

U.S. Customs Service

General Notices

PERFORMANCE REVIEW BOARD— APPOINTMENT OF MEMBERS

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

ACTION: General Notice.

SUMMARY: This notice announces the appointment of the members of the U.S. Customs Service Performance Review Boards (PRB's) in accordance with 5 U.S.C. 4314(c)(4). The purpose of the PRB's is to review performance appraisals for senior executives and to make recommendations to the appointing authority regarding proposed performance ratings, bonuses, and other related personnel actions.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Robert M. Smith, Assistant Commissioner, Human Resources Management, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Room 2.4-A, Washington, D.C. 20229, Telephone (202) 927-1250.

BACKGROUND: There are two PRB's in the U.S. Customs Service.

Performance Review Board 1

The purpose of this Board is to review the performance appraisals and proposed related personnel actions for senior executives who report directly to the Deputy Commissioner or the Commissioner of Customs. The members are:

Donnie A. Carter, Deputy Assistant Director, Recruitment and Hiring, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury

John C. Doohar, Senior Associate Director, Washington Office, Federal Law Enforcement Training Center, Department of the Treasury

Carla F. Kidwell, Associate Director for Technology, Bureau of Engraving and Printing, Department of the Treasury

Kenneth R. Papaj, Deputy Commissioner, Financial Management Service, Department of the Treasury

Carlton D. Spriggs, Deputy Director, U.S. Secret Service, Department of the Treasury

Performance Review Board 2

The purpose of this Board is to review the performance appraisals and proposed related personnel actions for all senior executives *except* those who report directly to the Deputy Commissioner or the Commissioner of Customs. The members are:

Assistant Commissioners:

Jayson P. Ahern, Field Operations
Marjorie L. Budd, Training and Development
S.W. Hall, Information and Technology/CIO
William A. Keefer, Internal Affairs
Dennis H. Murphy, Public Affairs
Nicole R. Nason, Congressional Affairs
Susan J. Rabern, Finance/CFO
Donald K. Shruhan, International Affairs
Michael T. Schmitz, Regulations and Rulings
Robert M. Smith, Human Resources Management
Deborah J. Spero, Strategic Trade
John C. Varrone, Investigations

Dated: September 13, 2002.

ROBERT C. BONNER,
Commissioner of Customs.

[Published in the Federal Register, October 7, 2002 (67 FR 62525)]

LIST OF FOREIGN ENTITIES VIOLATING TEXTILE
TRANSSHIPMENT AND COUNTRY OF ORIGIN RULES

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

ACTION: General notice.

SUMMARY: This document notifies the public of foreign entities which have been issued a penalty claim under section 592 of the Tariff Act of 1930, for certain violations of the customs laws. This list is authorized to be published by section 333 of the Uruguay Round Agreements Act.

DATES: This document notifies the public of the semiannual list for the 6-month period starting October 1, 2002, and ending March 30, 2003.

FOR FURTHER INFORMATION CONTACT: For information regarding any of the operational aspects, contact Gregory Olsavsky, Fines, Penalties and Forfeitures Branch, Office of Field Operations, (202) 927-3119. For information regarding any of the legal aspects, contact Willem A. Daman, Office of Chief Counsel, (202) 927-6900.

SUPPLEMENTARY INFORMATION

BACKGROUND

Section 333 of the Uruguay Round Agreements Act (URAA) (Public Law 103-465, 108 Stat. 4809) (signed December 8, 1994), entitled Tex-

tile Transshipments, amended Part V of title IV of the Tariff Act of 1930 by creating a section 592A (19 U.S.C. 1592a), which authorizes the Secretary of the Treasury to publish in the Federal Register, on a semiannual basis, a list of the names of any producers, manufacturers, suppliers, sellers, exporters, or other persons located outside the Customs territory of the United States, when these entities and/or persons have been issued a penalty claim under section 592 of the Tariff Act, for certain violations of the customs laws, provided that certain conditions are satisfied.

The violations of the customs laws referred to above are the following: (1) Using documentation, or providing documentation subsequently used by the importer of record, which indicates a false or fraudulent country of origin or source of textile or apparel products; (2) Using counterfeit visas, licenses, permits, bills of lading, or similar documentation, or providing counterfeit visas, licenses, permits, bills of lading, or similar documentation that is subsequently used by the importer of record, with respect to the entry into the Customs territory of the United States of textile or apparel products; (3) Manufacturing, producing, supplying, or selling textile or apparel products which are falsely or fraudulently labeled as to country of origin or source; and (4) Engaging in practices which aid or abet the transshipment, through a country other than the country of origin, of textile or apparel products in a manner which conceals the true origin of the textile or apparel products or permits the evasion of quotas on, or voluntary restraint agreements with respect to, imports of textile or apparel products.

If a penalty claim has been issued with respect to any of the above violations, and no petition in response to the claim has been filed, the name of the party to whom the penalty claim was issued will appear on the list. If a petition or supplemental petition for relief from the penalty claim is submitted under 19 U.S.C. 1618, in accord with the time periods established by sections 171.2 and 171.61, Customs Regulations (19 CFR 171.2, 171.61) and the petition is subsequently denied or the penalty is mitigated, and no further petition, if allowed, is received within 60 days of the denial or allowance of mitigation, then the administrative action shall be deemed to be final and administrative remedies will be deemed to be exhausted. Consequently, the name of the party to whom the penalty claim was issued will appear on the list. However, provision is made for an appeal to the Secretary of the Treasury by the person named on the list, for the removal of its name from the list. If the Secretary finds that such person or entity has not committed any of the enumerated violations for a period of not less than 3 years after the date on which the person or entity's name was published, the name will be removed from the list as of the next publication of the list.

REASONABLE CARE REQUIRED

Section 592A also requires any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly pro-

duced, manufactured, supplied, sold, exported, or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labeling that are accurate as to its origin. Reliance solely upon information regarding the imported product from a person named on the list is clearly not the exercise of reasonable care. Thus, the textile and apparel importers who have some commercial relationship with one or more of the listed parties must exercise a degree of reasonable care in ensuring that the documentation covering the imported merchandise, as well as its packaging and labeling, is accurate as to the country of origin of the merchandise. This degree of reasonable care must involve reliance on more than information supplied by the named party.

In meeting the reasonable care standard when importing textile or apparel products and when dealing with a party named on the list published pursuant to section 592A of the Tariff Act of 1930, an importer should consider the following questions in attempting to ensure that the documentation, packaging, and labeling is accurate as to the country of origin of the imported merchandise. The list of questions is not exhaustive but is illustrative.

- 1) Has the importer had a prior relationship with the named party?
- 2) Has the importer had any detentions and/or seizures of textile or apparel products that were directly or indirectly produced, supplied, or transported by the named party?
- 3) Has the importer visited the company's premises and ascertained that the company has the capacity to produce the merchandise?
- 4) Where a claim of an origin conferring process is made in accordance with 19 CFR 102.21, has the importer ascertained that the named party actually performed the required process?
- 5) Is the named party operating from the same country as is represented by that party on the documentation, packaging or labeling?
- 6) Have quotas for the imported merchandise closed or are they nearing closing from the main producer countries for this commodity?
- 7) What is the history of this country regarding this commodity?
- 8) Have you asked questions of your supplier regarding the origin of the product?
- 9) Where the importation is accompanied by a visa, permit, or license, has the importer verified with the supplier or manufacturer that the visa, permit, and/or license is both valid and accurate as to its origin? Has the importer scrutinized the visa, permit or license as to any irregularities that would call its authenticity into question?

The law authorizes a semiannual publication of the names of the foreign entities and/or persons. On March 20, 2002, Customs published a Notice in the Federal Register (67 FR 13044) which identified 10 (ten) entities which fell within the purview of section 592A of the Tariff Act of 1930.

592A LIST

For the period ending September 30, 2002, Customs has identified 3 (three) foreign entities that fall within the purview of section 592A of the Tariff Act of 1930. This list reflects no new entities and seven removals to the 10 entities named on the list published on March 20, 2002. The parties on the current list were assessed a penalty claim under 19 U.S.C. 1592, for one or more of the four above-described violations. The administrative penalty action was concluded against the parties by one of the actions noted above as having terminated the administrative process.

The names and addresses of the 3 foreign parties which have been assessed penalties by Customs for violations of section 592 are listed below pursuant to section 592A. This list supersedes any previously published list. The names and addresses of the 3 foreign parties are as follows (the parenthesis following the listing sets forth the month and year in which the name of the company was first published in the Federal Register):

Everlite Manufacturing Company, P.O. Box 90936, Tsimshatsui, Kowloon, Hong Kong (3/01).

Fairfield Line (HK) Co. Ltd., 60-66 Wing Tai Commer., Bldg. 1/F, Sheung Wan, Hong Kong (3/01).

G.P. Wedding Service Centre, Lee Hing Industrial Building, 10 Cheung Yue Street 11th Floor, Cheung Sha Wan, Kowloon, Hong Kong. (10/00)

Any of the above parties may petition to have its name removed from the list. Such petitions, to include any documentation that the petitioner deems pertinent to the petition, should be forwarded to the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

ADDITIONAL FOREIGN ENTITIES

In the March 20, 2002, Federal Register notice, Customs also solicited information regarding the whereabouts of 3 foreign entities, which were identified by name and known address, concerning alleged violations of section 592. Persons with knowledge of the whereabouts of those 3 entities were requested to contact the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

In this document, a new list is being published which contains the name and last known address of one entity. This reflects the removal of two entities from the list of 3 entities published on March 20, 2002.

Customs is soliciting information regarding the whereabouts of the following one foreign entity concerning alleged violations of section 592. Its name and last known address are listed below (the parenthesis following the listing sets forth the month and year in which the name of the company was first published in the Federal Register):

Lai Cheong Gloves Factory, Kar Wah Industrial Building, 8 Leung Yip Street, Room 101, 1-F, Yuen Long, New Territories, Hong Kong. (3/00)

If you have any information as to a correct mailing address for the above-named firm, please send that information to the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, D.C. 20229.

Dated: October 9, 2002.

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

[Published in the Federal Register, October 15, 2002 (67 FR 63729)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, October 9, 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.

MODIFICATION OF RULING LETTER AND TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF NEOPRENE
LUMBAR SUPPORT MERCHANDISE

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

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to the tariff classification of certain neoprene lumbar support merchandise.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling letter related to the classification of certain neoprene lumbar support merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Similarly, Customs is revoking any treatment previously accorded by it to substantially identical merchandise that is contrary to the position set forth in this notice.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

In HQ 952568, dated January 28, 1993, Customs classified a neoprene lumbar support article (style 6902) in subheading 6212.90.0030, HTSUSA, which provided for brassieres, girdles, corsets, braces, suspenders, garters and similar articles. Customs has reviewed the ruling and, with regard to the classification of this article, has determined that the ruling is in error. Accordingly, we intend to modify HQ 952568, as we find that the neoprene lumbar support article (style 6902) is classifiable within subheading 6307.90.9889, HTSUSA, which provides for an “other made up article * * * other * * * other.”

Pursuant to Customs obligations, a notice of proposed modification and/or revocation was published in the CUSTOMS BULLETIN of September 4, 2002, Volume 36, Number 36. No comments were received.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs is modifying a ruling letter relating to the classification of certain neoprene lumbar support merchandise. Although in this notice Customs is specifically referring to Headquarters Ruling Letter (HQ) 952568, dated January 28, 1993, this notice covers any rulings on such merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the issues subject to this notice, should have advised Customs during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs 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 An-

notated (HTSUSA). Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's failure to advise Customs of the substantially identical transactions or of a specific ruling not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

Dated: October 7, 2002.

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

[Attachments]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, October 7, 2002.
CLA-2 RR:CR:TE 965743 TF
Category: Classification
Tariff No. 6307.90.9889

DONALD L. MANN
DURO-MED INDUSTRIES, INC.
*301 Lodi Street
Hackensack, NJ 07602*

Re: Modification HQ 952568; classification of Neoprene Sacro-Support.

DEAR MR. MANN:

In Headquarters Ruling Letter HQ 952568, dated January 28, 1993 issued to you, Customs classified a Neoprene Sacro-Support in subheading 6212.90.0030, Harmonized Tariff Schedules of the United States Annotated, which provides for "brassieres, girdles, corsets, braces, suspenders, garters and similar articles."

We have reviewed this ruling and found it to be in error. Therefore, this ruling modifies HQ 952568.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation and/or modification was published on September 4, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 36. No comments were received in response to the notice.

Facts:

Style 6902, a back support, described as a "Neoprene Sacro-Support", wraps around the lower back; contains an adjustable criss-cross rear design; and has a Velcro® means of closure. Style 6902 is manufactured in sizes small, medium, and large. The rear of the back support measures ten inches in length while the front of the article measures six inches in length.

The catalog markets Style 6902 as a back support in a section labeled "Knee Immobilizers, Neoprene Rubber Supports, and describes the articles as follows:

Comfort, Support, Reflects Body Heat

* * * * *
Improves Circulation, Reduces Edema, Protects injured Areas

Issue:

Whether the neoprene back support (Style 6902) is classifiable in heading 6212, 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 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).

Legal note 2 to Chapter 62 provides that Chapter 62 does not cover "orthopedic appliances, surgical belts, trusses or the like (heading 9021)." EN 62.12(7) includes certain belts. We note that EN 62.12 provides for "articles of a kind designed for wear as body-supporting garments or as supports for certain other articles of apparel, and parts thereof." The exemplars listed within EN 62.12 include, *inter alia*:

- (1) Brasseries of all kinds.
- (2) Girdles and panty-girdles.
- (3) Corselettes (combinations of girdles or panty-girdles and brasseries).
- (4) Corsets and corset-belts. These are usually reinforced with flexible metallic, whalebone or plastic stays, and are generally fastened by lacing or by hooks.
- (5) Suspender-belts, hygienic belts, suspensory bandages, suspender jock-straps, braces, suspenders, garters, shirt-sleeve supporting armbands and armlets.
- (6) Body belts for men (including those combined with underpants)
- (7) Maternity, post-pregnancy or similar supporting or corrective belts, not being orthopedic appliances of heading 90.21 (see Explanatory Note to that heading).

This EN also provides that articles of this heading may incorporate fittings and accessories of non-textile materials (e.g., metal, rubber, plastics or leather), and may be made of any textile material including knitted or crocheted fabrics (whether or not elastic).

In HQ 952390, dated December 16, 1992, Customs considered headings 6212 and 6307 for classifying the "X-Tend Back Protector", a stretch mesh fabric back support with a hook and loop closure system. In making its determination that the merchandise was not classified in heading 6212, Customs referred to HQ 952201, dated October 26, 1992, which was a classification ruling on similar lumbar support belts. Customs noted:

The EN to heading 6212, HTSUSA, are clear in designating these articles as body-support garments or supports for other kind of apparel. The distinction centers on the fact that while the articles enumerated in the EN to heading 6212, HTSUSA, are principally used or worn as garments or garment accessories, those of heading 6307, HTSUSA, are not.

Stated simply, merchandise similar to the subject articles, is classifiable as belts of 6212, HTSUSA, if it functions with a dual purpose, in providing:

1. support for the body, or support for certain articles of apparel; and
2. construction that allows the belt to be worn comfortably next to the wearer's skin, under other garments.

This is the case for example, for such articles such as the brassieres, girdles, corset-belts, suspender-belts, hygienic belts, corrective belts, etc.

In the instant case, the subject merchandise is distinguishable from the enumerated articles of heading 6212, HTSUSA. Although style 6902 is designed to be worn next to the wearer's skin, it is neither a garment nor a garment-supporting article. Rather, it is marketed as a back support that reflects body heat, improves circulation, protects injured areas, and acts as a comfort to the wearer. Further, its principle use is to provide relief from pain in conjunction with supporting the wearer's lower back as a type of brace.

Therefore, as it is not *ejusdem generis* with the body supporting garments of heading 6212, HTSUSA, and since there are no headings that specifically provide for the goods, it is classifiable in heading 6307, HTSUSA, as other made up articles. Further, Customs has previously classified substantially similar neoprene lumbar support merchandise, which

was designed to provide pain relief by heat retention purposes in heading 6307, HTSUSA. See HQ 965061, dated August 12, 2002

As style 6902 is substantially similar to the articles of HQ 965061, it is also classified as an “other made up article * * * other * * * other” within subheading 6307.90.9889, HTSUSA.

Holding:

HQ 952568, dated January 28, 1993, is hereby modified. At GRI 1, the Neoprene Sacro-Support” (Style 6902) is classified as an “other made up article * * * other * * * other” within subheading 6307.90.9889, HTSUSA. The general column one duty rate is seven 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.

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

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

PROPOSED MODIFICATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO TARIFF
CLASSIFICATION OF SOLAR CAPS

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

ACTION: Notice of proposed modification of ruling letter and revocation of treatment relating to tariff classification of solar caps.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling letter pertaining, in pertinent part, to the tariff classification of certain solar caps under the Harmonized Tariff Schedule of the United States (“HTSUS”). Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before November 22, 2002.

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

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch, (202) 572-8780.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the classification of certain solar caps. Although in this notice Customs is specifically referring to one ruling, NY H88002, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the

importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY H88002 dated February 27, 2002, set forth as Attachment A to this document, in pertinent part, Customs classified certain solar caps in subheading 8541.40, HTSUS, as: "Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes."

It is now Customs position that the solar caps are classified in subheading 9405.92.00, HTSUS, as: "Lamps and lighting fittings * * * and parts thereof, not elsewhere specified or included * * *. * * * Parts: * * * Of plastics." Proposed HQ 965852, modifying NY H88002, is set forth as Attachment B.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify NY H88002 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 965852. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: October 3, 2002.

GAIL A. HAMILL,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, February 27, 2002.
CLA-2-94: RR:NC:2:227 H88002
Category: Classification; Marking
Tariff No. 9405.40.8000

MR. ROBERT E. BURKE
BARNES, RICHARDSON & COLBURN
303 East Wacker Drive, Suite 1100
Chicago, IL 60601

Re: The tariff classification, country of origin marking and status under the North American Free Trade Agreement (NAFTA), of solar outdoor lights from Mexico; Article 509.

DEAR MR. BURKE:

In your letter dated January 30, 2002, on behalf of Intermatic, Incorporated, you requested a ruling on the status of solar outdoor lights from Mexico under the NAFTA.

The articles in question are identified as solar outdoor lights used in a garden or around a home. Each solar light is comprised of a solar cap component from China and components produced in Mexico. The solar cap is made of a solar light panel connected to a light emitting diode (LED) mounted in a plastic housing. The cap imported into Mexico is classified under subheading 8541.40. The components manufactured in Mexico are produced by molding from plastic material such as pellets or chips and include the tiers, coupling, reflector, riser, globe and ground stake. The Mexican parts and a solar cap are combined in a package for importation into the United States as a complete but unassembled solar outdoor light. The applicable tariff provision for the solar outdoor lights will be 9405.40.8000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for other electric lamps and lighting fittings, other. The rate of duty will be 3.9 percent ad valorem. Each of the non-originating materials used to make the solar outdoor lights has satisfied the changes in tariff classification required under HTSUSA General Note 12(t)/94. The solar outdoor lights will be entitled to a free rate of duty under the NAFTA upon compliance with all the applicable laws, regulations, and agreements.

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134) implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

The country of origin marking requirements for a "good of a NAFTA country" are also determined in accordance with Annex 311 of the North American Free Trade Agreement ("NAFTA"), as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat 2057) (December 8, 1993) and the appropriate Customs Regulations. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, Customs Regulations. The marking requirements of these goods are set forth in Part 134, Customs Regulations.

Section 134.45(a)(2) of the regulations, provides that a "good of a NAFTA country" may be marked with the name of the country of origin in English, French or Spanish. Section 134.1(g) of the regulations, defines a "good of a NAFTA country" as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules.

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

With regard to the permanency of a marking, section 134.41(a), Customs Regulations (19 CFR 134.41(a)), provides that as a general rule marking requirements are best met by marking worked into the article at the time of manufacture. For example, it is suggested that the country of origin on metal articles be die sunk, molded in, or etched. However, section 134.44, Customs Regulations (19 CFR 134.44), generally provides that any mark-

ing that is sufficiently permanent so that it will remain on the article until it reaches the ultimate purchaser unless deliberately removed is acceptable. Applying the NAFTA Marking Rules set forth in Part 102 of the regulations to the facts of this case, we find that the solar outdoor lights imported in a complete but disassembled condition are goods of Mexico for marking purposes.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 CFR Part 181).

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 George Kalkines at 646-733-3028.

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 965852 GOB
Category: Classification
Tariff No. 9405.92.00

ROBERT E. BURKE
BARNES, RICHARDSON & COLBURN
303 East Wacker Drive
Suite 1100
Chicago, IL 60601

Re: Modification of H88002; Solar Caps.

DEAR MR. BURKE:

This is with respect to NY H88002 dated February 27, 2002, which was issued to you on behalf of Intermatic Incorporated by the Director, National Commodity Specialist Division, in pertinent part, with respect to the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of outdoor solar lights and a solar cap.

Facts:

In NY H88002, the goods were described as follows:

The articles in question are identified as solar outdoor lights used in a garden or around a home. Each solar light is comprised of a solar cap component from China and components produced in Mexico. The solar cap is made of a solar light panel connected to a light emitting diode (LED) mounted in a plastic housing***. The components manufactured in Mexico are produced by molding from plastic material such as pellets or chips and include the tiers, coupling, reflector, riser, globe and ground stake. The Mexican parts and a solar cap are combined in a package for importation into the United States as a complete but unassembled solar outdoor light.

Customs' examination of samples revealed that, in addition to the solar panel and LED, the largest sample contained a bulb as well as a complete board with components attached. The articles have plastic housings.

In NY H88002, Customs classified the solar caps in subheading 8541.40, HTSUS, and the outdoor lights in subheading 9405.40.80, HTSUS. Customs now believes the classification of the solar caps to be in error. This ruling sets forth the correct classification of the solar caps.

Issue:

What is the classification under the HTSUS of the solar caps?

Law and Analysis:

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

The Harmonized Commodity Description and Coding System Explanatory Notes (“EN’s”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN’s provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The HTSUS provisions under consideration are as follows:

8541	Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezoelectric crystals; parts thereof:
8541.40	Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes:
*	* * * * *
9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included: Parts:
9405.92.00	Of plastics

EN 85.41(B) discusses photosensitive semiconductor devices, including photovoltaic cells. It provides in pertinent part as follows:

The heading also covers solar cells, whether or not assembled in modules or made up into panels. However the heading **does not cover** panels or modules equipped with elements, however simple, (for example, diodes to control the direction of the current), which supply the power directly to, for example, a motor; an electrolyser (**heading 85.01**).

[All emphasis in original.]

We find that, when imported into the United States, the subject solar caps contain elements other than the photosensitive semiconductor devices which are within the scope of the EN exclusion described above. The solar caps contain both photosensitive cells and light emitting diodes, as well as part of the plastic lamp which contains at least the electronic components for connecting the cells and diodes to battery housings. *See generally* HQ 962957 dated October 23, 2000. Therefore, we conclude that they are not classified in heading 8541, HTSUS. We find that the solar caps are described in the heading text of heading 9405, HTSUS, because they are parts of lamps not elsewhere specified or included. Accordingly, we determine that the solar caps are classified in subheading 9405.92.00, HTSUS.

Holding:

The solar caps are classified in subheading 9405.92.00, HTSUS, as: “Lamps and lighting fittings * * * and parts thereof, not elsewhere specified or included * * *. * * * Parts: * * * Of plastics.”

Effect on Other Rulings:

NY H88002 is modified.

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

PROPOSED REVOCATION OF RULING LETTERS AND
TREATMENT RELATING TO THE TARIFF CLASSIFICATION
OF SCAFFOLDING PLANKS

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

ACTION: Notice of proposed revocation of tariff classification ruling letters and treatment relating to the classification of scaffolding planks.

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 two rulings relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain scaffolding planks. 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 November 22, 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, 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: Timothy Dodd, Textiles Branch: (202) 572-8819.

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 two rulings relating to the tariff classification of certain scaffolding planks. Although in this notice Customs is specifically referring to two New York Ruling Letters, 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 two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, an internal advice memorandum or decision or a protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical 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 HTSUS. 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 importers or their agents for importations of merchandise subsequent to this notice.

In New York Ruling Letter (NY) F85424, dated April 17, 2000, and NY 810686, dated June 14, 1995, the Customs Service classified scaffolding planks under subheading 4421.90.9840, HTSUSA, which provides for "Other articles of wood: Other: Other: Other, Other." NY F85424 is set forth as "Attachment A" and NY 810686 is set forth as "Attachment B" to this document.

It is now Customs determination that the proper classification for the scaffolding planks is subheading 4418.90.4590, HTSUSA, which provides for "Builders' joinery and carpentry of wood, including cellular wood panels and assembled parquet panels; shingles and shakes: Other: Other, Other." Proposed Headquarters Ruling Letter (HQ) 965886 revoking NY F85424 is set forth as "Attachment C" to this document. Proposed HQ 965887 revoking NY 810686 is set forth as "Attachment D" to this document.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY F85424 and NY 810686 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the

analyses set forth in Proposed HQ 965886 and Proposed HQ 965887, *supra*. 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: October 3, 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 17, 2000.
CLA-2-44:RR:NC:2:230 F85424
Category: Classification
Tariff No. 4421.90.9840

MR. LOUIS RENY
RENYCO INC.—DOWELOC™
175 A Alexandre, 2 etage, C.P 1080
Thurso, Quebec J0X 3B0 Canada

Re: The tariff classification of Doweloc™ scaffolding planks from Canada.

DEAR MR. RENY:

In your letter dated February 23, 2000, which was received in our office on April 4, 2000, you requested a tariff classification ruling.

The ruling was requested on an assembled panel that will be used as a scaffolding plank in the construction industry. A diagram and a description of the assembly process were submitted.

The panel consists of two pieces of 2 x 3 (nominal) spruce, pine or fir (SPF) on the outer edges and three pieces of 1.5" x 1.5" laminated veneer lumber (LVL) in the center. The five vertically assembled pieces of wood are held together with aluminum or steel dowels which are inserted across the width of the panel at 24 inch intervals. The use of metal dowels for assembly in this manner is referred to as the Doweloc™ process. The overall measurements of the panel are 9.5 inches wide, 1.5 inches thick and 9 to 16 feet long.

The applicable subheading for the assembled Doweloc™ scaffolding plank will be 4421.90.9840, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for other articles of wood; other; other. The general rate of duty will be 3.3 percent ad valorem.

Articles classifiable in subheading 4421.90.9840, HTSUSA, are presently not subject to the requirements of the U.S./Canadian Softwood Lumber Agreement of 1996.

The holding set forth above applies only to the specific factual situation and merchandise description as identified in the ruling request. This position is clearly set forth in 19 CFR 177.9(b)(1). This section states that a ruling letter is issued on the assumption that all of the information furnished in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

This ruling is being issued under the assumption that the subject goods, in their condition as imported into the United States, conform to the facts and the description as set forth both in the ruling request and in this ruling. In the event that the facts or merchandise are modified in any way, you should bring this to the attention of Customs and you

should resubmit for a new ruling in accordance with 19 CFR 177.2. You should also be aware that the material facts described in the foregoing ruling may be subject to periodic verification by the Customs Service.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Paul Garretto at 212-637-7009.

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

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, June 14, 1995.

CLA-2-44:S:N:N3:230 810686
Category: Classification
Tariff No. 4421.90.9840

MS. MARY ANNE O'BOYLE
HOGLUND AND MOYLES, INC.
P.O. Box 66373
O'Hare International Airport
Chicago, IL 60666

Re: The tariff classification of a wooden scaffold platform from Hungary.

DEAR MS. O'BOYLE:

In your letter dated May 16, 1995 you provided additional information for a tariff classification ruling requested on February 1, 1995. The request was made on behalf of the importer Krause Ladder Systems.

The product to be classified is a "Combi-Platform." Descriptive literature and a value breakdown were submitted. The product consists of a wooden board framed with metal. It measures approximately 17 inches by 58 inches. Four metal brackets are attached to the metal frame and these brackets are designed to connect to two ladders. According to the value breakdown submitted, the value of the wood component is five times greater than the value of the metal components combined. The platform when used with the ladders forms a scaffold. The ladders are supplied by the importer and apparently are not being imported with the platform. The descriptive literature shows that the ladders are made in the United States.

The applicable subheading for the wooden scaffold platform will be 4421.90.9840, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for other articles of wood. The duty rate will be 4.7 percent ad valorem.

Articles classifiable under subheading 4421.90.9840, HTSUSA, which are products of Hungary are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that, unless excepted, every article of foreign origin or its container must be legibly, permanently and conspicuously marked to indicate the English name of the country of origin to an ultimate purchaser in the United States. Since the imported scaffold platforms will be incorporated with ladders marked "Made In U.S.A.," the imported product should be marked with an appropriate phrase such as "Platforms Made in Hungary" in order to avoid confusing the ultimate purchaser.

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

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

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

[ATTACHMENT C]

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

CLA-2 RR:CR:TE 965886 ttd
Category: Classification
Tariff No. 4418.90.4590

MR. LOUIS RENY
RENYCO INC.—DOWELOC™
*175 A Alexandre, 2 etage, C.P. 1080
Thurso, Quebec J0X 3B0 Canada*

Re: Revocation of New York Ruling Letter F85424; Doweloc™ Scaffolding Planks from Canada.

DEAR MR. RENY:

This letter is pursuant to Customs reconsideration of New York Ruling Letter (NY) F85424, dated April 17, 2000, regarding classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of Doweloc™ scaffolding planks from Canada. After review of NY F85424, Customs has determined that the classification of the scaffolding planks considered under subheading 4421.90.9840, HTSUSA, was incorrect.

Facts:

In NY F85424, Customs described the merchandise as follows:

The panel consists of two pieces of 2 x 3 (nominal) spruce, pine or fir (SPF) on the outer edges and three pieces of 1.5" x 1.5" laminated veneer lumber (LVL) in the center. The five vertically assembled pieces of wood are held together with aluminum or steel dowels which are inserted across the width of the panel at 24 inch intervals. The use of metal dowels for assembly in this manner is referred to as the Doweloc™ process. The overall measurements of the panel are 9.5 inches wide, 1.5 inches thick and 9 to 16 feet long.

In NY F85424, Customs classified the subject scaffolding planks under subheading 4421.90.9840, HTSUSA, which provides for "Other articles of wood: Other: Other: Other: Other."

Issue:

What is the proper classification of the subject merchandise?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 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 * * *." In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While

neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. *See* T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

Chapter 44, HTSUS, provides for, among other things, wood and articles of wood. This chapter is structured so that less processed wood appears at the beginning of the chapter followed by more advanced wood in later headings within the same chapter. Thus, for example, heading 4403, HTSUS, is a general provision for wood in the rough, whether or not stripped of bark or sapwood or roughly squared, and heading 4421, HTSUS, is a basket provision for more advanced articles of wood that cannot be classified elsewhere in the chapter.

Regarding the subject merchandise, the competing headings under consideration are heading 4407, HTSUSA, which covers wood sawn or chipped lengthwise; heading 4418, HTSUSA, which covers builders' joinery and carpentry of wood; and heading 4421, HTSUSA, which covers other articles of wood. As heading 4407 resides near the beginning of chapter 44, it reflects coverage of a relatively basic category of lumber products in relation to either heading 4418 or 4421, which residing closer to the end of the chapter, reflect coverage of a relatively more advanced category of products.

Heading 4407, HTSUSA, provides for "Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm." As the subject merchandise is made of five vertically assembled pieces of wood (two S-P-F pieces on the outside edges and 3 LVL pieces in the center) held together with aluminum or steel dowels, it is advanced beyond the sawn wood of heading 4407, HTSUSA. Therefore, the scaffolding planks are precluded from classification in heading 4407, HTSUSA.

Heading 4418, HTSUSA, provides for, among other things, builder's joinery and carpentry of wood. The EN to heading 4418, HTSUS, state in pertinent part:

This heading applies to woodwork, including that of wood marquetry or inlaid wood, used in the construction of any kind of building, etc., in the form of assembled goods or as recognizable unassembled pieces (e.g., prepared with tenons, mortises, dovetails or other similar joints for assembly), whether or not with their metal fittings such as hinges, locks, etc.

The term "**joinery**" applies more particularly to builders' fittings (such as doors, windows, shutters, stairs, door or window frames), whereas the term "**carpentry**" refers to woodwork (such as beams, rafters and roof struts) used for structural purposes or in scaffoldings, arch supports, etc., and includes assembled shuttering for concrete constructional work. * * *

As referenced above, the EN to heading 4418 specifically identifies scaffolding as being within the scope of the heading. Given that the subject merchandise is processed beyond the sawn wood of heading 4407, HTSUSA, and is specifically named in the EN to heading 4418, it is properly classified in heading 4418, HTSUSA. *See* HQ 965693, dated August 5, 2002, wherein Customs classified edge-glued, finger-jointed planks with steel rods in subheading 4418.90.4590, HTSUSA.

We note that heading 4421, HTSUSA, which provides for "Other articles of wood," is a basket provision for more advanced articles of wood that cannot be classified elsewhere in the chapter. As the subject scaffolding planks are more specifically provided for in heading 4418, HTSUSA, they are precluded from classification in heading 4421, HTSUSA.

Holding:

The engineered wood scaffolding planks are classified in subheading 4418.90.4590, HTSUSA, which provides for "Builders' joinery and carpentry of wood, including cellular wood panels and assembled parquet panels; shingles and shakes: Other: Other." The general one column rate of duty is 3.2 percent *ad valorem*.

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 965887 ttd
Category: Classification
Tariff No. 4418.90.4590

MARY ANNE O'BOYLE
HOGLUND AND MOYLES, INC.
P.O. Box 66373
O'Hare International Airport
Chicago, IL 60666

Re: Proposed Revocation of New York Ruling Letter 810686; Wooden Scaffold Platform from Hungary.

DEAR Ms. O'BOYLE:

This letter is pursuant to Customs reconsideration of New York Ruling Letter (NY) 810686, dated June 14, 1995, regarding classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a wooden scaffolding platform from Hungary. After review of NY 810686, Customs has determined that the classification of the scaffolding platform considered under subheading 4421.90.9840, HTSUSA, was incorrect.

Facts:

In NY 810686, Customs described the merchandise, in pertinent part, as follows:

The product to be classified is a "Combi-Platform." * * * The product consists of a wooden board framed with metal. It measures approximately 17 inches by 58 inches. Four metal brackets are attached to the metal frame and these brackets are designed to connect to two ladders. * * * The platform when used with the ladders forms a scaffold. The ladders are supplied by the importer and apparently are not being imported with the platform. * * *

In NY 810686, Customs classified the subject scaffolding platform under subheading 4421.90.9840, HTSUSA, which provides for "Other articles of wood: Other: Other: Other: Other."

Issue:

What is the proper classification of the subject merchandise?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 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 * * *." In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

Chapter 44, HTSUS, provides for, among other things, wood and articles of wood. This chapter is structured so that less processed wood appears at the beginning of the chapter followed by more advanced wood in later headings within the same chapter. Thus, for example, heading 4403, HTSUS, is a general provision for wood in the rough, whether or not stripped of bark or sapwood or roughly squared, and heading 4421, HTSUS, is a basket provision for more advanced articles of wood that cannot be classified elsewhere in the chapter.

Regarding the subject merchandise, the competing headings under consideration are heading 4407, HTSUSA, which covers wood sawn or chipped lengthwise; heading 4418,

HTSUSA, which covers builders' joinery and carpentry of wood; and heading 4421, HTSUSA, which covers other articles of wood. As heading 4407 resides near the beginning of chapter 44, it reflects coverage of a relatively basic category of lumber products in relation to either heading 4418 or 4421, which residing closer to the end of the chapter, reflect coverage of a relatively more advanced category of products.

Heading 4407, HTSUSA, provides for "Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm." As the subject merchandise is a wooden board framed with metal having four attached metal brackets designed to connect to two ladders, it is advanced beyond the sawn wood of heading 4407, HTSUSA. Therefore, the scaffolding platform is precluded from classification in heading 4407, HTSUSA.

Heading 4418, HTSUSA, provides for, among other things, builder's joinery and carpentry of wood. The EN to heading 4418, HTSUS, state in pertinent part:

This heading applies to woodwork, including that of wood marquetry or inlaid wood, used in the construction of any kind of building, etc., in the form of assembled goods or as recognizable unassembled pieces (e.g., prepared with tenons, mortises, dovetails or other similar joints for assembly), whether or not with their metal fittings such as hinges, locks, etc.

The term "**joinery**" applies more particularly to builders' fittings (such as doors, windows, shutters, stairs, door or window frames), whereas the term "**carpentry**" refers to woodwork (such as beams, rafters and roof struts) used for structural purposes or in scaffoldings, arch supports, etc., and includes assembled shuttering for concrete constructional work. * * *

As referenced above, the EN to heading 4418 specifically identifies scaffolding as being within the scope of the heading. Given that the subject merchandise is processed beyond the sawn wood of heading 4407, HTSUSA, and is specifically named in the EN to heading 4418, it is properly classified in heading 4418, HTSUSA. See HQ 965693, dated August 5, 2002, wherein Customs classified edge-glued, finger-jointed planks with steel rods in subheading 4418.90.4590, HTSUSA.

We note that heading 4421, HTSUSA, which provides for "Other articles of wood," is a basket provision for more advanced articles of wood that cannot be classified elsewhere in the chapter. As the subject scaffolding planks are more specifically provided for in heading 4418, HTSUSA, they are precluded from classification in heading 4421, HTSUSA.

Holding:

The subject merchandise is classified in subheading 4418.90.4590, HTSUSA, which provides for "Builders' joinery and carpentry of wood, including cellular wood panels and assembled parquet panels; shingles and shakes: Other: Other, Other." The general one column rate of duty is 3.2 percent *ad valorem*.

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

PROPOSED REVOCATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
CLASSIFICATION OF WOMAN'S KNIT GARMENT

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 classification of a woman's knit garment.

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 relating to the tariff classification of a woman's knit garment under the Harmonized Tariff Schedule of the United States (HTSUS), and to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before November 22, 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, 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: Ann Segura Minardi, Textile Branch, and (202) 572-8822.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended and related laws. Two new concepts, which emerge from the law, are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as

amended, (19 U.S.C. section 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a woman's knit garment. Although in this notice, Customs is specifically referring to one ruling New York Ruling Letter (NY) I82773, dated June 7, 2002, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this period.

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

In NY I82773, dated June 7, 2002, Customs ruled that a woman's knit garment was classified as a cardigan under subheading 6110.30.3055, HTSUS. This ruling letter is set forth as "Attachment A" to this document. Since the issuance of this ruling, Customs has reviewed the classification of this item and has determined that the cited ruling is in error. Accordingly, we intend to revoke NY I82773, as we find that the woman's knit garment is accurately described as a beach robe, which is classifiable in heading 6108, HTSUS, which provides for "Women's or girl's slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted".

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY I82773, dated June 7, 2002, 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 965748 (see "Attachment B" to this document).

Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: October 3, 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, June 7, 2002.
CLA-2-61 :RR:NC:TA:359 I82773
Category: Classification
Tariff No. 6110.30.3055

MS. KIM YOUNG
BDP INTERNATIONAL
2721 Walker Avenue N.W.
Grand Rapids, MI 49504

Re: The tariff classification of a woman's cardigan from various countries.

DEAR MS. YOUNG:

In your letter dated May 29, 2000, you requested a classification ruling, on behalf of Meijer Distribution. As requested, your sample is being returned to you.

Your sample, item number 713754, is a woman's cardigan constructed from 50% cotton, 50% polyester openwork knitted net fabric. The garment features a round neckline, short sleeves, a full front opening with a zipper closure, and a hemmed bottom.

The applicable subheading for the cardigan will be 6110.30.3055, Harmonized Tariff Schedule of the United States (HTS), which provides for sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: of man-made fibers: other: other: other: other: women's. The general rate of duty will be 32.4% ad valorem.

You have indicated in your letter that the fabric of the cardigan is a blend of 50% polyester, 50% cotton. Garments that are claimed to be constructed from such a blend are subject, upon importation, to laboratory analysis by the U.S. Customs Service to verify the actual weight of the component fibers. Please be advised that a slight variation from the above stated fiber content may affect the classification of the subject garments.

The cardigan falls within textile category designation 639. Based upon international textile trade agreements products of different countries may be 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 Mike Crowley at 646-733-3049.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

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

CLA-2 RR:CR:TE 965748 ASM
Category: Classification
Tariff No. 6108.92.0030

MS. KIM YOUNG
BDP INTERNATIONAL, INC.
GLOBAL LOGISTICS & TRANSPORTATION
2721 Walker Avenue N.W.
Grand Rapids, MI 49504

Re: Request for reconsideration of classification and revocation of NY I82773; Woman's Knit Garment.

DEAR MS. YOUNG:

This is in response to a letter, dated June 20, 2002, on behalf of Meijer Distribution, Inc., requesting reconsideration of Customs New York Ruling Letter (NY) I82773, dated June 7, 2002, which involved the classification of a women's garment under the Harmonized Tariff Schedule of the United States Annotated. A sample was submitted to this office for examination.

Facts:

The submitted garment, item number 713754, is constructed from 50 percent cotton and 50 percent polyester knitted fabric. The garment is white and features openwork knit fabric that resembles netting interspersed with squares. The garment also has a round neckline, short sleeves, a full front opening with zipper closure and decorative pull-tab. The bottom edge of the garment has a turned hem. The neckline and shoulder seams have been edged with white knit piping. The sleeves feature a turned cuff with the same white knit piping sewn approximately 2 inches above the lower edge of the cuff. The importer indicates that the garment also includes a logo tag of "Wave Zone"™, sewn to the inside of the neckline. The importer, Meijer Distribution, Inc., asserts that this is a private label name for apparel sold exclusively in the swimwear department. The importer further claims that the garment will be marketed with swimwear and sold with the intention of being a cover-up for use with swimwear.

In NY I82773, dated June 7, 2002, Customs classified the item number 713754, as a woman's cardigan in subheading 6110.30.3055, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted. You have asserted, on behalf of your client, that the article should be classified, as a beach robe, in heading 6108, HTSUSA.

Issue:

What is the proper classification for the merchandise?

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1

provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 6108, HTSUSA, covers “Women’s or girl’s slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted”. The EN to heading 6108 specifically notes that the reference to “bathrobes” in the heading is intended to include “beachrobes”. In addition, the *Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories* (“Textile Guidelines”), CIE 13/88, provides the following guidance regarding the characteristics of dressing gowns, including bath robes, beach robes, lounging robes and similar apparel:

Dressing gowns, including bath robes, beach robes, lounging robes and similar apparel. Physical characteristics which are expected in garments included in this category include:

- 1) Looseness.
- 2) Length, reaching to the mid-thigh or below.
- 3) Usually a full or partial front opening, with or without a means of closure.
- 4) Sleeves are usually, but not necessarily, present.

The subject article has been designed to have a very loose/boxy fit. The length of the garment falls from the shoulder to the mid-thigh, there is a full zippered opening, and the garment has short sleeves. As such, the garment bears all four characteristics, as set forth in the Textile Guidelines, for beach robes.

In previous rulings, Customs has relied on the decision in *Mast Industries v. United States*, 9 CIT 549, 552 (1985), aff’d, 786 F.2d 1144 (1986), in which the Court noted that “the merchandise itself may be strong evidence of use.” In this instance, the subject merchandise has been designed to provide a fashionable cover-up over a swimsuit. In the instant case, we note that the fabric used to construct the subject garment is not particularly absorbent. However, the openwork net design is breathable and allows the suit to air dry more efficiently. Although Customs has previously emphasized the absorbent nature of some beach robes, absorbency is not the only criteria for beachwear. The term “beachwear” is defined in Mary Brooks Picken’s, *A Dictionary of Costume and Fashion, Historic and Modern*, as “All clothes or accessories designed for wear on beach or in water.” Furthermore, there is evidence that the garment is marketed, advertised, and sold exclusively with swimwear.

In view of the foregoing, it is Customs decision that the garment is properly classified as a beach robe in heading 6108, HTSUSA. This is consistent with our decision in the following Customs rulings: HQ 088266, dated March 22, 1991; HQ 958860, dated November 29, 1996; NY PD A86368, dated August 16, 1996; NY C81781, dated December 12, 1997. In particular, Customs has issued rulings classifying women’s garments of open crochet knit fabric or finely knit mesh fabric as beach robes classifiable in heading 6108, HTSUSA. See, respectively, NY H80783, dated June 20, 2002, and PD G82905, dated November 16, 2000.

It is also Customs decision that NY I82773, dated June 7, 2002, incorrectly classified the subject garment as a woman’s cardigan in subheading 6110.30.3055, HTSUSA.

Holding:

NY I82773, dated June 7, 2002, is hereby revoked.

The subject merchandise, identified as item number 713754, is correctly classified in subheading 6108.92.0030, HTSUSA, which provides for, “Women’s or girls’ slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted: Other: Of man-made fibers, Other: Women’s”. The general column one duty rate is 16.2 percent *ad valorem*. The textile category is 650. We note that textile category code 650 has been fully integrated. Accordingly, there are no applicable quota/visa requirements for the products of World Trade Organization (“WTO”) members. The textile category code only applies to merchandise produced in non-WTO member countries.

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 that the importer, by copy of this letter, be advised to 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 (CEEB) 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 applicable to textile merchandise, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

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