

Bureau of Customs and Border Protection

CBP Decisions

19 CFR PART 101

[CPB Dec. 04-24]

EXTENSION OF PORT LIMITS OF CHICAGO, ILLINOIS

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

ACTION: Final rule.

SUMMARY: This document amends the Customs and Border Protection (CBP) Regulations pertaining to the field organization of the Bureau of Customs and Border Protection by extending the geographical limits of the port of Chicago, Illinois, to include parts of the City of Elwood, Illinois. There is an intermodal facility in Elwood. The change is part of CBP's continuing program to more efficiently utilize its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.

EFFECTIVE DATE: Effective September 13, 2004.

FOR FURTHER INFORMATION CONTACT: Dennis Dore, Office of Field Operations, 202-927-6871.

SUPPLEMENTARY INFORMATION:

BACKGROUND

In order to facilitate the clearance of international freight at an intermodal facility in the City of Elwood, Illinois, the Bureau of Customs and Border Protection (CBP) is amending § 101.3(b)(1) of the Customs and Border Protection Regulations (19 CFR 101.3(b)(1)) by extending the port limits of the port of Chicago to include certain parts of the City of Elwood, Illinois. The extension of the port limits to include the specified territory will provide better service to importers and the rail transportation industry in central Illinois.

A Notice of Proposed Rulemaking concerning this extension was published in the Federal Register (68 FR 42650) on July 18, 2003.

ANALYSIS OF COMMENTS AND CONCLUSION

No comments were received in response to the Notice of Proposed Rulemaking. As CBP believes that the extension of the port of Chicago, Illinois, to include parts of the City of Elwood, Illinois, will improve service to importers and the rail transportation industry in central Illinois, CBP is expanding the limits of the port of Chicago as proposed.

NEW PORT LIMITS OF THE PORT OF CHICAGO, ILLINOIS

CBP extends the limits of the port of Chicago, Illinois, to include additional territory in the City of Elwood, Illinois, so that the description of the limits of port will read as follows:

Beginning at the point where the northern limits of Cook County, Illinois, intersect Lake Michigan, thence westerly along the Cook County-Lake County Line to the point where Illinois State Highway Fifty-Three (53) intersects this Line, thence in a southerly direction along Illinois State Highway Fifty-Three (53) to the point where the highway intersects Interstate Highway Fifty-Five (55), thence southwesterly along Interstate Highway Fifty-Five (55) to the point where this highway intersects the north bank of the Kankakee River, thence southeasterly to the point where the Kankakee River intersects State Highway Fifty-Three (53), thence northeasterly to the point where this highway intersects Interstate Highway Eighty (80), thence easterly to the point where this highway intersects the Cook County-Will County Line, thence in a general easterly and southerly direction along the northern and eastern limits of Will County, Illinois, to the point where the Will County-Cook County Line intersects the Illinois-Indiana State Line, thence northerly along the Illinois-Indiana State Line to the point near Dyer, Indiana, where U.S. Route Thirty (30) intersects this Line, thence easterly along U.S. Route Thirty (30) to the point where this highway and the Indiana State Highway Forty-Nine (49) intersect, thence in a northerly direction along Indiana State Highway Forty-Nine (49) to a place where this highway meets Lake Michigan.

AUTHORITY

This change is being made under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

THE REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

CBP establishes, expands and consolidates CBP ports of entry throughout the United States to accommodate the volume of CBP-

related activity in various parts of the country. Thus, although a notice was issued requesting public comment on this subject matter, because this document relates to agency management and organization, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Office of Management and Budget has determined this rule to be non-significant under Executive Order 12866.

DELEGATIONS OF AUTHORITY: SIGNATURE OF CUSTOMS AND BORDER PROTECTION REGULATIONS

The signing authority for this document falls under § 0.2(a), CBP Regulations (19 CFR 0.2(a)) because this port extension is not within the bounds of those regulations for which the Secretary of the Treasury has retained sole authority. Accordingly, the final rule may be signed by the Secretary of Homeland Security (or his or her delegate).

DRAFTING INFORMATION

The principal author of this document was Christopher W. Pappas, Regulations Branch, Office of Regulations and Rulings, CBP. However, personnel from other offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 101

Customs duties and inspection, Customs ports of entry, Exports, Imports, Organization and functions (Government Agencies).

AMENDMENTS TO THE REGULATIONS

For the reasons set forth above, Part 101, CBP Regulations (19 CFR 101), is amended as set forth below.

PART 101—GENERAL PROVISIONS

1. The general authority citation for Part 101 and specific authority provision for § 101.3 continue to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

* * * * *

2. In the list of ports in § 101.3(b)(1), under the state of Illinois, the “Limits of port” column adjacent to “Chicago” in the “ports of entry”

column is amended by removing the citation “T.D. 71–121” and by adding in its place “CBP Dec. 04–24”.

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

TOM RIDGE,
*Secretary,
Department of Homeland Security.*

[Published in the Federal Register, August 13, 2004 (69 FR 50064)]

(CBP Dec. 04–25)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON
QUARTERLY LIST FOR JULY, 2004

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday(s): None

European Union euro:

July 01, 2004	\$1.215800
July 02, 2004	1.230700
July 03, 2004	1.230700
July 04, 2004	1.230700
July 05, 2004	1.230700
July 06, 2004	1.229000
July 07, 2004	1.238400
July 08, 2004	1.239000
July 09, 2004	1.238800
July 10, 2004	1.238800
July 11, 2004	1.238800
July 12, 2004	1.240900
July 13, 2004	1.230200
July 14, 2004	1.238500
July 15, 2004	1.237300
July 16, 2004	1.243700
July 17, 2004	1.243700
July 18, 2004	1.243700
July 19, 2004	1.243100
July 20, 2004	1.237700
July 21, 2004	1.222400
July 22, 2004	1.227300

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly list for July 2004 (continued):

European Union euro: (continued):

July 23, 2004	1.212200
July 24, 2004	1.212200
July 25, 2004	1.212200
July 26, 2004	1.213500
July 27, 2004	1.205600
July 28, 2004	1.204600
July 29, 2004	1.207000
July 30, 2004	1.203200
July 31, 2004	1.203200

South Korea won:

July 01, 2004	\$0.000867
July 02, 2004 .....	.000866
July 03, 2004 .....	.000866
July 04, 2004 .....	.000866
July 05, 2004 .....	.000866
July 06, 2004 .....	.000866
July 07, 2004 .....	.000868
July 08, 2004 .....	.000869
July 09, 2004 .....	.000870
July 10, 2004 .....	.000870
July 11, 2004 .....	.000870
July 12, 2004 .....	.000871
July 13, 2004 .....	.000870
July 14, 2004 .....	.000868
July 15, 2004 .....	.000861
July 16, 2004 .....	.000859
July 17, 2004 .....	.000859
July 18, 2004 .....	.000859
July 19, 2004 .....	.000864
July 20, 2004 .....	.000862
July 21, 2004 .....	.000863
July 22, 2004 .....	.000860
July 23, 2004 .....	.000857
July 24, 2004 .....	.000857
July 25, 2004 .....	.000857
July 26, 2004 .....	.000861
July 27, 2004 .....	.000858
July 28, 2004 .....	.000856
July 29, 2004 .....	.000856
July 30, 2004 .....	.000855
July 31, 2004 .....	.000855

Taiwan N.T. dollar:

July 01, 2004	\$0.029762
July 02, 2004 .....	.029744
July 03, 2004 .....	.029744
July 04, 2004 .....	.029744
July 05, 2004 .....	.029744

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly list for July 2004 (continued):

Taiwan N.T. dollar: (continued):

July 06, 2004 .....	.029753
July 07, 2004 .....	.029780
July 08, 2004 .....	.029762
July 09, 2004 .....	.029744
July 10, 2004 .....	.029744
July 11, 2004 .....	.029744
July 12, 2004 .....	.029727
July 13, 2004 .....	.029744
July 14, 2004 .....	.029687
July 15, 2004 .....	.029542
July 16, 2004 .....	.029573
July 17, 2004 .....	.029573
July 18, 2004 .....	.029573
July 19, 2004 .....	.029551
July 20, 2004 .....	.029525
July 21, 2004 .....	.029555
July 22, 2004 .....	.029542
July 23, 2004 .....	.029442
July 24, 2004 .....	.029442
July 25, 2004 .....	.029442
July 26, 2004 .....	.029283
July 27, 2004 .....	.029369
July 28, 2004 .....	.029412
July 29, 2004 .....	.029334
July 30, 2004 .....	.029377
July 31, 2004 .....	.029377

Dated: August 2, 2004

RICHARD B. LAMAN,
Chief,
Customs Information Exchange.

(CBP Dec. 04-26)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR JULY, 2004

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in CBP Decision 04-18 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): None

South Africa rand:

July 19, 2004 S0.169348

Dated: August 2, 2004

RICHARD B. LAMAN,
Chief,
Customs Information Exchange.

19 CFR PART 101

EXTENSION OF PORT LIMITS OF ROCKFORD, ILLINOIS

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

ACTION: Notice of proposed rulemaking. **SUMMARY:** This document proposes to amend the Customs and Border Protection (CBP) Regulations pertaining to the field organization of CBP by extending the geographical limits of the port of Rockford, Illinois, to include the City of Rochelle, Illinois. The Union Pacific Railroad Company has a new intermodal facility in Rochelle. The proposed change is part of CBP's continuing program to more efficiently utilize its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.

DATES: Comments must be received on or before October 12, 2004.

ADDRESSES: Comments must be submitted to Bureau of Customs and Border Protection, Office of Regulations and Rulings (Attention: Regulations Branch), 1300 Pennsylvania Avenue NW (Mint Annex), Washington, DC 20229. Submitted comments may be inspected at 799 9th Street, NW, Washington, DC during regular business hours.

FOR FURTHER INFORMATION CONTACT: Dennis Dore, Office of Field Operations, 202-927-6871.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Union Pacific Railroad Company has a new state-of-the-art intermodal rail facility that is located 25 miles south of Rockford in Rochelle, Illinois. This facility provides the capacity necessary to support the efficient interchange of shipments to and from rail con-

nections, and expedite the operations of trains and containers. In order to accommodate this new facility and provide better service to carriers, importers, and the public, the Bureau of Customs and Border Protection (CBP) is proposing to extend the port limits of the port of Rockford, Illinois, to include the City of Rochelle, Illinois.

CURRENT PORT LIMITS OF ROCKFORD, ILLINOIS

The current port limits of Rockford, Illinois, are described as follows in Treasury Decision (T.D.) 95-62 of August 14, 1995:

Bounded to the north by the Illinois/Wisconsin border; bounded to the west by Illinois State Route 26; bounded to the south by Illinois State Route 72; and bounded to the east by Illinois State Route 23 north to the Wisconsin/Illinois border.

PROPOSED PORT LIMITS OF ROCKFORD, ILLINOIS

The new port limits of Rockford, Illinois, are proposed as follows: Bounded to the north by the Illinois/Wisconsin border; bounded to the west by Illinois State Route 26; bounded to the south by Interstate Route 88; bounded to the east by Illinois State Route 23 to the Wisconsin/Illinois border.

PROPOSED AMENDMENT TO CBP REGULATIONS

If the proposed port limits are adopted, CBP will amend § 101.3(b)(1), CBP Regulations (19 CFR 101.3(b)(1)) to reflect the new boundaries of the Rockford, Illinois port of entry.

AUTHORITY

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

SIGNING AUTHORITY

The signing authority for this document falls under § 0.2(a), CBP Regulations (19 CFR 0.2(a)) because this port extension is not within the bounds of those regulations for which the Secretary of the Treasury has retained sole authority. Accordingly, the notice of proposed rulemaking may be signed by the Secretary of Homeland Security (or his or her delegate).

COMMENTS

Before adopting this proposal, consideration will be given to any written comments that are timely submitted to CBP. All such comments received from the public pursuant to this notice of proposed rulemaking will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 103.11(b), CBP Regulations (19 CFR 103.11(b)) during regular business days be-

tween the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, Customs and Border Protection, Department of Homeland Security, 799 9th Street, NW, Washington, DC.

THE REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

CBP establishes, expands and consolidates CBP ports of entry throughout the United States to accommodate the volume of CBP-related activity in various parts of the country. Thus, although this document is being issued with notice for public comment, because it relates to agency management and organization, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Office of Management and Budget has determined this rule to be non-significant under Executive Order 12866.

DRAFTING INFORMATION

The principal author of this document was Christopher W. Pappas, Regulations Branch, Office of Regulations and Rulings, CBP. However, personnel from other offices participated in its development.

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

TOM RIDGE,
*Secretary,
Department of Homeland Security.*

[Published in the Federal Register, August 13, 2004 (69 FR 50107)]

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

Washington, DC, August 11, 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 A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF ORTHODONTIC CERVICAL NECK PADS

AGENCY: Bureau of Customs and 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 orthodontic cervical neck pads.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) intends to revoke one ruling letter relating to the tariff classification of orthodontic cervical neck pads under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP also 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 September 24, 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 reviewed 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) 572-8823.

FOR FURTHER INFORMATION CONTACT: Kelly Herman,
Textiles Branch: (202) 572-8713.

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 one ruling letter pertaining to the tariff classification of orthodontic cervical neck pads. Although in this notice, CBP is specifically referring to the revocation of Headquarters Ruling Letter (HQ) 965623, dated September 25, 2002, (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically 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 transactions. 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

in substantially identical transactions 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 HQ 965623, dated September 25, 2003, CBP ruled that an orthodontic cervical neck pad was classified in subheading 6307.90.9889, HTSUSA, which provides for "Other made up articles, including dress patterns: Other: Other: Other: Other: Other." Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error. We have determined that the article is properly classified in subheading 9021.10.0090, HTSUSA, which provides for "[O]rthopedic or fracture appliances, and parts and accessories thereof, Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke HQ 965623 and to revoke or modify any other ruling not specifically identified, to reflect the proper classification of orthodontic cervical neck pads according to the analysis contained in proposed HQ 967116, set forth as Attachment B to this document. 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: August 3, 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 965623
September 25, 2002
CLA-2 RR:TC:TE 965623 TMF
CATEGORY: Classification
TARIFF NO.: 6307.90.9889

MS. LINDA OTTO
ORMCO CORPORATION
1332 S. Lone Hill Avenue
Glendora, CA 91740

RE: Classification of cervical neck pad

DEAR MS. OTTO:

This letter is in response to your correspondence dated January 21, 2002, to the U.S. Customs National Commodity Specialist Division, in which you requested a tariff classification ruling on certain cervical neck pads under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Three samples, along with your letter and additional correspondence of March 20, 2002, were submitted to our office for a reply. You also requested a country of origin determination. However, you failed to provide requested information pertaining to the manufacturing country of the components of the subject cervical neck pads. Therefore, if you would like this determination, please forward this information to our office for our consideration.

FACTS:

Ormco is a manufacturer of orthodontic and related dental products, including orthodontic headgear systems. Orthodontists use orthodontic headgear in conjunction with braces to help straighten patients' teeth. When in use on a patient, Ormco's headgear systems are made up of a metal facebow and a Break-Away Release Module System. The facebow's outer arch hook into a Break-Away Release Module System, which fastens around the user's neck. The Break-Away Release Module System consists of a cervical neck pad or a high pull head cap with a spring release module and plastic straps attached at each end by means of a plastic clasp assembly. The plastic straps attached to each end of the facebow are adjustable. Each of the two straps has twelve holes along it. The ends of the facebow can be inserted into any of the holes. This allows the appliance to fit properly around the patient's neck. In NY 811690, dated July 20, 1995, Customs classified facebows in subheading 9021.19.8500, HTSUSA, which provided for "artificial joints and other orthopedic or fracture appliances . . . other."

You indicate that the subject cervical neck pad is made in Mexico and consists of a plastic foam pad covered with a textile sleeve. It measures 185 millimeters in length, 37 millimeters in width, and 6 millimeters in thickness. It is attached to a facebow that is composed of a stainless steel inner and outer arch. The cervical neck pad is made in three styles: denim back, nylon back, and a cotton/polyester front and back. The front of each style is covered entirely by a woven fabric composed of a cotton/polyester fiber blend. The back portion has sewn onto it a textile strap with the end doubled over to form loops to which the face bow and release module are attached.

The core of the foam pad is made of cellular vinyl PVC plastic that is covered on the two exterior sides: one side is covered with 100% polyester jersey knit scrim and the other side is embossed with a leather-like compact PVC plastic. According to your letter to the National Commodity Specialist Division dated March 20, 2002, the foam pad, with its jersey knit/leather-like compact plastic exterior, is generic, and has many uses. It is not engineered or purchased specifically for cervical neck pads. One example of another use for the foam pad is shoe insoles. It can vary in substance from one batch to the next.

You indicate in your various correspondence that the cervical neck pad's primary function is to provide comfort and support to the user's neck. You also stated that without the foam pad, the headgear would be uncomfortable and the user would likely not wear the headgear.

You stated that the cervical neck pads are imported alone in sets of ten and sold separately without the release or facebow to orthodontists. You also stated that the cervical neck pads are sold to an orthodontist in either packages of five or ten, or in a set consisting of one cervical neck pad and two Release Modules.

ISSUE:

What is the proper classification of the cervical neck pads that are designed for use in conjunction with orthodontic headgear systems within the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. Where goods cannot be classified solely on the basis of GRI 1 and if the headings or legal notes do not require otherwise, the remaining GRIs 2 through 6 may be applied.

Additionally, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) are the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUSA. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Chapter 39

The subject cervical neck pad consists of a cellular plastic foam pad that is cut into PVC plastic a rectangular shape. Plastic foam is provided for in Chapter 39. Note 10 to Chapter 39 indicates that "in headings 3920 and 3921, the expression 'plates, sheets, film, foil and strip' applies to . . . blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use)." In this instance, the cellular PVC plastic rectangular foam is possibly classifiable in subheading 3921.12.1950, HTSUSA, which provides for cellular sheets or plates of plastic combined with textile. However, the foam is also covered with 100% polyester jersey knit scrim and the other side is embossed with a leather-like compact PVC plastic and sold in various styles of textile sleeves. Note 2 of Chapter 39 indicates that Chapter 39 does not include "goods of

section XI (textiles and textile articles).” Thus, the instant article is not classifiable in subheading 3921.12.1950, HTSUSA, if the merchandise is determined to be a good of Section XI.

The cervical neck pad consists of a foam pad inserted into a textile sleeve that is sewn closed. Because the subject article is composed of three or more components that are classifiable in two or more headings, we consider GRI 3(b), which states:

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

EN (IX) to GRI 3(b) states, in pertinent part, that:

Composite goods [which are] made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, provided these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

In this case, the cervical neck pad, which is sold in various colors of textile sleeves, consists of a textile sleeve outer surface and a foam pad which has polyester jersey knit scrim on one side and a leather-like compact PVC plastic embossed on another side. We find the cervical neck pad to be subject to GRI 3(b) as it is a composite good. The foam pad and textile sleeve are attached to one another so as to form a practicably inseparable whole. The foam pad provides comfort and support to the user. The textile sleeve outer surface attaches to the facebow and provides comfort when worn against the skin. Therefore, we find the subject cervical neck pad is a composite good with no one component providing the essential character of the pad.

Chapter 59: Textiles Articles of a Kind Suitable for Technical Uses Chapter 59 provides for impregnated, coated, covered or laminated textile fabrics, and textile articles of a kind suitable for industrial use. In this case, the cervical neck pad is sold separately but used in conjunction with orthodontic headgear systems. Where an article is used for technical purposes, (other than those of headings 5908 to 5910), and it is not elsewhere in Section XI, it is classified in heading 5911. Although the term “technical uses” is defined in the Tariff, Note 7(b) to Chapter 59 describes “technical purposes” as those “of a kind in papermaking or similar machines (for example, for pulp or asbestos-cement), gaskets, washers, polishing discs and other machinery parts.” However, in this case, heading 5911 is not applicable because the subject article, although used in conjunction with orthodontic headgear systems, does not meet the definition of “technical purposes” as provided within Note 7(b). It is not used in conjunction with any machinery process or activity, rather it is used in conjunction with the orthodontic headgear system, which is used for straightening teeth (which is not involved in machinery process or activity).

Heading 9021

As the pads are imported and sold separately but used with orthodontic headgear, we consider heading 9021, which provides for, among other things, orthopedic appliances, including crutches, surgical belts and trusses.

According to the EN to the heading, an article may be classifiable as an orthopedic appliance within heading 9021 if it either:

Prevents or corrects bodily deformities; or Supports or holds organs following an illness operation or injury.

The subject pad does not satisfy either requirement of heading 9021. Although the pads are used in conjunction with the orthopedic headgear, they are sold separately from the headgear system to provide comfort to the user. Further, Chapter Note 2(b) states, in pertinent part: Subject to note 1 above, parts and accessories for machines, apparatus, instruments or articles of this chapter are to be classified according to the following rules:

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

Based on their condition as imported, we cannot conclude that the subject pads are designed to be used solely or principally with the orthopedic headgear system. Therefore, the subject cervical neck pad is not classifiable in heading 9021.

In the instant case, the subject articles are not *ejusdem generis* within the body of enumerated articles of headings 3921, 5911 or 9021, and since there are no headings within the Tariff that more specifically provide for the instant articles, we find them to be classifiable in heading 6307, HTSUSA, as other made up articles.

HOLDING:

The subject cervical neck pads are classified in subheading 6307.90.9889, HTSUSA, which provides for "other made up articles . . . other . . . other." The general column one duty rate is 7 percent ad valorem.

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 Status Report On Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service which is updated weekly and is available for inspection at your local Customs office. The Status Report on Current Import Quotas (Restraint Levels) is also available on the Customs Electronic Bulletin Board (CEBB) which can be found on the U.S. Customs Service Website at www.customs.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 Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967116
CLA-2 RR:CR:TE 967116 KSH
TARIFF NO.: 9021.10.0090

MARIA E. CELIS, ESQ.
NEVILLE PETERSON LLP
17 State Street, 19th Floor
New York, NY 10004

RE: Revocation of Headquarters Ruling Letter (HQ) 965623, dated September 25, 2002; Classification of cervical neck pads.

DEAR MS. CELIS:

This is in response to your letter of April 28, 2004, on behalf of your client, Sybron Dental Specialists (Sybron), and its subsidiary Ormco Corporation (Ormco), in which you request reconsideration of Headquarters Ruling Letter (HQ) 965623, issued to your client on September 25, 2002, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of cervical neck pads. The cervical neck pads were classified in subheading 6307.90.9889, HTSUS, which provides for "Other made up articles, including dress patterns: Other: Other: Other: Other: Other." You assert that the cervical neck pads are specially dedicated for use as cervical headgear designed to exert the appropriate amount of tension to prevent malocclusion. Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error.

We note that in HQ 966754, dated December 30, 2003, this office issued your client a ruling classifying certain plastic release modules and textile high pull straps to be used in conjunction with the cervical neck pads in subheading 9021.10.0090, HTSUS, which provides for, among other things, parts of orthopedic appliances.

FACTS:

Ormco, is a manufacturer of orthodontic and related dental products, including orthodontic headgear systems. When in use on a patient, Ormco's headgear systems are made up of a metal facebow and a Break-Away Release Module System. Each of the components are imported separately. The facebow's outer arch hooks into a Break-Away Release Module System, which fastens around the user's neck. The Break-Away Release Module System consists of a cervical neck pad or a high pull head cap with a spring release module and plastic straps attached at each end by means of a plastic clasp assembly. The plastic straps attached to each end of the facebow are adjustable. Each of the two straps has twelve holes along it. The ends of the facebow are inserted into the appropriate holes to exert the appropriate amount of tension to treat malocclusion. The cervical neck pads and high pull head caps also hold the facebow in place in the patient's mouth and together with the plastic straps, exert the appropriate amount of tension to

treat the patient.¹ The cervical neck pads measure 7 1/2" by 1 1/2" and are made from textile and foam padding with a nylon band sewn into one side of the pad.

ISSUE:

Whether the subject cervical neck pads are classifiable as other made up articles under subheading 6307.90.9889, HTSUS, or as parts and accessories of orthopedic appliances under subheading 9021.10.0090, HTSUS.

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings.

Heading 6307, HTSUS, covers other made up articles of textile materials. The EN to heading 6307, HTSUSA, indicate that the heading covers made up articles of any textile material which are not included more specifically in other headings of Section XI or elsewhere in the Nomenclature.

Thus, a determination must be made whether the cervical neck pads are included more specifically in the other headings of Section XI or elsewhere in the Nomenclature before classifying them in heading 6307, HTSUS.

Heading 9021, HTSUS, provides for, "orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof." According to the EN to the heading, an article may be classifiable as an orthopedic appliance within heading 9021 if it either:

- (a) Prevents or corrects bodily deformities; or
- (b) Supports or holds parts of the body following an illness operation or injury.

EN 90.21 states that orthopedic appliances include "[d]ental appliances for correcting deformities of the teeth (braces, rings, etc.)."

Chapter Note 2(b) states, in pertinent part: "Subject to note 1 above, parts and accessories for machines, apparatus, instruments or articles of this chapter are to be classified according to the following rules:"

- (b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (in-

¹ We note that in the prior submission upon which HQ 965623 was based, your client indicated that the cervical neck pad's primary function was to provide comfort and support to the user's neck. Your client further stated that while the neck pad does encourage downward jaw growth, it is not the neck pad in particular that accomplishes this.

cluding a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind[.]

A device may be considered a “part” of an article even though the device is not necessary to the operation of the article, provided that once the device is installed the article cannot function properly without it. Clipper Belt Lacer Co., Inc. v. United States, 14 C.I.T. 146, 738 F.Supp. 528 (1990), aff’d 923 F.2d 835 (1991).

The cervical neck pad is a part of the cervical headgear that, as your client States, when combined with the facebow, “provide[s] a vector force either straight backward from the teeth towards the back of the bottom of the head, or upward and backward from the teeth towards the crown of the head” and “without the neck pad/ Breakway Release Module System, the cervical headgear would not effectively correct such malocclusions.” Given these facts, the cervical neck pad is a part of appliances of heading 9021, HTSUSA.

HOLDING:

HQ 965623, dated September 25, 2002, is hereby revoked.

The cervical neckpad is classified in subheading 9021.10.0090 HTSUS, which provides for “Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof: Orthopedic or fracture appliances, and parts and accessories thereof, Other.” The applicable rate of duty is free.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN MASSAGING SLIPPERS

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

ACTION: Notice of proposed revocation of two tariff classification ruling letters and revocation of treatment relating to the classification of certain massaging slippers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs & Border Protection (CBP) intends to revoke two ruling letters relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of certain massaging slippers. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical merchan-

dise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before September 24, 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 two ruling letters relating to the tariff classification of certain massaging slippers. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) J87028, dated August 21, 2003 (Attachment A), and NY K81794, dated February 4, 2004 (Attachment B), 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 two 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 transactions. 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 transactions should advise CBP during this notice period. An importer's failure to advise CBP 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 decision on this notice.

In NY J87028, one model of massaging slipper was classified in subheading 6403.59.90, HTSUSA, which provides for "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather: Other footwear with outer soles of leather: Other: Other: For other persons." Also in NY J87028, another model of massaging slipper was classified in subheading 6403.99.60, HTSUSA, which provides for "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather: Other: Other: Other: For men, youths and boys." In NY K81794, a different model of massaging slipper was also classified in subheading 6403.59.90, HTSUSA. Based on our review of heading 6403 and heading 9019, HTSUSA, the pertinent Explanatory Notes, and past CBP rulings, we find that massaging slippers of the type subject to this notice, should be classified in subheading 9019.10.2030, HTSUSA, which provides for "Mechano-therapy appliances and massage apparatus; parts and accessories thereof, Massage apparatus: Electrically operated: Battery powered: Other."

Pursuant to 19 U.S.C. 1625 (c)(1), CBP intends to revoke NY J87028 and NY K81794, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 967179 (Attachment C). 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: August 3, 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 J87028
August 21, 2003
CLA-2-64; RR: NC: TA: 347 J87028
CATEGORY: Classification
TARIFF NO.: 6403.59.90; 6403.99.60

MS. CAROLE RITCHINGS
CONAIR CORPORATION
150 Milford Road
East Windsor, NJ 08520

RE: The tariff classification of footwear from China.

DEAR MS. RITCHINGS:

In your letter dated August 04, 2003, you requested a tariff classification ruling.

The two submitted samples are described as follows:

Model # WSW1, is a woman's closed-toe, open-heel, indoor house slipper that does not cover the ankle. The slipper has a suede leather upper with an approximately 1 3/4-inch wide woven textile top-line collar that traverses the vamp. The slipper also has a textile faced, foam rubber padded insole and features a suede leather outsole with a vibrating unit that is embedded in the heel section and controlled by a push-button on & off side outsole switch. The vibrating unit is powered by two AAA batteries, which are not included with the slipper.

The slippers will be boxed and sold as women's massaging slippers. The applicable subheading for Model # WSW1, will be 6403.59.90, Harmonized Tariff Schedule of the United States (HTS), which provides for footwear with uppers of leather and outer soles of leather; which is not "sports footwear"; which does not cover the ankle; which is not of turned or welt stitched construction; for other persons. The rate of duty will be 10% ad valorem.

Model # WSM1, is a man's closed-toe, open-heel, indoor house slipper that does not cover the ankle. The slipper has a suede leather upper with an approximately ?-inch wide textile top-line collar that traverses the vamp. The slipper also has a textile faced, foam rubber padded insole and features a rubber/plastic outsole with a vibrating unit that is embedded in the heel sec-

tion and controlled by a push-button on & off side outsole switch. The vibrating unit is powered by two AAA batteries, which are not included with the slipper.

The slippers will be boxed and sold as men's massaging slippers. The applicable subheading for Model # WSM1, will be 6403.99.60, Harmonized Tariff Schedule of the United States (HTS), which provides for footwear with uppers predominately of leather and outer soles of rubber, plastics or composition leather; which is not "sports footwear," which does not cover the ankle; for men, youths and boys. The rate of duty will be 8.5% ad valorem.

We are returning the samples as requested.

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 Richard Foley at 646-733-3042.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.



[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY K81794
February 4, 2004
CLA-2-64:RR:NC:SP:247 K81794
CATEGORY: Classification
TARIFF NO.: 6403.59.90

MS. CAROL RITCHINGS
CONAIR CORPORATION
*150 Milford Road
East Windsor, NJ 08520*

RE: The tariff classification of footwear from China

DEAR MS. RITCHINGS:

In your letter dated January 14, 2003 you requested a tariff classification ruling.

The submitted sample, identified as "Model VSW1G Women's Slipper Massager", is a closed-toe, open back indoor house slipper. The slipper has a mostly suede leather upper external surface area with an approximately 1 3/4-inch wide man-made textile fleece-like band upper portion that traverses the instep. The slipper also has a thick, fleece-like textile faced foam rubber/plastic midsole and a separately sewn-on suede leather outer sole. The foam rubber/plastic midsole features a vibrating unit that is embedded in the heel section and is controlled by a push-button side on/off switch. The vibrating unit is powered by two AAA batteries, which are not included with the slip-

per. The “massager” slipper is worn just like a house slipper and vibrates the foot only when turned on.

The applicable subheading for the “Model VSW1G Women’s Slipper Massager” will be 6403.59.90, Harmonized Tariff Schedule of the United States (HTS), which provides for footwear with uppers of leather and outer sole of leather; which is not “sports footwear”; which does not cover the ankle; which is not of turned or welt stitched construction; for other persons. The rate of duty will be 10% ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Richard Foley at 646-733-3042.

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967179
CLA-2: RR:CR:TE: 967179 BtB
CATEGORY: Classification
TARIFF NO.: 9019.10.2030

JOHN L. GLUECK, ESQ.
CONAIR CORPORATION
1 Cummings Point Road
Stamford, CT 06904

RE: Revocation of NY J87028 and NY K81794 regarding the tariff classification of massaging slippers

DEAR MR. GLUECK:

This is in response to your letter dated June 24, 2004, on behalf of Conair Corporation, requesting reconsideration of New York Ruling Letter (NY) J87028, dated August 21, 2003, and NY K81794, dated February 4, 2004, regarding the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of certain massaging slippers manufactured in China.

FACTS:

NY J87028 covers Conair™ Body Benefits® Foot Vibes™ massaging slippers models VSW1 and VSM1. The VSW1 is designed for women and the VSM1 is designed for men. Both are only available in “one-size-fits-all.” The VSW1 is a closed-toe, open-heel slipper with a suede leather upper external surface area. It has a woven textile fleece-like collar, approximately 1-3/4 inches wide, traversing the vamp. Additionally, it has a thick foam rubber/plastic midsole (the rear portion of which is accessible through a zippered

closure) and a separately sewn-on suede leather outer sole. A vibrating massaging unit is embedded in the heel section of the VSW1's midsole. When turned on, the unit causes the midsole to vibrate, giving the wearer a foot massage. The unit is turned on and off with a push-button switch located on the side of the slipper. The VSM1 is also a closed-toe, open-heel slipper with a suede leather upper external surface area. Unlike the VSW1, the VSM1 does not have a woven textile fleece-like collar traversing the vamp or on its midsole. Instead, the VSM1 has a textile top-line collar, approximately 3/8 of an inch wide, traversing the vamp. It has a textile faced foam rubber padded insole and a rubber/plastic outsole. Additionally, it has a thick foam rubber/plastic midsole (the rear portion of which is accessible through a zippered closure). Like the VSW1, a vibrating massaging unit is embedded in the heel section of the VSM1's midsole. The unit is turned on and off with a push-button switch located on the side of the slipper.

NY K81794 covers Conair™ Body Benefits® Foot Vibes™ massaging slippers model VSW1G. This VSW1G is identical to the VSW1 except that the suede leather upper and the fleece-like band upper portion traversing the instep can be pulled apart, revealing a relatively flat pouch measuring approximately 4 1/2 inches across by 4 inches deep. The VSW1G comes with two "gel packs" which are designed to be heated in a microwave and placed into the pouches in each slipper. Each pouch has a hook and loop fabric closure that helps to keep the packets in place, on top of the instep, when they are inserted in the slippers.

The VSW1, VSM1, and VSW1G are powered by batteries that are not included with the slippers. Each slipper uses two AAA batteries. All of the models are boxed and sold as massaging slippers.

In NY J87028, model VSW1 was classified in subheading 6403.59.90, HTSUSA, which provides for "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather: Other footwear with outer soles of leather: Other: Other: For other persons." Also in NY J87028, model VSM1 was classified in subheading 6403.99.60, HTSUSA, which provides for "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather: Other: Other: Other: Other: For men, youths and boys." In NY K81794, model VSW1 was also classified in subheading 6403.59.90, HTSUSA.

In this ruling, models VSW1, VSM1, and VSW1G will be collectively referred to as the "Conair™ massaging slippers."

ISSUE:

Whether the Conair™ massaging slippers are classified under heading 9019, HTSUSA, as massage apparatus, or under heading 6403, HTSUSA, as footwear.

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, in order. 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).

Models VSW1 and VSM1 each consist of two individual components, a slipper and a massaging mechanism. Nevertheless, classification of the models may be determined pursuant to GRI 1 if the terms of either heading 6404, HTSUSA, or 9019, HTSUSA, are sufficiently broad to cover the complete article.

Heading 6403, HTSUSA, covers "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather." It is clear that the terms of this heading cover only one of the models' components, the slipper.

In pertinent part, heading 9019, HTSUSA, covers "Mechano-therapy appliances; massage apparatus . . . parts and accessories thereof." For guidance in interpreting the scope of this heading, we look to the EN to heading 9019, which in part pertinent to the term "massage apparatus," provide the following guidance:

(II) MESSAGE APPARATUS

Apparatus for massage of parts of the body (abdomen, feet, legs, back, arms, hands, face, etc.) usually operate by friction, vibration, etc. They may be hand- or power-operated, or may be of an electro-mechanical type with a motor built in to the working unit (vibratory-massaging appliances). The latter type in particular may include interchangeable attachments (usually of rubber) to allow various methods of application (brushes, sponges, flat or toothed discs, etc.).

The terms of the heading and the guidance provided by the EN indicate that heading 9019, HTSUSA, is sufficiently broad to cover both of the components of the VSW1 and VSM1. As noted, a "massage apparatus" may include not only a vibratory-massaging appliance, but also the method by which the vibrating massage is applied to the intended body part. With models VSW1 and VSM1, the slipper functions as the component of the apparatus which holds the massaging component in place, allowing massage to be applied to the foot. In light of the above analysis, we find that the VSW1 and VSM1 are goods classifiable pursuant to GRI 1, under heading 9019. Both models are classified in subheading 9019.10.2030, HTSUSA. This determination is consistent with that of Headquarters Ruling Letter (HQ) 960032, dated December 6, 1999, in which we classified a textile travel slipper with a battery-operated massaging device under subheading 9019.10.2030, HTSUSA pursuant to GRI 1.

While we find that the terms of the heading and the guidance provided by the EN indicate that heading 9019, HTSUSA, is sufficiently broad to cover both of the components of the VSW1 and VSM1, we do not find that the heading is broad enough to cover all of the components of the model VSW1G. The VSW1G consists of three individual components, a slipper, a massaging mechanism, and a gel pack. We find that the scope of this heading is not broad enough to cover the gel pack. The gel pack, individually, is classifiable under heading 3824, HTSUSA, which provides for, among other things,

chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included.

As heading 9019, HTSUSA, is not sufficiently broad to cover the complete article and at least two of the components of the model VSW1G are classifiable in different headings, the complete good cannot be classified by reference to GRI 1. In pertinent part, GRI 2(b) states: “[t]he classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.” GRI 3(a) directs that the headings are regarded as equally specific when they each refer to part only of the materials contained in mixed or composite goods. We next look to GRI 3(b), which states in part that: “composite goods . . . which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.”

The applicability of GRI 3(b) is dependent upon whether the complete article is deemed to comprise a composite good. In pertinent part, EN IX to GRI 3(b) indicates that:

For purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, **provided** these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

In this instance, although the gel pack is separable from the massaging mechanism and the slipper, the components are adapted to each other and are mutually complementary. The massaging mechanism is embedded in the slipper’s midsole and cannot be removed. The slipper has a compartment expressly designed to hold the gel pack. The massaging unit, the slipper and the gel pack are specifically designed to be used together so that the user receives a heated foot massage. It is not likely that the massaging unit and the slipper, with its gel pack compartment, would be sold without the gel pack. If the massaging units and slippers did not include the gel packs, the user would need to search for and purchase gel packs that are not only capable of being heated, but also sized to fit into the slippers. In light of the above, we find that the massaging unit, the slipper, and the gel pack constitute a composite good.

In order to determine the essential character of the composite article, we first look to EN VIII to GRI 3(b), which provides the following guidance:

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.

We find that the primary purpose of the instant merchandise is to provide the user with a heated massage. The massaging mechanism plays a significant role in accomplishing this purpose. The slipper functions as the component which holds the massaging component in place, allowing massage to be applied to the foot. Although the gel pack provides an important feature (i.e., heat) that may enhance the user’s experience, the massage unit remains the component responsible for producing the article’s main function. Therefore,

we find that the massaging mechanism imparts the essential character to the composite article and that the article is classifiable in accordance with the massaging mechanism.

HOLDING:

The Conair™ massaging slippers identified as models VSW1, VSM1, and VSW1G, are classified in subheading 9019.10.2030, HTSUSA, the provision for “Mechano-therapy appliances and massage apparatus; parts and accessories thereof, Massage apparatus: Electrically operated: Battery powered: Other.” The general column one duty rate is free.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

**REVOCATION OF RULING LETTER AND REVOCATION OF
TREATMENT RELATING TO TARIFF CLASSIFICATION
OF MINIATURE GARDENING TOOL SET**

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the tariff classification of a miniature gardening tool set.

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 the Bureau of Customs and Border Protection (“CBP”) is revoking a ruling letter pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a miniature gardening tool set and revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin* on May 19, 2004. No comments were received in response to this notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 24, 2004.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, Commercial Rulings Division, (202) 572–8782.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “informed compliance” and “shared responsibility.” These concepts are premised on the idea that in order to maximize voluntary compliance with CBP 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 CBP 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, determine value, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on May 19, 2004, in the *Customs Bulletin* Vol. 38, No. 21, proposing to revoke NY G80010, dated July 28, 2000. This ruling pertained to the tariff classification of a miniature gardening tool kit. No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised 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 section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP 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, 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 in substantially identical transactions should have advised CBP during the notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in the notice, may raise issues of reasonable care on the part of the im-

porter or their agents for importations of merchandise subsequent to the effective date of this final notice.

In NY G80010, dated July 28, 2000, CBP found that a miniature gardening tool kit was classified in subheading 8205.51.3060, HTSUS, as household tools and parts thereof, of iron or steel, other, other (including parts). CBP has reviewed the matter and determined that the correct classification of the miniature gardening tool kit, pursuant to General Rule of Interpretation 3(c) is in subheading 8424.20.1000, HTSUSA, as a simple piston pump spray.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY G80010, and is revoking any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 966948, the Attachment to this document. 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: July 30, 2004

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

Attachment

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966948
July 30, 2004
CLA-2 RR:CR:GC 966948 KBR
CATEGORY: Classification
TARIFF NO.: 8424.20.1000, 4202.92.6091

MS. PILAR DORFMAN
E. BESLER & COMPANY
P.O. Box 66361
Chicago, IL 60666-0361

RE: Potting/Gardening Miniature Tool Set

DEAR MS. DORFMAN:

This is in reference to New York Ruling Letter (NY) G80010, dated July 28, 2000, issued to you by the Customs National Commodity Specialist Division, regarding the classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a 7-piece miniature gardening tool plant care kit. We have reconsidered NY G80010 and determined that the classification of the miniature gardening tool kit is not correct. This ruling sets forth the correct classification.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published on May 21, 2004, in Vol. 38, No. 21 of the *Customs Bulletin*, proposing to revoke NY G80010. No comments were received in response to this notice.

FACTS:

NY G80010 concerned a 7-piece potting/gardening miniature tool kit with carry bag. The kit contains a 7 x 1 inch trowel, a 7 1/4 x 1 3/4 inch spade, a 6 1/8 inch fork/aerator, a 6 1/4 x 1 1/2 inch spring-snipper with lock, a 7 1/4 x 2 1/8 inch spring-pruner with lock, a 6 1/2 x 3 (diameter) inch spray mister, and a canvas tote bag. The trowel, spade, and fork/aerator are made of stainless steel with wooden handles covered in soft plastic. The snipper and pruner are made of stainless steel with soft plastic covered handles. The spray mister's body is made of glass with a plastic cap/plunger/sprayer. The tote bag is an open cotton canvas bag with two carry handles, 5 side pockets and 2 end pockets, and a bungee-type cord looped through each side to retain tools placed in the side pockets.

In NY G80010, Customs found that the miniature gardening tool kit was classified in subheading 8205.51.3060, HTSUSA, which provides for household tools and parts thereof: of iron or steel: other: other (including parts). The Bureau of Customs and Border Protection ("CBP") has reviewed the matter and believes that the correct classification of the miniature gardening tool kit is in subheading 8424.20.1000, HTSUSA, as a simple piston pump spray.

ISSUE:

Whether the subject potting/gardening miniature tools may be classified as a set or must be individually classified. If a set, which General Rule of Interpretation (GRI) is used to classify the set.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) in accordance with the GRIs. The systematic detail of the HTSUSA is such that most goods are classified by application of GRI 1, that is, 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 interpreting the headings and subheadings, CBP looks to the Harmonized Commodity Description and Coding System Explanatory Notes (ENs). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUSA. It is CBP's practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUSA. *See* T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUSA provisions under consideration are as follows:

4202	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, insulated food or beverage 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 sheeting of plastics, of textile materials, of vulcanized fiber or paperboard, or wholly or mainly covered with such materials or with paper:
*	* * * * *
	Other:
4202.92	With outer surface of sheeting of plastic or textile materials:
*	* * * * *
	Other:
4202.92.60	Of cotton (369)
4202.92.6091	Other (369)
*	* * * * *
8201	Handtools of the following kinds and base metal parts thereof: spades, shovels, mattocks, picks, hoes, forks and rakes; axes, bill hooks and similar hewing tools; secateurs and pruners of any kind; scythes, sickles, hay knives, hedge shears, timber wedges and other tools of a kind used in agriculture, horticulture or forestry:
8201.10.0000	Spades and shovels, and parts thereof
8201.20.0000	Forks, and parts thereof
*	* * * * *
8201.50.0000	Secateurs and similar one-handed pruners and shears (including poultry shears), and parts thereof
*	* * * * *
8205	Handtools (including glass cutters) not elsewhere specified or included; blow torches and similar self-contained torches; vises, clamps and the like, other than accessories for and parts of machine tools; anvils; portable forges; hand- or pedal-operated grinding wheels with frameworks; base metal parts thereof:
*	* * * * *

Other handtools (including glass cutters) and parts thereof:

8205.51 Household tools, and parts thereof:

Of iron or steel:

* * * * *

8205.51.30 Other (including parts)

8205.51.3060 Other (including parts)

* * * * *

8424 Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof:

* * * * *

8424.20 Spray guns and similar appliances:

8424.20.1000 Simple piston pump sprays and powder bellows

CBP has ruled that, except for the pruner and snipper, miniature gardening tools of the type involved here are not classified in heading 8201, HTSUSA, which is meant for full-sized handtools for use primarily outdoors in a yard or garden. *See* HQ 085481 (December 8, 1989) and NY J86714 (July 16, 2003) (ruling that miniature gardening tools are classified in heading 8205, HTSUSA). *See, e.g.*, HQ 960587 (June 23, 1998), NY 869546 (December 23, 1991), NY I80595 (April 16, 2002), and NY I83734 (June 28, 2002) (ruling that full-sized garden tools are classified in heading 8201, HTSUSA).

In HQ 085481, CBP stated that:

Concerning the classification of the “spade,” “trowel,” and “rake,” we adopt the rationale of our ruling of June 22, 1989 (file 083964), in which we held that similar miniature tools were not spades, rakes, or horticultural tools of heading 8201. Spades, rakes, and trowels of the type in 8201 may be large or small, as long as they meet the common meaning of the terms. In this case, the miniature spade does not rise to the level of a spade which is defined in *Webster’s Third New International Dictionary* (Unabridged), 1965, at page 2181, as “an implement for turning soil * * * adapted for being pushed into the ground with the foot * * *.” The miniature rake does not rise to the level of a rake which is defined at page 1876 as “a hand tool usu. of a bar with projecting prongs that is set transversely at the end of a long handle and used for gathering grass, leaves, or other material or for loosening or smoothing the surface of the ground * * *.”

Regarding classification as other tools of a kind used in horticulture in heading 8701 [sic], we also conclude that the lack of substantial construction and size are sufficient to remove these miniature tools, including the miniature trowel,” from the type of tools commonly recognized and used in the pursuit of horticulture. For example, the list of exem-

plars in the EN to heading 8201 includes tools that have a more durable and serious application to agricultural or horticultural uses. . . .

Therefore, we find that the miniature trowel, spade and fork/aerator if imported separately are classifiable as hand tools not specified elsewhere, in subheading 8205.51.3060, HTSUSA.

However, heading 8201, HTSUSA, provides for "pruners of any kind." Because of this inclusive language, CBP has ruled that hand tools such as miniature pruners and snippers are still classified in heading 8201, HTSUSA. HQ 085481 (December 8, 1989); *see* EN 82.01(5). Therefore, if imported separately, the pruner and snipper would be classifiable as hand tools, secateurs and similar one handed pruners and shears in subheading 8201.50.0000, HTSUSA.

The miniature gardening tool kit also includes a glass spray mister. If imported separately, spray misters of the type in the instant case are classifiable in subheading 8424.20.1000, HTSUSA, as a simple piston pump spray. *See, e.g.*, NY 813550 (September 7, 1995).

The canvas tote bag if imported separately is classifiable in subheading 4202.92.6091, HTSUSA. *See* NY C83791 (February 10, 1998), NY C80552 (October 27, 1997, and PD C83608 (January 27, 1998).

The gardening miniature tool kit meets the GRI 3(b) and attendant EN (X) definition of "goods put up in sets for retail sale." First, the gardening set consists of at least two different articles which are, *prima facie*, classifiable in two different headings. Secondly, the items are put up together to carry out the specific activity of potting/gardening and the items will be used together or in conjunction with one another. Lastly, the articles are put up in a manner suitable for sale directly to users without repacking. We thus believe that the gardening miniature tool kit qualifies as a set of GRI 3(b); and we must now determine which item imparts the essential character to the set.

The factor which determines essential character may 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. GRI 3(b) EN (VIII). CBP has previously ruled that for gardening sets, each of the tools is equally important and no individual tool establishes an essential character for the set. Therefore, gardening sets generally should be classified pursuant to GRI 3(c). *See* NY F88782 (July 19, 2000), HQ 085481 (December 8, 1989), NY H84786 (August 23, 2001).

GRI 3(c) states that when goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration. We believe that, in this instance, each of the miniature tools and mister have equal importance in the gardening miniature tool set. Because these articles are classified under different headings, GRI 3(c) applies. Because the spray mister is classified last in numerical order, the gardening miniature tool set is classified in subheading 8424.20.1000, HTSUSA, as a simple piston pump spray.

Notwithstanding the tote bag's inclusion as a constituent part of the set for classification purposes under GRI 3(b), the tote bag is a textile article and remains subject to visa and quota requirements, regardless of where the set is classified. The tote bag at issue is classified in 4202.92.6091, HTSUSA, and falls within textile category 369.

HOLDING:

In accordance with the above discussion, the gardening miniature tool set is classified in subheading 8424.20.1000, HTSUSA, by virtue of GRI 3(c) as a simple piston pump spray. The 2004 column one, general rate of duty rate is 2.9% *ad valorem*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov. The tote bag, which is classified in 4202.92.6091, HTSUSA, falls within textile category 369, and will remain subject to visa and quota requirements regardless of where the gardening miniature tool set is classified.

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 or 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 U.S. Customs and Border Protection 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 or your client should contact the local U.S. Customs and Border Protection office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

EFFECT ON OTHER RULINGS:

NY G80010 dated July 28, 2000, is **REVOKED**. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective sixty (60) days after publication in the *Customs Bulletin*.

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

REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN GAS BARBECUES

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

ACTION: Notice of revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of certain gas barbecues.

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) is revoking one ruling letter relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of certain gas barbecues. Simi-

larly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed revocation was published in the Customs Bulletin of June 30, 2004, Vol. 38, No. 27. No comments were received.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 24, 2004.

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, a notice proposing to revoke New York Ruling Letter (NY) G85307, dated December 15, 2000, was published on June 30, 2004, in Vol. 38, No. 27, of the Customs Bulletin.

As stated in the notice of proposed revocation, this revocation 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. 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 have advised 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 is revoking any treatment previously accorded by CBP 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, 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 transactions should have advised CBP during this notice period. An importer's failure to advise CBP 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 decision on this notice.

In NY G85307, the gas barbecues were classified under subheading 7321.11.1060, HTSUSA, which provides for "Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas rings, plate warmers and similar nonelectric domestic appliances, and parts thereof, of iron or steel: Cooking appliances and plate warmers: For gas fuel or for both gas and other fuels: Portable, Other."

Based on our review of the characteristics of the gas barbecues and past CBP rulings, we find that gas barbecues of the type subject to this notice, should be classified in subheading 7321.11.6000, HTSUSA, which provides for "Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas rings, plate warmers and similar nonelectric domestic appliances, and parts thereof, of iron or steel: Cooking appliances and plate warmers: For gas fuel or for both gas and other fuels: Other: Other."

Pursuant to 19 U.S.C. 1625 (c)(1), CBP is revoking NY G85307 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 967090 (Attachment). 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 sixty (60) days after its publication in the Customs Bulletin.

DATED: August 3, 2004

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967090
August 3, 2004
CLA-2: RR:CR:TE: 967090 BtB
CATEGORY: Classification
TARIFF NO.: 7321.11.6000

LARS-ERIK A. HJELM, ESQ.
JASON A. PARK, ESQ.
Akin Gump Strauss Hauer & Feld LLP
Robert S. Strauss Building
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036-1564

RE: Revocation of NY G85307 regarding the tariff classification of gas barbecues from China

DEAR MSSRS. HJELM AND PARK:

This is in response to your letter dated April 14, 2004, on behalf of Meco Corporation, requesting reconsideration of New York Ruling Letter (NY) G85307, dated December 15, 2000, regarding the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of three models of heavy-duty propane gas grills in the Aussie™ Line, these being the Bonza™ 2 ("Bonza 2"), Bonza™ 3 ("Bonza 3"), and Bonza™ 4 ("Bonza 4"). In this response, the three models will be collectively referred to as the "Bonza Grills."

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY G85307, as described below, was published in the *Customs Bulletin*, Volume 38, Number 27, on June 30, 2004. CBP received no comments during the notice and comment period that closed on July 30, 2004.

FACTS:

The Bonza 2 is the smallest of the Bonza Grills, measuring approximately 49 x 25 x 43 inches and weighing 120 pounds. It has two burners that burn at 24,000 BTUs per hour and has 488 square inches of cooking area. The Bonza 3 is the intermediate size of the Bonza Grills, measuring approximately 59 x 26 x 43 inches and weighing 147 pounds. It has three burners that burn at 36,000 BTUs per hour and has 662 square inches of cooking area. The Bonza 4 is the largest of the Bonza Grills, measuring approximately 64 x 26 x 43 inches and weighing 174 pounds. It has four burners that burn at 48,000 BTUs per hour and has 815 square inches of cooking area. The bodies of the Bonza Grills are made of enameled steel, are pre-assembled, and are not designed to be taken apart for transport. The Bonza Grills also feature a porcelain-coated steel hood and bowl, cast iron grids and burners, a matchless ignition system, a built-in heat indicator, an easy-clean drip pan, and a polyurethane-coated hardwood cart with wheels. They are pre-assembled before importation. The Bonza Grills operate on propane gas and require a propane-cylinder weighing approximately 20 pounds that is sold separately.

In NY G85307, the Bonza Grills were classified under subheading 7321.11.1060, HTSUSA, which provides for "Stoves, ranges, grates, cookers

(including those with subsidiary boilers for central heating), barbecues, braziers, gas rings, plate warmers and similar nonelectric domestic appliances, and parts thereof, of iron or steel: Cooking appliances and plate warmers: For gas fuel or for both gas and other fuels: Portable, Other.”

ISSUE:

Whether the Bonza Grills are classifiable under subheading 7321.11.1060, HTSUSA, or under subheading 7321.11.6000, HTSUSA, which provides for “Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas rings, plate warmers and similar nonelectric domestic appliances, and parts thereof, of iron or steel: Cooking appliances and plate warmers: For gas fuel or for both gas and other fuels: Other: Other.”

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).

Propane has been held to be a gas fuel for classification purposes (See HQ 964976, dated January 8, 2002, HQ 965297, dated January 8, 2002, and HQ 964803, dated January 10, 2002). As the Bonza Grills are barbecue grills that operate on propane, they are classifiable pursuant to GRI 1 under subheading 7321.11, HTSUSA, which provides for “Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas rings, plate warmers and similar nonelectric domestic appliances, and parts thereof, of iron or steel: Cooking appliances and plate warmers: For gas fuel or for both gas and other fuels.” Whether the Bonza Grills are classifiable under subheading 7321.11.1060, HTSUSA, or 7321.11.6000, HTSUSA, depends solely on whether the grills are portable.

In HQ 964803, we discussed the portability of barbecue grills. The eleven grill models at issue in that ruling weighed between 175 and 300 pounds (without propane tanks) and had cooking compartments of steel, and frames constructed of steel, stainless steel, or steel and wood. Each of the grills operated with liquid propane and required that a tank be attached for use. The grills were approximately 4 feet tall, five feet wide and two feet deep. The grills had approximately 735 square inches of cooking space. We found that these grill models were not “easily carried or conveyed by hand” and “not of the class or kind of article normally considered as portable” and ruled that they were classified under subheading 7321.11.60, HTSUSA.

Like the models in HQ 964803, we find that the Bonza Grills are not portable. The Bonza Grills are not considered by the industry to be portable and

are designed for relatively fixed patio use. Marketing material explicitly states that a purpose of the Bonza Grills is to “serve as a centerpiece for the backyard patio.” While the grills’ hardwood cart with wheels may enable the grill to be rolled around the patio or yard, the wheels were not designed to and do not make the grills portable. While the Bonza Grills are generally smaller than the models in 964803, we find that the Bonza Grills are also too big and heavy to be carried by hand and are not designed to be transported for away-from-home activities. Just transporting the Bonza 2, the smallest of the Bonza Grills, would be an arduous task considering its dimensions and its weight of 120 pounds. Furthermore, the grills have considerably more features than grills normally considered to be portable, including hardwood carts, ignition systems, built-in heat indicators, etc. We find that the three Bonza models are classified in subheading 7321.11.6000, HTSUSA.

HOLDING:

NY G85307, dated December 15, 2000, 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*.

The Bonza Grills identified by model numbers 2, 3, and 4 are classified in subheading 7321.11.6000, HTSUSA, which provides for “Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas rings, plate warmers and similar nonelectric domestic appliances, and parts thereof, of iron or steel: Cooking appliances and plate warmers: For gas fuel or for both gas and other fuels: Other: Other.” Under the 2004 HTSUSA, merchandise classified in subheading 7321.11.6000, HTSUSA, has a “free” rate of duty.

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

19 CFR PART 177

**REVOCATION OF TREATMENT RELATING TO THE TARIFF
 CLASSIFICATION OF DURAPORE® FILTERING MATE-
 RIAL ON ROLLS**

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

ACTION: Notice of revocation of treatment of Durapore® filtering material on rolls

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) is revoking the treatment concerning the tariff classification

of Durapore® filtering material on rolls, 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 of such treatment was published on June 16, 2004, in Volume 38, Number 25, of the *Customs Bulletin*. No comments were received in response to this notice.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after October 24, 2004.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, General Classification Branch, (202) 572-8784.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with the CBP 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 CBP 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 (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), CBP published a notice in the June 16, 2004, *Customs Bulletin*, Volume 38, Number 25, proposing to revoke the treatment previously accorded the tariff classification of Durapore(r) filtering material on rolls. No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this issue which may exist but have not been specifically

identified. Any party, who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice, should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by Title VI, 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 involving the same or similar merchandise, or the importer's or CBP previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

CBP, pursuant to 19 U.S.C. 1625(c)(1), is revoking previously accorded treatment of Durapore® filtering material on rolls, and any ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 967003, which is set forth as an attachment to this notice. 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: August 6, 2004

MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967003
August 6, 2004
CLA-2 RR:CR:GC 967003 AM
CATEGORY: CLASSIFICATION
TARIFF NO.: 3921.19.0000

MR. MELVIN S. SCHWECHTER
LEBOEUF, LAMB, GREENE, MACRAE, L.L.P.
1875 Connecticut Ave., N.W. Ste. 1200
Washington, D.C. 20009-5728

Re: Revocation of Treatment; Durapore® Filtering Material imported on rolls

DEAR MR. SCHWECHTER:

This is in reference to your letter of January 13, 2004, on behalf of Millipore Corp., concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of Durapore® filtering material imported from Ireland in rolls. We have considered the arguments you made in a supplemental submission, dated April 21, 2004, and a meeting at Headquarters on that date. According to the information you provided, your client has confirmed that it has imported Durapore® material on rolls into the United States under subheading 8421.99.0080, HTSUS, the provision for parts of filtering apparatus, since 1997 without incident, thus creating a treatment of these goods. We believe this treatment is in error.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, (Pub. L. 103-82, 107 Stat. 2057, 2186), notice of the proposed revocation of such treatment was published on June 16, 2004, in the *Customs Bulletin*, in Volume 38, Number 25. No comments were received in response to this notice.

FACTS:

Durapore® is porous filtering material made from polyvinylidene fluoride (PVDF) that is designed to accomplish the sterile filtration of liquids and gasses. The Durapore® material is imported in rolls.

After entry, the material is cut into specific shapes required for insertion into the filter housing. The material may also be pleated or laminated for a particular housing. The finished Durapore® filter is inserted into a filtering device used primarily to remove bacteria in the pharmaceutical, biopharmaceutical, electronics and food and beverage industries.

Durapore® filtering material is created with one of two specific numbers of pores. Although identical to the naked eye, the material is treated differently. Rolls of material with certain porosity are cut into circles after entry. The circles are encased in plastic discs which are assembled into different size filters. The diameter of the circles and pattern of cutting them from the roll is constant thus creating the same number of circular filter disc inserts from any given length of material. Rolls of material with the other porosity are pleated and fitted into a plastic cartridge casing. The number and size of the pleats remains constant such that the same number of pleated filter cartridge inserts are created from any given length of Durapore® material. For instance, a given 100 feet of Durapore® roll may produce 1,745 discs or 72,

144, or 288 pleated cartridges with some amount of waste left over. There are no markings on the material to indicate the number of filters to be made from the material.

ISSUE:

Whether filtering material on rolls, cut to shape and inserted in housing after entry, is classifiable as parts of filtering or purifying machinery or apparatus?

LAW AND ANALYSIS:

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 2(a) states “[A]ny reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article. . . .” GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

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

The following provisions are relevant to the classification of this product:

3921	Plates, sheets, film, foil and strip, of plastics:
3921.19	Cellular:
3921.19.0000	Of other plastic
* * *	* * *
8421	Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof:
	Parts:
8421.99.00	Other:
8421.99.0080	Other
* * *	* * *

EN 84.21 states, in pertinent part, the following:

PARTS

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), the heading covers parts for the above-mentioned types of filters and purifiers. Such parts include, inter alia : . . .

It should be noted, however, that filter blocks of paper pulp fall in heading 48.12 and that many other **filtering elements** (ceramics, textiles, felts, etc.) **are classified according to their constituent material.** (emphasis added).

The issue of whether material is to be deemed an article, whether finished or unfinished, has been examined at length by the courts. Customs has long adhered to the general principal set forth in the following cases, that goods which remain material when entered are not classifiable as a particular, identifiable article unfinished. See *The Harding Co. et al v. United States*, 23 CCPA 250, T.D. 48109 (1936) (rolls of brake lining held to be material because the identity of the brake lining was not fixed with certainty); *American Import Co. v. United States*, 26 CCPA 72, 75, T.D. 49612 (1938) (lengths of silk fishing leader gut classified as manufactures of silk rather than unfinished leaders); *F.H. Paul & Stein Bros., Inc. v. United States*, 44 Cust. Ct. 130, C.D. 2166 (1960) (rolls of aluminum foil without lines of demarcation held to be material and not articles featuring an electrical element or device); *Sandvik Steel, Inc. v. United States*, 66 Cust. Ct. 12, C.D. 4161, 321 F.Supp. 1031 (1971) (knife steel in coils with no lines of demarcation, requiring cutting to length, held to be material rather than unfinished blades); *Naftone, Inc. v. United States*, 67 Cust. Ct. 340, C.D. 4294 (1971) (rolls of plastic film without demarcations, having only one use, held to be insulating material).

In *Baxter Healthcare Corp. of Puerto Rico v. U. S.*, 182 F. 3d 1333, 1338–9, (1999), the disputed merchandise was monofilament imported in rolls for use in oxygenators. The Court states:

Whether an imported item that is made into multiple parts after import is classifiable as "parts" of other articles under the HTSUS involves two questions. First, the item must be dedicated solely or principally for use in those articles and must not have substantial other independent commercial uses. See *Bauerhin*, 110 F.3d at 779. If the item has substantial other commercial uses, "it is a distinct and separate commercial entity," not a part. *Id.* (quoting *United States v. Willoughby Camera Stores, Inc.*, 21 C.C.P.A. 322 (1933)). In this case, it is undisputed that Oxyphan® has no commercial use other than making membrane oxygenators and therefore is "dedicated" to such use.

Second, if the item as imported can be made into multiple parts of articles, the item must identify and fix with certainty the individual parts that are to be made from it. See *The Harding Co. v. United States*, 23 C.C.P.A. 250, 253 (1936). In *Harding*, our predecessor court held that an imported item made from asbestos yarn, wire, and a mixture of other materials, used for the sole purpose of making brake linings, was properly classified as a manufacture of yarn rather than as a "part" of an automobile because the individual brake lining parts to be made from it

were not identified or otherwise "fixed with certainty"; rather, the item had to be individually cut to custom fit each brake shoe made. See *id.* at 252-53. "In the condition as imported, the long roll of brake-lining material has in no manner been dedicated to the making of any particular brake lining. To be a part of an automobile, that is a brake lining, it must be more than mere material for making a brake lining." *Id.* at 252. In this case, it is undisputed that each roll of Oxyphan® contributes material to approximately four oxygenators. At the time of import, the individual parts cannot be discerned from the roll, and the roll nowhere marks or otherwise identifies the individual parts to be made from it. Rather, Baxter individually cuts lengths of Oxyphan® from a roll and custom-fits them around a steel bellows. The exact length needed per oxygenator is not known until the oxygenator is made. Because the individual parts are not identifiable or fixed at the time of import, Oxyphan® cannot be classified as a "part" of an oxygenator.

Like the Oxyphan® material in *Baxter*, the instant merchandise is a specialized material, dedicated to only one use, but not fixed with certainty as a part. The Durapore® material is imported in rolls and is cut to specific sizes and shapes after entry. No objective assessment of the number of filter discs or pleated inserts can be gleaned from the material as imported. Like the Oxyphan® material in *Baxter*, the discs and pleated cartridges are cut from the Durapore® material with some material left over. Accordingly, the dimensions, and therefore, the identity, of the article to be made from the imported goods is neither fixed nor certain and those goods can not be considered a "part" of filtering machinery or apparatus.

Furthermore, contrary to your contention, EN 84.21 does not demand a finding otherwise. In fact, the EN states that many filtering elements are classified according to their constituent material.

Lastly, the cases you cite do not support the conclusion you advocate. The court in *Clipper Belt Lacer Co., Inc. v. United States*, 14 CIT 146, 738 F. Supp. 528 (1990), did not define a "second line of cases" as you contend. Rather, *Clipper Belt* dealt with distinct fasteners for belt conveyors under the Tariff Schedule of the United States (TSUS), not merchandise imported in material lengths under the HTSUS. The court in *Ludvig Svensson Inc. v. United States*, 62 F. Supp. 2d 1171, noted that its findings were peculiar to agricultural products as dictated in the legislative history to the provisions discussed therein. *Id.* at 1177. Furthermore, in NY A88742, dated July 1, 1997, the product was imported cut and punched to various configurations for specific machines. In G81815, dated September 29, 2000, the product was unfinished but entered in the approximate size and shape of the finished product. Therefore, these cases do not contradict the *Baxter* analysis described above as they do not deal with products imported in material lengths.

HOLDING:

Durapore® filtering material imported in rolls is classified in subheading 3921.19.0000, HTSUS, the provision for "Plates, sheets, film, foil and strip, of plastics: Cellular: Of other plastics." The rate of duty is 6.5% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov.

The treatment of Durapore® filtering material previously afforded your client is revoked.

In accordance with 19 U.S.C. § 1625(c)(1), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

