

U.S. Customs Service

General Notices

TREASURY ADVISORY COMMITTEE ON COMMERCIAL OPERATIONS OF THE U.S. CUSTOMS SERVICE

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of meeting and announcement of membership.

SUMMARY: This notice announces the date, time, and location for the first meeting of the eighth renewed term of the Treasury Advisory Committee on Commercial Operations (COAC), announcement of members, and the provisional agenda for consideration by the Committee.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on Friday, January 24, 2003, at 9:00 a.m. at the Department of the Treasury, in the Cash Room, located at 15th Street and Pennsylvania Avenue, NW, Washington, DC. (Main entrance off of Pennsylvania Avenue) The duration of the meeting will be approximately four hours, starting at 9:00 a.m.

MEMBERSHIP: The twenty (20) members for the eighth term of COAC are:

Sandra M. Fallgatter
JC Penney Purchasing Corp.

Carol Fuchs
Katten, Muchin Zaris, & Rosemman

Dennis Heck
Yamaha Corp. of America

Michael D.Laden
Target Customs Brokers, Inc.

Arthur Litman
Tower Group

Peterson, John F.
C.H. Powell Company

Norman Schenk
United Parcel Service

James Finnegan
Kulicke & Soffa

Angela Gittens
Miami International Airport

D. Scott Johnson
Gap, Inc.

Marian Ladner
Strasburger and Price

Mary Jo Muoio
Barthco International, Inc.

Karen Phillips
Canadian National

Robert Schueler, Jr.
Delphi Corporation

Sandra Scott
Roadway Express

Renee Stein
Microsoft Corporation

Thomas G. Travis
Sandler, Travis & Rosenberg

Kevin M. Smith
General Motors Corp.

Katherine M. Terricciano
Philips Electronics N. America

Tim Van Oost
BP

FOR FURTHER INFORMATION CONTACT: Helen Belt, Tariff and Trade Specialist (Regulatory, Tariff and Trade Enforcement), Office of the Under Secretary (Enforcement), telephone (202) 622-0230.

At this meeting, the Advisory Committee is expected to pursue the following agenda. The agenda may be modified prior to the meeting.

Agenda:

- 1) Customs Business
- 2) Customs Trade Partnership Against Terrorism, 24-hr. Manifest Rules, Customs Structure in Department of Homeland Security
- 3) Merchandise Processing Fee; Proper Deduction of Freight & Other Costs from Customs Value
- 4) OR&R
- 5) Committee Administration
- 6) Agenda Items for Next Meeting

SUPPLEMENTARY INFORMATION: The meeting is open to the public; however, participation in the Committee's deliberations is limited to Committee members, Customs and Treasury Department staff, and persons invited to attend the meeting for special presentations. A person other than an Advisory Committee member who wishes to attend the meeting should contact Theresa Manning at (202) 622-0220 or Helen Belt at (202) 622-0230 for pre-clearance.

Dated: December 19, 2002.

TIMOTHY E. SKUD,
*Deputy Assistant Secretary,
Regulatory, Tariff, and Trade Enforcement.*

[Published in the Federal Register, December 26, 2002 (67 FR 78859)]

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

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

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

ACTION: Notice of 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 is revoking 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 is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed revocation was published on November 6, 2002, in the CUSTOMS BULLETIN. No comments were received in response to this notice.

DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 10, 2003.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to Customs obligations under 19 U.S.C 1625 (c)(1), a notice was published on November 6, 2002, in Vol. 36, No. 45 of the CUSTOMS BULLETIN, proposing to revoke a ruling letter pertaining to the tariff classification of certain optical amplifiers and dispersion compensation modules used in long-haul digital telecommunications systems. No comments were received in response to this notice.

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

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY H86252 to the extent that it does not reflect the proper classification of optical amplifiers and dispersion compensation modules used in long-haul digital telecommunication systems pursuant to the analysis in HQ 965942,

which is set forth as the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

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

Dated: December 19, 2002.

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

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, December 19, 2002.
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.

Pursuant to 625 (c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY H86252 was published on November 6, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 45. No comments were received in response to that notice.

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 telecommunications 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. 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, Acting Director,
Commercial Rulings Division.)

**REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF ALUMINUM FOIL**

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

ACTION: Notice of revocation of ruling letters and treatment relating to tariff classification of aluminum foil.

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 aluminum foil 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 November 13, 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 March 10, 2003.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the CUSTOMS BULLETIN on November 13, 2002, proposing to revoke HQ 965610, NY H87523, and NY C85578, which involved the classification of aluminum foil. 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 HQ 965610, NY H87523, NY C85578, and any other ruling not specifically identified in order to reflect the proper classification of the subject merchandise pursuant to the analysis set forth in HQ 965976, HQ 965999, and HQ 966004, respectively. HQ 965976, HQ 965999, and HQ 966004 are set forth as Attachments A, B, and C. 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: December 19, 2002.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, December 19, 2002.

CLA-2 RR:CR:GC 965976 GOB
Category: Classification
Tariff No. 7607.19.60

MICHAEL A. JOHNSON
RODRIGUEZ O'DONNELL ROSS FUERST GONZALEZ & WILLIAMS
*20 North Wacker Drive
Suite 1416
Chicago, IL 60606*

Re: Revocation of HQ 965610; Aluminum Foil.

DEAR MR. JOHNSON:

This letter is with respect to HQ 965610 issued to you on behalf of Vaw Flexible Packaging on September 20, 2002. HQ 965610 affirmed NY H87523 dated January 25, 2002, with respect to the merchandise the subject of HQ 965610 and this ruling. We have reviewed the classification in HQ 965610 and have determined that it is incorrect. This ruling sets forth the correct classification.

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 HQ 965610, as described below, was published in the CUSTOMS BULLETIN on November 13, 2002. No comments were received in response to the notice.

Facts:

In HQ 965610, the subject merchandise was described as follows:

The merchandise at issue is aluminum foil known as "top peel"® or "Aluthene"®. Three types of Aluthene®, Aluthene® 40 II E 133/6, Aluthene® 50 II E 133/6 and 12 are the subject of this reconsideration. The merchandise is used as a peelable closure or operculum (i.e., a non-permeable and sterilized lid or seal) for bottles and cups in the food packing industry. The product has two layers. The outer layer of Aluthene 40 II E

133/6 is formed of an aluminum foil with a thickness of 0.038mm. The outer layers of Aluthene® 50 II E 133/6 and 12 are made of an aluminum foil with a thickness of 0.048mm. According to your submission, the foil has a second layer—"a co-extruded plastic sealing layer (a plastic film) laminated to one side, namely, the side which forms the inside of the packaging top for which the foil is used—the side which will face the food product being packaged." The layer has a thickness of 0.030mm in all three products, and is used for heat sealing to different types of plastics, glass or metal.

In HQ 965610, we classified the subject aluminum foil in subheading 7607.11.60, HTSUS. As stated above, we have reviewed that 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 subject foil?

Law and Analysis:

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

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

The HTSUS provisions under consideration are as follows:

7607	Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm:
	Not backed:
7607.11	Rolled but not further worked:
	Of a thickness not exceeding 0.15 mm:
7607.11.60	Of a thickness exceeding 0.01 mm
*	*
7607.19	Other:
	Other:
7607.19.60	Other

In HQ 965610, the crucial issue addressed was whether or not the aluminum foil was "backed." We concluded that the aluminum foil was not "backed" and classified the foil in subheading 7607.11.60, HTSUS. The issue of whether the foil was "further worked" was not examined. See the language of subheading 7607.11, HTSUS. If the aluminum foil is "further worked," it is not described in subheading 7607.11.60, HTSUS, and is described in subheading 7607.19.60, HTSUS.

In *Winter-Wolff Inc. v. United States*, 22 CIT 70 (1998), in finding that certain laser-treated aluminum capacitor foil was classified in subheading 7607.19.60, HTSUS, the court held that "further worked" should be defined in accordance with its common, dictionary meaning for the purpose of subheading 7607.11, HTSUS. From two dictionaries, the court interpreted the common dictionary meaning of "further worked" to be as follows: " * * * to subject an existing product to some process of development, treatment, or manufacture to a greater degree or extent * * * to form, fashion or shape an existing product to a greater extent." *Id.* at 78.

In your letter of April 5, 2002, requesting reconsideration of NY H87523, you stated in pertinent part as follows:

The product is not merely coated. It has a co-extruded plastic sealing layer (a plastic film) laminated to one side, namely, the side which will form the inside of the packaging top for which this foil is used—the side which will face the food product being packaged. It also has a printable lacquer coating on the outside surface * * *

We now conclude that the work performed on the subject aluminum foil (i.e., coatings) constitutes a "further working" based upon the definitions in *Winter-Wolff, supra*, i.e., the

original product of the aluminum foil was developed, treated or manufactured to a greater extent. Because the aluminum foil is further worked, it is classified in subheading 7607.19.60, HTSUS, as: "Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm: Not backed: * * * Other: * * * Other: * * * Other."

Holding:

The subject aluminum foil is classified in subheading 7607.19.60, HTSUS, as: "Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm: Not backed: * * * Other: * * * Other: * * * Other."

Effect on Other Rulings:

HQ 965610 is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

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

[ATTACHMENT B]

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

CLA-2 RR:CR:GC 965999 GOB
Category: Classification
Tariff No. 7607.19.60

TIM MICHAELY
ICS CUSTOMS SERVICE INC.
812 Thorndale Ave.
Bensenville, IL 60106

Re: Revocation of NY H87523; Aluminum Foil.

DEAR MR. MICHAELY:

This letter is with respect to NY H87523 issued to you on behalf of Vaw Flexible Packaging on January 25, 2002. We have reviewed the classification in NY H87523 and have determined that it is incorrect. This ruling sets forth the correct classification.

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 H87523, as described below, was published in the CUSTOMS BULLETIN on November 13, 2002. No comments were received in response to the notice.

Facts:

In NY H87523, the subject merchandise was described as follows:

Sample #1, called top peel[®], is to be used as a peelable closure for bottles and cups. It will be made in France. Sample #2, called Hermetalu[®], is to be used as a lidding aluminum with a heat seal lacquer. It will be made in Germany. Each foil is rolled, then coated with plastic. The thickness will vary from .03 mm to .06 mm. The product comes in three layers with the outside-coated layer to be used for surface printing. The middle layer is for oxygen and U.V. protection, stiffness and strength. The inside layer is for heat sealing to different types of plastics, glass or metal.

In NY H87523, Customs classified both samples in subheading 7607.11.60, HTSUS. As stated above, we have reviewed that 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 subject aluminum foil?

Law and Analysis:

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

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

The HTSUS provisions under consideration are as follows:

7607	Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm:
	Not backed:
7607.11	Rolled but not further worked:
	Of a thickness not exceeding 0.15 mm:
7607.11.60	Of a thickness exceeding 0.01 mm
*	*
*	*
*	*
*	*
*	*
*	*
7607.19	Other:
	Other:
7607.19.60	Other

In *Winter-Wolff Inc. v. United States*, 22 CIT 70 (1998), in finding that certain laser-treated aluminum capacitor foil was classified in subheading 7607.19.60, HTSUS, the court held that “further worked” should be defined in accordance with its common, dictionary meaning for the purpose of subheading 7607.11, HTSUS. From two dictionaries, the court interpreted the common dictionary meaning of “further worked” to be as follows: “* * * to subject an existing product to some process of development, treatment, or manufacture to a greater degree or extent * * * to form, fashion or shape an existing product to a greater extent.” *Id.* at 78.

We now conclude that the work performed on the subject aluminum foil (i.e., coatings) constitutes a “further working” based upon the definitions in *Winter-Wolff, supra*, i.e., the original product of the aluminum foil was developed, treated or manufactured to a greater extent. Because the aluminum foil is further worked, it is classified in subheading 7607.19, HTSUS, specifically in subheading 7607.19.60, HTSUS, as: “Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm: Not backed: * * * Other: * * * Other: * * * Other.”

Holding:

The subject aluminum foil (both samples) is classified in subheading 7607.19.60, HTSUS, as: “Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm: Not backed: * * * Other: * * * Other: * * * Other.”

Effect on Other Rulings:

NY H87523 is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

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

[ATTACHMENT C]

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

CLA-2 RR:CR:GC 966004 GOB
Category: Classification
Tariff No. 7607.19.60

NED H. MARSHAK
SHARRETT, PALEY, CARTER & BLAUVELT, P.C.
75 Broad Street, 26th Floor
New York, NY 10004

Re: Revocation of NY C85578; Aluminum Fin Stock.

DEAR MR. MARSHAK:

This letter is with respect to NY C85578 issued to you on behalf of Nissho Iwai American Corporation on March 24, 1998. We have reviewed the classification in NY C85578 and have determined that it is incorrect. This ruling sets forth the correct classification.

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 C85578, as described below, was published in the CUSTOMS BULLETIN on November 13, 2002. No comments were received in response to the notice.

Facts:

In NY C85578, the subject merchandise was described as follows:

The subject merchandise is aluminum fin stock, item KS203, designed for use in heat exchangers for air conditioners. In its imported condition, the aluminum fin stock is 0.14 mm thick x 346 mm wide (0.0055" thick x 13.62" wide) in material lengths. This product's surface is treated with a double layer pre-coating of a silicate film and a hydrophilic coating for the prevention of rust. After importation, the aluminum fin stock is cut to fit individual air conditioners.

In NY C85578, Customs classified the subject merchandise in subheading 7607.11.60, HTSUS. As stated above, we have reviewed that 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 subject aluminum fin stock?

Law and Analysis:

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

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

The HTSUS provisions under consideration are as follows:

7607	Aluminum foil (whether or not printed, or backed with paper, paper-board, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm: Not backed:
7607.11	Rolled but not further worked: Of a thickness not exceeding 0.15 mm:
7607.11.60	Of a thickness exceeding 0.01 mm
*	* * * * *

7607.19 Other:
 Other:
 7607.19.60 Other

In *Winter-Wolff Inc. v. United States*, 22 CIT 70 (1998), in finding that certain laser-treated aluminum capacitor foil was classified in subheading 7607.19.60, HTSUS, the court held that “further worked” should be defined in accordance with its common, dictionary meaning for the purpose of subheading 7607.11, HTSUS. From two dictionaries, the court interpreted the common dictionary meaning of “further worked” to be as follows: “* * * to subject an existing product to some process of development, treatment, or manufacture to a greater degree or extent * * * to form, fashion or shape an existing product to a greater extent.” *Id.* at 78.

We now conclude that the work performed on the subject aluminum fin stock (i.e., coatings) constitutes a “further working” based upon the definitions in *Winter-Wolff*; *supra*, i.e., the original product was developed, treated or manufactured to a greater extent. Because the aluminum fin stock is further worked, it is classified in subheading 7607.19, HTSUS, specifically in subheading 7607.19.60, HTSUS, as: “Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm: Not backed: * * * Other: * * * Other.”

Holding:

The subject aluminum fin stock is classified in subheading 7607.19.60, HTSUS, as: “Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm: Not backed: * * * Other: * * * Other.”

Effect on Other Rulings:

NY C85578 is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

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

REVOCATION OF RULING LETTER AND TREATMENT
 RELATING TO TARIFF CLASSIFICATION OF BULK LIP
 MAKE-UP PREPARATIONS

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

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of bulk lip make-up preparations.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking one ruling letter pertaining to the tariff classification of bulk lip make-up preparations 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 November 13, 2002, in the CUSTOMS BULLETIN. No comments were received in response to this notice.

DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 10, 2003.

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 November 13, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 46, proposing to revoke NY B84855, dated June 24, 1997, which classified bulk lipstick in subheading, 3824.90.90, HTSUS. No comments were received in response to this notice.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or to the importer's or Customs' previous interpretation

of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on treatment of substantially identical transactions or on a specific ruling concerning merchandise covered by this notice which was not identified 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 this final decision.

In NY B84855, dated June 24, 1997, bulk lipstick was classified as a chemical preparation not elsewhere specified or included in subheading 3824.90.90, HTSUS. It is now Customs position that bulk lip make-up preparations are classifiable in subheading 3304.10.00, HTSUS. The scope of heading 3304, HTSUS, covers cosmetics imported in bulk, so long as the goods contain all essential ingredients and are produced as cosmetics, because "make-up preparations" are goods produced for the specific purpose of making oneself up. Thus, bulk lipstick containing the essential elements of lipstick and that needs only be molded or have minor constituents added is a lip make-up preparation.

Further, Chapter 33, Note 3, HTSUS, which states that "[h]eadings 3303 to 3307 apply, *inter alia*, to products, whether or not mixed * * * suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use," cannot be read to exclude from classification in heading 3304, HTSUS, goods that are not put up in packings for retail sale because of the use of *inter alia*, which means "among other things." Therefore, bulk lipstick is classifiable in heading 3304, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY B84855 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 HQ 965977, which attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical merchandise.

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

Dated: December 19, 2002.

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

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
 U.S. CUSTOMS SERVICE,
 Washington, DC, December 19, 2002.
 CLA-2: RR:CR:GC 965977 DBS
 Category: Classification
 Tariff No. 3304.10.00

MR. DAVID A. EISEN
 TOMKINS & DAVIDSON
 One Astor Plaza, 1515 Broadway
 New York, NY 10036-8901

Re: Bulk cosmetic preparations; NY B84855 revoked.

DEAR MR. EISEN:

On June 24, 1997, this office issued to you on behalf of your client, Christian Dior Perfumes Inc., New York (NY) B84855, classifying bulk lipstick as a chemical preparation not elsewhere specified or included under subheading 3824.90.90, Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered NY B84855 and have determined the classification to be 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 November 13, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 46. No comments were received in response to the notice.

Facts:

In a letter dated May 1, 1997 you had requested a binding classification ruling from Customs National Commodity Specialist Division, New York, (NCSO) for bulk lipstick with a composition as follows: castor oil, isostearate, myristyl lactate, microcrystalline wax, cetyl acetate, butyl stearate, ceresin, mineral oil, carnuaba, acetelated linolin alcohol, synthetic beeswax, canoelilla wax, octylmethoxy cinnamate, tocopherol, titanium oxide, iron oxide, FD&C yellow, D&C red and traces of other organic compounds.

Issue:

Whether the scope of heading 3304, HTSUS, includes make-up preparations imported in bulk.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. 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 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:

- 3304** Beauty or make-up preparations and preparations for the care of skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations:
- * * * * *
- 3824** Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included

GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note.

Section VI, Note 2, HTSUS, provides, in pertinent part, as follows: “* * * [G]oods classifiable in heading * * * 3304 * * * by reason of being put up in measured doses or for retail sale are to be classified in [this heading] and in no other heading of the tariff schedule.”

Chapter 33, Note 3, HTSUS, states that “[h]eadings 3303 to 3307 apply, *inter alia*, to products, whether or not mixed * * * suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use.”

The issue before Customs is the scope of heading 3304, HTSUS. Beauty and make-up preparations imported ready for retail sale are classifiable in heading 3304, HTSUS. However, we must consider whether the legal note excludes from classification in those headings goods imported in bulk that are not put up in packings for retail sale.

Heading 3304, HTSUS, is an *eo nomine* provision. An *eo nomine* provision is one that describes a commodity by a specific name, as opposed to use. Absent limiting language or indicia of contrary legislative intent, an *eo nomine* provision covers all forms of the article. See *National Advanced Sys. v. United States*, 26 F.3d 1107, 1111 (Fed. Cir. 1994). An *eo nomine* provision may be limited by use, but such use limitation should not be read into an *eo nomine* provision unless the name itself inherently suggests a type of use. See *United States v. Quon Quon Co.*, 46 C.C.P.A. 70, 72–73 (1959), cited by *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1379 (Fed. Cir. 1999).

The term “preparations” is not defined in the HTSUS, and the exemplars of beauty or make-up preparations and preparations for the care of the skin in the ENs do not provide clear guidance with regard to the bulk product at issue. To determine the proper meaning of tariff terms as contained in the statute, the terms are “construed in accordance with their common and popular meaning, in the absence of contrary legislative intent.” *E.M. Chemicals v. United States*, 920 F.2d 910, 913 (Fed. Cir. 1990). “To assist it in ascertaining the common meaning of a tariff term, the court may rely upon its own understanding of the terms used, and it may consult lexicographic and scientific authorities, dictionaries, and other reliable information sources.” *Brookside Veneers, Ltd. v. United States*, 847 F.2d 786, 789, 6 Fed. Cir. (T) 121, 125 (Fed. Cir.) cert. denied, 488 U.S. 943, (1988).

We consulted several lexicographic sources. The relevant definition of “preparation,” found in the Oxford English Dictionary, 2281 (compact ed. 1987), is: “6. A substance specially prepared, or made up for its appropriate use or application, e.g. as food or medicine, or in the arts or sciences.” Webster’s Third New International Dictionary, 1790 (unabridged 1986), states: “5. Something that is prepared: something made, equipped, or compounded for a specific purpose.” In the Random House Unabridged Dictionary (2d ed. 1993) “preparation” is, in pertinent part: “5. Something prepared, manufactured or compounded: *a special preparation for sunbathers.*”

Each definition specifically states or denotes that a “preparation” is made for a specific purpose. Therefore, the *eo nomine* provision is limited by use. As the terms of heading 3304, HTSUS, provide for beauty and make-up preparations, goods of the heading must be substances made for the specific purpose of making oneself up.

It is axiomatic that classification is based on goods in the condition in which they are imported. See, e.g., *United States v. P. John. Hanrahan, Inc.*, 45 CCPA 120, 124, C.A.D. (1958). In *Aceto Chemical Co., Inc. v. United States*, 59 CCPA 212, C.A.D. 1069 (1972), the appellate court held that the chemical mixture at issue in its condition as imported contained the essential elements that impart the function of shampoo, and was thus a completed shampoo for tariff purposes, even though water, perfume and coloring agents were added after importation. Similarly, though not packaged for retail sale, the product at issue contains all essential components of lipstick and is produced only for use as a lip make-up preparation. Therefore, it is a completed lip make-up preparation for tariff purposes, and thus provided for by the terms of heading 3304, HTSUS.

Accordingly, Note 3 to Chapter 33, HTSUS, cannot be read to exclude a good specifically provided for in the heading text. Moreover, neither of the relevant legal notes use exclusionary or limiting language. On the contrary, the use of *inter alia*, meaning “among other things,” in Note 3 signifies that the heading covers more than products “suitable for use as goods of the heading and put up in packings of a kind sold by retail for such use.” The language of Section VI, Note 2 merely requires that goods that are put up for retail sale must be classified in those headings.

The scope of the heading is buttressed by the decisions of the Nomenclature Committee of the Customs Co-Operation Council under the Brussels Tariff Nomenclature (BTN), predecessors to the Harmonized System Committee (HSC) and the Harmonized System (HS) of the World Customs Organization, respectively. The BTN may be treated as legislative history to the tariff provisions where the language of the tariff provision and a Brussels section is very similar. *See S.G.B. Steel Scaffolding & Shoring Co., Inc. v. United States*, 82 Cust. Ct. 197, Cust. Dec. 4802 (1979); Sturm, *Customs Laws & Administration*, § 52.2 at 16, 17 (3d ed. 1988), and cases cited therein.

Heading 33.06 of the BTN provided for "Perfumery, cosmetics and toilet preparations." It is the predecessor provision for heading to 3304, HTSUS. The language is similar, as cosmetic preparations are beauty and make-up preparations, so we may consider the BTN as legislative history. Further, the classification from the following decision was retained in the conversion to the HTS. *See Annex H/3 to Doc. 33.250, NC/56/May 86, IHSC/6/May 86.*

The Nomenclature Committee determined that bulk lipstick matter, not packaged for retail sale but containing all of the ingredients, including coloring matter, which needed only to be molded into lipstick was classifiable in heading 33.06. *See 8500/315 E, NC/6/Sept. 61.* In a classification opinion published in the Compendium of Classification Opinions, the HSC determined that lipstick base containing no coloring matter or perfume was not classifiable in Chapter 33 as an unfinished cosmetic preparation by application of GRI 2(a) because of the absence of coloring matter, an essential component of lipstick. *See Doc. 37.202, HSC/9/Jan. 92; see also Doc. 37.302, HSC/8/Oct. 91 for full discussion.* This lipstick base was classified as a chemical mixture in subheading 3823.90, HTS (now subheading 3824.90, HTS, pursuant to Doc. 38.960, Annex L/8, HSC/14/Nov. 94).

Heading 3824, HTSUS, provides for chemical preparations not elsewhere specified or included. As the instant product is provided for in heading 3304, HTSUS, heading 3824, HTSUS, is inapplicable.

Holding:

Bulk lipstick is classifiable in subheading 3304.10.00, HTSUS, which provides for, "Beauty or make-up preparations and preparations for the care of skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: lip make-up preparations."

Effect on Other Rulings:

NY B84855, dated June 24, 1997 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.

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

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

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling letter pertaining to the tariff classification of solar caps 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 October 23, 2002. One comment 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 March 10, 2003.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the CUSTOMS BULLETIN on

October 23, 2002, proposing to revoke NY H88002, dated February 27, 2002, which involved the classification of solar caps. One comment was received in response to the notice.

As stated in the proposed notice, this modification 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 modifying NY H88002 and any other ruling not specifically identified in order to reflect the proper classification of the solar caps pursuant to the analysis set forth in HQ 965852, 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.

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

Dated: December 20, 2002.

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

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, December 20, 2002.
CLA-2 RR:CR:GC 965852 GOB
Category: Classification
Tariff No. 9405.92.00

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

Re: Modification of H88002; Solar Caps.

DEAR MR. BURKE:

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

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 modification of H88002, as described below, was published in the CUSTOMS BULLETIN on October 23, 2002.

The only comment received in response to the notice was the comment filed by your office on behalf of Intermatic Incorporated. You take issue with the description of the subject good with a light bulb. While one of the four samples received in this office had a light bulb, for the purpose of this ruling we are willing to state that the subject goods do not contain light bulbs. The subject goods consist of plastic housings with a solar panel and LED. You contend that the goods are classified in subheading 8541.40.60, HTSUS, as composite machines by virtue of Note 3 to Section XVI, HTSUS. We are unpersuaded by your comment. Note 3 to Section XVI, HTSUS, applies to goods of Section XVI, HTSUS. As detailed below, we believe that the subject solar caps are squarely within the exclusion of EN 85.41(B)(2)(i), excerpted below, such that they are not classified in heading 8541, HTSUS. The solar caps are goods which are beyond the scope of heading 8541 and its subheadings. See HQ 962957 dated October 23, 2000, and the discussion below. The solar caps are fully described in heading 9405, HTSUS, as parts of a lamp.

Facts:

In NY H88002, the goods were described as follows:

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

The subject goods consist of plastic housings with a solar panel and LED.

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

Issue:

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

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined

according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied.

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

The HTSUS provisions under consideration are as follows:

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

EN 85.41(B) discusses photosensitive semiconductor devices, including photovoltaic cells. EN 85.41(B)(2)(i) provides in pertinent part as follows:

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

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

Holding:

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

Effect On Other Rulings:

NY H88002 is modified. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

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

REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF A COMPACT
TUNABLE LASER SOURCE MODULE

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 a compact tunable laser source module.

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 a compact tunable laser source module 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 November 13, 2002. The one comment that was received in response to this notice was in support of the proposed revocation.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 10, 2003.

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 November 13, 2002, in the CUSTOMS BULLETIN, Vol. 36, No. 46, proposing to revoke HQ 964451 dated March 8, 2001, pertaining to the tariff classification of a compact tunable laser source module. The one comment that was received during the comment period was in support of the proposed revocation.

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 HQ 964451, dated March 8, 2001, Customs found that the subject compact tunable laser source module was classified in subheading 9013.80.90, HTSUS, as an other optical instrument, not specified or included elsewhere in chapter 90, HTSUS. Customs has reviewed the matter and determined that the correct classification of the compact tunable laser source module is in subheading 9027.90.54, HTSUS, as a part of an instrument or apparatus for measuring or checking quantities of heat, sound or light.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking HQ 964451 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) 965906 (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), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: December 20, 2002.

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

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, December 20, 2002.
CLA-2 RR:CR:GC 965906 KBR
Category: Classification
Tariff No. 9027.90.54

MR. AL LOW
IMPORT OPERATIONS MANAGER
AGILENT TECHNOLOGIES, INC.
*395 Page Mill Road, MS A2-04A
Palo Alto, CA 94303-0870*

Re: Reconsideration of HQ 964451; Compact Tunable Laser Source Modules.

DEAR MR. LOW:

This is in reference to Headquarters Ruling Letter (HQ) 964451, dated March 8, 2001, issued to you regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of compact tunable laser source modules. 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 November 13, 2002, in Vol. 36, No. 46 of the CUSTOMS BULLETIN, proposing to revoke HQ 964451. The one comment received during the comment period was in support of the proposed revocation. This ruling revokes HQ 9064451 by providing the correct classification for the compact tunable laser source module.

In HQ 964451, Customs found that the compact tunable laser source module for the Lightwave Multimeter Measuring System was classified in subheading 9013.80.90, HTSUS, as an other optical instrument, not specified or included elsewhere in chapter 90, HTSUS. Since HQ 964451 was issued Customs has issued two other rulings involving tunable laser source modules for the Lightwave Multimeter system, HQ 965639 (September 12, 2002) and HQ 965640 (September 12, 2002). Customs has reviewed the matter and determined that, pursuant to HQ 965639 and HQ 965640, the correct classification of the compact tunable laser source module is in subheading 9027.90.54, HTSUS, as a part of an instrument or apparatus for measuring or checking quantities of heat, sound or light. For the reasons stated below, this ruling revokes HQ 964451.

Facts:

HQ 964451 concerned a compact tunable laser source module, model # 81689A. It is one part of a Lightwave Multimeter mainframe and modules consisting of seven components: the mainframe, the power sensors, the optical heads, the return loss, laser sources (standard and high power) and compact laser sources.

The compact tunable laser provides a laser output at a particular laser wavelength that is tunable over a specific wavelength range. It contains a Fabry-Perot laser diode, features

an external cavity and incorporates various other elements like a printed circuit board and a coupler. The physical composition is:

- 3 printed circuit assemblies (PCA)
- 1 laser chip
- 1 inline isolator/taped coupler
- 1 grating
- 1 prism
- 1+ collimating lens
- 1+ focusing lens
- 1 stepper motor
- 1 fiber optic cable assembly
- Cavity machine parts
- Chassis sheetmetal parts
- Plastic front panel

You described the compact tunable laser source as capable of being controlled remotely or from the front panel of the mainframe in which it is housed. The compact tunable laser source module does not stand alone but must be inserted into a slot in the mainframe.

The article is built specifically to work with the Agilent 8163A Lightwave Multimeter Mainframe, 8164A Lightwave Multimeter Mainframe, 8164A Lightwave Measurement System Mainframe and 8166A Lightwave Multichannel System Mainframe. The Agilent 8163A/8164A/8166A Lightwave Multimeter series are fiber-optic multipurpose measurement tools used for testing optical components and systems. The system measures quantities of light by use of optical radiation. It is capable of measuring basic fiber-optic parameters and replaces stand alone instruments such as optical power meters, dedicated loss test sets, return loss meters and stable optical sources. The Lightwave Multimeter is used in test applications such as the Dense WDM (Wavelength Division Multiplexing) test, the classic EDFA (Erbium Doped Fiber Amplifier) test, the classic component test and the CD/PMD (Chromatic Dispersion/Polarization Mode Dispersion) test.

The system sends light to the device being tested and measures the light that is returned to the Lightwave Multimeter measurement system mainframe. The measurement system characterizes the effects of the device on the lightwave and displays those effects on the cathode ray tube monitor contained within the mainframe. The measurement system is used principally to test optical components such as multiplexers, demultiplexers, optical switches, isolators, connectors and amplifiers, during their manufacture, fiber bragg gratings or thin film filters.

The measurement system can be used to measure the absorption of light by the tested device, effects on light wavelength, effects on chromatic dispersion (the color of light), cross talk (such as when you hear another conversation on the telephone), and signal power. The mainframe unit has a plug-in port or slots where tunable laser sources may be inserted and four slots for hosting power modules, return loss modules, compact tunable lasers or fixed laser sources. It has a color display and a 3.5 inch floppy drive.

Issue:

What is the classification under the HTSUS for the compact tunable laser source module?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI.

The HTSUS provisions under consideration are as follows:

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:
9013.80	Other devices, appliances and instruments:
9013.80.90	Other.
9027	Instruments and apparatus for physical or chemical analysis for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus; instruments and apparatus for measuring or checking

	viscosity, porosity, expansion, surface tension or the like; instruments and apparatus for measuring or checking quantities of heat, sound, or light (including exposure meters); microtomes; parts and accessories thereof:
9027.50	Other instruments and apparatus using optical radiations (ultra-violet, visible, infrared):
9027.50.40	Electrical:
9027.90	Microtomes; parts and accessories: Parts and accessories: Other:
9027.90.54	Of instruments and apparatus of subheading 9027.20, 9027.30, 9027.40, 9027.50 or 9027.80

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Two headings within chapter 90 are under consideration, heading 9013 and heading 9027. Heading 9013, in pertinent part, includes lasers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in chapter 90. Heading 9027, in pertinent part, includes instruments and apparatus for measuring or checking quantities of heat, sound, or light.

The article involved in the instant decision is a compact tunable laser source module intended to be incorporated into Agilent's Lightwave Multimeter mainframe unit. In HQ 965639 (September 12, 2002), Customs found that the Lightwave Multimeter measurement system was classified in subheading 9027.50.40, HTSUS, as instruments and apparatus for measuring or checking quantities of heat, sound, or light. However, this decision involves only the compact tunable laser source module.

In part, EN 90.13 (p. 1600) states that:

[l]asers are classified in this heading not only if they are intended to be incorporated in machines or appliances but also if they can be used independently, as compact lasers or laser systems, for various purposes such as research, teaching, or laboratory examinations.

However, the heading excludes lasers which have been adapted to perform quite specific functions by adding ancillary equipment consisting of special devices (e.g., worktables, work-holders, means of feeding and positioning workpieces, means of observing and checking the progress of the operation, etc.) and which, therefore, are identifiable as working machines, medical apparatus, control apparatus, measuring apparatus, etc. Machines and appliances incorporating lasers are also excluded from the heading. Insofar as their classification is not specified in the Nomenclature, they should be classified with the machines or appliances having a similar function.

In construing heading 9013, Customs has determined that where a light source contains optical components other than a laser, but was not provided for more specifically elsewhere in chapter 90, such a good was classifiable within heading 9013. See HQ 956919 (December 12, 1994), and HQ 957966 (October 31, 1995).

Customs previously found that stand alone, bench-top tunable laser diode sources were classified under subheading 9013.80.90, HTSUS. See HQ 962947 (March 12, 2001), HQ 962890 (March 5, 2001), HQ 962893 (March 5, 2001), HQ 956919 (December 12, 1994)(classified under subheading 9013.80.60, HTSUS, now subheading 9013.80.90, HTSUS). Because, the merchandise contained a laser diode chip, the light source could not be classified under subheading 9013.20.00, HTSUS, as a laser, other than a laser diode. Customs found that even if the light source contained a laser other than a laser diode, that component would still be just one of many optical components contained within the light source. Therefore, because the light source, which contained various optical components, was not classifiable elsewhere under chapter 90, HTSUS, it was classifiable under subheading 9013.80.90, HTSUS. See NY 873993 (May 27, 1992).

The instant compact tunable laser sources are only modules. They must be inserted into the mainframe unit and cannot stand alone. The compact tunable laser source module does not have a power source, a central processing unit (CPU), controls, application software, or displays. The design and connections of the compact tunable laser source allow it to be incorporated only into the Lightwave Multimeter mainframe unit. In very similar

situations involving the same Lightwave Multimeter testing systems but a different plug-in module, Customs found that the tunable laser source module was classified in subheading 9027.90.54, HTSUS, citing note 2(b) to chapter 90 which states:

Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013, or 9031) are to be classified with the machines, instruments or apparatus of that kind

See HQ 965640 (September 12, 2002); HQ 965639 (September 12, 2002).

Therefore, because the compact tunable laser source module cannot function outside of the mainframe unit, we find that the compact tunable laser source module is a part for use solely with the Lightwave Multimeter measurement system. Therefore, pursuant to the discussion above, we find that the correct classification of the Agilent compact tunable laser source module is as a part of an instrument or apparatus for measuring or checking quantities of heat, sound or light; classifiable in subheading 9027.90.54, HTSUS.

Holding:

The compact tunable laser source module is classifiable in subheading 9027.90.54, HTSUS, as a part of an instrument or apparatus for measuring or checking quantities of heat, sound or light.

Effect on Other Rulings:

HQ 964451 dated March 8, 2001, 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.

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

PROPOSED REVOCATION OF A RULING LETTER AND
REVOCATION OF TARIFF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A QUILT

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

ACTION: Notice of proposed revocation of a tariff classification ruling letter and revocation of treatment relating to the tariff classification of a quilt.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to revoke one ruling letter pertaining to the tariff classification of a quilt and to revoke any treatment previously accorded by Customs to substantially identical merchandise. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before February 7, 2003.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Rebecca Hollaway, Textiles Branch, (202) 572-8814.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke one ruling letter pertaining to the tariff classification of a quilt. Although in this notice Customs is specifically referring to one ruling, New York Ruling Letter (NY) I82843, dated July 2, 2002, (attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice which is contrary to the position set forth in the proposed ruling letter, should advise Customs during this notice period.

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

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

In NY I82843, Customs classified a quilt (referred to as a Beach Roll-Up) under subheading 9404.90.8020, HTSUS, as articles of bedding and similar furnishing. However, due to the irregular size of the quilt Customs intends to revoke the above mentioned ruling letter and reclassify the quilt under subheading 6304.92.0000, as other furnishings articles, excluding those of heading 9404. Customs further intends to revoke any other ruling not specifically identified, in order to classify this merchandise under subheading 6304.92.0000, HTSUS. 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 merchandise. Before taking this action, we will give consideration to any written comment, timely received.

Proposed HQ 965829 is set forth as Attachment B to this document.

Dated: December 19, 2002.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, July 2, 2002.

CLA-2-94:RR:NC:TA:349 I82843
Category: Classification
Tariff No. 9404.90.8020

MS. PILAR DORFMAN
E. BESLER & COMPANY
*115 Martin Lane
Elk Grove Village, IL 60007-1309*

Re: The tariff classification of a beach quilt from China.

DEAR MS. DORFMAN:

In your letter dated May 13, 2002, received by this office on June 5, 2002, you requested a classification ruling on behalf of LTD Commodities Inc.

The submitted sample is referred to as the BIK-Beach Quilt Roll-Up. This composite item consists of a quilt, inflatable pillow and a storage/carry bag. The outer shell of the quilt is made from 100 percent cotton woven fabrics and it is stuffed with a polyester fiber-fill. The face side features a Hawaiian style print and the back is plain white. It is quilted through all three layers and measures 76 x 85 inches. The edges are finished with a strip of binding fabric. An approximately 10 x 14 inch fabric pocket is sewn along the edge of one side. This pocket contains a 9.5 x 13.5 inch inflatable plastic bladder. The cylindrical storage and carrying bag measures approximately 25 inches high and 8 inches in diameter. It is

made from the Hawaiian print fabric and features a drawstring closure, carry strap and a mesh bottom panel. The storage and carrying bag is specifically designed to contain the rolled up quilt. The quilt conveys the essential character of this product.

The applicable tariff provision for the beach quilt will be 9404.90.8020, Harmonized Tariff Schedule of the United States (HTS), which provides for mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with any material or of cellular rubber or plastics, whether or not covered: other: other: of cotton, not containing any embroidery, lace, braid, edging, trimming, piping exceeding 6.35 mm or applique work * * * quilts, eiderdowns, comforters and similar articles. The rate of duty will be 4.5 percent ad valorem.

The beach quilt falls within textile category designation 362. Based upon international textile trade agreements products of China are subject to quota and the requirement of a visa.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist John Hansen at 646-733-3043.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

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

CLA-2 RR:CR:TE 965829 RH
Category: Classification
Tariff No. 6304.92.0000

LAWRENCE R. PILON, ESQ.
HODES KEATING & PILON
39 South LaBalle Street, Suite 1020
Chicago, IL 60603-1731

Re: Proposed Revocation of NY I82843; Classification of a Beach Roll-Up; Heading 9404; Heading 6304.

DEAR MR. PILON:

This is in reply to your letter of August 15, 2002, on behalf of LTD Commodities, Inc., requesting reconsideration of New York Ruling Letter (NY) 182843, dated July 2, 2002, concerning the classification of a beach quilt roll-up.

Facts:

A description of the merchandise in NY I82843 reads as follows:

The submitted sample is referred to as the BIK-Beach Quilt Roll-Up. This composite item consists of [sic] a quilt, inflatable pillow and a storage/carry bag. The outer shell of the quilt is made from 100 percent cotton woven fabrics and it is stuffed with a polyester fiberfill. The face side features a Hawaiian style print and the back is plain

white. It is quilted through all three layers and measures 76 x 85 inches. The edges are finished with a strip of binding fabric. An approximately 10 x 14 inch fabric pocket is sewn along the edge of one side. This pocket contains a 9.5 x 13.5 inch inflatable plastic bladder. The cylindrical storage and carrying bag measures approximately 25 inches high and 8 inches in diameter. It is made from the Hawaiian print fabric and features a drawstring closure, carry strap and a mesh bottom panel. The storage and carrying bag is specifically designed to contain the rolled up quilt. The quilt conveys the essential character of this product.

Customs classified the beach quilt under subheading 9404.90.8020 of the Harmonized Tariff Schedule of the United States (HTSUS), as an article of bedding or similar furnishing.

You argue that the merchandise is properly classified under subheading 6307.90.9889, HTSUS, as "Other made up textile articles, including dress patterns."

Issue:

What is the proper classification of the subject merchandise?

Law and Analysis:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order.

Heading 9404, HTSUS, provides for "Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material, or of cellular rubber or plastics, whether or not covered."

You argue that neither the specific terms of subheading 9404.90.8020 nor the more general terms of heading 9404 describe the merchandise at issue because it is not intended, designed, marketed, nor used as a bedcover, nor is it similar to quilts, eiderdowns, and comforters.

In HQ 957410, dated February 3, 1995, Customs held that implicit in an article being considered "bedding" is that it be capable of serving a primary function of covering a bed sufficiently so as to make such use practicable. We further held that while Customs is reluctant to provide specific dimensions and a dividing line for goods that are potentially classifiable as quilts or bedding, those goods with the general appearance of bedding which slightly deviate from the standard quilt sizes and could still adequately cover an entire bed so that use as a quilt is reasonable and likely, would also be classifiable under Heading 9404, HTSUS. The standard sizes listed in the ruling are as follows:

	Mattress Sizes	Quilts and Bedspreads
Twin	39" X 75"	66" X 86"
Full	54" X 75"	81" X 86"
Queen	60" X 80"	86" X 86"
King	78" X 80"	100" X 90"

A detailed discussion on heading 9404 is set forth in the LAW and ANALYSIS portion of HQ 957410, which is attached for your convenience.

Both your submission and the advertising literature states that the instant quilt measures 74 inches by 84 inches. We note that the original sample examined by the National Import Specialist measured 76 inches by 85 inches, and our measurements of the instant sample are 74.5 inches by 84.5 inches.

Based on our examination of the sample, we find that it has the general appearance and construction of a quilt. However, in our opinion the size of the quilt (both the original and present sample) "deviates significantly" from the standard size mattresses and bedding listed in HQ 957410.

We further find that the quilt is classifiable under heading 6304, HTSUS, which provides for "Other furnishing articles, excluding those of heading 9404", notwithstanding the pillow and bladder component. See NY H81473, dated June 13, 2001, NY H86638, dated January 14, 2002, and NY F82823, dated February 24, 2000, in which we held that irregular size quilts with a pocket feature were classified in heading 6304.

Finally, we disagree with you that the beach roll-up is classifiable in heading 6307, HTSUS. The items in the rulings cited to support your claim are distinguishable from your client's quilt and possess features that are not characteristic of bedding. For example, in

NY G86366, dated January 30, 2001, NY G86128, dated January 24, 2001, and D80795, dated August 1, 1998, the beach “mats” or “blankets” were filled with “foam” and were tightly woven of synthetic fibers or were coated with plastic to give them moisture resistant or waterproof qualities, features that are not present in your client’s quilt.

Holding:

NY I82843 is REVOKED. The subject article is classifiable in subheading 6304.92.0000, HTSUS, which provides for “Other furnishing articles, excluding those of heading 9404; Other, Not knitted or crocheted, of cotton.” It is dutiable at the general one column rate at 6.5 percent ad valorem.

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

PROPOSED MODIFICATION OF RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF GRADUATED COMPRESSION
STOCKINGS AND HOSIERY

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

ACTION: Notice of proposed modification of tariff classification ruling letters and treatment relating to the classification of graduated compression stockings and hosiery.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify seven ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of graduated compression stockings and hosiery. Similarly, Customs proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before February 7, 2003.

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

FOR FURTHER INFORMATION CONTACT: Timothy Dodd, Textiles Branch: (202) 572–8819.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify seven rulings relating to the tariff classification of graduated compression stockings and hosiery. Although in this notice Customs is specifically referring to seven New York Ruling Letters, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the seven identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, an internal advice memorandum or decision or a protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer’s or Customs previous interpretation of the HTSUS. Any person involved with substantially identical merchandise should advise Customs during this notice period. An importer’s failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to this notice.

In New York Ruling Letter (NY) B87014, dated August 6, 1997, NY E82160, dated June 10, 1999, and NY E82592, NY E82593, NY E82594, NY E82595, and NY E82596, all dated June 11, 1999, the Customs Service classified hosiery providing a graduated compression ranging from

20–30 mm Hg in subheading 6115.12.2000, 6115.92.9000, or 6115.93.9020, HTSUSA, as other panty hose or stockings. NY B87014 is set forth as “Attachment A,” NY E82160 is set forth as “Attachment B,” NY E82592 is set forth as “Attachment C,” NY E82593 is set forth as “Attachment D,” NY E82594 is set forth as “Attachment E,” NY E82595, is set forth as “Attachment F,” and NY E82596 is set forth as “Attachment G” to this document.

It is now Customs determination that the proper classification for the hosiery considered in those rulings, having a graduated compression range of 20–30 mm Hg, is either subheading 6115.12.1000, 6115.92.3000, or 6115.93.3000, HTSUSA, as surgical panty hose or stockings with graduated compression for orthopedic treatment. Proposed Headquarters Ruling Letter (HQ) 965914 modifying NY B87014 is set forth as “Attachment H” to this document. Proposed HQ 965916 modifying NY E82160 is set forth as “Attachment I” to this document. Proposed HQ 965917 modifying NY E82592 is set forth as “Attachment J” to this document. Proposed HQ 965918 modifying NY E82593 is set forth as “Attachment K” to this document. Proposed HQ 965919 modifying NY E82594 is set forth as “Attachment L” to this document. Proposed HQ 965920 modifying E82595 is set forth as “Attachment M” to this document. Proposed HQ 965921 modifying NY E82596 is set forth as “Attachment N” to this document.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify the aforementioned seven New York Ruling Letters and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analyses set forth in the seven Proposed Headquarters Ruling Letters identified above (HQ 965914, HQ 965916, HQ 965917, HQ 965918, HQ 965919, HQ 965920, and HQ 965921). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

Dated: December 23, 2002.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
 U.S. CUSTOMS SERVICE,
New York, NY, August 6, 1997.
 CLA-2-61:RR:NC:BCH3:353 B87014
 Category: Classification
 Tariff No. 6115.12.1000, 6115.12.2000,
 6115.93.3000, and 6115.93.9020

MR. JEROEN HONDEMAN
 INTERNATIONAL TRADE ADVISOR
 THE NETHERLANDS CHAMBER OF COMMERCE
 2015 South Park Place, Suite 110
 Atlanta, GA 303339

Re: The tariff classification of Medical Stockings from the Netherlands.

DEAR MR. HONDEMAN:

In your letter dated June 24, 1997, received in our office on July 8, 1997, you requested a tariff classification ruling. A sample of a medical compression stocking and a descriptive brochure was submitted.

Per our telephone conversation of July 25, 1997 your ruling request will cover the following styles with the noted features.

Style SOFT 141 18-21 mmHg below knee, mid thigh, thigh, thigh w/belt 68% polyamide, 32% elastane

Style SOFT 241 25-32 mmHg below knee, mid thigh, thigh, thigh w/belt 62% polyamide, 32% elastane

Style STRONG 261 25-32 mmHg below knee, mid thigh, thigh, thigh w/belt, pantyhose, maternity pantyhose, pantyhose for a man 39% polyamide, 30% elastodiene, 29% polyester, 2% elastane

Style STRONG 361 36-46 mmHg below knee, med thigh, thigh, thigh w/belt, pantyhose, pantyhose for a man 39% polyamide, 30% elastodiene, 29% polyester, 2% elastane

Style THROMBOSIS 120 18 mmHg below knee, thigh, thigh w/belt, 80% polyamide, 20% elastane

We assume that the measurement per single yarn is 67 decitex or more.

The Harmonized Tariff System (HTS) since 1988 has provided for stockings for varicose veins in heading 6115. Customs classified surgical compression stockings in HTS heading 9021 and noted characteristics that distinguished them from support hosiery for varicose veins.

Surgical stockings and panty hose with compression were moved out of HTS heading 9021 to heading 6115 in 1993. The amendment to the tariff maintained the identical duty and quota treatment. Since the tariff provision in HTS 9021 was not quota restrained, neither was the merchandise in the new 6115 provision.

For the 1996 tariff, the text of the heading was reworded with renumbering the tariff item, indicating that the scope had not changed. The change in tariff description regarding compression hosiery have not affected the Customs view that they remain separate and distinct articles of commerce from support hosiery for the treatment of varicose veins.

It is Customs position that surgical compression hosiery, because of their construction and application of use were more than simply compression stockings to treat varicose veins. This hosiery is generally of heavy gauge, opaque, of elasticized knit fabric with either one-way or two-way stretch and is designed to supply compression in the ranges of 30-40 mm mercury to 50-60 mercury. They are prescribed by physicians for the treatment of venous diseases and other serious conditions such as reversible and irreversible lymphedema and severe post-thrombotic treatment.

Clinical studies have indicated that surgical stockings for ambulatory patients have a minimum compression of 30mm mercury; have recommended compression figures well above 30mm mercury for the more serious venous disorders concluding that "a stocking giving less than 30 mm mercury at the ankle is only able to remove a small amount of vespertine ankle edema"; compression stockings of less than 30mm mercury are ineffective in the treatment of ambulatory venous disorders; and that hosiery of less than 30mm mercury for such applications as "for tired and heavy legs, mild swelling, prolonged sitting or standing, etc." are indicative of support hosiery rather than for the specific requirements of surgical stockings.

Styles SOFT 141, 241, 261 and THROMBOSIS 120 are not considered surgical panty hose or stockings with graduated compression for orthopedic treatment as they not prescribed by physicians and do not meet the required compression ranges. Style STRONG 361 meets the required compression ranges.

The applicable subheading for Styles 141, 241, 261 (below knee, mid thigh, thigh, thigh w/belt), and 120 will be 6115.93.9020, Harmonized Tariff Schedule of the United States (HTS), which provides for "Panty hose, tights, stockings, socks, and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Other: Of synthetic fibers: Other: Other: Other." The rate of duty will be 15.2 percent ad valorem.

The applicable subheading for Style 261 (pantyhose, maternity pantyhose and pantyhose for a man) will be 6115.12.2000, HTS, which provides for "Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Panty hose and tights: Of synthetic fibers, measuring per single yarn 67 decitex or more: Other." The rate of duty will be 16.4 percent ad valorem.

The applicable subheading for Style 361 (below the knee, mid thigh, thigh, thigh w/belt) will be 6115.93.3000 HTS which provides for "Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Of synthetic fibers: Surgical stockings with graduated compression for orthopedic treatment ." The rate of duty will be 2.3 percent ad valorem.

The applicable subheading for Style 361 (pantyhose, pantyhose for a man) will be 6115.12.1000 HTS which provides for "Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Panty hose and tights: Of synthetic fibers, measuring per single yarn 67 decitex or more: Surgical panty hose with graduated compression for orthopedic treatment." The rate of duty will be 2.3 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 Martin Weiss at 212-466-5881.

PAUL K. SCHWARTZ,

*Chief, Textiles & Apparel Branch,
National Commodity Specialist Division.*

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, June 10, 1999.
CLA-2-61:RR:NC:3:353 E82160
Category: Classification
Tariff No. 6115.12.1000 and 6115.12.2000

MR. TOM MIESEN
GLORIA-MED AMERICA, INC.
*1813 E. John Sims Parkway
Suite 3
Niceville, FL 32578*

Re: The tariff classification of compression panty hose from Italy.

DEAR MR. MIESEN:

In your undated letter received by this office on May 24, 1999 you requested a tariff classification ruling. Samples were supplied of styles Lady Gloria 24 and Soft 151.

Style Lady Gloria 24 pantyhose is composed of 76% polyamide/24% elastane fabric, decitex is 226. It features feet, a gusset and elasticized waist. It supplies compression in the range of 20-30 mm mercury and is prescribed by a physician.

Style Soft 151 pantyhose is composed of 68% polyamide/32% elastane fabric, decitex is 486. It features feet, a gusset and a self-fabric belt at the waist. It supplies compression in the range of 20–30 mm mercury and is prescribed by a physician.

Style Soft 152 pantyhose is composed of 68% polyamide/32% elastane fabric, decitex is 486. It features feet, a gusset and a self-fabric belt at the waist. It supplies compression in the range of 30–40 mm mercury and is prescribed by a physician.

It is Customs position that surgical compression hosiery, because of their construction and application of use, are more than simple compression stockings to treat varicose veins. The hosiery is made of heavy gauge, opaque, elasticized knit fabric, and is designed to supply compression in the range of 30–40mm mercury to 50–60mm mercury. They are prescribed by physicians for the treatment of venous diseases and other serious conditions such as reversible and irreversible lymphedema and severe post-thrombotic treatment.

The Styles Lady Gloria 24 and Soft 151 pantyhose do not meet required compression ranges, the applicable subheading will be 6115.12.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Panty hose and tights: Of synthetic fibers, measuring per single yarn 67 decitex or more: Other." The rate of duty will be 16% ad valorem.

The Style Soft 152 pantyhose meets required compression ranges, the applicable subheading will be 6115.12.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Panty hose and tights: Of synthetic fibers, measuring per single yarn 67 decitex or more: Surgical panty hose with graduated compression for orthopedic treatment." The rate of duty will be Free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kenneth Reidlinger at 212-637-7084.

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

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, June 11, 1999.
CLA-2-61:RR:NC:3:353 E82592
Category: Classification
Tariff No. 6115.92.3000 and 6115.92.9000

MR. TOM MIESEN
GLORIA-MED AMERICA, INC.
1813 E. John Sims Parkway
Suite 3
Niceville, FL 32578

Re: The tariff classification of compression hosiery from Italy.

DEAR MR. MIESEN:

In your undated letter received by this office on May 25, 1999 you requested a tariff classification ruling. A sample was supplied of style Cotton 262.

Style Cotton 162 single leg hosiery is composed of 66% cotton/17% polyamide/17% elastane fabric, decitex is 486. It features a covered heel, open toes and an elastic belt at the waist. It supplies compression in the range of 20–30 mm mercury and is prescribed by a physician.

Style Cotton 262 single leg hosiery is composed of 66% cotton/17% polyamide/17% elastane fabric, decitex is 486. It features a covered heel, open toes and an elastic belt at the waist. It supplies compression in the range of 30–40 mm mercury and is prescribed by a physician.

It is Customs position that surgical compression hosiery, because of their construction and application of use, are more than simple compression stockings to treat varicose veins. The hosiery is made of heavy gauge, opaque, elasticized knit fabric, and is designed to supply compression in the range of 30–40mm mercury to 50–60mm mercury. They are prescribed by physicians for the treatment of venous diseases and other serious conditions such as reversible and irreversible lymphedema and severe post-thrombotic treatment.

The Style Cotton 162 single leg hosiery does not meet required compression ranges, the applicable subheading will be 6115.92.9000, Harmonized Tariff Schedule of the United States (HTS), which provides for “Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Other: Of cotton: Other: Other.” The rate of duty will be 14% ad valorem.

The Style Cotton 262 single leg hosiery meets required compression ranges, the applicable subheading will be 6115.92.3000, Harmonized Tariff Schedule of the United States (HTS), which provides for “Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Other: Of cotton: Surgical stockings with graduated compression for orthopedic treatment.” The rate of duty will be Free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kenneth Reidlinger at 212-637-7084.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, June 11, 1999.
CLA-2-61:RR:NC:3:353 E82593
Category: Classification
Tariff No. 6115.93.3000 and 6115.93.9020

MR. TOM MIESEN
GLORIA-MED AMERICA, INC.
1813 E. John Sims Parkway
Suite 3
Niceville, FL 32578

Re: The tariff classification of compression hosiery from Italy.

DEAR MR. MIESEN:

In your undated letter received by this office on May 25, 1999 you requested a tariff classification ruling. A sample was supplied of style Soft 241.

Style Soft 141 single leg hosiery is composed of 63% polyamide/38% elastane fabric, decitex is 486. It features a covered heel, open toes and an elastic belt at the waist. It supplies compression in the range of 20–30 mm mercury and is prescribed by a physician.

Style Soft 241 single leg hosiery is composed of 63% polyamide/38% elastane fabric, decitex is 486. It features a covered heel, open toes and an elastic belt at the waist. It supplies compression in the range of 30–40 mm mercury and is prescribed by a physician.

Style Strong 261 single leg hosiery is composed of 63% polyamide/38% elastane fabric, decitex is 2700. It features a covered heel, open toes and an elastic belt at the waist. It supplies compression in the range of 30–40 mm mercury and is prescribed by a physician.

It is Customs position that surgical compression hosiery, because of their construction and application of use, are more than simple compression stockings to treat varicose veins. The hosiery is made of heavy gauge, opaque, elasticized knit fabric, and is designed to supply compression in the range of 30–40mm mercury to 50–60mm mercury. They are prescribed by physicians for the treatment of venous diseases and other serious conditions such as reversible and irreversible lymphedema and severe post-thrombotic treatment.

The Style Soft 141 single leg hosiery does not meet required compression ranges, the applicable subheading will be 6115.93.9020, Harmonized Tariff Schedule of the United States (HTS), which provides for “Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Other: Of synthetic fibers: Other: Other * * * Other.” The rate of duty will be 15% ad valorem.

The Styles Soft 241 and Strong 261 single leg hosiery meet required compression ranges, the applicable subheading will be 6115.93.3000, Harmonized Tariff Schedule of the United States (HTS), which provides for “Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Other: of synthetic fibers: Surgical stockings with graduated compression for orthopedic treatment.” The rate of duty will be Free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kenneth Reidlinger at 212-637-7084.

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

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, June 11, 1999.
CLA-2-61:RR:NC:3:353 E82594
Category: Classification
Tariff No. 6115.92.9000 and 6115.92.3000

MR. TOM MIESEN
GLORIA-MED AMERICA, INC.
1813 E. John Sims Parkway
Suite 3
Niceville, FL 32578

Re: The tariff classification of knee high compression hosiery from Italy.

DEAR MR. MIESEN:

In your undated letter received by this office on May 24, 1999 you requested a tariff classification ruling. A sample was supplied of style Cotton 262.

Style Cotton 162 knee high hosiery is composed of 66% cotton/17% polyamide/17% elastane fabric, decitex is 486. It features a covered heel, open toe and elastic band at the top. It supplies compression in the range of 20–30 mm mercury and is prescribed by a physician.

Style 262 knee high hosiery is composed of 66% cotton/17% polyamide/17% elastane fabric, decitex is 486. It features a covered heel, open toe and elastic band at the top. It supplies compression in the range of 30–40 mm mercury and is prescribed by a physician.

It is Customs position that surgical compression hosiery, because of their construction and application of use, are more than simple compression stockings to treat varicose veins. The hosiery is made of heavy gauge, opaque, elasticized knit fabric, and is designed to supply compression in the range of 30–40mm mercury to 50–60mm mercury. They are prescribed by physicians for the treatment of venous diseases and other serious conditions such as reversible and irreversible lymphedema and severe post-thrombotic treatment.

The Style 162 knee high hosiery does not meet required compression ranges, the applicable subheading will be 6115.92.9000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Other: Of cotton: Other: Other." The rate of duty will be 14% ad valorem.

The Style 262 knee high hosiery meets required compression ranges, the applicable subheading will be 6115.92.3000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Other: Of cotton: Surgical stockings with graduated compression for orthopedic treatment." The rate of duty will be Free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kenneth Reidlinger at 212-637-7084.

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

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, June 11, 1999.
CLA-2-61:RR:NC:3:353 E82595
Category: Classification
Tariff No. 6115.92.9000 and 6115.92.3000

MR. TOM MIESEN
GLORIA-MED AMERICA, INC.
1813 E. John Sims Parkway
Suite 3
Niceville, FL 32578

Re: The tariff classification of thigh high compression hosiery from Italy.

DEAR MR. MIESEN:

In your undated letter received by this office on May 25, 1999 you requested a tariff classification ruling. A sample was supplied of style Cotton 162.

Style Cotton 162 thigh high hosiery is composed of 66% cotton/17% polyamide/17% elastane fabric, decitex is 486. It features a covered heel, open toe and elastic band at the top. It supplies compression in the range of 20-30 mm mercury and is prescribed by a physician.

Style Cotton 262 thigh high hosiery is composed of 66% cotton/17% polyamide/17% elastane fabric, decitex is 486. It features a covered heel, open toe and elastic band at the top. It supplies compression in the range of 30-40 mm mercury and is prescribed by a physician.

It is Customs position that surgical compression hosiery, because of their construction and application of use, are more than simple compression stockings to treat varicose veins. The hosiery is made of heavy gauge, opaque, elasticized knit fabric, and is designed to supply compression in the range of 30-40mm mercury to 50-60mm mercury. They are prescribed by physicians for the treatment of venous diseases and other serious conditions such as reversible and irreversible lymphedema and severe post-thrombotic treatment.

The Style Cotton 162 thigh high hosiery does not meet required compression ranges, the applicable subheading will be 6115.92.9000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Other: Of cotton: Other: Other." The rate of duty will be 14% ad valorem.

The Style Cotton 262 thigh high hosiery meets required compression ranges, the applicable subheading will be 6115.92.3000, Harmonized Tariff Schedule of the United States

(HTS), which provides for "Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Other: Of cotton: Surgical stockings with graduated compression for orthopedic treatment." The rate of duty will be Free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kenneth Reidlinger at 212-637-7084.

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

[ATTACHMENT G]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, June 11, 1999.
CLA-2-61:RR:NC:3:353 E82596
Category: Classification
Tariff No. 6115.93.3000 and 6115.93.9020

MR. TOM MIESEN
GLORIA-MED AMERICA, INC.
1813 E. John Sims Parkway
Suite 3
Niceville, FL 32578

Re: The tariff classification of knee high compression hosiery from Italy.

DEAR MR. MIESEN:

In your undated letter received by this office on May 25, 1999 you requested a tariff classification ruling. Samples were supplied of styles 151, 241 and 261.

Styles Soft 141 and 151 knee high hosiery are composed of 68% polyamide/32% elastane fabric, decitex is 486. They feature a covered foot and an elastic band at the top. They supply compression in the range of 20-30 mm mercury and are prescribed by a physician.

Styles Soft 241 and 251 knee high hosiery are composed of 62% polyamide/38 % elastane fabric, decitex is 486. They feature a covered heel, open toe and an elastic band at the top. They supply compression in the range of 30-40 mm mercury and are prescribed by a physician.

Style Strong 261 knee high hosiery is composed of 39% polyamide/30% elastodiene/ 29% polyester/2% elastane fabric, decitex is 2700. It features a covered heel, open toe and an elastic band at the top. It supplies compression in the range of 30-40 mm mercury and is prescribed by a physician.

Style Strong 361 knee high hosiery is composed of 39% polyamide/30% elastodiene/29% polyester/2% elastane fabric, decitex is 3629. It features a covered heel, open toe and an elastic band at the top. It supplies compression in the range of 40-50 mm mercury and is prescribed by a physician.

It is Customs position that surgical compression hosiery, because of their construction and application of use, are more than simple compression stockings to treat varicose veins. The hosiery is made of heavy gauge, opaque, elasticized knit fabric, and is designed to supply compression in the range of 30-40mm mercury to 50-60mm mercury. They are prescribed by physicians for the treatment of venous diseases and other serious conditions such as reversible and irreversible lymphedema and severe post-thrombotic treatment.

The Styles Soft 141 and 151 knee high hosiery do not meet required compression ranges, the applicable subheading will be 6115.93.9020, Harmonized Tariff Schedule of the United States (HTS), which provides for "Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles,

knitted or crocheted: Other: Of synthetic fibers: Other: Other * * * Other ." The rate of duty will be 15% ad valorem.

The Styles Soft 241, 251 and Strong 261, 361 knee high hosiery meet required compression ranges, the applicable subheading will be 6115.93.3000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Other: of synthetic fibers: Surgical stockings with graduated compression for orthopedic treatment." The rate of duty will be Free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kenneth Reidlinger at 212-637-7084.

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

[ATTACHMENT H]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.
CLA-2 RR:CR:TE 965914 ttd
Category: Classification
Tariff No. 6115.12.1000 and 6115.93.3000

MR. JEROEN HONDEMAN
INTERNATIONAL TRADE ADVISOR
THE NETHERLANDS CHAMBER OF COMMERCE
2015 South Park Place, Suite 110
Atlanta, GA 30339

Re: Proposed Modification of New York Ruling Letter B87014, dated August 6, 1997;
Classification of Medical Graduated Compression Stockings and Panty Hose.

DEAR MR. HONDEMAN:

This letter concerns New York Ruling Letter (NY) B87014, issued to you on August 6, 1997, regarding the tariff classification of medical compression stockings and panty hose under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After review of that ruling, Customs has determined that the classification for two of the five styles considered has changed from other panty hose or stockings to surgical panty hose or stockings with graduated compression for orthopedic treatment. For the reasons that follow, this ruling modifies, in part, NY B87014.

Facts:

The articles under consideration are two styles of compression hosiery, identified in NY B87014 as Style SOFT 241 and Style STRONG 261, which has two types: stocking or panty hose. In NY B87014, Customs described Style SOFT 241 and Style STRONG 261 as follows:

Style SOFT 241 25-32 mmHg¹ below knee, mid thigh, thigh w/belt 62% polyamide, 32% elastane

Style STRONG 261 25-32 mmHg below knee, mid thigh, thigh, thigh w/belt pantyhose, maternity pantyhose, pantyhose for a man 39% polyamide, 30% elastodiene, 29% polyester, 2% elastane

¹ Compression is measured by how much pressure is required to elevate a column of Mercury (Hg) a certain distance, as measured in millimeters (mm).

In NY B87014, we classified Style SOFT 241 (style 241) and the stocking version of Style STRONG 261 (style 261) in subheading 6115.93.9020, HTSUSA, which provides for “Panty hose, tights, stockings, socks and other hosiery including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Other: Of synthetic fibers: Other: Other.” The panty hose version of style 261 was classified under subheading 6115.12.2000, HTSUSA, which provides for “Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Panty hose and tights: Of synthetic fibers, measuring per single yarn 67 decitex or more: Other.”

We presume, as we did in NY B87014, that the measurement per single yarn is 67 decitex or more. We note that at the time NY B87014 was issued we considered the following:

It is Customs position that surgical compression hosiery, because of their construction and application of use were more than simply compression stockings to treat varicose veins. This hosiery is generally of heavy gauge, opaque, of elasticized knit fabric with either one-way or two-way stretch and is designed to supply compression in the ranges of 30–40 mm mercury to 50–60 mercury. They are prescribed by physicians for the treatment of venous diseases and other serious conditions such as reversible and irreversible lymphedema and severe post-thrombotic treatment.

Clinical studies have indicated that surgical stockings for ambulatory patients have a minimum compression 30 mm mercury; have recommended compression figures well above 30 mm mercury for the more serious venous disorders concluding that “a stocking giving less than 30 mm mercury at the ankle is only able to remove a small amount of vespertine ankle edema”; compression stockings of less than 30mm mercury are ineffective in the treatment of ambulatory venous disorders; and that hosiery of less than 30mm mercury for such applications as “for tired and heavy legs, mild swelling, prolonged sitting or standing, etc.” are indicative of support hosiery rather than for the specific requirements of surgical stockings.

Issue:

What is the proper classification of the subject graduated compression stockings and panty hose under the HTSUSA?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI taken in order. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings.

Heading 6115, HTSUSA, provides for “Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted.” The articles under consideration are made of synthetic fibers and it is presumed for the purposes of this ruling that the yarns measure 67 decitex or more.

In HQ 963517 and HQ 963518, both dated January 2, 2002, Customs classified stockings with graduated compression ranging 20–30 mm Hg as surgical stockings for orthopedic treatment. To reach our decision, we considered a study evaluating the effects of duration of use of class I (20–30 mm Hg) graduated compression hosiery. See Robert Weiss, Neil Sadick, Mitchel Goldman, & Margaret Weiss, *Post-Sclerotherapy Compression: Controlled Comparative Study of Duration of Compression and its Effects on Clinical Outcome* DERMATOL SURG, 35: 105–108 (1999). This study essentially persuaded our office that compression greater than 20 mm Hg is presently considered necessary for reduction of venous insufficiency.² We noted certain statements made in the study, including “* * * in terms of controlling objective and subjective parameters of venous insufficiency no difference was found between class I (20–30 mm Hg) and class II (30–40 mm Hg) compression stockings.” Based on our review, we found that the study suggested that sclerotherapy results overall

² The partial failure of leg veins to carry blood up towards the heart results in venous disorders, which vary in severity from mild varicosity to deep vein thrombosis and thromboembolism. The use of graduated compression stockings is one of the methods used in the prevention and treatment of these disorders. The stockings are constructed so that the maximum pressure is exerted at the ankle and gradually decreasing up the leg, thus achieving a milking effect that helps blood rise toward the heart.

can be significantly improved by class I compression and should be part of the post-operative sclerotherapy protocol. In citing other studies, the study concluded that class I (20–30 mm Hg) compression may be recommended over class II since patient compliance is much higher and symptom improvement is identical. *See Jungbeck C, Thulin I, Darenheim C, Norgen L. Graduated Compression Treatment in Patients with Chronic Venous Insufficiency; A Study Comparing Low and Medium Grade Compression Stockings. PHLEBOLOGIE, 12:142–5 (1997).*

Moreover, during our review of HQ 963517 and HQ 963518, this office examined several letters from vascular surgeons and dermatologists familiar with the beneficial effects of compression on the venous system. The letters indicated consensus within the medical community that surgical stockings with graduated compression of 20–30 mm Hg are principally used for orthopedic purposes and are primarily prescribed by physicians to prevent or correct bodily deformities and the consequences associated with venous disease. The letters established that it is widely recognized that 20 mm Hg of compression is considered necessary for the treatment of venous disease. We noted in HQ 963517 and HQ 963518 that the physicians stated that they recommend using surgical supports with graduated compression of 20 to 30 mm Hg for several reasons: to prevent telangiectatic matting following sclerotherapy, to prevent thrombus formation and phlebitic reactions following sclerotherapy, to reduce post-operative edema, to prevent venous ulcerations, to prevent venous dermatitis and as treatment protocol for post-operative invasive vascular procedures.

In HQ 963517 and HQ 963518, Customs determined that physicians generally recommend graduated compression therapy as a treatment for venous insufficiency. We further recognized that graduated compression hosiery is generally available in three classes of compression; class I specifically covers a compression range of 20–30 mm Hg. We found that physicians generally prescribe compression stockings and that doctors indicated that patients generally find the hosiery uncomfortable and do not wear them unless directed by a doctor. Moreover, letters from medical authorities and conversations with medical professionals confirmed that certified and well-trained personnel must measure various parts of the foot and leg of a patient in order to obtain a proper fit for the stockings. We also found that pharmacies and medical supply companies prefer that a patient have a prescription that prescribes the amount of compression and noted that stockings obtained by prescription are often covered by insurance. We observed that graduated compression stockings are significantly more expensive than support hosiery of the types generally found in retail stores, noting that panty hose with 20–30 mm Hg compression typically sell for approximately \$75.00 to \$100.00 and similar thigh-high stockings typically sell for \$60.00 to \$95.00 per pair.

Accordingly, in HQ 963517 and HQ 963518, we concluded that surgical panty hose and stockings with graduated compression ranging from 20–30 mm Hg should be considered surgical hosiery with graduated compression for orthopedic treatment when prescribed by a physician and/or specially fitted to the patient.

As the stockings and panty hose under consideration have a minimum compression of 25 mm Hg, presuming they are prescribed by a physician or professionally fitted, Customs finds that the merchandise is within the scope of surgical panty hose and stockings with graduated compression for orthopedic treatment.

Holding:

Based on the foregoing, Styles 241 and 261 (below the knee, mid-thigh, thigh, thigh with belt) are classified under subheading 6115.93.3000, HTSUSA, which provides for “Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Other: Of synthetic fibres: Surgical stockings with graduated compression for orthopedic treatment.” The general column one rate of duty is “Free.”

Style 261 (panty hose, maternity pantyhose and pantyhose for a man) is classified under subheading 6115.12.1000, HTSUSA, which provides for “Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Panty hose and tights: Of synthetic fibers, measuring per single yarn 67 decitex or more: Surgical panty hose with graduated compression for orthopedic treatment.” The general column one rate of duty is “Free.”

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

[ATTACHMENT I]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.CLA-2 RR:CR:TE 965916 ttd
Category: Classification
Tariff No. 6115.12.1000MR. TOM MIESEN
GLORIA-MED AMERICA, INC.
1813 E. John Sims Parkway, Suite 3
Niceville, FL 32578

Re: Proposed Modification of New York Ruling Letter E82160, dated June 10, 1999; Classification of Medical Graduated Compression Panty Hose.

DEAR MR. MIESEN:

This letter concerns New York Ruling Letter (NY) E82160, issued to you on June 10, 1999, regarding the tariff classification of medical compression panty hose under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After review of that ruling, Customs has determined that the classification for two out of the three styles considered has changed from subheading 6115.12.2000, HTSUSA, as other panty hose to subheading 6115.12.1000, HTSUSA, as surgical panty hose with graduated compression for orthopedic treatment. For the reasons that follow, this ruling modifies, in part, NY E82160.

Facts:

The articles under consideration are two styles of compression panty hose, identified in NY E82160 as Style Lady Gloria 24 and Style Soft 151. Style Lady Gloria 24 is comprised of 76 percent polyamide and 24 percent elastane fabric, with a decitex of 226 and supplies graduated compression ranging from 20–30 mm Hg.¹ Style Soft 151 is comprised of 68 percent polyamide and 32 percent elastane fabric, with a decitex of 486 and supplies compression in the range of 20–30 mm Hg.

In NY E82160, we classified Style Lady Gloria 24 and Style Soft 151 in subheading 6115.12.2000, HTSUSA, which provides for “Panty hose, tights, stockings, socks and other hosiery including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Panty hose and tights: Of synthetic fibers, measuring per single yarn 67 decitex or more: Other.” We note that at the time NY E82160 was issued we considered the following:

It is Customs position that surgical compression hosiery, because of their construction and application of use, are more than simple compression stockings to treat varicose veins. The hosiery is made of heavy gauge, opaque, elasticized knit fabric, and is designed to supply compression in the range of 30–40 mm mercury to 50–60 mercury. They are prescribed by physicians for the treatment of venous diseases and other serious conditions such as reversible and irreversible lymphedema and severe post-thrombotic treatment.

Issue:

What is the proper classification of the subject graduated compression panty hose under the HTSUSA?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI taken in order. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings.

¹ Compression is measured by how much pressure is required to elevate a column of Mercury (Hg) a certain distance, as measured in millimeters (mm).

Heading 6115, HTSUSA, provides for “Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted.”

In HQ 963517 and HQ 963518, both dated January 2, 2002, Customs classified stockings with graduated compression ranging 20–30 mm Hg as surgical stockings for orthopedic treatment. To reach our decision, we considered a study evaluating the effects of duration of use of class I (20–30 mm Hg) graduated compression hosiery. See Robert Weiss, Neil Sadick, Mitchel Goldman, & Margaret Weiss, *Post-Sclerotherapy Compression: Controlled Comparative Study of Duration of Compression and its Effects on Clinical Outcome* DERMATOL SURG, 35: 105–108 (1999). This study essentially persuaded our office that compression greater than 20 mm Hg is presently considered necessary for reduction of venous insufficiency.² We noted certain statements made in the study, including “* * * in terms of controlling objective and subjective parameters of venous insufficiency no difference was found between class I (20–30 mm Hg) and class II (30–40 mm Hg) compression stockings.” Based on our review, we found that the study suggested that sclerotherapy results overall can be significantly improved by class I compression and should be part of the post-operative sclerotherapy protocol. In citing other studies, the study concluded that class I (20–30 mm Hg) compression may be recommended over class II since patient compliance is much higher and symptom improvement is identical. See Jungbeck C, Thulin I, Darenheim C, Norgen L. *Graduated Compression Treatment in Patients with Chronic Venous Insufficiency: A Study Comparing Low and Medium Grade Compression Stockings*. PHLEBOLOGIE, 12:142–5 (1997).

Moreover, during our review of HQ 963517 and HQ 963518, this office examined several letters from vascular surgeons and dermatologists familiar with the beneficial effects of compression on the venous system. The letters indicated consensus within the medical community that surgical stockings with graduated compression of 20–30 mm Hg are principally used for orthopedic purposes and are primarily prescribed by physicians to prevent or correct bodily deformities and the consequences associated with venous disease. The letters established that it is widely recognized that 20 mm Hg of compression is considered necessary for the treatment of venous disease. We noted in HQ 963517 and HQ 963518 that the physicians stated that they recommend using surgical supports with graduated compression of 20 to 30 mm Hg for several reasons: to prevent telangiectatic matting following sclerotherapy, to prevent thrombus formation and phlebitic reactions following sclerotherapy, to reduce post-operative edema, to prevent venous ulcerations, to prevent venous dermatitis and as treatment protocol for post-operative invasive vascular procedures.

In HQ 963517 and HQ 963518, Customs determined that physicians generally recommend graduated compression therapy as a treatment for venous insufficiency. We further recognized that graduated compression hosiery is generally available in three classes of compression; class I specifically covers a compression range of 20–30 mm Hg. We found that physicians generally prescribe compression stockings and that doctors indicated that patients generally find the hosiery uncomfortable and do not wear them unless directed by a doctor. Moreover, letters from medical authorities and conversations with medical professionals confirmed that certified and well-trained personnel must measure various parts of the foot and leg of a patient in order to obtain a proper fit for the stockings. We also found that pharmacies and medical supply companies prefer that a patient have a prescription that prescribes the amount of compression and noted that stockings obtained by prescription are often covered by insurance. We observed that graduated compression stockings are significantly more expensive than support hosiery of the types generally found in retail stores, noting that panty hose with 20–30 mm Hg compression typically sell for approximately \$75.00 to \$100.00 and similar thigh-high stockings typically sell for \$60.00 to \$95.00 per pair.

Accordingly, in HQ 963517 and HQ 963518, we concluded that surgical panty hose and stockings with graduated compression ranging from 20–30 mm Hg should be considered surgical hosiery with graduated compression for orthopedic treatment when prescribed by a physician and/or specially fitted to the patient.

² The partial failure of leg veins to carry blood up towards the heart results in venous disorders, which vary in severity from mild varicosity to deep vein thrombosis and thromboembolism. The use of graduated compression stockings is one of the methods used in the prevention and treatment of these disorders. The stockings are constructed so that the maximum pressure is exerted at the ankle and gradually decreasing up the leg, thus achieving a milking effect that helps blood rise toward the heart.

As the subject styles of panty hose both have a graduated compression range of 20–30 mm Hg and are prescribed by a physician, Customs finds that the instant graduated compression hosiery is within the scope of subheading 6115.12.1000, HTSUSA, providing for surgical panty hose with graduated compression for orthopedic treatment.

Holding:

Based on the foregoing, Style Lady Gloria 24 and Style Soft 151 are classified under subheading 6115.12.1000, HTSUSA, which provides for “Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Panty hose and tights: Of synthetic fibers, measuring per single yarn 67 decitex or more: Surgical panty hose with graduated compression for orthopedic treatment.” The general column one rate of duty is “Free.”

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

[ATTACHMENT J]

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

CLA-2 RR:CR:TE 965917 ttd
Category: Classification
Tariff No. 6115.92.3000

MR. TOM MIESEN
GLORIA-MED AMERICA, INC.
1813 E. John Sims Parkway, Suite 3
Niceville, FL 32578

Re: Proposed Modification of New York Ruling Letter E82592, dated June 10, 1999; Classification of Medical Graduated Compression Hosiery.

DEAR MR. MIESEN:

This letter concerns New York Ruling Letter (NY) E82592, issued to you on June 11, 1999, regarding the tariff classification of compression hosiery under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After review of that ruling, Customs has determined that the classification for one of the two styles considered has changed from subheading 6115.92.9000, as stockings to subheading 6115.92.3000, HTSUSA, as surgical stockings with graduated compression for orthopedic treatment. For the reasons that follow, this ruling modifies, in part, NY E82592.

Facts:

The article under consideration is one style of compression hosiery, identified in NY E82592 as Style Cotton 162 (style 162). Style 162 is comprised of 66 percent cotton, 17 percent polyamide and 17 percent elastane fabric, with a decitex of 486. Style 162 supplies graduated compression ranging from 20–30 mm Hg¹ and is prescribed by a physician.

In NY E82592, Customs classified style 162 in subheading 6115.92.9000, HTSUSA, which provides for “Panty hose, tights, stockings, socks and other hosiery including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Other: Of cotton: Other: Other.” We note that at the time NY E82592 was issued we considered the following:

It is Customs position that surgical compression hosiery, because of their construction and application of use, are more than simple compression stockings to treat varicose veins. The hosiery is made of heavy gauge, opaque, elasticized knit fabric, and is

¹ Compression is measured by how much pressure is required to elevate a column of Mercury (Hg) a certain distance, as measured in millimeters (mm).

designed to supply compression in the range of 30–40 mm mercury to 50–60 mercury. They are prescribed by physicians for the treatment of venous diseases and other serious conditions such as reversible and irreversible lymphedema and severe post-thrombotic treatment.

Issue:

What is the proper classification of the subject graduated compression hosiery under the HTSUSA?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI taken in order. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings.

Heading 6115, HTSUSA, provides for “Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted.”

In HQ 963517 and HQ 963518, both dated January 2, 2002, Customs classified stockings with graduated compression ranging 20–30 mm Hg as surgical stockings for orthopedic treatment. To reach our decision, we considered a study evaluating the effects of duration of use of class I (20–30 mm Hg) graduated compression hosiery. See Robert Weiss, Neil Sadick, Mitchel Goldman, & Margaret Weiss, *Post-Sclerotherapy Compression: Controlled Comparative Study of Duration of Compression and its Effects on Clinical Outcome* DERMATOL SURG, 35: 105–108 (1999). This study essentially persuaded our office that compression greater than 20 mm Hg is presently considered necessary for reduction of venous insufficiency.² We noted certain statements made in the study, including “* * * in terms of controlling objective and subjective parameters of venous insufficiency no difference was found between class I (20–30 mm Hg) and class II (30–40 mm Hg) compression stockings.” Based on our review, we found that the study suggested that sclerotherapy results overall can be significantly improved by class I compression and should be part of the post-operative sclerotherapy protocol. In citing other studies, the study concluded that class I (20–30 mm Hg) compression may be recommended over class II since patient compliance is much higher and symptom improvement is identical. See Jungbeck C, Thulin I, Darenheim C, Norgen L. *Graduated Compression Treatment in Patients with Chronic Venous Insufficiency; A Study Comparing Low and Medium Grade Compression Stockings*. PHLEBOLOGIE, 12:142–5 (1997).

Moreover, during our review of HQ 963517 and HQ 963518, this office examined several letters from vascular surgeons and dermatologists familiar with the beneficial effects of compression on the venous system. The letters indicated consensus within the medical community that surgical stockings with graduated compression of 20–30 mm Hg are principally used for orthopedic purposes and are primarily prescribed by physicians to prevent or correct bodily deformities and the consequences associated with venous disease. The letters established that it is widely recognized that 20 mm Hg of compression is considered necessary for the treatment of venous disease. We noted in HQ 963517 and HQ 963518 that the physicians stated that they recommend using surgical supports with graduated compression of 20 to 30 mm Hg for several reasons: to prevent telangiectatic matting following sclerotherapy, to prevent thrombus formation and phlebitic reactions following sclerotherapy, to reduce post-operative edema, to prevent venous ulcerations, to prevent venous dermatitis and as treatment protocol for post-operative invasive vascular procedures.

In HQ 963517 and HQ 963518, Customs determined that physicians generally recommend graduated compression therapy as a treatment for venous insufficiency. We further

² The partial failure of leg veins to carry blood up towards the heart results in venous disorders, which vary in severity from mild varicosity to deep vein thrombosis and thromboembolism. The use of graduated compression stockings is one of the methods used in the prevention and treatment of these disorders. The stockings are constructed so that the maximum pressure is exerted at the ankle and gradually decreasing up the leg, thus achieving a milking effect that helps blood rise toward the heart.

recognized that graduated compression hosiery is generally available in three classes of compression; class I specifically covers a compression range of 20–30 mm Hg. We found that physicians generally prescribe compression stockings and that doctors indicated that patients generally find the hosiery uncomfortable and do not wear them unless directed by a doctor. Moreover, letters from medical authorities and conversations with medical professionals confirmed that certified and well-trained personnel must measure various parts of the foot and leg of a patient in order to obtain a proper fit for the stockings. We also found that pharmacies and medical supply companies prefer that a patient have a prescription that prescribes the amount of compression and noted that stockings obtained by prescription are often covered by insurance. We observed that graduated compression stockings are significantly more expensive than support hosiery of the types generally found in retail stores, noting that panty hose with 20–30 mm Hg compression typically sell for approximately \$75.00 to \$100.00 and similar thigh-high stockings typically sell for \$60.00 to \$95.00 per pair.

Accordingly, in HQ 963517 and HQ 963518, we concluded that surgical panty hose and stockings with graduated compression ranging from 20–30 mm Hg should be considered surgical hosiery with graduated compression for orthopedic treatment when prescribed by a physician and/or specially fitted to the patient.

As the subject merchandise has a graduated compression range of 20–30 mm Hg and is prescribed by a physician, Customs finds the instant graduated compression hosiery is within the scope of subheading 6115.92.3000, HTSUSA, providing for surgical stockings with graduated compression for orthopedic treatment.

Holding:

Based on the foregoing, style 162 is classified under subheading 6115.92.3000, HTSUSA, which provides for “Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Other: Of cotton: Surgical stockings with graduated compression for orthopedic treatment.” The general column one rate of duty is “Free.”

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

[ATTACHMENT K]

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

CLA-2 RR:CR:TE 965918 ttd
Category: Classification
Tariff No. 6115.93.3000

MR. TOM MIESEN
GLORIA-MED AMERICA, INC.
1813 E. John Sims Parkway, Suite 3
Niceville, FL 32578

Re: Proposed Modification of New York Ruling Letter E82593, dated June 11, 1999; Classification of Medical Graduated Compression Stockings.

DEAR MR. MIESEN:

This letter concerns New York Ruling Letter (NY) E82593, issued to you on June 11, 1999, regarding the tariff classification of compression hosiery under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After review of that ruling, Customs has determined that the classification for one of the three styles considered has changed from subheading 6115.93.9020, HTSUSA, as other stockings to subheading 6115.93.3000, HTSUSA, as surgical stockings with graduated compression for orthopedic treatment. For the reasons that follow, this ruling modifies, in part, NY E82593.

Facts:

The article under consideration is one style of compression hosiery, identified in NY E82593 as Style Soft 141 (style 141). Style 141 is comprised of 63 percent polyamide and 38

percent elastane fabric, with a decitex of 486. Style 141 supplies graduated compression ranging from 20–30 mm Hg¹ and is prescribed by a physician.

In NY E82593, Customs classified style 141 in subheading 6115.93.9020, HTSUSA, which provides for “Panty hose, tights, stockings, socks and other hosiery including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Of synthetic fibers: Other: Other, Other.” We note that at the time NY E82593 was issued we considered the following:

It is Customs position that surgical compression hosiery, because of their construction and application of use, are more than simple compression stockings to treat varicose veins. The hosiery is made of heavy gauge, opaque, elasticized knit fabric, and is designed to supply compression in the range of 30–40 mm mercury to 50–60 mercury. They are prescribed by physicians for the treatment of venous diseases and other serious conditions such as reversible and irreversible lymphedema and severe post-thrombotic treatment.

Issue:

What is the proper classification of the subject graduated compression hosiery under the HTSUSA?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI taken in order. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of these headings.

Heading 6115, HTSUSA, provides for “Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted.”

In HQ 963517 and HQ 963518, both dated January 2, 2002, Customs classified stockings with graduated compression ranging 20–30 mm Hg as surgical stockings for orthopedic treatment. To reach our decision, we considered a study evaluating the effects of duration of use of class I (20–30 mm Hg) graduated compression hosiery. See Robert Weiss, Neil Sadick, Mitchel Goldman, & Margaret Weiss, *Post-Sclerotherapy Compression: Controlled Comparative Study of Duration of Compression and its Effects on Clinical Outcome* DERMATOL SURG, 35: 105–108 (1999). This study essentially persuaded our office that compression greater than 20 mm Hg is presently considered necessary for reduction of venous insufficiency.² We noted certain statements made in the study, including “* * * in terms of controlling objective and subjective parameters of venous insufficiency no difference was found between class I (20–30 mm Hg) and class II (30–40 mm Hg) compression stockings.” Based on our review, we found that the study suggested that sclerotherapy results overall can be significantly improved by class I compression and should be part of the post-operative sclerotherapy protocol. In citing other studies, the study concluded that class I (20–30 mm Hg) compression may be recommended over class II since patient compliance is much higher and symptom improvement is identical. See Jungbeck C, Thulin I, Darenheim C, Norgen L. *Graduated Compression Treatment in Patients with Chronic Venous Insufficiency; A Study Comparing Low and Medium Grade Compression Stockings*. PHLEBOLOGIE, 12:142–5 (1997).

Moreover, during our review of HQ 963517 and HQ 963518, this office examined several letters from vascular surgeons and dermatologists familiar with the beneficial effects of compression on the venous system. The letters indicated consensus within the medical community that surgical stockings with graduated compression of 20–30 mm Hg are prin-

¹ Compression is measured by how much pressure is required to elevate a column of Mercury (Hg) a certain distance, as measured in millimeters (mm).

² The partial failure of leg veins to carry blood up towards the heart results in venous disorders, which vary in severity from mild varicosity to deep vein thrombosis and thromboembolism. The use of graduated compression stockings is one of the methods used in the prevention and treatment of these disorders. The stockings are constructed so that the maximum pressure is exerted at the ankle and gradually decreasing up the leg, thus achieving a milking effect that helps blood rise toward the heart.

cipally used for orthopedic purposes and are primarily prescribed by physicians to prevent or correct bodily deformities and the consequences associated with venous disease. The letters established that it is widely recognized that 20 mm Hg of compression is considered necessary for the treatment of venous disease. We noted in HQ 963517 and HQ 963518 that the physicians stated that they recommend using surgical supports with graduated compression of 20 to 30 mm Hg for several reasons: to prevent telangiectatic matting following sclerotherapy, to prevent thrombus formation and phlebitic reactions following sclerotherapy, to reduce post-operative edema, to prevent venous ulcerations, to prevent venous dermatitis and as treatment protocol for post-operative invasive vascular procedures.

In HQ 963517 and HQ 963518, Customs determined that physicians generally recommend graduated compression therapy as a treatment for venous insufficiency. We further recognized that graduated compression hosiery is generally available in three classes of compression; class I specifically covers a compression range of 20–30 mm Hg. We found that physicians generally prescribe compression stockings and that doctors indicated that patients generally find the hosiery uncomfortable and do not wear them unless directed by a doctor. Moreover, letters from medical authorities and conversations with medical professionals confirmed that certified and well-trained personnel must measure various parts of the foot and leg of a patient in order to obtain a proper fit for the stockings. We also found that pharmacies and medical supply companies prefer that a patient have a prescription that prescribes the amount of compression and noted that stockings obtained by prescription are often covered by insurance. We observed that graduated compression stockings are significantly more expensive than support hosiery of the types generally found in retail stores, noting that panty hose with 20–30 mm Hg compression typically sell for approximately \$75.00 to \$100.00 and similar thigh-high stockings typically sell for \$60.00 to \$95.00 per pair.

Accordingly, in HQ 963517 and HQ 963518, we concluded that surgical panty hose and stockings with graduated compression ranging from 20–30 mm Hg should be considered surgical hosiery with graduated compression for orthopedic treatment when prescribed by a physician and/or specially fitted to the patient.

As the subject merchandise has a graduated compression range of 20–30 mm Hg and is prescribed by a physician, Customs finds the instant graduated compression hosiery is within the scope of subheading 6115.93.3000, HTSUSA, providing for surgical stockings with graduated compression for orthopedic treatment.

Holding:

Based on the foregoing, style 141 is classified under subheading 6115.93.3000, HTSUSA, which provides for “Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Other: Of synthetic fibers: Surgical stockings with graduated compression for orthopedic treatment.” The general column one rate of duty is “Free.”

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

[ATTACHMENT L]

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

CLA-2 RR:CR:TE 965919 ttd
Category: Classification
Tariff No. 6115.92.3000

MR. TOM MIESEN
GLORIA-MED AMERICA, INC.
1813 E. John Sims Parkway, Suite 3
Niceville, FL 32578

Re: Proposed Modification of New York Ruling Letter E82594, dated June 11, 1999; Classification of Medical Graduated Compression Stockings.

DEAR MR. MIESEN:

This letter concerns New York Ruling Letter (NY) E82594, issued to you on June 11, 1999, regarding the tariff classification of compression hosiery under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After review of that ruling, Customs has determined that the classification for one of the two styles considered has changed from subheading 6115.92.9000, HTSUSA, as other stockings to subheading 6115.92.3000, HTSUSA, as surgical stockings with graduated compression for orthopedic treatment. For the reasons that follow, this ruling modifies, in part, NY E82594.

Facts:

The article under consideration is one style of compression hosiery, identified in NY E82594 as Style Cotton 162 (style 162). Style 162 is knee-high and comprised of 66 percent cotton, 17 percent polyamide and 17 percent elastane fabric, with a decitex of 486. It features a covered heel, open toe and elastic band at the top. Style 162 supplies graduated compression ranging from 20–30 mm Hg¹ and is prescribed by a physician.

In NY E82594, Customs classified style 162 in subheading 6115.92.9000, HTSUSA, which provides for “Panty hose, tights, stockings, socks and other hosiery including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Other: Of cotton: Other: Other.” We note that at the time NY E82594 was issued we considered the following:

It is Customs position that surgical compression hosiery, because of their construction and application of use, are more than simple compression stockings to treat varicose veins. The hosiery is made of heavy gauge, opaque, elasticized knit fabric, and is designed to supply compression in the range of 30–40 mm mercury to 50–60 mercury. They are prescribed by physicians for the treatment of venous diseases and other serious conditions such as reversible and irreversible lymphedema and severe post-thrombotic treatment.

Issue:

What is the proper classification of the subject graduated compression hosiery under the HTSUSA?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI taken in order. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of these headings.

Heading 6115, HTSUSA, provides for “Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted.”

¹ Compression is measured by how much pressure is required to elevate a column of Mercury (Hg) a certain distance, as measured in millimeters (mm).

In HQ 963517 and HQ 963518, both dated January 2, 2002, Customs classified stockings with graduated compression ranging 20–30 mm Hg as surgical stockings for orthopedic treatment. To reach our decision, we considered a study evaluating the effects of duration of use of class I (20–30 mm Hg) graduated compression hosiery. See Robert Weiss, Neil Sadick, Mitchel Goldman, & Margaret Weiss, *Post-Sclerotherapy Compression: Controlled Comparative Study of Duration of Compression and its Effects on Clinical Outcome* DERMATOL SURG, 35: 105–108 (1999). This study essentially persuaded our office that compression greater than 20 mm Hg is presently considered necessary for reduction of venous insufficiency.² We noted certain statements made in the study, including “* * * in terms of controlling objective and subjective parameters of venous insufficiency no difference was found between class I (20–30 mm Hg) and class II (30–40 mm Hg) compression stockings.” Based on our review, we found that the study suggested that sclerotherapy results overall can be significantly improved by class I compression and should be part of the post-operative sclerotherapy protocol. In citing other studies, the study concluded that class I (20–30 mm Hg) compression may be recommended over class II since patient compliance is much higher and symptom improvement is identical. See Jungbeck C, Thulin I, Darenheim C, Norgen L. *Graduated Compression Treatment in Patients with Chronic Venous Insufficiency; A Study Comparing Low and Medium Grade Compression Stockings*. PHLEBOLOGIE, 12:142–5 (1997).

Moreover, during our review of HQ 963517 and HQ 963518, this office examined several letters from vascular surgeons and dermatologists familiar with the beneficial effects of compression on the venous system. The letters indicated consensus within the medical community that surgical stockings with graduated compression of 20–30 mm Hg are principally used for orthopedic purposes and are primarily prescribed by physicians to prevent or correct bodily deformities and the consequences associated with venous disease. The letters established that it is widely recognized that 20 mm Hg of compression is considered necessary for the treatment of venous disease. We noted in HQ 963517 and HQ 963518 that the physicians stated that they recommend using surgical supports with graduated compression of 20 to 30 mm Hg for several reasons: to prevent telangiectatic matting following sclerotherapy, to prevent thrombus formation and phlebitic reactions following sclerotherapy, to reduce post-operative edema, to prevent venous ulcerations, to prevent venous dermatitis and as treatment protocol for post-operative invasive vascular procedures.

In HQ 963517 and HQ 963518, Customs determined that physicians generally recommend graduated compression therapy as a treatment for venous insufficiency. We further recognized that graduated compression hosiery is generally available in three classes of compression; class I specifically covers a compression range of 20–30 mm Hg. We found that physicians generally prescribe compression stockings and that doctors indicated that patients generally find the hosiery uncomfortable and do not wear them unless directed by a doctor. Moreover, letters from medical authorities and conversations with medical professionals confirmed that certified and well-trained personnel must measure various parts of the foot and leg of a patient in order to obtain a proper fit for the stockings. We also found that pharmacies and medical supply companies prefer that a patient have a prescription that prescribes the amount of compression and noted that stockings obtained by prescription are often covered by insurance. We observed that graduated compression stockings are significantly more expensive than support hosiery of the types generally found in retail stores, noting that panty hose with 20–30 mm Hg compression typically sell for approximately \$75.00 to \$100.00 and similar thigh-high stockings typically sell for \$60.00 to \$95.00 per pair.

Accordingly, in HQ 963517 and HQ 963518, we concluded that surgical panty hose and stockings with graduated compression ranging from 20–30 mm Hg should be considered surgical hosiery with graduated compression for orthopedic treatment when prescribed by a physician and/or specially fitted to the patient.

As the subject merchandise has a graduated compression range of 20–30 mm Hg and is prescribed by a physician, Customs finds the instant graduated compression hosiery is

² The partial failure of leg veins to carry blood up towards the heart results in venous disorders, which vary in severity from mild varicosity to deep vein thrombosis and thromboembolism. The use of graduated compression stockings is one of the methods used in the prevention and treatment of these disorders. The stockings are constructed so that the maximum pressure is exerted at the ankle and gradually decreasing up the leg, thus achieving a milking effect that helps blood rise toward the heart.

within the scope of subheading 6115.92.3000, HTSUSA, providing for surgical stockings with graduated compression for orthopedic treatment.

Holding:

Based on the foregoing, style 162 is classified under subheading 6115.92.3000, HTSUSA, which provides for "Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Other: Of cotton: Surgical stockings with graduated compression for orthopedic treatment." The general column one rate of duty is "Free."

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

[ATTACHMENT M]

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

CLA-2 RR:CR:TE 965920 ttd
Category: Classification
Tariff No. 6115.92.3000

MR. TOM MIESEN
GLORIA-MED AMERICA, INC.
1813 E. John Sims Parkway, Suite 3
Niceville, FL 32578

Re: Proposed Modification of New York Ruling Letter E82595, dated June 11, 1999; Classification of Medical Graduated Compression Stockings.

DEAR MR. MIESEN:

This letter concerns New York Ruling Letter (NY) E82595, issued to you on June 11, 1999, regarding the tariff classification of compression hosiery under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After review of that ruling, Customs has determined that the classification for one of the two styles considered has changed from subheading 6115.92.9000, HTSUSA, as other stockings to subheading 6115.92.3000, HTSUSA, as surgical stockings with graduated compression for orthopedic treatment. For the reasons that follow, this ruling modifies, in part, NY E82595.

Facts:

The article under consideration is one style of compression hosiery, identified in NY E82595 as Style Cotton 162 (style 162). Style 162 is thigh-high hosiery and comprised of 66 percent cotton, 17 percent polyamide and 17 percent elastane fabric, with a decitex of 486. It features a covered heel, open toe and elastic band at the top. Style 162 supplies graduated compression ranging from 20–30 mm Hg¹ and is prescribed by a physician.

In NY E82595, Customs classified style 162 in subheading 6115.92.9000, HTSUSA, which provides for "Panty hose, tights, stockings, socks and other hosiery including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Other: Of cotton: Other." We note that at the time NY E82595 was issued we considered the following:

It is Customs position that surgical compression hosiery, because of their construction and application of use, are more than simple compression stockings to treat varicose veins. The hosiery is made of heavy gauge, opaque, elasticized knit fabric, and is designed to supply compression in the range of 30–40 mm mercury to 50–60 mercury. They are prescribed by physicians for the treatment of venous diseases and other seri-

¹ Compression is measured by how much pressure is required to elevate a column of Mercury (Hg) a certain distance, as measured in millimeters (mm).

ous conditions such as reversible and irreversible lymphedema and severe post-thrombotic treatment.

Issue:

What is the proper classification of the subject graduated compression hosiery under the HTSUSA?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI taken in order. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of these headings.

Heading 6115, HTSUSA, provides for "Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted."

In HQ 963517 and HQ 963518, both dated January 2, 2002, Customs classified stockings with graduated compression ranging 20–30 mm Hg as surgical stockings for orthopedic treatment. To reach our decision, we considered a study evaluating the effects of duration of use of class I (20–30 mm Hg) graduated compression hosiery. See Robert Weiss, Neil Sadick, Mitchel Goldman, & Margaret Weiss, *Post-Sclerotherapy Compression: Controlled Comparative Study of Duration of Compression and its Effects on Clinical Outcome* DERMATOL SURG, 35: 105–108 (1999). This study essentially persuaded our office that compression greater than 20 mm Hg is presently considered necessary for reduction of venous insufficiency.² We noted certain statements made in the study, including " * * * in terms of controlling objective and subjective parameters of venous insufficiency no difference was found between class I (20–30 mm Hg) and class II (30–40 mm Hg) compression stockings." Based on our review, we found that the study suggested that sclerotherapy results overall can be significantly improved by class I compression and should be part of the post-operative sclerotherapy protocol. In citing other studies, the study concluded that class I (20–30 mm Hg) compression may be recommended over class II since patient compliance is much higher and symptom improvement is identical. See Jungbeck C, Thulin I, Darenheim C, Norgen L. *Graduated Compression Treatment in Patients with Chronic Venous Insufficiency: A Study Comparing Low and Medium Grade Compression Stockings*. PHLEBOLOGIE, 12:142–5 (1997).

Moreover, during our review of HQ 963517 and HQ 963518, this office examined several letters from vascular surgeons and dermatologists familiar with the beneficial effects of compression on the venous system. The letters indicated consensus within the medical community that surgical stockings with graduated compression of 20–30 mm Hg are principally used for orthopedic purposes and are primarily prescribed by physicians to prevent or correct bodily deformities and the consequences associated with venous disease. The letters established that it is widely recognized that 20 mm Hg of compression is considered necessary for the treatment of venous disease. We noted in HQ 963517 and HQ 963518 that the physicians stated that they recommend using surgical supports with graduated compression of 20 to 30 mm Hg for several reasons: to prevent telangiectatic matting following sclerotherapy, to prevent thrombus formation and phlebitic reactions following sclerotherapy, to reduce post-operative edema, to prevent venous ulcerations, to prevent venous dermatitis and as treatment protocol for post-operative invasive vascular procedures.

In HQ 963517 and HQ 963518, Customs determined that physicians generally recommend graduated compression therapy as a treatment for venous insufficiency. We further recognized that graduated compression hosiery is generally available in three classes of compression; class I specifically covers a compression range of 20–30 mm Hg. We found

² The partial failure of leg veins to carry blood up towards the heart results in venous disorders, which vary in severity from mild varicosity to deep vein thrombosis and thromboembolism. The use of graduated compression stockings is one of the methods used in the prevention and treatment of these disorders. The stockings are constructed so that the maximum pressure is exerted at the ankle and gradually decreasing up the leg, thus achieving a milking effect that helps blood rise toward the heart.

that physicians generally prescribe compression stockings and that doctors indicated that patients generally find the hosiery uncomfortable and do not wear them unless directed by a doctor. Moreover, letters from medical authorities and conversations with medical professionals confirmed that certified and well-trained personnel must measure various parts of the foot and leg of a patient in order to obtain a proper fit for the stockings. We also found that pharmacies and medical supply companies prefer that a patient have a prescription that prescribes the amount of compression and noted that stockings obtained by prescription are often covered by insurance. We observed that graduated compression stockings are significantly more expensive than support hosiery of the types generally found in retail stores, noting that panty hose with 20–30 mm Hg compression typically sell for approximately \$75.00 to \$100.00 and similar thigh-high stockings typically sell for \$60.00 to \$95.00 per pair.

Accordingly, in HQ 963517 and HQ 963518, we concluded that surgical panty hose and stockings with graduated compression ranging from 20–30 mm Hg should be considered surgical hosiery with graduated compression for orthopedic treatment when prescribed by a physician and/or specially fitted to the patient.

As the subject merchandise has a graduated compression range of 20–30 mm Hg and is prescribed by a physician, Customs finds the instant graduated compression hosiery is within the scope of subheading 6115.92.3000, HTSUSA, providing for surgical stockings with graduated compression for orthopedic treatment.

Holding:

Based on the foregoing, style 162 is classified under subheading 6115.92.3000, HTSUSA, which provides for “Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Other: Of cotton: Surgical stockings with graduated compression for orthopedic treatment.” The general column one rate of duty is “Free.”

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

[ATTACHMENT N]

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

CLA–2 RR:CR:TE 965921 ttd
Category: Classification
Tariff No. 6115.93.3000

MR. TOM MIESEN
GLORIA-MED AMERICA, INC.
1813 E. John Sims Parkway, Suite 3
Niceville, FL 32578

Re: Proposed Modification of New York Ruling Letter E82596, dated June 11, 1999; Classification of Medical Graduated Compression Stockings.

DEAR MR. MIESEN:

This letter concerns New York Ruling Letter (NY) E82596, issued to you on June 11, 1999, regarding the tariff classification of compression hosiery under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After review of that ruling, Customs has determined that the classification for two of the six styles considered has changed from subheading 6115.93.9020, HTSUSA, as other stockings to subheading 6115.93.3000, HTSUSA, as surgical stockings with graduated compression for orthopedic treatment. For the reasons that follow, this ruling modifies, in part, NY E82596.

Facts:

The items under consideration are two styles of compression hosiery, identified in NY E82596 as Style Soft 141 (style 141) and Style 151. Both styles are comprised of 68 percent

polyamide and 32 percent elastane fabric, with a decitex of 486. Each style supplies graduated compression ranging from 20–30 mm Hg¹ and is prescribed by a physician.

In NY E82596, Customs classified styles 141 and 151 in subheading 6115.93.9020, HTSUSA, which provides for “Panty hose, tights, stockings, socks and other hosiery including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Of synthetic fibers: Other: Other: Other.” We note that at the time NY E82596 was issued we considered the following:

It is Customs position that surgical compression hosiery, because of their construction and application of use, are more than simple compression stockings to treat varicose veins. The hosiery is made of heavy gauge, opaque, elasticized knit fabric, and is designed to supply compression in the range of 30–40 mm mercury to 50–60 mercury. They are prescribed by physicians for the treatment of venous diseases and other serious conditions such as reversible and irreversible lymphedema and severe post-thrombotic treatment.

Issue:

What is the proper classification of the subject graduated compression hosiery under the HTSUSA?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI taken in order. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of these headings.

Heading 6115, HTSUSA, provides for “Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted.”

In HQ 963517 and HQ 963518, both dated January 2, 2002, Customs classified stockings with graduated compression ranging 20–30 mm Hg as surgical stockings for orthopedic treatment. To reach our decision, we considered a study evaluating the effects of duration of use of class I (20–30 mm Hg) graduated compression hosiery. See Robert Weiss, Neil Sadick, Mitchel Goldman, & Margaret Weiss, *Post-Sclerotherapy Compression: Controlled Comparative Study of Duration of Compression and its Effects on Clinical Outcome* DERMATOL SURG, 35: 105–108 (1999). This study essentially persuaded our office that compression greater than 20 mm Hg is presently considered necessary for reduction of venous insufficiency.² We noted certain statements made in the study, including “* * * in terms of controlling objective and subjective parameters of venous insufficiency no difference was found between class I (20–30 mm Hg) and class II (30–40 mm Hg) compression stockings.” Based on our review, we found that the study suggested that sclerotherapy results overall can be significantly improved by class I compression and should be part of the post-operative sclerotherapy protocol. In citing other studies, the study concluded that class I (20–30 mm Hg) compression may be recommended over class II since patient compliance is much higher and symptom improvement is identical. See Jungbeck C, Thulin I, Darenheim C, Norgen L. *Graduated Compression Treatment in Patients with Chronic Venous Insufficiency; A Study Comparing Low and Medium Grade Compression Stockings*. PHLEBOLOGIE, 12:142–5 (1997).

Moreover, during our review of HQ 963517 and HQ 963518, this office examined several letters from vascular surgeons and dermatologists familiar with the beneficial effects of compression on the venous system. The letters indicated consensus within the medical community that surgical stockings with graduated compression of 20–30 mm Hg are prin-

¹ Compression is measured by how much pressure is required to elevate a column of Mercury (Hg) a certain distance, as measured in millimeters (mm).

² The partial failure of leg veins to carry blood up towards the heart results in venous disorders, which vary in severity from mild varicosity to deep vein thrombosis and thromboembolism. The use of graduated compression stockings is one of the methods used in the prevention and treatment of these disorders. The stockings are constructed so that the maximum pressure is exerted at the ankle and gradually decreasing up the leg, thus achieving a milking effect that helps blood rise toward the heart.

cipally used for orthopedic purposes and are primarily prescribed by physicians to prevent or correct bodily deformities and the consequences associated with venous disease. The letters established that it is widely recognized that 20 mm Hg of compression is considered necessary for the treatment of venous disease. We noted in HQ 963517 and HQ 963518 that the physicians stated that they recommend using surgical supports with graduated compression of 20 to 30 mm Hg for several reasons: to prevent telangiectatic matting following sclerotherapy, to prevent thrombus formation and phlebitic reactions following sclerotherapy, to reduce post-operative edema, to prevent venous ulcerations, to prevent venous dermatitis and as treatment protocol for post-operative invasive vascular procedures.

In HQ 963517 and HQ 963518, Customs determined that physicians generally recommend graduated compression therapy as a treatment for venous insufficiency. We further recognized that graduated compression hosiery is generally available in three classes of compression; class I specifically covers a compression range of 20–30 mm Hg. We found that physicians generally prescribe compression stockings and that doctors indicated that patients generally find the hosiery uncomfortable and do not wear them unless directed by a doctor. Moreover, letters from medical authorities and conversations with medical professionals confirmed that certified and well-trained personnel must measure various parts of the foot and leg of a patient in order to obtain a proper fit for the stockings. We also found that pharmacies and medical supply companies prefer that a patient have a prescription that prescribes the amount of compression and noted that stockings obtained by prescription are often covered by insurance. We also noted that graduated compression stockings are significantly more expensive than support hosiery of the types generally found in retail stores, noting that panty hose with 20–30 mm Hg compression typically sell for approximately \$75.00 to \$100.00 and similar thigh-high stockings typically sell for \$60.00 to \$95.00 per pair.

Accordingly, in HQ 963517 and HQ 963518, we concluded that surgical panty hose and stockings with graduated compression ranging from 20–30 mm Hg should be considered surgical hosiery with graduated compression for orthopedic treatment when prescribed by a physician and/or specially fitted to the patient.

As the subject merchandise has a graduated compression range of 20–30 mm Hg and is prescribed by a physician, Customs finds the instant graduated compression hosiery is within the scope of subheading 6115.93.3000, HTSUSA, providing for surgical stockings with graduated compression for orthopedic treatment.

Holding:

Based on the foregoing, style 141 and style 151 are classified under subheading 6115.93.3000, HTSUSA, which provides for “Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Other: Of synthetic fibers: Surgical stockings with graduated compression for orthopedic treatment.” The general column one rate of duty is “Free.”

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

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO FILLING BOTTLES AS A MANUFACTURING PROCESS UNDER 19 U.S.C. 1313(a)

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

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to filling bottles as a manufacturing process under 19 U.S.C. 1313(a).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling letter pertaining to manufacturing drawback under 19 U.S.C. 1313(a). Customs is also revoking any treatment previously accorded by Customs that is contrary to the position set forth in this notice. Notice of the proposed action was published on October 2, 2002 in Volume 36, Number 40 of the CUSTOMS BULLETIN.

EFFECTIVE DATE: This modification is effective on exports made on or after March 10, 2003.

FOR FURTHER INFORMATION CONTACT: Margaret R. McKenna, Duty and Refund Determination Branch (202) 572-8806.

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 proposing to

modify one ruling letter, HQ 227906 dated May 27, 1998 pertaining to a manufacturing process for drawback was published in the CUSTOMS BULLETIN, Volume 36, Number 40 on October 2, 2002. One comment was received in response to this notice.

As stated in the proposed notice, this modification will cover any rulings on this process which may exist but have not been specifically identified that are contrary to the position set forth in this notice. 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 process 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. This treatment may have been, among other reasons, the result of the claimant's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to a drawback transaction of the same or similar merchandise, or the claimant's or Customs interpretation of 19 U.S.C. 1313 drawback provisions. Any person with interests in drawback on substantially identical merchandise should have advised Customs during the comment period. A drawback claimant'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 a lack of reasonable care on the part of the drawback claimant or its agent for drawback claims subsequent to the effective date of this final decision.

The subject ruling had previously held that the repackaging of imported toner which had been imported in bulk into smaller cartridges or bottles resulted in a commodity or article fit for a use for which it was otherwise not fit, thereby falling within the "letter and spirit" of "manufacture" for drawback purposes. The ruling involved cartridges and bottles that were made to fit commercial copy machines and bottles that were not made to fit commercial copy machines but required the operator to physically pour the toner from the bottle into the machine. The notice indicated our intention to modify HQ 227906 to disallow manufacturing drawback with respect to the toner filled in bottles that were not made to fit commercial copy machines but to allow unused merchandise drawback on that operation.

Comment:

One comment was received in response to this notice. The comment disagreed with the proposal and contends that the operation of filling "machine-dedicated" cartridges with imported toner is no different than filling bottles that are not "machine-dedicated" with imported toner and should also be considered an incidental operation under unused

merchandise drawback. The comment contends this treatment has been based solely on the change in tariff classification of the filled cartridges and that the test of “substantial transformation” should be the determining basis whether an operation constitutes a manufacture for drawback purposes.

Response:

We disagree that there can be no distinction made between the two operations. The change in classification of the “machine-dedicated” cartridges from “toner” to “part or accessory of copying machines” shows not only a change in “name” but also a change in “character” or “use” between the imported product (toner) and the exported product (part or accessory of copying machines). The machine-dedicated container of toner has only one purpose and that is to be used as a part of the machine to which it is designed to fit. No such change occurs with respect to the bottles not made to fit commercial copy machines.

In *Uniden America Corporation v. United States*, 120 F. Supp. 2d 1091 (2000) the court cites *National Hand Tool Corp. v. United States*, 16 C.I.T. 308, 311 (1992) as defining “character” as “one of the essentials of structure, form, materials, or function that together make up and usually distinguish the individual.” A change in function changes the character. Once a toner container made for a specific machine is filled it can have no other use than to be used in that machine as a part of that machine. Any other use for such a part would be a fugitive use. The toner and the machine designated cartridge form a new article which is dedicated as a part to a specific machine.

“There must be “transformation”; a new and different article must emerge, ‘having a distinctive name, character or use.’” *Anheuser-Busch Brewing Assn. v. United States*, 207 U.S. 556 (1908). The court, in *National Juice Products Association v. United States*, 628 F. Supp. 978, 10 CIT 48 (1986) at footnote 14, found that the test whether a transformation occurred for drawback was to be applied consistent with the congressional intent of encouraging the development in the United States of making articles for export to increase our foreign commerce. In *United States v. International Paint Co., Inc.* 35 C.C.P.A. 87 (1948) imported paint containing impurities which rendered the product unfit for use as an anti-fouling paint used for preventing marine growth on the bottoms of steel ships was subjected to removal of the impurities to make the product capable of use as an anti-fouling paint. The process consisted in some cases of merely opening the paint containers and tipping out the aqueous solution containing the impurities. For those impurities still remaining the paint was dumped in a mechanical mixer and as the aqueous solution came to the surface the mixer was stopped and the impurities ladled off. The balance of the impurities was then released by the introduction of varnish and once again the impurities were ladled off when they came to the surface. The court found proof of a change in character in the fact that the exported product was fitted for a distinctive use for which the imported product was not fit.

In *Former Employees of Shaw Pipe, Inc., v. United States*, 98 F. Supp. 588 (1997) concerning whether applying protective coating to steel pipe used for pipeline transmission transformed the pipe into a new or different article the court held an important consideration in evaluating whether an item is transformed into a new and different article is whether a new article has been entered into commerce. The court held that the coated and uncoated pipes were not likely to be used interchangeably in construction because the two types of pipe are different products. The coated pipe was said to represent a new product that was entered into commerce. See also *O.A. Both Corporation v. United States*, 63 Cust. Ct. 443 (1969) in which the court found with respect to aluminum and copper fritters and flakes which were classified separately under the Tariff Schedules of the United States a difference in tariff classification can be a recognition by Congress of two distinct articles of commerce.

Based on this analysis we have determined that a transformation has not occurred with respect to the imported toner that fills containers that are not dedicated to a particular copy machine but are hand-poured by the machine operator. There is no new article of commerce.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying HQ 227906 and any other ruling not specifically identified to reflect the revocation of the treatment allowing manufacturing drawback on toner which has been filled in containers not dedicated to specific copier machines pursuant to the analysis set forth in Proposed HQ 229488 set forth as the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical operations.

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

Dated: December 23, 2002.

WILLIAM G. ROSOFF,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, December 23, 2002.
DRA-2-01-RR:CR:DR 229488 MM
Category: Drawback

MR. GEORGE M. KELLER
CUSTOMS ADVISORY SERVICES, INC.
*1003 Virginia Avenue
Suite 200
Atlanta, GA 30354*

Re: Drawback; Manufacture or Production; 19 U.S.C. 1313(a); Unused Merchandise; 19 U.S.C. 1313(j); HQ 227906; Toner Imported in Bulk; 19 U.S.C. 1625; Ruling Modification under Section 1625(c).

DEAR MR. KELLER:

This is in reference to an application for a specific manufacturing drawback ruling filed on behalf of International Trade & Manufacturing Corporation d/b/a ITM, Inc. covering toner cartridges and bottles manufactured under title 19, United States Code, section 1313(b) with the use of dry bulk toner. The application was submitted pursuant to Headquarters Ruling Letter (HQ) 227906 issued to ITM Corporation (ITM) on May 27, 1998 concerning the applicability of drawback under section 1313(a) on toner imported in bulk containers and repackaged into cartridges or bottles.

We held in HQ 227906 that the operation of repackaging imported toner into cartridges and bottles resulted in a commodity or article fit for a use for which it was otherwise not fit, therefore making 19 U.S.C. 1313(a) applicable. Upon review of HQ 227906 Customs has determined that repackaging imported bulk toner into bottles of toner that are not made to fit a particular copy machine but are merely used by the operator to physically pour the toner into the machine does not produce an article fit for a use for which it was otherwise not fit. The ruling is to be modified for the reasons set forth below.

Facts:

ITM imports bulk toner for use in copy machines. The bulk toner is received by ITM in 60, 80 and 100 kilogram drums or barrels to be conveyed to smaller containers used in specific copy machines. The operation involves machines that take the bulk product and by use of vacuum and screw augers convey the toner to the appropriate container. The toner is vacuumed from barrel or drum and transferred to a holding tank. An auger then screws toner down a tube and deposits it into the proper container.

Various shapes and sizes of toner containers are used in copy machines. The toner containers are known as toner kits, bottles, tubes, cartridges, consumables, containers or starter kits. They all refer to the same product, a container which holds toner which is inserted into the machine to make copies.

There are four main ways of conveying the toner to the machine:

1. A sealed container of toner which when the seal is removed is physically poured into the toner hopper or receptacle in the machine by the operator. The container is then discarded. This material is stored in the machine until it calls for the addition of more toner to be added to the developer section. Bottle type containers are used in this method by the operator to pour the toner into the machine.
2. A sealed container of toner which is snapped in place on the toner receptacle and has a foam rubber insert. The operator then pulls the seal on the toner container and the toner is dumped or gravity fed into the toner hopper or receptacle which is part of the machine. The container is then discarded. Either cartridge or bottle type containers that are specifically engineered to be used with particular model copiers are used in this method to dump the product into the machine receptacle.
3. A container of toner which stays in the copier until empty and dispenses the toner when the machine requires the addition of more toner. These containers usually use a spiral groove on the container to gradually move the toner from container to the toner receptacle when needed. Bottle type containers that are specifically engineered to be used with particular model copiers are used in this method to dispense the toner slowly when the machine requires additional toner.
4. A container of toner which stays in the copier until empty and dispenses the toner through a mechanical action produced by the machine through a gear connection to

the toner container which moves a paddle or auger to shove the toner into the machine receptacle. Cartridge type containers that are specifically engineered to be used with particular model copiers are used in this method to dispense the toner when the machine requires additional toner.

Issue:

Whether the bottled toner which is physically poured into the machine as described in item 1 above qualifies for manufacturing drawback under 19 U.S.C. 1313(a).

Law and Analysis:

Drawback is authorized under the provisions of title 19, United States Code, section 1313(a) upon the exportation of articles manufactured or produced in the United States with the use of imported merchandise. The Customs Regulations 19 CFR 191.2(q), define a manufacture or production as:

1. A process, including, but not limited to, an assembly, by which merchandise is made into a new and different article having a distinctive "name, character or use"; or
2. A process, including, but not limited to, an assembly, by which merchandise is made fit for a particular use even though it does not meet the requirements of paragraph (q)(1) of this section.

Generally, in determining whether there has been a manufacture or production for drawback purposes, Customs has long used the criteria in the *Anheuser-Busch Brewing Association v. United States* 207 U.S. 566 (1908) case. Under that case, a manufacture or production is considered to have occurred when the merchandise under consideration is changed or transformed into a new and different article having a distinctive name, character, or use.

In HQ 227906 we held that the operation of filling various bottles and cartridges with imported bulk toner resulted in a commodity or article fit for a use for which it was otherwise not fit, thereby falling within the "letter and spirit" of "manufacture" for drawback purposes. It was stated that the end user of the bottles of toner would pour the contents from the bottle into the copier while the cartridges were actually placed into the copier allowing the contents to be dumped into the copying machine. This conclusion was based on a previous ruling HQ 207865 dated June 25, 1977 concerning toner imported in 180 liter drums which was rebottled into 600 milliliter bottles and packaged for retail sale. However, the retail bottles in this case were all made to fit commercial copy machines. It was held the rebottling of bulk toner into bottles that were intended to be used as part of the copier rather than as containers resulted in a retail preparation suitable for immediate consumption thus changing the use and character of the merchandise. The operation was said to constitute a manufacture or production within the meaning of the drawback statute.

In determining whether the end product would have been processed into a new and different article with a distinctive name, character or use we can look to the classification of the end use toner bottles and cartridges. In HQ 964351 Customs determined that toner cartridges and bottles like those described in items 2, 3 and 4 under the FACTS section that are made to fit specific copy machines whether they remain in the machines until they were empty of toner or are fitted onto the machine to refill the machine with toner are to be classified as parts or accessories of copying machines. The bottles of toner described in item 1 are not made to fit into or onto specific machines and would be considered containers of toner.

However, unused merchandise drawback is allowable under title 19, United States Code, section 1313(j) on imported merchandise which has been exported or destroyed under Customs supervision within 3 years of the date of importation and has not been used in the United States before such exportation or destruction. The term "unused merchandise" is not defined in the Customs Regulations. However, it has been determined that an article is used when it is employed for the purpose for which it was manufactured or when it is used in the manufacture or production of another article. Section 1313(j)(3) provides that the performance of certain operations or combination of operations (such as testing, cleaning, repacking, inspecting, sorting, refurbishing, freezing, blending, repairing, reworking, cutting, slitting, adjusting, replacing components, relabeling, disassembling, and unpacking), on the imported item, not amounting to a manufacturing or production for drawback purposes, will not be treated as a "use" of that merchandise. The toner described in item 1 under the FACTS section would qualify as unused merchandise drawback because it is merely bottled which does not amount to a manufacture or production for drawback purposes.

Holding:

Upon reconsideration of HQ 227906 we find that the toner in bottles as described in item 1 under the FACTS section which were not made to fit specific copying machines has not been changed in name, character or use and is therefore not eligible for manufacturing drawback under 19 U.S.C. 1313(a). However, we find such bottled toner is eligible for unused merchandise drawback under 19 U.S.C. 1313(j)(1).

HQ 227906, dated May 27, 1998, is hereby modified. In accordance with 19 U.S.C. 1625(c), this ruling will become effective on exports made on or after 60 days after its publication in the CUSTOMS BULLETIN.

WILLIAM G. ROSOFF
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

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

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

ACTION: Notice of proposed revocation of tariff classification ruling letters and revocation of treatment relating to the 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 intends to revoke two ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of geotextile material. Similarly, Customs proposes to revoke any treatment previously accorded by it to substantially identical merchandise that is contrary to the position set forth in this notice. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before February 7, 2003.

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke two ruling letters relating to the tariff classification of geotextile material. Although in this notice Customs is specifically referring to the revocation of New York Ruling Letter (NY) B89661, dated September 30, 1997 (Attachment A), and Headquarters Ruling Letter (HQ) 965747, dated September 10, 2002 (Attachment B); this notice covers any rulings on this merchandise which may exist but have not been specifically identified that are contrary to the position set forth in this notice. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to those identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise 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 issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer’s or Customs previous interpretation of the HTSUSA. Any person involved with substantially identical merchandise should advise Customs during this notice period. An importer’s failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice that is contrary to the position set forth 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 decision on this notice.

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. The yarns are woven into a mesh, the open spaces of which vary from 16mm x 16mm, to 21mm x 24mm. The woven mesh material is dipped in a bath of liquid polyvinyl chloride plastisol that is subsequently cured, making a soft, solid covering over the woven textile yarns. This mesh material is used for civil engineering, waste containment, road pavement overlay applications, etc. Customs classified the geotextile material in subheading 3921.90.1950, HTSUSA, which provides, in part, for other plates sheets, film, foil and strip of plastics, combined with a single textile material.

Based on our analysis of the scope of the terms of subheadings 3921.90.1950, HTSUSA, and 3926.90.9880, HTSUSA, the Legal Notes, and the Explanatory Notes, 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 intends to revoke NY B89661 and HQ 965747, and any other ruling not specifically identified, that is contrary to the determination set forth in this notice, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter HQ 965889 (Attachment C). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

Dated: December 23, 2002.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, September 30, 1997.
CLA-2-39:RR:NC:TA:350 B89661
Category: Classification
Tariff No. 3921.90.1950

MR. JOHN H. QUALEY
ROGERS & BROWN
2 Cumberland St. (29401)
P.O. Box 20160
Charleston, SC 29413-0160

Re: The tariff classification of a PVC coated textile geogrid material, from Germany.

DEAR MS. SPIVEY:

In your letter dated September 2, 1997, on behalf of Luckenhaus North America Inc., you requested a tariff classification ruling. The manufacturer is Luckenhaus Technische Textilien GmbH, Germany.

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.

The applicable subheading for the material will be 3921.90.1950, Harmonized Tariff Schedule of the United States (HTS), which provides for other plates, sheets, film, foil and strip, of plastics, combined with a single textile material, other, and weighing not more than 1.492kg/m². The rate of duty will be 5.3 percent ad valorem. This ruling is being issued under the provisions of Section 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 George Barth at 212-466-5884.

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

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 10, 2002.
CLA-2:RR:CR:TE 965747 JFS
Category: Classification
Tariff No. 3921.90.1950

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

Re: Request for Reconsideration of *NY B89661*, Dated September 30, 1997; Geotextile Material; Chapter 39, HTSUSA.

DEAR MR. ZELLER:

On September 30, 1997, New York Ruling Letter (*NY B89661*), was issued to your client, Luckenhaus, North America, Inc. The ruling was issued in response to a request for a

binding ruling on the tariff classification of a geotextile material under the Harmonized Tariff Schedule Annotated (HTSUSA).

Facts:

In *NY B89661*, the article under consideration 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 ½”. 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.

The sample considered in *NY B89661* was lost in the World Trade Center on September 11, 2001. You submitted additional samples that vary in size that are, for all essential purposes, identical to the original sample. The geotextile material is constructed from man-made yarns 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. The woven mesh material is dipped in a bath of liquid polyvinyl chloride plastisol that is subsequently cured, making a soft, solid covering over the woven textile yarns.

In *NY B89661*, the geotextile material was classified under subheading 3921.90.1950, HTSUSA, which provides, in part, for other plates sheets, film, foil and strip of plastics, combined with a single textile material. You argue that the geotextile material is properly classified in heading 5903, HTSUSA, which provides for: “Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902.”

Issue:

Whether geotextile material manufactured from woven mesh that is thoroughly coated with plastic is classified in heading 5903, HTSUSA, as a plastic coated fabric.

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) 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.

Legal Note 2(a)(3) to Chapter 59, HTSUSA, states that Heading 5903 applies to:

Textile fabrics impregnated, coated, covered or laminated with plastics, whatever the weight per square meter and whatever the nature of the plastic material (compact or cellular) other than: * * * (3) Products in which the textile fabric is either completely embedded in plastic or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resultant change in color (chapter 39).

Emphasis added.

The intent of Note 2(a)(3) to Chapter 59 is to classify those products “embedded in” or “completely covered” with plastics under the headings that provide for plastics or articles of plastics because they have acquired the characteristics of plastics. See HQ 963614, dated May 16, 2002 (classifying a warning vest made from PVC dipped polyester fiber mesh fabric in Chapter 39). The fabric comprising the article under consideration is entirely coated or covered on all sides with plastics. Accordingly, pursuant to Note 2(a)(3) to Chapter 59, HTSUSA, the geotextile material is excluded from classification in Chapter 59, HTSUSA.

The geotextile material is considered a good of plastics and is classified in Chapter 39, HTSUSA. At the subheading level, the material is classified in subheading 3921.90.1950,

HTSUSA, as an other sheet of plastics, combined with a single textile material. However, in light of a recent Decision of the Harmonized System Committee (HSC), classifying a substantially similar article in subheading 3926.90, HTSUSA, Customs is considering whether the geotextile material is properly classified in subheading 3926.90, HTSUSA. Accordingly, if it is decided to adopt the HSC decision, appropriate action will be taken to modify or revoke inconsistent Customs decisions, including *NY B89661* and this decision, under the provisions of 19 USC 1625(c).

Holding:

NY 848018 is hereby affirmed. The instant geotextile material is classified in subheading 3921.90.1950, HTSUSA, which provides for: "Other plates, sheets, film, foil and strip, of plastics: Other: Other; Other. The general column one rate of duty is 5.3 percent ad valorem.

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

[ATTACHMENT C]

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

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 Material Mesh; Chapter 39, HTSUSA; Other Article of Plastic; Not a "Sheet" of Plastic.

DEAR MR. ZELLER:

On September 10, 2002, Headquarters Ruling Letter (HQ) 965747, 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.

In HQ 965747, Customs noted a recent Decision of the Harmonized System Committee (HSC), classifying a substantially similar article in subheading 3926.90, HTSUSA. Customs notified you that we were considering adopting the HSC decision. For the reasons that follows, 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. The woven mesh material is dipped in a bath of liquid polyvinyl chloride plastisol that is subsequently cured, making a soft, solid covering over the woven textile yarns.

In NY B89661, nearly identical article 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 $\frac{1}{2}$ ". 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 geotextile material manufactured from woven mesh that is thoroughly coated with plastic is classified as a sheet of plastic in subheading 3921.90, HTSUSA, or as an “other” article of plastic in subheading 3926.90, 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) 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 correctly determined that the geotextile material is classified in Chapter 39, HTSUSA. At the subheading level, Customs classified the material in subheading 3921.90.1950, HTSUSA, as an other sheet of plastics, combined with a single textile material. However, Customs decision is in conflict with a recent decision, by the Harmonized HSC, wherein substantially similar merchandise was classified in subheading 3926.90, HTSUSA. See Annex L/5 to Doc. NC0590B2 (HSC/29/May 2002).

The HSC decision was based on their 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). Decisions of the HSC should be treated in the same manner as the EN’s, i.e., while neither legally binding nor dispositive, they provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of these headings. See T.D. 89–80. Moreover, EN’s and decisions of the HSC “should receive considerable weight.” *Id.* Customs is in agreement with the conclusion of the HSC.

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 on the instant geotextile material are large enough that it cannot be considered to have a “broad surface.” The unusually wide spacing in the weave interrupts any sort of surface 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 a “sheet” of plastic classified in heading 3921, HTSUSA.

Heading 3926, HTSUSA, is a basket provision for articles of plastics not elsewhere specified. Since there are no other headings in Chapter 39 that provide for the instant geotextile material, heading 3926, HTSUSA, is the proper heading in which to classify the instant good. Within the heading, the 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.

Holding:

HQ 965747 and NY B89661 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*.

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