

# Bureau of Customs and Border Protection

## *General Notices*

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

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date, time, and location for the third meeting of the eighth term of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service (COAC), and the expected agenda for its consideration.

DATES: The next meeting of the COAC will be held on Friday, June 20, 2003 at 9 a.m. at the U.S. Mint, Conference Rooms A and B (second floor), located at 801 9th Street, NW, Washington, DC. The duration of the meeting will be approximately four hours.

FOR FURTHER INFORMATION CONTACT: Robyn Day at 202-927-1440.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. However, participation in the COAC's deliberations is limited to COAC members, Homeland Security and Treasury Department staff, and persons invited to attend the meeting for special presentations. All persons entering the building must be cleared by building security at least 72 hours in advance of the meeting. Personal data to obtain this clearance must be submitted to Robyn Day at 202-927-1440 no later than 2 p.m. EST on June 16, 2003.

#### *Agenda:*

The COAC is expected to pursue the following agenda, which may be modified prior to the meeting:

- 1) Customs and Border Protection Organization under the Department of Homeland Security
- 2) Customs-Trade Partnership Against Terrorism
- 3) Trade Act of 2002
- 4) 24-Hour Manifest Rule

- 5) COAC Administration under DHS and Treasury
- 6) Customs Participation on WCO Task Force for Global Security Standard

Dated: May 22, 2003.

TIMOTHY E. SKUD,  
*Deputy Assistant Secretary.*

[Published in the Federal Register, May 29, 2003 (68 FR 32169)]

DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS,  
*Washington, DC, May 28, 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.*

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REVOCATION OF RULING LETTER AND TREATMENT  
RELATING TO TARIFF CLASSIFICATION OF BATH BUCKET  
GIFT SETS

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of bath bucket gift sets.

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 a ruling pertaining to the tariff classification of bath bucket gift sets 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 actions was published on March 12, 2003, in the CUSTOMS BULLETIN. One comment from the importer was received in response to this notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 11, 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 on March 12, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 11, proposing to revoke NY I83983, dated August 6, 2002, which classified the components of certain bath bucket gift sets separately under the HTSUS. One comment was received in response to this notice.

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

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

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY I83983 and any other ruling not specifically identified, in order to reflect the proper

classification of certain bath bucket gift sets pursuant to the analysis set forth in HQ 966046, 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 merchandise.

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

Dated: May 16, 2003.

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

[Attachment]

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[ATTACHMENT]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
*Washington, DC, May 16, 2003.*

CLA-2 RR:CR:GC 966046 HEF  
Category: Classification  
Tariff No. 3307.30.50

MR. LARRY ORDET  
SANDLER, TRAVIS & ROSENBERG, P. A.  
*The Waterford*  
*5200 Blue Lagoon Drive*  
*Miami, FL 33126-2022*

Re: Revocation of NY I83983; "Bob the Builder" and "Clifford the Big Red Dog" Bath Bucket Gift Sets.

DEAR MR. ORDET:

This is in response to your letter dated November 14, 2002, requesting reconsideration of New York Ruling Letter (NY) I83983, issued to you on August 6, 2002, on behalf of Wal-Mart Stores, Inc., which classified the components of the "Bob the Builder" and the "Clifford the Big Red Dog" Bath Bucket Gift Sets separately under the Harmonized Tariff Schedule of the United States (HTSUS). A sample was submitted. Consideration was given to submissions made on November 14, 2002, January 30, 2003, and January 31, 2003, as well as arguments presented in a teleconference held on January 27, 2003. We have reconsidered the classification of the merchandise at issue and have determined that NY I83983 is incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published on March 12, 2003, in the Customs Bulletin, Volume 37, Number 11. Your comment was the only comment received. It is addressed in the LAW AND ANALYSIS section of this ruling.

*Facts:*

The gift sets each contain a collection of bath products. "Bob the Builder" Bath Bucket Gift Set contains an 8.5 oz. bottle of bubble bath, a hammer shaped sponge, two soap crayons and a netting sponge. The bubble bath and netting sponge both have roto-molded toy toppers. The bubble bath topper, composed of plastic, depicts a toy bulldozer truck. The netting sponge topper portrays the head of Bob the Builder. It is composed of plastic and is permanently attached to the sponge. "Clifford the Big Red Dog" Bath Bucket Gift Set con-

tains an 8.5 oz. bottle of bubble bath, a dog bone shaped sponge, two soap crayons and a netting sponge. The bubble bath and netting sponge both have roto-molded toy toppers. The bubble bath topper, composed of plastic, portrays the head of Clifford the Big Red Dog, and the netting sponge has a Clifford figure attached. These articles are packed together and sold at retail in plastic buckets. The buckets measure approximately 5½ inches high by 6½ inches in diameter and have plastic handles for carrying. The buckets have stickers associating the containers with the featured character. Each bucket and its contents are wrapped in a clear plastic.

*Issue:*

Whether the bath gift sets constitute goods put up in sets for retail sale or whether the components are separately classifiable?

*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:

<b>3307</b>	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:
3307.30	Perfumed bath salts and other bath preparations:
3307.30.50	Other.
*	* * * * *
<b>3401</b>	Soap; organic surface-active products and preparations for use as soap, in the form of bars, cakes, molded pieces or shapes, whether or not containing soap; organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap; paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent:
	Soap and organic surface-active products and preparations, in the form of bars, cakes, molded pieces or shapes, and paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent:
3401.11	For toilet use (including medicated products):
3401.11.50	Other.
*	* * * * *
<b>9503</b>	Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:
9503.70.00	Other toys, put up in sets or outfits, and parts and accessories thereof.
*	* * * * *

In your view, the subject merchandise should be classified as toy sets in heading 9503 under a GRI 1 analysis. The subject merchandise does not consist of merely one article, but contains several distinct articles that, when considered individually, cannot be construed as toys. The ENs to heading 9503 provide that, "collections of articles, the individual items of which if presented separately would be classified in other headings in the Nomenclature, are classified in this Chapter when they are put up in a form clearly indi-

cating their use as toys (e.g. instructional toys such as chemistry, sewing, etc., sets).” In contrast to GRI 3(b) sets, the articles need not meet a particular need or carry out a specific activity. It has been Customs position that articles which normally would be classified elsewhere in the HTSUS may be classified as toys when put up together so that they are designed and used principally for amusement. See Additional U.S. Rule of Interpretation 1(a), HTSUS. See also Headquarters Ruling Letter (HQ) 965295, dated September 11, 2002, holding that the amusement derived from “Paper Punch Art” activity kit is secondary to the work performed to create a decoration; HQ 959189, dated September 25, 1996, holding that the amusement derived from the “Create-a-Card Stencil Book” is secondary to its functional purpose of making decorations; and HQ 960420, dated July 25, 1997, holding that the amusement derived from “Color-Me Pals” is secondary to their functional purpose of coloring.

In the tariff context, “amuse” is mainly used in contrast to some utilitarian or functional quality and the focus is not how the toys are used, but whether they are designed to amuse. An examination of the contents of the bath gift sets shows that the merchandise is not designed to amuse, but rather, it functions as a means by which children can bathe. For example, while one may find drawing with chalk to be amusing in a colloquial sense, the chalk is not designed to amuse. The chalk is designed to put words on a blackboard or color a picture. That is its function, not amusement.

Next, you argue that the bath gift sets qualify as GRI 3(b) sets. In pertinent part, GRI 2(b) states that the classification of goods consisting of more than one material or substance shall be according to the principles of rule 3. The products under consideration consist of items classifiable under four different headings. Thus, GRI 3(a) is applicable, which directs, in pertinent part, that goods classifiable under two or more headings be classified under the heading which provides the most specific description of the good. However, all such headings are regarded as equally specific when each refers to only part of the items in either a composite good or a set put up for retail sale. Therefore, to determine whether the article might be classified under one provision, we look to GRI 3(b), which states in pertinent part that:

\* \* \* goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

EN(X) to GRI 3(b) provides in pertinent part that:

For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:

- (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings \* \* \*;
- (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
- (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

In accordance with EN (X) to GRI 3(b), the products qualify as sets. They consist of at least two different articles which are classifiable in different headings. The products consist of items put up together to carry out the specific activity of making “bath time” more appealing to children, and all of the items can be used for the distraction of the child during the bath. Thus, the products minimize some of the negative associations children have with bathing.

The sets are intended to distract children while parents bathe them, as indicated by the warning on the bubble bath stating that this product should be used by children only under adult supervision. The soap crayons can be used to write on the walls of the tub. The hammer and the dog shaped sponges and netting sponges with toy toppers are designed not only to aid in cleaning but also distract the child while bathing. While buckets are generally not sold with bath sets, in this instance, the bucket forms an integral part of the children’s bath set. The plastic bucket can be emptied and filled with water by the child, and the adult can use it to aid in rinsing the child. The bucket also organizes and stores the items. Thus, the items carry out the specific activity of making “bath time” more attractive to children. Finally, the product is ready for direct sale without repacking.

You contend that the essential character of the sets is embodied by the character toppers, as the “highlight” of the bath bucket gift set. Alternatively, you state that the soap crayons make up approximately thirty percent of the value of the set, and as such constitute the most valuable component. EN (VIII) to GRI 3(b) states “The factor which deter-

mines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.”

Recently, there have been several decisions on “essential character” for purposes of GRI 3(b). These cases have looked primarily to the role of the constituent materials or components in relation to the use of the goods to determine essential character. See *Better Home Plastics Corp. v. United States*, 916 F. Supp. 1265 (CIT 1996), affirmed, 119 F.3d 969 (Fed. Cir. 1997); *Mita Copystar America, Inc. v. United States*, 966 F. Supp. 1245 (CIT 1997), motion for rehearing and reconsideration denied, 994 F. Supp. 1245 (1997), rev’d 160 F.3d 710 (Fed. Cir. 1998), and *Vista International Packaging Co. v. United States*, 19 CIT 868, 890 F. Supp. 1095 (1995). See also *Pillowtex Corp. v. United States*, 983 F. Supp. 188 (CIT 1997), affirmed 171 F.3d 1370 (Fed. Cir. 1999).

We have determined that the essential character of the sets is imparted by the bubble bath. It is the item most prominently displayed in the sets and would be the reason most parents would consider buying one of the sets for their children. It unifies the sets by creating the atmosphere or setting for the bath time enjoyment. In essence, it creates the fundamental character of the sets and is the item that most associates the sets with bath time. The character toppers make the sets more attractive to children, but do not suggest the sets’ purpose of making “bath” time more appealing. They are often found on children’s bubble bath bottles. In this case, the two small bath crayons do not play a predominant role in the sets.

Thus, the “Bob the Builder” Bath Bucket Gift Set and the “Clifford the Big Red Dog” Bath Bucket Gift Set are properly classifiable as sets according to GRI 3(b) and their essential characters are determined by the bubble bath components. The merchandise is classified under subheading 3307.30.50, HTSUS.

*Holding:*

Pursuant to GRI 3(b), The “Bob the Builder” and “Clifford the Big Red Dog” Bath Bucket Gift Sets are classifiable under subheading 3307.30.50, which provides for pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic and toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties: perfumed bath salts and other bath preparations: other.

*Effect on Other Rulings:*

NY I83983 is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

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