

# Bureau of Customs and Border Protection

## *General Notices*

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

*Washington, DC, July 6, 2005,*

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

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

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### **19 CFR PART 177**

#### **PROPOSED REVOCATION OF FIVE RULING LETTERS, MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN SPORTS EQUIPMENT**

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

ACTION: Notice of proposed revocation of five tariff classification ruling letters, modification of one tariff classification ruling letter, and revocation of treatment relating to the classification of certain sports equipment.

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 U.S. Customs and Border Protection (CBP) intends to

revoke five ruling letters and modify one ruling letter relating to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of certain sports equipment. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

**DATE:** Comments must be received on or before August 20, 2005.

**ADDRESS:** Written comments are to be addressed to U.S. 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 U.S. 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 Joseph Clark at (202) 572-8768.

**FOR FURTHER INFORMATION CONTACT:** Brian Barulich, Textiles Branch, at (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 five ruling letters and

modify one ruling letter relating to the tariff classification of certain sports equipment. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) K88490, dated August 19, 2004 (Attachment A), NY 854193, dated August 6, 1990 (Attachment B), NY 801913, dated October 4, 1994 (Attachment C), NY E82883, dated June 18, 1999 (Attachment D), NY H83396, dated July 30, 2001 (Attachment E), and the modification of Headquarters Ruling (HQ) 086505, dated April 12, 1990 (Attachment F), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise. 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 K88490, NY 854193, NY 801913, NY E82883, NY H83396, and HQ 086505, CBP classified textile articles designed to be worn while participating in sports and incorporating hard plastic protective cups in headings other than heading 9506, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in [Chapter 95]; swimming pools and wading pools; parts and accessories thereof." In light of the Court of Appeals for the Federal Circuit's decision in Bauer Nike Hockey USA, Inc. v. United States, 393 F.3d 1246 (Fed. Cir., 2004) and our subsequent review of these rulings and the scope of heading 9506, HTSUSA, we now believe that all of the articles at issue in NY K88490, NY 854193, NY 801913, NY E82883, NY H83396 are classified in heading 9506, HTSUSA, as sports equipment. Additionally, we believe that the athletic supporter with protective cup at issue in HQ 086505 is also classified in heading 9506, HTSUSA, as sports equipment.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY K88490, NY 854193, NY 801913, NY E82883, and NY H83396 and

modify HQ 086505 and revoke or modify any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analyses set forth in proposed HQ 967478 (Attachment G), HQ 967619 (Attachment H), HQ 967620 (Attachment I), HQ 967621 (Attachment J), HQ 967622 (Attachment K) and HQ 967623 (Attachment L). 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: July 1, 2005

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 K88490  
August 19, 2004  
CLA-2-61:RR:NC:3:353 K88490  
CATEGORY: Classification  
TARIFF NO.: 6114.30.3060

MR. JOHNNY MUCCIARONE  
TRADE AID DELMAR INT'L., INC.  
10636 Cote De Liesse Lachine,  
Quebec H8T1A5

RE: The tariff classification of hockey protective shorts from Taiwan.

DEAR MR. MUCCIARONE:

In your letter dated August 4, 2004 you requested a classification ruling. The sample will be returned to you as requested.

The submitted samples are hockey protective shorts that are worn under hockey pants. The shorts are made of knit mesh 90% polyester/10% cotton fabric. Style 200 is a men's size short designed with an elasticized waistband and drawstring. The outside bottom of the shorts has two hook and loop attachments enabling hockey pants to be attached. On the inside of the shorts there is a protective cup that is permanently affixed to the shorts. Style 201 is a boy's size short identical to style 200.

You propose that the hockey protective shorts be classified as other ice hockey . . . equipment . . . under subheading 9506.99.02580.

**Chapter 95 Note 1 states that “1. This chapter does not cover (e) Sport clothing or fancy dress, of textiles, of chapter 61 or 62.” Further, the Explanatory Notes (EN) to heading 6114 state that “ The heading includes, inter alia: (5) Special articles of apparel used for certain sports . . .” The items in question are considered wearing apparel that is worn during the playing of the sport of hockey to protect the player.**

**The applicable subheading for the protective hockey shorts, styles 200 and 201 will be 6114.30.3060, Harmonized Tariff Schedule of the United States (HTS), which provides for “Other garments, knitted or crocheted: Of man-made fibers: Other, Other: Men’s or boys’.” The duty rate will be 14.9% ad valorem.**

**Styles 200 and 201 fall within textile category designation 659. Based upon international textile trade agreements products of Taiwan are subject to quota and the requirement of a visa.**

**The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the Textile Status Report for Absolute Quotas, which is available at our Web site at [www.cbp.gov](http://www.cbp.gov). In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.**

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

**A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kenneth Reidlinger at 646-733-3053.**

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

**[ATTACHMENT B]**

**DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
NY 854193  
August 6, 1990  
CLA-2-62;63:S:N:N3H:354 854193  
CATEGORY: Classification  
TARIFF NOS.: 6212.90.0030; 6307.90.9590**

**MS. ANN M. WILLIAMS  
A.N. DERINGER, INC.  
30 West Service Road  
Champlain, New York 12919-9703**

**RE: The tariff classification of an athletic supporter with protective cup, shin straps, garter belt and suspenders from Canada.**

**DEAR MS. WILLIAMS:**

**In your letter dated July 9, 1990, on behalf of Holmont Industries, Ltd., you requested a tariff classification ruling.**

**Your submitted sample, a junior hockey accessory kit is composed of four separate articles which can function alone and are not considered a set under the General Rules of Interpretation (GRI) of the Harmonized Tarrif Schedules of the United States (HTS). In addition, the athletic supporter, garter belts and suspenders are excluded from classification as ice-hockey equipment in Chapter 95 by the Legal Notes to that chapter. The shin straps are excluded from classification in as ice-hockey equipment by a previous headquarters' rulings Your first submitted sample, is a textile athletic supporter imported with a protective cup. The athletic supporter is constructed of a 1 1/2 inch elasticized man-made fiber waistband, 3/4 inch elaticized leg straps, and a front pouch that holds the protective cup. The cup is plastic with a rubber-like cushioned edge. If the cup is imported with the supporter it is considered as a part of the supporter and classified as such. If the cup was imported alone, it would be classified under chapter 95.**

**Your second submitted sample is a garter belt of elasticized man-made fiber, one inch wide and secured by a metal buckle. The belt has four metal and plastic garter grips attached to two 3 inch long elasticized straps that are sewn onto the belt. The third sample is suspenders of elasticized man-made fibers with adjustable straps, metal buckles, and is attached to the pants by vinyl inverted U-shaped fasteners with a place for the buttons at the bottom of the U. The last sample is four shin guard straps that attach a shin guard to the player's leg. The straps are 3/4 inch wide and 12 inches long with a hook and loop closure.**

**The applicable subheading for the athletic supporter and protective cup, garter belt and suspenders will be 6212.90.0030, Harmonized Tariff Schedule of the United States (HTS), which provides for brasieres, girdles, corsets, braces, suspenders, garters and similar ar-**

ticles and parts thereof, whether or not knitted or crocheted: other . . . of man-made fibers or man-made fibers and rubber or plastics. The duty rate will be 7 percent ad valorem.

The applicable subheading for the shin guard straps will be 6307.90.9590, (HTS), which provides for other made-up articles including dress patterns: other: other: other. The duty rate will be 7 percent ad valorem.

Goods classifiable under subheading 6212.90.0030 and 6307.90.9590 HTS, which have originated in the territory of Canada, will be entitled to a 5.6 percent rate of duty under the United States-Canada Free Trade Agreement (FTA) upon compliance with all applicable regulations.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,  
*Area Director New York Seaport.*

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
NY 801913  
October 4, 1994  
CLA-2-62:S:N5:354 801913  
CATEGORY: Classification  
TARIFF NO.: 6212.90.0030

MS. SUSAN ANDRIUZZO  
KEN HAMANAKA CO., INC.  
5777 West Century Blvd.  
Los Angeles, CA 90045

RE: The tariff classification of an athletic supporter with protective cup from China.

DEAR MS. ANDRIUZZO:

In your letter dated September 6, 1994, on behalf of Pam & Frank (USA) Industrial Co., Ltd., you requested a classification ruling.

Your submitted sample, style 80-02-44, is a textile athletic supporter imported with a protective cup. The supporter is made of a 3 inch elasticized man-made fiber waistband, 1 inch elasticized leg straps,

and a front pouch that holds the protective cup. The cup is plastic with a rubber-like cushioned edge. If the cup is imported with the supporter it is considered as a part of the supporter and classified as such. If the cup was imported alone, it would be classified under chapter 95.

The applicable subheading for style 80-02-44, will be 6212.90.0030, Harmonized Tariff Schedule of the United States (HTS), which provides for brassieres, . . . and similar articles and parts thereof, whether or not knitted or crocheted; other, of man-made fibers or man-made fibers and rubber or plastics. The duty rate will be 7 percent ad valorem.

Style 80-02-44, falls within textile category designation 659. Based upon international textile trade agreements, products of China are subject to quota restraints and visa requirements.

The designated textile and apparel category may be subdivided into parts. If so, 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 that you check, close to the time of shipment, the Status Report On Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,  
*Area Director New York Seaport.*



**[ATTACHMENT D]**

**DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
NY E82883  
June 18, 1999  
CLA-2-61:RR:NC:3:353 E82883  
CATEGORY: Classification  
TARIFF NO.: 6114.30.3060**

**MS. GAYLE PIKE  
CHARLES M. SCHAYER & Co.  
3839 Newport Street  
Denver, CO 80207**

**RE: The tariff classification of a sliding short with hard cup from Taiwan.**

**DEAR MS. PIKE:**

In your letter dated May 24, 1999, on behalf of SafeTgard, you requested a classification ruling. You describe the item as shorts with a protective cup that will be worn in lieu of a separate athletic supporter and used while participating in the sports of football, hockey and baseball. Based on the sample provided, this office would describe item in the following manner.

The submitted sample is a sliding short with a hard cup. The package calls the item by that name and pictures a baseball player sliding into home plate. The sliding short consists of knit 83% nylon/17% spandex fabric. There are two sliding pads permanently sewn into the garment that consists of 50% cotton/50% polyester fabric that is double layered for protection. There is a pouch for the hard cup on the inside of the short. The high impact shatter resistant vented hard cup has a perimeter foam cushion for comfort. The short fabric offers compression and support while the pad fabric offers protection.

You believe the proper classification is under subheading 9506.99, which includes baseball, football and hockey equipment, parts and accessories. However, Chapter 95, Note 1 (e) states that the chapter does not cover "Sports clothing or fancy dress, of textiles, of chapter 61 or 62." Heading 6212 covers support garments. This garment offers support, but it also offers protection through the double layered sliding pads. Thus the sliding short has a feature not associated with, and a character which is beyond that of, a body-supporting garment. Further, it is doubtful that this merchandise will be worn without the protective cup. The Explanatory Notes (EN) to heading 6114 states that "the heading includes, inter alia: . . . (5) Special articles of apparel used for certain sports . . ." The applicable subheading for the sliding short with a hard cup will be 6114.30.3060, Harmonized Tariff Schedule of the United States (HTS), which provides for "Other garments, knitted or crocheted: Of man-made fibers: Other . . . Other: Men's or boys'." The duty rate will be 15.5% ad valorem.

The sliding short with a hard cup falls within textile category designation 659. Based upon international textile trade agreements

products of Taiwan are subject to quota and the requirement of a visa.

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

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

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

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

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
NY H83396  
July 30, 2001  
CLA-2-61:RR:NC:3:353 H83396  
CATEGORY: Classification  
TARIFF NO.: 6114.30.3060

MR. LANCE KANESHIRO  
EASTON SPORTS  
*7855 Haskell Avenue*  
*Van Nuys, CA 91406-1999*

RE: The tariff classification of hockey protective shorts from Taiwan or China.

DEAR MR. KANESHIRO:

In your letter dated July 2, 2001 you requested a classification ruling.

The submitted samples are hockey protective shorts that are worn under hockey pants and are constructed of knit polyester and nylon fabric. Sample 1 is a mesh short with an internal built-in protective cup and strap. The hard plastic protective cup is removable for ease of washing the garment. The mesh short features a heavy-duty elasticized waist with drawstring and front and rear hook and

loop tabs at the base of the legs for attaching additional protective elements. Sample 2, embroidered with "Jock-Plus®" on the right leg, is a stretch short that reaches to mid-thigh with an external built-in protective cup. The hard plastic protective cup is removable for ease of washing the garment. The stretch short features a heavy-duty elasticized waist and front and rear hook and loop tabs at the base of the legs for attaching additional protective elements.

You believe the correct classification is as ice hockey equipment under subheading 9506.99.02580. Chapter 95 Note 1 states that "1. This chapter does not cover: (e) Sport clothing or fancy dress, of textiles, of chapter 61 or 62." Further, the Explanatory Notes (EN) to heading 6114 state that "The heading includes, inter alia: (5) Special articles of apparel used for certain sports . . ." The items in question are considered wearing apparel that is worn during the playing of the sport of hockey to protect the player.

The applicable subheading for the hockey protective shorts will be 6114.30.3060, Harmonized Tariff Schedule of the United States (HTS), which provides for "Other garments, knitted or crocheted: Of man-made fibers: Other, Other: Men's or boys'." The duty rate will be 15.3% ad valorem.

The hockey protective shorts fall within textile category designation 659. Based upon international textile trade agreements products of Taiwan and China are subject to quota and the requirement of a visa.

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

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

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

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

**[ATTACHMENT F]**

**DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 086505  
April 12, 1990  
CLA-2 CO:R:C:G 086505 HP  
CATEGORY: Classification  
TARIFF NO.: 6212.90.0030**

**MR. STEPHEN D. GOODWIN  
PRESIDENT  
SARATOGA FORWARDING CO., INC.  
18 Griffin Way  
Chelsea, MA 02150**

**RE: Athletic supporter is a body supporting garment, not a part or accessory of athletic equipment. Protective cup is part of jock strap.**

**DEAR MR. GOODWIN:**

**This is in reply to your letter of January 25, 1990, concerning the tariff classification of athletic supporters and cup, produced in Taiwan, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA).**

**FACTS:**

**The merchandise at issue consists of a textile athletic supporter packaged with a protective cup, and an athletic supporter packaged separately. The athletic supporter is constructed of a 3" polyester/spandex waistband, 1" leg straps, and a front pouch which metallically snaps closed to house the protective cup. The cup is plastic, with a rubber-like cushioned edge.**

**ISSUE:**

**Whether the instant merchandise is classifiable as sports equipment under the HTSUSA?**

**LAW AND ANALYSIS:**

**Athletic Supporter**

**Heading 9506, HTSUSA, provides for, inter alia, sports equipment. The General Rules of Interpretation (GRIs) to the HTSUSA govern the classification of goods in the tariff schedule.**

**GRI 1 states, in pertinent part:**

**... classification shall be determined according to the terms of the headings and any relative section or chapter notes. . . .**

**Goods which cannot be classified in accordance with GRI 1 are to be classified in accordance with subsequent GRIs, taken in order.**

**Note 1(e) to Chapter 95, HTSUSA, excludes from classification therein "[s]ports clothing . . . , of textiles, of Chapters 61 or 62." In addition, the Explanatory Notes (EN) to heading 9506, which constitute the official interpretation of the tariff at the international level, specifically exclude the same merchandise.**

Since we have previously held athletic supporters to be garments, classification within Chapter 95 would be incorrect.

Heading 6212, HTSUSA, provides for, inter alia, brassieres, garters and similar articles. The EN to this heading states:

The heading includes, inter alia:

\* \* \*

(5) Suspender-belts, hygienic belts, suspensory bandages, suspender jock-straps, braces, suspenders, garters, shirt-sleeve supporting arm-bands and armlets. [Emphasis added.]

\* \* \*

All of the above articles may \* \* \* incorporate fittings and accessories of non-textile materials (e.g., metal, rubber, plastics or leather).

Based upon the above language, it is our opinion that the athletic supporter is classifiable in heading 6212, HTSUSA.

#### Athletic Supporter & Protective Cup

Heading 6212, as we stated above, provides for, inter alia, athletic supporters and parts thereof. If the cup is considered a part of the supporter, therefore, it is classifiable with the supporter under this heading.

Generally, an article is a part if it:

ONE) Must be combined with other articles to be used; or  
TWO) Must be an integral, constituent or component part, without which the article to which it is joined could not function; or  
THREE) Lends to the safe and efficient operation of the article; and  
FOUR) Must be identifiable by shape or other characteristics as an article solely or principally used as a part.

It is our opinion that the protective cup falls under the definition of parts, and is classifiable with the supporter. One wears an athletic supporter and protective cup to provide a groin shield against incoming projectiles. Clearly, the athletic supporter on its own would be unable to perform this vital function.

The question has been raised as to whether the above analysis affects the classification of protective cups imported unaccompanied by athletic supporters. The EN to heading 9506 specifically includes, at (B) (13), "[p]rotective equipment for sports or games, e.g., fencing masks and breast plates, elbow and knee pads, cricket pads, shin guards." Protective cups clearly fall under this description. See, e.g., NYRL 833791 of December 30, 1988 (classifying "foam-trimmed, hard plastic cup that is normally worn with a supporter" under subheading 9506.99.6080, HTSUSA). Note 1(e) to Chapter 95, supra, excludes only sports clothing from classification therein, not PARTS of sports clothing. Since we have determined that the cup is a part of the athletic supporter, not sports clothing in and of itself, classification under subheading 9506 would still be correct.

**HOLDING:**

**As a result of the foregoing, the instant merchandise is classified . . .  
ATHLETIC SUPPORTER & ATHLETIC SUPPORTER WITH PRO-  
TECTIVE CUP**

**. . . under subheading 6212.90.0030, HTSUSA, textile category 659, as brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted, other, of man-made fibers or man-made fibers and rubber or plastics. The applicable rate of duty is 7 percent ad valorem.**

**The designated textile and apparel category may be subdivided into parts. If so, 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 negotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report On Current Import Quotas (Restraint Levels), an issuance of the U.S. Customs Service, which is updated weekly and is available at your local Customs office.**

**Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the re straint (quota/visa) categories, you should contact your local Customs of-  
fice prior to importing the merchandise to determine the current status of any import restraints or requirements.**

**JOHN DURANT,  
Director,  
Commercial Rulings Division.**

[ATTACHMENT G]

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 967478  
CLA-2 RR:CR:TE 967478 BtB  
CATEGORY: Classification  
TARIFF NO.: 9506.99.2580

MR. JOHNNY MUCCIARONE  
TRADEAID CONSULTANTS, INC.  
DELMAR INTERNATIONAL, INC.  
10636 Cote De Liesse  
Lachine, Quebec H8T 1A5

Re: Classification of hockey jocks; NY K88490 revoked

DEAR MR. MUCCIARONE:

This is in response to your letter dated November 22, 2004, requesting re-consideration of New York Ruling Letter (NY) NY K88490, dated August 19, 2004. In NY K88490, the Bureau of Customs and Border Protection (CBP) classified two models of what were referred to as "hockey protective shorts

from Taiwan” in subheading 6114.30.3060 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for: “Other garments, knitted or crocheted: Of man-made fibers: Other, Other: Men’s or boys’.”

We have reviewed NY K88490 and have determined that the classification of the merchandise at issue is incorrect. This ruling sets forth the correct classification of the merchandise.

**FACTS:**

The models at issue are specifically identified as the “Itech Jock Regular (200)” and the “Itech Jock Regular (201).” The articles are “hockey jocks,” jock straps with removable protective cups permanently attached to 100% polyester knit mesh shorts. The shorts have elasticized waistbands with drawstrings. On the outside, the shorts have four hook and loop attachments (one on the front and back of each leg) that are designed to affix to hockey hose and keep it in place.

In your letter dated November 22, 2004, you assert that the models at issue in NY K88490 were incorrectly classified and are properly classifiable in subheading 9506.99.2580, HTSUSA, which provides for, among other articles, other articles of hockey equipment. You supplemented your letter dated November 22, 2004 with a letter dated January 6, 2005, in which you present additional arguments supporting classification of the shorts in subheading 9506.99.2580, HTSUSA.

**ISSUE:**

Whether the Itech Jock Regular (200) and (201) models are classified in heading 9506, HTSUSA, as other articles of hockey equipment.

**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.” If 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, 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).

Heading 9506, HTSUS, provides for “Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in [Chapter 95]; swimming pools and wading pools; parts and accessories thereof.”

In regard to protective equipment covered by the heading, the EN to heading 9506, lists the following exemplars: “fencing masks and breast plates, elbow and knee pads, cricket pads, shin-guards.”

In the recent case, *Bauer Nike Hockey USA, Inc. v. United States*, 393 F.3d 1246 (Fed. Cir., 2004), the Court of Appeals for the Federal Circuit (CAFC) found two styles of hockey pants with textile shells and interior assemblies of hard plastic guards and soft pads to be “equipment” under heading 9506, HTSUS, because they were “specially designed and intended for use only while playing ice hockey.”

As in *Bauer*, we find that the models at issue are covered by heading 9506, HTSUSA, because they are specially designed and intended for use only while playing ice hockey. Generally, an article that is worn, consisting of textile and non-textile components, will be held to meet this criterion only if it incorporates thick non-textile protective guards or pads that are designed exclusively for protection against injury, that is, having protective features with the sole or primary function of directly absorbing the impact of blows, collisions, or flying objects. Generally, these non-textile protective guards will be non-removable or specially-fitted to be inserted into textile parts of the articles, made of hard plastic or thick foam, and make the articles impractical to use as everyday wearing apparel. Articles with only textile or insubstantial non-textile padding will generally not meet this criterion.

The models at issue incorporate a hard plastic protective cup designed exclusively to protect the groin against injury by absorbing blows, collisions, or flying objects. This protective cup is specially-fitted to the jock strap in the models. The features of the models make them especially suited for hockey and impractical to use as everyday wearing apparel. Accordingly, we find that the Itech Jock Regular (200) and (201) models are classified in heading 9506, HTSUSA.

**HOLDING:**

The Itech Jock Regular (200) and (201) models are classified in subheading 9506.99.2580, HTSUSA, which provides for, among other articles, other articles of hockey equipment. The applicable column one, general duty rate under the 2005 HTSUSA is “Free.”

NY K88490, dated August 19, 2004, is hereby revoked.

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



## [ATTACHMENT H]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 967619  
CLA-2 RR:CR:TE 967619 BtB  
CATEGORY: Classification  
TARIFF NO.: 9506.99.6080

MR. STEPHEN D. GOODWIN  
PRESIDENT  
SARATOGA FORWARDING CO., INC.  
*80 Everett Avenue  
Chelsea, MA 21500*

Re: Classification of Athletic Supporter and Protective Cup; HQ 086505  
modified

DEAR MR. GOODWIN:

On April 12, 1990, the U.S. Customs Service, now known as the Bureau of Customs and Border Protection (CBP), issued Headquarters Ruling Letter (HQ) 086505 to you. In HQ 086505, CBP classified an athletic supporter individually and an athletic supporter packaged with a protective cup under subheading 6212.90.0030, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for: "Brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted: Other, Of man-made fibers or man-made fibers and rubber or plastics."

We have reviewed HQ 086505 and have determined that the classification of the athletic supporter with protective cup is incorrect. This ruling sets forth the correct classification of that article. The classification of the athletic supporter individually was correctly set forth in HQ 086505 and this ruling letter does not modify it.

## FACTS:

The athletic supporter is constructed of a 3-inch polyester/spandex waistband. It has 1-inch leg straps and a front pouch that can be closed with small metal snaps. The protective cup is hard plastic with a rubber-like cushioned edge. The protective cup is specially-fitted to be inserted into and housed in the front pouch of the athletic supporter.

## ISSUE:

Whether the athletic supporter with protective cup is classified in heading 9506, as other equipment for athletics.

## 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." If 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, 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).

Heading 9506, HTSUS, provides for “Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in [Chapter 95]; swimming pools and wading pools; parts and accessories thereof.”

In regard to protective equipment covered by the heading, the EN to heading 9506, lists the following exemplars: “fencing masks and breast plates, elbow and knee pads, cricket pads, shin-guards.”

In the recent case, *Bauer Nike Hockey USA, Inc. v. United States*, 393 F.3d 1246 (Fed. Cir., 2004), the Court of Appeals for the Federal Circuit (CAFC) found two styles of hockey pants with textile shells and interior assemblies of hard plastic guards and soft pads to be “equipment” under heading 9506, HTSUS, because they were “specially designed and intended for use only while playing ice hockey.”

As in *Bauer*, we find that the athletic supporter with protective cup is covered by heading 9506, HTSUSA, because it is specially designed and intended for use only while participating in sports. Generally, an article that is worn, consisting of textile and non-textile components, will be held to meet this criterion only if it incorporates thick non-textile protective guards or pads that are designed exclusively for protection against injury, that is, having protective features with the sole or primary function of directly absorbing the impact of blows, collisions, or flying objects. Generally, these non-textile protective guards will be non-removable or specially-fitted to be inserted into textile parts of the articles, made of hard plastic or thick foam, and make the articles impractical to use as everyday wearing apparel. Articles with only textile or insubstantial non-textile padding will generally not meet this criterion.

The subject athletic supporter with protective cup incorporates a hard plastic protective cup designed exclusively to protect the groin against injury by absorbing blows, collisions, or flying objects. This protective cup is specially-fitted to the athletic supporter. The features of the article makes it especially suited for sports and impractical to use as everyday wearing apparel. Therefore, we find that the instant athletic supporter with protective cup is classified in heading 9506. HTSUSA.

**HOLDING:**

The athletic supporter with protective cup is classified in subheading 9506.99.6080, HTSUSA, which provides for, among other articles, “Articles and equipment for general physical exercise, gymnastics, athletics, other sports . . . : Other: Other: Other, Other.” The applicable column one, general duty rate under the 2005 HTSUSA is 4 percent *ad valorem*.

HQ 086505, dated April 12, 1990, is hereby modified.

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

## [ATTACHMENT I]

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 967620  
CLA-2 RR:CR:TE 967620 BtB  
CATEGORY: Classification  
TARIFF NO.: 9506.99.6080

MS. ANN M. WILLIAMS  
A.N. DERINGER, INC.  
30 West Service Road  
Champlain, NY 12919-9703

Re: Classification of hockey accessory kit; NY 854193 revoked

DEAR MS. WILLIAMS:

On August 6, 1990, the U.S. Customs Service, now known as the Bureau of Customs and Border Protection (CBP), issued New York Ruling Letter (NY) 854193 to you on behalf of Holmont Industries, Ltd. In NY 854193, CBP found that four articles packaged together as a "junior hockey accessory kit" did not comprise a set under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) and were, therefore, classified separately under the HTSUSA as follows: an athletic supporter with protective cup, garter belt, and suspenders were each individually classified in subheading 6212.90.0030, HTSUSA, which provides for: "Brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted; Other, Of man-made fibers or man-made fibers and rubber or plastics;" and shin guard straps were individually classified in subheading 6307.90.9590, HTSUSA, which provides for: "Other made up articles, including dress patterns: Other: Other: Other."

We have reviewed NY 854193 and have determined that the classification of the articles in the junior hockey accessory kit is incorrect. This ruling sets forth the correct classification of the articles.

FACTS:

In NY 854193, the articles in the junior hockey kit were described as follows:

Your first submitted sample, is a textile athletic supporter imported with a protective cup. The athletic supporter is constructed of a 1 1/2 inch elasticized man-made fiber waistband, 3/4 inch elasticized (stet.) leg straps, and a front pouch that holds the protective cup. The cup is plastic with a rubber-like cushioned edge. If the cup is imported with the supporter it is considered as a part of the supporter and classified as such. If the cup was imported alone, it would be classified under chapter 95.

Your second submitted sample is a garter belt of elasticized man-made fiber, one inch wide and secured by a metal buckle. The belt has four metal and plastic garter grips attached to two 3 inch long elasticized straps that are sewn onto the belt. The third sample is suspenders of elasticized man-made fibers with adjustable straps, metal buckles, and is attached to the pants by vinyl inverted U-shaped fasteners with a place for the buttons at the bottom of the U. The last sample is four shin

guard straps that attach a shin guard to the player's leg. The straps are 3/4 inch wide and 12 inches long with a hook and loop closure.

While not stated in NY 854193, the suspenders and garter belt are specifically designed for hockey. The suspenders are specifically designed to attach to hockey pants with their U-shaped fasteners and the garter belt is specifically designed to hold hockey hose. As a consequence, the suspenders and garter belt are only suitable to be worn while playing hockey and not as normal wearing apparel.

ISSUE:

Whether the articles in the hockey accessory kit comprise a set under the HTSUSA. If the articles do comprise a set, what is the classification of the set under the HTSUSA?

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." If 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, 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).

The hockey accessory kit consists of four individual components. The kit cannot be classified pursuant to GRI 1 because the components are classifiable in different headings (the headings covering each article if imported separately are set forth below). Since no single heading describes all of the products in the accessory kit, the components must either be considered as a set under GRI 3(b) or classified individually.

The components constitute "goods put up in sets for retail sale" if they satisfy the criteria set forth in EN (X) to GRI 3(b). Under this EN, goods are classified as sets put up for retail sale if they:

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

In this instance, the goods are *prima facie* classifiable in at least two headings. They are put up together to equip a hockey player. Each of the articles in the kit will be worn while playing. The goods are packaged together as a "junior hockey accessory kit" in a manner suitable for direct sale to the consumer. In light of the above, we find that they constitute "goods put up in sets for retail sale" and are classifiable accordingly pursuant to GRI 3(b).

In order to determine the essential character of the goods put up in the set, we 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.

In this case, each of the goods in the accessory kit serves a unique and important purpose. Each article protects a player or helps to keep equipment or clothing securely in place. For this reason, we find that no component imparts the essential character to the set.

GRI 3(c) provides 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." The headings that equally merit consideration are the headings covering the components in the set if they were imported individually. In this instance, the hockey garter belt and the hockey suspenders in the set are individually classified in heading 6212, HTSUSA, which provides for: "Brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted." Additionally, the hockey shin guard straps in the set are individually classified in heading 6307, HTSUSA, which provides for: "Other made up articles, including dress patterns." And, pursuant to the analysis set forth below, the athletic supporter with protective cup is classified in heading 9506, HTSUSA, which provides for: "Articles and equipment for general physical exercise, gymnastics, athletics, other sports. . . ." Of the three headings meriting consideration, heading 9506, HTSUSA, covering the athletic supporter with protective cup, occurs last.

Heading 9506, HTSUS, provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in [Chapter 95]; swimming pools and wading pools; parts and accessories thereof." In regard to protective equipment covered by the heading, the EN to heading 9506, lists the following exemplars: "fencing masks, breast plates, elbow and knee pads, cricket pads, shin-guards."

In the recent case, Bauer Nike Hockey USA, Inc. v. United States, 393 F.3d 1246 (Fed. Cir., 2004), the Court of Appeals for the Federal Circuit (CAFC) found two styles of hockey pants with textile shells and interior assemblies of hard plastic guards and soft pads to be "equipment" under heading 9506, HTSUS, because they were "specially designed and intended for use only while playing ice hockey."

As in Bauer, we find that the athletic supporter with protective cup is covered by heading 9506, HTSUSA, because it is specially designed and intended for use only while participating in sports. Generally, an article that is worn, consisting of textile and non-textile components, will be held to meet this criterion only if it incorporates thick non-textile protective guards or pads that are designed exclusively for protection against injury, that is, having protective features with the sole or primary function of directly absorbing the impact of blows, collisions, or flying objects. Generally, these non-textile protective guards will be non-removable or specially-fitted to be inserted into textile parts of the articles, made of hard plastic or thick foam,

and make the articles impractical to use as everyday wearing apparel. Articles with only textile or insubstantial non-textile padding will generally not meet this criterion.

The athletic supporter with protective cup incorporates a hard plastic protective cup designed exclusively to protect the groin against injury by absorbing blows, collisions, or flying objects. This protective cup is specially-fitted to the front pouch on the athletic supporter. The features of the article makes it especially suited for sports and impractical to use as everyday wearing apparel. Accordingly, we find that the athletic supporter with protective cup is classified in heading 9506. HTSUSA.

HOLDING:

The four articles packaged together as a "junior hockey accessory kit" comprise a set under the HTSUSA. The kit is classified pursuant to GRI 3(c) in subheading 9506.99.6080, HTSUSA, which provides for, among other articles, "Articles and equipment for general physical exercise, gymnastics, athletics, other sports . . . : Other: Other: Other, Other." While the articles in the kit have been put up together to meet the need of equipping a hockey player, the article on which classification of the set is based, the athletic supporter with protective cup, is used generally in athletics and sports, not solely or principally in hockey. Accordingly, the set is not classified in the subheading covering hockey equipment (9506.99.2580, HTSUSA). The applicable column one, general duty rate under the 2005 HTSUSA is 4 percent *ad valorem*.

NY 854193, dated August 6, 1990, is hereby revoked.

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

[ATTACHMENT J]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 967621  
CLA-2 RR:CR:TE 967621 BtB  
CATEGORY: Classification  
TARIFF NO.: 9506.99.6080

MS. SUSAN ANDRIUZZO  
KEN HAMANAKA CO., INC.  
5777 West Century Blvd.  
Los Angeles, CA 90045

Re: Classification of Athletic Supporter and Protective Cup; NY 801913 revoked

DEAR MS. ANDRIUZZO:

On October 4, 1994, the U.S. Customs Service, now known as the Bureau of Customs and Border Protection (CBP), issued New York Ruling Letter (NY) 801913 to you on behalf of Pam & Frank (USA) Industrial Co, Ltd. In NY 801913, CBP classified an athletic supporter imported with a protective cup under subheading 6212.90.0030, Harmonized Tariff Schedule of the

United States Annotated (HTSUSA), which provides for: “Brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted: Other, Of man-made fibers or man-made fibers and rubber or plastics.”

We have reviewed NY 801913 and have determined that the classification of the athletic supporter with protective cup is incorrect. This ruling sets forth the correct classification of that article.

**FACTS:**

The athletic supporter is recognized as the “Style 80-02-44.” It is constructed of a 3-inch elasticized man-made fiber waistband. It has 1-inch elasticized leg straps and a front pouch. The protective cup is hard plastic with a rubber-like cushioned edge. The protective cup is specially-fitted to be inserted into and housed in the front pouch of the athletic supporter.

**ISSUE:**

Whether the athletic supporter with protective cup is classified in heading 9506, as other equipment for athletics.

**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.” If 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, 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).

Heading 9506, HTSUS, provides for “Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in [Chapter 95]; swimming pools and wading pools; parts and accessories thereof.”

In regard to protective equipment covered by the heading, the EN to heading 9506, lists the following exemplars: “fencing masks and breast plates, elbow and knee pads, cricket pads, shin-guards.”

In the recent case, Bauer Nike Hockey USA, Inc. v. United States, 393 F.3d 1246 (Fed. Cir., 2004), the Court of Appeals for the Federal Circuit (CAFC) found two styles of hockey pants with textile shells and interior assemblies of hard plastic guards and soft pads to be “equipment” under heading 9506, HTSUS, because they were “specially designed and intended for use only while playing ice hockey.”

As in Bauer, we find that the athletic supporter with protective cup is covered by heading 9506, HTSUSA, because it is specially designed and intended for use only while participating in sports. Generally, an article that is worn, consisting of textile and non-textile components, will be held to meet this criterion only if it incorporates thick non-textile protective guards or pads that are designed exclusively for protection against injury, that is, hav-

ing protective features with the sole or primary function of directly absorbing the impact of blows, collisions, or flying objects. Generally, these non-textile protective guards will be non-removable or specially-fitted to be inserted into textile parts of the articles, made of hard plastic or thick foam, and make the articles impractical to use as everyday wearing apparel. Articles with only textile or insubstantial non-textile padding will generally not meet this criterion.

The subject athletic supporter with protective cup incorporates a hard plastic protective cup designed exclusively to protect the groin against injury by absorbing blows, collisions, or flying objects. This protective cup is specially-fitted to the athletic supporter. The features of the article makes it especially suited for sports and impractical to use as everyday wearing apparel. Therefore, we find that the instant athletic supporter with protective cup is classified in heading 9506. HTSUSA.

**HOLDING:**

The athletic supporter with protective cup (Style 80-02-44) is classified in subheading 9506.99.6080, HTSUSA, which provides for, among other articles, "Articles and equipment for general physical exercise, gymnastics, athletics, other sports . . . : Other: Other: Other, Other." The applicable column one, general duty rate under the 2005 HTSUSA is 4 percent *ad valorem*.

NY 801913, dated October 4, 1994, is hereby revoked.

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

[ATTACHMENT K]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 967622  
CLA-2 RR:CR:TE 967622 BtB  
CATEGORY: Classification  
TARIFF NO.: 9506.99.6080

MS. GAYLE PIKE  
CHARLES M. SCHAYER & Co.  
3839 Newport Street  
Denver, CO 80207

Re: Classification of sliding short with hard cup; NY E82883 revoked

DEAR MS. PIKE:

On June 18, 1999, the U.S. Customs Service, now known as the Bureau of Customs and Border Protection (CBP), issued New York Ruling Letter (NY) E82883 to you on behalf of SafeTgard. In NY E82883, CBP classified a sliding short with hard cup from Taiwan in subheading 6114.30.3060, Harmonized Tariff Schedule of the United States (HTS), which provides for: "Other garments, knitted or crocheted: Of man-made fibers: Other, Other: Men's or boys'."



We have reviewed NY E82883 and have determined that the classification of the sliding short set forth in that ruling is incorrect. This ruling sets forth the correct classification of the article.

**FACTS:**

In NY E82883, the sliding short at issue is described as follows:

The submitted sample is a sliding short with a hard cup. The package calls the item by that name and pictures a baseball player sliding into home plate. The sliding short consists of knit 83% nylon/17% spandex fabric. There are two sliding pads permanently sewn into the garment that consists of 50% cotton/50% polyester fabric that is double layered for protection. There is a pouch for the hard cup on the inside of the short. The high impact shatter resistant vented hard cup has a perimeter foam cushion for comfort. The short fabric offers compression and support while the pad fabric offers protection.

In your May 24, 1999 request for a classification ruling, you describe the item as shorts with a protective cup that will be worn in lieu of a separate athletic supporter and used while participating in the sports of football, hockey and baseball.

**ISSUE:**

Whether the sliding short with hard cup is classified in heading 9506, HTSUSA, as other equipment for athletics.

**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.” If 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, 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).

Heading 9506, HTSUS, provides for “Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in [Chapter 95]; swimming pools and wading pools; parts and accessories thereof.”

In regard to protective equipment covered by the heading, the EN to heading 9506, lists the following exemplars: “fencing masks and breast plates, elbow and knee pads, cricket pads, shin-guards.”

In the recent case, *Bauer Nike Hockey USA, Inc. v. United States*, 393 F.3d 1246 (Fed. Cir., 2004), the Court of Appeals for the Federal Circuit (CAFC) found two styles of hockey pants with textile shells and interior assemblies of hard plastic guards and soft pads to be “equipment” under heading 9506, HTSUS, because they were “specially designed and intended for use only while playing ice hockey.”

As in *Bauer*, we find that the sliding short at issue is covered by heading 9506, HTSUSA, because it is specially designed and intended for use only while participating in sports. Generally, an article that is worn, consisting of textile and non-textile components, will be held to meet this criterion only if it incorporates thick non-textile protective guards or pads that are designed exclusively for protection against injury, that is, having protective features with the sole or primary function of directly absorbing the impact of blows, collisions, or flying objects. Generally, these non-textile protective guards will be non-removable or specially-fitted to be inserted into textile parts of the articles, made of hard plastic or thick foam, and make the articles impractical to use as everyday wearing apparel. Articles with only textile or insubstantial non-textile padding will generally not meet this criterion.

The sliding short at issue incorporates a hard plastic protective cup designed exclusively to protect the groin against injury by absorbing blows, collisions, or flying objects. This protective cup is specially-fitted to the pouch on the inside of the short. The features of the article make it especially suited for sports and impractical to use as everyday wearing apparel. Accordingly, we find that the sliding short with hard cup is classified in heading 9506, HTSUSA.

Note that it is the hard protective cup that makes the article specially designed and intended for use only while participating in sports. While the sliding shorts have double-layered sliding pads permanently sewn into them, this padding alone would not bring the sliding shorts within the scope of heading 9506, HTSUSA, as the padding is solely textile (50% cotton/50% polyester) and does not make the article impractical to use as everyday wearing apparel.

**HOLDING:**

The sliding short with hard cup is classified in subheading 9506.99.6080, HTSUSA, which provides for, among other articles, "Articles and equipment for general physical exercise, gymnastics, athletics, other sports . . . : Other: Other: Other."

The applicable column one, general duty rate under the 2005 HTSUSA is 4 percent *ad valorem*.

NY E82883, dated June 18, 1999, is hereby revoked.

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

## [ATTACHMENT L]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 967623  
CLA-2 RR:CR:TE 967623 BtB  
CATEGORY: Classification  
TARIFF NO.: 9506.99.2580

MR. LANCE KANESHIRO  
EASTON SPORTS  
7855 Haskell Avenue  
Van Nuys, CA 91406-1999

Re: Classification of hockey jocks; NY H83396 revoked

DEAR MR. KANESHIRO:

On July 30, 2001, the U.S. Customs Service, now the Bureau of Customs and Border Protection (CBP), issued New York Ruling Letter (NY) H83396 to you. In NY H83396, CBP classified two styles of what were referred to as "hockey protective shorts" in subheading 6114.30.3060 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for: "Other garments, knitted or crocheted: Of man-made fibers: Other, Other: Men's or boys'."

We have reviewed NY H83396 and have determined that the classification of the merchandise at issue is incorrect. This ruling sets forth the correct classification of the merchandise.

## FACTS:

In NY H83396, the two styles of "hockey protective shorts," identified as "Sample 1" and "Sample 2," respectively, are described as follows:

The submitted samples are hockey protective shorts that are worn under hockey pants and are constructed of knit polyester and nylon fabric. Sample 1 is a mesh short with an internal built-in protective cup and strap. The hard plastic protective cup is removable for ease of washing the garment. The mesh short features a heavy-duty elasticized waist with drawstring and front and rear hook and loop tabs at the base of the legs for attaching additional protective elements. Sample 2, embroidered with "Jock-Plus®" on the right leg, is a stretch short that reaches to mid-thigh with an external built-in protective cup. The hard plastic protective cup is removable for ease of washing the garment. The stretch short features a heavy-duty elasticized waist and front and rear hook and loop tabs at the base of the legs for attaching additional protective elements.

Although not referred to as such in NY H83396, Sample 1 and Sample 2 are more precisely described as "hockey jocks." The hook and loop tabs at the base of the legs on the styles are designed to attach and hold up hockey socks.

## ISSUE:

Whether Sample 1 and Sample 2 are classified in heading 9506, HTSUSA, as other articles of hockey equipment.

## 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.” If 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, 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).

Heading 9506, HTSUS, provides for “Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in [Chapter 95]; swimming pools and wading pools; parts and accessories thereof.”

In regard to protective equipment covered by the heading, the EN to heading 9506, lists the following exemplars: “fencing masks and breast plates, elbow and knee pads, cricket pads, shin-guards.”

In the recent case, *Bauer Nike Hockey USA, Inc. v. United States*, 393 F.3d 1246 (Fed. Cir., 2004), the Court of Appeals for the Federal Circuit (CAFC) found two styles of hockey pants with textile shells and interior assemblies of hard plastic guards and soft pads to be “equipment” under heading 9506, HTSUS, because they were “specially designed and intended for use only while playing ice hockey.”

As in *Bauer*, we find that the models at issue are covered by heading 9506, HTSUSA, because they are specially designed and intended for use only while playing ice hockey. Generally, an article that is worn, consisting of textile and non-textile components, will be held to meet this criterion only if it incorporates thick non-textile protective guards or pads that are designed exclusively for protection against injury, that is, having protective features with the sole or primary function of directly absorbing the impact of blows, collisions, or flying objects. Generally, these non-textile protective guards will be non-removable or specially-fitted to be inserted into textile parts of the articles, made of hard plastic or thick foam, and make the articles impractical to use as everyday wearing apparel. Articles with only textile or insubstantial non-textile padding will generally not meet this criterion.

The styles at issue incorporate a hard plastic protective cup designed exclusively to protect the groin against injury by absorbing blows, collisions, or flying objects. This protective cup is specially-fitted to the jock strap or front external pocket in the styles. The features of the styles make them especially suited for hockey and impractical to use as everyday wearing apparel. Accordingly, we find that the styles are classified in heading 9506, HTSUSA.

## HOLDING:

The hockey jocks identified as Sample 1 and Sample 2 are classified in subheading 9506.99.2580, HTSUSA, which provides for, among other ar-

ticles, other articles of hockey equipment. The applicable column one, general duty rate under the 2005 HTSUSA is "Free."

NY H83396, dated July 30, 2001, is hereby revoked.

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

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## 19 CFR PART 177

### **PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A CERTAIN SOCCER SHINGUARD**

**AGENCY:** U.S. 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 a certain soccer shinguard.

**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 U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a certain soccer shinguard. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

**DATE:** Comments must be received on or before August 20, 2005.

**ADDRESS:** Written comments are to be addressed to U.S. 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 U.S. 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 Joseph Clark at (202) 572-8768.

**FOR FURTHER INFORMATION CONTACT:** Brian Barulich, Textiles Branch, at (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 one ruling letter relating to the tariff classification of a certain soccer shinguard. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) H87957, dated February 13, 2002 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise. 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 H87957, CBP classified a soccer shinguard encased in a knit polyester sock under subheading 6115.93.9020, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for, among other articles, socks of synthetic fabrics. Based on our review of the ruling and a sample of the article, we now believe that the article is classified in subheading 9506.99.2000, HTSUSA, which provides for, among other articles, soccer articles and equipment, except balls, and parts and accessories thereof.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY H87957 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) 967738 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

DATED: July 1, 2005

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

[ATTACHMENT A]

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

**NY H87957**  
February 13, 2002  
CLA-2-61:RR:NC:3:353 H87957  
CATEGORY: Classification  
TARIFF NO.: 6115.93.9020

MS. LILA NEEDHAM  
FRANKLIN SPORTS INC.  
*P.O. Box 508*  
*17 Campanelli Parkway*  
*Stoughton, MA 02072*

RE: The tariff classification of a shin sock from China.

DEAR MS. NEEDHAM:

In your letter dated January 29, 2002 you requested a tariff classification ruling.

The submitted sample Shin Sock is constructed of knit 100% polyester fabric. The sock contains a permanent shin guard constructed of a high-density polyethylene shell and EVA foam. The shin sock is worn when playing soccer.

Although a protective element has been added, the item's basic function is as a sock.

The applicable subheading for the shin sock will be 6115.93.9020, Harmonized Tariff Schedule of the United States (HTS), which provides for "Panty hose, tights, stockings, socks and other hosiery...knitted or crocheted: Other: Of synthetic fibers: Other: Other, Other." The rate of duty will be 14.8% ad valorem.

China is a member of the World Trade Organization (WTO), and the Shin Sock is not subject to quota or the requirements of a visa.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kenneth Reidlinger at 646-733-3053.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 967738  
CLA-2 RR:CR:TE 967738 BtB  
CATEGORY: Classification  
TARIFF NO.: 9506.99.2000

DAVID M. MURPHY, ESQ.  
GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN & KLESTADT LLP  
399 Park Avenue  
25<sup>th</sup> Floor  
New York, NY 10022-4877

Re: Classification of Soccer Shinguards; NY H87957 revoked

DEAR MR. MURPHY:

On February 13, 2002, the Bureau of Customs and Border Protection (CBP) issued New York Ruling Letter (NY) H87957 to Franklin Sports, Inc. ("Franklin"). As you now represent Franklin, this letter is addressed to you.

In NY H87957, CBP classified a soccer shinguard encased in a knit polyester sock under subheading 6115.93.9020, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for, among other articles, ". . . socks . . . : Other: Of synthetic fibers: Other: Other: Other."

We have reviewed NY H87957 and have determined that the classification of the merchandise is incorrect. This ruling, HQ 967738, sets forth the correct classification of the merchandise and revokes NY H87957.

FACTS:

The article at issue is identified as the Franklin "Shin Sock." The "Shin Sock" is a soccer shinguard permanently encased in a knit polyester sock.



The shinguard is constructed of a hard-plastic (high density polyethylene) guard with EVA foam backing. The sock holding the shinguard is made of 100% polyester knit fabric.

ISSUE:

Whether the “Shin Sock” is classified in heading 9506, as sports equipment.

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.” If 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, 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).

Heading 9506, HTSUS, provides for “Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in [Chapter 95]; swimming pools and wading pools; parts and accessories thereof.” In regard to protective equipment covered by the heading, the EN to heading 9506, lists the following exemplars: “fencing masks and breast plates, elbow and knee pads, cricket pads, shin-guards.”

In the recent case, *Bauer Nike Hockey USA, Inc. v. United States*, 393 F.3d 1246 (Fed. Cir., 2004), the Court of Appeals for the Federal Circuit (CAFC) found two styles of hockey pants with textile shells and interior assemblies of hard plastic guards and soft pads to be “equipment” under heading 9506, HTSUS, because they were “specially designed and intended for use only while playing ice hockey.”

As in *Bauer*, we find that the “Shin Sock” is covered by heading 9506, HTSUSA, because it is specially designed and intended for use only while participating in sports. Generally, an article that is worn, consisting of textile and non-textile components, will be held to meet this criterion only if it incorporates thick non-textile protective guards or pads that are designed exclusively for protection against injury, that is, having protective features with the sole or primary function of directly absorbing the impact of blows, collisions, or flying objects. Generally, these non-textile protective guards will be non-removable or specially-fitted to be inserted into textile parts of the articles, made of hard plastic or thick foam, and make the articles impractical to use as everyday wearing apparel. Articles with only textile or insubstantial non-textile padding will generally not meet this criterion.

The “Shin Sock” at issue incorporates a hard plastic protective guard designed exclusively to protect the shin against injury by absorbing blows, collisions, or flying objects while playing soccer. This hard protective guard is specially-fitted to the polyester sock in which it is encased and it is not re-

movable. The features of the article make it especially suited for playing soccer, the use for which it is designed and marketed, and impractical to use as everyday wearing apparel. Therefore, we find that the “Shin Sock” is classified in heading 9506. HTSUSA.

**HOLDING:**

The soccer shinguard permanently encased in a knit polyester sock identified as the Franklin “Shin Sock” is classified in subheading 9506.99.2000, HTSUSA, which provides for, among other articles, “Articles and equipment for general physical exercise, gymnastics, athletics, other sports . . . : Other: . . . soccer . . . articles and equipment, except balls, and parts and accessories thereof.” The applicable column one, general duty rate under the 2005 HTSUSA is “Free.” This classification is consistent with the holding in NY G87127, dated February 28, 2001, in which CBP classified a substantially similar article in the same provision.

NY H87957, dated February 13, 2002, is hereby revoked.

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

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**19 CFR PART 177**

**REVOCATION OF RULING LETTERS AND TREATMENT  
RELATING TO TARIFF CLASSIFICATION OF PORCELAIN  
TABLE-/KITCHENWARE FOR COMMERCIAL USE**

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

**ACTION:** Notice of revocation of three ruling letters and treatment relating to the tariff classification of porcelain table-/kitchenware for commercial use under the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”).

**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 U.S. Customs and Border Protection (“CBP”) is revoking three rulings concerning the tariff classification of porcelain table-/kitchenware for commercial use and is revoking any treatment CBP has previously accorded to substantially identical transactions. Notice of the proposed revocations was published on May 25, 2005, in Vol. 39, No. 22 of the *Customs Bulletin*. No comments were received in response to the notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 19, 2005.

**FOR FURTHER INFORMATION CONTACT:** Andrew M. Langreich, General Classification Branch: (202) 572-8776.

**SUPPLEMENTARY INFORMATION:**

Background

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

Pursuant to CBP's obligations, notice proposing to revoke New York Ruling Letters ("NY") K88482, K88488 and K88494, all dated August 30, 2004, as they pertain to the classification of porcelain table/kitchenware for commercial use, was published on May 25, 2005, in Vol. 39, No. 26 of the *Customs Bulletin*. No comments were received in response to this notice.

As stated in the proposed notice, the revocation action will cover any rulings on this merchandise that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings other than those herein identified; no further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(2)), 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 this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to the effective date of this final decision.

In the rulings, ("NY") K88482, K88488 and K88494, all dated August 30, 2004, merchandise described as porcelain table and kitchen articles was classified under subheadings 6911.10.8000, 6911.10.5200 and 6911.10.4500, HTSUSA, which provide for various types of porcelain table-/kitchenware for household use. In reaching these conclusions, we reasoned, notwithstanding the provision within subheading 6911.10.1000, HTSUSA, for porcelain table/kitchenware articles . . . "hotel or restaurant ware and other ware not household ware," that the articles were classified as porcelain articles for household use. We have determined that the porcelain articles for use on aircraft are similar to those used in restaurants and hotels and are therefore classified under subheading 6911.10.1000, HTSUSA, which provides for tableware, kitchenware, other household articles and toilet articles, of porcelain or china: tableware and kitchenware: hotel or restaurant ware and other ware not household ware, pursuant to the analysis in HQ 967535.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NYs K88482, K88488 and K88494, and any other ruling not specifically identified, to reflect the proper classification of the porcelain table-/kitchenware for commercial use, pursuant to the analysis in HQ 967535, which is set forth as 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), these rulings will become effective sixty (60) days after their publication in the *Customs Bulletin*.

**Dated:** July 1, 2005

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,**HQ 967535**

July 1, 2005

CLA-2 RR:CR:GC 967535 AML

**CATEGORY:** Classification**TARIFF NO.:** 6911.10.1000

MS. TABITHA STEWART  
AMERICAN AIRLINES  
4333 Amon Carter Blvd.  
Mail Drop 5223  
Ft. Worth, Texas 76155

**RE:** Porcelain table-/kitchenware not for household use; New York Ruling Letters ("NY") K88482, K88488 and K88494 revoked

DEAR MS. STEWART:

This is in regard to New York Ruling Letters ("NY") K88482, K88488 and K88494, all dated August 30, 2004, which were issued to you concerning the tariff classification of porcelain table/kitchenware for commercial use under the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"). The referenced rulings classified the articles under subheadings 6911.10.45, 6911.10.52 and 6911.10.80, HTSUS, which provide for various types of porcelain table-/kitchenware for household use. We revisited the classification decisions made in NYs K88482, K88488 and K88494 and determined that they are incorrect. This letter sets forth the proper classification of the porcelain table-/kitchenware for commercial use.

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 revocations was published on May 25, 2005, in Vol. 39, No. 22 of the *Customs Bulletin*. No comments were received in response to the notice.

**FACTS:**

We described the articles in NY K88482 as follows:

The products include various table/kitchen articles - Style numbers 73-PL-88, 73PL069, 73DI092, 73D1087 and 73RA38 made of porcelain and are not imported packed together for retail sale as a set.

We described the articles in NY K88488 as follows:

The products include various table/kitchen articles - Style numbers 73-PL-87, 73PL083, 73PL068, 73-PL-86 and Kingway, made of porcelain and are not imported packed together for retail sale as a set. We noted that the Kingway product is a mug and that Style 73-PL-86 is a plate not over 22.9 cm in maximum diameter, valued over \$8.50 per dozen but not over \$31 per dozen.

We described the articles in NY K88494 as follows:

The products include various plates, dishes and bowls - Style numbers 73-PL-92, 73DI102, 73BO121, 73BO128 and 73BO111 made of porcelain and not imported packed together for retail sale as a set.

The merchandise is sourced by Wessco, a California concern that (according to its website) specializes in providing such goods to major airlines. The subject table/kitchenware is used for meal service in the front (first class) cabin of aircraft. The name of the airline and the model number for each piece appears on the bottom of the articles.

**ISSUE:**

What is the proper tariff classification of the porcelain table-/kitchenware for commercial use?

**LAW AND ANALYSIS:**

Classification of imported merchandise is accomplished pursuant to the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"). Classification under the HTSUSA is guided by the General Rules of Interpretation of the Harmonized System ("GRIs"). GRI 1, HTSUSA, states in part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes[.]"

The HTSUS provisions under consideration are as follows:

6911	Tableware, kitchenware, other household articles and toilet articles, of porcelain or china:
6911.10	Tableware and kitchenware:
6911.10.10	Hotel or restaurant ware and other ware not household ware.
	Other:
	Other:
	Other:
	* * *
6911.10.45	Mugs and other steins
	* * *
6911.10.52	Cups valued over \$8 but not over \$29 per dozen; saucers valued over \$5.25 but not over \$18.75 per dozen; soups, oatmeals and cereals valued over \$9.30 but not over \$33 per dozen; plates not over 22.9 cm in maximum diameter and valued over \$8.50 but not over \$31 per dozen; plates over 22.9 but not over 27.9 cm in maximum diameter and valued over \$11.50 but not over \$41 per dozen; platters or chop dishes valued over \$40 but not over \$143 per dozen; sugars valued over \$23 but not over \$85 per dozen; creamers valued over \$20 but not over \$75 per dozen; and beverage servers valued over \$50 but not over \$180 per dozen
	* * *
6911.10.80	Other.

United States Customs and Border Protection (“CBP”) has previously determined the distinction between porcelain table-/kitchenware for household use and those (in the parlance of the tariff) “not for household” (commercial) use. The distinction was initially made in Headquarters Ruling Letter (“HQ”) 082780, dated December 18, 1989, which, under the auspices of the Tariff Schedules of the United States (“TSUS”), differentiated, based upon “chief use” (the TSUS predecessor to “principal use” in the HTSUS; see below), between hotel ware and household ware, *i.e.*, porcelain dishes for private use in or commercially outside of the household. After discussing the nature and use of the articles, CBP concluded that:

In the case where restaurants and hotels special order household china in modified patterns more suitable for commercial uses, as described in situation (2) above such modification alone will not provide the imports with a utility different from the class. However, when such modifications include the hotel or restaurant logo or name, it is obvious that such china is in a class chiefly for hotel purposes.

Thus, household china which has been special ordered and modified for hotel and restaurant use by incorporating the hotel/restaurant logo or name in the design, is no longer in the class of china for household use, but belongs to the class of china that is chiefly used for hotels and restaurants. HQ 082780 at page 5.

CBP reached a similar conclusion in HQ 959745, dated July 20, 1998. At issue was the classification of ceramic dinnerware for use in the rental and private catering industries. The merchandise was imported from a supplier that sold “tableware designed exclusively for institutional use and sold expressly and exclusively to institutional buyers such as restaurants, hotels, airlines, nursing homes and hospitals.” CBP referred to HQ 082870 with approval, noting that:

On a case-by-case basis, decisions under the Tariff Schedules of the United States (TSUS) - the HTSUS predecessor tariff - are deemed instructive in interpreting HTSUS provisions, provided the nomenclature remains unchanged and no dissimilar interpretation is required by the text of the HTSUS. See H. Rep. No. 100-576, 100th Cong., 2d Sess. 548, 550 (1988), a conference report to the Omnibus Trade & Competitiveness Act of 1988, Pub. L. No. 100-418. The nomenclature of the TSUS and the HTSUS are identical. Both provisions distinguish between “hotel or restaurant ware and other ware not household ware” and “household” ware. As the language of the two nomenclatures is identical, and the issue is essentially the same, we must consider HQ 082780, dated December 18, 1989, which was based on the TSUS. The only difference between the TSUS and the HTSUS in heading 6911 is the standard of use. “Principal use” replaced the prior standard of “chief use.”

The principal use criteria of the HTSUS are set forth in Additional U.S. Rule of Interpretation 1(a), which provides that:

In the absence of special language or context which otherwise requires— (a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that

class or kind to which the imported goods belong, and the controlling use is the principal use.

After applying the principal use criteria set forth in Additional U.S. Rule of Interpretation 1(a) to the HTSUS and the *Carborundum* factors (see generally *U.S. v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), *cert. denied*, 429 U.S. 979 (1977)) (they include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use), CBP concluded that the chinaware in question was of the class or kind principally used for other than household use, classifiable under subheading 6911.10.10, HTSUS. In discussing the determination made in HQ 082780 above, CBP noted that:

It is the use of the chinaware and not the physical composition that is critical for classification purposes. For example, in HQ 082780, Customs held that if a plate was emblazoned with a logo or crest of the hotel or restaurant, it was found to be hotel ware regardless of the fact that without the logo, crest or symbol the chinaware would be classified as household chinaware. HQ 959745 at page 6.

We consider the meal service provided in first and business class of the major airlines to be similar to that received in a hotel or restaurant. Distinctive porcelain table- or kitchenware is used to serve meals and create ambiance or a sense of luxury. Thus, we find porcelain table- and kitchen ware intended for exclusive use on commercial airlines to be *ejusdem generis* with the articles classified as porcelain table- or kitchenware not for household use under subheading 6911.10.10, HTSUS. The Court of International Trade ("CIT") has stated that the canon of construction *ejusdem generis*, which means literally, of the same class or kind, teaches that "where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described." *Nissho-Iwai American Corp. v. United States (Nissho)*, 10 CIT 154, 156 (1986). The CIT further stated that "[a]s applicable to customs classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms." *Nissho*, p. 157. The porcelain dishes for use on aircraft, manufactured with the name and model numbers for a specific airline, are substantially similar to those used in restaurants or hotels. The information presented establishes that the articles are not intended for household use but rather are intended for exclusive use in front cabin food service on a commercial airline.

**HOLDING:**

The porcelain table-/kitchenware for use on commercial aircraft are classified under subheading 6911.10.1000, HTSUSA, which provides for tableware, kitchenware, other household articles and toilet articles, of porcelain or china: tableware and kitchenware: hotel or restaurant ware and other ware not household ware. The general, column one rate of duty is 25% per cent *ad valorem* per dozen pieces.



**EFFECT ON OTHER RULINGS:**

NYs K88482, K88488 and K88494 are revoked. In accordance with 19 U.S.C. § 1625 (c)(2), this ruling will become effective sixty (60) days after its publication in the *Customs Bulletin*.

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

cc: National Commodity Specialist Division  
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