUS, as otherwise worked oat cereal grains.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY H81626 and any other ruling not specifically identified to reflect the proper classification of the subject merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) 965522 (see "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: August 9, 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, May 30, 2001.

CLA-2-19:RR:NC:2:228 H81626
Category: Classification
Tariff No. 1904.90.0040

MR. STEPHEN DECASTRO
ALL WAYS FOWARDING INTERNATIONAL INC.
701 Newark Avenue
Elizabeth, NJ 07208

Re: The tariff classification of a cereal product from Ireland.

DEAR MR. DECASTRO:

In your letter dated May 1, 2001, on behalf of World Finer Foods, you requested a tariff classification ruling.

A description of the manufacturing process accompanied your letter. McCann's Fortified Oats is a food product composed of pre-cooked, vitamin-fortified oat groats, packed for retail sale.

The applicable subheading for this product will be 1904.90.0040, Harmonized Tariff Schedule of the United States (HTS), which provides for cereals (other than corn (maize) in grain form or in the form of flakes or other worked grains (except flour or meal), pre-cooked or otherwise prepared, not elsewhere specified or included * * * other * * * other. The rate of duty will be 14 percent 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 Stanley Hopard at 212-637-7065.

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 965522 bc
Category: Classification
Tariff No. 1104.22.0000

JEFFREY S. LEVIN, ESQ.
HARRIS ELLSWORTH & LEVIN
2600 Virginia Ave., N.W., Suite 1113
Washington, DC 20037

Re: McCann's Fortified Oats; NY H81626 revoked.

DEAR MR. LEVIN:

This concerns NY H81626, dated May 30, 2001, issued to All-Ways Forwarding Int'l Inc. (All-Ways Forwarding) on behalf of World Finer Foods by the Director, Customs National Commodity Specialist Division, New York, regarding the classification of a fortified oat cereal product (McCann's) under the Harmonized Tariff Schedule of the United States (HTSUS).

As further explained below, in NY H81626, Customs classified the fortified oat cereal product at issue under subheading 1904.90.0040, HTSUS, as a pre-cooked or otherwise prepared cereal (other than corn) in grain form or in the form of other worked grains. In response to your letter of March 20, 2002, requesting reconsideration of NY H81626, we reviewed that ruling and find it to be inconsistent with the HTSUS requirements for classification of such merchandise. It is now Customs position that the fortified oat cereal product at issue is properly classifiable under subheading 1104.22.0000, HTSUS, as otherwise worked oat cereal grains. For the reasons stated below, this ruling revokes NY H81626.

Facts:

In NY H81626, issued May 30, 2001, Customs described the fortified oat cereal product there classified as follows: "McCann's Fortified Oats is a food product composed of pre-cooked, vitamin-fortified oat groats, packed for retail sale." Based on this description, Customs classified the cereal product under subheading 1904.90.0040, HTSUS, as cereals (other than corn (maize)) in grain form or in the form of flakes or other worked grains (except flour, groats, and meal), pre-cooked or otherwise prepared, not elsewhere specified or included: Other: Other. The classification ruling was issued on May 30, 2001.

In your March 20, 2002, letter, you requested reconsideration of the ruling and contended that the cereal product should be classified under subheading 1104.22.0000, HTSUS, as cereal grains otherwise worked (for example, hulled, rolled, flaked, pearled, sliced, or kibbled), except rice of heading 1006; * * * Other worked grains (for example, hulled, pearled, sliced, or kibbled): Of oats. You set forth a description of the product and the production process with particular emphasis on the question of whether the product was subject to a pre-cooking process. You contend that the product is not pre-cooked or otherwise prepared.

Issue:

Is McCann's Fortified Oats classified as a pre-cooked or otherwise prepared cereal in grain form under heading 1904, HTSUS, or as an otherwise worked cereal grain of oats under heading 1104, HTSUS?

Law and Analysis:

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

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope

of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See Treasury Decision 89-80.

The HTSUS provisions under consideration are as follows:

- 1104 Cereal grains otherwise worked (for example, hulled, rolled, flaked, pearled, sliced, or kibbled), except rice of heading 1006; germ of cereals, whole, rolled, flaked, or ground:
- 1904 Prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, cornflakes); cereals (other than corn (maize)) in grain form or in the form of flakes or other worked grains (except flour and meal), pre-cooked or otherwise prepared, not elsewhere specified or included:

The Customs ruling that classified the oat cereal product under heading 1904, HTSUS, was based in significant part on Customs understanding that the product had been pre-cooked during production. A description of the production process submitted by All-Ways Forwarding included two stages where heat was applied to the product. During what is designated the kilning stage, early in the process, the oats are steamed for 10 minutes at 100 degrees Celcius, kilned for 2 hours at 95-105 degrees Celcius, and cooled for 30 minutes at 25 degrees Celcius. This stage of production is designed to toast the oats for flavoring purposes and to inactivate an enzyme present in the oats that can cause rancidity. Later in the process, the oats, which are referred to as cut groats at this stage, are subjected to steam for 10 minutes to bind the vitamin mix to the cut groats and then conditioned for 40 minutes at 100 degrees Celcius. This stage of production also ensures completion of the enzyme deactivation process. In initially classifying the product, Customs believed that this second heating process constituted a pre-cooking process. Essential to this belief was the fact that a relatively short cooking time (6-7 minutes as compared to 20-30 minutes for similar product) is required to prepare the finished product for consumption. Thus, based on the conclusion that pre-cooking was involved, Customs classified the cereal product as "pre-cooked or otherwise prepared" under heading 1904, HTSUS.

In reconsidering this case, Customs has reviewed your arguments, conducted additional research, and consulted an expert in the field of oat processing. As a result, Customs acknowledges that its understanding that the product was pre-cooked, upon which NY H81626 was based, is not accurate. For the reasons set forth below, Customs now understands that the product classified in NY H81626 is not pre-cooked or otherwise prepared.

Regarding pre-cooking, Customs now believes that the reduced cooking time for the finished product at issue is primarily due to three factors. The first is the fact that the product is cut more finely than other products of this kind that require more time for cooking. (Kibbling is a grinding process that produces the finished oat pieces, but they are referred to as cut pieces.) The size of the pieces affects cooking time: the smaller the pieces, the quicker the cooking time. The second is that during the heating and conditioning process that binds the vitamin mixture to the product, the moisture content of the cut pieces is reduced, resulting in a product that is more absorbent than most similar products. The ability of the oat pieces to absorb water affects cooking time: the more absorbent the pieces, the quicker the cooking time. The third is the fact that the product is cooked by adding it directly to boiling water, resulting in more rapid hydration of the pieces and, again, a shorter cooking time.

Thus, Customs now concludes that while the second heating process involved in production of the product inevitably has some effect on cooking time, it is not a pre-cooking process. Its purpose is to bind the vitamin mixture to the oat pieces, and the shortened cooking time is predominantly the result of other factors.

Regarding the question of whether the product is "otherwise prepared," Chapter Note 4 of Chapter 19, HTSUS, provides that the expression "otherwise prepared" means prepared or processed to an extent beyond that provided for in the headings of or notes to chapter 10 or 11." The relevant preparations and processes of Chapter 11 are hulling, rolling, flaking, pearling, slicing, kibbling, and grinding. As the product at issue has undergone only the processes of hulling and kibbling (along with some other routine, incidental procedures, such as cleaning and sorting), both permitted under Chapter 11, and has not been subject to advanced processes that would constitute preparation beyond that which is permitted under Chapter 11, HTSUS, Customs concludes that the product is not otherwise prepared within the meaning of Chapter 19, HTSUS.

Holding:

Based on the foregoing findings that McCann's Fortified Oats consists of cereal grains of oats that have been hulled and kibbled, as permitted under Chapter 11, HTSUS, but not pre-cooked or otherwise prepared which would require its classification under Chapter 19, HTSUS, such product is classifiable under Chapter 11, HTSUS, specifically in sub-heading 1104.22.0000, HTSUS, as: Cereal grains otherwise worked (for example, hulled, rolled, flaked, pearled, sliced, or kibbled), except rice of heading 1006; * * *: Other worked grains (for example, hulled, pearled, sliced, or kibbled): Of oats.

 Effect on Other Rulings:

NY H81626 is revoked.

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

PROPOSED MODIFICATION AND REVOCATION OF RULING
LETTERS AND REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF COTTON HEADWEAR

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

ACTION: Notice of proposed modification of one ruling letter and revocation of two ruling letters and revocation of treatment relating to the tariff classification of cotton headwear.

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 one ruling letter and revoke two ruling letters relating to the tariff classification of cotton headwear under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Similarly, Customs intends to revoke any treatment previously accorded by it to substantially identical merchandise that is contrary to the position set forth in this notice. Comments are invited as to the correctness of the proposed action.

DATE: Comments must be received on or before September 27, 2002.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at US 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: Teresa Frazier, Textiles 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. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify one ruling letter and revoke two ruling letters relating to the classification of cotton headwear. Although in this notice Customs is specifically referring to Headquarters Ruling Letters (HQ) 084261, dated June 15, 1989, HQ 085174, dated September 7, 1989 and HQ 087327, dated July 3, 1990, 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 those 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 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 Annotated (HTSUSA). 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 Headquarters Ruling Letter (HQ) 084261, dated June 15, 1989, Customs classified two styles of cotton headwear in subheading 6505.90.2500, Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"), which essentially provided for hats and other headgear, of cotton textile fabric. In HQ 085174, dated September 7, 1989, Customs classified a polycotton cap crown in subheading 6505.90.8060, HTSUSA, which essentially provided for hats and other headgear, made up of textile fabric, of man-made fibers. In HQ 087327, dated July 3, 1990, Customs classified a cotton hood lined with Orlon® pile material also in subheading 6505.90.2500, HTSUSA, which essentially provided for hats and other headgear, of cotton textile fabric.

Since the issuance of these rulings, Customs has reviewed the classification of the merchandise and has determined that the cited rulings are in error. Accordingly, we intend to modify HQ 084261 and revoke HQ 085174 and HQ 087327, as we find the merchandise is properly classified in subheading 6505.90.2060, HTSUSA, which provides for "Hats and other headgear * * *: Other: Of cotton, flax or both: Not knitted: Certified hand-loomed and folklore products; and headwear of cotton, Other."

Pursuant to 19 U.S.C. §1625(c)(1), Customs intends to modify HQ 084261 (see "Attachment A" to this document) and revoke HQ 085174 and HQ 087327 (see "Attachments B and C" 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 965741, HQ 963642 and HQ 963643 (see "Attachments D-F" 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 12, 2002.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, June 15, 1989.
CLA-2 CO:R:C:G 084261 DSN
Category: Classification
Tariff No. 6505.90.2500 and 9004.10.0000

JOHN A. BESSICH, ESQUIRE
POLLUCK & BESSICH, P.C.
225 Broadway, Suite 500
New York, NY 10007

Re: Classification of children's headwear and sunglasses.

DEAR MR. BESSICH:

This ruling letter is in response to your inquiry of March 17, 1989, on behalf of Arlington Hat Co., Inc., requesting tariff classification of children's headwear and sunglasses under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). The sunglasses are produced in Hong Kong while the cap is produced in China.

Facts:

The samples at issue consist of a cap, style number 1241 which is composed of cotton woven fabric with a narrow, vertical, cotton fabric loop sewn to the cap above the brim. The loop may be opened and closed by a metal snap. The loop holds a pair of plastic sunglasses. By opening the snap of the fabric loop, the sunglasses can be removed and worn by the cap wearer. In addition, the cap has two fabric loops which are sewn to each side of the cap into which the user could possibly insert the sunglasses.

Style number 264 is also a cap designed like style number 1241 except that it has two half-moon shaped panels of cotton netting material which extend back from the brim. This cap contains a pair of plastic heart-shaped sunglasses that are worn in the same fashion as style number 1241.

According to your submissions the cap and sunglasses will be imported and sold together. The sunglasses are inserted in the fabric loop where a plastic tag is used to prevent separation during shipment and at retail.

Issue:

Whether the cap and sunglasses are classified together or separately.

Law and Analysis:

Classification of merchandise under the HTSUSA is in accordance with the General Rules of Interpretation (GRI's), taken in order. GRI 3 provides for classification of sets.

GRI 3(b) provides that goods put up in sets for retail sale which cannot be classified by GRI 3(a), shall be classified as if they consisted of the material or component which give them their essential character. The Explanatory Notes constitute the official interpretation of the tariff at the international level.

The Explanatory Notes for GRI 3(b) state that goods put up in sets for retail sale are those which consist of at least two different articles which are classifiable in different headings; consist of products or articles put up together to meet a particular need or carry out a specific activity; and are put up in a manner suitable for sale directly to users without repacking.

The samples at issue consists of two articles classifiable in different headings. Heading 6505, HTSUSA, provides for hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece, whether or not lined or trimmed. Heading 9004, HTSUSA, provides for spectacles, goggles and the like, corrective, protective or other.

Even though the sunglasses and cap are classifiable in different headings, the articles do not meet a particular need or carry out a specific activity. There is no need for children to wear the sunglasses while wearing the cap. The cap can be worn both outdoors and indoors, in the rain and other types of weather conditions where sunglasses would be unnecessary. The sunglasses have a separate function apart from the cap and neither article is in any way dependent on its use for the other.

Although the cap and sunglasses will be imported together their packaging suggests that they are separate and distinct articles of commerce. The sunglasses are packaged in

clear plastic bags and are inserted in the fabric loop. The sunglasses are further attached to the cap by a plastic tag to ensure that they are not separated during shipment and at retail. The cap and the sunglasses do not lose their separate identities nor their separate functions by virtue of a plastic tag that connects them.

Therefore, it is our opinion that the sunglasses and cap do not meet the requirements of a "set" for classification purposes and are classified separately under the HTSUSA.

Holding:

The sunglasses are classified under subheading 9004.10.0000, HTSUSA, which provides for spectacles, goggles and the like, corrective, protective or other, sunglasses, and dutiable at the rate of 7.2 percent ad valorem.

The cap is classified under subheading 6505.90.2500, HTSUSA, which provides for hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed, other, other, textile category 859, and dutiable at the rate of 8 percent ad valorem.

Due to the changeable nature of the statistical annotation 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.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 7, 1989.
CLA-2:CO:R:C:G 085174 SR
Category: Classification
Tariff No. 6505.90.8060 and 6505.90.2500

MR. JACK ALSUP ALSUP & ASSOCIATES
PO. Box 1251
Del Rio, TX 78841

Re: Cap and a cap crown.

DEAR MR. ALSUP:

This is in reference to your letter dated June 16, 1989, requesting the tariff classification of a cap and a cap crown under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Your request for the classification of visors was issued by Customs in New York. Samples produced in Mexico were submitted.

Facts:

The merchandise at issue is a cap and a cap crown. The cap consists of a material that is 65 percent man-made fiber and 35 percent cotton. It is a standard cap with a crown and bill and it is adjustable in the back. The words "The Classic" are embroidered on the front of the crown.

The crown is made of a 65 percent polyester/35 percent cotton woven fabric with an interior stiffener made of 100 percent cotton woven fabric. The importer states that the combined weight of the cotton in the outer shell and the interior stiffener outweighs the man-made fibers. The crown will be made into a cap similar to the one at issue in this ruling. The crown has the word "Titleist" embroidered on the front.

Issue:

What is the classification of the cap and cap crown at issue?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that "classification shall be determined according to the

terms of the headings and any relative section or chapter notes, and provided such headings or notes do not otherwise require, according to [the remaining GRI's taken in order]." Heading 6505, HTSUSA, provides for hats and other headgear, made up from textile material, whether or not lined or trimmed. The hat at issue is made-up of a poly/cotton blend. The chief weight of the hat is provided by the man-made fibers. According to GRI 1, the completed caps at issue must be classified under Heading 6505, HTSUSA.

With respect to the cap crowns, GRI 2(a), HTSUSA, states:

Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article.

The cap crown at issue does have the essential character of a hat. It covers the head and could be worn as a hat. In its unfinished state it resembles a beanie. The chief weight of the crown is cotton.

Holding:

The cap at issue is classifiable under subheading 6505.90.8060, HTSUSA, as hats and other headgear, made up of textile fabric, whether or not lined or trimmed, of man-made fibers, other, not in part of braid, other, other. The textile category number is 659, and the rate of duty is 22 cents per kilogram, and 8 percent ad valorem.

The cap crown is classifiable under subheading 6505.90.2500, HTSUSA, as hats and other headgear, of textile fabric, whether or not lined or trimmed, other, of cotton, not knitted, other. The textile category number is 859, the rate of duty is 8 percent ad valorem.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, July 3, 1990.
CLA-2 CO:R:C:G 087327 JS
Category: Classification
Tariff No. 6505.90.2500

YOLANDA LANDAU
MILTON SNEDEKER CORPORATION
105 Chambers Street
New York, NY 10007

Re: Pile Lined Hood.

DEAR MS. LANDAU:

This is in reference to your letter of May 1, 1990, on behalf of RefrigiWear Inc., requesting classification of a pile lined hood under the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA").

Facts:

The sample at issue is a hood made of a 100 percent cotton outer material which is lined with an orlon pile material.

There is a knit fabric edge which lines the top front opening of the hood, presumably for added warmth and wind blockage. A drawstring on the bottom edge of the hood provides an adjustable fit; a Velcro tab secures the front flap closure, and two snaps are in place at the bottom rear of the hood. According to descriptive literature included with your submission, these snaps are intended for attachment of style no. 332 jacket and style no. 543 overall manufactured by importer. The importer confirms that these latter garments are for separate purchase.

The sample will be returned under separate cover as requested.

Issue:

Whether the merchandise at issue qualifies as headgear for purposes of classification under the HTSUSA?

Law and Analysis:

Classification of merchandise under the HTSUSA is in accordance with the General Rules of Interpretation (GRI), taken in order. GRI 1 provides that the classification shall be determined according to the terms of the headings and any relevant section or chapter notes.

Heading 6505, HTSUSA, provides, in relevant part, for hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed. The Explanatory Notes ("EN") constitute the official interpretation of the tariff at the international level. EN 65.05(9) states that the heading includes hoods. The subnote to EN 65.05(9) indicates that detachable hoods for capes, cloaks, etc., presented with the garments to which they belong, are, however, excluded, and classified with the garments according to their constituent materials. The separate importation of the subject hoods from the garments for which they are designed is substantiated by the importer's statements as well as the descriptive literature provided. Therefore, EN 65.05(9) subnote does not apply in this case, and classification is appropriate in heading 6505, HTSUSA.

 Holding:

The merchandise at issue is classified under subheading 6505.90.2500, HTSUSA, which provides for hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed; hair nets of any material, whether or not lined or trimmed; other: of cotton, flax or both: Not knitted: other, textile category number 859. The rate of duty is 8 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 the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an issuance of the U.S. Customs Service which is updated weekly and 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, 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 DURANT,
Director,
Commercial Operations Division.

[ATTACHMENT D]

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

CLA-2 RR:TC:TE 965741 TMF
Category: Classification
Tariff No. 6505.90.2060

JOHN A. BESSICH, Esq.
FOLLICK & BESSICH, P.C.
33 Walt Whitman Road, Suite 204,
Huntington, Station, NY 11746

Re: Modification of HQ 084261; children's cotton woven cap.

DEAR MR. BESSICH:

In Headquarters Ruling Letter (HQ) 084261, issued to you, June 15, 1989, on behalf of your client, Arlington Hat Company, Inc., two styles of children's cotton woven caps were classified in subheading 6505.90.2500, Harmonized Tariff Schedule of the United States

Annotated (“HTSUSA”), which essentially provided for hats and other headgear, of cotton textile fabric.

Upon review of HQ 084261, Customs has determined that the caps were erroneously classified. Therefore, this ruling modifies HQ 084261.

Facts:

Style number 1241 is a children’s cap that is composed of cotton woven fabric with a narrow, vertical, cotton fabric loop sewn to the cap above the brim. The loop may be opened and closed by a metal snap. The loop holds a pair of plastic sunglasses. By opening the snap of the fabric loop, the sunglasses can be removed and worn by the cap wearer. In addition, the cap has two fabric loops that are sewn to each side of the cap into which the user could possibly insert the sunglasses.

Style number 264 is a children’s cap that is designed like style number 1241 except that it has two half-moon shaped panels of cotton netting material which extend back from the brim. This cap contains a pair of plastic heart-shaped sunglasses that are worn in the same fashion as style number 1241.

In HQ 084261, it is stated that the submissions indicated that the cap and sunglasses were to be imported and sold together. In its determination, Customs considered whether the components constituted a set or were separately classifiable. Customs ruled that the goods were not a set pursuant to GRI 3(b) and classified the caps separately in subheading 6505.90.2500, HTSUSA.

Issue:

What is the classification of the children’s caps within the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. Where goods cannot be classified solely on the basis of GRI 1 and if the headings or legal notes do not require otherwise, the remaining GRIs 2 through 6 may be applied.

Additionally, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) are 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 HTSUSA. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Both styles of headwear are composed of woven cotton. Both styles are headgear as they entirely cover the wearer’s head. A cap is a type of headgear. *Merriam Webster’s Collegiate Dictionary*, Tenth Edition (1999), defines headgear as a covering or protective device for the head. Rulings issued by Customs have based the definition of headgear on the *Random House Dictionary of the English Language*, Unabridged Edition (1983), which describes headgear as “any covering for the head, esp. a hat, cap, bonnet, etc.” *See* HQ 087539, dated September 20, 1990.¹ In the instant case, the merchandise at issue is children’s caps. We refer to the General Explanatory Note to Chapter 65, which offers an expansive definition of the term “headgear”:

With the **exception** of the articles listed below [*see footnote 2*] this Chapter covers hat-shapes, hat-forms, hat bodies and hoods, and hats and other headgear of all kinds,

¹ In HQ 087539, it is noted that “Certain articles (wigs, shawls, veils) which may be worn on the head are excluded from Chapter 65 either by the Chapter Notes or the Explanatory Notes, while other articles such as headphones are provided for in heading 8518, HTSUSA. Finally, we do not consider headbands, sweatbands and barrettes, which are worn on the head or in the hair in order to keep hair out of the eyes or off the forehead to be classifiable as headgear.”

² The noted exceptions to Chapter 65 are as follows:

- (a) Headgear for animals (heading 42.01).
- (b) Shawls, scarves, mantillas, veils and the like (heading 61.17 or 62.14).
- (c) Headgear showing signs of appreciable wear and presented in bulk, bales, sacks or similar bulk packings (heading 63.09).
- (d) Wigs and the like (heading 67.04).
- (e) Asbestos headgear (heading 68.12).
- (f) Dolls’ hats, other toy hats or carnival articles (Chapter 95).
- (g) Various articles used as hat trimmings (buckles, clasps, badges, feathers, artificial flowers, etc.) when not incorporated in headgear (appropriate headings).

irrespective of the materials of which they are made and of their intended use (daily wear, theatre, disguise, protection, etc.).

It also covers hair-nets of any material and certain specified fittings for headgear.

The hats and other headgear of this Chapter may incorporate trimmings of various kinds and of any material, including trimmings made of the materials of Chapter 71.

As the caps are composed of woven cotton, we refer to subheading 6505.90.2060, which provides, *eo nomine*, for headwear of cotton. Therefore, we find the subject merchandise is classified in subheading 6505.90.2060, HTSUSA. For additional rulings consistent with this determination, see HQ 958958, dated September 12, 1997 (classifying three separate styles of cotton caps within subheading 6505.90.2060, HTSUSA) and HQ 087825, dated September 5, 1990 (modifying HQ 087060, dated August 17, 1990 and classifying a woven 100% cotton twill cap within subheading 6505.90.2060).

Holding:

HQ 084261, dated June 15, 1989, is hereby modified.

The children's cotton woven caps, styles 1241 and 264, are classified in subheading 6505.90.2060, HTSUSA, textile category 359, which provides for "Hats and other headgear * * *: Other: Of cotton, flax or both: Not knitted: Certified hand-loomed and folklore products; and headwear of cotton, Other." The general column one duty rate is 7.6 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.

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

[ATTACHMENT E]

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

CLA-2 RR:TC:TE 963642 TMF
Category: Classification
Tariff No. 6505.90.2060

MR. JACK ALSUP, ESQ.
ALSUP & ASSOCIATES
P.O. Box 1251
Del Rio, TX 78841

Re: Revocation of HQ 085174; cotton/polyester cap and cap crown.

DEAR MR. ALSUP:

In Headquarters Ruling Letter (HQ) 085174, issued to you, September 7, 1989, Customs classified a cap and cap crown in subheadings 6505.90.8060 and 6505.90.2500, Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"), respectively.

Subheading 6505.90.8060 essentially provided for hats and other headgear, made up of textile fabric, of man-made fibers. Subheading 6505.90.2500 essentially provided for hats and other headgear, of cotton textile fabric.

Upon review of HQ 085174, Customs has determined that this merchandise was erroneously classified. Therefore, this ruling revokes HQ 085174.

Facts:

The merchandise at issue is a cap and a cap crown. The cap is composed of a 65 percent polyester/35 percent cotton woven fabric. It is a standard cap with a crown and bill and it is adjustable in the back. The words "The Classic" are embroidered on the front of the crown.

The crown is made of a 65 percent polyester/35 percent cotton woven fabric with an interior stiffener made of 100 percent cotton woven fabric. The importer states that the combined weight of the cotton in the outer shell and the interior stiffener outweighs the fabric of man-made fibers. The crown was to be made into a cap similar to the one at issue. The crown had the word "Titleist" embroidered on the front.

Issue:

What is the classification of the subject cap and cap crown within the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. Where goods cannot be classified solely on the basis of GRI 1 and if the headings or legal notes do not require otherwise, the remaining GRIs 2 through 6 may be applied.

Additionally, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) are 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 HTSUSA. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The cap is a type of headgear. *Merriam Webster's Collegiate Dictionary*, Tenth Edition (1999), defines headgear as a covering or protective device for the head. Rulings issued by Customs have based the definition of headgear on the *Random House Dictionary of the English Language*, Unabridged Edition (1983), which describes headgear as "any covering for the head, esp. a hat, cap, bonnet, etc." See HQ 087539, dated September 20, 1990.¹ We refer to the General Explanatory Note to Chapter 65, which offers an expansive definition of the term "headgear":

With the **exception** of the articles listed below [*see footnote 2*] this Chapter covers hat-shapes, hat-forms, hat bodies and hoods, and hats and other headgear of all kinds, irrespective of the materials of which they are made and of their intended use (daily wear, theatre, disguise, protection, etc.).

It also covers hair-nets of any material and certain specified fittings for headgear.

The hats and other headgear of this Chapter may incorporate trimmings of various kinds and of any material, including trimmings made of the materials of Chapter 71.

Concerning the cap crown, it was noted in HQ 085174, that "In its unfinished state, it resembles a beanie." *Merriam Webster's Collegiate Dictionary*, defines "beanie" as a small

¹ In HQ 087539, it is noted that "Certain articles (wigs, shawls, veils) which may be worn on the head are excluded from Chapter 65 either by the Chapter Notes or the Explanatory Notes, while other articles such as headphones are provided for in heading 8518, HTSUSA. Finally, we do not consider headbands, sweatbands and barrettes, which are worn on the head or in the hair in order to keep hair out of the eyes or off the forehead to be classifiable as headgear."

² The noted exceptions to Chapter 65 are as follows:

- (a) Headgear for animals (heading 42.01).
- (b) Shawls, scarves, mantillas, veils and the like (heading 61.17 or 62.14).
- (c) Headgear showing signs of appreciable wear and presented in bulk, bales, sacks or similar bulk packings (heading 63.09).
- (d) Wigs and the like (heading 67.04).
- (e) Asbestos headgear (heading 68.12).
- (f) Dolls' hats, other toy hats or carnival articles (Chapter 95).
- (g) Various articles used as hat trimmings (buckles, clasps, badges, feathers, artificial flowers, etc.) when not incorporated in headgear (appropriate headings).

round tight-fitting skullcap worn especially by schoolboys and college freshmen. Therefore, as the merchandise entirely covers the wearer's head, we consider the cap crown to be a type of headwear.

Further, the crown likely constitutes an incomplete or unfinished cap. Where merchandise is incomplete or unfinished, we look to GRI 2(a), which provides, in pertinent part:

Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article.

We find that the cap crown has the essential character of the complete cap. Both articles are composed of 65 percent polyester and 35 percent woven cotton with an interior stiffener of 100 percent cotton. We refer to Note 2(A) to Section XI which states, in part:

Goods classifiable in chapters 50 to 55 or in heading 5809 or 5902 and of a mixture of two or more textile materials are to be classified as if consisting wholly of that one textile material which predominates by weight over each other single textile material.

This note is applicable to the merchandise at issue by application of Additional U.S. Rule of Interpretation 1(d) which states that "the principles of section XI regarding mixtures of two or more textile materials shall apply to the classification of goods in any provision in which a textile material is named."

The outer surface of both the cap and crown is composed of a woven blend of 65 percent polyester and 35 percent cotton and each has an interior stiffener made of 100 percent cotton woven fabric. Customs properly determined that the combined weight of the cotton outershell and the interior stiffener weighs more than the polyester material pursuant to Section Note 2(A). The cap was therefore misclassified in subheading 6505.90.8060, HTSUSA because its cotton material outweighs the fabric of man-made fibers. As the cotton predominates by weight over the polyester material, the cap is classified within subheading 6505.90.2060, HTSUSA. Since the cap crown has the essential character of the complete or finished cap, it is classified in this same provision as headwear of cotton.

Holding:

HQ 085174, dated September 7, 1989, is hereby revoked.

The cap and cap crown are classified in subheading 6505.90.2060, HTSUSA, textile category 359, which provides for "Hats and other headgear * * *: Other: Of cotton, flax or both: Not knitted: Certified hand-loomed and folklore products; and headwear of cotton, Other." The general column one duty rate is 7.6 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.

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

[ATTACHMENT F]

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

CLA-2 RR:TC:TE 963643 TMF
Category: Classification
Tariff No. 6505.90.2060

YOLANDA LANDAU
MILTON SNEDEKER CORPORATION
105 Chambers Street
New York, NY 10007

Re: Revocation of HQ 087327; cotton hood with Orlon® pile lining.

DEAR MS. LANDAU:

In Headquarters Ruling Letter (HQ) 087327, issued to you, July 3, 1990, Customs classified a cotton hood with Orlon® pile lining in subheading 6505.90.2500, Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”), which essentially provided for hats and other headgear, of cotton textile fabric.

Upon review of HQ 087327, Customs has determined that the hood was erroneously classified. Therefore, this ruling revokes HQ 087327.

Facts:

The article at issue is described in HQ 087327 as being a hood made of a 100 percent cotton outer material which was lined with an Orlon® pile material. (Orlon® is a trademark owned by Du Pont for acrylic staple fiber.) A knit fabric edge lined the top front opening of the hood, presumably for added warmth and wind blockage. A drawstring on the bottom edge of the hood provided an adjustable fit; a hook and loop tab secured the front flap closure, and two snaps were in place at the bottom rear of the hood. The descriptive literature included with the submission stated that the snaps were intended for attachment of style no. 332 jacket and style no. 543 overall manufactured by importer, either of which were available for separate purchase, but the hood at issue is imported separately.

Issue:

What is the classification of the cotton hood within the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. Where goods cannot be classified solely on the basis of GRI 1 and if the headings or legal notes do not require otherwise, the remaining GRIs 2 through 6 may be applied.

Additionally, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) are 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 HTSUSA. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Merriam Webster's Collegiate Dictionary, Tenth Edition (1999), defines headgear as a covering or protective device for the head. Rulings issued by Customs have based the definition of headgear on the *Random House Dictionary of the English Language*, Unabridged Edition (1983), which describes headgear as “any covering for the head, esp. a hat, cap, bonnet, etc.” See HQ 087539, dated September 20, 1990.¹ We refer to the General

¹ In HQ 087539, it is noted that “Certain articles (wigs, shawls, veils) which may be worn on the head are excluded from Chapter 65 either by the Chapter Notes or the Explanatory Notes, while other articles such as headphones are provided for in heading 8518, HTSUSA. Finally, we do not consider headbands, sweatbands and barrettes, which are worn on the head or in the hair in order to keep hair out of the eyes or off the forehead to be classifiable as headgear.”

Explanatory Note to Chapter 65, which offers an expansive definition of the term “headgear”:

With the **exception** of the articles listed below [*see footnote 2*] this Chapter covers hat-shapes, hat-forms, hat bodies and hoods, and hats and other headgear of all kinds, irrespective of the materials of which they are made and of their intended use (daily wear, theatre, disguise, protection, etc.).

It also covers hairnets of any material and certain specified fittings for headgear.

The hats and other headgear of this Chapter may incorporate trimmings of various kinds and of any material, including trimmings made of the materials of Chapter 71.

EN (9) to heading 6505 indicates that the heading covers “Hoods,” and that detachable hoods presented with the garments to which they belong are excluded from heading 6505 and classified with the garments according to their constituent materials. In the instant case as the hood is imported separately from the jacket and overalls, it is classified within heading 6505.

The outer surface of the hood is composed of 100 percent woven cotton fabric. Orlon® pile material lines the inside. Since the hood is composed of more than one material, we look to GRI 2(b), which, in pertinent part, states:

[t]he classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

GRI 3 provides:

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: [under GRI 3a and 3b]

GRI 3(a) directs that the headings are regarded as equally specific when each heading refers to part only of the materials contained in composite goods. In this case, the relevant headings are headings 5208, HTSUSA, which provides for woven cotton fabrics, and heading 5515 HTSUSA, which provides for other woven fabrics of synthetic staple fibers.

To determine under which provision the hood should be classified, we look to GRI 3(b), which states:

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.

We must consider Explanatory Note IX to GRI 3(b), which states:

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

The woven cotton and Orlon® fabrics are practically inseparable layers sewn together to form a hood. The interior Orlon® material provides warmth for the wearer’s head and the exterior cotton is the more visible material. We find that the hood is a composite good.

As a composite good is classified by the material that imparts its essential character, we refer to Explanatory Note VIII to GRI 3(b), which provides the following guidance:

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.

² The noted exceptions to Chapter 65 are as follows:

- (a) Headgear for animals (heading 42.01).
- (b) Shawls, scarves, mantillas, veils and the like (heading 61.17 or 62.14).
- (c) Headgear showing signs of appreciable wear and presented in bulk, bales, sacks or similar bulk packings (heading 63.09).
- (d) Wigs and the like (heading 67.04).
- (e) Asbestos headgear (heading 68.12).
- (f) Dolls’ hats, other toy hats or carnival articles (Chapter 95).
- (g) Various articles used as hat trimmings (buckles, clasps, badges, feathers, artificial flowers, etc.) when not incorporated in headgear (appropriate headings).

In this case, the outer surface of cotton most significantly contributes to the overall appearance of the hood; it being far more visible to the eye than the Orlon® material. Further, the outer surface of cotton provides the shape of the hood as well as being capable of matching and attaching to the separately sold jacket and overalls. Therefore, we find that the outer surface of cotton imparts the hood's essential character.

In light of the above analysis, the hood is classified in subheading 6505.90.2060, HTSUSA, which provides, *eo nomine*, for headwear of cotton.

Holding:

HQ 087327, dated July 3, 1990, is hereby revoked.

The woven cotton hood is classified in subheading 6505.90.2060, HTSUSA, textile category 359, which provides for "Hats and other headgear * * *: Other: Of cotton, flax or both: Not knitted: Certified hand-loomed and folklore products; and headwear of cotton, Other." The general column one duty rate is 7.6 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.

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

PROPOSED MODIFICATION OF TWO RULING LETTERS AND
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
SLEEP GARMENTS

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

ACTION: Notice of proposed modification of two tariff classification ruling letters and treatment relating to the classification of certain sleepwear garments.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to modify New York Ruling Letter (NY) I80792, issued April 25, 2002, relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a man's sleep pants, style 505-0503, and NY H80784, issued June 5, 2001, relating to the tariff classification under the HTSUSA, of a woman's two piece pajama set, style 733808. Similarly, Customs proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before September 27, 2002.

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

FOR FURTHER INFORMATION CONTACT: Shirley Greitzer, Textiles Branch: (202) 572-8823.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility.**" These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify two rulings relating to the tariff classification of sleepwear. Although in this notice Customs is specifically referring to the modification of New York decisions (NY) I80792, dated April 25, 2002, (attachment A), and NY H80784, dated June 5, 2001, (attachment B), 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 ones 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 (19 U.S.C. 1625(c)(2)), as amended by sec-

tion 623 of Title VI, Customs intends to revoke 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 HTSUSA. Any person involved with substantially identical merchandise should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY I80792, Customs classified a man's sleep pant, style 505-0503, under heading 6203, HTSUS, which provides for, among other things, men's trousers. Customs has reviewed the classification of the man's garment and has determined to modify NY I80792 to reflect the proper classification of the garment under subheading 6207, HTSUS, the provision for men's pajamas and similar articles.

Similarly, in NY H80784 Customs classified a woman's two piece pajama set, style 733808, under headings 6106 and 6104, HTSUS, which provide for, among other things, women's blouses and trousers, respectively.

Customs has reviewed the classification of these garments and has determined that the cited rulings are partially in error. Accordingly, we intend to modify NY I80792 to reflect the proper classification of style 505-0503 under subheading 6207.91.3010, HTSUSA, as men's woven cotton sleepwear, other than nightshirts or pajamas. We also intend to modify NY H80784 to reflect the proper classification of the style 733808 under subheading 6108.31.0010, HTSUSA, as cotton pajamas. Proposed Headquarters Ruling Letter 965633 modifying NY I80792, is set forth as "Attachment C" and proposed Headquarters Ruling Letter 965561 modifying NY H80784, is set forth as "Attachment D"

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify NY I80792 and NY H80784 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 965633 and HQ 965561. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

Dated: August 13, 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, April 25, 2002.
CLA-2-62:RR:NC:WA:355 I80792
Category: Classification
Tariff No. 6203.42.4015 and 6207.91.3010

MS. DANA MOBLEY
J.C. PENNEY PURCHASING CORP.
P.O. Box 10001
Dallas, TX 75301

Re: The tariff classification of men's lounge and sleep pants from Indonesia.

DEAR MS. MOBLEY:

In your letter dated April 19, 2002, you requested a classification ruling.

You submitted two samples of men's lower body garments which you identified as sleepwear pants, styles 505-0503 and 505-0503A. Both are made of 100 percent woven cotton and will be imported in sizes small to extra large. Your samples will be returned as you have requested.

Style 505-0503 has a covered elasticized waistband with a drawstring. It does not have pockets. The front fly is not secured by any means, however, it is noted that the opening is sewn down for approximately two and a half inches from the waistband and the actual opening is much smaller than that which is usual in the trade. The opening does not gap; modesty is preserved.

Style 505-0503A has a covered elasticized waistband with a drawstring, two side seam pockets and an open fly with no means of securing it closed. Unlike style 505-0503, this fly opening begins just under the waistband and continues for a normal length. A slight gaping of the fly opening is observed.

The applicable subheading for style 505-0503 will be 6203.42.4015, Harmonized Tariff Schedule of the United States (HTS), which provides for men's or boys' trousers, bib and brace overalls, breeches and shorts, of cotton, other; other; trousers and breeches, men's, other. The duty rate will be 16.8 percent ad valorem.

The applicable subheading for style 505-0503A will be 6207.91.3010, HTS, which provides for men's or boys' singlets and other undershirts, underpants, briefs, nightshirts, pajamas, bathrobes, dressing gowns and similar articles, other, of cotton, other; sleepwear. The duty rate will be 6.2 percent ad valorem.

Style 505-0503 falls within textile category designation 347. Style 505-0503A falls within textile category designation 351. Based upon international textile trade agreements products of Indonesia are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

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 Camille R. Ferraro at 646-733-3046.

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

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, June 5, 2001.
CLA-2-61:RR:NC:TA:361 H80784
Category: Classification
Tariff No. 6104.62.2011, 6104.63.2011,
6106.10.0010, and 6106.20.2010

Ms. JULIE GIMM
BDP INTERNATIONAL INC.
2721 Walker N.W.
Grand Rapids, MI 49504

Re: The tariff classification of three women's garments from Taiwan.

DEAR Ms. GIMM:

In your letter dated May 18, 2001, you requested a classification ruling for four women's garments on behalf of Meijer Distribution. Samples were provided and will be returned, as you requested.

You have described style 733808 as a pajama set. This style is constructed from 60% cotton, 40% polyester knit fabric, and consists of a shirt styled top and pull-on pants. The top is made mainly from two different types of fabric: thermal knit raglan sleeves; and a front and back of jersey that has been brushed on the inside. The top has more than ten stitches per centimeter in both the horizontal and vertical directions. The top has a banded neckline; a full front opening with button closure; long sleeves with rib knit cuffs; and a hemmed bottom. The pull-on pants are mainly constructed from the thermal knit fabric, and have an elasticized waistband; and rib knit cuffs at the leg openings.

You have also described style 733786 as a pajama set. This style is constructed from 100% polyester knit fabric heavily brushed on both sides and consists of a pullover shirt styled top and coordinating pull-on pants. The fabric has more than ten stitches per centimeter in both the horizontal and vertical directions. The top has a rounded neckline; a partial placket opening with a three-button closure; a chest pocket; long sleeves with cuffs; and a hemmed bottom with three-inch side slits. The pants of this style have an elasticized waistband and hemmed leg openings.

You have referred to these garments as sleepwear, however, based on appearance, they seem to be capable of multiple uses. As such, and in the absence of persuasive information as to the manner in which they are marketed and sold, these garments will not be classified as sleepwear in heading 6108.

The applicable subheading for the top of style 733808 will be 6106.10.0010, Harmonized Tariff Schedule of the United States (HTS), which provides for women's blouses and shirts, knitted or crocheted, cotton. The rate of duty will be 20.1 percent ad valorem.

The applicable subheading for the top of style 733786 will be 6106.20.2010, Harmonized Tariff Schedule of the United States (HTS), which provides for women's blouses and shirts, knitted or crocheted, of man-made fibers. The rate of duty will be 32.8 percent ad valorem.

The applicable subheading for the pants of style 733808 will be 6104.62.2011, Harmonized Tariff Schedule of the United States (HTS), which provides for women's knit trousers of cotton. The rate of duty will be 15.4 percent ad valorem.

The applicable subheading for the pants of style 733786 will be 6104.63.2011, Harmonized Tariff Schedule of the United States (HTS), which provides for women's knit trousers of synthetic fibers. The rate of duty will be 28.7 percent ad valorem.

The top of style 733808 falls within textile category designation 339; the top of style 733786 falls within textile category designation 639; the pants of style 733808 fall within textile category designation 338; the pants of style 733786 fall within textile category designation 648. Based upon international textile trade agreements products of Taiwan are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web Site at WWW.CUSTOMS.GOV. In addition, the designated textile and apparel categories may be subdivided into parts. If so,

visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

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 Angela De Gaetano at 212-637-7029.

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

[ATTACHMENT C]

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

CLA-2 RR:CR:TE 965633 SG
Category: Classification
Tariff No. 6207.91.3010

MS. DANA N. MOBLEY
CUSTOMS ANALYST
JCPENNEY PURCHASING CORPORATION
P.O. Box 10001
Dallas, TX 75301

Re: Modification of New York Ruling Letter (NY) I80792, dated April 25, 2002; Men's Sleep Pants from Indonesia.

DEAR MS. MOBLEY:

This letter is in response to your letter dated May 7, 2002, in which you requested reconsideration of New York Ruling Letter (NY) I80792, issued on April 25, 2002, in which Customs classified a men's garment, style 505-0503, in subheading 6203.42.4015, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for men's and boys' trousers, bib and brace overalls, breeches and shorts, of cotton, other; trousers and breeches, men's, other. Your letter along with a sample was forwarded to this office for our reply. We have reviewed the ruling and have found it to be partially in error. Therefore, this ruling modifies NY I80792.

Facts:

The merchandise at issue is described as a pair of men's 100 percent woven cotton sleepwear pant, JCPenney style number 505-0503. The garment has an elasticized waistband with a fully functional drawstring, and hemmed pant leg bottoms. The pants do not have pockets. It has a placketed fly approximately 8 inches in length. The fly is sewn shut for 2.5 inches from the top of the waistband and sewn shut from the bottom for 2 inches, leaving an unsecured fly opening of approximately 4½ inches.

It is claimed that although the open fly is smaller than some sleepwear pants, the wearer would not wear this garment outside without a closure. It is also claimed that the fact that the garment does not have pockets in which to carry keys or change, the wearer would likely not wear these outside of the home. It is claimed that the correct classification is under subheading 6207.91.3010, as men's sleepwear.

Issue:

Whether the merchandise, style 505-0503, was properly classified as an outerwear garment under heading 6203, HTSUS, or is a sleepwear garment under heading 6207, HTSUS?

Law and Analysis:

The General Rules of Interpretation (GRI's) govern classification of goods under the HTSUSA. GRI 1 provides that classification shall be determined according to the terms of

the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order. The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), although not dispositive nor legally binding, provide a commentary on the scope of each heading of the HTSUSA 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 order to determine whether or not the garment is sleepwear, Customs considers the factors discussed in two decisions of the Court of International Trade. In *Mast Industries, Inc. v. United States*, 9 CIT 549, 552 (1985), aff'd 786 F.2d 1144 (CAFC, April 1, 1986), the court dealt with the classification of a garment claimed to be sleepwear and cited *Webster's Third New International Dictionary* which defined "nightclothes" as "garments to be worn to bed." In *Mast*, the court ruled that the garments at issue were designed, manufactured, and marketed as nightwear and were chiefly used as nightwear. Similarly, in *St. Eve International, Inc. v. United States*, 11 CIT 224 (1987), the court ruled that the garments at issue were designed, manufactured, and advertised as sleepwear and were chiefly used as sleepwear.

In the recent case of *International Home Textile, Inc. v. United States*, 21 CIT 280, March 18, 1997, the Court of International Trade addressed the issue of whether certain men's garments were properly classified under the provision for cotton pants, shorts and tops or as sleepwear under the HTSUSA. The court held that in order to be classified as sleepwear, the loungewear items at issue must share that essential character of being for a "private activity", e.g., sleeping. The court also stated that garments classified as sleepwear would be inappropriate for use at "informal social occasions in and around the home, and for other individual, non-private activities in and around the house e.g., watching movies at home with guests, barbecuing at a backyard gathering, doing outside home and yard maintenance work, washing the car, walking the dog, and the like."

In past rulings, Customs has stated that the crucial factor in the classification of a garment is the garment itself. As the court pointed out in *Mast*, "the merchandise itself may be strong evidence of use." *Mast* at 552, citing *United States v. Bruce Duncan Co.*, 50 CCPA 43, 46, C.A.D. 817 (1963). However, when presented with a garment which is somewhat ambiguous and not clearly recognizable as sleepwear or underwear or outerwear, Customs will consider other factors such as environment of sale, advertising and marketing, recognition in the trade of virtually identical merchandise, and documentation incidental to the purchase and sale of the merchandise, such as purchase orders, invoices, and other internal documentation. It should be noted that Customs considers these factors in totality and no single factor is determinative of classification as each of these factors viewed alone may be flawed. For instance, Customs recognizes that internal documentation and descriptions on invoices may be self-serving as was noted by the court in *Regaliti, Inc. v. United States*, 16 CIT 407 (May 21, 1992). We have long acknowledged that intimate apparel/sleepwear departments often sell a variety of merchandise besides intimate apparel, including garments intended to be worn as outerwear. See Headquarters Ruling Letter (HQ) 955341 of May 12, 1994.

In the instant case, a physical examination of the garment at issue reveals that the design is somewhat ambiguous due to both the styling features and the smaller than usual opening of the unsecured fly. It is our view that although the unsecured fly opening is somewhat smaller than those we have seen on comparable garments, the unsecured fly opening is large enough that it does not satisfy the conventional standards of modesty necessary on a garment that would be worn for the type of non-private activities named in *International Home Textiles, Inc.* An open fly is a feature whose defining characteristic is privateness or private activity, which is indicative of sleepwear and pajamas.

Although the subject garment could possibly be used for social activity inside the home, it is our view that because of the unsecured fly; it would be inappropriate to wear this garment while participating in any " * * * non-private activities in and around the house * * *". It is our view that this use would be a fugitive use. In *Hampco Apparel, Inc. v. United States*, 12 CIT 92 (1988), the Court of International Trade stated: "The fact that a garment could have a fugitive use or uses does not take it out of the classification of its original and primary use. The primary design, construction, and function of an article will be determinative of classification, whether or not there is an incidental or subordinate function." In this case, because the submitted sample is capable of being used to lounge inside the home does not change what is its principal use and character as sleepwear. Thus, it is our determination that this garment has the essential character of privateness, i.e. of

being used for the private activity of sleeping. The garment identified as style 505-0503 is therefore properly classifiable as a sleep garment, not outerwear. See HQ 963519, dated July 16, 2002, wherein we ruled that almost identical pants were classified as sleepwear.

Heading 6207, HTSUS, provides for, *inter alia*, pajamas and similar articles. Customs has consistently ruled that pajamas are generally two-piece garments worn for sleeping, one-piece garments such as these under consideration have been classified as other woven sleepwear.

Holding:

The instant merchandise is properly classifiable under the provision for "Men's or boys' singlets and other undershirts, underpants, briefs, nightshirts, pajamas, bathrobes, dressing gowns and similar articles: Other: Of cotton: Other: Sleepwear", in subheading 6207.91.3010, HTSUSA, and is dutiable under the general column one rate of 6.2 percent ad valorem. The textile category for this provision is 351.

NY I80792 issued on April 25, 2002, is hereby MODIFIED.

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 Quota (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.treas.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.

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

[ATTACHMENT D]

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

CLA-2 RR:CR:TE 965561 SG
Category: Classification
Tariff No. 6108.31.0010,
6106.20.2010, and 6104.63.2011

Ms. JULIE GIMM, COMPLIANCE
BDP INTERNATIONAL INC.
2721 Walker Avenue, NW
Grand Rapids, MI 49504

Re: Modification of New York Ruling Letter (NY) H80784, dated June 5, 2001; Women's Pajama Set.

DEAR Ms. GIMM:

This letter is in response to your letter dated April 1, 2002, in which you requested reconsideration of New York Ruling Letter (NY) H80784, issued on June 5, 2001, in which Customs classified women's two piece "pajama sets" in heading 6106, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for women's knitted blouses and shirts, and 6104, HTSUSA, which provides for women's knit trousers. We have reviewed that ruling and have found it to be partially in error. Therefore, this ruling modifies NY H80784.

Facts:

The merchandise identified as style 733808 is described as a woman's two-piece pajama set. It is constructed from 60% cotton and 40% polyester knit fabric. It consists of a shirt styled top and pull-on pants. The top features a banded neckline, full button front with one upper left chest pocket, long sleeves with rib knit cuffs, and a hemmed bottom. The pull-on pants have an elasticized waistband and rib knit cuffs at the leg openings. The top is made mainly of two different types of fabric: thermal knit raglan sleeves; and a full front and back of jersey knit that has been brushed on the inside. The top has more than ten stitches per centimeter in both the horizontal and vertical directions. The pants are mainly constructed from thermal knit fabric.

The merchandise identified as style 733786 is described as a woman's two-piece pajama set. It is constructed from 100% polyester knit fabric heavily brushed on both sides. It consists of a pullover shirt styled top and coordinating pull-on pants. The top has a rounded neckline, a partial placket opening with a three-button closure, an upper left chest pocket, long sleeves with cuffs, and a hemmed bottom with three-inch side slits. The pants have an elasticized waistband and hemmed leg openings. The fabric has more than ten stitches per centimeter in both the horizontal and vertical directions.

You advise that the pajama sets will be sold in Meijer retail stores throughout the Midwest and that both styles will be sold exclusively under the "Simple Pleasures" brand name. You indicate that "Simple Pleasures" is a Meijer private label name for apparel sold exclusively in the Meijer Sleepwear Department. You attach samples of the "Simple Pleasures" labels from the Meijer corporate brands website. You indicate that these labels will be sewn into the garments themselves. You state that the garments are sold with the intention that they will be worn as sleepwear articles and not worn outside the privacy of one's home.

Issue:

Whether the merchandise was properly classified as outerwear garments under headings 6104 and 6106, HTSUS, or is pajamas sets under heading 6108, HTSUS?

Law and Analysis:

The General Rules of Interpretation (GRI's) govern classification of goods under the HTSUSA. GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order. The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), although not dispositive nor legally binding, provide a commentary on the scope of each heading of the HTSUSA 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 determining the classification of garments submitted to be sleepwear, Customs usually considers the factors discussed in two court cases that addressed sleepwear. In *Mast Industries, Inc. v. United States*, 9 CIT 549, 552 (1985), aff'd 786 F.2d 144 (CAFC, 1986), the Court of International Trade considered the classification of a garment claimed to be sleepwear. The court cited several lexicographic sources, among them *Webster's Third New International Dictionary* which defined "nightclothes" as "garments to be worn to bed." In *Mast*, the court determined that the garment at issue therein was designed, manufactured, and used as nightwear and therefore was classifiable as nightwear. Similarly, in *St. Eve International, Inc. v. United States*, 11 CIT 224 (1987), the court ruled the garments at issue therein were manufactured, marketed and advertised as nightwear and were chiefly used as nightwear. Finally, in *Inner Secrets/Secretly Yours, Inc. v. United States*, 885 F. Supp. 248 (1995), the court was faced with the issue of whether women's boxer-style shorts were classifiable as "outerwear" under heading 6204 HTSUS, or as "underwear" under heading 6208, HTSUS. The court stated the following, in pertinent part:

[P]laintiff's preferred classification is supported by evidence that the boxers in issue were designed to be worn as underwear and that such use is practical. In addition, plaintiff showed that the intimate apparel industry perceives and merchandises the boxers as underwear. While not dispositive, the manner in which plaintiff's garments are merchandised sheds light on what the industry perceives the merchandise to be. * * * Further, evidence was provided that plaintiff's merchandise is marketed as underwear. While advertisements also are not dispositive as to correct classification under the HTSUS, they are probative of the way that the importer viewed the merchandise and of the market the importer was trying to reach.

Furthermore, we bring your attention to *International Home Textile, Inc.*, 21 CIT 280, March 18, 1997, which classified garments as outerwear in headings 6103 and 6105, HTSUS. The court therein stated:

Based upon a careful examination of the loungewear as well as the testimony of the various witnesses, the court finds that the loungewear items at issue do not share that essential character of privateness or private activity. As the parties have already stipulated, the loungewear is used primarily for lounging and not for sleeping. The court finds no basis in the exhibits, the witness testimony, or the loungewear's construction and design to find that it is inappropriate, at a minimum, for the loungewear to be worn at informal social occasions in and around the home, and for other individual, non-private activities in and around the house e.g., watching movies at home with guests, barbecuing at a backyard gathering, doing outside home and yard maintenance work, washing the car, walking the dog, and the like. * * *

In your request for reconsideration you admitted that the sample garments can be worn for other than sleeping. You argue, however, that the controlling use is principal use, and that is as sleepwear. You state that the garments were designed, manufactured, marketed, and intended for use as sleepwear. In addition you claim that the print on the garments is clearly that of sleepwear and would not be worn out in public. Additionally, it is your belief that the following features are congruous with the garments classification as women's pajamas: the lack of pockets on the pants, the print used on the garments, and the loose construction and styling.

We have physically examined both of the two-piece garments at issue, and will address each separately.

Style 733786

We do not agree that the physical characteristics of the two-piece garment identified as style 733786, nor the manner in which it has been designed, marketed or sold are limited to sleepwear or intimate apparel. The physical characteristics of this style 733786 is such that it can easily be used as either sleepwear or as non-intimate apparel. The fleece fabric of which it is constructed is used for both types of garments. The appearance of this two-piece garment is, in fact, ambiguous. Although you claimed the sample was designed as sleepwear, no specific information concerning the design was submitted. Nothing about the design or appearance of the sample makes it unsuitable for use as sleepwear. However, the counter argument that nothing about the design or appearance makes the sample unsuitable for use as general apparel is equally true. In such circumstances, the principal use may be determined by the manner in which the garment is designed, marketed and sold.

In past rulings, Customs has stated that the crucial factor in the classification of a garment is the garment itself. As the court pointed out in *Mast*, "the merchandise itself may be strong evidence of use. *Mast* at 552, citing *United States v. Bruce Duncan Co.*, 50 CCPA 43, 46, C.A.D. 817 (1963). However, when presented with a garment which is somewhat ambiguous and not clearly recognizable as sleepwear or underwear or outerwear, Customs will consider other factors such as environment of sale, advertising and marketing, recognition in the trade of virtually identical merchandise, and documentation incidental to the purchase and sale of the merchandise, such as purchase orders, invoices, and other internal documentation. It should be noted that Customs considers these factors in total and no single factor is determinative of classification as each of these factors viewed alone may be flawed. For instance, Customs recognizes that internal documentation and descriptions on invoices may be self-serving as was noted by the court in *Regaliti, Inc. v. United States*. 16 CIT 407 (May 21, 1992). We have long acknowledged that intimate apparel/sleepwear departments often sell a variety of merchandise besides intimate apparel, including garments intended to be worn as outerwear. See HQ 955341 of May 12, 1994.

Customs does not find the fact that "Simple Pleasures" is a private label for apparel sold exclusively in the Meijer Sleepwear Department of particular significance. What we do find of importance is the 2-piece garment itself and the manner in which the garment will be presented to the public.

The sample will be imported with a label sewn into it saying "Simple Pleasures" but nothing else. There is a sample tag on the sample garment that describes it as a "Ladies Lounge Set". No other advertising or information was submitted. Based on the above, it is our view that the information submitted does not show that the style 733786 is merchandised to the consumer as a garment to be worn exclusively, or even principally, as sleepwear.

In your submission you concede that all the submitted garments may be used as outerwear (albeit inside the home). You however argue that this use would be a fugitive use. In *Hampco Apparel, Inc. v. United States*, 12 CIT 92 (1988), the Court of International Trade stated: "The fact that a garment could have a fugitive use or uses does not take it out of the classification of its original and primary use. The primary design, construction, and function of an article will be determinative of classification, whether or not there is an incidental or subordinate function." It is your stated view that just because the sample, style 733786, is capable of being used to lounge around the home does not change the claim that its principal use and character is as sleepwear.

As the court noted in *Mast*, at 551, "most consumers purchase and use a garment in the manner in which it is marketed." In our view, style 733786 is a multi-purpose garment and nothing provided to Customs suggests the garment is presented to consumers as designed or intended for wear while sleeping. Thus, Customs does not agree that this garment is presented to consumers as sleepwear garments.

Based on our examination of the sample identified as style 733786, we find that it is loungewear, i.e., loose, casual clothes that are worn in and around the home for comfort. Its fabric, construction and design are suitable for the type of non-private activities named in *International Home Textile, Inc.* Finally, although the garment may be worn to bed for sleeping, in our opinion its principal use is for "home comfort" and lounging. This garment can easily make the transition from inside the home (in a private setting) to outside the home (and a more social environment). In addition, the sample submitted is made of fabric heavy enough for outdoor use.

Taking into consideration all of the information before us, especially the two-piece garment (style 733786) itself, Customs believes this garment was properly classified as outerwear not as sleepwear.

Style 733808

Insofar as **style 733808** is concerned, a physical examination of the sample at issue reveals that the design is such that it can easily be used as sleepwear or as intimate apparel. We note that the hangtag on the garment states that it is a 2-piece ladies' pajama. Thus, Customs agrees that this garment is presented to consumers as a sleepwear garment.

Although the subject garment could possibly be used for social activity inside the home, it is our view that one would not wear this garment while participating in any non-private activities such as those named in *International Home Textile, Inc.* It is our view that any such use would be a fugitive use. In this case, because the submitted sample is capable of being used to lounge inside the home does not change its principal use and character as sleepwear. Thus, it is our determination that this garment has the essential character of being used for the private activity of sleeping. The garment identified as style 733808 is therefore properly classifiable as a pajama set, not as loungewear.

Holding:

The sample identified as **style 733808** is properly classifiable under the provision for "Women's or girls' slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted: Nightdresses and pajamas: Of cotton: Women", in subheading 6108.31.0010, HTSUSA, and is dutiable under the general column one rate of 8.6 percent ad valorem. The textile category for this provision is 351.

The sample identified as **style 733786** was properly classified in NY H80784 as outerwear separates. The top is classifiable under the provision for "Women's or girls' blouses and shirts, knitted or crocheted: Of man-made fibers: Other: Women's", in subheading 6106.20.2010, HTSUSA, and is dutiable under the 2002 general column one rate of 32.5 percent ad valorem. The textile category for this provision is 639. The bottom is classifiable under the provision for "Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted: Trousers, bib and brace overalls, breeches and shorts: Of synthetic fibers: Other: Other: Trousers and breeches: Women's: Other", in subheading 6104.63.2011, and is dutiable under the 2002 general column one rate of 28.6 percent ad valorem. The textile category for this provision is 648.

NY H80784 issued on June 5, 2001, is hereby MODIFIED.

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 fre-

quent 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 Quota (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.treas.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.

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