

Bureau of Customs and Border Protection

General Notices

Cancellation of Customs Broker Licenses Due to Death of the License Holder

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security

ACTION: General Notice

SUMMARY: Notice is hereby given that, pursuant to Title 19 of the Code of Federal Regulations at section 111.51(a), the following individual Customs broker licenses and any and all permits have been cancelled due to the death of the broker:

<u>Name</u>	<u>License #</u>	<u>Port Name</u>
Kenneth E. Lacy	05962	San Francisco
Sheila P. Wolff	11935	Washington, D.C.
Betty J. Wilderspin	6381	Dallas

DATED: April 13, 2004

JAYSON P. AHERN,
*Assistant Commissioner,
Office of Field Operations.*

[Published in the Federal Register, April 29, 2004 (69 FR 23533)]

Notice of Cancellation of Customs Broker License

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

ACTION: General Notice

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license are canceled without prejudice.

<u>Name</u>	<u>License #</u>	<u>Issuing Port</u>
G.H. Matthes Co., Inc.,	16882	New York
Richard Murray, III	3408	Washington, D.C.
Fernando L. Lozano	21724	Laredo
Marathon Freight Services, Inc.	08096	New York
American Brokerage Int'l Inc.	21151	Portland, OR

DATED: April 13, 2004

JAYSON P. AHERN,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, April 29, 2004 (69 FR 23532)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.

Washington, DC, April 28, 2004,

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

SANDRA L. BELL,
*Acting Assistant Commissioner,
Office of Regulations and Rulings.*

**PROPOSED REVOCATION OF CLASSIFICATION LETTER
AND REVOCATION OF TREATMENT RELATING TO CLAS-
SIFICATION OF MEN'S COTTON DENIM WOVEN UPPER
BODY GARMENTS**

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

ACTION: Notice of proposed revocation of one ruling letter and revocation of treatment relating to the classification of certain men's cotton denim woven upper body garments.

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 revoke one ruling letter relating to the classification of certain men's cotton denim woven upper body garments under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Similarly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise.

DATE: Comments must be received on or before June 11, 2004.

ADDRESS: Written comments are to be addressed to Bureau of 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: Teresa Frazier, Textiles Branch, at (202) 572-8821.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under 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 revoke one ruling letter relating to the tariff classification of certain men's cotton denim woven upper body garments. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) D89498, dated March 30, 1999, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP 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 and Border Protection intends to revoke any treatment previously accorded by CBP 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, CBP's personnel applying a ruling of a third party to importations of the same or similar mer-

chandise, or the importer's or CBP's previous interpretation of the HTSUSA. Any person involved with substantially identical merchandise should advise CBP during this notice period. An importer's failure to advise CBP 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 importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY D89498, dated March 30, 1999, CBP classified certain men's cotton denim woven upper body garments in subheading 6205.20.2050, Harmonized Tariff Schedule of the United States Annotated, which provides for men's or boys' shirts: of cotton: other: other: other: with two or more colors in the warp and/or filling: other: men's.

Upon review of this ruling, CBP has determined that the merchandise's classification in subheading 6205.20.2050, HTSUSA, was incorrect. Rather, CBP finds the merchandise is classifiable in subheading 6201.92.2031, HTSUSA, which provides for "Anoraks (including ski jackets), windbreakers and similar articles (including padded, sleeveless jackets): Of cotton: Other: Other, Other: Blue denim: Men's."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY D89498 (Attachment A) and any other rulings not specifically identified that are contrary to the determination set forth in this notice to reflect consistency in classification pursuant to the analysis set forth in proposed Headquarters Ruling Letter HQ 966831 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: April 21, 2004

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY D89498 March 30, 1999
CLA-2-62:RR:NC:3:WA:355 D89498
CATEGORY: Classification
TARIFF NO.: 6205.20.2050

MR. JOHN PELLEGRINI
ROSS & HARDIES
65 East 55th Street
New York, NY 10022-3219

RE: The tariff classification of a man's shirt from Bangladesh.

DEAR MR. PELLEGRINI:

In your letter dated March 18, 1999, on behalf of Berkley Shirt Co., Inc., you requested a classification ruling. As requested, the sample will be returned to you.

Your submitted sample, style 210166AB, is a man's 100% cotton denim woven shirt. The garment features long sleeves with a one button cuff, a one button side sleeve vent, a collar, a full frontal opening secured with a seven button closure, a polyester fleece lining, two buttoned flapped breast pockets and a curved hemmed bottom. The applicable subheading for style 210166AB, will be 6205.20.2050, Harmonized Tariff Schedule of the United States (HTS), which provides for men's or boys' shirts: of cotton: other: other: with two or more colors in the warp and/or filling: men's. The duty rate will be 20.4 percent ad valorem.

Style 210166AB falls within textile category designation 340. Based upon international textile trade agreements products of Bangladesh are subject to quota and the requirement of a visa.

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. 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 that you check, close to the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

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 Gerard Shea at 212-637-7082.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966831
CLA-2 RR:CR:TE 966831 TMF
CATEGORY: Classification
TARIFF NO.: 6201.92.2031

MR. JOHN B. PELLEGRINI
MCGUIRE WOODS, LLP
65 East 55th Street
New York, NY 10022-3219

RE: Reconsideration of New York Ruling Letter (NY) D89498; classification of men's cotton denim woven shirt

DEAR MR. PELLEGRINI

Pursuant to your request dated March 18, 1999 for a binding tariff classification ruling of certain men's cotton denim woven shirts on behalf of your client, Berkley Shirt Company, Inc., Customs and Border Protection (formerly U. S. Customs Service) issued New York Ruling Letter (NY) D89498, dated March 30, 1999. This ruling classified the merchandise in subheading 6205.20.2050, Harmonized Tariff Schedule of the United States Annotated, which provides for men's or boys' shirts: of cotton: other: other: other: with two or more colors in the warp and/or filling: other: men's.

Upon review, the Bureau of Customs and Border Protection (CBP) has determined that the merchandise was erroneously classified. This ruling letter sets forth the correct classification determination.

FACTS:

The description of the men's cotton denim woven shirt in New York Ruling Letter (NY) D89498, dated March 30, 1999, reads as follows:

... [S]tyle 210166AB, is a man's 100% cotton denim woven shirt. The garment features long sleeves with a one button cuff, a one button side sleeve vent, a collar, a full frontal opening secured with a seven button closure, a polyester fleece lining, two buttoned flapped breast pockets and a curved hemmed bottom.

Although a sample garment is not available, Berkley Shirt Company, the manufacturer of the merchandise above, provided to our office a sample that they state is identical to merchandise of NY D89498.

ISSUE:

Whether the subject garment is classifiable as a jacket under Heading 6201, HTSUSA, or as a shirt under Heading 6205, 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 heading 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 Explanatory Notes ("EN") to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the in-

ternational level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

The issue in the instant case is whether the submitted sample is properly classifiable as a men's shirt or as a jacket. A physical examination of the garment reveals that it possesses features traditionally associated with both jackets and shirts and therefore potentially lends itself to classification as either a coat or jacket under heading 6201, HTSUSA, or as a shirt under heading 6205, HTSUSA.

The garment at issue is considered to be a hybrid garment since it possesses characteristics found on both shirts and jackets. In circumstances such as these, where the identity of a garment is ambiguous for classification purposes, reference to The Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories, CIE 13/88 ("Guidelines"), is appropriate. The Guidelines were developed and revised in accordance with the HTSUSA to ensure uniformity, to facilitate statistical classification, and to assist in the determination of the appropriate textile categories established for the administration of the Arrangement Regarding International Trade in Textiles. The Guidelines offer the following with regard to the classification of shirt-jackets:

* * *

Shirt-jackets have full or partial front openings and sleeves, and at the least cover the upper body from the neck area to the waist. . . . The following criteria may be used in determining whether a shirt-jacket is designed for use over another garment, the presence of which is sufficient for its wearer to be considered modestly and conventionally dressed for appearance in public, either indoors or outdoors or both:

- (1) Fabric weight equal to or exceeding 10 ounces per square yard
- (2) A full or partial lining.
- (3) Pockets at or below the waist.
- (4) Back vents or pleats. Also side vents in combination with back seams.
- (5) Eisenhower styling.
- (6) A belt or simulated belt or elasticized waist on hip length or longer shirt-jackets.
- (7) Large jacket/coat style buttons, toggles or snaps, a heavy-duty zipper or other heavy-duty closure, or buttons fastened with reinforcing thread for heavy-duty use.
- (8) Lapels.
- (9) Long sleeves without cuffs.
- (10) Elasticized or rib-knit cuffs.
- (11) Drawstring, elastic or rib-knit waistband.

* * *

Garments having features of both jackets and shirts will be categorized as coats if they possess at least three of the above-listed features and if the result is not unreasonable. . . . Garments not possessing at least three of the listed features will be considered on an individual basis. See Guidelines, supra.

CBP recognizes that the garment at issue is a hybrid garment, possessing features of both shirts and jackets. A physical examination of the garment at issue reveals that it possesses three of the Guidelines' jacket criteria:

- fabric weight equal to or exceeding 10 ounces per square yard;
- a full lining;
- buttons fastened with reinforcing thread for heavy-duty use.

The garment's cotton denim outer shell and interior fleece lining separately have an average fabric weight of 8 ounces per square yard. The garment's body portion has a combined fabric weight of 16 ounces per square yard, which is an indication of the garments' use for outerwear purposes. Further, the combination of the garment's quilted sleeve lining, full fleece lining, and oversize cut are features characteristic of outerwear garments.

Based on the factors outlined in the Guidelines, we find this heavy construction woven denim garment is intended to be worn over other clothing for added warmth and protection from the elements. Therefore, as the garment sufficiently satisfies the above-discussed jacket criteria and gives the overall impression of a jacket, it is not unreasonable to reclassify the garment in heading 6201, HTSUSA, as a jacket. For some of the rulings issued by CBP which classifies substantially similar upper body garments as men's jackets of heading 6201, HTSUSA, see Headquarters Ruling Letter (HQ) 966159, dated April 14, 2003, classifying a men's denim jacket with fleece and quilted polyfill lining in heading 6201, HTSUSA; HQ 960522, dated January 26, 1998, classifying men's denim stadium jackets with fleece lining in heading 6201, HTSUSA; NY H87763, dated February 26, 2002, classifying men's cotton denim overshirt with a fleece lining in heading 6201, HTSUSA.

HOLDING:

Style number 210166AB, is classified in subheading 6201.92.2031, HTSUSA, which provides for "Anoraks (including ski jackets), windbreakers and similar articles (including padded, sleeveless jackets): Of cotton: Other: Other: Blue Denim: Men's." The general column one rate of duty is 9.4 percent *ad valorem*, quota category number 334.

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 CPB 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.

PROPOSED REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN CHEF'S COATS

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

ACTION: Notice of proposed revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of certain chef's coats.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs & Border Protection (CBP) intends to revoke one ruling letter relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of certain chef's coats. Similarly, CBP 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 June 11, 2004.

ADDRESS: Written comments 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: Brian Barulich, Textiles Branch: (202) 572-8883.

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 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 revoke a ruling letter relating to the tariff classification of certain chef's coats. Although in this notice CBP is specifically referring to the revocation of NY A87771, dated September 30, 1996 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP 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, CBP intends to revoke any treatment previously accorded by CBP 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, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUSA. Any person involved with substantially identical merchandise should advise CBP during this notice period. An importer's failure to advise CBP 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 importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY A87771, CBP classified a chef's coat under subheading 6211.42.0081, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of cotton: Other." Based on our review of heading 6211, HTSUSA, heading 6206, HTSUSA, the Legal Notes, and the Explanatory Notes, we find that a chef's coat of the type subject to this notice, should be classified in subheading 6206.30.3040, HTSUSA, which provides for "Women's or girls' blouses, shirts and shirt-blouses: Of cotton: Other: Other: Other: Women's".

Pursuant to 19 U.S.C. 1625 (c)(1), CBP intends to revoke NY A87771 and any other ruling not specifically identified, to reflect the

proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 967104 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise.

Before taking this action, consideration will be given to any written comments timely received.

DATED: April 27, 2004

Cynthia Reese for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY A87771

September 30, 1996

CLA-2-62:RR:NC:5:353 A87771

CATEGORY: Classification

TARIFF NO.: 6211.42.0081

MR. MAURITZ PLENBY
AMC (ASSOCIATED MERCHANDISING CORP.)
1440 Broadway
New York, N.Y. 10018

RE: The tariff classification of a unisex chef's coat from Indonesia.

DEAR MR. PLENBY:

In your letter dated September 13, 1996, on behalf of PT Mayertex, you requested a classification ruling. The sample will be returned to you as requested. The submitted sample is a unisex chef's coat consisting of 100% woven cotton fabric. The garment features a full front opening with a double row of fabric knot buttons that can button either left over right or right over left. It is hip-length with a mandarin collar and mandarin styling, long sleeves with a turned up split cuff. The chef's coat does not have sufficient features to be considered a suit-type jacket or blazer. It does not meet the requirements set forth in heading 6203 HTSUS. The Explanatory Notes are the official interpretation of the HTSUS at the international level. The Explanatory Notes for heading 6103, HTSUSA, which apply mutatis mutandis to heading 6203, HTSUSA, require a jacket or blazer to have four or more panels (of which two are in the front) sewn together lengthwise. The applicable subheading for the chef's coat will be 6211.42.0081, Harmonized Tariff Schedule of the United States (HTS), which provides for track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of cotton: Other. The duty rate will be 8.5 percent ad valorem.

The chef's coat falls within textile category designation 359. Based upon international textile trade agreements products of Indonesia are subject to quota and the requirement of a visa.

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. 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 that you check, close to the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

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.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967104
CLA-2: RR:CR:TE: 967104 BtB
CATEGORY: Classification
TARIFF NO.: 6206.30.30

MR. MAURITZ PLENBY
ASSOCIATED MERCHANDISING CORPORATION (AMC)
1440 Broadway
New York, NY 10018

RE: The tariff classification of a unisex's chef coat from Indonesia

DEAR MR. PLENBY:

This is in reference to New York Ruling Letter (NY) A87771, dated September 30, 1996, issued to you by the Bureau of Customs and Border Protection (f/k/a U.S. Customs Service) regarding the classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a chef's jacket from Indonesia ("chef's coat"). We have reconsidered NY A87771 and have determined that the classification of the chef's coat is not correct. This ruling sets forth the correct classification and revokes NY A87771.

FACTS:

The chef's coat is made of 100% woven cotton fabric. The garment features a full-front opening with a double row of fabric knot buttons that can button either left over right or right over left. It is hip-length with a mandarin col-

lar and mandarin styling, long sleeves with a turned-up split cuff. The chef's coat is unisex.

In NY A87771, CBP classified the chef's coat under subheading 6211.42.0081, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of cotton: Other."

ISSUE:

Whether the chef's coat is properly classified in heading 6211, HTSUSA, which provides for, *inter alia*, other garments not more specifically provided for elsewhere, or in heading 6206, HTSUSA, which provides for women's blouses.

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be "determined according to the terms of the headings and any relative section or chapter notes." In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

The EN to heading 6211 state that the EN to heading 6114 concerning other garments apply *mutatis mutandis*, to the articles of heading 6211, HTSUSA. The applicable EN to heading 6114, HTSUSA, provides that "this heading covers knitted or crocheted garments which are not included more specifically in the preceding headings of this Chapter". Applying this language to heading 6211, HTSUSA, denotes that Heading 6211, HTSUSA, is not appropriate if the garments at issue are covered more specifically in preceding headings.

The applicable EN to heading 6114, HTSUSA, further states the following:

The heading includes, *inter alia*:

- (1) Aprons, boiler suits (coveralls), smocks and other protective clothing of a kind worn by mechanics, factory workers, surgeons, etc.
- (2) Clerical or ecclesiastical garments and vestments (e.g., monks' habits, cassocks, copes, soutanes, surplices).
- (3) Professional or scholastic gowns and robes.
- (4) Specialized clothing for airmen, etc. (e.g., airmen's electrically heated clothing).
- (5) Special articles of apparel used for certain sports or for dancing or gymnastics (e.g., fencing clothing, jockeys' silks, ballet skirts, leotards).

The General Notes to the EN to Chapter 62 state, in part, "Shirts and shirt blouses are garments designed to cover the upper part of the body, having long or short sleeves and a full front opening starting at the neckline."

The application of heading 6211 to other garments has been previously reviewed by CBP. In Headquarters Ruling Letter (HQ) 959136, dated November 27, 1996, this office classified a hospital issue scrub type top in heading 6206, HTSUSA, determining that it was not suitable for use as protective clothing and, hence, not classifiable under heading 6211. In this ruling, CBP pointed out that “the protective garments properly classifiable under heading 6211, HTSUSA, are of a kind that have special design features or unique properties that distinguish them from other garments that are not used for protective purposes.”

In contrast, in HQ 952934, dated July 19, 1993, CBP classified coveralls designed to protect the wearer from microwave radiation as protective clothing under Heading 6211, HTSUSA. The coveralls at issue in that case were composed of textile fabric and stainless steel fibers. Also, in HQ 084132, dated July 6, 1989, CBP classified a lab coat made of 100 percent polyester woven fabric with carbon fiber woven into it as an antistatic component under Heading 6211, HTSUSA. The lab coat was designed for wear in the electronics industry.

The instant chef's coat is not intended to be worn over other forms of clothing to provide protection to one's clothing. Rather, the garment is designed to be worn over underwear and as the main article of clothing over the torso. It provides the wearer with the coverage of most upper body garments, but has no protective design features or properties as we construe those terms. Therefore, the chef's jacket is more specifically provided for at GRI 1 in headings earlier in the chapter.

Chapter 62, note 8, HTSUSA, states:

Garments of this chapter designed for left over right closure at the front shall be regarded as men's or boys' garments, and those designed for right over left closure at the front as women's or girls' garments. These provisions do not apply where the cut of the garment clearly indicates that it is designed for one or other of the sexes.

Garments which cannot be identified as either men's or boys' garments or as women's or girls' garments are to be classified in the headings covering women's or girls' garments.

The instant chef's coat features a double row of fabric knot buttons that can button either left over right or right over left. The cut of the coat does not clearly indicate that it is designed for one or other of the sexes. As closure can be both ways and cut does not clearly indicate the sex designation, the garment is not identifiable as either a men's or boy's garment or women's or girls' garment. Therefore, the coat is to be classified in the appropriate heading covering women's or girls' garments. The chef's coat is not described as having features which would distinguish it as a jacket rather than a shirt worn outside the waistband, in terms of its features, detailing or notions, within the tariff meaning of the term jacket. Therefore, the upper body garment is more properly classified in heading 6206, as a blouse or shirt.

HOLDING:

NY A87771, dated September 30, 1996, is hereby revoked.

The subject chef's jacket is classified in subheading 6206.30.3040, HTSUSA, which provides for “Women's or girls' blouses, shirts and shirt-blouses: Of cotton: Other: Other: Women's”. The applicable rate of duty under the 2004 HTSUSA is 15.4% percent *ad valorem* and the textile category is 341.

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 available now 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 your 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 SATELLITE RADIO RECEIVER SETS

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

ACTION: Notice of revocation of ruling letter and treatment relating to the tariff classification of satellite radio receiver sets.

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 pertaining to the tariff classification of satellite radio receiver 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. No comments were received in response to the proposed action.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 11, 2004.

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)), notice was published March 24, 2004 in the CUSTOMS BULLETIN, Volume 38, Number 13, proposing to revoke NY I84878, dated August 28, 2002, which classified satellite radio receiver sets in subheading 8527.29.8060, HTSUS, which provides, in relevant part, for reception apparatus for radiobroadcasting of a kind used in motor vehicles not combined with sound recording or reproducing apparatus. No comments were received in response to the proposed action.

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

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

terpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of the proposed action.

In NY I84878, Customs classified three models of XM satellite radio kits, which met the criteria for goods put up in sets for retail sale according to GRI 3(b) and having the essential character of the satellite radio receiver, in subheading 8527.29.80, HTSUS, which provides, in relevant part, for reception apparatus for radiobroadcasting of a kind used in motor vehicles not combined with sound recording or reproducing apparatus. Upon reconsideration of this ruling, it came to our attention that all of the receivers did in fact have sound recording or reproducing apparatus, and that one of the three receivers is not of a kind used in motor vehicles.

Therefore, it is now Customs position that two of the models are properly classified in subheading 8527.21.4080, HTSUS, which provides in part for other reception apparatus for radiobroadcasting of a kind used in motor vehicles combined with sound recording or reproducing apparatus. The third model is properly classified in subheading 8527.31.6080, HTSUS, which provides for other radiobroadcasting reception apparatus combined with sound recording or reproducing apparatus.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY I84878 and any other ruling not specifically identified to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analysis set forth in the attached ruling, HQ 966675. 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.

Dated: April 26, 2004

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966675
April 26, 2004
CLA-2 RR: CR: GC 966675 DBS
CATEGORY: Classification
TARIFF NO.: 8527.21.40, 8527.31.60

MS. LUCY RICHARDSON
SONY ELECTRONICS INC.
123 Tice Boulevard
Woodcliff Lake, NJ 07675

RE: Revocation of NY I84878; Sony XM Satellite Radio

DEAR MS. RICHARDSON:

This is in response to your letter dated July 23, 2003, to the CBP National Commodity Specialist Division (NCSA), requesting reconsideration of New York ruling letter (NY) I84878, which was issued to you on behalf of Sony Electronics Inc. (Sony) on August 28, 2002. NY I84878 classified three XM satellite radio kits in subheading 8527.29.80, Harmonized Tariff Schedule of the United States (HTSUS). Your request was forwarded to this office for reply. We have reviewed NY I84878 and have found it to be incorrect. In addition, we have considered the new information which you submitted that was unavailable to CBP at the time of the ruling. The following 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 the above identified ruling was published on March 24, 2004, in the CUSTOMS BULLETIN, Volume 38, Number 13. No comments were received in response to the notice.

FACTS:

The merchandise at issue is three XM satellite radio kits. Satellite radio is broadcast radio transmitted via a satellite, directly to the receiver, on the XM frequency band. It is intended to provide 100 channels of subscriber radio to the user. The kits are configured in three model types. In NY I84878, the models were listed as DNR-XM01C, DNR-XM01R and DNR-XM01H. You have informed us that two of the letters were transposed, and that the model numbers are actually DRN-XM01C, DRN-XM01R and DRN-XM01H.

NY I84878 stated that model DRN-XM01C ("C" model) is composed of the satellite receiver, antenna, remote control, a cassette adapter/car battery cord and a cradle. Model DRN-XM01R ("R" model) is composed of the satellite receiver, RF modulator, antenna, remote control and cradle. Model DRN-XM01H ("H" model) is composed of a satellite receiver, antenna, remote control, cradle and an AC power adapter. Each kit is packaged for retail sale. Samples of the actual packaging in which the kits will be imported and sold were furnished to the NCSA at the time of the original ruling request. Each configured kit is designed to provide satellite radio to a listener while using a motor vehicle.

Though NY I84878 stated that all three models were for use in a motor vehicle, your request for reconsideration stated that the "C" and "R" models

are advertised as predominantly for use in a motor vehicle, and that the "H" model is primarily intended for the home. The "R" model is designed for custom installation while the "C" model is designed for self-installation. They are imported and sold with car docking stations that stabilize the unit in a motor vehicle. The antennae have magnetic bases for rooftop mounting. The "H" model, on the other hand, has an XM-compatible antenna that does not have a magnetic base. It is imported with an audio cable that connects to a home stereo system or boom box. The "C" and "H" models may be adapted to home or car, respectively, but require add-on kits to do so.

You submitted that all three receivers at issue provide signal selection, amplification and detection capabilities for the XM satellite radio frequency. You explained that "R" model operates by the the RF modulator supplying power to the cradle, which in turn powers the tuner. The tuner sends audio signals back through the cradle to the RF modulator box which modulates and converts the signal to FM frequency. The RF output is connected to a car stereo head unit. The "C" model operates in a similar fashion, but instead of a RF modulator, the signal is sent through the cassette adapter. The signal for the "H" model is sent through the audio cable.

Unknown to Sony at the time of the original ruling request, the satellite radio receivers in these kits incorporate Synchronous Dynamic Random Access Memory (SDRAM) for sound recording. The XM receivers record XM audio and then retrieve from the SDRAM. The receivers' digital process circuitry repairs any discrepancies in the audio signal output by the SDRAM, removes any textual data associated with the audio signal and converts the signal from digital to analog. In addition, CBP subsequently issued rulings on other models of XM's receivers (NY J83641, dated April 30, 2003 and NY J84658, dated May 14, 2003) and classified them in subheading 8527.31.60, HTSUS, which provides for other radiobroadcasting receivers combined with sound recording or reproducing apparatus. You claim that the receivers classified in those rulings are substantially similar to the instant models for tariff purposes, but for the fact that the "C" and "R" are of a kind used in a motor vehicle.

In light of the foregoing, you claim models DRN-XM01C and DRN-XM01R are classified in subheading 8527.21.40, HTSUS, and that model DRN-XM01H is classified in subheading 8527.31.60, HTSUS.

ISSUE:

What is the tariff classification of Sony's XM Satellite Receiver kits that incorporate sound recording or reproducing apparatus?

LAW AND ANALYSIS:

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

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation

of the Harmonized System at the international level. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

8527	Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock:
	Radiobroadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles, including apparatus capable of receiving also radiotelephony or radiotelegraphy:
8527.21	Combined with sound recording or reproducing apparatus:
8527.21.40	Other. * * *
8527.29	Other
8527.29.80	Other. * * *
	Other radiobroadcast receivers, including apparatus capable of receiving also radiotelephony or radiotelegraphy:
8527.31	Combined with sound recording or reproducing apparatus:
	Other:
8527.31.60	Other.

When imported as a set, classification of merchandise under a single heading cannot be determined by applying GRI 1; we must apply the other GRIs. GRI 3 provides for goods that are, *prima facie*, classifiable in two or more headings. GRI 3(b) instructs that mixtures, composite goods, and goods put up in sets for retail sale shall be classified by the component which gives them their essential character. The components constitute "goods put up in sets for retail sale," if they satisfy the following criteria set forth in EN (X) to GRI 3(b). If they do not meet the criteria, the components are classified individually. Goods are classified as sets put up for retail sale if they:

- (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings. Therefore, for example, six fondue forks cannot be regarded as a set within the meaning of this Rule;
- (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 re-packing (e.g., in boxes or cases or on boards).

EN (X), GRI 3(b). Each of the satellite radio kits is comprised of goods that are *prima facie* classifiable in different headings. The sets consists of articles put up together to meet the particular need of receiving and listening to XM radio broadcasting in either the home or motor vehicle. They are packaged together for retail sale. Therefore, the three models meet the criteria to be classified as a set; and are thus classified by that article which imparts the essential character.

The EN VIII to GRI 3(b), states, "The factor which determines 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." As the receiver is the article without which there would be no reception of the XM broadcast, it imparts the essential character of the set.

To classify the satellite radio receiver, we turn back to GRI 1. Heading 8527, HTSUS, provides, in relevant part, for reception apparatus for radiobroadcasting. EN 85.27(B) states in part that sound radio-broadcasting apparatus are for the reception of signals by means of electro-magnetic waves transmitted through the ether without any line connection. In *Channel Master v. United States* 648 F. Supp. 10, 12 (CIT 1986), *aff'd* 856 F. 2d 177 (Fed. Cir. 1988), the Court of International Trade stated that a radio receiver, as the term was used in the predecessor tariff schedule to the HTSUS, is an *eo nomine* designation for an article which has been lexicographically and judicially defined as capable of performing three basic functions: selectivity, amplification, and detection. *See also NEC America, Inc. v. United States*, 596 F. Supp. 466, 470 (CIT 1984), *aff'd* 760 F.2d 1295 (CAFC 1985); *General Electric Co. v. United States*, 525 F. Supp. 1244, 1248 (CIT 1981), *aff'd* 69 CCPA 166 (1982). We are still guided by this today. See Headquarters ruling letter (HQ) 964419, dated January 2, 2001. As the instant receivers obtain a radio signal via satellite, they use electro-magnetic waves transmitted through the ether without any line connection to receive the signals. *See id.* Moreover, according to Sony, they select, amplify and detect (demodulate) the signals. Therefore, at GRI 1, they are reception apparatus for radio broadcasting of heading 8527, HTSUS.

In order to determine in which subheading(s) they fall, we turn to GRI 6, which permits the comparison of same-level subheadings within a heading, by the terms of the subheading and any subheading notes, as well as the application of Rules 1 through 5, applied by the appropriate substitution of terms, unless the context otherwise requires. Applying GRI 1 through GRI 6, the terms of the first subheading level at issue require us to determine whether any of the Sony models are of a kind used in motor vehicles.

To determine the class or kind to which a good belongs, the courts have provided factors, which are indicative but not conclusive. These factors are set forth in *United States v. Carborundum Co.*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), *cert. denied*, 429 U.S. 979 (hereinafter *Carborundum*). They include the general physical characteristics of the article, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use.

All three Sony models at issue are transportable satellite radio receivers. However, the antennae for the "C" and "R" model receivers have magnetic

bases for attaching to a vehicle rooftop. They are advertised for installation in a motor vehicle. They are sold as a set for retail sale with accessories such as the car docking station for use in a motor vehicle or the cassette adapter or RF modulator to connect the receiver to an existing car stereo. Given these factors for the environment of sale, we may assume that the expectation of the ultimate purchaser is to use the receiver in a motor vehicle. Other XM satellite radio receivers similarly equipped for motor vehicles, though, like the "C" model, may be adapted for use in the home. Taking into account, however, that unlike certain other models, such as those subject to NY J83641 and NY J84658, the "R" and "C" models are imported primarily for use in a motor vehicle, we find that they may be considered to be "of a kind used in motor vehicles," classified under either subheading 8527.21 or 8527.29, HTSUS.

Based on the information available at the time of the original ruling request, these two receivers were properly classified under subheading 8527.29, HTSUS. However, Sony has since submitted that all three of the receivers incorporate SDRAM, which is sound recording apparatus. Accordingly, the "R" and "C" models are classified under subheading 8527.21, HTSUS, specifically in subheading 8527.21.40, HTSUS.

The "H" model is imported with an audio cable and XM-compatible antenna. It is advertised and sold with a home accessory kit. However, the user may separately purchase a car accessory kit, which includes the items specialized for use in a motor vehicle, most of which are currently presented with the "C" model. We note that NY J83641 and NY J84658 classified satellite radio receivers with internal digital sound recording capability from XM radio broadcasts in subheading 8527.31.6080, HTSUS, which provides, in relevant part, for other reception apparatus for radio broadcasting combined with sound recording or reproducing apparatus. The receiver classified in NY J83641 is designed for use with a personal computer. The receiver classified in NY J84658 is sold with home adapter, vehicle adapter or audio system kits, which are advertised equally. Applying the *Carborundum* factors to the foregoing, we find the "H" model is not of a kind used in motor vehicles. Therefore, it should not have been classified in NY I84878 under subheading 8527.29, HTSUS. However, it is a radiobroadcast receiver, classifiable under subheading 8527.31. As with the receivers in NY J83641 and NY J84658, it incorporates SDRAM, and is therefore classified under subheading 8527.31.6080, HTSUS.

For the foregoing reasons, we find NY I84878 to be incorrect.

HOLDING:

At GRI 3(b), Sony's XM satellite radio receiver kit models DRN-XM01C and DRN-XM01R are classified in subheading 8527.21.4080, HTSUS, which provides for "Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock: Radiobroadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles, including apparatus capable of receiving also radiotelephony or radiotelegraphy: Combined with sound recording or reproducing apparatus: Other: Other." The rate of duty according to the 2004 HTSUS is 1% *ad valorem*.

At GRI 3(b), Sony's XM satellite radio receiver kit model DRN-XM01H is classified in subheading 8527.31.6080, HTSUS, which provides for "Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting,

whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock: Other radiobroadcast receivers, including apparatus capable of receiving also radio telephony or radiotelegraphy: Combined with sound recording or reproducing apparatus: Other: Other: Other." The rate of duty according to the 2004 HTSUS is free.

EFFECT ON OTHER RULINGS:

NY I84878, dated August 28, 2002, is hereby REVOKED. In accordance with 19 U.S.C 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

19 CFR PART 177

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF RADAR APPARATUS THAT MEASURES LIQUID LEVELS

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

ACTION: Notice of revocation of ruling letter and treatment relating to the tariff classification of radar apparatus that measures liquid levels.

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 radar apparatus that measures liquid levels 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 March 10, 2004, in the CUSTOMS BULLETIN. No comments were received in response to the proposed action.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 11, 2004.

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)), notice was published March 10, 2004 in the CUSTOMS BULLETIN, Volume 38, Number 11, proposing to revoke NY 873105, dated May 1, 1992, which classified radar apparatus that measures liquid levels in subheading 9026.10.60, HTSUS, as other instruments and apparatus for measuring or checking the flow of level of liquids. No comments were received in response to the proposed action.

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

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

identical transactions should have advised Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice.

In NY 873105, dated May 1, 1992, Customs classified a depth and level gauging unit that measured levels of liquid using electromagnetic radar waves in subheading 9026.10.60, HTSUS, which provides in part for instruments and apparatus for measuring or checking the flow, level, pressure or other variable of liquids or gases. However, Note 1(h) to Chapter 90, HTSUS, excludes radar apparatus of heading 8526, HTSUS, from classification within the chapter. As the depth and level gauging unit utilizes radar for measurement, it is radar apparatus, and thus excluded from Chapter 90, HTSUS.

Therefore, it is now Customs position that the depth and level gauging unit, which measures liquid levels using radar, is classified in subheading 8526.10.0040, which provides for "Radar apparatus, radio navigational aid apparatus and radio remote control apparatus: Radar apparatus: Other."

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY 873105, and any other ruling not specifically identified, to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analysis set forth in the attached ruling, HQ 966930. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise.

Dated: April 26, 2004

John Elkins for MYLES B. HARMON,
Director;
Commercial Rulings Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,**HQ 966930**

April 26, 2004

CLA-2 RR: CR: GC 966930 DBS**CATEGORY: Classification****TARIFF NO.: 8526.10.00**

MR. MICHAEL B. SPERANZA
B.E. SPERANZA INC.
9013 Indianapolis Blvd.
Highland, IN 46322

RE: Revocation of NY 873105; Radar apparatus

DEAR MR. SPERANZA:

On May 1, 1992, the Area Director of Customs New York Seaport issued to you New York Ruling Letter (NY) 873105, classifying a depth and level gauging unit for measuring liquids in subheading 9026.10.60, Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed this ruling and found it to be 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 the above identified ruling was published on March 10, 2004, in the CUSTOMS BULLETIN, Volume 38, Number 11. No comments were received in response to the notice.

FACTS:

The following facts were set forth in NY 873105:

The system in question is the DDS non-contacting depth and level gauging unit. It utilizes electromagnetic radar waves to measure the level of liquids in containers. The literature submitted depicts the principal use as being in the metallurgical fields, notably in such areas as liquid steel level in a blast furnace or liquid iron level in a transport ladle. The system works by bouncing radar waves off of the liquid surface and calculating the elapsed time from point of transmission to point of reception. The system can perform 6 measurements per second over a level range of from .5 meters to 28 meters. The results of these measurements are calculated by a digital central processing unit.

ISSUE:

Whether apparatus that measures liquid levels by using radar is classified in heading 9026, HTSUS, as apparatus for measuring and checking levels of liquids or in heading 8526, HTSUS, as radar apparatus.

LAW AND ANALYSIS:

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

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

The HTSUS provisions under consideration are as follows:

8526	Radar apparatus, radio navigational aid apparatus and radio remote control apparatus:
8526.10.00	Radar apparatus
	* * *
9026	Instruments and apparatus for measuring or checking the flow, level, pressure or other variable of liquids or gases (for example, flow meters, level gauges, manometers, heat meters), excluding instruments and apparatus of heading 9014, 9015, 9028 or 9032; parts and accessories thereof:
9026.10	For measuring or checking the flow or level of liquids:
	Other:
9026.10.60	Other
	* * *

Section XVI, Note 1(m), HTSUS, excludes articles of Chapter 90, HTSUS, from classification in Chapters 84 and 85, HTSUS. Therefore, we must first determine whether the instant apparatus is classified within Chapter 90, HTSUS. Note 1(h) to Chapter 90 excludes, in pertinent part, radar apparatus of heading 8526, HTSUS.

The term "radar apparatus" is not specifically defined in the HTSUS. Tariff terms are construed in accordance with their common and commercial meaning. See *Nippon Kogasku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. See *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982). McGraw-Hill Encyclopedia of Science & Technology (1995) provides in pertinent part, as follows:

Radar operates by transmitting electromagnetic energy into the surroundings and detecting energy reflected by objects. If a narrow beam of this energy is transmitted by the directive antenna, the direction from which reflections come and hence the bearing of the object may be estimated. The distance to the reflecting object is estimated by measuring the period between the transmission of the radar pulse and reception of the echo. . . . Many different kinds of radar have been developed for a wide range of purposes, but they all use electromagnetic radiation (radio waves) to detect and measure certain characteristics of objects (or targets) in their vicinity.

In addition, according to the ENs, radar height measuring apparatus (radio altimeters) is among the goods included in heading 8526, HTSUS. Therefore, articles that measure height or other characteristics by using radar waves, as described above, are included within the scope of radar apparatus of heading 8526, HTSUS.

The DDS non-contacting depth and level gauging unit measured liquid levels by radar waves. By virtue of the explanation of radar above, as well as the specific inclusion of height measurement in the ENs to heading 8526, HTSUS, it is evident that the measurement of liquid levels is clearly within the scope of the term radar apparatus. Therefore, it is excluded from classification within Chapter 90, HTSUS. For the same reasons, it is classified in heading 8526, HTSUS. Accordingly, we find NY 873105 to be in error.

HOLDING:

The DDS non-contacting depth and level gauging unit is classified in sub-heading 8526.10.0040, HTSUS, which provides for "Radar apparatus, radio navigational aid apparatus and radio remote control apparatus: Radar apparatus: Other." The rate of duty under the 2004 version of the HTSUS is free.

EFFECT ON OTHER RULINGS:

NY 873105, dated May 1, 1992, 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.

John Elkins for MYLES B. HARMON,
Director;
Commercial Rulings Division.

**MODIFICATION AND REVOCATION OF RULING LETTERS
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF TEXTILE TOOL HOLDERS**

AGENCY: Bureau of Customs & Border Protection; Department of Homeland Security

ACTION: Notice of modification and revocation of ruling letters and revocation of treatment relating to the tariff classification of textile tool holders.

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 & Border Protection (CBP) is modifying one ruling and revoking two rulings relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of textile tool holders. CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published on March 10, 2004, in

Volume 38, Number 11X, of the CUSTOMS BULLETIN. CBP received no comments in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 11, 2004.

FOR FURTHER INFORMATION CONTACT: Rebecca Hollaway, Textiles Branch, at (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 that emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on 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 Title VI, notice proposing to modify NY G85500, dated January 4, 2001 and to revoke NY J803601, dated October 17, 2003 and NY J81807, dated March 6, 2003, and to revoke any treatment accorded to substantially identical merchandise was published in the March 10, 2004, CUSTOMS BULLETIN, Volume 38, Number 11. CBP received no comments.

In NY G85500, NY J80360 and NY J81807, CPB erroneously classified various textile tool holders under heading 6307, HTSUS, as other made up articles. However, based on an earlier decision of the Court of International Trade, *Rooster Products, Inc. v. United States*, decided June 1, 2000, *Slip Op.* 2000-60 (*Ct. Int'l Trade*), these items are *ejusdem generis* with tool bags and are properly classified in heading 4202, HTSUS.

As stated in the notice of proposed modification and revocation, this notice covers 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 CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by Title VI, CBP is revoking any treatment previously accorded by CBP 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, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY G85500 and revoking NY J80360 and NY J81807, and revoking any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 966907, HQ 966830 and HQ 966908, which are attached to this document as exhibits A, B and C, respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP 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 26, 2004

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966907
April 26, 2004
CLA-2 RR:CR:TE 966907 RH
CATEGORY: Classification
TARIFF NO.: 4202.92.9026

MR. JAMES C. TUTTLE
LAW OFFICES OF JAMES C. TUTTLE
82 Wall Street, Suite 1105
New York, NY 10005

RE: Modification of NY G85500; Tool Caddy; Tool Organizer; Heading 4202;
Rooster Products, Inc. v. United States, decided June 1, 2000, *Slip. Op.*
2000-60 (*Ct. Int'l Trade*)

DEAR MR. TUTTLE:

On January 4, 2001, Customs (now Customs and Border Protection (CBP)), issued New York Ruling Letter (NY) G85500 to you on behalf of your client, Arden Companies. In that ruling, CBP classified a tool caddy (a style number was not submitted) commonly known as a bucket organizer or "bucket pockets" under heading 6307 of the Harmonized Tariff Schedule of the United States (HTSUS), as an other made up article. We also classified two other textile tool holders (style G20001 and style G40301) under heading 4202, HTSUS, and a textile belt with permanently attached holster (style G40251) under heading 6307, HTSUS.

For the reasons set forth below, we find that the tool bucket organizer is classifiable under heading 4202, HTSUS. Accordingly, NY G85500 is modified to reflect that change.

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 G40251 was published on March 10, 2004, in Vol. 38, No. 11 of the CUSTOMS BULLETIN. CBP received no comments.

FACTS:

A description of the tool holder at issue in this ruling was described in NY G85500 as follows:

The tool caddy is commonly known as a bucket organizer or "bucket pockets". It is designed to be placed over a bucket to organize tools. The exterior surface consists of a fabric backed embossed compact plastic sheeting. There are eight pockets of textile mesh material that cover the width of the organizer.

ISSUE:

Is the tool bucket organizer classified in heading 4202, HTSUS, as a "tool bag" or "similar container", or in heading 6307 HTSUS, as an "other made up article"?

LAW AND ANALYSIS:

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

Heading 4202, HTSUS, reads in its entirety:

Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, **tool bags**, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of plastic sheeting, or textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper. (Emphasis added).

Ruling on Cross Motions for Summary Judgement, the court in *Rooster Products, Inc. v. United States*, decided June 1, 2000, *Slip. Op.* 2000-60 (*Ct. Int'l Trade*), held that CBP properly classified a tool holder under heading 4202, as a form of a tool bag, or alternatively, as a similar container, and provided clear guidance for interpreting the term "tool bag" in heading 4202.

The tool holder in the *Rooster Products* case had two large flared pockets, a couple of smaller pockets, and two loops. The pockets were designed to hold smaller tools as well as nails, bolts, and similar small items. The loops were designed for larger tools to hang from, such as a hammer or a pair of pliers. When the tool holder was used in its intended manner it was worn like an apron around the individual's waist conforming to the contours of the individual's body.

The court rejected Plaintiff's argument that since the tool holder was not specifically named in the heading, it was not classifiable under heading 4202, HTSUS, and pointed out that an *eo nomine* provision without terms of limitation includes **all forms** of the article in the absence of a contrary legislative intent. The court further found that the Plaintiff did not overcome the presumption that both the common and commercial meaning of a tariff term are the same. Thus, using various lexicographic sources, the court determined that the defining characteristics of a "bag" are that it must be a container of flexible material with an opening at the top, and that it does not have to close or be capable of closing.

After examining the tool holder, the court concluded that it possessed all the characteristics of a tool bag and that it was, therefore, classifiable *eo nomine* as a form of tool bag under heading 4202, HTSUS. Additionally, the court found that the tool holder possessed the essential characteristics or purposes uniting the listed exemplars and did not have a more specific primary purpose that was inconsistent with the listed exemplars, *i.e.*, storage, protection, organization and carriage. The court determined that the tool holder protects and stores items while it is in use by "preventing its contents from falling to the ground" and by "holding its contents while work is performed." Thus, the court said that even if the tool holder were not classifi-

able *eo nomine* as a form of tool bag, it was still correctly classified through the application of *ejusdem generis* as a similar container.

In light of the court's rationale in *Rooster Products*, it is clear that the scope of heading 4202 is broad enough to encompass all forms of tool bags, including the tool bucket organizer at issue. The tool organizer's function is to store and protect items while in use, preventing its contents from falling to the ground, and holding its contents while work is performed. Accordingly, it is correctly classified under heading 4202, HTSUS.

HOLDING:

NY G85500 is MODIFIED. The tool bucket organizer is correctly classified under subheading 4202.92.9026, HTSUS, which provides for "Trunks, suitcases, vanity cases, attache cases briefcases . . . holsters and similar containers; traveling bags . . . tool bags . . . and similar containers . . . :Other: With outer surface of sheeting of plastic or of textile materials: Other: Other: With outer surface of textile materials: Other: Of man-made fibers." It is dutiable at the general column one rate at 17.6 percent *ad valorem*, and the textile category is 670.

There are no applicable quota/visa requirements for members of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries.

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, 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.

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

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966830
April 26, 2004
CLA-2 RR:CR:TE 966830 RH
CATEGORY: Classification
TARIFF NO.: 4202.92.9026

MR. MICHAEL GUNTER
UPS SUPPLY CHAIN SOLUTIONS
1600 Genessee, Suite 450
Kansas City, MO 64102

RE: Revocation of NY J80360; Tool Bucket Organizer; Heading 4202;
Rooster Products, Inc. v. United States, decided June 1, 2000, *Slip. Op.*
2000-60 (*Ct. Int'l Trade*)

DEAR MR. GUNTER:

This is in reply to your letter of October 28, 2003, on behalf of Midwest Quality Glove, Inc., requesting reconsideration of New York Ruling Letter (NY) J89587, dated October 17, 2003.

In NY J89587, Customs and Border Protection (CBP) classified a tool bucket organizer under subheading 4202.92.9026 of the Harmonized Tariff Schedule of the United States (HTSUS). Several months later, in NY J80360, dated February 5, 2003, CBP issued another ruling to your client that classified a similar tool bucket organizer under subheading 6307.90.9889, HTSUS.

For the reasons set forth below, tool holders are classifiable under heading 4202, HTSUS. Accordingly, NY J80360 is the incorrect ruling.

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 J80360 was published on March 10, 2004, in Vol. 38, No. 11 of the CUSTOMS BULLETIN. CBP received no comments.

FACTS:

A description of the tool bucket organizer in NY J80360 reads as follows:

The sample submitted is a "Bucket Organizer," style number 56. It is made of 100 percent polyester woven textile fabric that has been visibly coated on one side [the inner surface] with polyvinyl plastic. It is designed to fit inside and around the outside of a 5-gallon bucket. It features 10 outside pockets, [and] 4 inside pockets. It has corner textile straps with a metal snap fastener to secure it to the bucket.

ISSUE:

Is the tool bucket organizer classified in heading heading 4202, HTSUS, as a "tool bag" or "similar container", or in heading 6307 HTSUS, as an "other made up article"?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods

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

Heading 4202, HTSUS, reads in its entirety:

Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, **tool bags**, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of plastic sheeting, or textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper. (Emphasis added).

Ruling on Cross Motions for Summary Judgement, the court in *Rooster Products, Inc. v. United States*, decided June 1, 2000, *Slip. Op.* 2000-60 (*Ct. Int'l Trade*), held that CBP properly classified a tool holder under heading 4202, as a form of a tool bag, or alternatively, as a similar container, and provided clear guidance for interpreting the term "tool bag" in heading 4202.

The tool holder in the *Rooster Products* case had two large flared pockets, a couple of smaller pockets, and two loops. The pockets were designed to hold smaller tools as well as nails, bolts, and similar small items. The loops were designed for larger tools to hang from, such as a hammer or a pair of pliers. When the tool holder was used in its intended manner it was worn like an apron around the individual's waist conforming to the contours of the individual's body.

The court rejected Plaintiff's argument that since the tool holder was not specifically named in the heading, it was not classifiable under heading 4202, HTSUS, and pointed out that an *eo nomine* provision without terms of limitation includes **all forms** of the article in the absence of a contrary legislative intent. The court further found that the Plaintiff did not overcome the presumption that both the common and commercial meaning of a tariff term are the same. Thus, using various lexicographic sources, the court determined that the defining characteristics of a "bag" are that it must be a container of flexible material with an opening at the top, and that it does not have to close or be capable of closing.

After examining the tool holder, the court concluded that it possessed all the characteristics of a tool bag and that it was, therefore, classifiable *eo nomine* as a form of tool bag under heading 4202, HTSUS. Additionally, the court found that the tool holder possessed the essential characteristics or purposes uniting the listed exemplars and did not have a more specific primary purpose that was inconsistent with the listed exemplars, *i.e.*, storage, protection, organization and carriage. The court determined that the tool holder protects and stores items while it is in use by "preventing its contents from falling to the ground" and by "holding its contents while work is performed." Thus, the court said that even if the tool holder were not classifiable *eo nomine* as a form of tool bag, it was still correctly classified through the application of *ejusdem generis* as a similar container.

In light of the court's rationale in *Rooster Products*, it is clear that the scope of heading 4202 is broad enough to encompass all forms of tool bags,

including the tool bucket organizer at issue. The tool organizer's function is to store and protect items while in use, preventing its contents from falling to the ground, and holding its contents while work is performed. Accordingly, the tool bucket organizer is correctly classified under heading 4202, HTSUS.

HOLDING:

NY J80360 is REVOKED. The tool bucket organizer is correctly classified under subheading 4202.92.9026, HTSUS, which provides for "Trunks, suitcases, vanity cases, attache cases briefcases . . . holsters and similar containers; traveling bags . . . tool bags . . . and similar containers . . . : Other: With outer surface of sheeting of plastic or of textile materials: Other: Other: With outer surface of textile materials: Other: Of man-made fibers." It is dutiable at the general column one rate at 17.6 percent *ad valorem*, and the textile category is 670.

There are no applicable quota/visa requirements for members of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries.

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, 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.

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

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966908
April 26, 2004
CLA-2 RR:CR:TE 966908 RH
CATEGORY: Classification
TARIFF NO.: 4202.92.9026

MS. LINDA LEE
FISKARS BRANDS, INC.
2537 Daniels Street
Madison, WI 53718

RE: Revocation of NY J81807; Garden Bucket Organizer; Heading 4202;
Rooster Products, Inc. v. United States, decided June 1, 2000, *Slip. Op.*
2000-60 (*Ct. Int'l Trade*)

DEAR MS. LEE:

On March 6, 2003, Customs (now Customs and Border Protection (CBP)), issued New York Ruling Letter (NY) J81807 to your company concerning the classification of a garden bucket tool caddy. In that ruling, CBP classified the tool caddy under heading 6307 of the Harmonized Tariff Schedule of the United States (HTSUS), as an other made up article.

For the reasons set forth below, we find that the tool caddy is classifiable under heading 4202, HTSUS. Accordingly, NY J81807 is revoked.

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 J81807 was published on March 10, 2004, in Vol. 38, No. 11 of the CUSTOMS BULLETIN. CBP received no comments.

FACTS:

A description of the tool caddy in NY J81807 reads as follows:

The sample submitted is a garden bucket tool caddy made of woven textile fabric. It is designed to fit around the outside of a 5-gallon bucket. It features open pockets that cover the width of the caddy. It also has a compartment to store packages of seeds. A corner strap with hook and loop fastener secures it to the bucket.

ISSUE:

Is the garden tool bucket caddy classified in heading 4202, HTSUS, as a "tool bag" or "similar container", or in heading 6307 HTSUS, as an "other made up article"?

LAW AND ANALYSIS:

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

Heading 4202, HTSUS, reads in its entirety:

Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, **tool bags**, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of plastic sheeting, or textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper. (Emphasis added).

Ruling on Cross Motions for Summary Judgement, the court in *Rooster Products, Inc. v. United States*, decided June 1, 2000, *Slip. Op.* 2000-60 (*Ct. Int'l Trade*), held that CBP properly classified a tool holder under heading 4202, as a form of a tool bag, or alternatively, as a similar container, and provided clear guidance for interpreting the term “tool bag” in heading 4202.

The tool holder in the *Rooster Products* case had two large flared pockets, a couple of smaller pockets, and two loops. The pockets were designed to hold smaller tools as well as nails, bolts, and similar small items. The loops were designed for larger tools to hang from, such as a hammer or a pair of pliers. When the tool holder was used in its intended manner it was worn like an apron around the individual's waist conforming to the contours of the individual's body.

The court rejected Plaintiff's argument that since the tool holder was not specifically named in the heading, it was not classifiable under heading 4202, HTSUS, and pointed out that an *eo nomine* provision without terms of limitation includes **all forms** of the article in the absence of a contrary legislative intent. The court further found that the Plaintiff did not overcome the presumption that both the common and commercial meaning of a tariff term are the same. Thus, using various lexicographic sources, the court determined that the defining characteristics of a “bag” are that it must be a container of flexible material with an opening at the top, and that it does not have to close or be capable of closing.

After examining the tool holder, the court concluded that it possessed all the characteristics of a tool bag and that it was, therefore, classifiable *eo nomine* as a form of tool bag under heading 4202, HTSUS. Additionally, the court found that the tool holder possessed the essential characteristics or purposes uniting the listed exemplars and did not have a more specific primary purpose that was inconsistent with the listed exemplars, *i.e.*, storage, protection, organization and carriage. The court determined that the tool holder protects and stores items while it is in use by “preventing its contents from falling to the ground” and by “holding its contents while work is performed.” Thus, the court said that even if the tool holder were not classifiable *eo nomine* as a form of tool bag, it was still correctly classified through the application of *ejusdem generis* as a similar container.

In light of the court's rationale in *Rooster Products*, it is clear that the scope of heading 4202 is broad enough to encompass all forms of tool bags, including the tool bucket organizer at issue. The tool bucket caddy's function is to store and protect items while in use, preventing its contents from falling to the ground, and holding its contents while work is performed. Accordingly, the tool bucket organizer is correctly classified under heading 4202, HTSUS.

HOLDING:

NY J81807 is REVOKED. The garden tool bucket caddy is correctly classified under subheading 4202.92.9026, HTSUS, which provides for "Trunks, suitcases, vanity cases, attache cases briefcases . . . holsters and similar containers; traveling bags . . . tool bags . . . and similar containers . . . : Other: With outer surface of sheeting of plastic or of textile materials: Other: Other: With outer surface of textile materials: Other: Of man-made fibers." It is dutiable at the general column one rate at 17.6 percent *ad valorem*, and the textile category is 670.

There are no applicable quota/visa requirements for members of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. 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 bi-lateral 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, 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.

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

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.