

Bureau of Customs and Border Protection

General Notices

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

AGENCY: Customs and Border Protection, Homeland Security; Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. For the calendar quarter beginning April 1, 2003, the interest rates for overpayments will be 4 percent for corporations and 5 percent for non-corporations, and the interest rate for underpayments will be 5 percent. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: April 1, 2003.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in the Federal Register on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

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

In Revenue Ruling 2003-30 (*see*, 2003-13 IRB 659, dated March 31, 2003), the IRS determined the rates of interest for the calendar quarter beginning April 1, 2003, and ending June 30, 2003. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (2%) plus three percentage points (3%) for a total of five percent (5%). For corporate overpayments, the rate is the Federal short-term rate (2%) plus two percentage points (2%) for a total of four percent (4%). For overpayments made by non-corporations, the rate is the Federal short-term rate (2%) plus three percentage points (3%) for a total of five percent (5%). These interest rates are subject to change for the calendar quarter beginning July 1, 2003, and ending September 30, 2003.

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

<i>Beginning Date</i>	<i>Ending Date</i>	<i>Underpayments (percent)</i>	<i>Overpayments (percent)</i>	<i>Corporate Overpayments (Eff. 1-1-99) (percent)</i>
Prior to				
070174	063075	6 %	6 %	
070175	013176	9 %	9 %	
020176	013178	7 %	7 %	
020178	013180	6 %	6 %	
020180	013182	12 %	12 %	
020182	123182	20 %	20 %	
010183	063083	16 %	16 %	
070183	123184	11 %	11 %	
010185	063085	13 %	13 %	
070185	123185	11 %	11 %	
010186	063086	10 %	10 %	
070186	123186	9 %	9 %	
010187	093087	9 %	8 %	
100187	123187	10 %	9 %	
010188	033188	11 %	10 %	
040188	093088	10 %	9 %	
100188	033189	11 %	10 %	
040189	093089	12 %	11 %	
100189	033191	11 %	10 %	
040191	123191	10 %	9 %	
010192	033192	9 %	8 %	
040192	093092	8 %	7 %	
100192	063094	7 %	6 %	
070194	093094	8 %	7 %	
100194	033195	9 %	8 %	

<i>Beginning Date</i>	<i>Ending Date</i>	<i>Underpayments (percent)</i>	<i>Overpayments (percent)</i>	<i>Corporate Overpayments (Eff. 1-1-99) (percent)</i>
040195	063095	10 %	9 %	
070195	033196	9 %	8 %	
040196	063096	8 %	7 %	
070196	033198	9 %	8 %	
040198	123198	8 %	7 %	
010199	033199	7 %	7 %	6 %
040199	033100	8 %	8 %	7 %
040100	033101	9 %	9 %	8 %
040101	063001	8 %	8 %	7 %
070101	123101	7 %	7 %	6 %
010102	123102	6 %	6 %	5 %
010103	063003	5 %	5 %	4 %

Dated: April 15, 2003.

ROBERT C. BONNER,
Commissioner,
Customs and Border Protection.

[Published in the Federal Register, April 25, 2003 (68 FR 20398)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, April 30, 2003.

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

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

PROPOSED MODIFICATION OF RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO THE
CLASSIFICATION OF CARPENTERS’ APRONS OF LENGTHS OF
TWENTY INCHES AND TWENTY-TWO INCHES

AGENCY: Bureau of Customs and Border Protection; Department of Homeland Security.

ACTION: Notice of proposed modification of ruling letters and revocation of treatment relating to the tariff classification of carpenters’ aprons of lengths of twenty inches and twenty-two inches.

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 and Border Protection (CBP) intends to modify two ruling letters relating to the classification of carpenters’ aprons. CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before June 13, 2003.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at: Customs and Border Protection, 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: J. Steven Jarreau, Textiles Branch: (202) 572-8817

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerged 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 CBP 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 CBP 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 CBP 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 CBP intends to modify two ruling letters relating to the tariff classification, pursuant to the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of carpenters' aprons.

CBP, in Headquarters Ruling Letter (HQ) 084324 (July 26, 1989) and in New York Ruling Letter (NY) A81801 (April 10, 1996) classified carpenters' aprons of lengths of twenty inches and twenty-two inches made of cotton fabric in subheadings 6307.90.9930 and 6307.99.9089, HTSUSA, respectively. CBP classified the merchandise as "other made-up articles." Headquarters Ruling Letter 084324 is set forth as Attachment "A" to this document and New York Ruling Letter A81801 is set forth as Attachment "B."

After reviewing those rulings, it is CBP's determination that they are erroneous as they relate to the carpenters' aprons of lengths of twenty inches and twenty-two inches. Carpenters' aprons of the above-lengths are "other protective clothing" and properly classified as "other garments" in subheading 6211.42.0081, HTSUSA. Proposed Headquarters Ruling Letters 966339 and 966244, modifying HQ 084324 and NY A81801, are set forth as Attachments "C" and "D" to this document.

Although CBP refers in this notice to one Headquarters Ruling Letter and one New York Ruling Letter, this notice covers any rulings on substantially identical merchandise that may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search

existing databases for rulings in addition to the two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, an internal advice memorandum or decision or a protest review decision) on the merchandise subject to this notice, which is contrary to this notice, should advise CBP during this comment period. An importer's failure to advise CBP of a specific interpretative ruling or decision addressing substantially identical merchandise not identified in this notice, may raise issues of reasonable care on the part of the importer or its agent for importation of merchandise subsequent to the effective date of the final decision on this notice.

CBP, 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, also intends to revoke any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of an importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling issued to a third party to importations of the same or similar merchandise, or an importer's or CBP's previous interpretation of the HTSUSA. Any person involved with a substantially identical transaction and asserting a claim of treatment should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions may raise issues of reasonable care on the part of the importer or its agent for importation of merchandise subsequent to the effective date of the final decision on this notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify HQ 084324 and NY A81801 and any other rulings not specifically identified, to reflect the proper classification of carpenters' aprons of lengths of twenty inches and twenty-two inches. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise and transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: April 24, 2003.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY
BUREAU OF CUSTOMS AND BORDER PROTECTION,
Washington, DC, July 26, 1989.

CLA-2 CO:R:C:G 084324 DSN
Category: Classification
Tariff No. 6307.90.9030

ARMSTRONG GLOBAL
Box 117
Muscotah, KS 66058

Re: Classification of carpenter's aprons.

DEAR MR. ARMSTRONG:

This ruling letter is in response to your request of March 30, 1989, concerning the classification of carpenter's aprons under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Two samples produced in China were submitted for examination.

Facts:

Style number C-40 is a two pocket carpenter's apron and measures approximately 18-5/8 inches wide by 9 inches long. The apron is composed of 100 percent cotton woven fabric. It has two textile ties for wearing around the waist.

Style number C-75 is a bib-type carpenter's apron and measures approximately 20 inches long by 23-1/2 inches wide with 14 pockets and two loops, one at each side. The apron is composed of 100 percent cotton woven fabric. It is designed to be worn around the neck and tied around the waist.

Issue:

Whether the samples at issue are classified under heading 6211, HTSUSA, or under heading 6307, HTSUSA.

Law and Analysis:

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

Heading 6211, HTSUSA provides for track suits, ski-suits and swimwear; other garments. The Explanatory Notes constitute the official interpretation of the tariff at the international level. The Explanatory Notes to heading 6211 state that the Explanatory Notes to heading 6114 concerning other garments apply, *mutatis mutandis*, to the articles of this heading. Heading 6114, HTSUSA, provides for other garments, knitted or crocheted. The Explanatory Notes to heading 6114 state that the heading includes aprons, boiler suits (coveralls), smocks and other protective clothing of a kind worn by mechanics, factory workers, surgeons, etc. The samples at issue are not considered clothing because they are not worn for decency, comfort or adornment. Moreover, the aprons do not provide any protection to the wearer, they merely function as a holder of tools. Thus, applying the Explanatory Notes to heading 6211 *mutatis mutandis* to heading 6114, the aprons at issue are not classified under heading 6211, HTSUSA.

Heading 6307, HTSUSA, provides for other made up articles, including dress patterns. The Explanatory Notes to heading 6307 state that the heading covers made up articles of any textile material which are not included more specifically in other headings of Section XI or elsewhere in the Nomenclature. The merchandise at issue is not included more specifically in the tariff and therefore classifiable under this provision.

Holding:

The aprons at issue are classified under subheading 6307.90.9030, HTSUSA, which provides for other made up articles, including dress patterns, other, other, other, and dutiable at the rate of 7 percent ad valorem.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
New York, NY, April 10, 1996.

CLA-2-63:RR:NC:5: 353 A81801
Category: Classification
Tariff No. 6307.90.9989

MR. GORDON C. ANDERSON
C.H. ROBINSON INTERNATIONAL, INC.
8100 Mitchell Rd., Suite 200
Eden Prairie, MN 55344

Re: The tariff classification of tool aprons from China.

DEAR MR. ANDERSON:

In your letter dated March 20, 1996, received in our office on March 25, 1996, you requested a tariff classification ruling on behalf of your client Portable Products. Two samples were submitted for examination and will be returned as per your request.

The first sample, identified as a "Carpenter's Super Bib Apron". You note that although the submitted sample is made in the United States, future aprons will be made in China. The apron measures approximately 22½ inches in width at the waist and tapers to 10 inches wide at the bib area and is approximately 22 inches in length. The apron is stated to be constructed of 12 oz. cotton duck and has two adjustable nylon web style straps with plastic buckles, one strap for the neck and one for the waist. Sewn on the apron are 16 pockets of various sizes which are located all along the waist and one large pocket with two pencil/drill pockets at the chest area. These pockets are stated to be designed and marketed to hold objects ranging from traditional carpenter tools, to fasteners, glue, pencils, drill bits and pocket calculators. In addition to the pockets are two web straps located on both ends of the waist which are stated to be designed to hold hammers. The accompanying retail packaging for the article shows the apron with its intended uses as well how it would be worn.

The second sample, identified as a "Carpenter's Waist Apron", is stated to be constructed of 10 oz. cotton twill canvas and has two ties for securing around the waist. The apron measures approximately 8½ inches high by 18 inches in width with two large front pockets that each measure 6¼ inches by 8 inches with a narrow pocket in between for carrying pencils. The accompanying retail packaging shows how a similar article is worn around the waist.

Heading 6211, HTSUSA, provides for track suits, ski-suits and swimwear; other garments. The Explanatory notes constitute the official interpretation of the tariff at the international level. The Explanatory notes to Heading 6211 state that the Explanatory notes to heading 6114 concerning other garments apply, *mutatis mutandis*, to the articles of this heading. Heading 6114, HTSUSA, provides for other garments, knitted or crocheted. The Explanatory notes to heading 6114 states that the heading includes aprons, boiler suits (coveralls), smocks and other protective clothing of a kind worn by mechanics, factory workers, surgeons, etc. The samples at issue are not considered clothing because they are not worn for comfort, decency or adornment. Moreover, the aprons do not provide adequate protection to the wearer. The "Carpenter's Super Bib Apron" ends just below the waist and is tapered at the bib area leaving chest areas exposed. The "Carpenter's Waist Apron" just covers the waist area. Both items function as holders of tools.

Heading 6307, HTSUSA, provides for other made up articles, including dress patterns. The Explanatory Notes to heading 6307 state that the heading covers made up articles of any textile material which are not included more specifically in other headings of, Section XI or elsewhere in the Nomenclature. The merchandise at issue is not included more specifically in the tariff and therefore classifiable under this provision.

The applicable subheading for the "Carpenter's Super Bib Apron" and the "Carpenter's Waist Apron" will be 6307.90.9989, Harmonized Tariff Schedule of the United States (HTS), which provides for Other made up articles, including dress patterns: Other: Other: Other. * * * Other: Other. The rate of duty will be 7 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 Alan Tytleman at 212-466-5896.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

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

CLA-2 RR:CR:TE 966339 jsj
Category: Classification
Tariff No. 6211.42.0081

ARMSTRONG GLOBAL
P.O. Box 117
Muscotah, KS 66058

Re: Modification of HQ 084324 (July 26, 1989); Bib-Type Carpenter's Apron, Style C-75;
"Other Protective Clothing"; Heading 6211, HTSUS; Explanatory Note 62.14.

DEAR SIR OR MADAM:

The purpose of this correspondence is to respond to a request of the National Commodity Specialist Division of the Bureau of Customs and Border Protection (CBP) to reconsider Headquarters Ruling Letter 084324 (July 26, 1989). Headquarters Ruling Letter 084324 was issued to Armstrong Global. The article in issue in HQ 084324 that is subject to this reconsideration and modification is the bib-type carpenter's apron, identified as style C-75.

CBP, subsequent to reconsidering HQ 084324, is modifying that ruling letter as it relates to the classification of the bib-type carpenter's apron identified as style C-75 pursuant to the analysis set forth in this ruling letter.

Facts:

The article in issue is the bib-type carpenter's apron, identified as style C-75. It was described in HQ 084324 as follows:

Style number C-75 is a bib-type carpenter's apron and measures approximately 20 inches long by 23½ inches wide with 14 pockets and two loops, one at each side. The apron is composed of 100 percent cotton woven fabric. It is designed to be worn around the neck and tied around the waist.

Issue:

What is the classification, pursuant to the Harmonized Tariff Schedule of the United States Annotated, of the above-described bib-type carpenter's apron, style C-75, that measures approximate twenty (20) inches in length?

Law and Analysis:

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

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

² See 19 U.S.C. 1202 (West 1999); See generally, *What Every Member of The Trade Community Should Know About: Tariff Classification*, an Informed Compliance Publication of Customs and Border Protection available on the World Wide Web site of the CBP at www.cbp.gov.

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

The Explanatory Notes constitute the official interpretation of the Harmonized System at the international level. See Joint Explanatory Statement *supra* note 1, at 549. The Explanatory Notes, although neither legally binding nor dispositive of classification issues, do provide commentary on the scope of each heading of the HTSUS. The EN’s are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989); *Lonza, Inc. v. United States*, 46 F.3d 1098, 1109 (Fed. Cir. 1995).

Commencing classification of the bib-type carpenter’s apron, style C-75, in accordance with the dictates of GRI 1, CBP examined the headings of the HTSUSA. Heading 6211, HTSUS, provides for: “Track suits, ski-suits and swimwear; other garments.” The Explanatory Notes, particularly EN 62.11, provides, in part, that “[t]he provisions of the Explanatory Notes * * * to heading 61.14 concerning other garments apply, *mutatis mutandis*, to the articles of this heading.” Explanatory Note 61.14 provides, in part, that “[t]he heading includes *inter alia*: (1) Aprons, boiler suits (coveralls), smocks, and other protective clothing of a kind worn by mechanics, factory workers, surgeons, etc.”

CBP, relying on EN 61.14, has previously concluded that “other protective clothing” classifiable in heading 6211, HTSUS, as “other garments” are garments “of a kind that have special design features or unique properties that distinguish them from other garments that are not used for protective purposes.” HQ 959136 (Nov. 27, 1996). See also HQ 961826 (Feb. 2, 1999), HQ 959974 (April 7, 1997), HQ 957362 (Mar. 27, 1995), and HQ 084087 (Sept. 7, 1989). The “Carpenter’s Super Bib Apron” is designed to protect the wearer’s clothing while engaged in carpentry or similar shop work. See HQ 961184 (Aug. 7, 1998), HQ 959540 (April 7, 1997).

Continuing the classification of the bib-type carpenter’s apron the article, made of 100 percent cotton fabric is classified in subheading 6211.42.0081, HTSUSA. Subheading 6211.42.0081, HTSUSA, provides for:

6211	Track suits, ski-suits and swimwear; other garments: Other garments, women’s or girls:
6211.42.00	Of cotton,
6211.42.0081	Other.

The apron, at the subheading level, is classified as a “women’s or girls” garment pursuant to Chapter 62, Note 8. Since the garment cannot be identified as either a men’s or boys’ or a women’s or girls’ article, the chapter note dictates that it be classified as a women’s or girls’ article.

Holding:

Headquarters Ruling Letter 084324 (July 26, 1989) has been reconsidered and is modified as it relates to the bib-type carpenter’s apron identified as style C-75.

The bib-type carpenter’s apron identified as style C-75 is classified in subheading 6211.42.0081, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty is eight and two-tenths (8.2) percent, *ad valorem*.

The textile quota category is 359.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment, the *Textile Status Report for Absolute Quotas*, previously available on the Customs Electronic Bulletin Board (CEBB), which is now available on the CBP website at: www.cbp.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact the local

CBP office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

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

CLA-2 RR:CR:TE 966244 jsj
Category: Classification
Tariff No. 6211.42.0081

MR. GORDON C. ANDERSON
C. H. ROBINSON INTERNATIONAL, INC.
8100 Mitchell Road
Suite 200
Eden Prairie, MN 55344

Re: Modification of NY A81801 (April 10, 1996); "Carpenter's Super Bib Apron"; "Other Protective Clothing"; Heading 6211, HTSUS; Explanatory Note 62.14.

DEAR MR. ANDERSON:

The purpose of this correspondence is to respond to a request of the National Commodity Specialist Division of the Bureau of Customs and Border Protection (CBP) to reconsider New York Ruling Letter A81801 (April 10, 1996). New York Ruling Letter A81801 was issued to C. H. Robinson International, Inc. on the behalf of its client, Portable Products. The article in issue in NY A81801 that is subject to this reconsideration and modification is the "Carpenter's Super Bib Apron."

CBP, subsequent to reconsidering NY A81801, is modifying that ruling letter as it relates to the classification of the "Carpenter's Super Bib Apron" pursuant to the analysis set forth in this ruling letter.

Facts:

The article in issue, as identified by C. H. Robinson International and Portable Products, is the "Carpenter's Super Bib Apron." It was described in NY A81801 as follows:

The first sample [is] identified as a "Carpenter's Super Bib Apron". You note that although the submitted sample is made in the United States, future aprons will be made in China. The apron measures approximately 22½ inches in width at the waist and tapers to 10 inches wide at the bib area and is approximately 22 inches in length. The apron is stated to be constructed of 12 oz. cotton duck and has two adjustable nylon web style straps with plastic buckles, one strap for the neck and one for the waist. Sewn on the apron are 16 pockets of various sizes which are located all along the waist and one large pocket with two pencil/drill pockets at the chest area. These pockets are stated to be designed and marketed to hold objects ranging from traditional carpenter tools, to fasteners, glue, pencils, drill bits and pocket calculators. In addition to the pockets are two web straps located on both ends of the waist which are stated to be designed to hold hammers. The accompanying retail packaging for the article shows the apron with its intended uses as well how it would be worn.

Issue:

What is the classification, pursuant to the Harmonized Tariff Schedule of the United States Annotated, of the above-described "Carpenter's Super Bib Apron" that measures approximate twenty-two (22) inches in length?

Law and Analysis:

The federal agency responsible for initially interpreting and applying the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is the Bureau of Customs and

Border Protection.¹ CBP, in accordance with its legislative mandate, classifies imported merchandise pursuant to the General Rules of Interpretation (GRI) and the Additional U.S. Rules of Interpretation.²

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

The Explanatory Notes constitute the official interpretation of the Harmonized System at the international level. See Joint Explanatory Statement *supra* note 1, at 549. The Explanatory Notes, although neither legally binding nor dispositive of classification issues, do provide commentary on the scope of each heading of the HTSUS. The EN’s are generally indicative of the proper interpretation of the headings. See T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989); *Lonza, Inc. v. United States*, 46 F.3d 1098, 1109 (Fed. Cir. 1995).

Commencing classification of the “Carpenter’s Super Bib Apron,” in accordance with the dictates of GRI 1, CBP examined the headings of the HTSUSA. Heading 6211, HTSUS, provides for: “Track suits, ski-suits and swimwear; other garments.” The Explanatory Notes, particularly EN 62.11, provide, in part, that “[t]he provisions of the Explanatory Notes * * * to heading 61.14 concerning other garments apply, *mutatis mutandis*, to the articles of this heading.” Explanatory Note 61.14 provides, in part, that “[t]he heading includes *inter alia*: (1) Aprons, boiler suits (coveralls), smocks, and other protective clothing of a kind worn by mechanics, factory workers, surgeons, etc.”

CBP, relying on EN 61.14, has previously concluded that “other protective clothing” classifiable in heading 6211, HTSUS, as “other garments” are garments “of a kind that have special design features or unique properties that distinguish them from other garments that are not used for protective purposes.” HQ 959136 (Nov. 27, 1996). See also HQ 961826 (Feb. 2, 1999), HQ 959974 (April 7, 1997), HQ 957362 (Mar. 27, 1995), and HQ 084087 (Sept. 7, 1989). The “Carpenter’s Super Bib Apron” is designed to protect the wearer’s clothing while engaged in carpentry or similar shop work. See HQ 961184 (Aug. 7, 1998), HQ 959540 (April 7, 1997).

Continuing the classification of the “Carpenter’s Super Bib Apron,” the article, made of cotton duck fabric is classified in subheading 6211.42.0081, HTSUSA. Subheading 6211.42.0081, HTSUSA, provides for:

6211	Track suits, ski-suits and swimwear; other garments: Other garments, women’s or girls:
6211.42.00	Of cotton,
6211.42.0081	Other.

The apron, at the subheading level, is classified as a “women’s or girls’” garment pursuant to Chapter 62, Note 8. Since the garment cannot be identified as either a men’s or boys’ or a women’s or girls’ article, the chapter note dictates that it be classified as a women’s or girls’ article.

Holding:

New York Ruling Letter A81801 (April 10, 1996) has been reconsidered and is modified as it relates to the “Carpenter’s Super Bib Apron.”

The “Carpenter’s Super Bib Apron” is classified in subheading 6211.42.0081, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty is eight and two-tenths (8.2) percent, *ad valorem*. The textile quota category is 359.

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

² See 19 U.S.C. 1202 (West 1999); See generally, *What Every Member of The Trade Community Should Know About: Tariff Classification*, an Informed Compliance Publication of Customs and Border Protection available on the World Wide Web site of CBP at www.cbp.gov.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest your client check, close to the time of shipment, the *Textile Status Report for Absolute Quotas*, previously available on the Customs Electronic Bulletin Board (CEBB), which is now available on the CBP website at: www.cbp.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, your client should contact the local CBP office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A SEWING MACHINE LIGHT

AGENCY: U.S. Customs and Border Protection.

ACTION: Notice of revocation of ruling letter and treatment relating to the classification of a sewing machine light.

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 concerning the tariff classification of a sewing machine light 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 February 5, 2003, in Volume 37, Number 6, of the CUSTOMS BULLETIN. One comment was received in response to this notice.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after July 14, 2003.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, Commercial Rulings Division, (202) 572-8784.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to Customs obligations, a notice was published in the February 5, 2003, CUSTOMS BULLETIN, Volume 37, Number 6, proposing to revoke New York Ruling Letter (NY) G88460, dated April 12, 2001, and to revoke any treatment accorded to substantially identical merchandise. One comment was received in response to this notice.

In NY G88460, Customs ruled that a sewing machine light was classified in subheading 8452.90.00, HTSUS, the provision for parts of sewing machines, other than book-sewing machines of heading 8440.

It is now Customs position that the merchandise was not correctly classified in NY G88460 because Additional U.S. Rule of Interpretation (AUSRI) 1(c) directs classification of the merchandise into subheading 9405.40.60, HTSUS, the provision for other electric lamps and lighting fittings. AUSRI 1(c) directs this classification because Section XVI, Note 2, HTSUS, does not apply to the situation where a part of a machine included in the section is also classifiable in a specific provision of another section.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by Title VI, Customs is revoking any treatment it previously accorded to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer’s reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer’s or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer’s reliance on a treatment of substantially identical transactions or on a specific ruling con-

cerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Customs, pursuant to section 625(c)(1), is revoking NY G88460 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) 966041, which is set forth as the Attachment to this notice. Additionally, pursuant to section 625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

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

Dated: April 29, 2003.

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

[Attachment]

[ATTACHMENT]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
Washington, DC, April 29, 2003.

CLA-2 RR:CR:GC 966041
Category: Classification
Tariff No. 9405.40.60

MR. KARL F. KRUEGER
DANZAS AEI CUSTOMS BROKERAGE SERVICES
*29200 Northwestern Highway
Soputhfield, MI 48034*

Re: Sewing Machine Light from Taiwan.

DEAR MR. KRUEGER:

This is in reference to New York Ruling Letter (NY) G88460, issued to you on April 12, 2001, by the Director of Customs National Commodity Specialist Division, New York, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a sewing machine light from Taiwan. We have had an opportunity to review this ruling and believe it is incorrect.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, (Pub. L. 103-82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY G88460 was published on February 5, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 6. One comment was received in response to this notice.

Facts:

NY G88460 classified the merchandise in subheading 8452.90.00, HTSUS, the provision for “[s]ewing machines, other than book-sewing machines of heading 8440; furniture, bases and covers specially designed for sewing machines; sewing machine needles; parts thereof: [o]ther sewing machines: [o]ther parts of sewing machines.”

The facts as stated in NY G88460 are as follows:

The CFL (Coldcathode Fluorescent Light) sewing machine light is used to illuminate the entire stitching area so as to reveal the details of the work. As evidenced by the sample provided, this sewing machine part consists of the following components:

- (a) a u-shaped metal housing,
- (b) a very thin white fluorescent light bulb running the length of the U-shaped housing,
- (c) wiring connected to a printed circuit board and
- (d) mounting hardware.

An advertisement on the Bernina® of America, Inc. web site describes the “Cool Fluorescent Light” as follows: “Bernina offers the brightest built-in light of any sewing machine. Our Cool Fluorescent Light surrounds the entire stitching area to reveal every detail of your work. For embroidery on the Artista, it brings your stitchery to life as it sews out. (Note: This accessory requires installation by your authorized Bernina Dealer.)”

Issue:

Is a sewing machine light classified as a part of a sewing machine or as a lamp?

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation (AUSRI). The GRIs and the AUSRI are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any related section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order.

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

The following HTSUS headings are under consideration:

- | | |
|-------|---|
| 8452: | Sewing machines, other than book-sewing machines of heading 8440; furniture, bases and covers specially designed for sewing machines; sewing machine needles; parts thereof: |
| * | * * * * * |
| 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: |

AUSRI 1(c) states that “[i]n the absence of special language or context which otherwise requires * * * a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for ‘parts’ or ‘parts and accessories’ shall not prevail over a specific provision for such part or accessory.”

Section XVI, Note 2 states, in pertinent part, the following:

Subject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

- (a) Parts which are goods included in any of the headings of chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8485, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;
- (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;

* * * * *

EN 94.05 states, in pertinent part, the following:

I. LAMPS AND LIGHTING FITTINGS, NOT ELSEWHERE SPECIFIED OR INCLUDED

Lamps and lighting fittings of this group can be constituted of any material (excluding those materials described in Note 1 to Chapter 71) and use any source of light (candles, oil, petrol, paraffin (or kerosene), gas, acetylene, electricity, etc.). Electrical lamps and lighting fittings of this heading may be equipped with lamp-holders, switches, flex and plugs, transformers, etc., or, as in the case of fluorescent strip fixtures, a starter or a ballast.

This heading covers in particular: * * *

(3) Specialised lamps, e.g.: darkroom lamps; machine lamps (presented separately); photographic studio lamps; inspection lamps (other than those of heading 85.12); non-flashing beacons for aerodromes; shop window lamps; electric garlands (including those fitted with fancy lamps for carnival or entertainment purposes or for decorating Christmas trees). (emphasis added).

First, citing *Bauerhin Technologies Limited v. United States*, 914 F.Supp. 554, (Ct. Intl Trade, 1995), the commenter argues that the sewing machine light is indisputably a part of a sewing machine because it is “dedicated for use” with the sewing machine.” We do not find the *Bauerhin* test to be so simply applied. The *Bauerhin* court actually acknowledges that there are two distinct lines of cases defining the word “part” in the tariff. Starting with *U.S. v. Willoughby Camera Stores, Inc.* 21 C.C.P.A. 322 (*Cust. & Pat. App.*, 1933) and restated in *E.M Chemicals v. U.S.*, 920 F.2d 910 (1990), this line of cases holds that a part of an article “is something necessary to the completion of that article without which the article to which it is to be joined, could not function as such article.” Another line of cases evolved from *United States v. Antonio Pompeo*, 43 C.C.P.A. 9, C.A.D. 602 (*Cust. & Pat. App.*, 1955), which held that a device may be a part of an article even though its use is optional and the article will function without it, if the device is dedicated for use upon the article, and, once installed, the article will not operate without it.

Here, the sewing machine light illuminates the sewing area in the same manner as any overhead or desk lamp. Although dedicated for use with a sewing machine, the sewing machine will function even if the lamp is subsequently removed. Furthermore, the instant merchandise is advertised as an “accessory” and is not necessary to the functioning of the sewing machine but serves the subordinate purpose of illuminating the stitching area. Merchandise used in conjunction with an item in a subordinate role to the function of that item has been described as an accessory, and not as a part, by the Court of International Trade. See, *Rollerblade, Inc. v. United States*, 116 F. Supp. 2d 1247, 1252 (Ct. Intl Trade, 2000). Hence, under either analysis, we find that the instant merchandise is not a “part” of a sewing machine. However, for the remainder of this ruling, we will assume, *arguendo*, that the sewing machine light is a “part” of a sewing machine.

In New York Ruling Letter (NY) H87473, dated February 6, 2002, an electric lamp designed to be fitted into a dedicated aperture of various popular sewing machines which power the merchandise was classified in heading 9405, HTSUS, as a lamp. This case is similar. The instant merchandise is a specialized lamp designed to be used with a sewing machine in order to illuminate the stitching area. It is therefore *prima facie* classifiable under GRI 1 in heading 9405, HTSUS, as lamps and lighting fittings, not elsewhere specified or included.

The term “not elsewhere specified or included” does not render this residual provision for lamps a “basket” or non-specific provision. In *Sharp Microelectronics Technology, Inc. v. United States*, 122 F.3d 1446 (Fed. Cir. 1997), the court found that heading 9013, HTSUS, the provision for “liquid crystal devices not constituting articles provided for more specifically in other headings; * * * other optical appliances and instruments, not specified or included elsewhere in this chapter; * * *,” was not a “basket” provision. The court explained that the provision “is simply another specific provision acknowledging that it may be more or less difficult to satisfy than some other provision, or a more or less accurate or certain provision than some other to describe a particular article.” *Id.* at 1450. So too with heading 9405, HTSUS. The heading specifically describes lamps and lighting fittings, but acknowledges that other headings for lamps and lighting fittings may provide a more specifically described home for the merchandise at issue. Hence, heading 9405 is a specific provision for those lamps and lighting fittings not elsewhere specified or included.

However, NY G88460 finds an alternative classification for the instant merchandise as a “part” of a sewing machine. In HQ 561353, dated September 19, 2002, we discussed the

classification of a copper wire in heading 7408 that was dedicated to use in an Electrical Discharge Machine (EDM). We stated that "Section XVI note 2, HTSUS, appears to direct the classification of parts of machines of Chapters 84 and 85. However, in this case we also have unrestricted language as to the classification of a named product, copper wire. We believe that, in such cases, Additional U.S. Rule of Interpretation 1(c) provides us with the necessary guidance." Just as the copper wire in HQ 561353 was provided for as a good of a heading outside of Section XVI, so too is the sewing machine lamp provided for outside of Section XVI.

Citing *Mitsubishi International Corporation v. United States*, 182 F.3d 884, 886 (Fed. Cir. 1999), commenter correctly argues that Section XVI, Note 2(a) is regarded by the courts as "context which otherwise requires" with regard to the application of A.U.S.R.I. 1(c). Also see, *Nidec Corporation v. United States*, 861 F. Supp. 136 (Ct. Int'l Trade, 1994). However, Section XVI, Note 2(a) does not resolve the classification situation at hand. Specifically, the instant sewing machine lamps are not "[p]arts which are goods included in any of the headings of Chapter 84 or 85 * * *," as addressed by note 2(a). Lamps are not classifiable in Chapters 84 or 85. Lamps are classifiable outside of Section XVI, in Chapter 94.

In this manner, AUSRI 1(c), which applies to the entire HTSUS, not just a particular section, remains the guiding rule of interpretation when a part can also be classified in a specific provision not in chapters 84 or 85. Heading 9405, HTSUS, specifically describes the instant merchandise as a lamp that is not specified or included as such in any other provision.

Holding:

The CFL is classified in subheading 9405.40.60, HTSUS, the provision for other electric lamps and lighting fittings.

Effect on Other Rulings:

NY G88460 is revoked.

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