

U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, April 3, 2002.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

JOHN DURANT,
(for Douglas M. Browning, Acting Assistant Commissioner,
Office of Regulations and Rulings.)

PROPOSED REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF COMPONENTS FOR ELECTRICAL TRANSFORMER CORES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of ruling letter and revocation of treatment relating to tariff classification of components for electrical transformer cores.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling relating to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of components for electrical transformer cores, and to revoke any treatment Customs has previously accorded to substantially identical transactions. These articles are individual pieces of alloy steel, cut to specific sizes and shapes, for use as components of cores for electrical transformers. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before May 17, 2002.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927-0760.

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), 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 based on the premise that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, 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 declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other 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 Customs intends to revoke a ruling relating to the tariff classification of components for electrical transformer cores. Although in this notice Customs is specifically referring to one ruling, *HQ* 958077, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been identified. Any party who has received an interpretative 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 Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Cus-

toms personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In *HQ* 958077, dated January 31, 1996, certain steel pieces, cut to specific sizes and shapes in Canada from alloyed silicon electrical steel in coils, were held to be classifiable in subheading 7226.10.50 (now 7226.11.90), HTSUS, as flat-rolled products of grain oriented, silicon electrical steel, of a width of less than 300 mm. This ruling was based on the fact that the merchandise conformed to the tariff definition in Chapter 72, HTSUS, for *Flat-rolled products*. The ruling also denied originating-goods status under the North American Free Trade Agreement (NAFTA), for the merchandise entering the customs territory. *HQ* 958077 is set forth as "Attachment A" to this document.

It is now Customs position that these cut-to-size steel shapes are classifiable in subheading 8504.90.95, HTSUS, as other parts of electrical transformers. Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke *HQ* 958077 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis in *HQ* 965472, which is set forth as "Attachment B" to this document. The change in classification proposed by *HQ* 965472 is sufficient to confer originating-goods status under the NAFTA. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment it previously accorded to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: March 14, 2002.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, January 31, 1996.
CLA-2 RR:TC:MM 958077 JAS
Category: Classification
Tariff No. 7226.10.50

MR. MAGNUS WALLER
CORMAG, INC.
279 Sumach Drive, RR #2
Burlington, Ontario L7R 3X5

Re: Transformer Cores; Flat-Rolled Products of Other Alloy Steel, Chapter 72, Note 1(k); Unfinished Parts of Apparatus for Transforming Electrical Current, Subheading 8504.90.90; Originating Goods, North American Free Trade Agreement (NAFTA); General Note 12(b)(ii)(A), General Note 12(t)/85.8.

DEAR MR. WALLER:

In a letter, dated June 5, 1995, you inquire whether the processing in Canada of alloy steel in coils from the United Kingdom is sufficient to confer originating goods status for purposes of the North American Free Trade Agreement (NAFTA). Your letter to us was in response to NY 807312, dated March 17, 1995, in which the Area Director of Customs, New York Seaport, requested certain additional information. In preparing this response, full consideration was given to the further information you provided to this office by telephone on December 20, 1995.

Facts:

The merchandise entering the customs territory of the United States from Canada is individual pieces of alloyed steel, each measuring 4 inches wide, from 10 to 20 inches long, and from .009 to .014 inch in thickness. These steel pieces, which will be incorporated into cores for electrical transformers, are made in Canada from alloyed, grain oriented, electrical steel from the United Kingdom imported into Canada in coils. In Canada, the steel is uncoiled and the individual pieces cut to specific sizes and shapes as required by the transformer manufacturer. These pieces, referred to in the trade as legs and yokes, are ready for assembly, without further fabrication. You state that after importation into the United States, several thousand of these steel pieces are stacked and clamped into an E-shape, and the legs of the E are then encased in copper windings to complete the transformer. Electricity is passed through the copper to magnetize the core. It is your contention that these steel shapes are transformed in Canada into unfinished transformer cores that, upon importation into the customs territory of the United States, are classifiable in subheading 8504.90.90, Harmonized Tariff Schedule of the United States (HTSUS), as other parts of electrical transformers. In your opinion, this is a change in tariff classification sufficient to confer originating goods status on the merchandise for purposes of the NAFTA.

Issue:

Whether the processing in Canada of alloyed, grain oriented, electrical steel in coils from a non-NAFTA country, is sufficient to confer originating goods status for purposes of the NAFTA.

Law and Analysis:

To be eligible for tariff preferences under the NAFTA, goods must be "originating goods" within the rules of origin in General Note 12(b), HTSUS. General Notes 12(b)(I) and (ii)(A), HTSUS, state:

[f]or the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as "*goods originating in the territory of a NAFTA party*" only if—

(I) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or

(II) they have been transformed in the territory of Canada, Mexico and/or the United States so that—

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in

tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein * * *

One such authorized change in tariff classification is a change to subheading 8504.90 from any other heading. **General Note 12(t)/85.8, HTSUS.** In this regard, the term ***Flat-rolled products*** is defined in relevant part as rolled products of solid rectangular (other than square) cross section, which do not conform to the definition of Rule 1(ij) (Semifinished products), in the form of coils of successively superimposed layers, or straight lengths, which if of a thickness less than 4.75 mm are of a width measuring at least 10 times the thickness or if of a thickness of 4.75 mm or more are of a width which exceeds 150 mm and measures at least twice the thickness. **Chapter 72, Note 1(k), HTSUS.**

You state the alloyed, grain oriented, electrical steel in coils entering Canada is provided for either in heading 7225 or in heading 7226. The processing in Canada results in individual steel pieces that are straight lengths of a thickness less than 4.75 mm with a width measuring at least 10 times the thickness. Upon importation into the United States, the individual steel pieces remain flat-rolled products of heading 7226 and an authorized change in tariff classification does not occur. For this reason, the goods are not eligible for preferential treatment under the NAFTA.

Holding:

Under the authority of GRI 1, the individual pieces of alloyed, grain oriented, electrical steel, as described, are provided for in heading 7226. They are classifiable in subheading 7226.10.50, HTSUS, as flat-rolled products of other alloy silicon electrical steel, of a width of less than 300 mm. As they are not "*goods originating in the territory of a NAFTA party,*" they are dutiable at the rate of 6.3 percent ad valorem.

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 965472 JAS
Category: Classification
Tariff No. 8504.90.95

MR. CHRIS BROWN
COGENT POWER, INC.
*279 Sumach Drive, RR#2
Burlington, ON, Canada L7R 3X5*

Re: Alloy Steel Shapes for Use in Electrical Transformer Cores; *HQ 958077* Revoked.

DEAR MR. BROWN:

In our ruling to CorMag Inc., the predecessor to Cogent Power Inc., *HQ 958077*, dated January 31, 1996, the processing in Canada of alloy steel in coils from the United Kingdom into cut-to-size steel shapes was held to be insufficient to confer originating-goods status under the North American Free Trade Agreement (NAFTA), on the steel shapes entering the customs territory. We have reconsidered this decision and now believe that it is incorrect.

Facts:

As described in *HQ 958077*, the merchandise entering the customs territory of the United States from Canada is individual pieces of alloyed steel, each measuring 4 inches wide, from 10 to 20 inches long, and from .009 to .014 inch in thickness. These steel pieces, which will be incorporated into cores for electrical transformers, are made in Canada from

alloyed, grain-oriented, electrical steel from the United Kingdom imported into Canada in coils. In Canada, the steel is uncoiled and the individual pieces cut to specific sizes and shapes as required by the transformer manufacturer. These pieces, referred to in the trade as legs and yokes, are ready for assembly, without further fabrication. After importation, several thousand of these steel pieces are stacked and clamped into an E-shape, and the legs of the E are then encased in copper windings to complete the transformer. Electricity is passed through the copper to magnetize the core.

We rejected your proposed classification of the merchandise as unfinished transformer cores classifiable in subheading 8504.90.95, Harmonized Tariff Schedule of the United States (HTSUS), as other parts of electrical transformers. It was Customs belief that though cut-to-size, the shapes nevertheless conformed to the definition for *Flat-rolled products*, in Chapter 72, Note 1(k), HTSUS. Classification of the merchandise as a flat-rolled product is not sufficient to confer originating-goods status on the merchandise under the NAFTA. However, we have now had occasion to reconsider both the classification of this merchandise, and its status as originating goods.

Issue:

Whether the processing in Canada of alloyed, grain-oriented, electrical steel in coils from a non-NAFTA country, is sufficient to confer originating-goods status for purposes of the NAFTA.

Law And Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

Additional U.S. Rule on Interpretation 1(c), HTSUS, states, in part, that in the absence of special language or context which otherwise requires a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for "parts" shall not prevail over a specific provision for such part. It was on this basis that *HQ 958077* concluded that the merchandise at issue was specifically provided for as a flat-rolled product.

Subject to certain exceptions that are not relevant here, goods that are identifiable as parts of machines or apparatus of Chapter 84 or Chapter 85 are classifiable in accordance with Section XVI, Note 2, HTSUS. Parts which are goods included in any of the headings of Chapters 84 and 85 are in all cases to be classified in their respective headings. *See* Note 2(a). Other parts, if suitable for use solely or principally with a particular machine, or with a number of machines of the same heading, are to be classified with the machines of that kind. *See* Note 2(b). Upon further consideration of the law in these circumstances, we believe that Section XVI, Note 2, HTSUS, provides "special language or context" that requires a determination of whether the cut-to-size steel shapes are goods included in a heading of chapter 84 or 85, or are parts suitable for use solely or principally with a machine or apparatus of either of those chapters. *See Mitsubishi International Corporation v. U.S.*, 5F. Supp. 2d 991 (CIT 1998), *HQ 954768*, dated January 4, 1994, and cases cited.

The facts indicate that the individual pieces at issue are cut to specific sizes and shapes as required by the transformer manufacturer. These pieces are ready for assembly, without further fabrication, into cores for electrical transformers. For tariff purposes, a "part" is an integral, constituent component of another article, necessary to the completion of the article with which it is used, and which enables that article to function in the manner for which it was designed. Upon the stated facts, it is apparent from their intended use in cores for electrical transformers, that the cut-to-size steel pieces or shapes qualify as parts for tariff purposes. They are not goods included in any heading of chapters 84 or 85. Under Section XVI, Note 2(b), HTSUS, therefore, the merchandise appears to be principally, if not solely, used with electrical transformers of heading 8504. Classification as parts, in subheading 8504.90.95, HTSUS, is therefore appropriate.

To be eligible for tariff preferences under the NAFTA, goods must be "originating goods" within the rules of origin in General Note 12(b), HTSUS. General Notes 12(b)(I) and (ii)(A), HTSUS, state:

[f]or the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set

forth in the tariff schedule as “*goods originating in the territory of a NAFTA party*” only if—

(I) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or

(II) they have been transformed in the territory of Canada, Mexico and/or the United States so that—

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein * * *

One such authorized change in tariff classification is a change to subheading 8504.90 from any other heading. General Note 12(t)/85.8, HTSUS. As stated in *HQ 958077*, the alloyed, grain-oriented, electrical steel in coils entering Canada constitutes *Flat-rolled products*, as defined in Chapter 72, Note 1(k), HTSUS. The merchandise is provided for either in heading 7225 or in heading 7226, HTSUS, depending on width. As the processing in Canada results in individual steel pieces that qualify as parts under subheading 8504.90, HTSUS, the requisite originating-goods status is conferred on the merchandise entering the customs territory, as required by General Note 12(t)/85.8, HTSUS.

Holding:

Under the authority of GRI 1, and Section XVI, Note 2(b), HTSUS, the individual pieces of alloyed, grain-oriented electrical steel, imported into the customs territory in the manner herein described, are provided for in heading 8504. They are classifiable in subheading 8504.90.95, HTSUS. The merchandise qualifies as “*goods originating in the territory of a NAFTA party*,” and is therefore eligible for preferential tariff treatment under the NAFTA.

Effect on Other Rulings:

HQ 958077, dated January 31, 1996, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND OF
TREATMENT RELATING TO THE TARIFF CLASSIFICATION
OF DESMODUR IL

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter and treatment relating to the classification of Desmodur IL.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling concerning the tariff classification of Desmodur IL, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before May 17, 2002.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulation and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, General Classification Branch, (202) 927-2326.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of Desmodur IL. Although in this notice Customs is specifically referring to New York Ruling Letter (NY) 850109, dated May 1, 1990, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NY 850109, Customs classified Desmodur IL in subheading 3909.30.00, HTSUS, which provides for "[A]mino-resins, phenolic resins and polyurethanes, in primary forms: [O]ther amino-resins." NY 850109 is set forth as Attachment "A" to this document. It is now Customs position that this article was not correctly classified in subheading 3909.30.00, HTSUS, because Desmodur IL is not an amino resin, a polyurethane or a resol. Rather, Desmodur IL is a product specified in note 3 to chapter 39 as an "other prepolymer" classifiable in heading 3911, HTSUS.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY 850109 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) 965435. (*see* Attachment "B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: March 29, 2002.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, May 1, 1990.
CLA-2-29:S:N:N1:238 850109
Category: Classification
Tariff No. 3909.30.0000

MS. KAREN K. DAVIS
MOBAY CORPORATION
Mobay Road
Pittsburgh, PA, 15205-9741

Re: The tariff classification of Desmodur IL from West Germany.

DEAR MS. DAVIS:

In your letter dated February 20, 1990 you requested a tariff classification ruling.

Desmodur IL is an aromatic polyisocyanate based on polymeric toluene diisocyanate (TDI), and dissolved in butyl acetate.

The applicable subheading for the Desmodur IL will be 3909.30.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for other amino resins. The duty rate will be 6.9 percent ad valorem.

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

This merchandise may be subject to the regulations of the Environmental Protection Agency, Office of Pesticides and Toxic Substances. You may contact them at 402 M Street, SW, Washington, D.C. 20460, telephone number (800) 424-9086.

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 B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.
CLA-2 RR:CR:GC 965435 AM
Category: Classification
Tariff No. 3911.90.45

MR. KENNETH G. WEIGEL
MR. DAVID P. SANDERS
KIRKLAND & ELLIS
655 Fifteenth Street, N.W.
Washington, DC 20005

Re: NY 850109: Desmodur IL.

DEAR MR. WEIGEL AND MR. SANDERS:

This is in reference to New York Ruling Letter (NY) 850109, issued to Mobay Corporation, by Customs National Commodity Specialist Division, New York, on May 1, 1990, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of Desmodur IL. We have reviewed the decision in NY 850109, and have determined that the classification set forth therein, is in error. This ruling revokes NY 850109.

In your electronic message of March 27, 2002, you state that "Mobay was merged out of existence in Miles, Inc., which was then merged out of existence into Bayer Corp." We are therefore addressing this ruling to you as counsel for Bayer Corporation.

Facts:

Desmodur IL is formed by the condensation of diisocyanates. It is described in NY 850109 as an aromatic polyisocyanate based on polymeric toluene diisocyanate (TDI) dissolved in butyl acetate. The average number of repeating monomer units is seven. After importation, Desmodur IL is reacted with either a polyether or a polyester polyol to form polyurethane coatings for wood, metal and paper substrates.

Customs Laboratory Report 2-1990-30613 dated April 3, 1990, states “[T]he sample, a clear colorless liquid, is a solution of 1,3,5-bis(3-isocyanato-4-methylphenyl)-2,4,6-triazine(1H,3H,5H)-trione (56% by weight) in an organic solvent (butyl acetate). According to information received, Desmodur IL can be combined with polyesters to formulate fast drying 2 component polyurethane coatings. In our opinion, the sample is a prepolymer for polyurethane resins.”

In NY 850109, Customs classified the merchandise in subheading 3909.30.00, HTSUS, which provides for “[A]mino-resins, phenolic resins and polyurethanes, in primary forms; [O]ther amino-resins.”

Issue:

What is the classification of Desmodur IL under the HTSUS?

Law and Analysis:

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any related section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

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

The following HTSUS provisions are under consideration:

3909	Amino-resins, phenolic resins and polyurethanes, in primary forms:
3909.30.00	Other amino-resins
*	* * * * *
3911	Petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones and other products specified in note 3 to this chapter, not elsewhere specified or included, in primary forms:
3911.90	Other: [than Petroleum resins, coumarone, indene or coumarone-indene resins; polyterpenes] Other: [than elastomeric] Containing monomer units which are aromatic or modified aromatic, or which are obtained derived or manufactured in whole or in part therefrom: Thermosetting:
3911.90.45	Other: [than 1,1'-Bis(methylenedi-4,1-phenylene)-1H-pyrrole-2,5-dione, copolymer with 4,4'-methylenebis (benzeneamine); and Hydrocarbon novolac cyanate ester]

Chapter 39, note 3, HTSUS, states the following:

Headings 3901 to 3911 apply only to goods of a kind produced by chemical synthesis, falling in the following categories:

- (a) Liquid synthetic polyolefins of which less than 60 percent by volume distills at 300°C, after conversion to 1,013 millibars when a reduced-pressure distillation method is used (headings 3901 and 3902);
- (b) Resins, not highly polymerized, of the coumarone-indene type (heading 3911);

- (c) Other synthetic polymers with an average of at least five monomer units;
- (d) Silicones (heading 3910);
- (e) Resols (heading 3909) and other prepolymers.

EN 39.09 states, in pertinent part, the following:

This heading covers:

(1) Amino-resins

These are formed by the condensation of amines or amides with aldehydes (formaldehyde, furfuraldehyde, etc.). The most important are urea resins (for example, urea-formaldehyde), thiourea resins (for example, thiourea-formaldehyde), melamine resins (for example, melamine-formaldehyde) and aniline resins (for example, aniline-formaldehyde).

* * * * *

Polyamine resins, such as poly(ethyleneamines), are not amino-resins and fall in heading 39.11 when complying with the requirements of Note 3 to this Chapter.

* * * * *

(3) Polyurethanes

This class includes all polymers produced by the reaction of polyfunctional isocyanates with polyhydroxy compounds, such as, castor oil, butane-1,4-diol, polyether polyols, polyester polyols. Polyurethanes exist in various forms, of which the most important are the foams, elastomers, and coatings. They are also used as adhesives, moulding compounds and fibres.

Desmodur IL is not an amino resin formed by the condensation of amines or amides with aldehydes. The repeating unit portion of Desmodur IL is polymerized by isocyanate groups. Subheading 3909.50.50, HTSUS, provides for other polyurethanes. Polyurethanes include all polymers produced by the reaction of polyfunctional isocyanates with polyhydroxy compounds. Only after importation will the product, a polyfunctional isocyanate, be reacted with a polyether or polyol to form polyurethane. Desmodur IL as imported is a prepolymer for making polyurethane resins and is not a polyurethane. Chapter 39, Note 3(e) specifies that resols are classified in heading 3909, HTSUS, but that other prepolymers may be classified in headings 3901 through 3911, HTSUS. Desmodur IL is not a resol. Hence, Desmodur IL is a product specified in note 3 to chapter 39 as a prepolymer and by the terms of those headings, falls to be classified in heading 3911, HTSUS.

Holding:

Desmodur IL is classified in subheading 3911.90.45, HTSUS, the provision for “[P]etroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones and other products specified in note 3 to this chapter, not elsewhere specified or included, in primary forms: [O]ther: [O]ther: [C]ontaining monomer units which are aromatic or modified aromatic, or which are obtained derived or manufactured in whole or in part therefrom: [T]hermosetting: [O]ther.”

Effect on Other Rulings:

NY 850109, dated May 1, 1990, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED MODIFICATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO TARIFF
CLASSIFICATION OF CERTAIN WOVEN PAPER PLACE MATS

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of proposed modification of tariff classification ruling letter and revocation of treatment relating to the classification of certain woven paper place mats (placemats).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify one ruling relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain woven paper placemats. Similarly, Customs 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 May 17, 2002.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Timothy Dodd, Textiles Branch: (202) 927-1735.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

ing reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify one ruling relating to the tariff classification of certain woven paper placemats. Although in this notice Customs is specifically referring to one ruling letter, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved with substantially identical merchandise should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to this notice.

In New York Ruling Letter (NY) E88353, dated November 16, 1999, the Customs Service classified a certain woven paper placemat under subheading 6302.59.0020, HTSUSA, which covers other table linen of other textile materials. NY E88353 is set forth as "Attachment A" to this document.

It is now Customs position that the proper classification for the woven paper placemat is subheading 4601.99.0500, HTSUSA, as plaits and similar products of plaiting materials. Proposed Headquarters Ruling Letter (HQ) 965233 modifying NY E88353 is set forth as "Attachment B" to this document.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify, in part, NY E88353 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed HQ 965233, *supra*. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. Before tak-

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

Dated: April 1, 2002.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, November 16, 1999.
CLA-2-63:RR:NC:TA:349 E88353
Category: Classification
Tariff No. 6302.40.2020 and 6302.59.0020

MS. LISA RAGAN
LISA RAGAN CUSTOMS BROKERAGE
795 Terrell Mill Rd.
Suite 207
College Park, GA 30349

Re: The tariff classification of two placemats from Taiwan.

DEAR MS. RAGAN:

In your letter dated October 19, 1999 you requested a classification ruling on behalf of Fashion Industries Inc.

You submitted two placemats. Both placemats are made from paper yarn. One placemat is rectangular in shape and it measures approximately 13 x 19.5 inches. This blue colored placemat is of a knit construction. The second placemat is circular in shape and it measures approximately 15 inches in diameter. The white colored mat is of an interlaced construction.

The applicable subheading for the rectangular mat will be 6302.40.2020, Harmonized Tariff Schedule of the United States (HTS), which provides for bed linen, table linen, toilet linen and kitchen linen: table linen, knitted or crocheted: other * * * other. The duty rate will be 7.2 percent ad valorem.

The applicable subheading for the circular mat will be 6302.59.0020, HTS, which provides for bed linen, table linen, toilet linen and kitchen linen: other table linen: of other textile materials * * * other. The rate of duty will be 9.4 percent ad valorem.

The knit placemat falls within textile category designation 666 while the interlaced placemat falls within textile category designation 899. Based upon international textile trade agreements products of Taiwan are subject to quota and the requirement of a visa. The interlaced mat is only subject to 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. 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 John Hansen at 212-637-7078.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:TE 965233 ttd
Category: Classification
Tariff No. 4601.99.0500

MS. LISA RAGAN
LISA RAGAN CUSTOMS BROKERAGE
795 Terrell Mill Rd., Suite 207
College Park, GA 30349

Re: Reconsideration of New York Ruling Letter E88353, dated November 16, 1999.

DEAR MS. RAGAN:

This is in response to your letter, dated June 1, 2001, filed on behalf of Fashion Industries, requesting reconsideration, in part, of New York Ruling Letter (NY) E88353, dated November 16, 1999, regarding classification of a round woven place mat under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Your letter, which was originally submitted to the Customs National Commodity Specialist Division in New York, was referred to this office for reply. We note that a new sample representative of the original, but blue in color, was submitted and considered for this reconsideration. After review of NY E88353, Customs has determined that the classification of the round woven place mat in subheading 6302.59.0020, HTSUSA, was incorrect. For the reasons that follow, this ruling modifies, in part, NY E88353.

Facts:

In NY E88353, the round place mat under consideration was classified in subheading 6302.59.0020, HTSUSA, which provides for other table linen of other textile materials. The article at issue is a round, woven paper place mat (placemat). The circular mat is blue in color, about 15 inches in diameter and is constructed of woven paper strips having a width of approximately 1 millimeter (mm). The strips of paper have been folded longitudinally before being woven into the mat.

Your submission of June 1, 2001, suggested classification of the subject merchandise in heading 4818, HTSUSA, as household articles of paper, including tablecloths and table napkins.

Issue:

Whether the subject merchandise is classifiable in heading 6302, HTSUSA, which provides for, *inter alia*, table linen; heading 4818, HTSUSA, which provides for, *inter alia*, various household articles made of paper; or heading 4601, HTSUSA, which provides for, *inter alia*, plaits and similar products of plaiting materials.

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be "determined according to the terms of the headings and any relative section or chapter notes." In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level

(for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. *See* T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

Heading 6302, HTSUSA, provides for, *inter alia*, table linen. The EN state that the heading includes “[t]able linen, e.g., table cloths, table mats and runners, tray cloths, table centers, serviettes, tea napkins, sachets for serviettes, doilies, drip mats” (emphasis added). The EN also state that these articles are usually made of cotton or flax, but sometimes also of hemp, ramie or man-made fibres, etc. Accordingly, to be classifiable as table linen in heading 6302, HTSUSA, the woven paper placemat at issue must be constructed of paper yarn within Section XI, HTSUSA, which covers textiles and textile articles. Pursuant to Section XI, the classification of paper yarns is governed by heading 5308, HTSUSA, which expressly provides for, *inter alia*, paper yarn. The EN to heading 5308 explain that paper yarn is obtained by twisting or rolling lengthwise strips of moist paper. *See e.g.*, HQ 957758, dated June 23, 1995 (wherein Customs found a paper handbag to be made of paper yarn). The EN further state that the heading does not cover paper simply folded one or more times lengthwise.

In NY E88353, when the merchandise at issue was initially examined, Customs believed that the subject placemat was made of paper yarn, and therefore classifiable in heading 6302, HTSUSA, as table linen. After further review, we find that the subject placemat, unlike the handbag at issue in HQ 957758, is not constructed of paper yarn. The placemat under consideration is constructed of paper strips folded longitudinally and woven into the shape of the placemat. The instant strips of paper are neither twisted nor rolled. As the subject paper strips have been folded longitudinally and not twisted or rolled prior to being woven, the placemat is not made of paper yarn in the manner defined by heading 5308, HTSUSA. Accordingly, the subject item is not properly classifiable in heading 6302, HTSUSA, as table linen.

Heading 4818, HTSUSA, provides, *inter alia*, for various household articles made of paper, including tablecloths and table napkins. Note 1(ij) to Chapter 48, HTSUSA, provides that articles of Chapter 46 (manufactures of plaiting material) are not covered in Chapter 48. Note 1 of Chapter 46, HTSUSA, defines “*plaiting materials*” as materials in a state or form suitable for plaiting, interlacing or similar processes, including strips of paper.

Although made of paper, the placemat under consideration is more accurately described as made of woven paper strips, having an approximate width of 1 mm. These strips of paper have been folded longitudinally before being woven into the circular placemat. Accordingly, the subject paper strips are “*plaiting materials*” as defined by the Note 1 of Chapter 46. Therefore, based on Note 1(ij) to Chapter 48, HTSUSA, the subject placemat is excluded from Chapter 48 and not properly classifiable in heading 4818, HTSUSA, as household articles of paper, including tablecloths and table napkins.

Heading 4601, HTSUSA, provides for plaits and similar products of plaiting materials, whether or not assembled into strips, plaiting materials, plaits and similar products of plaiting materials, bound together in parallel strands or woven, in sheet form, whether or not being finished articles (for example, mats, matting, screens). The EN to heading 4601 provide in pertinent part that goods covered under heading 4601, HTSUSA, including mats, are “either formed of strands woven together, generally in the manner of warp and weft fabrics, or they may be made of parallel strands placed side by side and maintained in position in the form of sheets by transverse binding threads or strands holding the successive parallel strands.” Thus, the language indicates that the mats covered in heading 4601, HTSUSA, may be woven with a generally warp and weft-like orientation. *See* HQ 961103, dated September 24, 2001.

In HQ 082996, dated August 22, 1989, Customs ruled that a plaited paper handbag, constructed of strips of paper woven together in a warp and weft manner, was properly classified in heading 4602, HTSUSA, as an other article made up from goods of heading 4601. Moreover, in HQ 087352, dated January 14, 1991, Customs classified a placemat of woven abaca strips in heading 4601, HTSUSA, as matting. *See* also HQ 084801, dated September 7, 1989.

The strips of paper composing the placemat at issue, like the paper strips in HQ 082996, are plaiting materials as defined in Note 1 of Chapter 46, HTSUSA, as they are suitable for weaving or plaiting the shape of the subject placemat. Moreover, the placemat under consideration, like the placemat in HQ 084801, is a mat as contemplated by heading 4601,

HTSUSA. The subject placemat is also woven with a basic warp and weft-like orientation as described in the EN to heading 4601. Accordingly, the subject placemat is a product of plaiting materials properly classifiable in heading 4601, HTSUSA.

As the subject woven paper placemat is made of plaited paper strips, it is classifiable under subheading 4601.99.0500, HTSUSA, which provides for plaiting materials, * * * bound together in parallel strands or woven, in sheet form, whether or not being finished articles (for example, mats, matting, screens) * * * other.

Holding:

Based on the foregoing, the subject merchandise is classified in subheading 4601.99.0500, HTSUSA, which provides for "Plaits and similar products of plaiting materials, whether or not assembled into strips; plaiting materials, plaits and similar products of plaiting materials, bound together in parallel strands or woven, in sheet form, whether or not being finished articles (for example, mats, matting, screens): Other: Other: Plaits and similar products of plaiting materials, whether or not assembled into strips." The applicable rate of duty is 2.7 percent *ad valorem*. Articles within this subheading, regardless of origin, are not subject to quota or visa requirements.

In accordance with the above, NY E88353 is modified, in part.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
CERTAIN TWISTED NYLON YARN ON A SPOOL

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter and treatment relating to the classification of certain twisted nylon yarn on a spool.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke one ruling relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain twisted nylon yarn on a spool. Similarly, Customs 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 May 17, 2002.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Timothy Dodd, Textiles Branch: (202) 927-1735.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify one ruling relating to the tariff classification of certain twisted nylon yarn on a spool. Although in this notice Customs is specifically referring to one ruling letter, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved with substantially identical merchandise should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice,

may raise issues of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to this notice.

In New York Ruling Letter (NY) H85147, dated August 30, 2001, the Customs Service classified certain twisted nylon yarn on a spool under subheading 5406.10.0090, HTSUSA, which provides for man-made filament yarn (other than sewing thread), put up for retail sale: synthetic filament yarn: other. NY H85147 is set forth as "Attachment A" to this document.

After review of NY H85147, Customs has determined that the proper classification for the twisted nylon yarn on a spool is subheading 5402.61.0000, HTSUSA, as synthetic filament yarn (other than sewing thread), not put up for retail sale, * * *: other yarn, multiple (folded) or cabled. Proposed Headquarters Ruling Letter (HQ) 965347 revoking NY H85147 is set forth as "Attachment B" to this document.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY H85147, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed HQ 965347, *supra*. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

Dated: April 1, 2002.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, August 30, 2001.
CLA-2-54:RR:NC:N3:351 H85147
Category: Classification
Tariff No. 5406.10.0090

MS. BRENDA E. SMITH
IMPORT SUPERVISOR
FRITZ COMPANIES, INC.
7001 Chatham Center Dr., Suite 100
Savannah, GA 31419

Re: The tariff classification of twisted nylon cord on a spool from Hong Kong.

DEAR MS. SMITH:

In your letter dated August 16, 2001, you requested a ruling on behalf of Lowes Companies, Inc., on tariff classification.

You describe the merchandise as twisted nylon twine, #18, 0.06" in diameter, with a linear weight of 10 grams per 10 meters, which works out to a decitex of 1,000.

The applicable subheading for this product will be 5406.10.0090, Harmonized Tariff Schedule of the United States (HTS), which provides for man-made filament yarn (other than sewing thread), put up for retail sale: synthetic filament yarn, other. The general rate of duty will be 9.2 percent ad valorem.

This product falls within textile category designation 200. Based upon international textile trade agreements products of Hong Kong are currently 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. 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 Mitchel Bayer at 212-637-7086.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:TE 965347 ttd
Category: Classification
Tariff No. 5402.61.0000

BRENDA E. SMITH
IMPORT SUPERVISOR
FRITZ COMPANIES, INC.
7001 Chatham Center Dr., Suite 100
Savannah, GA 31419

Re: Reconsideration of New York Ruling Letter H85147, dated August 30, 2001.

DEAR MS. SMITH:

This letter is pursuant to Customs reconsideration of New York Ruling Letter (NY) H85147, dated August 30, 2001, filed on behalf of Lowes Companies, Inc., regarding classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of certain twisted nylon yarn on a spool. After review of NY H85147, Customs has determined that the classification of the twisted nylon yarn on a spool in subheading 5406.10.0090, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes NY H85147.

Facts:

The merchandise at issue is a three-ply, twisted, nylon yarn on a spool (#18) described as having a diameter of .06 inches and linear weight of 10 grams per 10 meters, with a decitex of 1,000. A visual examination of the item reveals that the yarn is composed of three individual strands of synthetic multifilament nylon yarn, twisted counter-clockwise, in excess of 50 turns per meter. The yarn is orange in color and wrapped on a black plastic spool with a revolving handle.

Issue:

Whether the subject merchandise is classifiable in heading 5406, HTSUSA, which provides for man-made filament yarn (other than sewing thread), put up for retail sale or in

heading 5402, HTSUSA, which provides for synthetic filament yarn (other than sewing thread), not put up for retail sale.

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be “determined according to the terms of the headings and any relative section or chapter notes.” In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. *See* T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

Section XI, Chapter 54, HTSUSA, provides for man-made filaments. Note 1 to Chapter 54 provides that the terms “*man-made*”, “*synthetic*” and “*artificial*” shall have the same meanings when used in relation to textile materials. Within Chapter 54, the competing headings under consideration are heading 5406, HTSUSA, which provides for man-made filament yarn (other than sewing thread), put up for retail sale and heading 5402, HTSUSA, which provides for synthetic filament yarn (other than sewing thread), not put up for retail sale.

Heading 5406, HTSUSA, provides for man-made filament yarn put up for retail sale. Note 4(A)(a)(i) to Section XI, HTSUSA, defines the term “*put up for retail sale*” as put up on cards, reels, tubes or similar supports, of a weight (including support) not exceeding 85 grams in the case of man-made filament yarn. The subject merchandise is twisted nylon filament yarn on a spool and it weighs 161.2 grams, including the spool. As the merchandise under consideration weighs more than 85 grams, it does not satisfy the definition of “*put up for retail sale*.” Moreover, none of the exceptions to the term “*put up for retail sale*” listed in Note 4(B) to Section XI, HTSUSA, apply to the merchandise under consideration. Thus, the subject nylon yarn on a spool is not properly classifiable in heading 5406, HTSUSA, as man-made filament yarn put up for retail sale.

Having precluded classification in heading 5406, HTSUSA, the next heading under consideration is heading 5402, HTSUSA, which provides for synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex. The EN to heading 5402 provide, in pertinent part, that the heading covers synthetic filament yarn (other than sewing thread), including:

- (1) **Monofilament** (monofil) of less than 67 decitex.
- (2) **Multifilament** obtained by grouping together a number of monofilaments (varying from two filaments to several hundred) generally as they emerge from the spinnerets * * *.

Accordingly, the EN to heading 5402, HTSUSA, encompasses both synthetic monofilament and multifilament. Moreover, nylon is a synthetic material. *See* Note 1 to Chapter 54, HTSUSA, and HQ 088557, dated May 23, 1991.

The merchandise at issue is a plied yarn composed of three individual multifilament nylon yarns twisted together. The subject yarn is composed of nylon, which is a synthetic, and it is clearly not sewing thread. Therefore, as a three-ply multifilament synthetic yarn, the subject yarn falls within the scope of the EN to heading 5402. Accordingly, the subject nylon yarn on a spool is properly classifiable in heading 5402, HTSUSA, as synthetic filament yarn. *See* HQ 958135, dated March 18, 1996, (nylon multifilament yarn classifiable in heading 5402) and NY 803904, dated January 6, 1995 (two-ply polyester multifilament embroidery thread on a spool, classifiable in heading 5402). *See also* NY E80158, dated April 1, 1999; and NY G86022, dated January 29, 2001.

As the instant merchandise is a three-ply, multifilament, nylon, yarn on a spool, it is classifiable under subheading 5402.61.0000, HTSUSA, which provides for synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex: Other yarn, multiple (folded) or cabled: Of nylon or other polyamides.

Holding:

Based on the foregoing, the subject merchandise is classifiable in subheading 5402.61.0000, HTSUSA, which provides for synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex: Other yarn, multiple (folded) or cabled: Of nylon or other polyamides. The applicable rate of duty is 7.8 percent *ad valorem* and the textile restraint category is 606.

NY H85147 is revoked.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service which is updated weekly and is available **for inspection** at your local Customs office. The *Status Report on Current Import Quotas (Restraint Levels)* is also available on the Customs Electronic Bulletin Board (CEBB) which can be found on the U.S. Customs Service Website at www.customs.gov.

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

JOHN DURANT,
Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF CERTAIN
TEXTILE LACE CAP AND HEADBAND WIG ACCESSORIES

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter and treatment relating to the classification of certain textile lace cap and headband wig accessories.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking one ruling relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain textile lace cap and headband wig accessories. Similarly, Customs is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed actions was published February 13, 2002, in the CUSTOMS BULLETIN, Vol. 36, No. 7. 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 June 17, 2002.

FOR FURTHER INFORMATION CONTACT: Timothy Dodd, Textiles Branch: (202) 927-1735.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the February 13, 2002, CUSTOMS BULLETIN, Vol. 36, No. 7, proposing to revoke New York Ruling Letter (NY) B82405 (March 24, 1997), relating to the tariff classification of certain textile lace cap and headband wig accessories, and to revoke any treatment accorded to substantially identical transactions. The period to submit comments expired on March 15, 2002. No comments were received.

In NY B82405, dated March 24, 1997, the Customs Service classified certain textile lace cap and headband wig accessories under subheading 6117.80.9540, HTSUSA, which covers other made up clothing accessories.

It is now Customs determination that the proper classification for the certain textile lace cap and headband wig accessories is subheading 6505.90.60, HTSUSA, which provides "Hats and other headgear, knitted or crocheted * * * Other: Of man-made fibers: Knitted or crocheted or made up from knitted or crocheted fabric: Not in part of braid." Headquarters Ruling Letter (HQ) 965180 revoking NY B82405 is set forth in the Attachment to this document.

Although in this notice Customs is specifically referring to one New York Rulings Letter (NY), this revocation covers any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY B82405, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 965180, *supra*. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise.

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

Dated: April 1, 2002.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 1, 2002.
CLA-2 RR:CR:TE 965180 ttd
Category: Classification
Tariff No. 6505.90.6045 and 6505.90.6090

MR. RICKY VILLENA
H.L.M. CARGO CLEARANCE BROKERS, INC.
P.O. Box 652623
Miami, FL 33265-2623

Re: Reconsideration of New York Ruling Letter B82405, dated March 24, 1997.

DEAR MR. VILLENA:

This letter concerns New York Ruling Letter (NY) B82405, dated March 24, 1997, regarding the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a textile lace cap and a textile lace headband. After review of that ruling, Customs has determined that the classification of the textile lace cap and headband in subheading 6117.80.9540, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes NY B82405.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-82, 107 Stat. 2057, 2186), notice of the proposed revocation of NYRL H81076 was published on February 13, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 7. As explained in the notice, the period within which to submit comments on this proposal was until March 15, 2002. No comments were received in response to this notice.

Facts:

In NY B82405, Customs classified the merchandise at issue in heading 6117, HTSUSA, as clothing accessories. The subject articles were described as a textile lace cap and a textile lace headband. Both articles are of a knit construction made from 90 percent polyester and 10 percent lycra. It is stated that these items will be used by the general public and cancer patients without hair to secure a wig onto the head. Each item features hook and loop tape on the outer surface to which the wig will be attached, and hook and eye closures at the rear that allow the items to be sized for the head.

Issue:

Whether the merchandise should be classified under heading 6117, HTSUSA, as clothing accessories; heading 6507, HTSUSA, as head-bands and linings and part linings; heading 6505, HTSUSA, as other headgear; or heading 6307, HTSUSA, as other made up textile articles.

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

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

One of the four possible headings in which the subject merchandise may be classified is heading 6117, HTSUSA, which provides for "other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories." Neither "clothing" nor "accessory" is defined in the tariff schedule or EN. In Headquarters Ruling Letter (HQ) 961167, dated November 28, 2000, Customs found that "clothing" is synonymous with the terms "apparel" and "garment," meaning " * * * articles which cover the trunk of the body." Moreover, Mary Brooks Picken's, *The Fashion Dictionary* (page 1) defines "accessory" as an article of apparel that completes the costume such as shoes, gloves, hats, bags, jewelry, neckwear, belts, boutonnieres, scarves. *Merriam-Webster's Collegiate Dictionary Online*, (2001), defines "accessory" as a thing of secondary or subordinate importance or an object or device not essential in itself but adding to the beauty, convenience, or effectiveness of something else. In HQ 088540, dated June 3, 1991, Customs defined "accessory" as an article that is related to the primary article, and intended for use solely or principally with a specific article.

In HQ 084857, dated June 28, 1989, and HQ 081945, dated January 29, 1990, Customs ruled that accessories to shoes are not considered clothing accessories of heading 6217, HTSUSA. HQ 084857 stated in pertinent part:

[I]n order to be classifiable under Heading 6217, an article must be a clothing accessory. In our view, shoes are commonly considered to be apparel accessories and not "clothing", and, while shoe covers may be considered to be shoe accessories, accessories of clothing accessories are not within the purview of Heading 6217.

This line of reasoning also extends to "clothing accessories" of heading 6117, HTSUSA. See HQ 963531, dated June 1, 2000; and HQ 963535, dated June 1, 2000. Therefore, in heading 6117, HTSUSA, accessories classifiable under this provision will be related to clothing, intended for use with clothing and of secondary importance to clothing. HQ 950470, dated January 7, 1992.

Applying these principles to the textile cap and headband under consideration, Customs concludes that these items are not "used solely or principally as an accessory to clothing." The subject cap and headband are both accessories; however, they are not accessories to clothing but rather accessories to a wig. Each item is intended to be worn under a wig, serving as a wig liner, which adds to a wig's effectiveness by improving its comfort and fit. Moreover, each item is intended for use solely or principally with a wig as the primary article. Neither the subject cap nor headband is intended to be worn absent a wig, which is indicated by the fastener tapes visible on their outer surfaces to which a wig attaches. However, as a wig itself is not an article of clothing (a wig of human hair, animal hair or textile materials is classifiable under heading 6704, HTSUSA), the subject cap and headband are accessories for an item that is not an article of clothing. Therefore, the subject items are not properly classifiable as accessories to clothing under heading 6117, HTSUSA.

Customs has previously ruled that textile headbands, ponytail holders and similar articles are properly classifiable as other clothing accessories of heading 6117 and 6217,

HTSUSA. See T.D. 96-24, 61 Fed. Reg. 10841 (Mar. 15, 1996). However, the subject headband is different than those considered in T.D. 96-24, which reads in pertinent part:

Textile headbands and ponytail holders accent or otherwise complete one's costume. In addition, these articles can be decorative and add to the beauty of one's costume or function to hold the hair in place and add to the effectiveness of one's costume. We believe textile headbands and ponytail holders meet the definition of accessory.

Accordingly, in T.D. 96-24, Customs determined that generally textile headbands meet the definition of "clothing accessories." The textile headbands considered in T.D. 96-24 were items which accented or otherwise completed one's costume. The headbands were visible when worn and either decorative, adding to the beauty of one's costume, or functional, adding to the effectiveness of one's costume by holding the hair in place.

The subject headband is not the type of headband contemplated by T.D. 96-24 as a clothing accessory under heading 6117, HTSUSA. The subject headband functions to secure a wig to the head and make it fit more comfortably. It is designed to be worn under a wig and therefore, is not intended to be visible or decorative when used as intended. In contrast, the headbands described in T.D. 96-24 were plainly visible when worn and adorned an outfit either decoratively by its own appearance or functionally by holding one's hair in place. Therefore, while heading 6117, HTSUSA, is the appropriate heading for most textile headbands, it does not apply to the instant textile headband.

Chapter 65, HTSUSA, provides for among other things, headgear and parts thereof. While a general EN exclusion to Chapter 65 states that Chapter 65 does not include *inter alia* wigs and the like of heading 6704, HTSUSA, the subject wig accessories are not precluded from being classifiable in Chapter 65. The subject cap and headband are potentially classifiable under two provisions in Chapter 65, HTSUSA, as headbands and linings under heading 6507, HTSUSA, and as hats and other headgear under heading 6505, HTSUSA.

Heading 6507, HTSUSA, includes "headbands, linings, covers, hat foundations, hat frames, peaks (visors) and chinstraps for headgear." The EN to heading 6507 lists specific fittings for headgear and states that only those items listed are covered by the heading. The EN lists headbands and linings and part linings, which are described as follows:

(1) **Head-bands** for fitting on the edge of the crown. These are usually of leather, but may also be of composition leather, of oiled cloth or other coated fabric, etc. They are classified in this heading **only** when cut to length or otherwise ready for incorporation in the headgear. They frequently bear an inscription of the hat-maker's name, etc.

(2) **Linings and part linings** normally made of textile material but sometimes of plastics, leather, etc. These also usually bear a printed indication of the hat-maker's name, etc.

According to the EN, the headbands, linings and part linings cited in heading 6507, HTSUSA, are components used in the construction of headgear.

The exemplar head-bands in the EN of heading 6507 represent items that are used in making hats or headgear. In contrast, the subject cap and headband are not specific fittings for headgear but rather completed articles, not incorporated into articles of headgear. Therefore, the subject articles are not *ejusdem generis* or "of the same kind" of merchandise as the exemplars cited in the EN to 6507, HTSUSA. Accordingly, neither the subject cap nor headband are properly classifiable under heading 6507, HTSUSA.

Heading 6505, HTSUSA, provides for "Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed; hair-nets of any material, whether or not lined or trimmed." The EN to heading 6505, HTSUSA, provide that the range of headgear embraced by the heading includes hats made up from textile fabric, berets, skull-caps, fezzes, peaked caps, mortarboards, nurses' headcaps, nuns' headdresses, pith helmets, sou'westers, hoods, and top hats. The EN to heading 6505, HTSUSA, also state that the heading includes hair-nets, snoods, and the like, of any material. Moreover, the broad language of the EN state that Chapter 65 covers "other headgear of all kinds, irrespective of the materials of which they are made and of their intended use (daily wear, theatre, disguise, protection, etc.)."

The Random House Dictionary of the English Language, the Unabridged Edition (1983) defines "headgear" as "any covering for the head, esp. a hat, cap, bonnet, etc." *The Encyclopedia Americana* (International Edition 1980) describes the term "hat" as follows:

HAT, strictly, a head covering that has a crown and a brim. Loosely, the term is used for many kinds of headgear. Since earliest times, men have created a great range of headgear, from fitted caps to draped or wrapped veils, turbans and bands. Almost ev-

ery kind of material has been used – fur, fabric, metal, straw, horns, jewels, feathers, flowers, lace, glass and synthetic materials.

The subject cap satisfies the definition of “headgear” as it is a covering for the head. Though not specifically referenced in the EN, the subject cap is headgear within the intended scope of Chapter 65. Further, the cap under consideration is similar to several of the exemplars cited in the EN to heading 6505, namely skull-caps, hair-nets, snoods and the like. The subject cap is brimless and fits the head snugly like a skull-cap, swim cap, hair-net, or knit cap. *See* NY G86364, dated February 12, 2001 (tie hat similar to a skull-cap classified under heading); NY D88490, dated March 31, 1999 (child’s swim cap classified under heading 6505); NY D85956, dated January 6, 1999 (hairnet classified under heading 6505); and NY B87125 (knit hat classified under heading 6505). Similar to the subject cap, skull-caps and other small caps may be worn under other headgear articles, such as helmets and turbans. *See* NY G86364 (cited above). Given the broad definition of headgear and the expansive language of the EN, the subject cap falls within the scope of Chapter 65, HTSUSA, and is properly classifiable under heading 6505, HTSUSA.

Among multiple examples of headgear, Mary Brooks Picken’s, *The Fashion Dictionary* (3rd ed. 1973), provides for an open-crown hat, a “hat with complete brim and partial crown, the center being left open so that hair shows through.” Picken’s at 180. Similarly, turbans include an open-crown version. Picken’s at 184. In HQ 962450, dated August 23, 1999, Customs ruled that a “u” shaped sun visor made of neoprene material is properly classifiable as headgear in heading 6505, HTSUSA. Also, in NY G86364, Customs classified a removable headband shaped hat liner that is worn under a hard hat as a specific fitting for headgear in heading 6507, HTSUSA.

The headband at issue functions the same as the subject cap; it is worn under a wig to secure the wig and make it fit more comfortably. Moreover, identical to the cap under consideration, the subject headband is headgear within the intended scope of Chapter 65, HTSUSA. The instant headband encircles the head without covering the crown of the head in the same manner as the sun visor in HQ 962450, the removable headband shaped hat liner in NY G86364, and the open-crowned examples cited above in *The Fashion Dictionary*. Just like the headband shaped hat liner in NY G86364, the subject headband is not intended to be worn without another article nor visible when worn. Moreover, unlike a sweatband, the subject headband does not absorb perspiration, nor is its principal purpose to hold hair in place like a sweatband worn on the head. While the instant headband is not a specific fitting for headgear like the hat liner in NY G86364, it is itself an article of headgear. Based on the broad definition of headgear and language of the EN, combined with the similarities of the subject headband to other hats and headgear articles, the headband at issue is also properly classifiable under heading 6505, HTSUSA.

Heading 6307, HTSUSA, provides for other made up articles of textile materials. The EN to heading 6307 state that the heading covers made up articles of any textile material which are not included more specifically elsewhere in the tariff schedule. The textile cap and headband under consideration are more specifically provided for in heading 6505, HTSUSA. As such, the subject articles are not properly classifiable under heading 6307, HTSUSA.

As the subject cap and headband are each made of 90 percent polyester and 10 percent lycra and are of knit construction, they are both classifiable under subheading 6505.90.60, HTSUSA, which provides “Hats and other headgear, knitted or crocheted * * * Other: Of man-made fibers: Knitted or crocheted or made up from knitted or crocheted fabric: Not in part of braid.”

Holding:

Based on the foregoing, the subject textile headband is classified in subheading 6505.90.6045, HTSUSA, the provision for “Hats and other headgear, knitted or crocheted * * * Other: Of man-made fibers: Knitted or crocheted or made up from knitted or crocheted fabric: Not in part of braid * * * Other: Other: Visors, and other headgear which provides no covering for the crown of the head.” The subject textile cap is classified in subheading 6505.90.6090, HTSUSA, the provision for “Hats and other headgear, knitted or crocheted * * * Other: Of man-made fibers: Knitted or crocheted or made up from knitted or crocheted fabric: Not in part of braid * * * Other: Other: Other.” The duty rate for each item will be 23.9 cents per kilogram plus 8.4% *ad valorem*. Both the cap and headband fall within textile category designation 659.

NYRL B82405, dated March 24, 1997, is hereby REVOKED. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service which is updated weekly and is available **for inspection** at your local Customs office. The *Status Report on Current Import Quotas (Restraint Levels)* is also available on the Customs Electronic Bulletin Board (CEBB) which can be found on the U.S. Customs Service Website at www.customs.gov.

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

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND REVOCATION
OF TARIFF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF A TEXTILE BAG DESIGNED FOR A
DOWN COMFORTER

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation and modification of ruling letters and revocation of treatment relating to the tariff classification of a textile bag designed for a down comforter.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification of a textile bag designed for a down comforter under the Harmonized Tariff Schedule of the United States (HTSUS). Customs is also revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published on February 20, 2002, in Volume 36, Number 8, of the CUSTOMS BULLETIN. Customs received no comment in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 17, 2002.

FOR FURTHER INFORMATION CONTACT: Rebecca Hollaway, Textile Classification Branch, at (202) 927-2394.

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 Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by Title VI, a notice proposing to revoke New York Ruling Letter (NY) D85011 and to revoke any treatment accorded to substantially identical merchandise was published in the February 20, 2002, CUSTOMS BULLETIN, Volume 36, Number 8.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision. Pursuant to 19 U.S.C. 1625(c)(1), Customs is re-

voking NY D85011 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 962663, which is attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

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

Dated: April 1, 2002.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, April 1, 2002.
CLA-2 RR:CR:TE 962663 RH
Category: Classification
Tariff No. 6307.90.9889

MS. PHYLLIS LOCKLEAR
GENERAL MANAGER
IMEX VINYL PACKAGING
*531177 Center Drive, Suite 95
Charlotte, NC 28217-0751*

Re: Revocation of NY D85011; Classification of a draw string bag of nonwoven textile materials; storage bag; heading 4202 vs. heading 6307.

DEAR MS. LOCKLEAR:

This is in reply to your letter of March 15, 1999, requesting reconsideration of New York Ruling Letter D85011, dated December 7, 1998. In that ruling, Customs classified a textile bag designed to store a down comforter in subheading 4202.92.3031 of the Harmonized Tariff Schedule of the United States (HTSUS), as a traveling bag designed to contain clothing or other personal effects during travel.

Facts:

The merchandise under consideration is a bag manufactured of a nonwoven fabric of polypropylene fibers. The bag measures 30 inches high and has a base diameter of approximately 17 inches. The top closes by means of a drawstring cord and is secured by a cord lock. The nonwoven polypropylene fiber material has a continuous pattern of small holes intended to permit the comforter to breathe.

In your letter, you state that the bag is a "one-time-only use bag for the conveyance of a product." We note, however, that the bags are not imported with the comforters.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY D85011 was published in the CUSTOMS BULLETIN on February 20, 2002. Customs received no comments.

Issue:

What is the proper classification for the subject merchandise?

Law and Analysis:

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

Bags of textile materials similar to the subject merchandise have been classified in both headings 4202 and 6307, HTSUS, depending upon their construction and the purpose(s) for which they are designed. Bags classified outside of heading 4202, HTSUS, are generally those considered not specially designed to contain particular item(s), or not adequately constructed to sustain repeated use.

Heading 4202, HTSUS, provides for "Trunks, suitcases, vanity cases * * * spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags * * * sports bags * * * and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper."

The Explanatory Notes to the Harmonized Commodity Description and Coding System (EN) to heading 4202 suggest that the expression "similar containers" in the first part of the heading "includes hat boxes, camera accessory cases, cartridge pouches, sheaths for hunting or camping knives, portable tool boxes or cases, specially shaped or internally fitted to contain particular tools with or without their accessories, etc." With regard to the second part of heading 4202, the EN indicate that the expression "similar containers" indicates articles which must be wholly or mainly composed of the materials specified therein. There is no requirement that the articles be specially shaped or fitted.

Upon further review of this matter, we agree with you that the bag in question is designed for the conveyance of a down comforter and is not of a kind similar to a bag designed to contain clothing during travel. The bag is not capable of providing the protection requisite of a traveling bag and is not adequately constructed to sustain repeated use.

Finally, we note that the bag cannot be classified as packing material under GRI 5, HTSUS, as it is not imported with the comforter.

Accordingly, since the bag is not more specifically provided for in another heading it is classified under subheading 6307.90.9889, HTSUS, as an other made up textile article.

Holding:

NY D85011 is REVOKED. The textile bag is classified under subheading 6307.90.9889, HTSUS. It is dutiable at the general column one rate at 7 percent *ad valorem*.

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

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO THE CLASSIFICATION OF TEXTILE BAGS
WITH DRAWSTRINGS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of two ruling letters and treatment relating to the classification of textile bags with drawstrings.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking two ruling letters relating to the tariff classification of textile bags with drawstrings under the Harmonized Tariff Schedule of the United States (HTSUS), and to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Notice of the proposed action was published in the CUSTOMS BULLETIN of February 27, 2002, Volume 36, Number 9. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 17, 2002.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Textile Branch, and (202) 927-1009.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

In NY G83311, Customs ruled that all four of the subject articles identified as style numbers 12-120-04, 12-120-07, 12-120-73, 12-120-72,

were classified under subheading 4202.92.3031, HTSUSA. Since the issuance of this ruling, Customs has reviewed the classification of these items and has determined that the cited ruling is in error. We have determined that all four articles are correctly classified in subheading, 6307.90.9889, HTSUSA, which provides for, "Other made up articles, including dress patterns: Other: Other: Other, Other, Other" (See "Attachment A" to this document).

In NY G83306, Customs ruled that the subject articles identified as style numbers 12-116, 12-120, were classified under subheading 4202.92.3031, HTSUSA. Since the issuance of this ruling, Customs has reviewed the classification of these items and has determined that the cited ruling is in error. We have determined that the articles are correctly classified in subheading, 6307.90.9889, HTSUSA, which provides for, "Other made up articles, including dress patterns: Other: Other: Other, Other, Other" (See "Attachment B" to this document).

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 Customs is revoking two ruling letters pertaining to the tariff classification of textile bags with drawstrings. Although in this notice, Customs is specifically referring to two New York Rulings (NY) G83311 dated November 2, 2000, and NY G83306 dated November 2, 2000, this notice covers any rulings on this merchandise that may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reason-

able care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

Dated: April 2, 2002.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, April 2, 2002.
CLA-2 RR:CR:TE 964711 ASM
Category: Classification
Tariff No. 6307.90.9889

MS. MARTY LANGTRY
MANAGEMENT CONSULTANT
TOWERGROUP INTERNATIONAL
*1114 Tower Lane
Bensenville, IL 60106*

Re: Request for reconsideration and revocation of NY G83311; Textile bags with drawstrings imported from China; Other made up articles, Heading 6307; Not Heading 4202, HTSUSA.

DEAR MS. LANGTRY:

This is in response to your letter, on behalf of Home Products International requesting reconsideration of Customs New York Ruling (NY) G83311 which involved the classification of textile bags under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. This ruling revokes NY G83311 by providing the correct classification for the subject textile bags with drawstrings. Samples have been submitted and reviewed by this office.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of NY G83311 was published on February 27, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 9. No comments were received in response to this notice.

Facts:

The subject articles are advertised as laundry bags and identified under the following style numbers and names as follows:

- 12-120-04, "CarryAll Cloth Laundry Bag"
- 12-120-07, "CarryAll Cloth Laundry Bag"
- 12-120-73, "Pack 'n Pouch Specialty Bag"
- 12-120-72, "Bag'n Carry"

The sample identified as "CarryAll Cloth Laundry Bag" (12-120-04; 12-120-07) are 19 inches x 30 inches and constructed of lightweight woven fabric of 65 percent polyester, 35 percent cotton. These articles are composed of two panels which have been attached by one bottom seam and two side seams. Overlock stitching secures an open hem at the top. A single cord with a plastic "Cordlock"™ has been threaded through the top hem.

The article identified as the "Pack n' Pouch Specialty Bag"™ (12-120-73) is 24 inches x 36 inches and constructed of a mesh fabric of 100 percent polyester. This article is com-

posed of two panels which have been attached by one bottom seam and two side seams. A large zippered mesh pouch (approx. 13 inches high x 15 inches wide) has been sewn onto the front. Overlock stitching secures an open hem at the top. A single cord with a plastic "Cordlock"™ has been threaded through the top hem. A single carrying strap has been securely sewn to the back of the bag.

The "Bag n' Carry"™ (12-120-72) is 22 inches x 32 inches. The top two thirds of the article is constructed of 100 percent polyester mesh fabric. This article is composed of two panels which have been attached by one bottom seam and two side seams. The bottom one-third portion of the article is constructed of 100 percent woven nylon fabric. In addition, the top hem is composed of the same woven fabric. Overlock stitching secures an open hem at the top. A single cord with a plastic "Cordlock"™ has been threaded through the top hem.

In NY G83311, dated November 2, 2000, all four of the subject articles identified as style numbers 12-120-04, 12-120-07, 12-120-73, 12-120-72, were classified as containers under subheading 4202.92.3031, HTSUSA. The quota category for this provision is 670.

Issue:

What is the proper classification for the merchandise?

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 4202, HTSUSA, specifically covers various cases and containers, and provides as follows:

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

Additional U.S. Notes to Chapter 42 state, in relevant part: "1. For the purposes of heading 4202, the expression 'travel, sports and similar bags' means goods, other than those falling in subheadings 4202.11 through 4202.39, of a kind designed for carrying clothing and other personal effects during travel * * *".

The EN to 4202 indicates that the heading covers only the articles specifically named and similar containers. We note that "laundry bags" are not specifically named in heading 4202, HTSUSA. Accordingly, we must determine whether they are similar to the travel or sports bags specified in 4202. However, in order to classify the subject goods as "similar" under 4202, HTSUSA, we must look to factors, which would identify the merchandise as being *ejusdem generis* (of a similar kind) to those specified in the provision.

In the case of *Totes, Inc. v. United States*, 18 CIT 919, 865 F. Supp. 867(1994), *aff'd*. 69 F.3d 495 (1995), the Court of Appeals stated as follows:

As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* [by name] in order to be classified under the general terms.

In classifying goods under the residual provision of "similar containers" of 4202, HTSUSA, the Court of Appeals affirmed the trial court's decision and found that the rule of *ejusdem generis* requires only that the imported merchandise share the essential character or purpose running through all the containers listed *eo nomine* in heading 4202, HTSUSA., *i.e.*, " * * * to organize, store, protect and carry various items."

The subject merchandise does not have the capability to protect clothing or other essential items during travel. Each bag is constructed of relatively lightweight material with two of the bags having see-through mesh panels. The mesh bags would be especially susceptible to snags, frays, and tears. One of the mesh bags has a single carry strap; however, this single feature is insufficient to render the bag suitable for travel or sports use. Each of the bags has a single drawstring closure, which is impractical for extended travel because the excess drawstring loop could easily drag or catch. Furthermore, such a drawstring closure fails to completely secure the contents of the bag; small items could slip through the opening. Thus, it is Customs determination that none of these bags are *ejusdem generis* to the travel or sports bags of heading 4202, HTSUSA.

The subject bags are distinct from the drawstring bags of HQ 963575, dated October 12, 1999, wherein various textile bags identified as "stuff sacks" were classified as "travel * * * and similar bags" under subheading 4202.92.3031, HTSUSA. The bags in HQ 963575 featured waterproof fabric, zippers, a handle, and a protective interior flap to secure the drawstring closure. Furthermore, these bags were specifically designed and advertised to organize, store, protect and carry sleeping bags and other essentials during camping trips.

Inasmuch as the articles now in question are not classifiable under heading 4202, HTSUSA, they would not be precluded from classification in 6307, HTSUSA, pursuant to the EN for 6307 that excludes: "(b) Travel goods * * * and all similar containers of **heading 42.02.**" The EN to 6307 further specifies that the heading particularly includes: "(5) Domestic laundry * * * bags." The Webster's *New Collegiate Dictionary (1979)* defines "laundry" as "clothes or linens that have been or are to be laundered." The definition for "launder" or "laundered" is "to wash (as clothes) in water: to make ready for use by washing and ironing: to wash or wash and iron clothing or household linens." The term "bag" is defined as a "flexible container that may be closed for holding, storing, or carrying something." Thus, it would follow that a "laundry bag" is a type of flexible container, with a closure, used to hold clothes or linens for laundering purposes. Webster's dictionary defines "domestic" as "of or relating to the household or the family."

The subject merchandise consists of woven/mesh bags of a size and shape suited for domestic use and intended to contain clothes or linens for laundering purposes. In the instant case, all four bags are advertised, packaged, promoted and intended for use as domestic laundry bags. The packaging clearly identifies the article as a "laundry bag." The packaging also demonstrates the use of the item by displaying a picture of the bag, packed with towels, sheets, clothing, and a container of laundry detergent. Customs has previously ruled that such textile bags with drawstrings are classifiable under heading 6307, HTSUSA, as "Other made up articles." In Headquarters Ruling (HQ) 954948, dated October 28, 1993, a textile bag with drawstring comprised of a lightweight cotton fabric with an intended use of packaging and transporting covered candy at retail, was classified as an other made-up article in subheading 6307.90.9986, HTSUSA. In reaching this decision, Customs noted that drawstring pouches of insubstantial construction, which are not specially shaped or fitted to contain specific merchandise, are not similar to the containers enumerated in heading 4202, HTSUSA. See HQ 953177, dated April 7, 1993; HQ 953176, dated March 16, 1993; HQ 088411, dated April 23, 1991; HQ 086852, dated May 10, 1990.

Holding:

NY G83311 is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

The subject merchandise is correctly classified in subheading, 6307.90.9889, HTSUSA, which provides for, "Other made up articles, including dress patterns: Other: Other: Other: Other, Other, Other." The general column one duty rate is 7 percent *ad valorem*.

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

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 2, 2002.
CLA-2 RR:CR:TE 964712 ASM
Category: Classification
Tariff No. 6307.90.9889

MS. MARTY LANGTRY
MANAGEMENT CONSULTANT
TOWERGROUP INTERNATIONAL
1114 Tower Lane
Bensenville, IL 60106

Re: Request for reconsideration and revocation of NY G83306 Textile bags with drawstrings imported from China; Other made up articles, Heading 6307; Not Heading 4202, HTSUSA.

DEAR MS. LANGTRY:

This is in response to your letter, on behalf of Home Products International requesting reconsideration of Customs New York Ruling (NY) G83306 which involved the classification of textile bags under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. This ruling revokes NY G83306 by providing the correct classification for the subject textile bags with drawstrings. Samples have been submitted and reviewed by this office.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of NY G83306 was published on February 27, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 9. No comments were received in response to this notice.

Facts:

The subject articles are advertised as laundry bags and identified under the following style numbers and names as follows:

- 12-116, "Jumbo Laundry Bag"
- 12-120, "CarryAll Laundry Bag"

The sample identified as the "Jumbo Laundry Bag" (12-116) is 24 inches x 36 inches and constructed of lightweight woven fabric of 100 percent nylon. This article is composed of two panels attached by one bottom seam and two side seams. Overlock stitching secures an open hem at the top. A single cord with a plastic "Cordlock"™ has been threaded through the top hem.

The article identified as the "CarryAll Laundry Bag" (12-120) is 19 inches x 30 inches and constructed of a lightweight woven fabric of 65 percent polyester and 35 percent cotton. This article is composed of two panels which have been attached by one bottom seam and two side seams. Overlock stitching secures an open hem at the top. A single cord with a plastic "Cordlock"™ has been threaded through the top hem.

In NY G83306, dated November 2, 2000, both the subject articles identified as style numbers 12-116 and 12-120, were classified under subheading 4202.92.3031, HTSUSA. The quota category for this provision is 670.

Issue:

What is the proper classification for the merchandise?

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither

legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 4202, HTSUSA, specifically covers various cases and containers, and provides as follows:

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

Additional U.S. Notes to Chapter 42 state, in relevant part: "1. For the purposes of heading 4202, the expression 'travel, sports and similar bags' means goods, other than those falling in subheadings 4202.11 through 4202.39, of a kind designed for carrying clothing and other personal effects during travel * * *".

The EN to 4202 indicates that the heading covers only the articles specifically named and similar containers. We note that "laundry bags" are not specifically named in heading 4202, HTSUSA. Accordingly, we must determine whether they are similar to the travel or sports bags specified in 4202. However, in order to classify the subject goods as "similar" under 4202, HTSUSA, we must look to factors, which would identify the merchandise as being *ejusdem generis* (of a similar kind) to those specified in the provision.

In the case of *Totes, Inc. v. United States*, 18 CIT 919, 865 F. Supp. 867(1994), *aff'd*. 69 F.3d 495 (1995), the Court of Appeals stated as follows:

As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* [by name] in order to be classified under the general terms.

In classifying goods under the residual provision of "similar containers" of 4202, HTSUSA, the Court of Appeals affirmed the trial court's decision and found that the rule of *ejusdem generis* requires only that the imported merchandise share the essential character or purpose running through all the containers listed *eo nomine* in heading 4202, HTSUSA, *i.e.*, " * * * to organize, store, protect and carry various items."

The subject merchandise does not have the capability to protect clothing or other essential items during travel. Each of the bags has a single drawstring closure, which is impractical for extended travel because the excess drawstring loop could easily drag or catch. Furthermore, such a drawstring closure fails to completely secure the contents of the bag; small items could slip through the opening. Thus, it is Customs determination that none of these bags are *ejusdem generis* to the travel or sports bags of heading 4202, HTSUSA.

The subject bags are distinct from the drawstring bags of HQ 963575, dated October 12, 1999, wherein various textile bags identified as "stuff sacks" were classified as "travel * * * and similar bags" under subheading 4202.92.3031, HTSUSA. The bags in HQ 963575 featured waterproof fabric, zippers, a handle, and a protective interior flap to secure the drawstring closure. Furthermore, these bags were specifically designed and advertised to organize, store, protect and carry sleeping bags and other essentials during camping trips.

Inasmuch as the articles now in question are not classifiable under heading 4202, HTSUSA, they would not be precluded from classification in 6307, HTSUSA, pursuant to the EN for 6307 that excludes: "(b) Travel goods * * * and all similar containers of **heading 42.02.**" The EN to 6307 further specifies that the heading particularly includes: "(5) Domestic laundry * * * bags." The Webster's *New Collegiate Dictionary* (1979) defines "laundry" as "clothes or linens that have been or are to be laundered." The definition for "launder" or "laundered" is "to wash (as clothes) in water: to make ready for use by washing and ironing: to wash or wash and iron clothing or household linens." The term "bag" is defined as a "flexible container that may be closed for holding, storing, or carrying something." Thus, it would follow that a "laundry bag" is a type of flexible container, with a closure, used to hold clothes or linens for laundering purposes. Webster's dictionary defines "domestic" as "of or relating to the household or the family."

The subject merchandise consists of woven bags of a size and shape suited for domestic use and intended to contain clothes or linens for laundering purposes. In the instant case, both bags are advertised, packaged, promoted and intended for use as domestic laundry

bags. The packaging clearly identifies the article as a "laundry bag." The packaging also demonstrates the use of the item by displaying a picture of the bag, packed with towels, sheets, clothing, and a container of laundry detergent. Customs has previously ruled that such textile bags with drawstrings are classifiable under heading 6307, HTSUSA, as "Other made up articles." In Headquarters Ruling (HQ) 954948, dated October 28, 1993, a textile bag with drawstring comprised of a lightweight cotton fabric with an intended use of packaging and transporting covered candy at retail, was classified as an other made-up article in subheading 6307.90.9986, HTSUSA. In reaching this decision, Customs noted that drawstring pouches of insubstantial construction, which are not specially shaped or fitted to contain specific merchandise, are not similar to the containers enumerated in heading 4202, HTSUSA. See HQ 953177, dated April 7, 1993; HQ 953176, dated March 16, 1993; HQ 088411, dated April 23, 1991; HQ 086852, dated May 10, 1990.

Holding:

NY G83306 is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

The subject merchandise is correctly classified in subheading, 6307.90.9889, HTSUSA, which provides for, "Other made up articles, including dress patterns: Other: Other: Other, Other, Other." The general column one duty rate is 7 percent *ad valorem*.

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

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF INSULATED SHOPPING BAGS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letters and treatment relating to tariff classification of insulated shopping bags.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking two ruling letters pertaining to the tariff classification of insulated shopping bags under the Harmonized Tariff Schedule of the United States (HTSUS). Customs is also revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published on February 20, 2002, in Volume 36, Number 8, 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 June 17, 2002.

FOR FURTHER INFORMATION CONTACT: Joe Shankle, Textiles Branch, (202) 927-2379.

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 Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, notice proposing to revoke New York Ruling Letters (NY) G87998, dated March 15, 2001, and NY G89102 dated April 20, 2001, and to revoke any treatment accorded to substantially identical merchandise was published in the February 20, 2002, CUSTOMS BULLETIN, Volume 36, Number 8. No comments were received in response to the notice.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions that is contrary to the position set forth in this notice. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its

agents for importations of merchandise subsequent to the effective date of this final decision.

In NY G87998 and NY G89102, Customs classified three insulated shopping bags in subheading 4202.92.4500, HTSUSA, which provides in pertinent part for travel, sports and similar bags with an outer surface of sheeting of plastic. The insulated shopping bags are constructed of two layers of unbacked, unsupported and unreinforced sheetings of plastics sandwiching a thin layer of cellular plastics.

The largest bag has side panels that measure approximately 18 inches wide by 19 inches tall. The end panels are gusseted, tapering from approximately 7 inches at the top to 8 inches wide at the bottom, and are 18 inches tall. The bottom of the bag is 8 inches wide and 18 inches long and has an insert for the bottom. The request for reconsideration states that the bag has a nominal interior volume of 12 gallons or 45 liters and is capable of holding up to forty-five pounds of food. The bag is FDA approved for food contact. The middle-sized bag is nearly identical except smaller. It has an interior volume of 9 gallons or 34 liters and is designed to hold 35 pounds. The smallest, is a flat bag with a volume of five gallons and a load carrying rating of 25 pounds. This bag does not have side gussets or an insert for the bottom. It has a straight bottom and molded snap handles that are heat sealed to the bag. Based on our analysis of the scope of the terms of subheadings 4202.92.45, HTSUSA, and 3923.21.00 HTSUSA, the Legal Notes, and the Explanatory Notes, the insulated shopping bags of the type discussed herein, are classifiable under subheading 3923.21.00, HTSUSA, which provides for: Articles for the conveyance or for packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics: Sacks and bags (including cones): Of polymers of ethylene, Other.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking G87998 and NY G89102, and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter 965039 and (Attached). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions that is contrary to the position set forth in this notice.

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

Dated: April 1, 2002.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 1, 2002.
CLA-2 RR:CR:TE 965039 JFS
Category: Classification
Tariff No. 3923.21.00, HTSUSA

JOHN S. RODE, ESQ.
RODE & QUALEY
295 Madison Avenue
New York, NY 10017

Re: Revocation of NY G87998 and NY G89102; Insulated Shopping Bags; Prolonged Use;
Not Heading 4202.

DEAR MR. RODE:

This letter is to inform you that Customs has reconsidered New York Ruling Letter (NY) G87998 dated March 15, 2001, and NY G89102 dated April 20, 2001, issued to you on behalf of your client, KeepCool USA Company ("KeepCool"), concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of insulated shopping bags. After review of the two rulings, it has been determined that the classification of the insulated shopping bags in subheading 4202.92.4500, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes NY G87998 and NY G89102.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY G87998 and NY G89102 was published on February 20, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 8. As explained in the notice, the period within which to submit comments on this proposal was until March 22, 2002. No comments were received in response to this notice.

Facts:

The articles considered in NY G87998 and NY G89102 are insulated shopping bags. Three samples of the bags were submitted with the request for reconsideration. The bags are constructed of two layers of unbacked, unsupported and unreinforced sheetings of plastics sandwiching a thin layer of cellular plastics.

KeepCool Model #45vfb, has side panels which measure approximately 18 inches wide by 19 inches tall. The end panels are gusseted, taper from approximately 7 inches at the top to 8 inches wide at the bottom, and are 18 inches tall. The bottom of the bag has an insert and is 8 inches wide and 18 inches long. The request for reconsideration states that the bag has a nominal interior volume of 12 gallons or 45 liters and is capable of holding up to forty-five pounds of food. The bag is FDA approved for food contact. On the exterior of the bag is the "Sam's Club" logo. The printing on the exterior of the bag states that the bag (1) is reusable; (2) is triple-insulated to keep frozen food purchases frozen for over 2.5 hours; (3) can be used to protect groceries and keep drinks cold; (4) will keep your food frozen all the way home; and (5) is great for picnics, trips to the beach or to the ball game.

KeepCool Model #34vfb is nearly identical in design to Model #45vfb except it is smaller, having an interior volume of 9 gallons or 34 liters and being designed to hold 35 pounds. The bag has various logos from food manufacturers such as "Stouffer's®," "Tyson®," and "Cool Whip®." lettering on the exterior of the bag states that the bag will keep frozen food frozen for over two hours and that the bag is reusable.

KeepCool Model #18vsb is a flat bag with a volume of five gallons and a load carrying rating of 25 pounds. This bag does not have side gussets or an insert for the bottom. It has a straight bottom and molded snap handles that are heat sealed to the bag. The lettering on the exterior of the bag states that it will keep products frozen for two hours in standard conditions of use. It further states that it can be used for groceries such as meat, fish, vegetables and even drinks. It promotes using the bag for picnics, the beach or the ball game.

The request for reconsideration states that:

All three of the bags are constructed from three layers of plastic sheeting, plus molded plastic handles. The inner layer is made from 2.56 mil polyethylene sheeting, the middle layer is an insulating layer of 0.8 mm closed-cell polyethylene foam, and

the outer layer consists of metalized 0.47 mil polyester film glued to a 1.77 mil thick polyethylene film.

The Customs Laboratory reached similar results. It determined that the inner layer is constructed of 2.559 mil of polyethylene. The middle layer is constructed of 17.126 mil of foam polyethylene. The outer layer is constructed of 2.087 mil of metalized polyethylene and .256 mil of polyester.¹

Issue:

Whether the insulated shopping bags are not designed for prolonged use and are therefore excluded from classification in heading 4202, HTSUSA.

Law and Analysis:

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

The Harmonized Commodity Description and Coding System, Explanatory Notes (EN), represent 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. The EN, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 4202, HTSUSA, provides for, among other articles, shopping bags wholly or mainly covered with plastic sheeting.² Subheading 4202.92.45, HTSUSA, provides for travel, sports and similar bags, with an outer surface of plastic sheeting or textile materials. Additional U.S. Note 1 to Chapter 42, states that "the expression "travel, sports and similar bags" means goods * * * of a kind designed for carrying clothing and other personal effects during travel, including * * * shopping bags. * * *" Chapter Note 2(A)(a) to Chapter 42, HTSUSA, states that heading 4202, HTSUSA, does not cover "Bags made of sheeting of plastics, whether or not printed, with handles, not designed for prolonged use (heading 3923)."

The EN to heading 4202, HTSUSA, as amended in 2002, provides guidance as to what type of bags are covered by the exclusion above. At its 26th session in November 2000, the Customs Cooperation Council's Harmonized System Committee (HSC), approved the following new text for the EN to heading 4202.:

This heading does not cover:

- (a) Shopping bags, including bags consisting of two outer layers of plastics sandwiching an inner layer of cellular plastics, not designed for prolonged use, as described in Note 2(A)(a) to this Chapter (heading 39.23).

Under the decision of the HSC, insulated shopping bags almost identical to the ones under consideration, assuming they are not designed for prolonged use, are excluded from classification in heading 4202, HTSUSA.

As stated previously, the EN's are relevant as guidelines in determining the scope of a heading. Both Congress and Customs have endorsed use of the EN's in the classification of merchandise. In T.D. 89-80, Customs set forth that EN's, along with decisions of the HSC that are published in the Compendium of Classification Opinions, are to be accorded appropriate weight in making classification determinations and that they (EN's) should always be consulted. Further, both Congress, in the report of the Joint Committee on the Omnibus Trade and Competitiveness Act of 1988, and Customs, in the T.D., have acknowledged that the EN's will be modified from time to time. That being the case, it is clear that Congress anticipated that EN's would be amended periodically, and that Customs, in such instances, would appropriately consider EN's in their amended form.

¹ A "mil" is equal to one one thousandth of an inch.

² The 2002 tariff includes new subheadings 4202.92.05 and 4202.92.10, which provide for insulated food and beverage bags. However, by operation of Additional U.S. Note 1, the instant bags would not be covered within these subheadings because shopping bags are considered travel bags and those with an outer surface of sheeting of plastic are classified under subheading 4202.92.45, HTSUSA.

The EN clearly describes the bags under consideration, that is, if they are “not designed for prolonged use.” Thus, although the bags appear to be excluded by Chapter Note 2(A)(a), it is necessary to determine if the bags are designed for prolonged use.

In Headquarters Ruling Letter (HQ) 088254, dated March 27, 1991, Customs classified a similar insulated shopping bag, described as “Sac Isotherme”, under subheading 4202.92.4500, HTSUSA. The “Sac Isotherme” consisted of an outer surface of metalized polyester plastic sheeting material, a thin foam interlining, and a polyvinyl inner lining. It measured approximately 20 inches by 13 inches by 6 inches, had a sturdy plastic handle, and was similar to a standard rectangular shopping bag. The “Sac Isotherme” was designed to transport fresh or frozen food from the place of purchase to the home. Customs ruled that the “Sac Isotherme” was of durable construction, designed for prolonged use, and therefore not precluded from classification in heading 4202, HTSUSA, by virtue of Chapter Note 2(A)(a) to Chapter 42, HTSUSA.

In HQ 953077, dated April 26, 1993, Customs classified another shopping bag under heading 3923, HTSUSA. That bag was made of plastic sheeting coated on the inside with vaporized aluminum and on the exterior with a thin polyethylene coating. The bag contained no insulation, but had some temperature retaining capability due to the reflectivity of the metallization. The bag was designed for transporting food from the place of purchase to the home and was given to purchasers at retail to carry purchases home and to be subsequently reused by the purchaser. However, tests concerning durability indicated that continued usage of the bag was unlikely and that the bag might only last through several uses. Accordingly, Customs ruled that the bag was flimsily constructed, not manufactured for continued durable use and that such bags were classifiable in heading 3923, HTSUSA.

In HQ 962033, dated November 29, 1999, Customs classified a shopping bag identified as “Bolsa Isotermica” which was constructed of three layers of plastics. The inner layer was a sheeting of polyethylene. The middle layer was an insulating layer of foamed polyethylene. The outer layer was a double layer consisting of metalized polyester and polyethylene. The description included with the ruling request stated that the thermal properties of the bag are guaranteed for between 50 and 100 uses. In considering this bag, Customs reviewed its prior decisions on insulated shopping bags and concluded that:

it appears that Customs has classified insulated shopping bags in heading 3923, HTSUSA, when made of flimsy materials such as polyethylene, not capable of prolonged use, containing no middle insulating material, and designed to be given away to the consumer. In contrast, insulated shopping bags of more durable construction, containing a middle insulating layer, and of a type sold empty at retail, are classified in heading 4202, HTSUSA.

In classifying the bag in heading 4202, HTSUSA, Customs relied upon the fact that the bag was of durable construction, was not given away as a premium but purchased empty by consumers, and was intended for repeated use, between 50 to 100 uses or for 1½ to 2 years.

The construction of the instant bags is not as substantial as the bag described in HQ 962033. It is given away as a promotional item as evidenced by the brand specific advertising. However it is also sold empty at retail as evidenced by the claims that it will keep food frozen for two hours and is great for picnics and a ball game. Although reusable, it is not designed to be used 50 to 100 times, or to last for 1½ to 2 years. While the bags do have an insulating layer, the layer is merely sandwiched between the inner and outer layers of plastics. It is not incorporated into the construction of the bag in a manner that provides durability to the bag. The insulating layer merely operates to improve the insulating function of the bag. It does not extend the life of the bag.

The bags under consideration are certainly reusable, but to a very limited extent. Because they also are of a kind that is explicitly described in the EN to heading 4202, HTSUSA, as being excluded from the heading, they must be considered to be “not designed for prolonged use.” The bags are classified in subheading 3923.21.00, HTSUSA, as: “Articles for the conveyance or for packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics: Sacks and bags (including cones): Of polymers of ethylene, Other.”

Holding:

NY G87998 and NY G89102 are hereby revoked. The Keep Cool bags, styles 45vfb, 34vfb, and 18vsb, are classified under subheading 3923.21.00, HTSUSA, which provides for: “Articles for the conveyance or for packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics: Sacks and bags (including cones): Of polymers of ethylene, Other.” The general column one rate of duty is 3% *ad valorem*.

Effect on Other Rulings:

NY G87998 dated March 15, 2001, and NY G89102 dated April 20, 2001, are hereby REVOKED. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

MODIFICATION OF RULING LETTER AND REVOCATION OF
TREATMENT RELATING TO THE CLASSIFICATION OF A
MAN'S WOVEN UPPER BODY GARMENT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to the classification of a man's woven upper body garment.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling letter relating to the tariff classification of a man's upper body garment under the Harmonized Tariff Schedule of the United States (HTSUS), and to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Notice of the proposed action was published in the CUSTOMS BULLETIN, on February 20, 2002, Volume 36, Number 9. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 17, 2002.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Textile Branch, (202) 927-1009.

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. According-

ly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. section 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

In NY G82775, Customs ruled that the subject garment, identified as "Microfiber Headwind Sports", was classifiable in subheading 6211.33.0040, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, men's or boys': Of man-made fibers, shirts excluded from heading 6205, HTSUS. Since the issuance of this ruling, Customs has reviewed the classification of this item and has determined that the cited ruling is in error. We have determined that this item is an outerwear jacket, and is properly classified in subheading 6201.93.3511, HTSUSA, which provides for, "Men's or boys' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets), other than those of heading 6203: Anoraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets): Of man-made fibers: Other: Other: Other, Men's." Accordingly, we are modifying NY G82775 to reflect the proper classification of the goods pursuant to the analysis set forth in HQ 964619 (see "Attachment" to this document).

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, Customs is modifying a ruling letter pertaining to the tariff classification of a man's woven upper body garment. Although in this notice, Customs is specifically referring to one ruling, New York Ruling (NY) G82775, dated October 13, 2000, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. 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 Customs during this period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous

interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

Dated: April 2, 2002.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 2, 2002.

CLA-2: RR:CR:TE 964619 ASM
Category: Classification
Tariff No. 6201.93.3511

Ms. PING LIN
SUN MOUNTAIN SPORTS
P.O. Box 9049
Missoula, MT 59807

Re: Modification of G82775; Man's woven upper body garment; Outerwear jacket.

DEAR MS. LIN:

Based upon our review of a ruling to you concerning the classification of a man's upper body garment which was classified in New York Ruling (NY) G82775, dated October 13, 2000, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have determined that the classification provided for this merchandise is incorrect. This ruling modifies NY G82775 by providing the correct classification for the man's upper body garment.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed modification of NY G82775 was published on February 27, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 9. No comments were received in response to this notice.

Facts:

The garment, which is the subject of this ruling, was identified as "Microfiber Headwind Sports" in NY G82775. In NY G82775, this article was classified under subheading 6211.33.0040, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, men's or boys': Of man-made fibers, shirts excluded from heading 6205." A single sample was forwarded to this office with correspondence requesting a review of NY G82775, and only the "Microfiber Headwind Sports" garment was identified as being at issue. Thus, we have not reviewed the classification of the other garments identified in NY G82775.

The subject article is a man's woven upper body garment consisting of 100 percent polyester "peached" microfiber fabric. The subject garment has a shallow v-neck with ribbed knit inset (1 inch wide), long sleeves with ribbed knit cuff (2 inches wide), ribbed knit waist

(2 inches wide), and a body length of approximately 24 inches. In addition, a ribbed knit panel (2.5 inches wide) has been sewn from collar to cuff and descends the full length of the sleeve. The body of the garment consists of a single woven front panel. A single woven back panel connects to the front panel at the side seams and shoulders. A heavy gauge zipper (11 inches long) extends the length of the left side seam from under the arm to the bottom of the garment, breaking at the waistband. The zipper features a tab pull that has been threaded and securely sewn to the zipper foot. The garment has been coated with “TEFLON” protection that is a durable water repellent. The labeling for this garment advertises the “TEFLON” fabric protector and promotes the article as water repellent outerwear. There is no lining and the garment does not have pockets.

Issue:

What is the proper classification for the merchandise?

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

First, it is important to note that the subject garment is constructed of both woven panels (front, back, sleeves) and ribbed knit trim (cuffs, v-neck, waist, sleeve trimming). In Headquarters Ruling (HQ) 958288, dated November 29, 1995, we stated “Usually, when Customs is faced with the classification of a garment that is comprised of a woven material and knit, we refer to a set of classification guidelines set forth in Customs Headquarters Memorandum 084118 (Customs Memorandum), dated April 13, 1989” in order to determine the essential character of a garment. In this memorandum, it was determined that the woven panels overlaying the knit fabric were mere decorative trim more similar to an “accessory” to the garment within the meaning of the EN to Chapter 61. The ruling further stated that if the woven panels had been viewed as an integral component of the garment, a GRI 3 analysis would be appropriate and the guidelines contained in the Customs Memorandum applied. However, as mere decorative trim, the woven panels were disregarded and the entire article was classified as a knit garment pursuant to a GRI 1 analysis. See, also HQ 950007, dated October 4, 1991.

In the subject case, we note that the knit trim is so minimal that it merely serves as an accessory to the garment. The woven panels comprise approximately 95 percent of the total surface area of the garment. As such, it is our determination that the knit trim is not an integral component of the garment, a GRI 3 analysis is not necessary, and the guidelines contained in the Customs Memorandum do not need to be applied to determine the essential character. Accordingly, the article is properly classified as a woven garment pursuant to a GRI 1 analysis.

Chapter 62, HTSUSA, provides for woven garments because it applies to made up articles of any textile fabric, other than wadding, and excludes knitted or crocheted articles (other than those of heading 6212). See Note 1, Chapter 62, HTSUSA.

In determining whether or not the subject article is classifiable as an outerwear jacket within the meaning of heading 6201, HTSUSA, we note that the subject garment has features that are typical of both an ordinary pullover garment and an outerwear garment. In such situations, it is appropriate to consult the *Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, C.I.E. 13/88, November 23, 1988 (Textile Guidelines). The Textile Guidelines set forth eleven criteria by which to classify a garment as a jacket under the HTSUSA. If the garments possess at least three of the eleven features, and if the result is not unreasonable, the articles will be classified as a coat/jacket. In relevant part, the guidelines state as follows:

Shirt-jackets have full or partial front openings and sleeves, and at the least cover the upper body from the neck area to the waist. They may be within the coat category if designed to be worn over another garment (other than underwear). The following cri-

teria may be used in determining whether a shirt-jacket is designed for use over another garment, the presence of which is sufficient for its wearer to be considered modestly and conventionally dressed for appearance in public, either indoors or outdoors or both:

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

In the subject case, the garment possesses at least three of the eleven jacket features enumerated in the Textile Guidelines as follows: 1) a heavy-duty zipper; 2) rib-knit cuffs; 3) rib-knit waistband. Thus, the subject garment may be classifiable as an outerwear jacket/coat if the result is not unreasonable. In addition to having met three of the guideline criteria, the garment also features a water repellent "TEFLON" fabric protection, and is advertised as a waterproof outerwear garment designed for use during golf. However, we note that this garment is merely advertised as having a "water repellent" coating. No additional evidence has been submitted to support the degree to which it resists water. Thus, we have no basis upon which to find that it should be classified as a "water resistant" garment within the meaning of the HTSUSA.

The EN to heading 6101, which apply *mutatis mutandis* to the articles of heading 6201, HTSUSA, state:

This heading covers * * * garments for men or boys, characterised by the fact that they are generally worn over all other clothing for protection against the weather.

Clearly, the subject garment is designed to be used as a final protective outerwear layer over clothing because the side zipper allows the wearer to easily slip the article over bulky clothing. Finally, the water repellent coating invites use of the garment as a final protective layer against the elements.

In view of the foregoing, it is Customs determination that it is reasonable to classify this garment as a jacket under heading 6201.93.3511, HTSUSA. This decision is supported by HQ 964203, dated December 4, 2000, wherein Customs classified a man's pullover article, almost identical to the one now in question, as an outerwear jacket under heading 6201.93.3511, HTSUSA. In HQ 964203, the garment is described as being constructed of (woven) nylon fabric, having a v-neck collar with rib knit band, no front opening, long sleeves with rib knit cuffs, a knit lining of polyester/cotton fabric, and a rib knit waistband, with plastic (acrylic coating).

Holding:

NY G82728, dated October 13, 2000, is hereby modified. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

The subject merchandise is correctly classified in subheading 6201.93.3511, HTSUSA, which provides for, "Men's or boys' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets) windbreakers and similar articles (including padded, sleeveless jackets), other than those of heading 6203: Anoraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets): Of man-made fibers: Other: Other: Other, Men's." The general column one duty rate is 28.2 percent *ad valorem*. The textile category is 634.

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 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. The *Status Report on Current Import Quotas (Restraint Levels)* is also available on the Customs Electronic Bulletin board (CEBB) which can be found on the U.S. Customs Service Website at www.customs.gov.

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

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

U.S. Customs Service

Proposed Rulemaking

19 CFR Parts 141 and 142

RIN 1515-AC94

SINGLE ENTRY FOR UNASSEMBLED OR DISASSEMBLED ENTITIES IMPORTED ON MULTIPLE CONVEYANCES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to allow an importer of record, under certain conditions, to submit a single entry to cover multiple portions of a single entity which, due to its size or nature, arrives in the United States on separate conveyances. The proposed amendments would implement statutory changes made to the merchandise entry laws by the Tariff Suspension and Trade Act of 2000.

DATE: Comments must be received on or before June 7, 2002.

ADDRESSES: Written comments may be addressed to and inspected at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

For operational matters: Tom Heffernan, Office of Field Operations, (202) 927-0360.

For classification matters: Patricia Fitzpatrick, Office of Field Operations, (202) 927-1106.

For legal matters: Larry L. Burton, Office of Regulations and Rulings, (202) 927-1287.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 1460 of Public Law 106-476, popularly known as the Tariff Suspension and Trade Act of 2000, amended section 484 of the Tariff Act of 1930 (19 U.S.C. 1484) by adding a new subsection (j) in order to provide for the treatment of certain multiple shipments of merchandise as a single entry.

The amended law, 19 U.S.C. 1484(j), is concerned with two issues. First, section 1484(j)(1) addresses a problem long encountered by the importing community in entering merchandise whose size or nature necessitates shipment in an unassembled or disassembled condition on more than one conveyance. Second, section 1484(j)(2) offers relief to importers whose shipments, which they intended to be carried on a single conveyance, are divided at the initiative of the carrier. As to both these matters, the legislation is silent as to the affected modes of transportation, thus indicating that the new law is to apply to merchandise shipped by air, land or sea.

Customs determined to proceed first with proposed regulations relating only to shipments which are divided by carriers (19 U.S.C. 1484(j)(2)); these are referred to as "split shipments." Separate proposals were undertaken because Customs had already begun a project to amend the regulations to provide for one entry for such split shipments prior to the present statutory amendments.

The proposed rule regarding split shipments (RIN 1515-AC91) was published in the Federal Register (66 FR 57688) for public comment on November 16, 2001.

Customs now proposes regulations concerning a single entry for shipments of unassembled or disassembled merchandise that arrive on more than one conveyance (19 U.S.C. 1484(j)(1)). It is noted that where the proposed regulatory text in this document affects the same sections in the Customs Regulations that the document regarding split shipments affected, this document includes the proposed regulatory text changes in those sections that were previously published for split shipments, as appropriately modified consistent with the present proposal. Accordingly, this document should be read in conjunction with that proposal. It is particularly noted that the other proposal contains in proposed § 141.57 the major requirements for split shipments. Comments with respect to the proposed amendments for split shipments should be submitted in connection with the Federal Register notice for split shipments, cited above. Only comments concerning the proposed amendments for single entities that are shipped unassembled or disassembled on multiple conveyances should be submitted in connection with this document.

An application to file a single entry covering an unassembled or disassembled entity as described in this proposed rulemaking must be made by the importer of record, either by appropriately annotating a CF 3461, a CF 3461 ALT, or electronic equivalent, or by submitting a letter to Customs. The required application must be made no later than 5 working days in advance of the arrival of the first conveyance. Justification for the need for more than one conveyance must be provided in the application, which must include an affirmative statement that the entity cannot, due to its size or nature, be accommodated on one conveyance. A copy of the relevant invoice or purchase order, or its electronic equivalent, must accompany the application, along with the proposed ap-

appropriate single tariff number under the Harmonized Tariff Schedule of the United States (HTSUS). The port director will notify the applicant of the approval or denial of the application within 3 working days of the receipt of the application.

UNASSEMBLED OR DISASSEMBLED ENTITY DEFINED

For the purposes of this proposal, an unassembled or disassembled entity consists of merchandise which is not capable of being transported on a single conveyance, but which is purchased and invoiced as a single classifiable entity. By necessity, due to its size or nature, the entity is placed on multiple conveyances which arrive in the United States at the same port at different times. The subject arriving portions are consigned to the same person in the United States.

The Customs Regulations ordinarily require, with certain exceptions not here relevant, that all merchandise arriving on one conveyance and consigned to one consignee be included on one entry (see § 141.51, Customs Regulations (19 CFR 141.51)). There is no provision currently in the Customs Regulations authorizing the filing of a single entry to cover multiple portions of a single entity arriving in the United States at different times on separate conveyances.

Specifically, the proposed regulations would permit the filing of a single entry to cover the importation by separate conveyances of portions of a large unassembled or disassembled entity provided that: (1) the subject shipment is not capable of being transported on a single conveyance, but is purchased, invoiced and classified under a single provision of the Harmonized Tariff Schedule of the United States (HTSUS) as a single entity; (2) the arriving portions of the shipment are consigned to the same person in the United States; and (3) the portions covered under the entry arrive directly from abroad at the same port of importation in the United States within 10 calendar days of the date of the portion that arrives first.

ENTRY OR RELEASE OF MERCHANDISE

Where a single entry is accepted for multiple portions of an entity which has arrived at different times, the legislation leaves open the question of whether the various portions may be released as they arrive, or whether their release must be delayed until the entire entity has been imported. Customs has determined to provide either option to importers of unassembled or disassembled entities whose portions arrive at different times. Under either option, the proposed regulations require the importer to file Customs Form (CF) 3461 or CF 3461 alternate (CF 3461 ALT), or electronic equivalent, which will cover the entity named on the invoice. In addition, the manifest accompanying each conveyance will be supplemented by a packing list specifying the contents of the particular load.

In the event that each portion of the unassembled or disassembled entity is to be released upon its arrival, and prior to the arrival of the entire shipment, the procedure for releasing merchandise under a special per-

mit for immediate delivery will be used for this purpose, as more fully outlined below. As each portion arrives, the importer must submit a copy of the originally executed CF 3461/3461 ALT, annotated to reflect which portion of the entire invoiced entity is arriving at that time (*e.g.*, third of six portions).

SPECIAL PERMIT FOR IMMEDIATE DELIVERY

Customs law typically contemplates that merchandise will be imported before it is entered. This raises a potential obstacle to allowing an entry covering an entity to be filed and accepted when only a portion of the unassembled or disassembled entity has thus far arrived. It also presents the difficult question of whether a rate of duty, set at the time of the release of the first portion, may apply to goods not yet imported into the United States. The proposed resolution of these latter two issues lies in requiring the unassembled or disassembled entity to be released under a special permit for immediate delivery. Section 142.21(a)–(g), Customs Regulations (19 CFR 142.21(a)–(g)), describes the circumstances and lists the types of merchandise that are currently eligible to be released under a special permit for immediate delivery. The proposed regulations would differ by not allowing the inclusion of quota class merchandise. In addition, § 142.22(a), Customs Regulations (19 CFR 142.22(a)), permits the submission of a *pro forma* rather than a commercial invoice. The proposed regulations would require the submission of a commercial invoice only.

Due to the fact that merchandise released under the special permit procedures set forth in § 142.21 is not considered to be entered until the entry/entry summary is filed, all of the portions comprising the entire unassembled or disassembled entity will be imported by the time the entry/entry summary is filed. The rate of duty applied to the merchandise will be the rate in effect for all goods released under the immediate delivery procedures, that is, the rate in effect when the entry/entry summary is filed.

It is proposed to create another category of immediate delivery releases by amending § 142.21 to add a new paragraph (h), in order to provide for the filing of a special permit for immediate delivery when the importer ships an entity on different conveyances due to its size or nature and elects to have each portion separately released as it arrives.

FILING OF ENTRY SUMMARY

Regarding the filing of the entry summary, the importer has two options if he waits until all portions of the entity have arrived. He can make entry of the entity when all portions arrive. If he does this, he must file the entry summary within 10 working days of the time of entry (see § 142.12(b), Customs Regulations (19 CFR 142.12(b))). In the alternative, he may have the entity released under a special permit for immediate delivery after all portions arrive, provided the entity is eligible for the special permit. If he chooses this option, the entry summary, which would serve as both the entry and entry summary, must be filed within

10 working days after the first portion of the entity has been authorized for release under the special permit (see §142.23, Customs Regulations (19 CFR 142.23)).

Under proposed § 142.21(h), in the case of the arriving portions of a large entity released incrementally under the immediate delivery procedures, the entry summary, which would serve as both the entry and the entry summary, must be filed within 10 working days from the date of the first released portion. However, the entry/entry summary for the entity cannot be filed before the last portion of the entity which is to be included on the entry has arrived.

At the time of filing of the entry summary, estimated duties, taxes and fees would be required to be attached. If the entry summary is filed electronically, the estimated duties, taxes and fees would be required to be scheduled at that time for payment pursuant to the Automated Clearinghouse requirements (see § 24.25 of this chapter).

TARIFF CLASSIFICATION

While 19 U.S.C. 1484(j) addresses the entry of merchandise, the legislation is silent as to classification under the HTSUS. It is therefore proposed that for Customs classification purposes the separate portions of the subject entity placed on one entry be classified as if they had been imported together. Since the legislation restricts the inclusion on one entry to merchandise purchased and invoiced as a single entity, any spare parts accompanying a portion of the entity must be entered separately.

FAILURE TO ARRIVE WITHIN THE 10 DAY PERIOD

The importer of record would be responsible for verifying whether all portions of the entity have arrived within the specified 10 calendar day period. In instances in which all portions have not arrived, the importer of record would be required to file separate entries, or applications for special permit for immediate delivery, as well as separate entry summaries, for the portions of the unassembled or disassembled entity that arrive on different conveyances. Each entry and/or entry summary would reflect the quantities, values, classifications and rates of duty, as appropriate, of the various components conveyed in each shipment, and not the value, classification and rate of duty of the ordered single entity. An importer of portions released incrementally would be required to recall the filed CF 3461/3461ALT application for special permit for immediate delivery and to substitute separate entries, or applications for special permit for immediate delivery, in its place.

EXCLUSIONS FROM PROCEDURE UNDER 19 U.S.C. 1484(j)(1)

Quota and/or visa class merchandise will not be eligible for treatment under the provisions of 19 U.S.C. 1484(j)(1) and this regulation.

Customs also proposes to reserve the right for the port director to deny use of the incremental release procedure under proposed § 142.21(h) as circumstances warrant, such as in the case where a particular shipment has been selected for examination.

In order to implement 19 U.S.C. 1484(j) insofar as it enables Customs to accept a single entry for separately arriving portions of a single large entity, as described, it is proposed to add a new § 141.58 to the Customs Regulations (19 CFR 141.58). Also, in addition to proposed § 142.21(h), as noted, minor conforming changes would be made to §§ 141.51 and 142.12(b) of the Customs Regulations (19 CFR 141.51, 142.12(b)).

COMMENTS

Before adopting the proposed amendments that provide for a single entry for portions of an entity that arrive at different times, consideration will be given to any written comments that are timely submitted to Customs in this regard. Comments concerning the language in this package concerning split shipments should be submitted in connection with the previously published notice dealing with such shipments (see 66 FR 57688). Customs particularly requests comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, 1300 Pennsylvania Avenue, NW, 3rd Floor, Washington, D.C.

REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

The proposed rule is intended to implement the amendment to 19 U.S.C. 1484 by the Tariff Suspension and Trade Act of 2000. The proposed rule, if adopted, will engender cost savings by reducing paperwork for importers, and by reducing the number of entries required for separate shipments of unassembled or disassembled entities. Hence, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor does the proposed rule result in a "significant regulatory action" under E.O. 12866.

PAPERWORK REDUCTION ACT

The collections of information encompassed within this proposed rule have already been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Numbers 1515-0065 (Requirement to make entry unless specifically exempt; Requirement to file entry summary form); 1515-0167 (Statement processing and Automated Clearinghouse); 1515-0214 (General recordkeeping and record production requirements); and 1515-0001 (Transportation manifest; cargo declaration). This rule does not propose any substantive changes to the existing approved information collections. An agency may not conduct, and a person is not required to respond to, a collection

of information unless the collection of information displays a valid control number assigned by OMB.

LIST OF SUBJECTS

19 CFR Part 141

Customs duties and inspection, Entry of merchandise, Release of merchandise, Reporting and recordkeeping requirements.

19 CFR Part 142

Computer technology, Customs duties and inspection, Entry of merchandise, Reporting and recordkeeping requirements.

PROPOSED AMENDMENTS TO THE REGULATIONS

It is proposed to amend parts 141 and 142, Customs Regulations (19 CFR parts 141 and 142), as set forth below.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for part 141 would continue to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

2. It is proposed to revise § 141.51 to read as follows:

§ 141.51 Quantity usually required to be in one entry.

All merchandise arriving on one conveyance and consigned to one consignee must be included on one entry, except as provided in § 141.52. In addition, a shipment of merchandise that arrives by separate conveyances at the same port of importation in multiple portions, either as a shipment split by the carrier or as components of a large unassembled or disassembled entity, may be processed under a single entry, as prescribed, respectively, in §§ 141.57 and 141.58 of this part.

3. It is proposed to amend subpart D of part 141 by adding a new § 141.58, to read as follows:

§ 141.58 Single entry for separately arriving portions of large unassembled or disassembled entities.

(a) *At election of importer of record.* At the election of the importer of record, a large unassembled or disassembled entity arriving on multiple conveyances as contemplated under section 484(j)(1), Tariff Act of 1930 (19 U.S.C. 1484(j)(1)), may be processed as a single entry, as prescribed under the procedures set forth in this section.

(b) *Unassembled or disassembled entities covered.* An unassembled or disassembled entity for purposes of this section is a large entity which:

(1) Cannot, due to its size or nature, be accommodated on a single conveyance, and is thus imported in an unassembled or disassembled condition;

(2) Is ordered, invoiced and is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS), as a single entity and is consigned to one person in the United States;

(3) Is imported on more than one conveyance, and

(4) Involves the first portion and all succeeding portions arriving directly at the same United States port of importation within 10 calendar days of the date of the first portion.

(c) *Application by importer.* An application to file a single entry covering an entity described in paragraph (b) of this section must be made by the importer of record, either by appropriately annotating a CF 3461, CF 3461 ALT, or electronic equivalent, or by submitting a letter to Customs. The required application must be made no later than 5 working days in advance of the arrival of the first conveyance. Justification for the need for more than one conveyance must be provided in the application, which must include an affirmative statement that the entity cannot, due to its size or nature, be accommodated on one conveyance. A copy of the relevant invoice or purchase order, or electronic equivalent, must accompany the application, along with the proposed appropriate single tariff number under the HTSUS. The port director will notify the applicant of the approval or denial of the application within 3 working days of the receipt of the application.

(d) *Entry or special permit for immediate delivery.* In order to make a single entry for portions of an entity covered under this section that arrive at different times, an importer of record must follow the procedure prescribed in paragraph (d)(1) or (d)(2) of this section, as applicable.

(1) *Entry or special permit after arrival of all portions.* An importer may file an entry at such time as all portions of the entity have arrived. In the alternative, the importer may file a special permit for immediate delivery after arrival of all portions of the entity provided that it is eligible for such a permit under § 142.21(a)–(d), (f) and (i) of this chapter (see § 142.21(e) of this chapter).

(2) *Special permit for immediate delivery after arrival of first portion.* As provided in § 142.21(h) of this chapter, an importer of record may file an application for a special permit for immediate delivery after the arrival of the first portion of the entity covered by paragraph (b) of this section, and its remaining portions may be released incrementally pursuant to the requirements set forth in paragraph (e) of this section.

(e) *Release.* To secure release of an entity after arrival of all portions under paragraph (d)(1) of this section, a Customs Form (CF) 3461 or CF 3461 alternate (CF 3461 ALT), as appropriate, or electronic equivalent, must be filed with Customs. To secure the separate release upon arrival of each portion of a shipment under paragraph (d)(2) of this section, a CF 3461 or CF 3461 ALT, as appropriate, or electronic equivalent, must be filed with Customs after arrival of the first portion. As each successive portion arrives, the importer must submit a copy of the originally submitted CF 3461/CF 3461 ALT, annotated to specifically identify that particular portion. The CF 3461/CF 3461 ALT must indicate the order of the arriving portion in relation to the entire shipment as reflected on the invoice (for example, third of six portions). The release of each portion upon arrival as permitted under this paragraph may be restricted due to

Customs need to examine the merchandise in accordance with paragraph (f) of this section. In addition, the importer of record must present to Customs either on paper or through an authorized electronic equivalent, specific and detailed information supplementing the CF 3461 or 3461 ALT, relating to the merchandise on each conveyance which reflects exact information for that portion of the ordered entity (for example, detailed packing lists).

(f) *Examination.* Examination of any or all portions of the entity may be required. Customs reserves the right to deny incremental release (defined in § 142.21(g) of this chapter) should such an examination of the merchandise be necessary. The denial of incremental release does not preclude the use of the procedures specified in paragraph (d)(1) of this section.

(g) *Entry summary.* (1) For merchandise entered under paragraph (d)(1) of this section, an entry summary must be filed within 10 working days from the time of entry (see § 142.12(b) of this chapter). For merchandise released under a special permit for immediate delivery, the entry summary, which serves as both the entry and entry summary, must be filed within 10 working days after the first portion of the entity is authorized for release under the special permit (see § 142.23 of this chapter).

(2) For merchandise released under a special permit for immediate delivery pursuant to paragraph (d)(2) of this section, the entry summary, which serves as both the entry and the entry summary, must be filed within 10 working days from the date of the first release of a portion of the unassembled or disassembled entity. However, the entry/entry summary for the entity cannot be filed before the last portion of the entity which is to be included on the entry has arrived.

(3) *Duty payment.* At the time the entry summary is filed under paragraphs (g)(1) and (g)(2) of this section, estimated duties, taxes and fees must be attached. If the entry summary is filed electronically, the estimated duties, taxes and fees must be scheduled for payment at such time pursuant to the Automated Clearinghouse procedures (see § 24.25 of this chapter).

(h) *Classification.* Except as provided in paragraph (j) of this section, for purposes of section 484(j)(1), Tariff Act of 1930 (19 U.S.C. 1484(j)(1)), the merchandise comprising the separate portions of an entity covered by paragraph (b) of this section included on one entry will be classified as though imported together. Any spare parts accompanying a portion of an entity must be classified and entered separately.

(i) *Separate entry and entry summary required.* When all portions of an entity do not arrive within 10 calendar days of the arrival of the first portion, a separate entry and entry summary must be filed for each portion that has already arrived, and for each portion that subsequently will arrive on separate conveyances. The merchandise included on each separate entry shall be classified in its condition as imported. Each entry would reflect the quantities, values, classifications and rates of duty, as

appropriate, of the various components conveyed in each shipment, and not the value or classification of the ordered single entity.

(j) *Exclusions.* Merchandise subject to quota and/or visa requirements is entirely excluded from the procedures set forth in this section. Also, Customs reserves the right for the port director to deny use of the incremental release procedure and only release the shipment in its entirety as circumstances warrant, such as in the case where a particular shipment has been selected for examination.

PART 142—ENTRY PROCESS

1. The general authority for part 142 would continue to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. It is proposed to amend § 142.21 by removing the second sentence in paragraph (e)(1) and adding in its place three new sentences, by removing the second sentence in paragraph (e)(2) and adding in its place three new sentences, by redesignating paragraph (g) as paragraph (i) and adding two new paragraphs (g) and (h), and by revising newly redesignated paragraph (i) to read as follows:

§ 142.21 Merchandise eligible for special permit for immediate delivery.

* * * * *

(e) *Quota-class merchandise.* (1) *Tariff rate quotas.* * * * However, merchandise subject to a tariff-rate quota may not be incrementally released under a special permit for immediate delivery as provided in paragraphs (g) and (h) of this section. Nor is such merchandise eligible for release under a special permit pursuant to § 141.58(d)(1) of this chapter. Where a special permit is authorized, an entry summary will be properly presented pursuant to § 132.1 of this chapter within the time specified in § 142.23, or within the quota period, whichever expires first. * * *

(2) *Absolute quotas.* * * * However, merchandise subject to an absolute quota under this paragraph may not be incrementally released under a special permit for immediate delivery as provided in paragraphs (g) and (h) of this section. Nor is such merchandise eligible for release under a special permit pursuant to § 141.58(d)(1) of this chapter. Where a special permit is authorized, a proper entry summary must be presented for merchandise so released within the time specified in § 142.23, or within the quota period, whichever expires first. * * *

* * * * *

(g) *Split shipments.* Merchandise subject to § 141.57(d)(2) of this chapter, which is purchased and invoiced as a single shipment, but which is shipped by the carrier in separate portions to the same port of arrival due to the carrier's inability to accommodate the merchandise on a single conveyance, may be released incrementally under a special permit.

(h) *Entities shipped unassembled or disassembled on multiple conveyances.* Merchandise subject to § 141.58(d)(2) of this chapter, which is purchased, invoiced, and classified as a single entity under the Harmonized Tariff Schedule of the United States (HTSUS), and which is shipped in separate portions because its size or nature prevents accommodating the entity on a single conveyance, may be released incrementally under a special permit.

(i) *When authorized by Headquarters.* Headquarters may authorize the release of merchandise under the immediate delivery procedure in circumstances other than those described in paragraphs (a), (b), (c), (d), (e), (f), (g), and (h) of this section provided a bond on Customs Form 301 containing the bond conditions set forth in § 113.62 of this chapter is on file.

3. It is proposed to amend § 142.22 by removing the first sentence of paragraph (a) and adding in its place the following two sentences to read as follows:

§ 142.22 Application for special permit for immediate delivery.

(a) *Form.* An application for a special permit for immediate delivery will be made on Customs Form 3461, supported by the documentation provided for in § 142.3. A commercial invoice will not be required, except for merchandise released under the provisions of 19 U.S.C. 1484(j).
* * *

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4. It is proposed to amend § 142.23 by adding a sentence to read as follows:

§ 142.23 Time limit for filing documentation after release.

* * * The time for filing entry summary documentation may be extended as set forth in § 141.58(g)(1) and (g)(2) of this chapter, under the authority of § 141.58(b)(4) of this chapter.

ROBERT C. BONNER,
Commissioner of Customs.

Approved: April 1, 2002.

TIMOTHY E. SKUD,

Acting Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, April 8, 2002 (67 FR 16664)]