

# Bureau of Customs and Border Protection

## *General Notices*

### DATES AND DRAFT AGENDA OF THE THIRTY-FIRST SESSION OF THE HARMONIZED SYSTEM COMMITTEE OF THE WORLD CUSTOMS ORGANIZATION

**AGENCIES:** Customs and Border Protection (Department of Homeland Security) and U.S. International Trade Commission.

**ACTION:** Publication of the dates and draft agenda for the thirty-first session of the Harmonized System Committee of the World Customs Organization.

**SUMMARY:** This notice sets forth the dates and draft agenda for the next session of the Harmonized System Committee of the World Customs Organization.

**DATE:** March 25, 2003.

**FOR FURTHER INFORMATION CONTACT:** Myles B. Harmon, Director, Commercial Rulings Division, Customs and Border Protection (202-572-8860) [myles.b.harmon@customs.treas.gov](mailto:myles.b.harmon@customs.treas.gov), or Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission (202-205-2592).

#### SUPPLEMENTARY INFORMATION:

##### BACKGROUND

The United States is a contracting party to the International Convention on the Harmonized Commodity Description and Coding System (“Harmonized System Convention”). The Harmonized Commodity Description and Coding System (“Harmonized System”), an international nomenclature system, form the core of the U.S. tariff, the Harmonized Tariff Schedule of the United States. The Harmonized System Convention is under the jurisdiction of the World Customs Organization (established as the Customs Cooperation Council).

Article 6 of the Harmonized System Convention establishes a Harmonized System Committee (“HSC”). The HSC is composed of representatives from each of the contracting parties to the Harmonized System

Convention. The HSC's responsibilities include issuing classification decisions on the interpretation of the Harmonized System. Those decisions may take the form of published tariff classification opinions concerning the classification of an article under the Harmonized System or amendments to the Explanatory Notes to the Harmonized System. The HSC also considers amendments to the legal text of the Harmonized System. The HSC meets twice a year in Brussels, Belgium. The next session of the HSC will be the thirty-first, and it will be held from May 15-28, 2003.

Set forth below is the draft agenda for the next session of the HSC. Copies of available agenda-item documents may be obtained from either the Customs and Border Protection or the U.S. International Trade Commission ("ITC"). Comments on agenda items may be directed to the above-listed individuals.

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

[Attachment]

Attachment

DRAFT AGENDA FOR THE THIRTY-FIRST  
SESSION OF THE HARMONIZED SYSTEM COMMITTEE

Thursday, May 15 (11:30 a.m.) to Wednesday, May 28, 2003

N.B.: *Monday, May 12, 2003 (10 a.m.) to Wednesday, May 14, 2003*: Presessional Working Party (to examine the questions under Agenda Item VII)  
*Thursday, May 15, 2003 (9:30 a.m. – 11:00 a.m.)*: Adoption of the Report of the 27th Session of the Review Sub-Committee

I.

*ADOPTION OF THE AGENDA*

- |                          |          |
|--------------------------|----------|
| 1. Draft Agenda .....    | NC0657E1 |
| 2. Draft Timetable ..... | NC0658B1 |

II.

*REPORT BY THE SECRETARIAT*

- |  |                      |
|--|----------------------|
| 1. Position regarding Contracting Parties to the HS Convention and related matters .....             | NC0659E1             |
| 2. Report on the last meeting of the Policy Commission (48th Session) ..                             | NC0660E1             |
| 3. Approval of decisions taken by the Harmonized System Committee at its 30th Session .....          | NG0045E1<br>NC0662E1 |
| 4. Capacity building activities of the Nomenclature and Classification Sub-Directorate .....         | NC0661E1             |
| 5. Co-operation with other international organisations .....   | NC0663E1             |
| 6. New information provided on the WCO Web site .....  | NC0664E1             |
| 7. Annual survey to determine the percentage of national revenue represented by Customs duties ..... | NC0665E1             |
| 8. Survey on Free Trade Agreements .....   | NC0666E1             |
| 9. Other   |                      |

III.

*GENERAL QUESTIONS*

- |  |          |
|--|----------|
| 1. Use of working languages for HS matters ..... | NC0667E1 |
| 2. Corrigendum to Doc. NG0023B1 .....            | NG0066E1 |

IV.

*RECOMMENDATION*

- |  |          |
|--|----------|
| 1. Draft Recommendation of the Customs Co-operation Council on the insertion in national statistical nomenclatures of subheadings to facilitate the collection and comparison of data on the international movement of substances controlled by virtue of amendments to the Montreal Protocol on substances that deplete the ozone layer ..... | NC0668E1 |
|--|----------|

V.

*REPORT OF THE SCIENTIFIC SUB-COMMITTEE*

- |   |          |
|---|----------|
| 1. Report of the 18th Session of the Scientific Sub-Committee ..... | NS0080E2 |
| 2. Matters for decision by the Harmonized System Committee .....    | NC0669E1 |
| 3. Classification of new INN products (INN List 87) .....           | NC0670E1 |

VI.

*REPORT OF THE HS REVIEW SUB-COMMITTEE*

- |  |          |
|--|----------|
| 1. Report of the 27th Session of the HS Review Sub-Committee ..... | NR0400E2 |
| 2. Matters for decision by the Harmonized System Committee .....   | NC0671E1 |

## VII.

*REPORT OF THE PRESESSIONAL WORKING PARTY*

1. Insertion of pictures or drawings in the Compendium of Classification Opinions .....	NC0672E1
2. Amendments to the Compendium of Classification Opinions arising from the classification of bakers' wares (waffles) in subheading 1905.32 .....	NC0673E1
3. Amendment of the Explanatory Notes with a view to distinguishing between medicated bone graft substitutes and bone reconstruction cements .....	NC0674E1
4. Amendments to the Compendium of Classification Opinions arising from the classification of a polyurethane resin in dimethyl formamide in subheading 3208.90 .....	NC0675E1
5. Amendment of the Explanatory Notes to reflect the classification of an injectable intracutaneous gel in heading 33.04 .....	NC0676E1
6. Amendments to the Compendium of Classification Opinions arising from the classification of a product by the name of "Mosstanol L" in subheading 3814.00 .....	NC0677E1
7. Amendments to the Compendium of Classification Opinions arising from the classification of a certain panels of wood in subheading 4421.90 .....	NC0678E1
8. Amendments to the Compendium of Classification Opinions arising from the classification of quilted, decorative pillow coverings (shams) in subheading 6304.92 .....	NC0679E1
9. Amendments to the Compendium of Classification Opinions arising from the classification of sliding doors for lifts (elevators) in subheading 7308.30 .....	NC0680E1
10. Amendments to the Compendium of Classification Opinions and the Explanatory Notes arising from the classification of a hydraulic salt/sand spreader in subheading 8479.10 .....	NC0681E1
11. Amendments to the Compendium of Classification Opinions arising from the classification of certain grounding rods in subheading 7326.90 and certain grounding devices in subheading 8535.90 .....	NC0682E1
12. Amendment of the Explanatory Notes to clarify the classification of flash electronic storage cards .....	NC0683E1
13. Amendments to the Compendium of Classification Opinions arising from the classification of two battery packs used in cellular (mobile) telephones in subheadings 8507.30 and 8507.80 .....	NC0684E1
14. Amendments to the Compendium of Classification Opinions arising from the classification of safety seats for infants and toddlers in subheading 9401.80 .....	NC0685E1
15. Amendments to the Compendium of Classification Opinions arising from the classification of a "baby walker" in subheading 9403.70 .....	NC0686E1
16. Amendments to the Compendium of Classification Opinions arising from the classification of "roller shoes" in subheading 9506.70 .....	NC0687E1

## VIII.

*FURTHER STUDIES*

1. Correlation between the Harmonized System and the WTO instrument on pharmaceutical products .....	NC0688E1
2. Possible amendment of the Explanatory Note to heading 19.05 .....	NC0689E1
3. Study of the phrase "unless the context otherwise requires" as used in GIR 6 .....	NC0690E1
4. Study on the possible conflict between the classification of "Bonnet Bleu" and Classification Opinion 2109.90/21 .....	NC0691E1
5. Proposal by the US Administration to amend the Nomenclature to Chapter 41 .....	NC0692E1
6. Classification of a "Fanta" beverage base .....	NC0636E1 NC0647E1 (HSC/30)

*FURTHER STUDIES—Continued*

7. Classification of certain modified starches or sizing preparations . . . .	NC0693E1
8. Classification of an antimycotic agent referred to as “Natamax” . . . . .	NC0694E1
9. Study of the use of the terms “hygienic”, “sanitary” and “toilet” in Chapter 39 . . . . .	NC0695E1
10. Possible amendment of the Explanatory Notes to Chapter 39 with regard to the classification of cellular plastics-covered nonwovens . . . . .	NC0639E1 (HSC/30) C0696E1
11. Possible amendments to the Nomenclature with regard to the Rotterdam Convention . . . . .	NC0697E1
12. Classification of yarn put up in hanks . . . . .	NC0638E1 (HSC/30) NC0698E1
13. Study of the application of GIR 3 (b) to multi-function machines . . .	NC0699E1
14. Classification of a “semi-automatic goods-vending machine”—Scope of heading 84.76 . . . . .	NC0700E1
15. Classification of parts of safety belts of heading 87.08 . . . . .	NC0701E1
16. Study of the classification of junction boxes in the Harmonized System . . . . .	NC0702E1
17. Possible amendment of the Explanatory Note to heading 94.01 to reflect the classification of safety seats for infants and toddlers in subheading 9401.80 . . . . .	NC0703E1
18. Possible amendment of the Explanatory Note to heading 95.05 (Proposal by the <i>EC</i> ) . . . . .	NC0704E1
19. Possible misalignment of the English and French texts of the Explanatory Note to heading 84.42 . . . . .	NC0705E1

## IX.

*NEW QUESTIONS*

1. Classification of a bread making machine . . . . .	NC0706E1
2. Classification of “skate fins” (of the genus <i>Raja</i> ) . . . . .	NC0707E1
3. Classification of natural sodium sulphate . . . . .	NC0708E1
4. Study on the criteria to distinguish between “domestic” vacuum cleaners of heading 85.09 and “industrial” vacuum cleaners of heading 84.79 . . . . .	NC0709E1
5. Definition of newsprint . . . . .	NC0710E1
6. Classification of used wooden railway sleepers (Note by the <i>Canadian Administration</i> ) . . . . .	NC0711E1
7. Possible amendment to the Explanatory Notes of Chapter 39 (Proposal by the <i>EC</i> ) . . . . .	NC0712E1
8. Possible amendment of the Explanatory Notes to headings 61.01 and 61.10 (Proposal by the <i>EC</i> ) . . . . .	NC0713E1

## X.

*OTHER BUSINESS*

1. List of questions which might be examined at a future session

## XI.

*ELECTIONS*

## XII.

*DATES OF NEXT SESSIONS*

DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS,  
*Washington, DC, March 19, 2003.*

The following documents of the Bureau of Customs and Border Protection (“CBP”), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,  
(for Michael T. Schmitz, Assistant Commissioner,  
Office of Regulations and Rulings.)

---

REVOCATION OF RULING LETTERS AND TREATMENT  
RELATING TO THE TARIFF CLASSIFICATION OF  
GEOTEXTILE MATERIAL

AGENCY: Bureau of Customs and Border Protection, Dept. of Homeland Security.

ACTION: Notice of revocation of ruling letters and treatment relating to the tariff classification of geotextile material.

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 five ruling letters pertaining to the tariff classification of geotextile material 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 January 8, 2003, in Volume 37, Number 2, of the CUSTOMS BULLETIN. One set of comments was received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 30, 2003.

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) B89661, dated September 30, 1997, Headquarters Ruling Letter (HQ) 965747, dated September 10, 2002, and to revoke any treatment accorded to substantially identical merchandise was published in the January 8, 2003, CUSTOMS BULLETIN, Volume 37, Number 2. One set of comments was received in response to the notice. A summary of the comments and Customs response are set out in the attached rulings.

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. To that end, three additional rulings on substantially similar merchandise have been identified that were not specified in the proposed notice. The newly identified rulings are NY G84179, dated November 15, 2000; NY B86204, dated July 2, 1997, and NY 818692, dated February 8, 1996. 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 merchandise. 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 pre-

sumption 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 B89661 and HQ 965747, Customs classified geotextile material that is constructed from man-made yarns that are woven together on a standard weaving loom, into an open mesh material, with spaces varying from 16mm x 16mm, to 21mm x 24mm, and which is dipped in polyvinyl chloride plastic, in subheading 3921.90.1950, HTSUSA, which provides, in part, for other plates sheets, film, foil and strip of plastics, combined with a textile material of a single type of fibers.

In NY G84179, NY B86204, and NY 818692, Customs classified geotextile materials constructed from open mesh leno woven fabric of man-made yarns, which was entirely coated with plastics material, and had spaces ranging from ½ inch to 1-1/8<sup>th</sup> inch, in subheading 3921.90.1950, HTSUSA.

Based on our analysis of the scope of the terms of subheadings 3921.90.1950 and 3926.90.9880, HTSUSA, the Legal Notes, the Explanatory Notes, a decision by the WCO's Harmonized System Committee, and the submitted comments, the geotextile material of the type discussed herein, is classified in subheading 3926.90.9880, HTSUSA, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other, Other."

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY B89661, HQ 965747, NY G84179, NY B86204, NY 818692, and any other ruling not specifically identified, in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 965889 (Attachment A) and HQ 966281 (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 merchandise.

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

Dated: March 17, 2003.

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

[Attachments]



[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,*Washington, DC, March 17, 2003.*

CLA-2:RR:CR:TE 965889 JFS

Category: Classification

Tariff No. 3926.90.9880

MICHAEL E. ZELLER, ESQ.  
MOORE & VAN ALLEN, PLLC  
Suite 4700  
100 North Tryon Street  
Charlotte, NC 28202-4003

Re: Revocation of HQ 965747 and NY B89661; Geotextile Mesh Material; Chapter 39, HTSUSA; Other Article of Plastic; Not "Sheeting" of Plastic.

DEAR MR. ZELLER:

On September 10, 2002, Headquarters Ruling Letter (HQ) 965747, dated September 10, 2002, was issued to you on behalf of your client, Luckenhaus, North America, Inc., concerning the tariff classification of a geotextile material under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). That ruling was issued in response to a request for reconsideration of New York Ruling Letter (NY) B89661, dated September 30, 1997.

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 965747 and NY B89661 was published on January 8, 2003, in the CUSTOMS BULLETIN, *Volume 37, Number 2*. As explained in the notice, the period within which to submit comments on this proposal ended on February 7, 2003. One set of comments, those submitted by you on behalf of your client, was received in opposition to the proposed revocation. After careful consideration of the comments, as set forth in the LAW AND ANALYSIS section of this ruling, we have determined to proceed. Therefore, this ruling revokes HQ 965747 and NY B89661.

*Facts:*

The samples considered in HQ 965747 are geotextile materials that are constructed from man-made yarns that are woven together on a standard weaving loom. The yarns are woven into a mesh, the open spaces of which vary from 16mm x 16mm, to 21mm x 24mm. In your request for reconsideration you stated that the fabric is "coated with PVC dispersion by dipping curing."

In NY B89661, a nearly identical material was considered and was described as follows:

The sample submitted, identified as "Raugrid" material, consists of an open mesh leno woven high tenacity polyester man-made fiber fabric that has been thoroughly coated and impregnated with a polyvinyl chloride plastics material. The instant sample has a mesh size of approximately 1/2". Your letter indicates that the PVC portion comprises 60% by weight of the total weight of the material. You indicate that this material, which will be imported as roll goods, will be used for civil engineering, waste containment and road pavement overlay applications, etc.

*Issue:*

Whether plastic coated geotextile material that is of an open mesh weave is classified as a sheet of plastic in subheading 3921.90, HTSUSA, or as an "other" article of plastics in subheading 3926.90, HTSUSA.

*Law and Analysis:*

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

The Harmonized Commodity Description and Coding System Explanatory Notes (EN's) represent the official interpretation of the Harmonized System at the internation-

al 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. The EN's, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUSA, and are generally indicative of the proper interpretation of these headings.

In HQ 965747, Customs classified the geotextile material in subheading 3921.90.1950, HTSUSA, as an other sheet of noncellular plastics, combined with a single textile material. In your comments, you argue that the geotextile material was improperly classified in Chapter 39, HTSUSA, and should be classified in heading 5903, HTSUSA, which provides, in part, for: "[t]extile fabrics **impregnated**, coated, covered or laminated with plastics \* \* \*." Emphasis added. You reason that Note 2(a)(3) to Ch. 59 only excludes products "in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye \* \* \*." You contend that, because Note 2(a)(3) does not include "impregnated" fabrics as one of the fabrics excluded from Chapter 59, fabrics that are impregnated, even if also covered and coated with plastics, are not excluded from classification in Chapter 59, HTSUSA.

In support of this argument you describe the mechanical process by which the instant fabric is "impregnated" with plastics. Additionally, you provide a lab report to demonstrate that the fabric is impregnated, and not just embedded, covered or coated with plastics. For the purposes of this ruling, Customs will assume that the fabric has undergone an "impregnation" process that is more than the dipping or coating that was described in your original ruling request that resulted in the issuance of HQ 965747.

In your comments, you argue that "[t]he fact that the impregnation process results in a coating on the surface of the article in addition to the impregnation is not sufficient reason to apply Note 2(a)(3) to Chapter 59 to exclude [your client's] product from Chapter 59." We find, however, that the intent of Note 2(a)(3) to Chapter 59 is to classify those products "completely embedded in" or "entirely coated or covered" with plastics under the headings that provide for plastics or articles of plastics because they have acquired the characteristics of plastics. The instant fabrics are embedded and entirely coated or covered with plastics. The fact that the fabric also underwent an impregnation process resulting in some impregnation of the fabric, only addresses the degree to which the PVC penetrated the surface of the fabric and yarns. It does not alter the fact the fabric is entirely coated with plastics.

You further argue that the geotextile material is not excluded from Chapter 59, HTSUSA, by operation of Note 2(a), because the textile material is not present merely for reinforcement purposes. Note 2(a) to chapter 59, HTSUSA, lists six alternative types of products that are excluded from classification in Chapter 59. Products of cellular plastics in which the textile fabric is present merely for reinforcing purposes, enumerated in Note 2(a)(5), are merely one type of the six types of fabrics or products to which heading 5903 does not apply. The note does not require that the plastic coated fabrics excluded by the terms of Note 2(a)(3), also be present merely for reinforcing purposes.

By operation of Note 2(a)(3) to Chapter 59, HTSUSA, the instant geotextile material is excluded from classification in heading 5903, HTSUSA, and is properly classified in Chapter 39, HTSUSA. Having concluded that the geotextile material is classified in Chapter 39, HTSUSA, it must next be determined in what heading the material will be classified. It is further noted that Customs decision in HQ 965747, to classify the geotextile material in heading 3921, HTSUSA, is in conflict with a recent decision by the World Customs Organization's (WCO) Harmonized System Committee (HSC). In the HSC decision, substantially similar merchandise was classified in subheading 3926.90, HS. See Annex L/5 to Doc. NC0590B2 (HSC/29/May 2002).

The HSC decision was based on the application of Legal Note 10 to Chapter 39, which states that:

In headings 3920 and 3921, the expression "*plates, sheets, film, foil and strip*" applies only to plates, sheets, film, foil and strip (other than those of Chapter 54) and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use).

The HSC did not consider the geotextile material, with its large open weave, to be a "sheet." See Annex G/11 to Doc. NC0510E2 (HSC/28/Nov. 2001). Customs treats decisions of the HSC in the same manner as the guidance of the EN's, i.e., while neither legally bind-

ing nor dispositive, they provide a commentary on the scope of each heading of the HTS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80. Moreover, EN’s and decisions of the HSC “should receive considerable weight.” *Id.* Customs is in agreement with the conclusions of the HSC referenced above.

The tariff does not define the term “sheet.” However, in *Sarne Handbags Corp. v. United States*, 100 F. Supp. 2d 1126 (2000), the Court of International Trade defined the term “sheeting” as follows:

[T]he common meaning of “sheeting” is material in the form of or suitable for forming into a broad surface of something that is unusually thin, or is a material in the form of a continuous thin covering or coating.

The open spaces of the instant geotextile material are large enough that the material cannot be considered to have a “broad surface.” The unusually wide spacing in the weave interrupts any sort of surface continuity that could be formed, with each warp and weft yarn essentially standing alone, except where they intersect. The weave is not tight enough, and the yarns are not close enough, for them to form a continuous surface. Accordingly, the instant geotextile material is not “sheeting,” nor a sheet of plastic that is classifiable in heading 3921, HTSUSA.

Heading 3926, HTSUSA, essentially covers articles of plastics not elsewhere specified. Since there are no other headings in Chapter 39 that specifically provide for the instant geotextile material, we agree with the HSC that subheading 3926.90, is the proper six digit subheading in which to classify the instant good. We find that the geotextile material is specifically classified in subheading 3926.90.9880, HTSUSA, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other: Other.”

*Holding:*

HQ 965747, dated September 10, 2002, and NY B89661, dated September 30, 1997, are hereby revoked. The instant geotextile material is classified in subheading 3926.90.9880, HTSUSA, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other: Other.” The general column one rate of duty is 5.3 percent *ad valorem*.

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

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

---

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
Washington, DC, March 17, 2003.

CLA–2:RR:CR:TE 966281 JFS  
Category: Classification  
Tariff No. 3926.90.9880

MS. BRENDA CHIDESTER  
WESTERN OVERSEAS CORP.  
4111-K Roselake Drive  
Charlotte, NC 28217

Re: Revocation of NY G84179, NY B86204, and NY 818692; Geotextile Mesh Material; Chapter 39, HTSUSA; Other Article of Plastic; Not “Sheeting” of Plastic.

DEAR MS. CHIDESTER:

Customs has issued three rulings, New York Ruling Letter (NY) G84179, dated November 15, 2000, NY B86204, dated July 2, 1997, and NY 818692, dated February 8, 1996, to you

and your firm on behalf of your client, Huesker Inc., concerning the tariff classification of a geotextile material under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Customs has also issued HQ 965747, dated September 10, 2002, and NY B89661, dated September 30, 1997, concerning the tariff classification of substantially similar geotextile material manufactured by a producer other than your client.

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 965747 and NY B89661, was published on January 8, 2003, in the CUSTOMS BULLETIN, *Volume 37, Number 2*. As explained in the notice, the period within which to submit comments on this proposal ended on February 7, 2003. One set of comments was received in opposition to the proposed revocation. It has come to Customs attention that the above referenced rulings issued to your client are subject to the proposed revocation. After careful consideration of the comments, as set forth in the LAW AND ANALYSIS section of this ruling, we have decided to revoke those rulings. Accordingly, this ruling revokes NY G84179, NY B86204, and NY 818692.

*Facts:*

In NY G84179, the samples were described as follows:

The instant sample, identified as Fortrac MP Geogrid material, consists of an open mesh leno woven fabric composed of high tenacity polyester yarns. The woven fabric is subsequently, entirely coated with a black colored, compact polyvinyl chloride plastics material (not PVA as also mentioned in the importer's letter) that is amply visible to the naked eye other than by a change of color. Because of the mesh size, only the yarns remain completely covered by the plastic. The instant sample has a mesh size of approximately 7/8" x 1-1/8". Your correspondence and brochure indicate that this material will range in weight from 5.5 to 21 ounces per square yard have mesh sizes varying from .8 x .8 inch to 2.0 x 2.0 inch. These materials are of a type that are used in construction projects for soil reinforcement in retaining walls, slopes and landfill lining systems, etc. They will be imported as roll goods having standard roll dimensions of 328 feet long by 12.14 feet wide.

In NY B86204, the samples were described as follows:

The instant sample, identified as "Fornit 20 Geogrid" material, consists of an open mesh leno woven fabric composed of polypropylene man-made fiber yarns that have been thoroughly coated and impregnated (per a recent telephone conversation with Jim Martin of Huesker Inc.,) with an acrylic plastics material. The instant sample has a mesh size of approximately 1/2". Your correspondence indicates that the material weighs approximately 4 ounces per square yard and will be imported in standard roll sizes of 16.4 foot wide and 656.14 feet long. These "Fornit" Geogrid materials have been developed to stabilize poor soils by providing tensile reinforcement and soil separation. They confine and strengthen road base thereby reducing the required aggregate base thickness.

In NY 818692, the samples were described as follows:

While you submitted two representative samples, Fortrac 55/30-20 and Fortrac 35/20-20, respectively, your brochure refers to several other styles. These materials consist of open mesh leno woven fabrics composed of high tenacity polyester yarns that have been thoroughly coated and impregnated with a polyvinyl chloride plastics material. The instant samples both have mesh sizes of approximately 3/4". Your correspondence indicates that these materials will range in weight from 5.5 to 30 ounces per square yard and 40 to 220 mils in thickness. These materials are of a type that are used in construction projects for reinforcement of roads, walls, slopes and embankments, etc. They will be imported as roll goods.

*Issue:*

Whether plastic-coated geotextile material that is of an open mesh weave is classified as a sheet of plastic in subheading 3921.90, HTSUSA, or as an "other" article of plastics in subheading 3926.90, HTSUSA.

*Law and Analysis:*

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or

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

The Harmonized Commodity Description and Coding System Explanatory Notes (EN's) represent 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. The EN's, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUSA, and are generally indicative of the proper interpretation of these headings.

In HQ 965747, Customs classified geotextile material (hereinafter "Raugrid" fabric") in subheading 3921.90.1950, HTSUSA, as an other sheet of noncellular plastics, combined with a single textile material. The Raugrid fabric is substantially similar to the instant geotextile material. In the comments received by Customs, the commenter argues that the Raugrid fabric was improperly classified in Chapter 39, HTSUSA, and should be classified in heading 5903, HTSUSA, which provides, in part, for: "[t]extile fabrics **impregnated**, coated, covered or laminated with plastics \* \* \*." Emphasis added. The commenter reasons that Note 2(a)(3) to Ch. 59 only excludes products "in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye \* \* \*." The commenter contends that, because Note 2(a)(3) does not include "impregnated" fabrics as one of the fabrics excluded from Chapter 59, fabrics that are impregnated, even if also covered and coated with plastics, are not excluded from classification in Chapter 59, HTSUSA.

In support of this argument the commenter describes the mechanical process by which the Raugrid fabric is "impregnated" with plastics. Additionally, the commenter provided a lab report to demonstrate that the fabric is impregnated, and not just embedded, covered or coated with plastics. For the purposes of this ruling, Customs will assume that the Raugrid fabric has undergone an "impregnation" process that is more than the dipping or coating that was described in the original ruling request that resulted in the issuance of HQ 965747.

The commenter argues that "[t]he fact that the impregnation process results in a coating on the surface of the article in addition to the impregnation is not sufficient reason to apply Note 2(a)(3) to Chapter 59 to exclude [your client's] product from Chapter 59." We find, however, that the intent of Note 2(a)(3) to Chapter 59 is to classify those products "completely embedded in" or "entirely coated or covered" with plastics under the headings that provide for plastics or articles of plastics because they have acquired the characteristics of plastics. The Raugrid fabrics are embedded and entirely coated or covered with plastics. The fact that the fabric also underwent an impregnation process resulting in some impregnation of the fabric, only addresses the degree to which the PVC penetrated the surface of the fabric and yarns. It does not alter the fact the fabric is entirely coated with plastics.

The commenter further argues that the Raugrid fabric is not excluded from Chapter 59, HTSUSA, by operation of Note 2(a), because the textile material is not present merely for reinforcement purposes. Note 2(a) to chapter 59, HTSUSA, lists six alternative types of products that are excluded from classification in Chapter 59. Products of cellular plastics in which the textile fabric is present merely for reinforcing purposes, enumerated in Note 2(a)(5), are merely one type of the six types of fabrics or products to which heading 5903 does not apply. The note does not require that the plastic coated fabrics excluded by the terms of Note 2(a)(3), also be present merely for reinforcing purposes.

The instant geotextile material, like the Raugrid fabric, is excluded from classification in heading 5903, HTSUSA, by operation of Note 2(a)(3) to Chapter 59, HTSUSA, and is properly classified in Chapter 39, HTSUSA. Having concluded that the geotextile material is classified in Chapter 39, HTSUSA, it must next be determined in what heading the material will be classified. It is further noted that Customs decision in HQ 965747, to classify the geotextile material in heading 3921, HTSUSA, is in conflict with a recent decision by the World Customs Organization's (WCO) Harmonized System Committee (HSC). In the HSC decision, substantially similar merchandise was classified in subheading 3926.90, HS. See Annex L/5 to Doc. NC0590B2 (HSC/29/May 2002).

The HSC decision was based on the application of Legal Note 10 to Chapter 39, which states that:

In headings 3920 and 3921, the expression “*plates, sheets, film, foil and strip*” applies only to plates, sheets, film, foil and strip (other than those of Chapter 54) and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use).

The HSC did not consider the geotextile material, with its large open weave, to be a “sheet.” See Annex G/11 to Doc. NC0510E2 (HSC/28/Nov. 2001). Customs treats decisions of the HSC in the same manner as the guidance of the EN’s, i.e., while neither legally binding nor dispositive, they provide a commentary on the scope of each heading of the HTS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80. Moreover, EN’s and decisions of the HSC “should receive considerable weight.” *Id.* Customs is in agreement with the conclusions of the HSC referenced above.

The tariff does not define the term “sheet.” However, in *Sarne Handbags Corp. v. United States*, 100 F. Supp. 2d 1126 (2000), the Court of International Trade defined the term “sheeting” as follows:

[T]he common meaning of “sheeting” is material in the form of or suitable for forming into a broad surface of something that is unusually thin, or is a material in the form of a continuous thin covering or coating.

The open spaces of the instant geotextile material are large enough that the material cannot be considered to have a “broad surface.” The unusually wide spacing in the weave interrupts any sort of surface continuity that could be formed, with each warp and weft yarn essentially standing alone, except where they intersect. The weave is not tight enough, and the yarns are not close enough, for them to form a continuous surface. Accordingly, the instant geotextile material is not “sheeting,” nor a sheet of plastic that is classifiable in heading 3921, HTSUSA.

Heading 3926, HTSUSA, essentially covers articles of plastics not elsewhere specified. Since there are no other headings in Chapter 39 that specifically provide for the instant geotextile material, we agree with the HSC that subheading 3926.90, is the proper six digit subheading in which to classify the instant good. We find that the geotextile material is specifically classified in subheading 3926.90.9880, HTSUSA, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other: Other.”

*Holding:*

NY G84179, dated November 15, 2000, NY B86204, dated July 2, 1997, and NY 818692 dated February 8, 1996, are hereby revoked. The instant geotextile material is classified in subheading 3926.90.9880, HTSUSA, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other: Other.” The general column one rate of duty is 5.3 percent *ad valorem*.

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

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