

# U.S. Customs Service

## *General Notices*

### COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 9-2002)

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

SUMMARY: The copyrights, trademarks, and trade names recorded with the U.S. Customs Service during the month of September 2002. The last notice was published in the CUSTOMS BULLETIN on October 2, 2002.

Corrections or information to update files may be sent to U.S. Customs Service, IPR Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Joanne Roman Stump, Chief, Intellectual Property Rights Branch, (202) 572-8710.

Dated: October 18, 2002.

JOANNE ROMAN STUMP  
*Chief,*  
*Intellectual Property Rights Branch.*

The list of recordations follow:

10/10/2002  
09:55:34

U.S. CUSTOMS SERVICE  
IPR RECORDATIONS ADDED IN SEPTEMBER 2002

PAGE 1  
DETAIL

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TMM OR MSK	ORACLE OF SEASONS/THE LEGEND OF	OWNER NAME	RES
COP0200176	20020904	20220904	THE LEGEND OF ZELDA: ORACLE OF SEASONS/THE LEGEND OF		NINTENDO OF AMERICA INC.	N
COP0200177	20020904	20220904	FLOWER Q-1		KENNETH CHONG	N
COP0200178	20020904	20220904	FLOWER Q-2		KENNETH CHONG	N
COP0200179	20020904	20220904	FLOWER Q-3		KENNETH CHONG	N
COP0200180	20020904	20220904	ANGEL J-2		KENNETH CHONG	N
COP0200181	20020904	20220904	EAGLE SOCCER Q-7		KENNETH CHONG	N
COP0200182	20020904	20220904	MARIA & ANGEL Q-6		KENNETH CHONG	N
COP0200183	20020904	20220904	SOCCER Q-5		KENNETH CHONG	N
COP0200184	20020904	20220904	SOCCER BOY J-1		KENNETH CHONG	N
COP0200185	20020904	20220904	PRINCESS T-1		KENNETH CHONG	N
COP0200186	20020904	20220904	PRINCESS T-2		KENNETH CHONG	N
COP0200187	20020904	20220904	TIGER IN THE BAMBOO (203BT)		KENNETH CHONG	N
COP0200188	20020905	20220905	COMUN BY COQUICO		COQUICO INC.	N
COP0200189	20020909	20220909	NEWTWO RETURNS		NINTENDO OF AMERICA INC.	N
COP0200190	20020911	20220911	ARKNIGHTS CORPORATION		ARKNIGHTS CORPORATION	N
COP0200191	20020911	20220911	MOVING MEN PACKAGE		TELEBANKS OF HAWAII, LIMITED	N
COP0200192	20020918	20220918	16K YELLOW-GOLD CHARM/PENDANT, HEART		MAUI DIVERS OF HAWAII, LIMITED	N
COP0200193	20020918	20220918	LEOPARD BAR		KATHRINE BAUMANN	N
COP0200194	20020918	20220918	STARRY NIGHT BLUE		KATHRINE BAUMANN	N
COP0200195	20020920	20220920	COMBOY BEBOP "THE AFTER"		KATHRINE BAUMANN	N
COP0200196	20020920	20220920	COMBOY BEBOP EPISODES 1-26		SUNRISE INC.	N
COP0200197	20020920	20220920	WARIO LAND 4		SUNRISE INC.	N
COP0200198	20020920	20220920	WARIO LAND 4		NINTENDO OF AMERICA INC.	N
COP0200199	20020923	20220923	TOY SCULPTURE-STYLE NO. K00017		TOY CENTURY INDUSTRIAL CO., LTD.	N
SUBTOTAL RECORDATION TYPE 24						
TMK0200662	20020905	20120219	COQUICO		COQUICO INC.	N
TMK0200663	20020905	20110911	AMD DUKON		ADVANCED MICRO DEVICES, INC.	N
TMK0200664	20020905	20110911	AMD DUKON		ADVANCED MICRO DEVICES, INC.	N
TMK0200665	20020905	20210227	BAKUCAN (STYLIZED)		BAKUCAN S.A.	N
TMK0200666	20020905	20060107	LONGINES (AND DESIGN)		SHARON INC.	N
TMK0200667	20020905	20070308	HIDO (STYLIZED)		COMPAGNIE DES MONTRES LONGINES	N
TMK0200668	20020905	20030728	OMEGA (AND DESIGN)		SCHAEREN, HIDO G. & CO., S.A.	N
TMK0200669	20020905	20021104	OMEGA (STYLIZED)		OMEGA SA	N
TMK0200670	20020905	20021103	RADO		RADO UHREN, AG	N
TMK0200671	20020905	20050427	RADO (AND DESIGN)		RADO UHREN, A.G.	N
TMK0200672	20020905	20110402	TISSOT (STYLIZED)		TISSOT S.A.	N
TMK0200673	20020906	20110814	TAEKWON-DO ITF AND DESIGN		SERFF TAEKWON-DO INC.	N
TMK0200674	20020906	20111224	TAI HING BRAND		BLOOMING IMPORT, INC.	N
TMK0200675	20020910	20071209	LEAPFROG		LEAPFROG ENTERPRISES, INC.	N
TMK0200676	20020910	20120219	FDRCALTONIN		UNIGENE LABORATORIES, INC.	N
TMK0200677	20020910	20120319	DESIGN ONLY		NINTENDO OF AMERICA INC.	N
TMK0200678	20020910	20120319	GAME BOY ADVANCE		NINTENDO OF AMERICA INC.	N
TMK0200679	20020910	20030611	DESIGN ONLY		THOMAS & BETTS INT'L., INC.	N
TMK0200680	20020910	20040815	DESIGN ONLY		FOSHAN HAI TIAN FLAVORING & FOOD	N
TMK0200681	20020910	20060618	DESIGN ONLY		FOSHAN HAI TIAN FLAVORING & FOOD	N
TMK0200682	20020910	20060618	DESIGN ONLY		FOSHAN HAI TIAN FLAVORING & FOOD	N
TMK0200683	20020910	20120205	DESIGN ONLY		CALLAWAY GOLF COMPANY	N

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TMN OR MSK	OWNER NAME	RES
TMK0200684	20020910	20071209	LEAFROG	LEAFROG ENTERPRISES	N
TMK0200685	20020911	20120507	76R	76R	N
TMK0200687	20020911	20060902	76R	PETERSEN MANUFACTURING CO., INC.	N
TMK0200688	20020911	20090520	RECORD	PETERSEN MANUFACTURING CO., INC.	N
TMK0200689	20020911	20110619	RECORD	RECORD TOOLS LIMITED	N
TMK0200690	20020911	20081212	MARATHON	THE IRWIN COMPANY	N
TMK0200691	20020911	20110320	AMERICAN TOOL COMPANIES, INC. & DESIGN	AMERICAN TOOL COMPANIES, INC.	N
TMK0200692	20020911	20101010	FACE-OFF	AMERICAN TOOL COMPANIES, INC.	N
TMK0200693	20020911	20101212	FIBERCUT	AMERICAN TOOL COMPANIES, INC.	N
TMK0200694	20020911	20090511	IRWIN	AMERICAN TOOL COMPANIES, INC.	N
TMK0200695	20020911	20101114	JACK	AMERICAN TOOL COMPANIES, INC.	N
TMK0200696	20020913	20081007	ROYAL	THE JEL SERT CO.	N
TMK0200697	20020913	20081111	ROYAL	THE JEL SERT CO.	N
TMK0200698	20020913	20120307	STANLEY BLACKER	SYMS CORP. INTERNATIONAL LTD.	N
TMK0200699	20020918	20050627	KELSEY	EID KORE INTERNATIONAL LTD.	N
TMK0200700	20020918	20050627	KELSEY	EID KORE INTERNATIONAL LTD.	N
TMK0200701	20020918	20050627	KELSEY	EID KORE INTERNATIONAL LTD.	N
TMK0200702	20020918	20050627	KELSEY	EID KORE INTERNATIONAL LTD.	N
TMK0200703	20020918	20050627	KELSEY	EID KORE INTERNATIONAL LTD.	N
TMK0200704	20020918	20050627	KELSEY	EID KORE INTERNATIONAL LTD.	N
TMK0200705	20020918	20050627	KELSEY	EID KORE INTERNATIONAL LTD.	N
TMK0200706	20020920	20120712	M&M'S	EATON CORPORATION	N
TMK0200707	20020920	20120712	M&M'S	EATON CORPORATION	N
TMK0200708	20020923	20110911	UPPER DECK AUTHENTICATED	EATON CORPORATION	N
TMK0200709	20020923	20111211	UPPER DECK AUTHENTICATED	EATON CORPORATION	N
TMK0200710	20020923	20060716	UPPER DECK	EATON CORPORATION	N
TMK0200711	20020923	20090302	UPPER D.E.C.K AND DESIGN	EATON CORPORATION	N
TMK0200712	20020923	20100403	UPPER D.E.C.K AND DESIGN	EATON CORPORATION	N
TMK0200713	20020923	20070726	BILL BLASS (SERVICE MARK)	EATON CORPORATION	N
TMK0200714	20020923	20050411	BILL BLASS	EATON CORPORATION	N
TMK0200715	20020923	20081103	BILL BLASS	EATON CORPORATION	N
TMK0200716	20020923	20091019	BILL BLASS	EATON CORPORATION	N
TMK0200717	20020923	20091019	BILL BLASS	EATON CORPORATION	N
TMK0200718	20020923	20110623	BILL BLASS AMAZING	EATON CORPORATION	N
TMK0200719	20020923	20081020	BILL BLASS	EATON CORPORATION	N
TMK0200720	20020923	20050812	BLASSPORT	EATON CORPORATION	N
TMK0200721	20020923	20070403	BILL BLASS USA (STYLIZED)	EATON CORPORATION	N
TMK0200722	20020923	20081121	BB (STYLIZED)	EATON CORPORATION	N
TMK0200723	20020923	20041222	BB (STYLIZED)	EATON CORPORATION	N
TMK0200724	20020923	20060514	BB (STYLIZED)	EATON CORPORATION	N
TMK0200725	20020923	20080728	BB (STYLIZED)	EATON CORPORATION	N
TMK0200726	20020927	20120714	HEATER	OAKLEY, INC.	N
TMK0200727	20020927	20120205	NERA	NATIONAL ECONOMIC RESEARCH ASSOC	N
TMK0200728	20020927	20120618	X-14 CAVITY DESIGN	NATIONAL ECONOMIC RESEARCH ASSOC	N
TMK0200729	20020927	20041129	DUAL FORCE	CALLAWAY GOLF COMPANY	N
TMK0200730	20020927	20080908	STRONOMIC	CALLAWAY GOLF COMPANY	N
TMK0200731	20020927	20090323	RUSSIE	CALLAWAY GOLF COMPANY	N
TMK0200732	20020927	20061201	LYONITE	CALLAWAY GOLF COMPANY	N
TMK0200733	20020927	20111015	BILLBOARD	VNU BUSINESS MEDIA INC.	N

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U.S. CUSTOMS SERVICE  
IPR RECORDATIONS ADDED IN SEPTEMBER 2002

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DETAIL

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
TMK0200733	20020927	20110409	GOLDFISH CONFIGURATION	PF BRANDS INC.	N
TMK0200734	20020927	20090403	CENTRUM	AMERICAN CYANAMID COMPANY	N
TMK0200735	20020927	20050917	FROM A TO ZINC	AMERICAN CYANAMID COMPANY	N
TMK0200736	20020927	20110714	DESIGN	AMERICAN CYANAMID COMPANY	N
TMK0200737	20020927	20050314	CENTRUM	AMERICAN CYANAMID COMPANY	N
TMK0200738	20020927	20110312	SILVER	AMERICAN CYANAMID COMPANY	N

SUBTOTAL RECORDATION TYPE 77

TOTAL RECORDATIONS ADDED THIS MONTH 101

**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 Textile 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 produced, 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 11<sup>th</sup> 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)]



## CUSTOMS TRADE SYMPOSIUM 2002

**AGENCY:** Customs Service, Treasury.

**ACTION:** Notice of symposium.

**SUMMARY:** This document announces that the Customs Service will convene a major trade symposium that will feature joint discussions by Customs personnel, members of the trade community, and other public and private sector representatives on international trade security initiatives and the agency's transition to the proposed Department of Homeland Security. Customs Commissioner Robert C. Bonner will be the keynote speaker. Members of the international trade and transportation communities and other interested parties are encouraged to attend, and those attending are requested to register early.

**DATES:** A reception and pre-registration will be held on Wednesday, November 20, 2002, from 6:00 p.m. until 8:00 p.m. The symposium will be held on Thursday, November 21, 2002, from 8:30 a.m. until 6:00 p.m. and will include a special session on Friday, November 22, 2002, from 8:00 a.m. until 12:00 p.m. All registrations must be made on-line and confirmed with payment by November 14<sup>th</sup>.

**ADDRESSES:** The meeting will be held in Washington, D.C. at the Ronald Reagan Building and International Trade Center, at 1300 Pennsylvania Avenue, N.W.

**FOR FURTHER INFORMATION CONTACT:** ACS Client Representatives; Customs Account Managers; Regulatory Audit Trade Liaisons; or the Office of Trade Relations at (202) 927-1440 or at [traderelations@customs.treas.gov](mailto:traderelations@customs.treas.gov). To obtain the latest information on the program or to register on-line, visit the Customs website at <http://www.customs.gov/trade2002>.

**SUPPLEMENTARY INFORMATION:**

Customs will be convening a major trade symposium (Customs Trade Symposium 2002) on Thursday, November 21, 2002, from 8:30 a.m. until 6:00 p.m. and on Friday, November 22, 2002, from 8:00 a.m. until 12:00 p.m. at the Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, N.W., Washington, D.C. The symposium will feature joint discussions by Customs personnel, members of the trade community, and other public and private sector representatives on international trade security initiatives and the agency's transition to the proposed Department of Homeland Security. Customs Commissioner Robert C. Bonner will be the keynote speaker. Members of the international trade and transportation communities and other interested parties are encouraged to attend.

The cost is \$ 150 per individual and includes all symposium activities. Interested parties are requested to register early. All registrations must be made on-line at the Customs website (<http://www.customs.gov/>

trade2002). Registrations will be accepted on a space available basis and must be confirmed with payment by November 14, 2002. The Renaissance Washington DC Hotel, 999 9<sup>th</sup> Street, NW has reserved a block of rooms for Wednesday, November 20<sup>th</sup> through Friday, November 22<sup>nd</sup> at a rate of US\$ 179 per night. Reservations must be confirmed with the hotel by November 5<sup>th</sup>. Call 202-898-9000 or 1-800-228-9290 and reference the "U.S. Customs Trade Symposium."

Dated: October 16, 2002.

ROBYN DAY,  
*Acting Director,*  
*Office of Trade Relations.*

[Published in the Federal Register, October 21, 2002 (67 FR 64699)]

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QUARTERLY IRS INTEREST RATES USED IN CALCULATING  
INTEREST ON OVERDUE ACCOUNTS AND REFUNDS ON  
CUSTOMS DUTIES

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. For the calendar quarter beginning October 1, 2002, the interest rates for overpayments will be 5 percent for corporations and 6 percent for non-corporations, and the interest rate for underpayments will be 6 percent. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 298-1200, extension 1349.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in the Federal Register on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at para-

graph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub.L. 105-206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2002-59 (*see*, 2002-38 IRB 557, dated September 23, 2002), the IRS determined the rates of interest for the calendar quarter beginning October 1, 2002, and ending December 31, 2002. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%). For corporate overpayments, the rate is the Federal short-term rate (3%) plus two percentage points (2%) for a total of five percent (5%). For overpayments made by non-corporations, the rate is the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%). These interest rates are subject to change for the calendar quarter beginning January 1, 2003, and ending March 31, 2003.

For the convenience of the importing public and Customs personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

<i>Beginning Date</i>	<i>Ending Date</i>	<i>Underpayments (percent)</i>	<i>Overpayments (percent)</i>	<i>Corporate Overpayments (Eff. 1-1-99) (percent)</i>
Prior to				
070174	063075	6 %	6 %	
070175	013176	9 %	9 %	
020176	013178	7 %	7 %	
020178	013180	6 %	6 %	
020180	013182	12 %	12 %	
020182	123182	20 %	20 %	
010183	063083	16 %	16 %	
070183	123184	11 %	11 %	
010185	063085	13 %	13 %	
070185	123185	11 %	11 %	
010186	063086	10 %	10 %	
070186	123186	9 %	9 %	
010187	093087	9 %	8 %	
100187	123187	10 %	9 %	
010188	033188	11 %	10 %	
040188	093088	10 %	9 %	
100188	033189	11 %	10 %	
040189	093089	12 %	11 %	
100189	033191	11 %	10 %	
040191	123191	10 %	9 %	
010192	033192	9 %	8 %	

<i>Beginning Date</i>	<i>Ending Date</i>	<i>Underpayments (percent)</i>	<i>Overpayments (percent)</i>	<i>Corporate Overpayments (Eff. 1-1-99) (percent)</i>
040192	093092	8 %	7 %	
100192	063094	7 %	6 %	
070194	093094	8 %	7 %	
100194	033195	9 %	8 %	
040195	063095	10 %	9 %	
070195	033196	9 %	8 %	
040196	063096	8 %	7 %	
070196	033198	9 %	8 %	
040198	123198	8 %	7 %	
010199	033199	7 %	7 %	6 %
040199	033100	8 %	8 %	7 %
040100	033101	9 %	9 %	8 %
040101	063001	8 %	8 %	7 %
070101	123101	7 %	7 %	6 %
010102	123102	6 %	6 %	5 %

Dated: October 17, 2002.

ROBERT C. BONNER,  
*Commissioner of Customs.*

[Published in the Federal Register, October 23, 2002 (67 FR 65186)]

DEPARTMENT OF THE TREASURY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS,  
*Washington, DC, October 23, 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.*

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

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 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 is revoking 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 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 August 28, 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 January 6, 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 August 28, 2002, in the CUSTOMS BULLETIN, Vol. 36, No. 35, proposing to revoke NY G80939 dated August 18, 2000, pertaining to the tariff classification of motor vehicle plastic seat knobs. 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 is revoking 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 G80939, dated August 18, 2000, 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 is revoking NY G80939 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) 965482 (see 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), these rulings will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: September 30, 2002.

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

[Attachment]

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[ATTACHMENT]

DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE,  
*Washington, DC, September 30, 2002.*  
CLA-2 RR:CR:GC 965482 KBR  
Category: Classification  
Tariff No. 3926.30.10

MR. ROBERT RESETAR  
PORSCHE 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.

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 August 28, 2002, in Vol. 36, No. 35 of the CUSTOMS BULLETIN, proposing to revoke NY G80939. No comments were received in response to this notice. This ruling revokes NY G80939 by providing the correct classification for the motor vehicle plastic seat knob.

*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.

*Effect on Other Rulings:*

NY G80939 dated October 9, 1997, 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.)

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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 revocation of classification ruling letter relating to the tariff 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 is revoking a ruling letter pertaining to the tariff classification of a fortified oat cereal product. Customs is also 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 August 28, 2002. The one comment that was received in response to the notice was in favor of the proposed revocation.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 6, 2002.

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 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on August 28, 2002, in the CUSTOMS BULLETIN, Vol. 36, No. 35, proposing to revoke New York Ruling Letter (NY) H81626, dated May 30, 2001. The one comment that was received during the comment period was in favor of the proposed revocation.

As stated in the proposed notice, the revocation will also cover any rulings on the subject merchandise which may exist but which 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 is revoking any treatment previously accorded by Customs to substantially identical transactions that is contrary to the position set forth in this notice. 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 have advised Customs during the comment period. An importer’s reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

In NY H81626, 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. Since the issuance of that ruling, Customs has reconsidered the ruling and determined that the fortified oat cereal product is classifiable under subheading 1104.22.0000, HTSUS, as otherwise worked oat cereal grains.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY H81626 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Letter 965522 (see "Attachment A"). 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: September 30, 2002.

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

[Attachment]

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[ATTACHMENT]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*Washington, DC, September 30, 2002.*

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).

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-82, 107 Stat. 2057, 2186), a notice was published on August 28, 2002, in the CUSTOMS BULLETIN, Vol. 36, No. 35, proposing to revoke NY H81626. The one comment received during the comment period was in favor of the proposed revocation.

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:*

NY H81626, dated May 30, 2001, is hereby REVOKED.

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.

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.)

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

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

ACTION: Notice of 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 is revoking three ruling letters pertaining to the tariff classification of spoons. Customs is also 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 August 28, 2002. No comments were received in response to the notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 6, 2002.

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 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was pub-

lished on August 28, 2002, in the CUSTOMS BULLETIN, Vol. 36, No. 35, proposing to revoke New York Ruling Letter (NY) D86420, dated January 7, 1999, NY E86257, dated September 9, 1999, and NY E88103, dated December 20, 1999. No comments were received during the comment period.

As stated in the proposed notice, the revocation will also cover any rulings on the subject merchandise which may exist but which 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 is revoking any treatment previously accorded by Customs to substantially identical transactions that is contrary to the position set forth in this notice. 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 have advised Customs during the comment period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

In NY D86420 and NY E86257, 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, a reconsideration of NY E86257, Customs classified the 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 each ruling and determined that 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.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking the three ruling letters pertaining to the classification of spoons and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Letters 965794 (Attachment A) and 965032 (Attachment B). 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), these rulings will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: September 30, 2002.

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

[Attachments]

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[ATTACHMENT A]

DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE,  
*Washington, DC, September 30, 2002.*  
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).

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-82, 107 Stat. 2057, 2186), a notice was published on August 28, 2002, in the CUSTOMS BULLETIN, Vol. 36, No. 35, proposing to revoke NY D86420. No comments were received during the comment period.

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 nonmetal 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:*

NY D86420, dated January 7, 1999, is hereby REVOKED.

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

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.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,  
 U.S. CUSTOMS SERVICE,  
 Washington, DC, September 30, 2002.  
 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).

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-82, 107 Stat. 2057, 2186), a notice was published on August 28, 2002, in the CUSTOMS BULLETIN, Vol. 36, No. 35, proposing to revoke NY E86257 and NY E88103. No comments were received during the comment period.

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 handles 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 non-metal 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:*

NY E86257, dated September 9, 1999, and NY E88103, dated December 20, 1999, are hereby REVOKED.

Based on the foregoing analysis, 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.

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.)

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PROPOSED REVOCATION OF RULING LETTER AND  
TREATMENT RELATING TO TARIFF CLASSIFICATION OF  
CERTAIN OPTICAL AMPLIFIERS AND DISPERSION  
COMPENSATION MODULES USED IN LONG-HAUL DIGITAL  
TELECOMMUNICATION SYSTEMS

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

ACTION: Notice of proposed revocation of ruling letter and treatment relating to tariff classification of certain optical amplifiers and dispersion compensation modules used in long-haul digital telecommunication systems.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of certain optical amplifiers and dispersion compensation modules used in long-haul digital telecommunication systems under the Harmonized Tariff Schedule of the United States ("HTSUS"). Similarly, Customs proposes to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before December 6, 2002.

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

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of certain optical amplifiers and dispersion compensation modules used in long-haul digital telecommunication systems. Although in this notice Customs is specifically referring to one ruling, NY H86252, 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 treat-

ment 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 this notice. In NY H86252, dated January 28, 2002 (Attachment A to this document), Customs classified certain optical amplifiers and dispersion compensation modules used in long-haul digital telecommunication systems under subheading 9013.80.90, HTSUS, which provides for other optical appliances and instruments not specified or included elsewhere in chapter 90.

It is now Customs position that the optical amplifiers and dispersion compensation modules are properly classifiable under subheading 8517.50.90, HTSUS, which provides for other telegraphic apparatus for digital line systems.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY H86252 and any other ruling not specifically identified to the extent that it does not reflect the proper classification of the optical amplifiers and dispersion compensation modules pursuant to the analysis set forth in proposed HQ 965942 (*see* "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: October 16, 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 22, 2002.*  
CLA-2-90:RR:NC:MM:114 H86252  
Category: Classification  
Tariff No. 9013.80.9000

MS. JOAN M. MCLEOD  
NORTEL NETWORKS, INC.  
*55 Pineview Drive  
Suite A  
Amherst, NY 14228*

Re: The tariff classification of optical amplifiers and dispersion compensation modules.

DEAR MS. MCLEOD:

In your letter dated November 12, 2001 you requested a tariff classification ruling on optical amplifiers and dispersion compensation modules.

The optical amplifiers are used in wideband optical transmission systems. Optical amplifiers replace regenerators. The optical amplifiers use an erbium-doped fiber amplifier (EDFA) and incorporate pump lasers that operate at the wavelength range of 980 nanometers. The dispersion compensation modules (DCM) are used in long haul transmission systems. They contain dispersion compensating fiber that applies a pre-defined level of dispersion to reconstruct (compress) optical pulses. The optical amplifier and the DCM incorporate fiber optic technology.

The applicable subheading for the optical amplifiers and the dispersion compensating modules will be 9013.80.90, Harmonized Tariff Schedule of the United States (HTS), which provides for liquid crystal devices not constituting articles provided for more specifically in other headings, laser, other than laser diodes, other optical appliances and instruments, not specified or included elsewhere in the this chapter. The rate of duty will be 4.5 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 Barbara Kiefer at 646-733-3019.

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 965367TPB  
Category: Classification  
Tariff No. 8517.50.90

Ms. JOAN M. MCLEOD  
NORTEL NETWORKS, INC.  
55 Pineview Drive, Suite A  
Amherst, NY 14228

Re: Circuit Packs; Optical Amplifiers; Dispersion Compensation Modules; Revocation of NY H86252.

DEAR Ms. MCLEOD:

This is in reference to your letter of January 28, 2002, requesting reconsideration of NY H86252, issued to you on January 22, 2002, by the Customs National Commodity Specialist Division, New York, classifying certain optical amplifiers and dispersion compensation modules under subheading 9013.80.90, Harmonized Tariff Schedule of the United States ("HTSUS"). We regret the delay in responding. After careful review of this matter, it is now our belief that NY H86252 is incorrect. This ruling sets forth the correct classification.

*Facts:*

There are two articles at issue. First are what you have termed optical amplifiers, hereinafter referred to as "circuit packs." They are used in long-haul digital telecommunication systems. They come in the form of printed circuit assemblies that are plugged into either a single 7 foot bay or an 11 foot high by 23 inches wide OC-48 Network bay. Circuit packs are used to extend the range of a telecommunication signal transmitted via optical fiber cable. The module components include a pump laser; and an erbium-doped fiber ("EDF"). When the signal passes through the EDF, it is boosted. As the signal travels through the EDF, light from an electrically powered "pump" laser excites or stimulates the erbium ions to release their stored energy that the signal then absorbs. Chemically, the light's one and only purpose is to stimulate the erbium, whose molecular structure renders it easily stimulated.

The "excited" particles release or transfer their energy to the signal by relaxing or becoming de-excited. As the incoming signal induces relaxation, the transfer of energy is synchronized to that of the incoming signal, resulting in an increase or power boost of the signal data. The signal continues through the EDF where the process is repeated on an atomic scale. As this process continues down the fiber, the signal grows stronger.

Second, the Dispersion Compensation Module ("DCM") is a passive device used to counter chromatic dispersion in a long-haul transmission system. DCMs contain dispersion compensating fibers that apply a pre-defined level of dispersion to reconstruct (compress) the optical pulses, and are mounted in bays or frames which house the OC systems. DCMs provide negative or positive dispersion in order to compensate the dispersion accumulated in a given fiber type. DCMs are used exclusively with Nortel's Optical transmission products and have no functionality as separate items.

*Issue:*

What is the classification of the DCMs and circuit packs?

*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). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. GRI 2(a) states in part that incomplete or unfinished articles are to be classified as complete or finished if, as imported, they have the essential character of the complete or finished article. GRI 6 permits the comparison of same-level subheadings within the same heading, in part by application of Rules 1 through 5, applied by appropriate substitution of terms.



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

The HTSUS provisions under consideration are as follows:

Section XVI, note 1(m), HTSUS, provides, in pertinent part, as follows:

1. This section does not cover:

*	*	*	*	*	*	*
(m) Articles of chapter 90;						
*	*	*	*	*	*	*
8517	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line systems; videophones; parts thereof;					
9013	Liquid crystal devices not constituting articles provided for more specifically in other headings; lasers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in this chapter; parts and accessories thereof;					

The ENs for heading 85.17 provide, in pertinent part, as follows:

(III) APPARATUS FOR CARRIER-CURRENT LINE SYSTEMS OR FOR DIGITAL LINE SYSTEMS

These systems are based on the modulation of \* \* \* a light beam by \* \* \* digital signals. \* \* \*. These systems are used for the transmission of all kinds of information (words, data, images, etc.)

These systems include all categories of multiplexers and related line equipment for metal or optical-fibre cables. "Line-equipment" includes transmitters and receivers or electro-optical converters.

Circuit packs are complete devices used exclusively in long-haul digital telecommunication systems. Sealed within the mechanical box are the components necessary to boost an incoming optical signal in order to increase that signal's range. These components include laser pumps, optical amplifiers, photodiodes, control circuits, supervisory circuits and power supply circuits. Heading 8517, HTSUS, captures goods principally used for digital line system transmission.

The merchandise before us fits within the terms of heading of 8517, HTSUS. The DCMs are apparatus used to counter chromatic dispersion in long-haul digital telecommunication systems. They have no other use outside of this area. We find that the DCMs are described by the terms of heading 8517. Therefore, we need not look to chapter 90 for classification.

The circuit packs contain optical amplifiers, which may, if principally used in other applications, be classified in heading 9013, which covers, in pertinent part, other optical appliances and apparatus not classified elsewhere in chapter 90. The instant circuit packs are not classified in chapter 90, as they are solely used in telecommunication digital line system, and contain other equipment as noted above. Thus, at GRI 1, the circuit packs are specifically provided for in heading 8517, HTSUS. Section XVI, note 1(m), which excludes goods of chapter 90, does not operate in this instance.

*Holding:*

For the above reasons, the DCMs and circuit packs are classified in subheading 8517.50.90, HTSUS, which provides for: "Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line systems; videophones; parts thereof: other apparatus for carrier-current line systems or for digital line systems: Other: Telegraphic: Other."

*Effect on Other Rulings:*

NY H86252 is revoked.

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

REVOCATION OF RULING LETTERS AND TREATMENT  
RELATING TO TARIFF CLASSIFICATION OF DRUMMERS'  
GLOVES

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

ACTION: Notice of revocation of tariff classification ruling letters and treatment relating to the classification of drummers' gloves.

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 (HTSUS), of certain drummers' gloves. Similarly, Customs is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed actions was published September 11, 2002, in the CUSTOMS BULLETIN, Vol. 36, No. 37. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 6, 2002.

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, a notice was published in the September 11, 2002, CUSTOMS BULLETIN, Vol. 36, No. 37, proposing to revoke Headquarters Ruling Letter (HQ) 951980, dated March 29, 1993, and HQ 952074, dated February 26, 1993, relating to the tariff classification of certain drummers' gloves.

In Headquarters Ruling Letter (HQ) 951980, dated March 29, 1993, and Headquarters Ruling Letter (HQ) 952704, dated February 26, 1993, the Customs Service classified drummers' gloves under subheading 4203.21.8060, HTSUSA, which provides for "Articles of apparel and clothing accessories of leather or of composition leather: Gloves, mittens and mitts: Other: Specially designed for use in sports: Other, Other."

It is now Customs determination that the proper classification for the Drummers' gloves is subheading 4203.29.3010, HTSUSA, which provides for "Articles of apparel and clothing accessories of leather or of composition leather: Gloves, mittens and mitts: Other: Other: Men's, Not lined." Headquarters Ruling Letter (HQ) 965715 revoking HQ 951980 and HQ 952704 is set forth in the Attachment to this document.

Although in this notice Customs is specifically referring to two Headquarters Ruling Letters (HQ), this notice covers 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.*, a ruling letter, an internal advice memorandum or decision or a protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking HQ 951980 and HQ 952704 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 965715, *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.

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

Dated: October 17, 2002.

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

[Attachments]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*Washington, DC, October 17, 2002.*

CLA-2 RR:CR:TE 965715 ttd  
Category: Classification  
Tariff No. 4203.29.3010

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

Re: Revocation of Headquarters Ruling Letter 951980 and Headquarters Ruling Letter 952074; Drummers' Gloves.

DEAR MR. FITCH:

This letter is pursuant to Customs reconsideration of Headquarters Ruling Letter (HQ) 951980, dated March 29, 1993, and HQ 952074, dated February 26, 1993, both filed by Fitch, King and Caffentzis on behalf of Universal Percussion, Inc., regarding classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of pairs of gloves. After review of HQ 951980 and HQ 952074, Customs has determined that the classification of the gloves considered under subheading 4203.21.8060, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes both HQ 951980 and HQ 952074.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-82, 107 Stat. 2057, 2186), notice of the proposed revocation of HQ 951980 and HQ 952074 was published on September 11, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 37. As explained in the notice, the period within which to submit comments on this proposal was until October 11, 2002. No comments were received in response to this notice.

*Facts:*

The articles under consideration are gloves used for drumming. In HQ 951980, dated March 29, 1993, and HQ 952074, dated February 26, 1993, Customs classified two styles of gloves under subheading 4203.21.8060, HTSUSA, which provides for "Articles of apparel and clothing accessories, of leather or of composition leather: Gloves, mittens and mitts: Specially designed for use in sports: Other, Other." In HQ 951980, the merchandise was described as follows:

The article in question is a man's glove manufactured in and imported from the Republic of Korea. The glove is full-fingered, with a palm and palm-side fingers constructed from smooth pigskin leather. The back of the glove is of man-made fabric mesh, while the fourchettes are made from knit fabric. An elastic strap with a hook and loop closure is featured at the wrist, directly below a divided, elasticized cuff.

We note that HQ 951980 modified HQ 089393, dated August 26, 1991, which originally classified the subject glove under subheading 4203.29.3010, HTSUSA, which provides for articles of apparel and clothing accessories, of leather or of composition leather: Other: Other: men's, not lined.

In HQ 952074, dated February 26, 1993, the merchandise was described as follows:

The submitted sample, referenced UPDG, is a man's leather and synthetic mesh and knit full-fingered glove. It has a thin leather palm, finely knit fourchettes and a man-made fiber mesh back. The glove has a two-inch vent on top of the wrist secured with a velcro-like strap, and the underside of the wrist is elasticized. The submitted sample has an abstract black and white stitched graphic design on the closure strap.

*Issue:*

Whether the merchandise is specially designed for use in sports.

*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 "deter-

mined 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).

Subheading 4203.21, HTSUSA, provides for "Articles of apparel and clothing accessories, of leather or of composition leather: Gloves, mittens and mitts: Specially designed for use in sports." As this is a "use" provision, to determine whether an article is classifiable in subheading 4203.21, HTSUSA, requires consideration of whether the article has particular features that adapt it for the stated purpose. In *Sport Industries, Inc. v. United States*, 65 Cust. Ct. 470, C.D. 4125 (1970), the court, in interpreting the term "designed for use," under the Tariff Schedules of the United States, the predecessor to the HTSUSA, examined not only the features of the articles, but also the materials selected and the marketing, advertising and sale of the article. The case suggests that, to be classifiable in subheading 4203.21, the subject gloves must be shown to be, in fact, specially designed for use in a particular sport.

Concerning the proper classification of sports gloves, numerous other court cases have examined the term "specially designed for use in sports." In *American Astral Corp. v. United States*, 62 Cust. Ct. 563, C.D. 3827 (1969), the court held that certain gloves were properly classified as lawn tennis equipment because the evidence established that the gloves were specially designed for use in the game of tennis. At the time, the Tariff Schedules of the United States included provisions covering specially designed protective articles as tennis equipment, such as gloves. The court noted the glove's distinguishing characteristics, which set it apart from ordinary gloves worn as apparel. Those features included: (a) an absorbent terry cloth back; (b) a partially perforated lambskin palm designed to aid grip, provide protection, and prevent perspiration by allowing air circulation; (c) fourchettes made from stretch material; (d) elasticized wrist for a snug fit and support; and (e) a button positioned to prevent interference to the player. Additionally, the court considered factors such as the nature of the importer's business, how the gloves were advertised in the trade, the types of stores where the gloves were sold, and the fact that the gloves were sold only in single units and not in pairs. The court also noted that, the fact that the gloves had other possible uses did not preclude their classification as sporting equipment. See, U.S. Customs Service, *What Every Member of the Trade Community Should Know About: Gloves, Mittens & Mitts, Not Knitted or Crocheted Under the HTSUS*, 32 Cust. B. & Dec. 51 (Dec 23, 1998).

In *Porter v. United States*, 409 F. Supp. 757; 76 Cust. Ct. 97, Cust. Dec. 4641 (1976), the court held that certain motorcross gloves, which possessed features specially designed for use in the sport of motorcross, were accordingly, specially designed for use in sports, even though not used exclusively for the sport of motorcross. In *Porter*, the court based its conclusion on the fact that motorcross gloves featured special characteristics and construction, specially designed for the sport of motorcross. These characteristics included a shortened palm, a reinforced thumb, an elastic band, protective strips or ribbing, and an out-seam construction. These features complemented the particular protective needs of the driver while racing with the specially designed motorcross bike on a dirt track. It was also shown that motorcross racing encompasses internationally accepted rules and that the American Motorcycle Association Motorcross Competition Rule Book specifically requires certain protective clothing and equipment, of which the motorcross gloves at issue were one type that complied with the requirements for the gloves. While the court noted that the gloves were subject to use outside the sport of motorcross, the plaintiff had already demonstrated that the gloves were primarily designed for the sport of motorcross. Moreover, the features, which made the gloves ideal for the sport of motorcross, rendered them useless or cumbersome for other types of motorcycle riding. Thus, the court in *Porter* found that the merchandise considered was designed to meet the needs of the sport.

Accordingly, a conclusion that a certain glove is "specially designed" for a particular sport, requires more than a mere determination of whether the glove or pair of gloves

could possibly be used in a certain sport. In determining whether gloves are specially designed for use in sports, Customs considers the connection the gloves have to an identified sporting activity, the features designed for that sporting activity, and how the gloves are advertised and sold in relation to the named sport.

While the term “sport” is not defined by the tariff, in HQ 089849, dated August 16, 1991, Customs noted that common dictionaries defined the term “sport” as “an activity requiring more or less vigorous bodily exertion and carried on according to some traditional form or set of rules, whether outdoors, as football, hunting, golf, racing, etc., or indoors, as basketball, bowling, squash, etc.” In *Newman Importing Company, Inc. v. United States*, 415 F. Supp. 375, Cust. Ct. 143, Cust. Dec. 4648 (1976), in finding backpacking to be a sport, the court determined that the term “sport” is not solely defined in terms of competitiveness, but also arises from the development and pursuit of a variety of skills. In this respect, in HQ 957848, dated August 10, 1995, Customs found hunting, fishing, canoeing, archery and similar outdoor activities to fall within the purview of “sport.” *The American College Dictionary* (1970) defines the term “sport” as “a pastime pursued in the open air or having an athletic character.” Likewise, *Webster’s New Dictionary of the English Language* (2001) defines “sport” as:

- 1: a source of diversion: PASTIME
- 2: physical activity engaged in for pleasure.

Notably, the term “sport” appears to also encompass activities in which individuals engage professionally (i.e., professional sports).

Recently, in HQ 965157, dated May 14, 2002, Customs ruled that five styles of gloves were not properly classified as gloves specially designed for use in sports. In that ruling, the gloves had some features associated with sports gloves, such as hook and loop closures, additional padding on the palm and palm-side fingers, man-made fabric mesh on the back of the glove, and a reinforced thumb. However, the gloves were not classifiable under subheading 6216.00.4600, HTSUSA, because they were not marketed, advertised and sold for use in the sports for which they were claimed to be designed. In HQ 957848, dated August 10, 1995, we declined to classify the gloves considered therein (half-fingered with synthetic palm patch) as being “specially designed for sport,” since they were not designed, marketed and sold specifically for use as sports gloves. In that ruling, we found that the advertising materials accompanying the gloves showed the wearer engaged in non-sport activities such as writing, playing a trumpet, looking through a bag and taking pictures. As those activities were not sports, we found that the gloves were not specially designed for use in sports. *See also* NY H80836, dated June 4, 2001, wherein Customs classified fingerless computer gloves in subheading 6116.93.8800, HTSUSA, which provides for “Gloves, mittens and mitts, knitted or crocheted: other: of synthetic fibers: other: other: without fourchettes.”

Similarly, in HQ 083450, dated August 25, 1989, in determining whether gloves were “specially designed for use in sports,” Customs found that a glove designed as a multi-sport glove and used in many different sports did not necessarily satisfy the meaning of “specially designed for use in sports.” In that ruling, we interpreted the term “specially designed for use in sports” to mean that the gloves must have special design features particular to the identified sport. Comfort, breathability and a reinforced thumb were not sufficient to show that special design features pertained specifically to any one of the sports cited (bicycling, cross-country skiing, ATV-motorcycling, racing and boating).

While we recognize that the term “sport” may encompass a variety of outdoor and indoor activities, which may or may not have competitive aspects, we do not find that the activity of drumming falls within the purview of the term “sport.” In this case, the subject pair of gloves is not associated with any identified sport. Rather, they are intended to be used by drummers during the activity of playing a musical instrument, namely a drum. While drumming may be considered a “pastime” and a “physical activity engaged in for pleasure,” it is not by any collective understanding or categorization considered a sporting activity. Rather, drumming is a musical activity. Thus, while the submitted gloves may have shown characteristics useful in the pursuit of sporting activities, we erred in concluding that the gloves were specially designed for a sport. After review of both HQ 951980 and HQ 952074, we do not find any evidence to support the claim that the subject gloves are specially designed for a sporting activity, as drumming is not a sport. Accordingly the subject pair of gloves are precluded from classification as gloves specially designed for use in sports.

Additionally, we acknowledge the fact that a glove may be used for purposes other than sporting activities does not necessarily prevent it from being classified as a glove specially designed for use in sports. The test for principal use is not solely dependent on actual use of the specific merchandise at issue but rather the principal use of that “class or kind” of merchandise to which the goods belong. Determining whether goods fall into a particular “class or kind” of merchandise, requires additional consideration of certain commercial factors, as enumerated by the court in *United States v. Carborundum Co.*, 63 C.C.P.A. 98, 102, 536 F.2d 373, 377, cert. denied, 429 U.S. 979, 50 L. Ed. 2d 587, 97 S. Ct. 490 (1976). The factors cited are: the expectation of the ultimate purchaser, channels of trade, general physical characteristics, environment of sale, economic practicality of so using the import, and recognition in the trade of this usage.

In HQ 963746, dated May 16, 2001, we applied the *Carborundum* factors in finding that disposable latex gloves for non-medical (industrial) use and medical use latex gloves were not of the same “class or kind” of merchandise. In that ruling, the gloves for both the industrial use and medical use were made on the same machines and were composed of the same materials. In fact, the only differences between the gloves were the higher leak resistance and degradation qualities of the medical use gloves. Essentially, the quality differences and marketing of the gloves distinguished the medical use gloves from the industrial use gloves.

Customs determined in HQ 963746 that while any particular glove for industrial use is likely to be physically exactly like a medical use glove, a given box of industrial use gloves would likely contain a higher number of defective gloves than a box of the medical use gloves. In this case, the subject gloves somewhat resemble gloves designed specially for use in a sport such as baseball, with features that include palm and palm-side fingers constructed from smooth pigskin leather, man-made fabric mesh on the back of the glove, knit fabric fourchettes, and a hook and loop closure. However, it has not been shown how the individual features or accumulation of them contribute to use in a sport.

In HQ 963746, the expectation of the ultimate purchaser of the medical gloves was the assurance of a higher quality product to the lower quality of the industrial use gloves. In this case, the ultimate purchaser expects that the subject gloves will provide necessary protection to the hands while engaged in the activity of drumming, not a sport.

Unlike the latex gloves in HQ 963746, where the industrial use gloves were sold through the same retailers as the medical use gloves, the subject gloves are sold through different channels of trade than gloves used for sports. While the subject gloves are sold through retailers such as music stores, gloves specially designed for sport are sold through retailers like sporting goods stores and outdoor outfitters. Moreover, as the industrial gloves did not enter the same industries as the medical use gloves in HQ 963746, the subject gloves do not enter the same trades as gloves designed specially for use in sport.

In HQ 963746, we determined that the distinctions were based on real differences in the use of the gloves, whether or not any particular glove from a box labeled “not for medical use” could theoretically form an effective barrier against blood-borne pathogens and other bodily fluids. The same holds true in this case: the subject gloves which have been designed, marketed and sold for use by drummers are distinctly different than those used in sports whether or not they could theoretically be used in a sport.

After determining that the products were actually different in HQ 963746, we concluded that they did not belong to the same class or kind of merchandise. Similarly, balancing the *Carborundum* factors in this case reveals that the subject gloves are not of the same class or kind of merchandise as those specially designed for use in sports.

As the gloves under consideration are not specially designed for use in sports, they would not be properly classified in subheading 4203.21.8060, HTSUSA. The subject gloves are properly classified in subheading 4203.29.3010, HTSUSA, as “Articles of apparel and clothing accessories, of leather or of composition leather: Gloves, mittens and mitts: Other: Other: Other: Men’s, Not lined.”

*Holding:*

Based on the foregoing, the merchandise is classified in subheading 4203.29.3010, HTSUSA, which provides for “Articles of apparel and clothing accessories of leather or of composition leather: Gloves, mittens and mitts: Other: Other: Men’s, Not lined.” The applicable general column one rate of duty is 14 percent *ad valorem* per dozen pairs.

HQ 951980, dated March 29, 1993, and HQ 952074, dated February 26, 1993, are 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.

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

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REVOCATION OF RULING LETTER AND TREATMENT  
RELATING TO TARIFF CLASSIFICATION OF CAR SEAT  
POCKETS

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

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of car seat pockets.

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 car seat pockets under the Harmonized Tariff Schedule of the United States ("HTSUS"), and is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published in the CUSTOMS BULLETIN on September 18, 2002. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 6, 2002.

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 responsi-



bilities 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 in the CUSTOMS BULLETIN on September 18, 2002, proposing to revoke NY I80344, dated April 11, 2002, which involved the classification of car seat pockets. No comments were received in response to the notice.

As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but which 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. Any person involved in substantially identical transactions should have advised Customs during the comment 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.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY I80344 and any other ruling not specifically identified in order to reflect the proper classification of the car seat pockets pursuant to the analysis set forth in HQ 965728. 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: October 21, 2002.

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

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*Washington, DC, October 21, 2002.*  
CLA-2 RR:CR:GC 965728 GOB  
Category: Classification  
Tariff No. 9401.90.10

MARSHA L. DAWSON  
IMPORT MANAGER  
GRACO CHILDREN'S PRODUCTS INC.  
*P.O. Box 100  
Elverson, PA 19520*

Re: Revocation of NY I80344; Car Seat Pockets.

DEAR MS. DAWSON:

This is in reply to your letter of May 28, 2002, in which you request that we reconsider NY I80344 issued to you on April 11, 2002, by the Director, National Commodity Specialist Division, with respect to the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of a plastic and mesh pocket for a car seat ("car seat pocket").

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 NY I80344, as described below, was published in the CUSTOMS BULLETIN on September 18, 2002. No comments were received in response to the notice.

*Facts:*

The article at issue was described as follows in NY I80344:

\* \* \* a Plastic and Mesh pocket to attach to children's car seats. They are designed to hold bottles, juice boxes, snacks, etc. They have a frame made of polypropylene—copolymer and then nylon cording for the pocket.

In your letter of August 19, 2002, you state:

This letter will confirm that the mesh cupholders \* \* \* are not being sold as a separate item \* \* \*

The Mesh Cupholder Model #P1931 is currently being used on our Cargo series of car seats (#8489 series). The Model #P1930 Mesh Cupholder is currently being used on our Comfort Sport series of car seats (Series #8431 & 8432) \* \* \*

We have included these cupholders [with the car seats] to make travel for the child more user friendly and to provide additional features for the car seats.

The product information in the file provides as follows for both the Accel/Comfort Sport Carseat Mesh pocket (P1930) and the Cargo Booster Seat Mesh Pockets (P1931):

Materials:	Plastic Frame:	Polypropylene—copolymer
	Fabric Component:	Nylon fabric
		0.06" thick high density polyethylene (HDPE) plastic insert
		Polyester Mesh 300 Denier
		Polyester Binding
		0.08" Diameter Nylon cording

The car seat pockets are essentially plastic tray frames that hook onto the front of car seats. There are notches or holes in the car seat which line up with "teeth" in the car seat holder. A mesh pocket forms the center of the tray. The shape of the plastic frame is slightly different for each of the two models.

You state that the car seats referenced above (series 8431, 8432, and 8489) are only sold with the subject car seat pockets. Other models of car seats are sold without car seat pockets.

In NY I80344, Customs classified the car seat pocket in subheading 8708.29.50, HTSUS. We have that reviewed the classification and have determined that it is incorrect. This ruling sets forth the correct classification.

*Issue:*

What is the classification under the HTSUS of the car seat pockets?

*Law and Analysis:*

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (“GRI’s”). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI’s may then be applied. GRI 2 is not applicable here. GRI 3(a) provides in pertinent part that where goods are *prima facie* classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description.

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:

8708	Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs):
8708.29	Other:
8708.29.50	Other
*	*
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

When Customs classified the car seat pockets in subheading 8708.29.50, HTSUS, in NY 180344, it was on the basis that the car seat pockets were *accessories* of the motor vehicles of headings 8701 to 8705. Heading 8708, HTSUS, covers: “Parts and accessories of the motor vehicles of headings 8701 to 8705.” The superior language to heading 8708.21.00, HTSUS, through subheading 8708.29.50, HTSUS, covers: “Other parts and accessories of bodies (including cabs).” In order for the car seat pockets to be described in heading 9401, HTSUS, the goods must be *parts* of seats, i.e., heading 9401, HTSUS, does not include accessories. A crucial inquiry, therefore, is whether the car seat pockets are parts of car seats.

In *Bauerhin Technologies Limited Partnership v. United States*, 110 F.3d 774 (C.A.F.C. 1997), *aff’g* 914 F. Supp. 554, 19 CIT 1441 (1995), the court addressed the issue as to whether certain canopies for child seats were “parts” as that term is used in the HTSUS. In trying to reconcile earlier cases with respect to what constituted a “part,” the court stated in pertinent part:

The parties seem to take differing positions regarding whether *Willoughby Camera* [21 C.C.P.A. 322 (1933)] or *Pompeo* [43 C.C.P.A. 9 (1955)] is the controlling precedent for determining whether an imported item is or is not a “part” within the meaning of the tariff schedules. We conclude that these cases are not inconsistent and must be read together. As set forth in *Willoughby Camera*, an “integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article” is surely a part for classification purposes. 21 C.C.P.A. at 324. However, that test is not exclusive. *Willoughby Camera* does not address the situation where an imported item is dedicated solely for use with an article. *Pompeo* addresses that scenario and states that such an item can also be classified as a part.

Reconciling *Willoughby Camera* with *Pompeo*, we conclude that where, as here, an imported item is dedicated solely for use with another article and is not a separate and distinct commercial entity, *Pompeo* is closer precedent and *Willoughby Camera* thus does not apply. See *Gallagher & Ascher Co. v. United States*, 52 C.C.P.A. 11, 15–16 (1964) (noting that *Trans Atlantic Co. v. United States*, 48 C.C.P.A. 30 (1960), expressly limited the rule in *Willoughby* “to fact situations of the precise type which the court there had before it”). Under *Pompeo*, an imported item dedicated solely for use with another article is a “part” of that article within the meaning of the HTSUS. The canopies in this case are dedicated solely for use with the child safety seats. They are neither designed nor sold to be used independently. Therefore, the canopies are properly considered parts under the HTSUS.

We believe the *Bauerhin* case is instructive and “on point” here. Similar to the canopies in *Bauerhin*, the car seat pockets in this protest are dedicated solely for use with the re-

spective car seats; they are neither designed nor sold to be used independently. Also, the specific car seats with which the car seat pockets are sold are not sold without the subject car seat pockets. Accordingly, we find that the *Pompeo* analysis as articulated in *Bauerhin* applies here. Therefore, the car seat pockets are described in heading 9401, HTSUS, as parts of seats. Pursuant to GRI 3(a), heading 9401, HTSUS, provides a more specific description of the car seat pockets than does heading 8708, HTSUS. Accordingly, at GRI 3, we find that the car seat pockets are provided for in heading 9401, HTSUS, and are classified in subheading 9401.90.10, 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."

*Holding:*

At GRI 3, the car seat pockets (models P1930 and P1931) are classified in subheading 9401.90.10, 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."

*Effect on Other Rulings:*

NY I80344 is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

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

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REVOCATION OF RULING LETTER AND TREATMENT  
RELATING TO THE TARIFF CLASSIFICATION OF TEXTILE  
FRIENDSHIP BRACELETS

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the tariff classification of certain textile friendship bracelets.

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 related to the classification of certain textile friendship bracelets 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.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 6, 2002.

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.

In HQ 088332, dated March 19, 1991 (which was named in error as a modification), Customs reclassified a textile bracelet in subheading 5609.00.1000, HTSUSA, which provides for "articles of yarn, strip or the like of heading 5404 or 5405, twine cordage, rope or cables, not elsewhere specified or included: of cotton."

Pursuant to Customs obligations, a notice of proposed modification and revocation was published in the CUSTOMS BULLETIN of September 18, 2002, Volume 36, Number 38. No comments were received.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, Customs is revoking one ruling letter relating to the classification of textile friendship bracelets. Although in this notice Customs is specifically referring to HQ 088332, dated March 19, 1999, 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 have advised Customs during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical 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 have advised 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.

Dated: October 21, 2002.

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

[Attachments]

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[ATTACHMENT]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*Washington, DC, October 21, 2002.*  
CLA-2 RR:CR:TE 964977 TF  
Category: Classification  
Tariff No. 6217.10.9510

MARTY LANGTRY  
CASTELAZO & ASSOCIATES  
*5420 West 104<sup>th</sup> Street*  
*Los Angeles, CA 90045*

Re: Revocation of HQ 088332; classification of a textile bracelet.

DEAR MR. LANTRY:

In HQ 088332, dated March 19, 1991 (which was named in error as a modification), Customs reclassified a textile bracelet in subheading 5609.00.1000, HTSUSA, which provides for "articles of yarn, strip or the like of heading 5404 or 5405, twine cordage, rope or cables, not elsewhere specified or included: of cotton."

We have reviewed this ruling and found it to be in error. Therefore, this ruling revokes HQ 088332.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of this ruling was published on September 18, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 38. No comments were received.

*Facts:*

The subject textile bracelet was previously classified in HQ 086975 dated July 24, 1990 in subheading 6217.10.0010, HTSUSA, which provided for "other made up clothing accessories, \* \* \*, accessories, of cotton."

The subject bracelet is manufactured in Guatemala and is represented as a friendship bracelet made of 100 percent cotton yarn. It is composed of blue, pink and green yarns which are woven into a narrow strip approximately nine centimeters long and then braided into two strands about 14 centimeters long. It is fastened by pulling one strand through a loop in one end and tying it to the other strand.

*Issue:*

What is the correct classification of the subject textile friendship bracelet 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 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).

In HQ 088332, dated March 19, 1991, Customs reclassified the subject article in heading 5609. Heading 5609, HTSUSA, covers, *inter alia*, articles of twine, cordage, rope or cables, not elsewhere specified or included. The EN to heading 5609 provides that the heading includes:

\* \* \* articles of twine, cordage, rope or cables of heading 56.07, **other than** those covered by a more specific heading in the Nomenclature.

It includes yarns, cordage, rope, etc., cut to length and looped at one or both ends, or fitted with tags, rings, hooks, etc., (e.g. shoe laces, clothes lines, towing ropes), ships' fenders, unloading cushions, rope ladders, loading slings, dish "cloths" made of a bundle of yarns folded in two and bound together at the folded end, etc.

The EN also explains that the heading does not cover, among other things, textile fabrics and articles made from such fabrics, which are classified in their appropriate headings.

In HQ 086609, dated April 12, 1990, Customs considered two headings, 5609 as an "article of cordage" and 6217 as "other made up clothing accessories" to classify a polypropylene cord bracelet. The cord was to be imported from the West Indies either in cut pieces ready to make the tie, or on spools to be cut and tied and returned to the U.S. Customs excluded heading 6217 as the cord, in its condition as imported, was more appropriately classified pursuant to GRI 3(a), which provides for classifying merchandise under the heading with the more specific description, in heading 5609, which provides for "an article of cordage."

In this instance, the bracelet is a type of jewelry. Chapter 71, HTSUSA, encompasses, among other things, imitation jewelry. Imitation jewelry is defined in Note 11, Chapter 71 as:

Articles of jewelry within the meaning of paragraph (a) of note 9 above (but not including buttons or other articles of heading 9606, or dress combs, hair slides or the like, or hairpins, of heading 9615), not incorporating natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed) nor (except as plating or as minor constituents) precious metal or metal clad with precious metal.

Articles of jewelry are described in Note 9 to Chapter 71, in pertinent part, as follows:

a) Any small objects of personal adornment (gem-set or not) (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia)

\* \* \* \* \*

The subject bracelet is jewelry, that is a small article of personal adornment, within the meaning of Note 9 to Chapter 71. It also meets the terms of Note 11 of Chapter 71, as an article of imitation jewelry. However, Note 3(g) to Chapter 71, HTSUSA, excludes "Goods of section XI (textiles and textile articles)" from classification within that chapter. As the subject bracelet is made of textile, it is excluded from classification within Chapter 71.

We now consider heading 6217, HTSUSA, which provides for other made up clothing accessories. The term accessory is not defined in the Tariff or the Explanatory Notes. *Merriam-Webster's New Collegiate Dictionary*, (10<sup>th</sup> Edition), defines "accessory" as "a thing of secondary or subordinate importance;" or "an object or device not essential in itself but adding to the beauty, convenience, or effectiveness of something else." The definition of accessory includes articles that add to the beauty of something else. Although one may view jewelry as purely decorative in nature, Customs does not find this a prohibition to classify jewelry as accessories of heading 6217. For example, in New York Ruling Letter 858606, dated December 18, 1990, Customs determined that a children's woven nylon wrist bracelet, which was essentially a piece of jewelry that accented or completed cloth-

ing, met the definition of accessory and classified the bracelet in heading 6217. We find that in this instance, this determination is applicable.

Further, Customs has long held that textile bracelets can be considered clothing accessories.<sup>1</sup> In HQ 955385, dated April 13, 1994, Customs considered both headings 6217 and 6307 for classifying a yellow, woven textile wrist bracelet with a hook and loop fastener and a person's name embroidered upon it in a contrasting color. By application of GRI 1, the article was classified in heading 6217 on the basis that the merchandise was made wholly of textile material and excluded by Note 3(f) to Chapter 71.

In this instance, the subject article is made of 100 percent woven cotton yarn into a narrow strip and then braided into two strands. We do not find heading 5609 to be applicable because the article is not of cord but of woven cotton fabric. Further, heading 6307 is not applicable because it is a residual provision for "other made up articles of textiles" within Section XI that are not more specifically provided elsewhere within the Tariff. In the instant case, the subject bracelet is not *ejusdem generis* within the enumerated articles of heading 5609, and heading 6217 covers the article more specifically and is more appropriate than heading 6307.

Therefore, based on the foregoing, we conclude that the article at issue is more suitable for classification within heading 6217, HTSUSA.

*Holding:*

HQ 088332, dated March 19, 1991 (which was erroneously labeled a modification) is hereby revoked. At GRI 1, the textile friendship bracelet is classified in subheading 6217.10.9510, HTSUSA, which provides for "other made up clothing accessories; parts of garments or of clothing accessories, other than those in heading 6212: accessories: other: other, of cotton." The general column one duty rate is 14.8 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 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](http://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.

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

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<sup>1</sup> For example, some rulings where textile bracelets have been classified as "Other made up clothing accessories" are: NY 182882, dated June 27, 2002 (woven 100% cotton fabric bracelet sewn on 100% PVC backing); NY F85284, dated April 17, 2000 (woven cotton fabric bracelet decorated with flower like items on the front with hook and loop closure); NY F85283, dated April 14, 2000 (woven cotton fabric bracelet with hook and loop closure); NY C80969, dated October 23, 1997, classifying in pertinent part, a 100% cotton rope bracelet made from fabric).



REVOCATION OF RULING LETTER AND TREATMENT  
RELATING TO TARIFF CLASSIFICATION OF A CHILDREN'S  
INFLATABLE BED TENT

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

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of a children's inflatable bed tent.

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 pertaining to the tariff classification of a children's inflatable bed tent 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 September 11, 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 January 6, 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 September 11, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 37, proposing to revoke NY G88728, dated April 19, 2001, which classified the children's inflatable bed tent in subheading 6306.22.90, HTSUS, as a tent of synthetic fiber. 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 failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of the proposed action.

In NY G88728, dated April 19, 2001, a children's inflatable bed tent was classified as a tent of synthetic fibers in subheading 6306.22.90, HTSUS, which provides for "Tarpaulins, awnings and sunblinds; tents; sails for boats, sailboards or landcraft; camping goods: tents: of synthetic fibers: other." The product is comprised of a polyester cover with eight mesh panels, two of which are in the roof, and an inflatable base, over which the cover fits to create an enclosure. The inflatable portion consists of a mattress-type bottom, which measures roughly the size of a twin bed, and a tent frame. Upon reconsideration, we are of the opinion that the inflatable bed tent does not provide the minimal protection from the elements required of a tent of heading 6306, HTSUS, due to the mesh panels on the roof, lack of rain flaps, and lack of ability to seal the tent.

It is now Customs position that the children's inflatable bed tent is of a class or kind of merchandise classifiable as a toy in subheading 9503.90.00, HTSUS, because it is designed and principally used for children's amusement. Although its size suggests otherwise, the unique structure of the inflatable base, which is both mattress and frame combined in a single unit, makes this article impractical as a bed. Further,

the design and marketing are as a play tent, and Customs has previously classified similar tent-like articles that attach to beds as toys of heading 9503, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), Customs revoking NY G88728 and any other ruling not specifically identified, to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analysis set forth in the attached document, HQ 965202. 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: October 16, 2002.

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

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE,  
*Washington, DC, October 16, 2002.*  
CLA-2 RR:CR:GC 965202 DBS  
Category: Classification  
Tariff No. 9503.90.00

MR. JAMES C. MCKELVEY  
NORTH POLE, INC.  
3333 Yale Way  
Fremont, CA 94538-6169

Re: Inflatable Air Bed Play Tent; *Ero Industries, Inc. v. United States*, 118 F. Supp. 2d 1356 (Ct. Int'l Trade 2000); NY G88728.

DEAR MR. MCKELVEY:

This is in response to your letter, dated June 28, 2001, requesting reconsideration of NY Ruling Letter (NY) G88728, issued to a customs broker on behalf of North Pole, Inc. on April 19, 2001, which classified a children's inflatable air bed tent in subheading 6306.22.90, Harmonized Tariff Schedule of the United States (HTSUS), as a textile tent. We have reviewed that ruling and, based in part on information obtained from your representatives during a teleconference, now believe it is incorrect.

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 September 11, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 37. No comments were received in response to the notice.

*Facts:*

The merchandise at issue, the "Inflatable Air Bed Play Tent," (inflatable bed tent) consists of a polyvinyl chloride (PVC) inflatable base and textile (polyester and mesh) encl-

sure/covering. The base is a single inflatable unit comprised of a mattress-type bottom and a tent frame. The textile covering is draped over the frame and attached to the base with elastic loops to create an enclosure. The mattress part of the base measures 72 inches long by 32 inches wide. The tent frame measures 34 inches from the top of the bed to the peak of the interior. The textile cover is comprised of polyester panels of various colors sewn together with eight mesh panels, two on the front, back and top, and one at each end, and plastic sheeting panels. There are no flaps to cover the mesh. The cover's opening can be closed with hook and loop patches. Product advertisements state the inflatable bed tent provides "hours of creative fun" and is for "indoor use or backyard play time."

In a teleconference, your representatives provided us with information regarding the development of this product. The product was designed to be a play tent, providing amusement by the enclosure. The tent was designed on an inflatable base both for children to bounce around and to provide parents with a product that could be deflated and stowed. We were also informed that the polyester portion of the cover is treated with a water repellent coating.

*Issue:*

Whether the inflatable air bed play tent is classifiable as a toy of heading 9503, HTSUS, or a tent, classifiable by constituent material, in heading 6306, HTSUS.

*Law and Analysis:*

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

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

The HTSUS provisions under consideration are as follows:

<b>6306</b>	Tarpaulins, awnings and sunblinds; tents; sails for boats, sailboards or landcraft; camping goods:
	Tents:
6306.22	Of synthetic fibers:
6306.22.90	Other
*	*                *                *                *                *
<b>9503</b>	Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:
9503.90.00	Other

The term "tent" is not defined in the HTSUS. However, the ENs for heading 6306, HTSUS, provide, in part, as follows:

Tents are shelters made of lightweight to fairly heavy fabrics of man-made fibres, cotton or blended textile materials, whether or not coated, covered or laminated, or of canvas. They usually have a single or double roof and sides or walls (single or double), which permit the formation of an enclosure. The heading covers tents of various sizes and shapes, e.g., marquees and tents for military, camping (including backpack tents), circus, beach use. They are classified in this heading, whether or not they are presented complete with their tent poles, tent pegs, guy ropes or other accessories.

Although the term "tents" has been broadly construed by Customs to encompass many types of tents, all merchandise classifiable in that heading must provide a minimum threshold of protection against the elements. Simply stated, all tents classifiable in heading 6306, HTSUS, must be designed for outdoor use and provide some sort of shelter, albeit minimal. See, e.g., HQ 962147, dated April 6, 1999 (classifying duck blinds for hunters in heading 6306 because it was "of a class or kind of merchandise" classified in heading 6306); HQ 962408, dated December 17, 1998 (classifying a tent-like attachment for a mat-

gress in heading 9503). We have stated that a tent of heading 6306, HTSUS, need not be fully enclosed and need not protect against *extremes* in weather. HQ 951774, dated May 28, 1992 (classifying a sun/windscreen shelter in heading 6306); HQ 953684, dated April 26, 1993 (classifying a cabana in heading 6306); and HQ 951814, dated September 8, 1992 (classifying a tent-like structure for protection from wind and sun on the beach or camping in heading 6306).

We found that the tent-like article at issue in HQ 962408 did not provide minimum protection against the elements because the fabric was of flimsy construction and would not be suitable or appropriate for outdoor use, and the openwork windows, which are not designed with any rain flaps, would expose the whole enclosure to wind, sun and rain. *See also* HQ 954239, dated September 14, 1993 (classifying a similar article outside of heading 6306 because of flimsy construction and mesh “sunroofs”). Similarly, two of the instant article’s eight mesh panels are located in the roof, but the product has no protective flaps. Further, the entrance is secured only with hook and loop patches rather than zippers, as are used in most camping tents to seal the tent closed. We find the instant article does not provide a minimum threshold of protection against the elements. Contrary to NY G88728, this article cannot be classified as a tent of heading 6306, HTSUS.

You claim the inflatable bed tent is a play tent and that it is classifiable as a toy of heading 9503, HTSUS. The term “toy” is not defined in the HTSUS. However, the general EN for Chapter 95, HTSUS, states that the “Chapter covers toys of all kinds whether designed for the amusement of children or adults.” Although nothing in heading 9503, HTSUS, or the relevant chapter notes explicitly states that an item’s classification as a “toy” is dependent upon its use, the Court of International Trade has found inherent in various dictionary definitions of “toy” the notion that an object is a toy only if it is designed and used for amusement, diversion or play, rather than practicality. *See Minnetonka Brands, Inc. v. United States*, 110 F. Supp. 2d 1020, 1026 (CIT 2000).

Because heading 9503, HTSUS, is, in relevant part, a principal use provision, classification under this provision is controlled by the principal use “of goods of that class or kind to which the imported goods belong” in the United States at or immediately prior to the date of importation. Additional U.S. Rule of Interpretation 1(a), HTSUS. *See also Primal Lite, Inc. v. United States*, 182 F.3d 1362, 1365 (Fed. Cir. 1999). Factors considered when determining whether merchandise falls within a particular class or kind include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. *United States v. Carborundum Company*, 536 F. 2d 373 (CCPA 1976), *cert. denied*, 429 U.S. 979.

EN 95.03 (22) includes “Play tents for use by children indoors or outdoors.” Thus, play tents are toys. In *Ero Industries, Inc. v. United States*, 118 F. Supp. 2d 1356 (Ct. Int’l Trade 2000) (*Ero*), the court considered the classification of “tent-like articles” (playhouses, play tents and vehicle tents) made of a vinyl shell and a supporting framework of interconnected elastic-corded PVC poles and connectors with colorfully imprinted on the exterior licensed copyrighted and trademarked graphics depicting various fictional children’s characters and images. It held that all of the merchandise was play tents, classifiable as toys of heading 9503, HTSUS. The *Ero* court stated, “It is beyond peradventure that young children derive “amusement” \* \* \* from the function of the imports to enclose the child while “playing fort,” “playing house,” playing “hide-and-seek.”” 118 F. Supp. 2d at 1360.

In HQ 954239 and HQ 962408, *supra* at 3, we classified other tent-like products, which consisted of textile and poles designed to fit over twin-sized beds, as toy of heading 9503, HTSUS. As explained above, neither was classifiable as tents of heading 6306, HTSUS, because both lacked minimum protection against the elements, and, since they were designed with elastic loops to attach to a mattress, were not intended for outdoor use. It is noted that play tents need not be limited to indoor use, especially since the addition of EN 95.03 (22), *supra* at 4.

You contend that the *Ero* decision controls the classification of the instant product, and that it is a play tent. We recently reviewed the *Ero* decision and discussed the scope of the decision with respect to heading 6306, HTSUS, in HQ 964897, dated August 13, 2002. Though we find *Ero* instructive in ruling out heading 6306, HTSUS, in this case, it does not control the classification of the instant product because the composition and size of the inflatable bed tent is dissimilar from merchandise subject to *Ero*. The product is uniquely

comprised in part of an inflatable base, which is both a “bed” and the frame for the “tent.” Additionally, the “bed” portion of the inflatable component is 72 inches long and 32 inches wide, only slightly smaller than a standard twin-sized mattress, which measures 74 inches long and 39 inches wide. The name of the product includes the word “bed,” indicating the product was intended to be, at least in part, a bed.

Thus, “when amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purposes incidental to the amusement.” *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, C.D. 4688 (1977) (holding that a baby playfloat was classifiable as a toy since the practical use of the device to support a child in water was incidental and the merchandise was essentially for the child’s amusement). The frame presents an impediment to fitting the mattress portion with sheets, a factor that conflicts with the product being principally designed to be a bed. The product is not identical to the tent-like articles classified in HQ 954239 and HQ 962408 because it is not designed to attach to a real bed and is not limited to inside use. However, the cover is designed to fit the inflatable frame and is attached to the “bed” part with elastic loops, as were the play tents in those rulings. And, as stated above, play tents need not be solely designed for use indoors.

The product literature advertises “hours of creative fun,” and “indoor use and outdoor play time” which, according to the *Ero* court, suggests “cognitive amusement rather than somnolence or napping.” *Id* at 1363. The literature also includes a parental supervision warning for when children are using it, which also suggests that the product was not designed for sleeping. According to your representative, the product was designed with an inflatable base for children to be able to bounce around, the product was tested by children in such a manner.

The marketing and channels of trade are geared towards children. The physical characteristics make use of the product as a bed impractical. And the product is a brightly colored enclosure not useable as a shelter. Moreover, the product is similar to other articles previously classified as toys. It is evident that this product, though distinct from other play tents classified in heading 9503, HTSUS, because of its inflatable base, is designed and intended to be used in the same manner as a play tent. Therefore, its principal use is amusement. According to the factors set forth in *Carborundum*, the inflatable bed tent is of a class or kind of merchandise classifiable as a toy in heading 9503, HTSUS. According to Additional U.S. Rule of Interpretation 1(a) and GRI 1, it is classifiable in subheading 9503.90.00, HTSUS.

*Holding:*

The “Inflatable Air Bed Play Tent” is classifiable in subheading 9503.90.00, 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.”

*Effect on Other Rulings:*

NY G88728, dated April 19, 2001, 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.)

REVOCATION OF RULING LETTER AND TREATMENT  
RELATING TO TARIFF CLASSIFICATION OF COMPRESSION  
ACTIVE WEAR FOR THE LOWER BODY

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

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of compression wear for the lower body.

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 compression active wear for the lower body under the Harmonized Tariff Schedule of the United States (HTSUS). Customs is also revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published on September 11, 2002, in Volume 36, Number 37, of the CUSTOMS BULLETIN. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 6, 2002.

FOR FURTHER INFORMATION CONTACT: Joe Shankle, Textiles Branch, (202) 572–8824.

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 that 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, notice proposing to revoke New York Ruling Letter (NY) H 88484, dated April 5, 2002, and to revoke any treatment accorded to substantially identical merchandise was published in the September 11, 2002, CUSTOMS BULLETIN, Volume 36, Number 37. No comments were received in response to the notice.

As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but which 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 Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions that is contrary to the position set forth in this notice. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

In H88484, Customs classified three styles of garments. One pair reaches above the knee, one pair reaches to just below the knee and one pair extends to the ankle. The garments are manufactured from finely knit 80% polyester, 20% spandex fabric. They have an enclosed one-inch highly elasticized waistband with a drawstring that ties on the interior of the waistband. The design of the garments utilizes the use of single-ply fabric with double-ply components. The single-ply fabric is easily stretched, whereas the two-ply fabric requires substantially more force to stretch. The two-ply fabric panels are located in specific areas of the garment, such as along the thigh, around the knees, under the buttocks and along the hamstring. The effect is to simulate the taping of muscles and joints, thereby obviating the need for taping or the use of a brace during physical activity. Customs classified the garments in subheading 6212.20.0020, HTSUSA, which provides for: Brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted: Girdles and panty-girdles, Of man-made fibers.

Based on our analysis of the scope of the terms of subheadings 6212.20.0020, HTSUSA, and 6212.90.0030, HTSUSA, the Legal Notes, and the Explanatory Notes, the garments of the type discussed herein,



are classifiable under subheading 6212.90.0030, HTSUSA, which provides for: Brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted: Other, Of man-made fibers.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY H88484, and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter 965621 (Attached). 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 that is contrary to the position set forth in this notice.

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

Dated: October 16, 2002.

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

[Attachment]

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[ATTACHMENT]

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

CLA-2 RR:CR:TE 965621 JFS  
Category: Classification  
Tariff No. 6212.90.0030

SANDRA LISS FRIEDMAN, ESQ.  
BARNES, RICHARDSON & COLBURN  
*475 Park Avenue South*  
*New York, NY 10016*

Re: Classification of Compression Active Wear; Revocation of NY H88484.

DEAR Ms. FRIEDMAN:

This letter is to inform you that Customs has reconsidered New York Ruling Letter (NY) H88484, dated April 5, 2002, issued to you on behalf of your client, Wacoal America, Inc. (Wacoal), concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of CW-X™ compression active wear. After review of NY H88484, it has been determined that the classification of the garments in subheading 6212.20.0020, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes NY H88484.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY H88484 was published on September 11, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 37. As explained in the notice, the period within which to submit comments on this proposal was until October 11, 2002. No comments were received in response to this notice.

*Facts:*

In NY H88484, Customs classified the instant garments under subheading 6212.20.0020, HTSUSA, which provides for: "Brassieres, girdles, corsets, braces, sus-

penders, garters and similar articles and parts thereof, whether or not knitted or crocheted: Girdles and panty-girdles, Of man-made fibers." The general column one rate of duty is 21 percent *ad valorem*, and the quota/visa category number is 649.

You filed a request for reconsideration, arguing that the garments are not girdles and are properly classified in subheading 9506.91.0030, HTSUSA, which provides, in part, for: "Articles and equipment for general physical exercise, gymnastics, athletics, other sports \* \* \*: Other: Articles and equipment for general physical exercise, gymnastics or athletics; parts and accessories thereof, Other." The general column one rate of duty is 4.6% *ad valorem*. There are no quota or visa restraints.

Three lower body garments were submitted for consideration and classification in NY H88484. Style 120805 reaches above the knee, style 120806 reaches below the knee and style 120809 extends to the ankle. The CW-X™ garments are manufactured from finely knit 80% polyester, 20% spandex fabric. They have an enclosed one-inch highly elasticized waistband with a drawstring that ties on the interior of the waistband. The design of the garments utilizes the use of single-ply fabric with double-ply components. The single-ply fabric is easily stretched, whereas the two-ply fabric requires substantially more force to stretch. The two-ply fabric panels are located in specific areas of the garment, such as along the thigh, around the knees, under the buttocks and along the hamstring. The effect is to simulate the taping of muscles and joints, thereby obviating the need for taping or the use of a brace during physical activity.

The manufacturer obtained three patents on the subject garments. Patent No. 5,367,708, dated November 29, 1994, describes the design and function of the garments as follows:

**Wearing article for wearing in pressed relation to human body surface**

**ABSTRACT**

A wearing article with a taping function for wearing on a human body in pressed relation to a surface of the human body, has a heavily-stretchable portion which has an excellent tightening force and is adapted to be held against a required portion of the human body so as to extend generally along muscle fibers over a region from a tendon to a central portion of the muscle. The remainder of the wearing article is defined by an easily-stretchable portion. With this arrangement, by merely wearing this wearing article on the required portion of the body, the heavily-stretchable portion tightens only a required portion of the body to support the central portion of the relevant muscle, thereby easily achieving a taping function.

**SUMMARY OF THE INVENTION**

According to the present invention, there is provided a wearing article with a taping function for wearing on a human body in pressed relation to a surface of the human body, comprising at least one heavily-stretchable portion which has an excellent tightening force and is adapted to be held against a required portion of the human body so as to extend generally along muscle fibers over a region from a tendon to a central portion of the muscle; the remainder of the wearing article being defined by an easily-stretchable portion.

The heavily-stretchable portion is pressed against that portion (e.g. muscle or articulation) of the human body requiring a taping treatment, in such a manner that the heavily-stretchable portion is extended along the muscle fibers over the region from the tendon to the central portion of the muscle. The other portions not requiring such a taping treatment are covered by the easily-stretchable portion.

With this construction, the wearing article, when worn on the human body, has the portion applying a high tightening force to the body surface, and the portion applying a low tightening force to the body surface. The former portion applying the high tightening force achieves a localized tightening effect similar to that achieved with a taping treatment, thereby enabling the prevention and remedy of an injury. The wearing article can be provided in the form of a tights for the lower half of the human body, a sock, an overall tights, a limb supporter, a shoulder supporter, a glove and so on. Therefore, upon wearing of this wearing article, even those who are not skillful in taping techniques can obtain an effect similar to that of a taping treatment. The other portion of the integral wearing article except for the taping portion is made of a two-way stretchable material which can stretch longitudinally and transversely, and therefore the taping portion can not be recognized from an external view, and the wearing article can be smoothly worn on the body with a beautiful silhouette.

Patent No. 6,186,970, dated February 13, 2001, states, in part, that:

## Protective clothing for regions of lower limb

**ABSTRACT**

The present invention provides a leg protection garment that is effective for mainly supporting the hamstrings, the muscle of the posterior side of the femoral region among the leg portion. The leg protection garment having a lower half of the body part which has a leg portion of length capable of covering at least the patella region and formed of stretchable fabric, the garment having a portion having a partially strong straining force, the portion having a strong straining force comprising at least a portion having a strong straining force 101 (A) which ranges from an area above the trochanter major to the vicinity 5 of the upper end of the tibia by way of the trochanter major and further the vicinity over the boundary between the musculus biceps femoris and the tractus iliotibialis so as to support the musculus biceps femoris, wherein the portion obliquely crosses the vicinity 4 of the tendon region located below the muscle belly of the musculus biceps femoris without crossing the muscle belly of the musculus biceps femoris.

**TECHNICAL FIELD**

The present invention relates to a leg protection garment.

More particularly, it relates to a leg protection garment applied generally in close contact with the surface of the human body and is mainly effective for supporting the hamstrings, namely, the muscles of the posterior side of the femoral region of the leg.

**BACKGROUND ART**

Hitherto, various kinds of sports or training activities or the like excessively load muscles of the leg region and often cause disorders in this region. In order to prevent such disorders in muscles, or to support the relevant muscles or bones when disorders occur, a taping treatment or so-called supporter has been employed. However, the above mentioned conventional taping method has a problem, for example, applying the taping treatment requires skill etc. Moreover, the taping treatment inhibits the movement of the muscles to prevent excessive contraction. On the other hand, the supporter, worn over the articulation, also restricts the movement of the articulation, and in turn often indirectly inhibits the movement of muscles. Therefore, both the taping treatment and the supporter restrict the function of muscles and do not provide support for the contraction of muscles.

Thus, a leg protection garment having a structure for supporting the specific muscles of the leg by a portion having a strong straining force has been developed (See Publication of Japanese Patent Application (Tokkai Hei) No. 4-343868, (Tokko Hei) No. 6-41641, (Tokko Hei) No. 6-51921). These leg protection garments: can be put on easily and adequately by ordinary people; provide a comfortable fit without being painful to a user; have no hygienic problems such as itchy skin due to it becoming stiff; and furthermore support the muscle contraction and help the extended muscle easily recover, thus being effective for reducing muscle fatigue during exercise and exhibiting the effect of promoting the prevention or treatment of specific disorders etc. of the leg.

Moreover, the leg protection garment described in the above mentioned official gazettes support the muscles of the medial, lateral and anterior sides of the femoral region, or the muscle below the patella region. Among such muscles, the musculus quadriceps femoris, for example, functions by flexing the articulatio coxae and extending the articulatio genus. However, the articulatio genus becomes unstable when it is in the extended position, so that an impact can easily cause a rupture of the ligament and a fracture in the vicinity of the articulation. Therefore, by supporting the musculus quadriceps femoris, its function can be strengthened and the above mentioned disorders can be prevented.

Wacoal hired three Ph.D.'s to test the effectiveness of the their CW-X™ garments at reducing muscle fatigue during physical activity. You submit that a similar study has been conducted in Japan with favorable results. The hired scientist submitted a research proposal wherein they detail the purpose and methods of their testing. The research proposal, titled *The Effect of CW-X Supporting Sportswear on Physiological Responses During Prolonged Running*, states, in part, that:

**Introduction**

\* \* \* \* \*

Recently, a specialized support garment has been developed for the purpose of assisting muscular contraction, thereby possibly reducing fatigue during physical activity.

If such a device is effective, it may improve performance and/or allow athletes to train harder and maximize their training adaptations.

**Purpose**

The purpose of this project will be to determine the effect of wearing supporting garments on 1) the physiological responses during a 60 min run at 70% of maximal aerobic capacity, and 2) a short duration, high intensity performance run after the 60-min run. Specifically, a selection of physiological variable known to be markers of energy expenditure and/or fatigue during prolonged submaximal running will be measured with and without the CW-X™ support garment, and a time-to-exhaustion run will be completed at a pace corresponding to 100% maximal aerobic capacity.

Japanese marketing materials depict the garments being worn as outerwear by persons engaged in various sports such as hiking, jogging, biking, skiing and skateboarding. Wacoal has begun marketing the articles to sporting goods stores in the United States. A Wacoal representative submitted a marketing letter to a store specializing in running, which states that:

The specialized fabric in CW-X tights uses a “taping technique” to support muscles, prevent injuries and reduce fatigue. CW-X pants are not traditional tights and definitely not fashion. They are designed to support the body in very specific ways, allowing full natural movement without excessive pressure.

*Issue:*

Are the compression active wear garments with a taping function classified as “other” sports equipment in Chapter 95, HTSUSA, as trousers or shorts in headings 6103 or 6104, HTSUSA, or as “other” support garments in heading 6212, HTSUSA?

*Law and Analysis:*

Classification under the HTSUSA 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 may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN’s) represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings). The EN’s facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI’s. While not legally binding, the EN’s represent the considered views of classification experts of the Harmonized System Committee. It has, therefore, been the practice of the Customs Service to follow the terms of the EN’s, when appropriate, when interpreting the HTSUS. See T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

Several possible headings can be considered for classification of the garments. You argue that the garments should be classified in subheading 9506.91.0030, HTSUSA, as articles and equipment for general physical exercise or athletics. However, Legal Note 1 (e) to Chapter 95 excludes sports clothing of textiles, of chapter 61 or 62 from classification in Chapter 95. Therefore, in order to qualify for classification in Chapter 95, the garments must not be clothing or wearing apparel.

All things worn by humans are not necessarily wearing apparel. See *Dynamics Classics, Ltd. v. United States*, Slip. Op. 86–105, 10 C.I.T. 666 (Oct. 17, 1986) (plastic suits used for weight reduction inappropriate for wear during exercise or work not wearing apparel); *Antonio Pompeo v. United States*, 40 Cust. Ct. 362, C.D. 2006 (1958) (crash helmets not wearing apparel); *Best v. United States*, 1 Ct. Cust. Appls. 49, T.D. 31009 (1910) (ear caps for prevention of abnormal ear growth not wearing apparel). “*Admiral Craft Equipment* developed the standard that items are not considered wearing apparel when the use of those items goes ‘far beyond that of general wearing apparel.’”<sup>1</sup> *Daw Industries, Inc. v. United States*, 714 F.2d 1140, 1143 (Fed. Cir. 1983). In *Daw Industries* the Court found that sheaths and socks used exclusively with prostheses do not provide “significantly more, or essentially different,” protection than analogous articles of clothing, but merely “differ incrementally.” The Court concluded that while in some cases the differences may become so large that the article is no longer wearing apparel, that was not the case with the sheaths and socks.

<sup>1</sup> *Admiral Craft Equipment, Corp. v. United States*, 82 Cust. Ct. 162, C.D. 4796 (1979).

In Headquarters Ruling Letter (HQ) 952204, dated April 12, 1993, Customs applied the reasoning relied upon in *Daw Industries* when considering the classification of a “swim sweater” which is a flotation device that functions as a swimming aid for children. Customs found that while the “swim sweater” provides some protection from the elements and arguably adorns the body, it is used in very specific situations. Customs concluded that the increment in the difference in use and effect between the “swim sweater” and a conventional sweater is so large that the “swim sweater” is no longer wearing apparel.

Customs recently considered what constitutes wearing apparel in HQ 965312, dated January 14, 2002, wherein Customs concluded that the difference in use and effect between “buoyancy compensators worn by SCUBA divers” and vests are so large, that buoyancy compensators are no longer wearing apparel. Customs reasoned that the entire design of buoyancy compensators is centered around buoyancy control and that while features such as padding provide some warmth and protection, these benefits are ancillary to the function of allowing the diver to control her buoyancy. In contrast, the difference between use and effect between the instant garments and traditional athletic shorts or tights is not great enough that they are no longer considered wearing apparel. Significantly, they are manufactured from Coolmax™ fabric that is specially designed to wick away moisture and to cool the body. Moreover, the garments are designed to be worn as outer wear and are worn as such during athletic activity. The garments are wearing apparel and are excluded from classification in Chapter 95. See also HQ 962072, dated August 12, 1999 (classifying ice-hockey pants with sewn-in protective padding as wearing apparel in Chapter 62, HTSUSA).

The instant garments are constructed from a knit fabric and are therefore classified in Chapter 61. Classification within Chapter 61, HTSUSA, is dependent upon whether the garments are trousers or shorts of headings 6103 or 6104 (depending on whether they are designed for men or women), or whether they are “other” support garment of subheading 6212, HTSUSA, which provides for brassieres, girdles, corsets, and similar articles.

EN (D) to heading 6103, HTSUSA, provides the following definition of trousers:<sup>2</sup>

“Trousers” means garments which envelop each leg separately, covering the knees and usually reaching down to or below the ankles; these garments usually stop at the waist; the presence of braces does not cause these garments to lose the essential character of trousers.

EN (F) to heading 6103, HTSUSA defines shorts as “‘trousers’ which do not cover the knee.” In that the subject garments “envelop each leg separately” and “stop at the waist,” they generally meet the description of “trousers” and “shorts” that are provided in the EN.

In appearance, the instant garments, in particular the pair that stop above the knee, are similar to bicycle shorts. In HQ 955479, dated March 17, 1994, Customs classified a pair of “Trail Shorts” that were essentially a pair of bicycle shorts inside a pair of hiking shorts, as shorts in subheading 6204.63.3532, HTSUSA. The “Trail Shorts” were described as follows:

The submitted sample, the Trail Short, is a size medium pair of shorts constructed from 100 percent nylon woven fabric. The garment features a knit inner lining which is constructed with elastomeric yarns. It possesses an elasticized waist, an internal drawstring, zippered side-pockets, side vents and a pad or insert sewn at the crotch.

The “Trail Shorts” did not contain any features that would demonstrate that they were designed, or intended, to serve a “support” function. They contained no spandex, they did not have targeted paneled construction, they did not have two-ply construction, and they were marketed as having “all the technical features and performance of a tight.” Customs concluded that the shorts were designed to be multi-functional and with fashion in mind. In contrast, the instant shorts are designed, marketed, and worn, for their support or taping function. While they may be worn as outerwear, their primary purpose is to act as a support garment.

The EN for heading 6212 states, in relevant part:

This heading covers articles of a kind designed for wear as body-supporting garments or as supports for certain other articles of apparel, and parts thereof. These articles may be made of any textile material including knitted or crocheted fabrics (whether or not elastic).

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<sup>2</sup> The provisions of the EN to heading 6103, HTSUSA, apply *mutatis mutandis* to articles of heading 6104, HTSUSA.

The heading includes, *inter alia*:

- (1) Brassieres of all kinds.
- (2) Girdles and panty-girdles
- (3) Corselettes (combinations of girdles or panty-girdles and brassieres).
- (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 jockstraps, braces, suspender, garters, shirt-sleeve supporting arm-bands and arm-lets.
- (6) Body belts for men (including those combined with underpants).
- (7) Maternity, post-pregnancy or similar supporting or corrective belts, **not being** orthopaedic appliances of **heading 90.21** (see Explanatory Note to that heading).

All of the above articles may be furnished with trimmings of various kinds (ribbons, lace, etc.), and may incorporate fittings and accessories of non-textile materials (e.g., metal, rubber, plastics or leather).

\* \* \* \* \*

Customs has had occasion to classify articles of wearing apparel, similar to the ones at issue, within heading 6212, HTSUSA. These rulings provide guidance as to what garments Customs considers support garments. In HQ 957940, dated June 30, 1995, Customs classified "baseball slider pants." The pants were constructed of 72 percent nylon/28 percent spandex knit fabric and had protective pads sewn in place to protect the athlete from abrasion and injury while playing baseball. Customs found that:

Customs believes the difference in fabric composition and construction of the sliding pants at issue imparts a significant feature to the sliding pants that was not present in the garments at issue in HRL 083876 [(classifying knit undergarments with no support function as other baseball equipment in 734.54 Tariff Schedules of the United States)]. **It is Customs' view that the tightly knit fabric containing 28 percent spandex causes the subject sliding pants to hold in and support the body. Customs also believes the support offered by the subject garment is an intended feature and not mere happenstance.** It may be argued that sliding pants are designed for wear as body-protecting garments, not body-supporting garments. However, Customs believes that the subject sliding pants are designed for both purposes. **Without the pads, Customs would view the garment before us as a girdle.** With the permanently sewn-in pads, the garment offers support and protection, thus giving it a feature not associated with girdles or other support garments.

Emphasis added. Similarly, in HQ 957469, dated November 7, 1995, Customs considered the classification of compression girdles or shorts for football. The articles were described as:

The submitted compression shorts, style 7648, are made of heavy gauge 92 percent nylon/8 percent spandex knit fabric. The shorts measure 14 inches from the elastic waistband to the bottom of the hemmed leg openings. The fabric of the center front and rear panels is oriented to reduce the lateral stretch and thus provide additional support to the body. You assert that the garment is designed for use as a support garment for wear by players of football and other sports needing protective pads. The garment features three internal pockets into which plastic foam pads may be inserted to protect the hips and tailbone. The pads are sold separately from the garment.

The manufacturer in HQ 957469, BIKE, marketed its compression shorts as follows:

BIKE's unique two-way knit construction offers steady, uniform pressure and support to the hamstring, groin, abdomen and quadricep muscle groups during the twisting, stretching and pivoting movements, brought about during a game or strenuous exercise program. BIKE COMPRESSION improves circulation and stamina, helps prevent edema after a blow or injury, acts like a second skin to prevent abrasions, and restricts muscle movement in injured muscle groups. Wearing BIKE COMPRESSION also fights fatigue and increases stamina.

Customs noted that BIKE stressed the support feature of their compression shorts in their marketing catalogues. Customs concluded that without the pads, the compression shorts were girdles classified in heading 6212, HTSUSA.

Like the sliding pants and compression shorts discussed above, the instant garments are designed to support muscles, joints and tendons. The patent materials stress the drawbacks to taping or using a brace when engaged in sporting activity. Namely, that they don't

provide the correct directional support, require a high level of skill to be properly applied, can cause fatigue, and can impede the movement and function of the targeted limb, muscle or joint. The instant garments are designed to alleviate some of the problems encountered with taping and the use of a brace while allowing the limb as a whole to move freely. This functionality is obtained by locating the double-ply non-stretch panels so that they target the muscle, tendon or joint that needs support. Proper application of the support is obtained by wearing the garments, thereby allowing even the casual athlete the ability to properly support a weak body part.

Wacoal has invested substantial resources, as evidenced by the research and patent materials, to ensure that the instant garments act as a replacement to taping or a support brace. In addition to the substantial resources allocated to develop the instant garments, the garments are marketed as providing a taping function that reduces fatigue and prevents injury. This is seen in the marketing materials targeting the Japanese market, as well as the individualized marketing materials sent to store owners in the U.S.

While the instant garments may be worn as outerwear, thereby resembling trousers or shorts, their entire function and design is centered on providing support to muscles, joints, and ligaments of the legs during physical activity. Accordingly, the instant garments are more specifically described by the terms of heading 6212, HTSUSA, than they are by the general provisions for trousers in headings 6103 and 6104, HTSUSA.

At the subheading level, the issue is whether to classify the articles in subheading 6212.20, HTSUSA, the provision for girdles, or in subheading 6212.90, HTSUSA, the provision for "other" support garments. In HQ 957469, discussed above, after dismissing the claim that girdles were "women's" garments, Customs took note of the fact that the compression shorts were clearly undergarments to be worn under other clothing. Customs stated that:

Neither of these definitions identify girdles as gender specific. All of the definitions, however, indicate that girdles are understood to be undergarments which provide support and hold in the body along the lower torso, specifically including the waist and hips.

After extensive research, Customs is still of the opinion that girdles are understood to be undergarments.<sup>3</sup> See HQ 965236, dated December 5, 2001 (Exemplars to heading 6212, HTSUSA, are generally worn underneath other garments). Furthermore, two of the garments extend below the knees and this is not a common characteristic of girdles. Accordingly, the instant articles are not classified as girdles in subheading 6212.20, HTSUSA. Even though the instant articles can be worn as outerwear, they are principally used and are primarily designed to act as a support garment. Accordingly, the CW-X™ active wear garments are classified in subheading 6212.90.0030, HTSUSA, as "other" support garments.

*Holding:*

NY H88484 is revoked. The CW-X™ active wear, styles 120805, 120806 and 120809, are classified in subheading 6212.90.0030, HTSUSA, which provides for: Brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted: Other, Of man-made fibers." The general column one rate of duty is 6.7 percent *ad valorem*, and the quota/visa category number is 659.

*Effect on Other Rulings:*

NY H88484, dated April 5, 2002, 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.

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

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<sup>3</sup> As opposed to certain sports bras which, although usually worn underneath workout clothes, may be worn alone with exercise bottoms. See HQ 951264, dated July 1, 1992. Girdles are distinguishable from bras because the EN state that bras of "any kind" are classified in subheading 6212.10 HTSUSA, and because it is not uncommon to have women wear sports bras as outer wear. Girdles have yet to become fashionable as outerwear.

REVOCATION OF RULING LETTER AND TREATMENT  
RELATING TO TARIFF CLASSIFICATION OF TOLANATE®  
HDB/HDT

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

ACTION: Notice of revocation of ruling letter and treatment relating to the tariff classification of Tolanate® HDB/HDT

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling concerning the tariff classification of Tolanate® HDB/HDT, 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 revocations was published on September 11, 2002, in Volume 36, Number 37, of the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after January 6, 2002.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, General Classification Branch, (202) 572-8784.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts, which emerge from the law, are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and 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 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, (Customs Moderniza-



tion) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), Customs published a notice in the September 11, 2002, CUSTOMS BULLETIN, Volume 36, Number 37, proposing to revoke New York Ruling Letter (NY) 833598, dated January 4, 1989, and to revoke any treatment accorded to substantially identical merchandise. No comments were received in response to this notice.

In NY 833598 it was determined that Tolanate<sup>®</sup> HDB and HDT products were classifiable in subheading 3909.30.00, HTSUS, which provides for “[a]mino-resins, phenolic resins and polyurethanes, in primary forms: [o]ther amino resins.” We now believe the merchandise is classified in subheading 3911.90.90, HTSUS, the provision for “[p]etroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones and other products specified in note 3 to this chapter, not elsewhere specified or included, in primary forms: [o]ther: [o]ther.” The merchandise is not formed by the condensation of condensation of amines or amides with aldehydes, thus it can not be classified as an amino resin. Nor is it produced by the reaction of polyfunctional isocyanates with polyhydroxy compounds. While the instant merchandise will be reacted with polyhydroxy compounds after entry, the merchandise is not polyurethane at the time of entry into the U.S. Hence, the merchandise is not classifiable in heading 3909.

As stated in the proposed notice, this revocation will cover any rulings on this issue 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 issue subject to this notice, should have advised Customs during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been 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 involving 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 the notice period. An importer’s reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Customs, pursuant to section 625(c)(1), is revoking NY 833598 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) 965753 set forth as an attachment to this

notice. Additionally, pursuant to section 625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

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

Dated: October 21, 2002.

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

[Attachment]

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[ATTACHMENT]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
Washington, DC, October 21, 2002.  
CLA-2 RR:CR:GC 965753 AM  
Category: Classification  
Tariff No. 3911.90.90

MS. NORA H. BAHR  
RHODIA, INC.  
CN 7500  
Cranbury, NJ 08512

Re: NY 833598 revoked: Tolonate HDB and HDT.

DEAR MS. BAHR:

This is in reference to New York Ruling Letter (NY) 833598, dated January 4, 1989, issued to Rhone-Poulenc Inc., concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of eight Tolonate HDB and HDT products. Rhone-Poulenc Inc. underwent a name change to Rhodia, Inc. in 1998. In NY 833598, it was determined that Tolonate HDB and HDT products were classifiable in subheading 3909.30.00, HTSUS, which provides for “[a]mino-resins, phenolic resins and polyurethanes, in primary forms: [o]ther amino resins.”

We have reconsidered NY 833598, and find the classification for the subject merchandise in NY 833598 to be incorrect.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, (Pub. L. 103-82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY 833598 was published on September 11, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 37. No comments were received in response to this notice.

*Facts:*

The subject merchandise Tolonate® HDB, HDB75, HDB75BX, HDB75MX, HDB75B, HDT, HDT 90 and HDT90B is a straw colored liquid consisting of polyurea prepolymer manufactured from the 1,6-hexamethylene diisocyanate. The merchandise are low molecular weight (average Mw 900-1100) thermosetting isocyanate pre-polymers used in the manufacture of polyurethane foam products.

*Issue:*

Is the instant merchandise an amino resin or a thermosetting prepolymer?

*Law and Analysis:*

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and,

in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

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

3909 Amino-resins, phenolic resins and polyurethanes, in primary forms:

\* \* \* \* \*

3911 Petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones and other products specified in note 3 to this chapter, not elsewhere specified or included, in primary forms:

Note 3 to Chapter 39 states the following:

Headings 3901 to 3911 apply only to goods of a kind produced by chemical synthesis, falling in the following categories:

(a) Liquid synthetic polyolefins of which less than 60 percent by volume distills at 300°C, after conversion to 1,013 millibars when a reduced-pressure distillation method is used (headings 3901 and 3902);

(b) Resins, not highly polymerized, of the coumarone-indene type (heading 3911);

(c) Other synthetic polymers with an average of at least five monomer units;

(d) Silicones (heading 3910);

(e) Resols (heading 3909) and other prepolymers.

The EN to heading 3909, HTSUS, states, in pertinent part, the following:

This heading covers:

(1) Amino-resins

These are formed by the condensation of amines or amides with aldehydes (formaldehyde, furfuraldehyde, etc.). The most important are urea resins (for example, urea-formaldehyde), thiourea resins (for example, thiourea-formaldehyde), melamine resins (for example, melamine-formaldehyde) and aniline resins (for example, aniline-formaldehyde).

\* \* \* \* \*

(3) Polyurethanes

This class includes all polymers produced by the reaction of polyfunctional isocyanates with polyhydroxy compounds, such as, castor oil, butane-1,4-diol, polyether polyols, polyester polyols. Polyurethanes exist in various forms, of which the most important are the foams, elastomers, and coatings. They are also used as adhesives, moulding compounds and fibres.

The instant merchandise is not formed by the condensation of amines or amides with aldehydes, thus it can not be classified as an amino resin. Nor is it produced by the reaction of polyfunctional isocyanates with polyhydroxy compounds. While the instant merchandise will be reacted with polyhydroxy compounds after entry, the merchandise is not polyurethane at the time of entry into the U.S. Hence, the merchandise is not classifiable in heading 3909.

Rather, the merchandise is described in Chapter 39, note 3(e), HTSUS, as an "other prepolymer." Specifically, this merchandise is classifiable in subheading 3911.90.90, HTSUS, the provision for "[p]etroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones and other products specified in note 3 to this chapter, not elsewhere specified or included, in primary forms: [o]ther: [o]ther."

*Holding:*

Tolonate® HDB/HDT is classifiable in subheading 3911.90.90, HTSUS, the provision for "[p]etroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysul-

phones and other products specified in note 3 to this chapter, not elsewhere specified or included, in primary forms: [o]ther; [o]ther.”

*Effect on Other Rulings:*

NY 833598 is revoked.

In accordance with 19 U.S.C. §1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

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