

# U.S. Customs Service

## *General Notices*

### COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 6-2002)

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

SUMMARY: The copyrights, trademarks, and trade names recorded with the U.S. Customs Service during the month of June 2002. The last notice was published in the CUSTOMS BULLETIN on June 26, 2002.

Corrections or information to update files may be sent to U.S. Customs Service, IPR Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Joanne Roman Stump, Chief, Intellectual Property Rights Branch, (202) 927-2330.

Dated: July 25, 2002.

JOANNE ROMAN STUMP,  
*Chief,*  
*Intellectual Property Rights Branch.*

The list of recordations follow:

U.S. CUSTOMS SERVICE  
IPR RECORDATIONS ADDED IN JUNE 2002

07/01/2002  
07:46:24

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TMM OR MSK	OWNER NAME	RES
COP0200114	20020613	20210613	SMILING FACE WITH DRAGONFLY	CRESKO INC.	N
COP0200115	20020613	20210613	SMILING FACE WITH BIRD	CRESKO INC.	N
COP0200116	20020613	20210613	SMILING FACE WITH DRAGONFLY	CRESKO INC.	N
COP0200117	20020618	20210618	BIG NOSE WITH DRAGONFLY	CRESKO INC.	N
COP0200118	20020618	20210618	POKEMON PUZZLE LEAGUE	CRESKO INC.	N
COP0200119	20020619	20220619	THE JAZZMAN 3346M	NINTENDO OF AMERICA INC.	N
COP0200120	20020619	20220619	SINGING PATRIOTIC G.I. ITEM #FOD-001B	MASTER TOYS & NOVELTIES, INC.	N
COP0200121	20020619	20220619	NUTCRACKER	MASTER TOYS & NOVELTIES, INC.	N
COP0200122	20020627	20220627	GRAPELEAF PATTERN PLANTER/POT	CONSOLIDATED FOAM, INC.	N
COP0200123	20020627	20220627	SAFETY TIPS IMPORTANT INFORMATION FROM N.K.H.A.	NATIONAL KEROSENE HEATER ASS.	N
COP0200124	20020627	20220627	ASSORTED FINIALS I	MSG MARKETING, INC.	N
SUBTOTAL RECORDATION TYPE 11					
TMK0200357	20020603	2011231	TURBO	QUANTUM INSTRUMENTS, INC.	N
TMK0200358	20020612	20070401	D.P.S.	MCNAUGHTON APPAREL HOLDINGS, INC.	N
TMK0200359	20020612	20030706	MAGGIE MCNAUGHTON	MCNAUGHTON APPAREL HOLDINGS, INC.	N
TMK0200360	20020612	20040505	NORTON MCNAUGHTON	MCNAUGHTON APPAREL HOLDINGS, INC.	N
TMK0200361	20020612	20050422	ANISSA BROOKE (STYLIZED)	MCNAUGHTON APPAREL HOLDINGS, INC.	N
TMK0200362	20020612	20021108	ERIKA & CO.	MCNAUGHTON APPAREL HOLDINGS, INC.	N
TMK0200363	20020612	20090302	ERIKA BLUES	MCNAUGHTON APPAREL HOLDINGS, INC.	N
TMK0200364	20020613	20090316	ERIKA COLLECTION	MCNAUGHTON APPAREL HOLDINGS, INC.	N
TMK0200365	20020613	20090302	ERIKA II & CO.	MCNAUGHTON APPAREL HOLDINGS, INC.	N
TMK0200366	20020613	20090316	ERIKA II STUDIO	MCNAUGHTON APPAREL HOLDINGS, INC.	N
TMK0200367	20020613	20090316	PRIVATE PARTY	MCNAUGHTON APPAREL HOLDINGS, INC.	N
TMK0200368	20020613	20021215	PRIVATE PARTY	MCNAUGHTON APPAREL HOLDINGS, INC.	N
TMK0200369	20020613	20100508	RICKI	MCNAUGHTON APPAREL HOLDINGS, INC.	N
TMK0200370	20020613	20021020	CLAMATO	MCNAUGHTON APPAREL HOLDINGS, INC.	N
TMK0200371	20020613	20100614	SUGAR BLUES	MCNAUGHTON APPAREL HOLDINGS, INC.	N
TMK0200372	20020613	20031102	SUGAR CO. LTD.	MCNAUGHTON APPAREL HOLDINGS, INC.	N
TMK0200373	20020613	20070929	ENERGIE (STYLIZED)	MCNAUGHTON APPAREL HOLDINGS, INC.	N
TMK0200374	20020613	20051206	CHARLE SCOTT	MCNAUGHTON APPAREL HOLDINGS, INC.	N
TMK0200375	20020613	20080113	GOLF BLUES	MCNAUGHTON APPAREL HOLDINGS, INC.	N
TMK0200376	20020613	20070728	GOLFBLASTER	MCNAUGHTON APPAREL HOLDINGS, INC.	N
TMK0200377	20020614	20050502	MONDO UOMO	MCNAUGHTON APPAREL HOLDINGS, INC.	N
TMK0200378	20020614	20110227	SPC AND DESIGN	MCNAUGHTON APPAREL HOLDINGS, INC.	N
TMK0200379	20020618	20110227	SANG-A AND DESIGN	MCNAUGHTON APPAREL HOLDINGS, INC.	N
TMK0200380	20020618	20110611	AS AND DESIGN	MCNAUGHTON APPAREL HOLDINGS, INC.	N
TMK0200381	20020618	20030629	COSAHIN	MCNAUGHTON APPAREL HOLDINGS, INC.	N
TMK0200382	20020618	20110515	PPS AND DESIGN	MCNAUGHTON APPAREL HOLDINGS, INC.	N
TMK0200383	20020618	20110515	EXPRESS	MCNAUGHTON APPAREL HOLDINGS, INC.	N
TMK0200384	20020618	20110904	PRECISION PRODUCT SYSTEMS	PRECISION PRODUCT SYSTEMS LLC.	N
TMK0200385	20020618	20110515	HEAVEN AND DESIGN	PRECISION PRODUCT SYSTEMS LLC.	N
TMK0200386	20020618	20110515	PERMA-LASH	PRECISION PRODUCT SYSTEMS LLC.	N
TMK0200387	20020618	20110721	LEVITON AND DESIGN	PRECISION PRODUCT SYSTEMS LLC.	N
TMK0200388	20020618	20050509	PICNIC BOAT	PRECISION PRODUCT SYSTEMS LLC.	N
TMK0200389	20020618	20110721	LEVITON AND DESIGN	PRECISION PRODUCT SYSTEMS LLC.	N
TMK0200390	20020618	20050509	PICNIC BOAT	PRECISION PRODUCT SYSTEMS LLC.	N
TMK0200391	20020618	20110721	LEVITON AND DESIGN	PRECISION PRODUCT SYSTEMS LLC.	N
TMK0200392	20020618	20050509	PICNIC BOAT	PRECISION PRODUCT SYSTEMS LLC.	N

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TMM OR MSK	OWNER NAME	RES
TMK0200393	20020618	20100710	SYSTEMAX	AVAYA INC.	N
TMK0200394	20020618	20105124	SYSTEMAX	AVAYA INC.	N
TMK0200395	20020618	20071223	ZIG-ZAG GOLD STANDARD	NORTH ATLANTIC OPERATING CO INC	Y
TMK0200396	20020618	20030408	ZIG-ZAG (AND DESIGN)	NORTH ATLANTIC OPERATING CO INC	Y
TMK0200397	20020618	20100415	ZIG ZAG	NORTH ATLANTIC OPERATING CO INC	Y
TMK0200398	20020618	20080112	ZIG ZAG	NORTH ATLANTIC OPERATING CO INC	Y
TMK0200399	20020618	20120302	ANDRE RIVALLE	E. GLUCK CORPORATION	N
TMK0200400	20020618	20081115	ZIG-ZAG (AND DESIGN)	NORTH ATLANTIC OPERATING CO INC	Y
TMK0200401	20020618	20081013	CAUTION!	VITELLO, JIM	N
TMK0200402	20020618	20070715	FLYING HORSE DESIGN	NORTH ATLANTIC OPERATING CO INC	Y
TMK0200403	20020618	20110612	RH' NY	MOBILE OIL CORPORATION	N
TMK0200404	20020618	20110206	OH' NY	RIRI SA	N
TMK0200405	20020619	20120122	DIGRAD AND DESIGN	NIPPON FLOUR MILLS	N
TMK0200406	20020619	20110220	DESIGN OF PEDESTRIAN	DIGRAD CORPORATION	N
TMK0200407	20020619	20110217	PEDESTRIAN SHOPS & DESIGN	PEDESTRIAN CORPORATION	N
TMK0200408	20020619	20081024	PEDESTRIAN & DESIGN	PEDESTRIAN CORPORATION	N
TMK0200409	20020619	20080912	PEDESTRIAN & DESIGN	PEDESTRIAN CORPORATION	N
TMK0200410	20020619	20070118	CORRANTS AND DESIGN	MCNAUGHTON APPAREL HOLDINGS, INC	Y
TMK0200411	20020619	20020728	LOGSERS LINED DESIGN	PLANNERS 1A PARTNERS	N
TMK0200412	20020619	20020728	LOGSERS LINED DESIGN	PLANNERS 1A PARTNERS	N
TMK0200413	20020619	20101016	MAJOR LEAGUE BASEBALL AND DESIGN	MAJOR LEAGUE BASEBALL PROPERTIES	N
TMK0200414	20020619	20101205	PIRATES	PITTSBURGH ASSOCIATES	N
TMK0200415	20020619	20110205	CARDINALS	ST. LOUIS CARDINALS, L.P.	N
TMK0200416	20020619	20110724	BREWERS	MILWAUKEE BREWERS BASEBALL CLUB	N
TMK0200417	20020619	20101223	REDS	THE CINCINNATI REDS, LLC	N
TMK0200418	20020619	20110914	DUNHILL & DESIGN	DUNHILL TOBACCO OF LONDON LTD.	N
TMK0200419	20020619	20050307	DESIGN (BLOCK)	THE LINCOLN ELECTRIC COMPANY	N
TMK0200420	20020621	20100404	NARCISO RODRIGUEZ	NARCISO RODRIGUEZ CORPORATION	N
TMK0200421	20020621	20100418	NARCISO RODRIGUEZ	NARCISO RODRIGUEZ CORPORATION	N
TMK0200422	20020621	20030427	VILLA ROSA	AMERICAN B.D. COMPANY	N
TMK0200423	20020625	20111027	SAVIN	SAVIN CORPORATION	N
TMK0200424	20020625	20110123	MR. COFFEE (STYLIZED LETTERING)	SUNBEAM PRODUCTS INC.	N
TMK0200425	20020625	20100613	MO MOCHI (PLUS DESIGN)	USM, INC.	N
TMK0200426	20020627	20101010	FUJIYAMA	SUCCES DE PARIS	N
TMK0200427	20020627	20111229	LOPID	WARNER-LAMBERT COMPANY	N
TMK0200428	20020627	20110320	LESORTSAC AND DESIGN	LE SPORTSAC, INC.	N
TMK0200429	20020627	20111219	CELFEI	STALE LIVING CORPORATION	N
TMK0200430	20020627	20120010	SHANEL	SHANEL CORPORATION	N
TMK0200431	20020627	20100110	BUKOV	BULOVA CORPORATION	N
TMK0200432	20020627	20101127	ACCUTRON	BULOVA CORPORATION	N
TMK0200433	20020628	20100109	GAP	GAP (APPAREL), INC.	N
TMK0200434	20020628	20110402	SOCOLOR	L'OREAL USA CREATIVE, INC.	N
TMK0200435	20020628	20111009	BIOLOGE	L'OREAL USA CREATIVE, INC.	N
TMK0200436	20020628	20090223	MATRIX	L'OREAL USA CREATIVE, INC.	N
TMK0200437	20020628	20030720	VAVOOM!	L'OREAL USA CREATIVE, INC.	N
TMK0200438	20020628	20060527	LOGICS	MATRIX ESSENTIALS, INC.	N
TMK0200439	20020628	20091012	AMPLIFY	L'OREAL USA CREATIVE, INC.	N

QUARTERLY IRS INTEREST RATES USED IN CALCULATING  
INTEREST ON OVERDUE ACCOUNTS AND REFUNDS ON  
CUSTOMS DUTIES

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. For the calendar quarter beginning July 1, 2002, the interest rates for overpayments will be 5 percent for corporations and 6 percent for non-corporations, and the interest rate for underpayments will be 6 percent. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 298-1200, extension 1349.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in the Federal Register on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub.L. 105-206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2002-33 (*see*, 2002-25 IRB \_\_\_\_, dated June 25, 2002), the IRS determined the rates of interest for the calendar quarter beginning July 1, 2002, and ending September 30, 2002. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%). For corporate overpayments, the rate is the Federal short-term rate (3%) plus two percentage points (2%) for a total of five percent (5%). For overpayments made by non-corporations, the rate is the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%). These interest rates are subject to change for

the calendar quarter beginning October 1, 2002, and ending December 31, 2002.

For the convenience of the importing public and Customs personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

<i>Beginning Date</i>	<i>Ending Date</i>	<i>Underpayments (percent)</i>	<i>Overpayments (percent)</i>	<i>Corporate Overpayments (Eff. 1-1-99) (percent)</i>
Prior to				
070174	063075	6 %	6 %	
070175	013176	9 %	9 %	
020176	013178	7 %	7 %	
020178	013180	6 %	6 %	
020180	013182	12 %	12 %	
020182	123182	20 %	20 %	
010183	063083	16 %	16 %	
070183	123184	11 %	11 %	
010185	063085	13 %	13 %	
070185	123185	11 %	11 %	
010186	063086	10 %	10 %	
070186	123186	9 %	9 %	
010187	093087	9 %	8 %	
100187	123187	10 %	9 %	
010188	033188	11 %	10 %	
040188	093088	10 %	9 %	
100188	033189	11 %	10 %	
040189	093089	12 %	11 %	
100189	033191	11 %	10 %	
040191	123191	10 %	9 %	
010192	033192	9 %	8 %	
040192	093092	8 %	7 %	
100192	063094	7 %	6 %	
070194	093094	8 %	7 %	
100194	033195	9 %	8 %	
040195	063095	10 %	9 %	
070195	033196	9 %	8 %	
040196	063096	8 %	7 %	
070196	033198	9 %	8 %	
040198	123198	8 %	7 %	
010199	033199	7 %	7 %	6 %
040199	033100	8 %	8 %	7 %
040100	033101	9 %	9 %	8 %
040101	063001	8 %	8 %	7 %
070101	123101	7 %	7 %	6 %
010102	093002	6 %	6 %	5 %

Dated: July 23, 2002.

ROBERT C. BONNER,  
*Commissioner of Customs.*

[Published in the Federal Register, July 26, 2002 (67 FR 48968)]

DEPARTMENT OF THE TREASURY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS,  
*Washington, DC, July 31, 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.

SANDRA L. BELL,  
(for Michael T. Schmitz, Assistant Commissioner,  
Office of Regulations and Rulings.)

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REVOCATION OF RULING LETTER AND TREATMENT  
RELATING TO TARIFF CLASSIFICATION OF A CHECKBOOK  
ORGANIZER

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to tariff classification of a checkbook organizer.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs is revoking a ruling pertaining to the tariff classification of a checkbook organizer and revoking any treatment previously accorded by Customs to substantially identical merchandise. Notice of the proposed revocation was published in the CUSTOMS BULLETIN of June 26, 2002, Vol. 36, No. 26. No comments were received in response to the notice of proposed action.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 14, 2002.

FOR FURTHER INFORMATION CONTACT: Greg Deutsch, Textiles Branch (202) 572-8811.

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 Customs obligations, notice proposing to revoke New York Ruling Letter (NY) E82903, dated June 16, 1999, was published on June 26, 2002, in the CUSTOMS BULLETIN, Vol. 36, No. 26. No comments were received in response to the notice of proposed action.

As was stated in the notice of proposed revocation, the notice covered any rulings relating to the specific issues of tariff classification set forth in the ruling, which may have existed but which had not been specifically identified. Any party who had received an interpretive ruling or decision (i.e., a ruling letter, an internal advice memorandum or decision, or a protest review decision) on the issues subject to the notice, should have advised Customs during the comment period.

In NY E82903, a multi-component article identified as a “Checkbook Organizer” was classified as a set in subheading 4202.32.2000, HTSUSA, which provides, in part, for “\* \* \* wallets \* \* \*: Articles of a kind normally carried in the pocket or in the handbag: With outer surface of sheeting of plastic or of textile materials: With outer surface of sheeting of plastic: Other.” The components were imported together, packed for retail sale, and found to comprise a “set” pursuant to General Rule of Interpretation (GRI) 3(b), with the PVC “wallet” imparting the set’s essential character. It is Customs position that the “wallet” component does not have the character of, and is not similar to, wallets or other containers enumerated in heading 4202, HTSUSA, which have in common the essential characteristics and purposes of organizing, storing, protecting and carrying various items. The outer component, instead, is similar to a cover for a checkbook and is classifiable under heading 3926, HTSUSA, which covers other articles of plastics. The essential character of the set is imparted by the checkbook register component, and the “Checkbook Organizer” is classified in subheading 4820.10.4000, HTSUSA, which provides, in part, for “\* \* \* Registers, account books \* \* \* order books, receipt books \* \* \* and similar articles: Other.”

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(1)), Customs is revoking NY E82903 and any other rul-

ings not specifically identified which involve identical or substantially identical merchandise, to reflect the proper classification of the articles according to the analyses in Proposed Headquarters Ruling Letter (HQ) 963397, which is set forth as an Attachment to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), Customs is revoking any treatment that Customs may have previously accorded to substantially identical transactions that is contrary to the position set forth in this notice.

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

Dated: July 26, 2002.

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

[Attachment]

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[ATTACHMENT]

DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE,  
*Washington, DC, July 26, 2002.*

CLA-2 RR:CR:TE 963397 GGD  
Category: Classification  
Tariff No. 4820.10.4000

ERIK D. SMITHWEISS, ESQUIRE  
GRUNFELD, DESIDERIO, LEBOWITZ & SILVERMAN LLP  
*245 Park Avenue, 33rd Floor  
New York, NY 10167-3397*

Re: Revocation of NY E82903; "Checkbook Organizer;" GRI 3(b) Set including Checkbook Register, Telephone/Address Book, Notebook, Card/Photo Holders, Pen, and Trifold Cover for Checkbook; Not Wallet of Heading 4202.

DEAR MR. SMITHWEISS:

This is in response to your request dated July 29, 1999, on behalf of your client, Archer Worldwide, Inc., for reconsideration of New York Ruling Letter (NY) E82903, issued June 16, 1999, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a multi-component article manufactured in China. A sample has been submitted for our examination. We have reviewed NY E82903 and have found the ruling to be in error. Therefore, this ruling revokes NY E82903. We regret the delay in responding.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of NY E82903 was published on June 26, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 26.

*Facts:*

In NY E82903, the multi-component article identified as a "Checkbook Organizer" was classified as a set in subheading 4202.32.2000, HTSUSA, which provides, in part, for "\*\*\* wallets \*\*\*: Articles of a kind normally carried in the pocket or in the handbag: With outer surface of sheeting of plastic or of textile materials: With outer surface of sheeting of plastic: Other." The sample article's outermost component, whether deemed to be a wallet



or a cover for a checkbook, is of a trifold design with a hook and loop front closure. The component is made with an outer material of unbacked polyvinyl chloride (PVC) plastic sheeting, and inner layers consisting of a paperboard stiffener and padding of foam plastic. In the closed position, the checkbook organizer measures approximately 6¼ inches in width by 4 inches in height by ½ of an inch in depth. When opened, the article's width remains the same, but it measures approximately 9½ inches in height. The interior of the article is fitted with two flat, translucent plastic sleeves, each of which extends full-width and measures approximately 3¼ inches in height.

The lower of the two sleeves is designed for the insertion of a staple-bound, 16 page checkbook register with 3 year calendar (included), or a checkbook (which is not included). The checkbook register measures approximately 6 inches in width by 3 inches in height. Loosely overlying both the lower sleeve and the checkbook register, and permanently attached by their top edges to the lower of the article's two spines, are two cardholder sleeves. Each cardholder sleeve contains a paper insert, one of which reads "Medical Card" and the other of which reads "Identification." The reverse sides of the inserts contain lines that are labeled for the entry of personal information.

The upper of the two flat, plastic sleeves lies on the interior, middle portion of the trifold component and contains a paper insert which reads "Receipts & Coupon Pocket." Overlying this paper insert, and slipped side by side into the flat plastic sleeve, are the back covers of two staple-bound, 16 page inserts, each of which measures approximately 3 inches square. One of the inserts is a telephone/address book and the other is a pad or notebook of blank paper. Above the upper sleeve, in the crease of the upper spine, is a tubular shaped pen holder of plastic sheeting, into which is inserted a retractable ball point pen. The uppermost or "fold-over" portion of the trifold article (above the pen and pen holder) extends full-width (6¼ inches), measures approximately 1¼ inch in height, and features only the "loop" segment of the article's hook and loop closure which, in the closed position, contacts the "hook" segment on the outer surface of the bottom portion.

It was determined in NY E82903 that, if imported separately, the components of the "Checkbook Organizer" would be individually classified in various subheadings, i.e., the address book in subheading 4820.10.2010, HTSUSA, the blank notebook in subheading 4820.10.2020, HTSUSA, the register in subheading 4820.10.4000, HTSUSA, the pen in subheading 9608.10.0000, and the wallet in subheading 4202.32.2000, HTSUSA. The components were imported together, however, packed for retail sale. The complete article was found to comprise a "set" pursuant to General Rule of Interpretation (GRI) 3(b), with the PVC "wallet" imparting the set's essential character.

*Issue:*

Whether the "Checkbook Organizer" is properly classified in subheading 4202.32.2000, HTSUSA, which covers, in part, " \* \* \* wallets \* \* \* and similar containers. \* \* \*," in subheading 3926.90.9880, HTSUSA, a basket provision which covers other articles of plastics; or under one of the provisions of heading 4820, HTSUSA, which covers, in part, "Registers \* \* \* notebooks \* \* \* diaries and similar articles \* \* \* book covers (including cover boards and book jackets) of paper or paperboard."

*Law and Analysis:*

Classification under the HTSUSA is made in accordance with the 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 Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

Among other merchandise, chapter 48, HTSUSA, covers articles of paper or of paperboard. Note 1(h) to chapter 48, HTSUSA, states that "[t]his chapter does not cover: Articles of heading 4202 (for example, travel goods)." As noted above, some of the items covered by heading 4820 are registers, notebooks, diaries and similar articles, book covers and other articles of stationery, of paper or paperboard. The EN to heading 4820 indicate that the heading covers various articles of stationery including (in addition to the examples named in the text of the heading) notebooks of all kinds, address books, and books, pads, etc., for entering telephone numbers. It is clear that several of the checkbook organizer's components are articles of stationery that are classifiable under heading 4820,

HTSUSA. To examine the characteristics of the component in which all of the other components are fitted, we next look to heading 4202, HTSUSA.

Among other goods, heading 4202, HTSUSA, provides for trunks, briefcases, wallets, and similar containers. The exemplars named in heading 4202 have in common the purpose of organizing, storing, protecting, and carrying various items. EN (c) to heading 4202 states, in part, that the heading does not cover:

Articles which, although they may have the character of containers, are not similar to those enumerated in the heading, for example, book covers and reading jackets, file-covers, document-jackets \* \* \* etc., and which are wholly or mainly covered with leather, sheeting of plastics, etc. Such articles fall in **heading 4205** if made of (or covered with) leather or composition leather, and in **other Chapters** if made of (or covered with) other materials. [Emphasis in original.]

For purposes of the outermost component at issue, such “other Chapters” include Chapter 39, HTSUSA, which provides for “Plastics and Articles Thereof.” Heading 3926, HTSUSA, covers “Other articles of plastics and articles of other materials of headings 3901 to 3914.” Although the language of the heading does not enumerate specific exemplars, the EN to heading 3926 state, in pertinent part, that the heading covers articles of plastics which include:

\* \* \* file-covers, document-jackets, book covers and reading jackets, and similar protective goods made by sewing or glueing together sheets of plastics.

In Headquarters Ruling Letter (HQ) 960835, dated June 29, 1999, this office classified a bifold cover (for a checkbook) with an exterior layer of cellular plastics not backed with textile fabric in subheading 3926.90.9880, HTSUSA. Like the “wallet” at issue herein, the interior sides of the bifold cover each had plastic slots or sleeves into which a checkbook or other types of books or pads could be inserted. To determine whether that article was similar to the containers enumerated in heading 4202, we first acknowledged that checkbook covers bear some resemblance to wallets of heading 4202, HTSUSA. Six digit subheadings 4202.32, 4202.31, and 4202.39, HTSUSA, cover articles of a kind normally carried in the pocket or handbag. The pertinent subheading EN states that:

These subheadings cover articles of a kind normally carried in the pocket or in the handbag and include spectacle cases, note-cases (bill-folds), wallets, purses, key-cases, cigarette-cases, cigar-cases, pipe-cases and tobacco-pouches.

In HQ 960835, it was noted that on June 21, 1995, this office had published a General Notice in the CUSTOMS BULLETIN, Volume 29, Number 25, concerning goods identified as “Wallets on a String.” The attributes of articles of a kind normally carried in the pocket or in the handbag were discussed. The notice stated in pertinent part that:

Such articles include wallets, which may be described as *flat* cases or containers fitted to hold credit/identification cards, paper currency, coins and in some instances a checkbook holder. Articles meeting this description which also possess a detachable carrying strap have been classified as flatgoods.

In recounting that checkbook covers were not normally fitted to hold paper currency or coins, and that wallets could be fitted to hold checkbook holders, we found indications that wallets and checkbook covers are separate and distinct commodities. We further determined that, unlike wallets, checkbook covers are specifically designed to accommodate articles of stationery, e.g., a book of checks and a register for recording details concerning each check written. We found that the bifold checkbook cover was not similar to a wallet or other containers enumerated in heading 4202, and was not classifiable in that heading.

In this case, the outermost component is essentially a protective cover for the articles of stationery it incorporates (a check register, a telephone address book, and a notebook) and a pen which renders the articles of stationery more useful. Although this component is also capable of holding a book of checks, the usefulness of such books depends upon their printed customized information (e.g., name, address, and other information pertinent to both the account owner and the financial institution) and checkbooks are not normally included in imported sets of this type. Although the outer component at issue is fitted with two small sleeves for cards or photos (features normally associated with a wallet), the two larger sleeves are not suitable fittings for carrying coins and are not designed or intended to withstand the repetitive manipulation associated with carrying currency. We thus find that the article is similar to a cover for a checkbook and, although it is not composed of paper or paperboard, to other articles of stationery. The component is not similar to a wal-

let or other containers of heading 4202, HTSUSA. If separately imported, the cover would be classified in subheading 3926.90.9880, HTSUSA.

The legal notes to chapter 48, HTSUSA, do not exclude covers found to be classifiable under heading 3926, HTSUSA. While we agree with the determination in NY E82903 that the group of components comprises a set, we note that three of the five separable components are classifiable under heading 4820, while the other two components (i.e., the pen and the cover) are designed to write on, and to cover/protect, the articles of stationery, respectively. In light of the roles played by the stationery, it is clear that the essential character of the set will be imparted by a component that is classifiable under heading 4820, HTSUSA. Classification of the complete good cannot be determined by GRI 1, however, i.e., according to the terms of heading 4820, because the components are classifiable in different subheadings of that heading.

GRI 6 addresses the classification of goods that are classifiable in different subheadings within the same heading. In pertinent part, GRI 6 states:

For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules [i.e., GRI 1 through GRI 5], on the understanding that only subheadings at the same level are comparable. \* \* \*

At the six digit subheading level, each of the three stationery components is classifiable in subheading 4820.10, HTSUSA, which provides, in pertinent part, for: “\* \* \* **Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles.**” (Emphasis added.)

We continue classification analysis of the three components using the remaining applicable GRI. In pertinent part, GRI 2(b) states:

The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

GRI 3(a) directs that the headings [and by operation of GRI 6 above, the subheadings] are regarded as equally specific when they each refer to part only of \* \* \* the items in a set put up for retail sale. GRI 3(a) requires that the subheadings be regarded as equally specific despite any disparity in their texts.

At the eight digit subheading level, the three components are classifiable in two different subheadings, i.e., 4820.10.20, HTSUSA, which provides for “\* \* \* Diaries, **notebooks** and **address books**, bound; memorandum pads, letter pads and similar articles,” and 4820.10.40, HTSUSA, the text of which reads “Other.” Since the exemplars of six digit subheading 4820.10, HTSUSA, are completely provided for in only two, eight digit subheadings, subheading 4820.10.40, HTSUSA, actually provides for all of the named exemplars of subheading 4820.10, that are not named in subheading 4820.10.20, HTSUSA. By process of elimination, the “Other” articles provided for in subheading 4820.10.40, HTSUSA, are “**Registers, account books, order books, receipt books and similar articles.**” (Emphasis added.)

We next look to GRI 3(b), which states, in part, that:

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

At GRI 3(b), the checkbook organizer set is classified as if it consists of the component or components that give the set its essential character. The terms of the competing subheadings might suggest that the provision which includes two of the three components more specifically describes the set, but neither the notebook nor the address book are more specific than the register, and neither of the two components appears to give the complete set its essential character. We therefore look next to Explanatory Note VIII to GRI 3(b), which states:

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

In viewing the nature of the checkbook organizer and the role of the remaining stationery components to the use of the set, we are mindful that although the notebook and the address book are classifiable in the same eight digit subheading, each is only one half the size of the checkbook register. We note that the cover of the “checkbook organizer” conforms in

size to the checkbook register, and that it is able and likely intended to incorporate a personalized checkbook, the individual checks of which a checkbook register is designed and intended to record and describe. We thus find that the checkbook register imparts the set's essential character, and that the checkbook organizer is classified in subheading 4820.10.4000, HTSUSA. For additional Customs rulings classifying sets of similar components, see NY C87832 (dated May 19, 1998), NY C81905 (dated November 25, 1997), and NY 812474 (dated July 18, 1995).

*Holding:*

NY E82903, dated June 16, 1999, is hereby revoked.

The trifold article identified as the "Checkbook Organizer" is classified in subheading 4820.10.4000, HTSUSA, which provides, in part, for "\*\*\* Registers, account books \*\*\* order books, receipt books \*\*\* and similar articles: Other." The general column one duty rate is free.

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

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

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PROPOSED REVOCATION AND MODIFICATION OF RULING  
LETTERS AND REVOCATION OF TREATMENT RELATING TO  
TARIFF CLASSIFICATION OF WOODEN FLOOR SCREENS

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

ACTION: Notice of proposed revocation and modification of tariff classification ruling letters and treatment relating to the classification of wooden floor screens.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to revoke or modify nine rulings relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of wooden floor screens. 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 September 13, 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, NW, Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9<sup>th</sup> Street, NW, Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Steven Bratcher, Textiles Branch: (202) 572-8757.

## 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 revoke six rulings and to modify three rulings relating to the tariff classification of wooden floor screens. Although in this notice Customs is specifically referring to eight New York Ruling Letters (NY) and one Headquarters Ruling Letter (HQ), 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 those 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.

The six rulings which Customs intends to revoke are HQ 961937, dated December 8, 1998, NY 857911, dated December 7, 1990, NY 886597, dated June 15, 1993, NY C82177, dated December 16, 1997, NY C85674, dated April 16, 1998 and NY F80426, dated December 28, 1999. The three rulings which Customs intends to modify are NY 855306, dated August 22, 1990 and NY E86014 and E86030, both dated September 20, 1999. In all nine of these rulings, wooden floor screens were classified under subheading 4421.90.4000, HTSUS, which provides for "Other articles of wood; Other; Wood blinds, shutters, screens and shades, all the foregoing with or without their hardware: Other." These rulings are set forth as Attachments A through I" to this document, in the order that they appear, above.

Customs has now determined that the subject articles are not classifiable under this subheading, or even under heading 4421, HTUSA, which provides for other articles of wood. Rather, such wooden screens are classified at subheading 9403.60.8080, HTSUSA, as wooden furniture.

Attached are the following proposed Headquarters Rulings revoking and modifying the identified prior rulings: Proposed HQ 964909, revoking HQ 961937 (Attachment J), HQ 964910, revoking NY 857911 (Attachment K), HQ 964911, modifying NY 855306, (Attachment L), HQ 964912, revoking NY 886597 (Attachment M), HQ 964913, revoking NY C82177 (Attachment N), HQ 964914, revoking NY C85674 (Attachment O), HQ 964915, revoking NY F80426 (Attachment P) and HQ 964916 which modifies both NY E86014 and NY E86030 (Attachment Q).

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke or modify the subject prior rulings, as appropriate, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in the proposed Headquarters Rulings 964909 through 964916, *supra*. 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: July 26, 2002.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE,  
Washington, DC, December 8, 1998.

CLA-2 RR:TC:TE 961937 SS  
Category: Classification  
Tariff Nos. 4421.90.4000

MS. PAULA M. CONNELLY, ESQUIRE  
MIDDLETON & SHRULL  
44 Mall Road, Suite 208  
Burlington, MA 01803-4530

Re: Reconsideration of NY C84340; Wooden Folding Room Screens.

DEAR MS. CONNELLY:

This is in response to your letter, dated May 4, 1998, on behalf of your client, FETCO International of Randolph, Massachusetts, requesting reconsideration of New York Ruling Letter (NY) C84340, dated March 11, 1998, regarding classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of wooden folding room screens styles 4160, 4161, 4162, 415500RS, 415600RS and 415700RS. The room screens are imported from China or Thailand. A physical sample was not provided with the request for reconsideration because of its size and weight. Information from the FETCO catalog was submitted to this office.

*Facts:*

A copy of the page from the FETCO catalog shows styles 4160, 4161 and 4162 and describes them as follows:

“FOLDING ROOM SCREEN Our 5’9” tall folding three-panel wooden room screen decorates any setting with 15 favorite images. Holds 8x10 photographs or art prints. Choose cherry or black finish.”

The Folding Room Screens consist of three wooden panels connected by metal hinges. Each panel incorporates five openings which may be used to display photographs, prints, or similar objects. Each opening consists of a piece of clear glass and a removable backing. The backing is removed to insert a photograph or print and is then reattached to the room screen to hold the photograph or print in place. The Folding Room Screens measure approximately 70 inches in height and 35 inches in width when fully extended. The room screens can display a total of fifteen 8” x 10” photographs or prints.

A drawing was submitted with the original request for styles 415500RS, 415600RS and 415700RS which are referred to as “Floating Room Screens”. The Floating Room Screens are constructed similar to the Folding Room Screens except that the backing consists of textured glass.

In NY C84340, the room screens were classified under 4421.90.4000, HTSUSA, as wood screens. The ruling determined that the merchandise was constructed, sold, bought and known as screens. The essential character of the article was determined to be that of a screen which decorates a room setting; the frame-like openings were merely features of the screen. You disagree with this determination. In your opinion, the subject merchandise is designed for and used to display photographs and would be classified under 4414.00.0000, HTSUSA, as wooden frames for photographs or similar objects.

*Issue:*

Whether the subject room screens are properly classifiable under 4421.90.4000, HTSUSA, which provides for wooden screens, or under 4414.00.0000, HTSUSA which provides for wooden frames?

*Law and Analysis:*

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (“GRIs”). GRI 1 provides that classification shall be determined according to the terms of the headings, and any relative section or chapter notes and, provided the head-

ings or notes do not otherwise require, according to remaining GRIs taken in order. The provisions under consideration are as follows:

- “4421.90.4000 Other articles of wood; Other; Wood blinds, shutters, screens and shades, all the foregoing with or without their hardware: Other.”
- “4414.00.0000 Wooden Frames for paintings, photographs, mirror or similar objects”

There are no section notes for Section IX and the chapter notes for Chapter 44 do not provide any guidance on the classification of the merchandise. The Explanatory Notes to the Harmonized Commodity Description and Coding System (“EN”) constitute the official interpretation of the scope and content of the nomenclature at the international level. Unfortunately, the ENs in this case do not assist in determining the proper classification. Thus, the question boils down to whether the merchandise is a wood screen or a wood frame. It is Customs position that the article is a wood screen.

We agree that HTSUSA 4414.00.0000 is an *eo nomine* provision covering wooden frames for paintings, photographs, mirrors or similar objects. You contend that the room screen frames are designed for and used to display photographs and similar articles and thus should be considered wooden frames for tariff purposes. However, the fact that this frame-like article is a room screen cannot be ignored. Mere observation of the article reveals that it is a room screen that features openings for photographs or similar articles. It is designed to be free-standing like a room screen, it is the approximate size of typical room screens and folds in sections like a room screen. It simply looks and feels like a room screen. The openings for photographs or prints are merely features of the room screen. Openings for photographs which are incorporated into a room screen do not convert a room screen to a photo frame.

The Explanatory Note to Heading 4421, HTSUS, states that the heading covers all articles of wood other than those specified or included in preceding headings. You assert that the room screens cannot be classified in Heading 4421, HTSUS, because the room screens are provided for in a more specific section of Chapter 44, namely Heading 4414, HTSUS, the provision for wooden frames. We disagree. The wooden frame provision is not more specific. The merchandise is a wood screen, not a wooden frame. Accordingly, it cannot be classified under the heading for wooden frames. Thus, the merchandise is not precluded from classification under Heading 4421, HTSUS. Having determined that Heading 4421, HTSUS, is applicable, a review of the subheadings reveals that subheading 4421.90.4000, HTSUSA, specifically provides for wood screens. Accordingly, classification under subheading 4421.90.4000, HTSUSA, is proper.

You attempt to distinguish several rulings on the grounds that the decorative screens involved were used primarily to divide or conceal an area of a room while your screens are used primarily to display photographs. New York Ruling Letter (NY) 857911, dated December 7, 1990, describes the “decorative wood screen” at issue as follows:

“The ruling was requested on a floor standing decorative screen. The screen is composed of three panels which are hinged together. Each panel measures 18 inches wide by 80 inches high. The screen is made of wood and decoratively covered with leather.”

Although the ruling mentioned that the screens function was to conceal, shade or divide an area, it also mentioned that they were highly decorative. The screens were classified under 4421.90.4000, HTSUSA. Notably, the screens were the same shape and approximate size as the screens at issue. Furthermore, the screens featured leather to make them more decorative just as the screens in the present case feature openings for photos to make them more decorative. NY 855306, dated August 22, 1990, also involved screens of similar shape and size. The screens were composed of four wooden panels measuring 20” wide x 72” high. Despite the lack of decoration or features, the screens were also classified under 4421.90.4000, HTSUSA. In NY 886597, dated June 15, 1993, Customs classified Coromandel screens which consisted of four or six lacquered and painted wood panels measuring 72” wide x 84” high under 4421.90.4000, HTSUSA. It was noted that screens typically have a “framed construction”. Applying the rationale of these cases to the present case, the decorative features of the screen, namely the openings for photographs or prints, do not change the classification of the screen. It is Customs’ position that the openings merely serve to enhance the decorative nature of the screens. The screens are still wood screens classifiable under 4421.90.4000, HTSUSA.

Headquarters is in agreement with the National Commodity Specialist that the screens are constructed, bought, and known as screens. Accordingly, an essential character analysis is not applicable. You contend that “the essential character of the screen is imparted by



the frame openings". Although we agree that the frame-like openings are a unique feature of the screen, they do not confer essential character to an article that has already been determined to be a screen.

You contend that the screen is primarily sold and purchased to display photographs. This contention completely ignores the shape, size and nature of the article. The purchaser of this article wants something more than several picture frames or a big picture frame; he wants the shape, size and free-standing nature of a room screen. While we agree that a consumer may set the screen against a wall or in a corner, we disagree with your statement that it would not be purchased to divide or conceal an area. Furthermore, its chief use is not simply to display photographs, it is to decorate a room. You contend that these screens are distinguishable from the byobu types of screens historically classified under Heading 4421, HTSUS, on the grounds that the byobu screens do not serve any other purpose than to decorate or divide off an area of room. This screen also decorates and divides; it decorates with photographs or prints rather than rice paper or paintings. In fact, the screen seems to mimic the traditional Japanese shoji screen by simply replacing the delicate rice paper panels with openings for photos. The fact that the screens are used as a type of photo frame is not sufficient to establish that the articles are not screens, when other factors, such as their shape, construction, and resemblance to the well-known oriental folding screen proclaim that they are screens properly classifiable under Heading 4421, HTSUS.

In Headquarters Ruling Letter (HQ) 086047, dated March 1, 1990, and HQ 087170, dated September 14, 1990, Customs dealt with hand painted Japanese folding screens. The screens were the folding "byobu" type comprised of wooden frames covered with rice paper and held together with paper hinges. Sumi ink and water soluble colors were used to paint the screens. The screens were 60 to 80 years old. The sizes of the screens ranged from 60" x 60" to 70" x 146". The screens were initially classified under Heading 4421, HTSUS. However, supplemental information was provided and the ruling was reconsidered. The Importer showed that he imported special screen hanging hardware and supplies with every screen so that the screens could be hung on a wall; no two screens were alike; the screens were not signed by the artist because a master painter of a school would not sign a screen in deference to the leader of school; the screens were of high value; and one screen was in the permanent collection of an Asian Art Museum. Customs felt the screens were unique works of art designed to be used as wall hangings rather than screens and revoked the prior ruling. The screens were reclassified under subheading 9701.10.0000, HTSUSA, which provides for paintings, pastels, drawings, executed entirely by hand. Applying this rationale to the present case, it is clear that there is a high threshold for removing a wood screen from the subheading specifically covering wood screens. Furthermore, until that high threshold is met, it does not matter that a wood screen is purchased for some decorative quality such as a painting or openings for photos; it does not deprive the screen of its status as a wood screen. The present screen is appropriately classified under subheading 4421.90.4000, HTSUSA.

Customs has ruled on virtually the same screens. In NY C82177, dated December 16, 1997, Customs classified the "Sona Floor Screen Frame" under 4421.90.4000, HTSUSA. The merchandise at issue was a floor standing wood screen measuring 35 inches wide by 69 inches high comprised of three panels each containing five 8 by 10 size picture frames in a row from top to bottom. The picture frames were described as unique and prominent features of the screen. The importer also suggested Heading 4414, HTSUSA. Customs responded that the screen was not just a large multiple picture frame; it was a completely different article, namely, a floor standing screen that incorporated photo frames in its design. Additionally, in NY C85674, dated April 16, 1998, a "photo gallery floor screen" was classified under 4421.90.4000, HTSUSA. It was described as a decorative, floor-standing article consisting of three upright wooden panels attached to each other with hinges. Each panel was approximately 11½ inches wide by 69 inches high, and consisted of a wood framework surrounding a vertical array of five identical rectangular openings intended to accommodate photographs for display. Each opening was equipped with a pane of glass, paper mat and removable fiberboard back. Applying these cases to the present case, which concerns a virtually identical screen, the proper classification is under 4421.90.4000, HTSUSA.

You contend that the screens are frames because most of the screens are sold to the stationary/frame departments of stores and they are advertised with frames. In the first unidentified advertisement, the screen is under a heading for "floor screens" and is designated as a "three panel floor screen". The photo frames in the advertisement, howev-

er, are referred to specifically as "frames" in the descriptions. It is also worthy to note that the floor screen costs approximately ten times as much as the most expensive frame advertised. Filene's advertisement calls the screen a "photo screen". The other frames in the advertisement are specifically called "frames" while there is no mention of the term "frame" in the screen portion of the ad. In this lay out the screen costs approximately twenty times as much as the most expensive frame. The March Macy's advertisement calls the screen "Fetco tri-panel floor screen" and states that the "screen holds fifteen 8x10 photos". The other photo frames in the ad are specifically referred to as "wood frames", "glass frames", etc.. In Macy's April advertisement the screen is located under a heading for "floor screens" and is called a "three panel wood floor screen". Other frames in the ad, even the "spinner", are specifically called "frames". Kohl's March ad calls it a "photo screen" and states the "tri-panel screen holds several 8x10 photos". Kohl's April advertisement calls it simply a "screen" and describes it as a "contemporary and unique way to show your treasured photos". Although most of the ads do state the screen holds photographs, none label it a "frame" and all designate it a "screen". Accordingly, the advertisements do support the finding that the screens are constructed, sold, bought and known as screens.

*Holding:*

The classification of the wood room screens under 4421.90.4000, HTSUSA, was correct.

The screens are classifiable in subheading 4421.90.4000, HTSUSA, which provides for Other articles of wood: Other: Wood blinds, shutters, screens and shades, all the foregoing with or without their hardware: Other. The duty rate is 5.7 ad valorem.

JOHN DURANT,

*Director,*

*Commercial Rulings Division.*

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[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,

U.S. CUSTOMS SERVICE,

*New York, NY, December 7, 1990.*

CLA44:S:N:N1:230 857911

Category: Classification

Tariff No. 4421.90.4000

Ms. CORINNE DARNELL  
THE HIPAGE COMPANY, INC.  
P. O. Box 19143  
Charlotte, NC 28219

Re: The tariff classification of a decorative wood screen from the Philippines.

DEAR Ms. DARNELL:

In your letter dated October 31, 1990, which was received in the office of the District Director of Customs at Wilmington, North Carolina on November 13, 1990, you requested a tariff classification ruling. The request was made on behalf of your customer, Henredon Furniture Industries, Inc.

The ruling was requested on a floor standing decorative screen. The screen is composed of three panels which are hinged together. Each panel measures 18 inches wide by 80 inches high. The screen is made of wood and decoratively covered with leather.

Decorative screens such as this one are not classifiable as furniture, which are movable articles used mainly with a utilitarian purpose to equip dwellings, offices, vehicles and similar places. These screens are like the wood blinds, shutters, screens and shades, which are provided for elsewhere in the tariff. The function that the screens provide is one of concealing or shading or dividing an area. At the same time, they are highly decorative.

The applicable subheading for the decorative wood screen will be 4421.90.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for wood blinds, shutters, screens and shades, all the foregoing with or without their hardware, other. The rate of duty will be 8 percent ad valorem.

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

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

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

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[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*New York, NY, June 15, 1993.*  
CLA-2-44:S:N:N8:230 886597  
Category: Classification  
Tariff No. 4421.90.4000

MS. PATTI VAN DE WARK  
MONDAY'S WHOLESALÉ  
*1401 Martin Avenue  
Santa Clara, CA 95050-2614*

Re: Tariff classification of Coromandel screens from China or Hong Kong.

DEAR MS. VAN DE WARK:

In your letter dated May 18, 1993 you requested a tariff classification ruling.

The ruling was requested on Coromandel screens. The screens consist of floor-standing 72 inch high or 84 inch high hinged panels in sets of four or six. The panels are made of wood and are lacquered and painted on both sides. They are used to decoratively divide a room or conceal off an area.

The Coromandel screens function as screens within the common definition of the term. A screen is defined as something that shelters, protects or conceals. The American Heritage Dictionary of the English Language (New College Edition) defines a screen as follows:

- n. 1. A movable device especially a framed construction, designed to divide, conceal, or protect, as a hinged or sliding room divider.

The wood blinds, shutters, screens and shades of subheadings 4421.90.3000 and 4421.90.4000, Harmonized Tariff Schedules of the United States Annotated (HTSUSA), all function similarly in that they conceal or protect an area. However, there is no language in the applicable heading or subheadings which limits these functions to windows.

The applicable subheading for the Coromandel screens will be 4421.90.4000, HTSUSA, which provides for wood blinds, shutters, screens and shades, all the foregoing with or without their hardware; other. The rate of duty will be 8 percent ad valorem.

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

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

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

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*New York, NY, December 16, 1997.*  
CLA-2-44:RR:NC:2:230 C82177  
Category: Classification  
Tariff No. 4421.90.4000

MR. KARL F. KRUEGER  
AEL-CARR CUSTOMS BROKERAGE SERVICES  
*1600 West Lafayette*  
*Detroit, MI 48216*

Re: The tariff classification of a wood floor screen with picture frames from China or Thailand.

DEAR MR. KRUEGER:

In your letter dated November 18, 1997, on behalf of your client, Umbra U.S.A. Inc., you requested a tariff classification ruling.

The ruling was requested on a product named the "Sona Floor Screen Frame." Descriptive literature in a catalogue and an advertising flyer was submitted. The floor screen frame is a three panel floor standing wood screen measuring 35 inches wide by 69 inches high. Each panel has five 8 by 10 size picture frames in a row from the top to the bottom. The picture frames are a unique and prominent feature of the screen.

You suggested classification in subheading 4414.00.0000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for wooden frames for paintings, photographs, mirrors or similar objects. You noted that the Explanatory Notes state that heading 4414 covers wooden frames of all shapes and dimensions. However, this product is not just a large multiple picture frame. It is a separate different article, namely, a floor standing screen which incorporates picture frames in its design. The essential character of this combination article is imparted by the screen because the screen provides the primary purpose of this product. The product is shown in the catalogue functioning as a screen; that is, screening off a corner. A person buying this product must first use it as a screen and then secondarily as a multiple picture frame unit.

The applicable subheading for the Sona Floor Screen Frame will be 4421.90.4000, HTSUSA, which provides for wood blinds, shutters, screens and shades, all the foregoing with or without their hardware; other. The rate of duty will be 6.3 percent ad valorem. Effective January 1, 1998, the rate of duty will be 5.7 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Paul Garretto at 212-466-5779.

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

## [ATTACHMENT E]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*New York, NY, April 16, 1998.*  
CLA-2-44:RR:NC:SP:230 C85674  
Category: Classification  
Tariff No. 4421.90.4000

MS. SHELLY PAPPAS  
VALUE CITY IMPORTS  
*1800 Moler Road*  
*Columbus, OH 43207*

Re: The tariff classification of a wooden floor screen from Taiwan.

DEAR MS. PAPPAS:

In your letter dated March 13, 1998, you requested a tariff classification ruling.

A sample identified as a "photo gallery floor screen" was submitted and is being returned to you as requested. It is a decorative, floor-standing article consisting of three upright wooden panels (each with two stubby legs) attached to each other with hinges. Each panel is about 11½ inches wide by 69 inches high, and consists of a wood framework surrounding a vertical array of five identical rectangular openings intended to accommodate photographs (up to 8" x 10") for display. Each opening is in turn equipped with a pane of glass, paper mat and removable fiberboard back.

The applicable subheading for the "photo gallery floor screen" will be 4421.90.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for other (than certain enumerated) wood blinds, shutters, screens and shades. The rate of duty will be 5.7%.

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 Paul Garretto at 212-466-5779.

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

## [ATTACHMENT F]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*New York, NY, December 28, 1999.*  
CLA-2-44:RR:NC:2:230 F80426  
Category: Classification  
Tariff No. 4421.90.4000

MR. ORLANDO RODRIGUEZ  
ALMACENES PITUSA  
*P.O. Box 839*  
*Hato Rey Station*  
*San Juan, PR 00919-0839*

Re: The tariff classification of wood folding screens with photo frames from Thailand.

DEAR MR. RODRIGUEZ:

In your letter dated December 2, 1999 you requested a tariff classification ruling.

The ruling was requested on three different photo frame screens made of solid rubberwood. Product information sheets with photocopied pictures were submitted.

The first item (#B-35-C3035) is a single photo frame panel with a wood stick easel. The panel measures 8 inches wide by 34 inches high and is designed to hold six 6" x 4" photographs vertically in a row.

The second item (#B-35-C3038) is a two panel hinged folding screen with feet. Each panel measures 8 inches wide by 56 inches high and is designed to hold six 5" x 7" photographs.

The third item (#B-35-C3003) is a three panel hinged folding screen with feet. Each panel measures 7 inches wide by 43 inches high and is designed to hold five 5" x 7" photographs.

The applicable subheading for the two panel folding screen (#B-35-C3038) and the three panel folding screen (#B-35-C3003) will be 4421.90.4000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for wood blinds, shutters, screens and shades, all the foregoing with or without their hardware; other. The rate of duty will be 5.1 percent ad valorem. This rate will remain the same in the year 2000.

Your inquiry does not provide enough information to issue a classification ruling on the single panel frame (#B-35-C3035). Your request for a ruling for this item should include a sample and information as where this item is designed to be placed.

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 Paul Garretto at 212-637-7009.

ROBERT B. SWIERUPSKI,

*Director,*

*National Commodity Specialist Division.*

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[ATTACHMENT G]

DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE,  
*New York, NY, August 22 1990.*  
CLA94:S:N:N1:233 855306  
Category: Classification  
Tariff No. 4421.90.4000 & 9403.60.8080

MS. LENA RAINBOW  
ASSOCIATED MERCHANDISING CORPORATION  
*1440 Broadway  
New York, NY 10018*

Re: The tariff classification of a wooden screen and table from India.

DEAR MS. RAINBOW:

In your letter dated August 3, 1990, you requested a tariff classification ruling.

The furniture items are comprised of a hand made wooden screen and table. The screen style model #2010, is constructed from Sheesham wood which is an inferior quality rose wood. It has four panels each measuring 20" W x 6 feet high. The table, style model #2011, is also made from Sheesham wood. It consists of an octagon shape top that seperates from the base and measures 21" in diameter. The base measures 18" high. Both screen and table are for household use and designed for placing on the floor or ground.

The applicable subheading for the hand made wooden screen will be 4421.90.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of wood: Wood blinds, shutters, screens and shades, all the foregoing with or without their hardware, other. The duty rate will be 8 percent ad valorem. The applicable subheading for the hand made wooden table will be 9403.60.8080, HTSUSA, which provides for other wooden furniture, other. The duty rate will be 2.5 percent ad valorem.

Articles classifiable under subheading 9403.60.8080, HTSUSA, which are products of India are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

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

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

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

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[ATTACHMENT H]

DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE,  
*New York, NY, September 20, 1999.*  
CLA-2-44:RR:NC:SP:230 E86014  
Category: Classification  
Tariff No. 4421.90.4000 and 9403.80.6040

MS. BONNIE GULYAS  
IMPORT CUSTOMS ANALYST—HOME & LEISURE DIVISION  
J.C. PENNEY PURCHASING CORPORATION  
*P.O. Box 10001  
Dallas, TX 75301-0001*

Re: The tariff classification of screens (decorative room dividers) from Taiwan and China.

DEAR MS. GULYAS:

In your letter dated August 16, 1999, you requested a tariff classification ruling.

Photos of four items described as "floor-standing partitions" were submitted and will be retained for reference. All are folding, decorative screens, usually comprised of three panels (held together with metal hinges) but in some instances offered in larger versions having 4-6 panels.

Lot # 778-2295 consists of ramin wood panels, each of which has 4 rectangular openings in which 8" x 10" pictures may be displayed. Dimensions are 35.25" W x 60.25" H.

Lot # 946-0908 has solid pine wood panels. Dimensions are 59" W x 65" H.

The applicable subheading for lot numbers 778-2295 and 946-0908 will be 4421.90.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of wood: other (than certain enumerated) wood blinds, shutters, screens and shades, all the foregoing with or without their hardware. The rate of duty will be 5.1%.

Lot # 856-2787 features polyester/cotton fabric panels held within wooden frames. The fabric, which predominates with respect to surface area and appearance, will be considered the component that imparts the essential character of the article. Dimensions are 51" W x 71" H.

Lot # 778-9852 features canvas panels held within steel frames. The canvas predominates with respect to surface area and appearance, and will be considered the component that imparts the essential character of the article. Dimensions are 59" W x 71" H.

The applicable subheading for lot numbers 856-2787 and 778-9852 will be 9403.80.6040, HTS, which provides for household furniture of other (non-enumerated) materials. The rate of duty will be free.

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 Paul Garretto at 212-637-7009.

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

[ATTACHMENT I]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
New York, NY, September 20, 1999.  
CLA-2-44:RR:NC:SP:230 E86030  
Category: Classification  
Tariff No. 4421.90.4000,  
9403.70.8010, and 9403.20.0010

Ms. BONNIE GULYAS  
IMPORT CUSTOMS ANALYST—HOME & LEISURE DIVISION  
J.C. PENNEY PURCHASING CORPORATION  
P.O. Box 10001  
Dallas, TX 75301-0001

Re: The tariff classification of screens (decorative room dividers) from Taiwan and China.

DEAR Ms. GULYAS:

In your letter dated August 16, 1999, you requested a tariff classification ruling.

Photos of five items described as "floor-standing partitions" were submitted and will be retained for reference. All are folding, 3-panel decorative screens, but you note that some of the models may also be offered in larger versions having 4-6 panels.

Lot # 778-8003 consists of continuous plywood panels, hand painted with a seaside picture, fastened together with metal hinges. Dimensions are 48.75" W x 69" H.

Lot # 946-0577 features a pine center panel resembling a door. The adjacent panels, attached with metal hinges, exhibit a pine framework having numerous rectangular openings filled in with decorative ironwork. Dimensions are 71.25" W x 70" H.

The applicable subheading for lot numbers 778-8003 and 946-0577 will be 4421.90.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of wood: other (than certain enumerated) wood blinds, shutters, screens and shades, all the foregoing with or without their hardware. The rate of duty will be 5.1%.

Lot # 246-2037 is of PVC plastic (frame, rails and slats) with metal hinges. Dimensions are 51" W x 72" H.

The applicable subheading for lot # 246-2037 will be 9403.70.8010, HTS, which provides for other furniture of plastics: household. The rate of duty will be free.

Lot # 946-0239 has panels consisting of an iron frame, filled in partially with decorative ironwork and partially with woven vegetable material. The iron will be considered the material that imparts the essential character to the whole. Dimensions are 66" W x 71" H.

The applicable subheading for lot # 946-0239 will be 9403.20.0010, HTS, which provides for other metal furniture \* \* \* household. The rate of duty will be free.

Your inquiry does not contain sufficient information for us to rule on lot # 946-4611, which features rattan panels. If you wish to pursue a ruling on this product, please specify the nature of the rattan pieces (e.g., flat strips, round rods, etc.) and how they are constructed. Also, please identify the material(s) comprising the frame.

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 Paul Garretto at 212-637-7009.

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



[ATTACHMENT J]

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

CLA-2 RR:CR:TE 964909 STB  
Category: Classification  
Tariff No. 9403.60.8080 80

MS. PAULA M. CONNELLY, ESQUIRE  
MIDDLETON & SHRULL  
44 Mall Road, Suite 208  
Burlington, MA 01803-4530

Re: Revocation of HQ 961937; Classification of Wooden Folding Room Screens as Other Furniture and Parts Thereof, Heading 9403, HTSUSA; Not as Other Articles of Wood: Not Heading 4421, HTSUSA.

DEAR MS. CONNELLY:

This letter is pursuant to Headquarter's reconsideration of Headquarters Ruling Letter (HQ) 961937, issued to you on behalf of your client, FETCO International, dated December 8, 1998 concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of wooden folding room screens.

This letter is to inform you that after review of that ruling, it has been determined that the classification of the wooden screens, in subheading 4421.90.4000, HTSUSA, is incorrect. As such, HQ 961937 is revoked pursuant to the analysis which follows below.

*Facts:*

In HQ 961937 (which was a reconsideration of New York Ruling Letter (NY) C84340), the items at issue were described, from a page of the FETCO catalog (styles 4160, 4161 and 4162) as follows:

FOLDING ROOM SCREEN Our 5'9" tall folding three-panel wooden room screen decorates any setting with 15 favorite images. Holds 8x10 photographs or art prints. Choose cherry or black finish.

The Folding Room Screens consist of three wooden panels connected by metal hinges. Each panel incorporates five openings which may be used to display photographs, prints, or similar objects. Each opening consists of a piece of clear glass and a removable backing. The backing is removed to insert a photograph or print and is then reattached to the room screen to hold the photograph or print in place. The Folding Room Screens measure approximately 70 inches in height and 35 inches in width when fully extended. The room screens can display a total of fifteen 8" x 10" photographs or prints.

A drawing was submitted with the original request for styles 415500RS, 415600RS and 415700RS which are referred to as "Floating Room Screens." The Floating Room Screens are constructed similar to the Folding Room Screens except that the backing consists of textured glass.

In NY C84340, the room screens were classified under 4421.90.4000, HTSUSA, as wood screens. The ruling determined that the merchandise was constructed, sold, bought and known as screens. The essential character of the article was determined to be that of a screen which decorates a room setting; the frame-like openings were merely features of the screen. This classification was affirmed in HQ 961937.

*Issue:*

What is the proper classification of the wooden folding floor screens under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

*Law and Analysis:*

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, provided the headings or

notes do not otherwise require, according to the remaining GRIs taken in order. The provisions under consideration are as follows:

- 4421.90.4000 Other articles of wood; Other; Wood blinds, shutters, screens and shades, all the foregoing with or without their hardware: Other.
- 9403.60.8080 Other furniture and parts thereof: Other wooden furniture: Other, Other.

Subheading 4421.90.4000, HTSUSA, is under consideration because that subheading specifically provides for, *inter alia*, wood screens. Subheading 9403.60.8080, HTSUSA, is under consideration because the subject screens are items normally considered to be “furniture.” We note the following dictionary definitions:

furniture (1)—\* \* \* the movable articles, as tables, chairs, bedsteads, desks, cabinets, etc., required for use or ornament in a house, office, or the like. *The Random House Dictionary of the English Language*, the Unabridged Edition;

furniture (2)—\* \* \* (The prevailing sense.) Movable articles, whether useful or ornamental, in a dwelling-house, place of business, or public building. Formerly including also the fittings. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

We find that the subject screens fit these definitions of “furniture.” They are movable and are constructed for placing on the floor. Their primary purpose is utilitarian, to partition a room or screen off a corner. Such screens are also used to display photographs and are used in both private dwellings and offices. We note that the above definitions are very similar to the more detailed definition of furniture provided at General Explanatory Note (A) to Chapter 94, which states as follows:

For the purposes of this Chapter, the term “furniture” means:

(A) Any “movable” articles (**not included** under other more specific headings of the Nomenclature), which would have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafes, restaurants, laboratories, hospitals dentists’ surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be “movable” furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.

In fact, certain types of screens, *i.e.*, “fire screens” and “draught screens” are even listed as exemplars of furniture in the Explanatory Notes to Heading 9403, HTSUSA. Additionally, it is relevant that screens themselves are usually defined as furniture, as seen in the following:

Screens—\* \* \* a piece of furniture consisting usually of an upright board or frame hung with leather, canvas, cloth, tapestry, or paper, or of two or more such boards or frames hinged together. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

Finally, we note that Customs has regularly classified screens of material other than wood as furniture in heading 9403, HTSUSA. *See* NY D88618, dated March 4, 1999, in which a single panel room screen, with a black iron frame, was classified in subheading 9403.20.0010, HTSUSA, the provision for metal furniture. *See also*, NY E86030, dated September 20, 1999, in which several multi-panel screens (non-wood) are classified as furniture, in various subheadings of 9403 depending on the materials of which they are constructed. The courts have also recognized that screens are types of furniture. *See Sanji Kobata v. United States*, 66 Cust. Ct. 341, C.D. 4213 (1971), in which the court stated that it considers screens to be articles of furniture.

Given the fact that screens, such as those at issue here, do constitute furniture, the decision must be made as to which of the two provisions of the HTSUSA, cited above, is the more appropriate provision of classification.

Pursuant to GRI 3(a), if a product is classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. This rule would seem to indicate classification under heading 4421 (Chapter 44) and the apparently more specific description provided in subheading

4421.90.4000, HTSUSA (wood screens). However, Explanatory Note II to GRI 3 states that:

\* \* \* the Rule can only take effect **provided the terms of headings or Section or Chapter Notes do not otherwise require**. For instance, Note 4(b) to Chapter 97 requires that goods covered both by the description in one of the headings 97.01 to 97.05 and by the description in heading 97.06 shall be classified in one of the former headings. Such goods are to be classified according to Note 4(b) to Chapter 97 and not according to this Rule.

(Emphasis from original.) In this instance, we must consider Note 1(o) to Chapter 44, which states as follows:

1. This Chapter does not cover:

(o) Articles of Chapter 94 (for example, furniture, lamps and lighting fittings, prefabricated buildings);

Therefore, Note 1(o) to Chapter 44 precludes consideration of that chapter for purposes of the classification of the subject screens because it excludes from classification in Chapter 44 all articles of Chapter 94, which would include furniture. Classification in subheading 4421.90.4000, HTSUSA, cannot even be considered; only after determining that a product is classifiable under the heading should the subheadings be examined to find the correct classification of the merchandise. *See* GRI 1.6. *See also, American Bayridge Corp. v. United States*, 35 F. Supp. 2d 922 (CIT 1998). Accordingly, the subject wooden folding screens should be classified in heading 9403, HTSUSA, as other furniture and parts thereof.

*Holding:*

The subject screens are classifiable in subheading 9403.60.8080, HTSUSA, which provides for Other furniture and parts thereof: Other wooden furniture: Other; Other. The duty rate is 1 percent ad valorem.

HQ 961937 and NY C84340, the ruling that HQ 961937 reconsidered and affirmed, are hereby revoked. In accordance with 19 U.S.C., Section 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

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

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[ATTACHMENT K]

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

CLA-2 RR:CR:TE 964910 STB  
Category: Classification  
Tariff No. 9403.60.8080

MS. CORINNE DARNELL  
THE HIPAGE COMPANY, INC.  
*P.O. Box 19143*  
*Charlotte, NC 28219*

Re: Revocation of NY 857911; Classification of a Decorative Wood Screen from the Philippines as Other Furniture and Parts Thereof, Heading 9403, HTSUSA; Not as Other Articles of Wood: Not Heading 4421, HTSUSA.

DEAR MS. DARNELL:

This letter is pursuant to Headquarter's reconsideration of New York Ruling Letter (NY) 857911, issued to you on behalf of your customer, Henredon Furniture Industries, Inc., dated December 7, 1990, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a decorative wood screen from the Philippines.

This letter is to inform you that after review of that ruling, it has been determined that the classification of the wooden screen, in subheading 4421.90.4000, HTSUSA, is incorrect. As such, NY 857911 is revoked pursuant to the analysis which follows below.

*Facts:*

In NY 857911, a ruling had been requested regarding a “floor standing decorative screen.” The screen was described as being composed of three (3) panels which are hinged together. The dimensions of each panel were said to be eighteen (18) inches wide by eighty (80) inches high. The screen was further described as being made of wood and decoratively covered with leather.

*Issue:*

What is the proper classification of the subject screen under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

*Law and Analysis:*

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (“GRIs”). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, provided the headings or notes do not otherwise require, according to the remaining GRIs taken in order. The provisions under consideration are as follows:

- 4421.90.4000 Other articles of wood; Other; Wood blinds, shutters, screens and shades, all the foregoing with or without their hardware: Other.
- 9403.60.8080 Other furniture and parts thereof: Other wooden furniture: Other, Other.

Subheading 4421.90.4000, HTSUSA, is under consideration because it specifically provides for, *inter alia*, wood screens. Subheading 9403.60.8080, HTSUSA, is under consideration because the subject screen is an item normally considered to be “furniture.” We note the following dictionary definitions:

furniture (1)—\* \* \* the movable articles, as tables, chairs, bedsteads, desks, cabinets, etc., required for use or ornament in a house, office, or the like. *The Random House Dictionary of the English Language*, the Unabridged Edition;

furniture (2)—\* \* \* (The prevailing sense.) Movable articles, whether useful or ornamental, in a dwelling-house, place of business, or public building. Formerly including also the fittings. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

We find that the subject screen fits these definitions of “furniture.” It is movable and is constructed for placing on the floor. Its primary purpose is utilitarian, to partition a room or screen off a corner. Such screens are also used to display photographs and are used in both private dwellings and offices. We note that the above definitions are very similar to the more detailed definition of furniture provided at General Explanatory Note (A) to Chapter 94, which states as follows:

For the purposes of this Chapter, the term “furniture” means:

(B) Any “movable” articles (**not included** under other more specific headings of the Nomenclature), which would have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafes, restaurants, laboratories, hospitals dentists’ surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be “movable” furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.

In fact, certain types of screens, *i.e.*, “fire screens” and “draught screens” are even listed as exemplars of furniture in the Explanatory Notes to Heading 9403, HTSUSA. Additionally, it is relevant that screens themselves are usually defined as furniture, as seen in the following:

Screens—\* \* \* a piece of furniture consisting usually of an upright board or frame hung with leather, canvas, cloth, tapestry, or paper, or of two or more such boards or

frames hinged together. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

Finally, we note that Customs has regularly classified screens of material other than wood as furniture in heading 9403, HTSUSA. *See* NY D88618, dated March 4, 1999, in which a single panel room screen, with a black iron frame, was classified in subheading 9403.20.0010, HTSUSA, the provision for metal furniture. *See also*, NY E86030, dated September 20, 1999, in which several multi-panel screens (non-wood) are classified as furniture, in various subheadings of 9403 depending on the materials of which they are constructed. The courts have also recognized that screens are types of furniture. *See Sanji Kobata v. United States*, 66 Cust. Ct. 341, C.D. 4213 (1971), in which the court stated that it considers screens to be articles of furniture.

Given the fact that screens, such as the one at issue here, do constitute furniture, the decision must be made as to which of the two provisions of the HTSUSA, cited above, is the more appropriate provision of classification.

Pursuant to GRI 3(a), if a product is classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. This rule would seem to indicate classification under heading 4421 (Chapter 44) and the apparently more specific description provided in subheading 4421.90.4000, HTSUSA (wood screens). However, Explanatory Note II to GRI 3 states that:

\* \* \* the Rule can only take effect **provided the terms of headings or Section or Chapter Notes do not otherwise require**. For instance, Note 4(b) to Chapter 97 requires that goods covered both by the description in one of the headings 97.01 to 97.05 and by the description in heading 97.06 shall be classified in one of the former headings. Such goods are to be classified according to Note 4(b) to Chapter 97 and not according to this Rule.

(Emphasis from original.) In this instance, we must consider Note 1(o) to Chapter 44, which states as follows:

1. This Chapter does not cover:

(o) Articles of Chapter 94 (for example, furniture, lamps and lighting fittings, prefabricated buildings);

Therefore, Note 1(o) to Chapter 44 precludes consideration of that chapter for purposes of the classification of the subject screen because it excludes from classification in Chapter 44 all articles of Chapter 94, which would include furniture. Classification in subheading 4421.90.4000, HTSUSA, cannot even be considered; only after determining that a product is classifiable under the heading should the subheadings be examined to find the correct classification of the merchandise. *See* GRI 1.6. *See also*, *American Bayridge Corp. v. United States*, 35 F. Supp. 2d 922 (CIT 1998). Accordingly, the subject screen should be classified in heading 9403, HTSUSA, as other furniture and parts thereof.

*Holding:*

The subject screen is classifiable in subheading 9403.60.8080, HTSUSA, which provides for Other furniture and parts thereof: Other wooden furniture: Other, Other. The duty rate is 1 percent ad valorem.

NY 857911 is hereby revoked. In accordance with 19 U.S.C., Section 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

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

[ATTACHMENT L]

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

CLA-2 RR:CR:TE 964911 STB  
Category: Classification  
Tariff No. 9403.60.8080

Ms. LENA RAINBOW  
ASSOCIATED MERCHANDISING CORPORATION  
1440 Broadway  
New York, NY 10018

Re: Modification of NY 855306; Classification of a Wooden Screen from India as Other Furniture and Parts Thereof, Heading 9403, HTSUSA; Not as Other Articles of Wood: Not Heading 4421, HTSUSA.

DEAR Ms. RAINBOW

This letter is pursuant to Headquarter's reconsideration of New York Ruling Letter (NY) 855306, dated August 22, 1990, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a wooden screen from India.

This letter is to inform you that after review of that ruling, it has been determined that the classification of the wooden screen, in subheading 4421.90.4000, HTSUSA, is incorrect. As such, NY 855306, as it concerns the wooden screen, is modified pursuant to the analysis which follows below. Note that NY 855306 also classified a table from India, in subheading 9403.60.8080 80, HTSUSA; the classification of the table is not addressed in, and not affected by, this ruling.

*Facts:*

In response to your original letter requesting a tariff classification ruling, we considered the proper tariff classification of a hand-made wooden screen and table. The screen was described as being style model no. 2010, and as being constructed from Sheesham wood, a type of rosewood. It was further described as having four panels, each measuring 20 inches wide and 6 feet in height. The table was also described and both screen and table were said to be for household use and designed for placing on the floor or ground.

*Issue:*

What is the proper classification of the subject screen under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

*Law and Analysis:*

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, provided the headings or notes do not otherwise require, according to the remaining GRIs taken in order. The provisions under consideration are as follows:

- |              |  |
|--------------|--|
| 4421.90.4000 | Other articles of wood; Other; Wood blinds, shutters, screens and shades, all the foregoing with or without their hardware: Other. |
| 9403.60.8080 | Other furniture and parts thereof: Other wooden furniture: Other, Other.   |

Subheading 4421.90.4000, HTSUSA, is under consideration because it specifically provides for, *inter alia*, wood screens. Subheading 9403.60.8080, HTSUSA, is under consideration because the subject screen is an item normally considered to be "furniture." We note the following dictionary definitions:

furniture (1)—\* \* \* the movable articles, as tables, chairs, bedsteads, desks, cabinets, etc., required for use or ornament in a house, office, or the like. *The Random House Dictionary of the English Language*, the Unabridged Edition;

furniture (2)—\* \* \* (The prevailing sense.) Movable articles, whether useful or ornamental, in a dwelling-house, place of business, or public building. Formerly including also the fittings. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

We find that the subject screen fits these definitions of “furniture.” It is movable and is constructed for placing on the floor. Its primary purpose is utilitarian, to partition a room or screen off a corner. Such screens are also used to display photographs and are used in both private dwellings and offices. We note that the above definitions are very similar to the more detailed definition of furniture provided at General Explanatory Note (A) to Chapter 94, which states as follows:

For the purposes of this Chapter, the term “furniture” means:

(B) Any “movable” articles (**not included** under other more specific headings of the Nomenclature), which would have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafes, restaurants, laboratories, hospitals dentists’ surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be “movable” furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.

In fact, certain types of screens, *i.e.*, “fire screens” and “draught screens” are even listed as exemplars of furniture in the Explanatory Notes to Heading 9403, HTSUSA.

Additionally, it is relevant that screens themselves are usually defined as furniture, as seen in the following:

Screens—\* \* \* a piece of furniture consisting usually of an upright board or frame hung with leather, canvas, cloth, tapestry, or paper, or of two or more such boards or frames hinged together. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

Finally, we note that Customs has regularly classified screens of material other than wood as furniture in heading 9403, HTSUSA. *See* NY D88618, dated March 4, 1999, in which a single panel room screen, with a black iron frame, was classified in subheading 9403.20.0010, HTSUSA, the provision for metal furniture. *See also*, NY E86030, dated September 20, 1999, in which several multi-panel screens (non-wood) are classified as furniture, in various subheadings of 9403 depending on the materials of which they are constructed. The courts have also recognized that screens are types of furniture. *See Sanji Kobata v. United States*, 66 Cust. Ct. 341, C.D. 4213 (1971), in which the court stated that it considers screens to be articles of furniture.

Given the fact that screens, such as the one at issue here, do constitute furniture, the decision must be made as to which of the two provisions of the HTSUSA, cited above, is the more appropriate provision of classification.

Pursuant to GRI 3(a), if a product is classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. This rule would seem to indicate classification under heading 4421 (Chapter 44) and the apparently more specific description provided in subheading 4421.90.4000, HTSUSA (wood screens). However, Explanatory Note II to GRI 3 states that:

\* \* \* the Rule can only take effect **provided the terms of headings or Section or Chapter Notes do not otherwise require**. For instance, Note 4(b) to Chapter 97 requires that goods covered both by the description in one of the headings 97.01 to 97.05 and by the description in heading 97.06 shall be classified in one of the former headings. Such goods are to be classified according to Note 4(b) to Chapter 97 and not according to this Rule.

(Emphasis from original.) In this instance, we must consider Note 1(o) to Chapter 44, which states as follows:

1. This Chapter does not cover:

(o) Articles of Chapter 94 (for example, furniture, lamps and lighting fittings, prefabricated buildings);

Therefore, Note 1(o) to Chapter 44 precludes consideration of that chapter for purposes of the classification of the subject screen because it excludes from classification in Chapter 44 all articles of Chapter 94, which would include furniture. Classification in subheading 4421.90.4000, HTSUSA, cannot even be considered; only after determining that a product is classifiable under the heading should the subheadings be examined to find the correct

classification of the merchandise. *See* GRI 1,6. *See also*, *American Bayridge Corp. v. United States*, 35 F. Supp. 2d 922 (CIT 1998). Accordingly, the subject screen should be classified in heading 9403, HTSUSA, as other furniture and parts thereof.

*Holding:*

The subject screen is classifiable in subheading 9403.60.8080, HTSUSA, which provides for other furniture and parts thereof: Other wooden furniture: Other, Other. The duty rate is 1 percent ad valorem.

NY 855306, classifying the subject screen in heading 4421, HTSUSA, is hereby modified. In accordance with 19 U.S.C., Section 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

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

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[ATTACHMENT M]

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

CLA-2 RR:CR:TE 964912 STB  
Category: Classification  
Tariff No. 9403.60.8080

MS. PATTI VAN DE WARK  
MONDAY'S WHOLESALE  
*1401 Martin Avenue*  
*Santa Clara, CA 95050-2614*

Re: Revocation of NY 886597; Classification of Coromandel Screens from China or Hong Kong as Other Furniture and Parts Thereof, Heading 9403, HTSUSA; Not as Other Articles of Wood: Not Heading 4421, HTSUSA.

DEAR MS. VAN DE WARK:

This letter is pursuant to Headquarter's reconsideration of New York Ruling Letter (NY) 886597, dated June 15, 1993, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of Coromandel screens from China or Hong Kong.

This letter is to inform you that after review of that ruling, it has been determined that the classification of the subject screens, in subheading 4421.90.4000, HTSUSA, is incorrect. As such, NY 886597 is revoked pursuant to the analysis which follows below.

*Facts:*

In your original ruling request, the subject items were described as floor-standing screens, consisting of hinged panels measuring either 72 inches high or 84 inches high (depending on the screen) with the panels present in sets of either four or six. You further stated that the panels are made of wood and are lacquered and painted on both sides. You claimed that the panels are used to decoratively divide a room or to conceal an area.

*Issue:*

What is the proper classification of the Coromandel screens under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

*Law and Analysis:*

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, provided the headings or



notes do not otherwise require, according to the remaining GRIs taken in order. The provisions under consideration are as follows:

- 4421.90.4000 Other articles of wood; Other; Wood blinds, shutters, screens and shades, all the foregoing with or without their hardware: Other.
- 9403.60.8080 Other furniture and parts thereof: Other wooden furniture: Other; Other.

Subheading 4421.90.4000, HTSUSA, is under consideration because it specifically provides for, *inter alia*, wood screens. Subheading 9403.60.8080, HTSUSA, is under consideration because the subject screen is an item normally considered to be “furniture.” We note the following dictionary definitions:

furniture (1)—\* \* \* the movable articles, as tables, chairs, bedsteads, desks, cabinets, etc., required for use or ornament in a house, office, or the like. *The Random House Dictionary of the English Language*, the Unabridged Edition;

furniture (2)—\* \* \* (The prevailing sense.) Movable articles, whether useful or ornamental, in a dwelling-house, place of business, or public building. Formerly including also the fittings. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

We find that the subject screens fit these definitions of “furniture.” They are movable and are constructed for placing on the floor. Their primary purpose is utilitarian, to partition a room or screen off a corner. Such screens are also used to display photographs and are used in both private dwellings and offices. We note that the above definitions are very similar to the more detailed definition of furniture provided at General Explanatory Note (A) to Chapter 94, which states as follows:

For the purposes of this Chapter, the term “furniture” means:

(B) Any “movable” articles (**not included** under other more specific headings of the Nomenclature), which would have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafes, restaurants, laboratories, hospitals dentists’ surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be “movable” furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.

In fact, certain types of screens, *i.e.*, “fire screens” and “draught screens” are even listed as exemplars of furniture in the Explanatory Notes to Heading 9403, HTSUSA. Additionally, it is relevant that screens themselves are usually defined as furniture, as seen in the following:

Screens—\* \* \* a piece of furniture consisting usually of an upright board or frame hung with leather, canvas, cloth, tapestry, or paper, or of two or more such boards or frames hinged together. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

Finally, we note that Customs has regularly classified screens of material other than wood as furniture in heading 9403, HTSUSA. *See* NY D88618, dated March 4, 1999, in which a single panel room screen, with a black iron frame, was classified in subheading 9403.20.0010, HTSUSA, the provision for metal furniture. *See also*, NY E86030, dated September 20, 1999, in which several multi-panel screens (non-wood) are classified as furniture, in various subheadings of 9403 depending on the materials of which they are constructed. The courts have also recognized that screens are types of furniture. *See Sanji Kobata v. United States*, 66 Cust. Ct. 341, C.D. 4213 (1971), in which the court stated that it considers screens to be articles of furniture.

Given the fact that screens, such as those at issue here, do constitute furniture, the decision must be made as to which of the two provisions of the HTSUSA, cited above, is the more appropriate provision of classification.

Pursuant to GRI 3(a), if a product is classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. This rule would seem to indicate classification under heading 4421 (Chapter 44) and the apparently more specific description provided in subheading

4421.90.4000, HTSUSA (wood screens). However, Explanatory Note II to GRI 3 states that:

\* \* \* the Rule can only take effect **provided the terms of headings or Section or Chapter Notes do not otherwise require.** For instance, Note 4(b) to Chapter 97 requires that goods covered both by the description in one of the headings 97.01 to 97.05 and by the description in heading 97.06 shall be classified in one of the former headings. Such goods are to be classified according to Note 4(b) to Chapter 97 and not according to this Rule.

(Emphasis from original.) In this instance, we must consider Note 1(o) to Chapter 44, which states as follows:

- 1. This Chapter does not cover:
  - (o) Articles of Chapter 94 (for example, furniture, lamps and lighting fittings, prefabricated buildings);

Therefore, Note 1(o) to Chapter 44 precludes consideration of that chapter for purposes of the classification of the subject screens because it excludes from classification in Chapter 44 all articles of Chapter 94, which would include furniture. Classification in subheading 4421.90.4000, HTSUSA, cannot even be considered; only after determining that a product is classifiable under the heading should the subheadings be examined to find the correct classification of the merchandise. *See* GRI 1.6. *See also, American Bayridge Corp. v. United States*, 35 F. Supp. 2d 922 (CIT 1998). Accordingly, the subject wooden folding screens should be classified in heading 9403, HTSUSA, as other furniture and parts thereof.

*Holding:*

The subject screens are classifiable in subheading 9403.60.8080, HTSUSA, which provides for Other furniture and parts thereof: Other wooden furniture: Other, Other. The duty rate is 1 percent ad valorem.

NY 886597 is hereby revoked. In accordance with 19 U.S.C., Section 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

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



[ATTACHMENT N]

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

CLA-2 RR:CR:TE 964913 STB  
Category: Classification  
Tariff No. 9403.60.8080

MR. KARL F. KRUEGER  
AEI-CARR CUSTOM BROKERAGE SERVICES  
*1600 West Lafayette*  
*Detroit, MI 48216*

Re: Revocation of NY C82177; Classification of a Wood Floor Screen with Picture Frames from China or Thailand as Other Furniture and Parts Thereof, Heading 9403, HTSUSA; Not as Other Articles of Wood: Not Heading 4421, HTSUSA.

DEAR MR. KRUEGER:

This letter is pursuant to Headquarter's reconsideration of New York Ruling Letter (NY) C82177, issued to you on behalf of your client, Umbra U.S.A., Inc., dated December 16, 1997, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a wood floor screen with picture frames from China or Thailand.

This letter is to inform you that after review of that ruling, it has been determined that the classification of the wood screens, in subheading 4421.90.4000, HTSUSA, is incorrect. As such, NY C82177 is revoked pursuant to the analysis which follows below.

*Facts:*

In NY C82177, a ruling was requested on a product named the “Sona Floor Screen Frame.” Descriptive literature in a catalogue and an advertising flyer was submitted with the ruling request. The floor screen was described therein as a three-panel floor standing wood screen measuring 35 inches wide by 69 inches high. Each panel was said to have five 8 by 10 size picture frames (organized in a straight row) from the top to the bottom. You claimed that the picture frames are a unique and prominent feature of the screen.

*Issue:*

What is the proper classification of the subject screen under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

*Law and Analysis:*

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (“GRIs”). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, provided the headings or notes do not otherwise require, according to the remaining GRIs taken in order. The provisions under consideration are as follows:

- |              |  |
|--------------|--|
| 4421.90.4000 | Other articles of wood; Other; Wood blinds, shutters, screens and shades, all the foregoing with or without their hardware: Other. |
| 9403.60.8080 | Other furniture and parts thereof: Other wooden furniture: Other, Other.   |

Subheading 4421.90.4000, HTSUSA, is under consideration because it specifically provides for, *inter alia*, wood screens. Subheading 9403.60.8080, HTSUSA, is under consideration because the subject screen is an item normally considered to be “furniture.” We note the following dictionary definitions:

furniture (1)—\* \* \* the movable articles, as tables, chairs, bedsteads, desks, cabinets, etc., required for use or ornament in a house, office, or the like. *The Random House Dictionary of the English Language*, the Unabridged Edition;

furniture (2)—\* \* \* (The prevailing sense.) Movable articles, whether useful or ornamental, in a dwelling-house, place of business, or public building. Formerly including also the fittings. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

We find that the subject screen fits these definitions of “furniture.” It is movable and is constructed for placing on the floor. Its primary purpose is utilitarian, to partition a room or screen off a corner. Such screens are also used to display photographs and are used in both private dwellings and offices. We note that the above definitions are very similar to the more detailed definition of furniture provided at General Explanatory Note (A) to Chapter 94, which states as follows:

For the purposes of this Chapter, the term “furniture” means:

(B) Any “movable” articles (**not included** under other more specific headings of the Nomenclature), which would have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafes, restaurants, laboratories, hospitals dentists’ surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be “movable” furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.

In fact, certain types of screens, *i.e.*, “fire screens” and “draught screens” are even listed as exemplars of furniture in the Explanatory Notes to Heading 9403, HTSUSA. Additionally, it is relevant that screens themselves are usually defined as furniture, as seen in the following:

Screens—\* \* \* a piece of furniture consisting usually of an upright board or frame hung with leather, canvas, cloth, tapestry, or paper, or of two or more such boards or

frames hinged together. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

Finally, we note that Customs has regularly classified screens of material other than wood as furniture in heading 9403, HTSUSA. See NY D88618, dated March 4, 1999, in which a single panel room screen, with a black iron frame, was classified in subheading 9403.20.0010, HTSUSA, the provision for metal furniture. See also, NY E86030, dated September 20, 1999, in which several multi-panel screens (non-wood) are classified as furniture, in various subheadings of 9403 depending on the materials of which they are constructed. The courts have also recognized that screens are types of furniture. See *Sanji Kobata v. United States*, 66 Cust. Ct. 341, C.D. 4213 (1971), in which the court stated that it considers screens to be articles of furniture.

Given the fact that screens, such as the one at issue here, do constitute furniture, the decision must be made as to which of the two provisions of the HTSUSA, cited above, is the more appropriate provision of classification.

Pursuant to GRI 3(a), if a product is classifiable under two or more headings, the heading which provides the most specific description shall be referred to headings providing a more general description. This rule would seem to indicate classification under heading 4421 (Chapter 44) and the apparently more specific description provided in subheading 4421.90.4000, HTSUSA (wood screens). However, Explanatory Note II to GRI 3 states that:

\* \* \* the Rule can only take effect **provided the terms of headings or Section or Chapter Notes do not otherwise require**. For instance, Note 4(b) to Chapter 97 requires that goods covered both by the description in one of the headings 97.01 to 97.05 and by the description in heading 97.06 shall be classified in one of the former headings. Such goods are to be classified according to Note 4(b) to Chapter 97 and not according to this Rule.

(Emphasis from original.) In this instance, we must consider Note 1(o) to Chapter 44, which states as follows:

1. This Chapter does not cover:

(o) Articles of Chapter 94 (for example, furniture, lamps and lighting fittings, prefabricated buildings);

Therefore, Note 1(o) to Chapter 44 precludes consideration of that chapter for purposes of the classification of the subject screen because it excludes from classification in Chapter 44 all articles of Chapter 94, which would include furniture. Classification in subheading 4421.90.4000, HTSUSA, cannot even be considered; only after determining that a product is classifiable under the heading should the subheadings be examined to find the correct classification of the merchandise. See GRI 1.6. See also, *American Bayridge Corp. v. United States*, 35 F. Supp. 2d 922 (CIT 1998). Accordingly, the subject screen should be classified in heading 9403, HTSUSA, as other furniture and parts thereof.

*Holding:*

The subject screen is classifiable in subheading 9403.60.8080, HTSUSA, which provides for Other furniture and parts thereof: Other wooden furniture: Other, Other. The duty rate is 1 percent ad valorem.

NY C82177, classifying the subject screen in heading 4421, HTSUSA, is hereby revoked. In accordance with 19 U.S.C., Section 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

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

[ATTACHMENT O]

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

CLA-2 RR:CR:TE 964914 STB  
Category: Classification  
Tariff No. 9403.60.8080

MS. SHELLY PAPPAS  
VALUE CITY IMPORTS  
1800 Moler Road  
Columbus, OH 43207

Re: Revocation of NY C85674; Classification of a Wooden Floor Screen from Taiwan as Other Furniture and Parts Thereof, Heading 9403, HTSUSA; Not as Other Articles of Wood: Not Heading 4421, HTSUSA.

DEAR MS. PAPPAS:

This letter is pursuant to Headquarter's reconsideration of New York Ruling Letter (NY) C85674, issued to you on April 16, 1998, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a wooden floor screen from Taiwan.

This letter is to inform you that after review of that ruling, it has been determined that the classification of the wooden screen, in subheading 4421.90.4000, HTSUSA, is incorrect. As such, NY C85674 is revoked pursuant to the analysis which follows below.

*Facts:*

In your original letter requesting a tariff classification ruling, dated March 13, 1998, you submitted a sample identified as a "photo gallery floor screen." The item was described in NY C85674 as a decorative, floor-standing article consisting of three upright wooden panels (each with two stubby legs) attached to each other with hinges. Each panel is approximately 11½ inches wide by 69 inches high, and consists of a wood framework surrounding a vertical array of five identical rectangular openings intended to accommodate photographs (up to 8" x 10") for display. It is further related in NY C85674 that each of the rectangular openings is, in turn, equipped with a pane of glass, paper mat and removable fiberboard back.

*Issue:*

What is the proper classification of the subject screen under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

*Law and Analysis:*

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, provided the headings or notes do not otherwise require, according to the remaining GRIs taken in order. The provisions under consideration are as follows:

4421.90.4000	Other articles of wood; Other; Wood blinds, shutters, screens and shades, all the foregoing with or without their hardware: Other.
9403.60.8080	Other furniture and parts thereof: Other wooden furniture: Other; Other.

Subheading 4421.90.4000, HTSUSA, is under consideration because it specifically provides for, *inter alia*, wood screens. Subheading 9403.60.8080, HTSUSA, is under consideration because the subject screen is an item normally considered to be "furniture." We note the following dictionary definitions:

furniture (1)—\* \* \* the movable articles, as tables, chairs, bedsteads, desks, cabinets, etc., required for use or ornament in a house, office, or the like. *The Random House Dictionary of the English Language*, the Unabridged Edition;

furniture (2)—\* \* \* (The prevailing sense.) Movable articles, whether useful or ornamental, in a dwelling-house, place of business, or public building. Formerly including also the fittings. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

We find that the subject screen fits these definitions of “furniture.” It is movable and is constructed for placing on the floor. Its primary purpose is utilitarian, to partition a room or screen off a corner. Such screens are also used to display photographs and are used in both private dwellings and offices. We note that the above definitions are very similar to the more detailed definition of furniture provided at General Explanatory Note (A) to Chapter 94, which states as follows:

For the purposes of this Chapter, the term “furniture” means:

(B) Any “movable” articles (**not included** under other more specific headings of the Nomenclature), which would have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafes, restaurants, laboratories, hospitals dentists’ surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be “movable” furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.

In fact, certain types of screens, *i.e.*, “fire screens” and “draught screens” are even listed as exemplars of furniture in the Explanatory Notes to Heading 9403, HTSUSA. Additionally, it is relevant that screens themselves are usually defined as furniture, as seen in the following:

Screens—\* \* \* a piece of furniture consisting usually of an upright board or frame hung with leather, canvas, cloth, tapestry, or paper, or of two or more such boards or frames hinged together. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

Finally, we note that Customs has regularly classified screens of material other than wood as furniture in heading 9403, HTSUSA. *See* NY D88618, dated March 4, 1999, in which a single panel room screen, with a black iron frame, was classified in subheading 9403.20.0010, HTSUSA, the provision for metal furniture. *See also*, NY E86030, dated September 20, 1999, in which several multi-panel screens (non-wood) are classified as furniture, in various subheadings of 9403 depending on the materials of which they are constructed. The courts have also recognized that screens are types of furniture. *See Sanji Kobata v. United States*, 66 Cust. Ct. 341, C.D. 4213 (1971), in which the court stated that it considers screens to be articles of furniture.

Given the fact that screens, such as the one at issue here, do constitute furniture, the decision must be made as to which of the two provisions of the HTSUSA, cited above, is the more appropriate provision of classification.

Pursuant to GRI 3(a), if a product is classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. This rule would seem to indicate classification under heading 4421 (Chapter 44) and the apparently more specific description provided in subheading 4421.90.4000, HTSUSA (wood screens). However, Explanatory Note II to GRI 3 states that:

\* \* \* the Rule can only take effect **provided the terms of headings or Section or Chapter Notes do not otherwise require**. For instance, Note 4(b) to Chapter 97 requires that goods covered both by the description in one of the headings 97.01 to 97.05 and by the description in heading 97.06 shall be classified in one of the former headings. Such goods are to be classified according to Note 4(b) to Chapter 97 and not according to this Rule.

(Emphasis from original.) In this instance, we must consider Note 1(o) to Chapter 44, which states as follows:

1. This Chapter does not cover:

(o) Articles of Chapter 94 (for example, furniture, lamps and lighting fittings, prefabricated buildings);

Therefore, Note 1(o) to Chapter 44 precludes consideration of that chapter for purposes of the classification of the subject screen because it excludes from classification in Chapter 44 all articles of Chapter 94, which would include furniture. Classification in subheading 4421.90.4000, HTSUSA, cannot even be considered; only after determining that a product is classifiable under the heading should the subheadings be examined to find the correct

classification of the merchandise. *See* GRI 1,6. *See also, American Bayridge Corp. v. United States*, 35 F. Supp. 2d 922 (CIT 1998). Accordingly, the subject screen should be classified in heading 9403, HTSUSA, as other furniture and parts thereof.

*Holding:*

The subject screen is classifiable in subheading 9403.60.8080, HTSUSA, which provides for Other furniture and parts thereof: Other wooden furniture: Other, Other. The duty rate is 1 percent ad valorem.

NY C85674, classifying the subject screen in heading 4421, HTSUSA, is hereby revoked. In accordance with 19 U.S.C., Section 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

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

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[ATTACHMENT P]

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

CLA-2 RR:CR:TE 964915 STB  
Category: Classification  
Tariff No. 9403.60.8080

MR. ORLANDO RODRIGUEZ  
ALMACENES PITUSA  
*P.O. 839*  
*Hato Rey Station*  
*San Juan, PR 00919-0839*

Re: Revocation of NY F80426; Classification of Wood Folding Screens with Photo Frames from Thailand as Other Furniture and Parts Thereof, Heading 9403, HTSUSA; Not as Other Articles of Wood: Not Heading 4421, HTSUSA.

DEAR MR. RODRIGUEZ:

This letter is pursuant to Headquarter's reconsideration of New York Ruling Letter (NY) F80426, dated December 28, 1999, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of wood folding screens with photo frames from Thailand.

This letter is to inform you that after review of that ruling, it has been determined that the classification of the subject screens, in subheading 4421.90.4000, HTSUSA, is incorrect. As such, NY F80426 is revoked pursuant to the analysis which follows below.

*Facts:*

The New York tariff classification ruling was requested with regard to three different photo frame screens all of which are made of solid rubberwood. Product information sheets with photocopied pictures were submitted with your request.

One item, No. B-35-C3035, is described in NY F80426 as a single photo frame panel with a wood stick easel. The panel measures 8 inches wide by 34 inches high and is designed to hold six photographs vertically in a row. Another item, No. B-35-C3038, is a two-panel hinged folding screen with feet. Each panel measures 8 inches wide by 56 inches high and is designed to hold six photographs. The third item, No. B-35-C3003, is a three-panel hinged folding screen with feet. Each panel measures 7 inches wide by 43 inches high and is designed to hold five photographs.

The first item described above, No. B-35-C3035 (the single photo frame panel) was not classified in NY F80426 due to a lack of sufficient information. The classification of that item is not affected by this revocation. The other two items, Nos. B-35-C3038 and B-35-C3003, were classified in subheading 4421.90.4000, HTSUSA.

*Issue:*

What is the proper classification of the two multi-panel screens under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

*Law and Analysis:*

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (“GRIs”). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, provided the headings or notes do not otherwise require, according to the remaining GRIs taken in order. The provisions under consideration are as follows:

- 4421.90.4000 Other articles of wood; Other; Wood blinds, shutters, screens and shades, all the foregoing with or without their hardware: Other.
- 9403.60.8080 Other furniture and parts thereof: Other wooden furniture: Other, Other.

Subheading 4421.90.4000, HTSUSA, is under consideration because it specifically provides for, *inter alia*, wood screens. Subheading 9403.60.8080, HTSUSA, is under consideration because the subject screen is an item normally considered to be “furniture.” We note the following dictionary definitions:

furniture (1)—\* \* \* the movable articles, as tables, chairs, bedsteads, desks, cabinets, etc., required for use or ornament in a house, office, or the like. *The Random House Dictionary of the English Language*, the Unabridged Edition;

furniture (2)—\* \* \* (The prevailing sense.) Movable articles, whether useful or ornamental, in a dwelling-house, place of business, or public building. Formerly including also the fittings. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

We find that the subject screens fit these definitions of “furniture.” They are movable and are constructed for placing on the floor. Their primary purpose is utilitarian, to partition a room or screen off a corner. Such screens are also used to display photographs and are used in both private dwellings and offices. We note that the above definitions are very similar to the more detailed definition of furniture provided at General Explanatory Note (A) to Chapter 94, which states as follows:

For the purposes of this Chapter, the term “furniture” means:

(B) Any “movable” articles (**not included** under other more specific headings of the Nomenclature), which would have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafes, restaurants, laboratories, hospitals dentists’ surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be “movable” furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.

In fact, certain types of screens, *i.e.*, “fire screens” and “draught screens” are even listed as exemplars of furniture in the Explanatory Notes to Heading 9403, HTSUSA. Additionally, it is relevant that screens themselves are usually defined as furniture, as seen in the following:

Screens—\* \* \* a piece of furniture consisting usually of an upright board or frame hung with leather, canvas, cloth, tapestry, or paper, or of two or more such boards or frames hinged together. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

Finally, we note that Customs has regularly classified screens of material other than wood as furniture in heading 9403, HTSUSA. See NY D88618, dated March 4, 1999, in which a single panel room screen, with a black iron frame, was classified in subheading 9403.20.0010, HTSUSA, the provision for metal furniture. See also, NY E86030, dated September 20, 1999, in which several multi-panel screens (non-wood) are classified as furniture, in various subheadings of 9403 depending on the materials of which they are constructed. The courts have also recognized that screens are types of furniture. See *Sanji Kobata v. United States*, 66 Cust. Ct. 341, C.D. 4213 (1971), in which the court stated that it considers screens to be articles of furniture.

Given the fact that screens, such as those at issue here, do constitute furniture, the decision must be made as to which of the two provisions of the HTSUSA, cited above, is the more appropriate provision of classification.



Pursuant to GRI 3(a), if a product is classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. This rule would seem to indicate classification under heading 4421 (Chapter 44) and the apparently more specific description provided in subheading 4421.90.4000, HTSUSA (wood screens). However, Explanatory Note II to GRI 3 states that:

**\* \* \*** the Rule can only take effect **provided the terms of headings or Section or Chapter Notes do not otherwise require.** For instance, Note 4(b) to Chapter 97 requires that goods covered both by the description in one of the headings 97.01 to 97.05 and by the description in heading 97.06 shall be classified in one of the former headings. Such goods are to be classified according to Note 4(b) to Chapter 97 and not according to this Rule.

(Emphasis from original.) In this instance, we must consider Note 1(o) to Chapter 44, which states as follows:

1. This Chapter does not cover:

(o) Articles of Chapter 94 (for example, furniture, lamps and lighting fittings, prefabricated buildings);

Therefore, Note 1(o) to Chapter 44 precludes consideration of that chapter for purposes of the classification of the subject screens because it excludes from classification in Chapter 44 all articles of Chapter 94, which would include furniture. Classification in subheading 4421.90.4000, HTSUSA, cannot even be considered; only after determining that a product is classifiable under the heading should the subheadings be examined to find the correct classification of the merchandise. *See* GRI 1.6. *See also, American Bayridge Corp. v. United States*, 35 F. Supp. 2d 922 (CIT 1998). Accordingly, the subject wooden folding screens should be classified in heading 9403, HTSUSA, as other furniture and parts thereof.

*Holding:*

The subject screens are classifiable in subheading 9403.60.8080, HTSUSA, which provides for Other furniture and parts thereof: Other wooden furniture: Other, Other. The duty rate is 1 percent ad valorem.

NY F80426 is hereby revoked. In accordance with 19 U.S.C., Section 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

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

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[ATTACHMENT Q]

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

CLA-2 RR:CR:TE 964916 STB  
Category: Classification  
Tariff No. 9403.60.8080

Ms. BONNIE GULYAS  
IMPORT CUSTOMS ANALYST,  
HOME & LEISURE DIVISION  
J.C. PENNY PURCHASING CORPORATION  
*P.O. Box 10001*  
*Dallas, TX 75301-0001*

Re: Modification of NY E86030 and NY E86014; Classification of Screens (Decorative Room Dividers) from Taiwan and China as Other Furniture and Parts Thereof, Heading 9403, HTSUSA; Not as Other Articles of Wood: Not Heading 4421, HTSUSA

DEAR Ms. GULYAS:

This letter is pursuant to Headquarter's reconsideration of New York Ruling Letter (NY) E86030 and NY E86014, both dated September 20, 1999, concerning the classifica-

tion under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of screens/decorative room dividers from Taiwan and China.

Some of the screens classified in NY E86030 and NY E86014 are constructed primarily of wood. Others are described as being constructed of plastic and other materials. This letter is to inform you that after review of those rulings, it has been determined that the classification of the wooden screens provided therein (in subheading 4421.90.4000, HTSUSA) is incorrect. As such, NY E86030 and NY E86014, as they concern the screens constructed of wood, are modified pursuant to the analysis which follows below. The classifications provided by the above rulings with respect to the screens constructed of materials other than wood are not affected by the present ruling.

*Facts:*

NY E86030 discusses your ruling request dated August 16, 1999, which was made with respect to five items. All of the items involved are folding, three-panel decorative screens, although you mentioned in your request that some of the models may also be offered in larger versions with four to six panels.

Lot No. 778-6003 was said to consist of continuous plywood panels, handpainted with a seaside picture, fastened together with metal hinges. The screen is said to measure 48.75 inches in width and 69 inches in height. Lot No. 9460577 is described in NY E86030 as featuring a pine center panel which resembles a door. The adjacent panels, attached with metal hinges, are described as exhibiting a pine framework which has numerous rectangular openings filled in with decorative ironwork. The dimensions are said to measure 71.25 inches in width and 70 inches in height.

The two lots described above were classified, in NY E86030, in subheading 4421.90.4000, HTSUSA. These screens were determined to be constructed primarily of wood.

The other items described in NY E86030 were screens considered to be constructed primarily of plastic and iron. These items were classified in that ruling in heading 9403 (furniture) in various subheadings depending on the material of which they were constructed.

NY E86014 discusses your ruling request with respect to four different items—this request was also dated August 16, 1999. All of the items involved in this ruling request are also folding, three-panel decorative screens, with some models possibly being offered in larger versions of four to six panels. It is mentioned in NY E86014 that the panels are held together with metal hinges.

Lot No. 778-2295 is described as consisting of “ramin wood panels,” each of which has four rectangular openings in which pictures may be displayed. The dimensions are provided as 35.25 inches in width and 60.25 inches in height. Lot No. 946-0908 is described as having “solid pine wood panels.” The dimensions are said to be 59 inches in width and 65 inches in height.

The two lots described above were classified, in NY E86014, in subheading 4421.90.4000, HTSUSA. As with the screens similarly classified in NY E86030, the screens of these lots were determined to be constructed primarily of wood.

The other items described in NY E86014 were screens considered to be constructed primarily of polyester/cotton fabric and canvas. These items were classified in that ruling in heading 9403 (furniture) in various subheadings depending on the material of which they were constructed.

*Issue:*

What is the proper classification of the screens constructed primarily of wood under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

*Law and Analysis:*

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (“GRIs”). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, provided the headings or

notes do not otherwise require, according to the remaining GRIs taken in order. The provisions under consideration are as follows:

- 4421.90.4000 Other articles of wood; Other; Wood blinds, shutters, screens and shades, all the foregoing with or without their hardware: Other.
- 9403.60.8080 Other furniture and parts thereof: Other wooden furniture: Other, Other.

Subheading 4421.90.4000, HTSUSA, is under consideration because it specifically provides for, *inter alia*, wood screens. Subheading 9403.60.8080, HTSUSA, is under consideration because the subject screen is an item normally considered to be “furniture.” We note the following dictionary definitions:

furniture (1)—\* \* \* the movable articles, as tables, chairs, bedsteads, desks, cabinets, etc., required for use or ornament in a house, office, or the like. *The Random House Dictionary of the English Language*, the Unabridged Edition;

furniture (2)—\* \* \* (The prevailing sense.) Movable articles, whether useful or ornamental, in a dwelling-house, place of business, or public building. Formerly including also the fittings. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

We find that the subject screens fit these definitions of “furniture.” They are movable and are constructed for placing on the floor. Their primary purpose is utilitarian, to partition a room or screen off a corner. Such screens are also used to display photographs (some of the subject screens are specifically designed for this purpose) and are used in both private dwellings and offices. We note that the above definitions are very similar to the more detailed definition of furniture provided at General Explanatory Note (A) to Chapter 94, which states as follows:

For the purposes of this Chapter, the term “furniture” means:

(B) Any “movable” articles (**not included** under other more specific headings of the Nomenclature), which would have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafes, restaurants, laboratories, hospitals dentists’ surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be “movable” furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.

In fact, certain types of screens, *i.e.*, “fire screens” and “draught screens” are even listed as exemplars of furniture in the Explanatory Notes to Heading 9403, HTSUSA.

Additionally, it is relevant that screens themselves are usually defined as furniture, as seen in the following:

Screens—\* \* \* a piece of furniture consisting usually of an upright board or frame hung with leather, canvas, cloth, tapestry, or paper, or of two or more such boards or frames hinged together. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

Finally, we note that Customs has regularly classified screens of material other than wood as furniture in heading 9403, HTSUSA. *See* NY D88618, dated March 4, 1999, in which a single panel room screen, with a black iron frame, was classified in subheading 9403.20.0010, HTSUSA, the provision for metal furniture. *See also*, NY E86030, dated September 20, 1999, in which several multi-panel screens (non-wood) are classified as furniture, in various subheadings of 9403 depending on the materials of which they are constructed. The courts have also recognized that screens are types of furniture. *See Sanii Kobata v. United States*, 66 Cust. Ct. 341, C.D. 4213 (1971), in which the court stated that it considers screens to be articles of furniture.

Given the fact that screens, such as those at issue here, do constitute furniture, the decision must be made as to which of the two provisions of the HTSUSA, cited above, is the more appropriate provision of classification.

Pursuant to GRI 3(a), if a product is classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. This rule would seem to indicate classification under heading 4421 (Chapter 44) and the apparently more specific description provided in subheading

4421.90.4000, HTSUSA (wood screens). However, Explanatory Note II to GRI 3 states that:

\* \* \* the Rule can only take effect **provided the terms of headings or Section or Chapter Notes do not otherwise require**. For instance, Note 4(b) to Chapter 97 requires that goods covered both by the description in one of the headings 97.01 to 97.05 and by the description in heading 97.06 shall be classified in one of the former headings. Such goods are to be classified according to Note 4(b) to Chapter 97 and not according to this Rule.

(Emphasis from original.) In this instance, we must consider Note 1(o) to Chapter 44, which states as follows:

1. This Chapter does not cover:

(o) Articles of Chapter 94 (for example, furniture, lamps and lighting fittings, prefabricated buildings);

Therefore, Note 1 (o) to Chapter 44 precludes consideration of that chapter for purposes of the classification of the subject screens because it excludes from classification in Chapter 44 all articles of Chapter 94, which would include furniture. Classification in subheading 4421.90.4000, HTSUSA, cannot even be considered; only after determining that a product is classifiable under the heading should the subheadings be examined to find the correct classification of the merchandise. *See* GRI 1,6. *See also, American Bayridge Corp. v. United States*, 35 F. Supp. 2d 922 (CIT 1998). Accordingly, the subject screens should be classified in heading 9403, HTSUSA, as other furniture and parts thereof.

*Holding:*

The screens determined to be constructed primarily of wood (Lot Nos. 778-8003 and 946-0577 in NY E86030 and Lot Nos. 778-2295 and 946-0908 in NY E86014) are classifiable in subheading 9403.60.8080, HTSUSA, which provides for Other furniture and parts thereof: Other wooden furniture: Other; Other. The duty rate is 1 percent ad valorem.

NY E86030 and NY E86014, classifying the subject wooden screens in heading 4421, HTSUSA, are hereby modified as described above. The classifications provided in those rulings with respect to the screens constructed of materials other than wood are not affected by this ruling. In accordance with 19 U.S.C., Section 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

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

PROPOSED MODIFICATION OF RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO TARIFF  
CLASSIFICATION OF MEMORY CARDS FOR VIDEO GAME  
MACHINES

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

ACTION: Notice of proposed modification of a ruling letter, and revocation of treatment relating to tariff classification of memory cards for video game machines.

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 a ruling letter pertaining to the tariff classification of memory cards used for video game machines under the Harmonized Tariff Schedule of the United States ("HTSUS"). Customs also 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 September 13, 2002.

ADDRESS: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, NW, Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Tom Peter Beris, General Classification Branch, (202) 572-8789.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to modify New York Ruling Letter (NY) 813932 pertaining to the tariff classification of certain memory cards used with video game machines. Although in this notice Customs is specifically referring to one ruling, NY 813932, 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 advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), 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. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY 813932 dated August 23, 1995, set forth as Attachment A to this document, among other articles, Customs classified memory cards used with the Sony Playstation in subheading 9504.10.0030, HTSUS, which provides for "Articles for arcade, table or parlor games \* \* \*; parts and accessories thereof: Video games of a kind used with a television receiver \* \* \*, Parts and accessories thereof."

It is now Customs position that the memory cards in this ruling are properly classifiable under subheading 8523.90.00, HTSUS which provides for "Prepared unrecorded media for sound recording or similar recording of other phenomena, other than products of chapter 37: Other."

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify NY 813932, and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analy-

sis set forth in proposed HQ 965759 (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 the Customs Service to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: July 24, 2002.

MARVIN AMERNICK,  
(for Myles B. Harmon, Acting Director,  
Commercial Rulings Division.)

[Attachments]

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[ATTACHMENT A]

DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE,  
*New York, NY, August 23, 1995.*  
CLA-2-95:S:N:N7:224 813932  
Category: Classification  
Tariff No. 9504.10.0010,  
9504.10.0030, and 8543.80.9890

LUCY RICHARDSON  
SONY ELECTRONICS INC.  
*1 Sony Drive  
Park Ridge, NJ 07656-8003*

Re: The tariff classification of video game machine from Japan.

DEAR MS. RICHARDSON:

In your letter dated August 17, 1995, you requested a tariff classification ruling.

The merchandise is a video game machine known as the Sony PlayStation (PS-X). It consists of the main unit which has a 32-bit processor and CD-Rom architecture; a joystick controller with four top buttons; an AC power cable and stereo AV cable.

The PlayStation PS-X is not being targeted at the multimedia sector; it is said to be primarily designed, marketed and used to play video games on a television screen. It can also play an audio (music) CD. While other video game machines utilize ROM cartridges, the PlayStation operates solely on CD-ROM.

The applicable subheading for the PlayStation PS-X video game machine will be 9504.10.0010, Harmonized Tariff Schedule of the United States (HTS), which provides for "Articles for arcade, table or parlor games \* \* \*; parts and accessories thereof: Video games of a kind used with a television receiver and parts and accessories thereof, games." The rate of duty will be free.

You also inquire as to the tariff classification of five accessories to the PlayStation unit when imported separately. These items include:

1. A memory card that plugs into the front of the PlayStation and allows game data to be saved;
2. Additional joystick controller;
3. A cable which can connect two PlayStations together to play against one another if two TV monitors are present;
4. A mouse with a pad which is recommended for use with certain games;
5. An RFU adapter which attaches to back of a TV set and compensates for the lack of a video input.

With the exception of the RFU adapter, these accessories are said to be designed specifically for use with the PlayStation and cannot be used elsewhere. Accordingly, the applica-

ble subheading for the memory card, controller, link combat cable and the mouse will be 9504.10.0030, HTS, which provides for "Articles for arcade, table or parlor games \* \* \*; parts and accessories thereof: Video games of a kind used with a television receiver \* \* \*; Parts and accessories thereof." The rate of duty will be free.

The RFU adapter is classifiable in subheading 8543.80.9890, HTS, which provides for electric machines and apparatus, having individual functions \* \* \*: other machines and apparatus: other, other. The rate of duty will be 3.6 percent ad valorem.

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

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

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

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[ATTACHMENT B]

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

CLA-2 RR: CR: GC 965759 TPB  
Category: Classification  
Tariff No. 8523.90.00

LUCY RICHARDSON  
TRADE STRATEGY AND COMPLIANCE  
SONY ELECTRONICS, INC.  
*123 Tice Blvd.  
Woodcliff Lake, NJ 07675*

Re: Sony PlayStation Memory Card.

DEAR MS. RICHARDSON:

This is in reference to NY 813932, issued to you on August 23, 1995, in response to your letter dated August 17, 1995, requesting classification, among other articles, of a memory card for the Sony PlayStation ("PX-X"), if separately imported, under the Harmonized Tariff Schedule of the United States ("HTSUS"). We have had an opportunity to review that ruling and now find it to no longer reflects our view as to the classification of unrecorded media. This ruling modifies NY 813932 to the extent noted.

*Facts:*

The merchandise in question is a "flash" memory card that plugs into the front of the PS-X and allows game data to be saved. The memory card is designed for and used exclusively for the PS-X. The card comes unrecorded, or "blank."

*Issue:*

Is the PS-X memory card properly classified under heading 8523, as unrecorded media, or heading 9504, as an accessory to a video game of a kind used with a television receiver?

*Law and Analysis:*

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

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the interna-



tional 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.

The HTSUS provisions under consideration are as follows:

- 8523 Prepared unrecorded media for sound recording or similar recording of other phenomena, other than products of chapter 37:
- 9504 Articles for arcade, table or parlor games, including pinball machines, bagatelle, billiards and special tables for casino games, automatic bowling alley equipment, parts and accessories thereof:

NY 813932 ruled that because the memory cards were designed specifically for use with the PS-X and could not be used elsewhere, they were classifiable under subheading 9504.10.0030, HTSUS, as accessories of video games of a kind used with a television receiver.

Headquarters has recently issued a series of rulings dealing with unrecorded flash memory. See HQ 964875, dated March 27, 2002 (classifying flash memory cards under heading 8523); HQ 962507, dated May 22, 2002 (classifying flash memory sticks in heading 8543); HQ 965529, dated June 25, 2002 (classifying a flash memory card for an MP3 device in heading 8523). For the reasons set forth in those rulings, which we incorporate by reference, we find that the unrecorded flash memory cards for use with the PS-X are properly classified under subheading 8523.90.00, HTSUS, which provides for “prepared unrecorded media for sound recording or similar recording of other phenomena, other than products of chapter 37: other.”

*Holding:*

For the reasons stated above, the memory card is to be classified under subheading 8523.90.00, HTSUS, as: prepared unrecorded media for sound recording or similar recording of other phenomena, other than products of chapter 37: other.”

*Effect on other Rulings:*

NY 813932 is modified to the extent described above, i.e., the memory card, when imported separately, is classifiable in heading 8523, HTSUS. All other classification determinations in NY 813932 remain unaffected.

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

MODIFICATION OF RULING LETTER AND REVOCATION OF  
TREATMENT RELATING TO THE TARIFF CLASSIFICATION  
OF THE CONTAINER COMPONENTS OF EMERGENCY  
ROADSIDE AUTOMOBILE KITS

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

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to the tariff classification of the container components of emergency roadside automobile kits.

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 related to the classification of the container components of emergency roadside automobile kits under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs is revoking any treatment previously accorded by it to substantially identical merchandise that is contrary to the position set forth in this notice. Notice of the proposed action was published on June 5, 2002 in the CUSTOMS BULLETIN in Volume 36, Number 23. One comment was received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or with-drawn from warehouse for consumption on or after October 14, 2002.

FOR FURTHER INFORMATION CONTACT: Teresa Frazier, Textile Branch (202) 572-8821.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI") became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**". These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on 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.

In NY D88516, dated March 31, 1999, Customs classified an *Ultimate Auto Safety Kit* emergency automobile roadside kit's nylon bag component pursuant to GRI 5(a), which resulted in the merchandise being classified with the contents and the value being prorated over the contents. For classification purposes, the items included in the kit were not considered to comprise a set. Customs has reviewed the ruling and, with regard to the classification of this bag, has determined that the ruling is in error. Since the issuance of this ruling, Customs has reviewed the classification of the kit and has determined that the cited ruling is in error. Accordingly, we are modifying NY D88516 to reflect proper classification of the container component within subheading 4202.92.9026, HTSUSA, pursuant to GRI 1 as set for in the analysis of HQ 963598 (see "Attachment" to this document).

Pursuant to Customs obligations, a notice of proposed modification of New York Ruling Letter (NY) D88516, dated March 31, 1999, was published in the CUSTOMS BULLETIN of June 5, 2002, Volume 36, Number 23. One comment from the importer (which was timely received in response to this notice) was considered. In this comment, the importer requested a delayed effective date of this modification. We have considered the importer's request. However, we have no authority to extend the effective date beyond the sixty-day statutory time frame provided by 19 U.S.C. 1625(c).

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 relating to the classification of a nylon bag container component of an emergency roadside automobile kit. Although in this notice Customs is specifically referring to New York Ruling Letter (NY) D88516, dated March 31, 1999, this notice covers any rulings on such 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., a ruling letter, internal advice memorandum or decision or protest review decision) on the issues subject to this notice, should have advised Customs during the notice period.

Similarly, pursuant to section 625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the 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 ad-

wise 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: July 30, 2002.

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

[Attachments]

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[ATTACHMENT]

DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE,  
Washington, DC, July 30, 2002.  
CLA-2 RR:TC:TE 963598 TMF  
Category: Classification  
Tariff No. 4202.92.9026

MR. JIM WICKSTEAD, SENIOR CONSULTANT  
PBB GLOBAL LOGISTICS  
434 Delaware Avenue  
Buffalo, NY 14202

Re: Modification of NY D88516; *Ultimate Auto Safety Kit*; emergency roadside automobile kits.

DEAR MR. WICKSTEAD:

In New York Ruling Letter (NY) D88516, dated March 31, 1999, issued to you on behalf of your client, Micris One, Inc., you were advised that the nylon bag which contained the items of the *Ultimate Auto Safety Kit*, was classified with its contents as a container described in GRI 5(a), and its value prorated over the contents. We have reviewed NY D88516 and have found it to be in error. Therefore, this ruling modifies NY D88516.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of NY D88516 was published on June 5, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 23. One comment was received in response to the notice.

*Facts:*

The article in question is the small black bag component of the *Ultimate Auto Safety Kit*. The bag was made in China. In NY D88516, dated March 31, 1999, the bag is described initially as a PVC bag. However, the ruling noted that the cardboard packaging listed the bag component's composition as being of nylon fabric. The bag has a rectangular shape and measures 10.5 inches by 6 inches by 4.5 inches. It has a zippered opening along three sides and a fabric-carrying handle. The bag has only one main interior compartment.

The bag is made to store and carry the contents of the *Ultimate Auto Safety Kit*, an emergency roadside automobile kit, which includes: two 10 inch by 6 inch foam pads; a flashlight; two batteries (D size, 1.5 volt); a first aid kit; an emergency heat-reflective blanket; candles; matches; an "SOS" banner; an emergency rain poncho; a safety vest; a pair of polycotton knit gloves; aerosol tire sealant; a flare; a shop cloth; and booster cables.

In NY D88516, Customs classified the nylon bag component of the *Ultimate Auto Safety Kit* pursuant to GRI 5(a), with its contents (which were found not to comprise a set) and its value was prorated over the contents.

*Issue:*

Whether the nylon bag component of the *Ultimate Auto Safety Kit* is classified pursuant to GRI 5(a) Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

*Law and Analysis:*

The classification of the bag components of emergency roadside automobile kits was addressed previously in HQ 964937, dated March 19, 2002 and HQ 965021, dated March 19, 2002. In both rulings, the bag components were described as soft-sided plastic, reinforced, zippered bags with straps. Customs determined that the kits were not sets pursuant to GRI 3(b) and classified the bag components individually in subheading 4202.92.90, HTSUSA.

The instant bag component is made of sturdy nylon fabric, and has straps, zippers, and one main compartment to contain emergency roadside assistance articles. The bag is substantially similar in function to the merchandise addressed in the aforementioned rulings and is classified accordingly in subheading 4202.92.9026, HTSUSA.

Although certain containers may be classified with the articles they are designed to hold, we do not find the instant bag to be a container pursuant to GRI 5(a), HTSUSA, which states:

Camera cases, musical instruments, gun cases, drawing instrument cases, necklace cases and similar containers, specifically shaped or fitted to contain a specific article or set of articles, suitable for long-term use and entered with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character.

The intent of the language of GRI 5(a) and the ENs to GRI 5(a) is that a container is specifically shaped or fitted for, in this case, the contents it holds.<sup>1</sup> The nylon bag contains one main compartment which is not specially shaped or fitted to hold its contents. Thus, the instant bag does not satisfy the requirements of GRI 5(a), and it is separately classified from its contents pursuant to GRI 1.

In your comment, you requested that we provide a delayed effective date of this modification. Unfortunately, we are not able to provide an exception to the sixty-day effective date as provided within 19 U.S.C. 1625(c), which reads, in relevant part:

A proposed interpretive ruling or decision which would—

(1) modify (other than to correct a clerical error) or revoke a prior interpretive ruling or decision which has been in effect for at least 60 days; or

(2) have the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions;

shall be published in the CUSTOMS BULLETIN \* \* \* The final ruling or decision shall become effective 60 days after the date of its publication.

Thus, under 19 U.S.C. 1625(c) the delayed effective date of the change in classification of the container components of emergency roadside automobile kits will be sixty days from publication within the CUSTOMS BULLETIN.

*Holding:*

NY D88516, dated March 31, 1999, 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 nylon bag component of the *Ultimate Auto Safety* is classified in subheading 4202.92.9026, HTSUSA, textile category 670, which provides for: “Trunks, suitcases, vanity cases, attaché 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: Other: With outer surface of sheeting of plastic or of textile materials: Other: Other, With outer surface of textile materials: Other: Of man-made fibers.” The general column one duty rate is 18.1 percent *ad valorem*. There are no applicable quota/visa requirements for the products of World Trade Organization (“WTO”) members. The textile category number above applies to merchandise produced in non-WTO countries.

<sup>1</sup> The EN(I) to GRI 5(a) states: “This rule shall be taken to cover only those containers which “are specially shaped or fitted to contain a specific article or set of articles, i.e., they are designed specifically to accommodate the article for which they are intended.”

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](http://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 Myles B. Harmon, Acting Director,  
Commercial Rulings Division.)

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## PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF PLASTIC-COATED, COTTON DENIM BASEBALL CAPS

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

ACTION: Notice of proposed revocation of a ruling letter and revocation of treatment relating to the tariff classification of polyurethane plastic-coated, woven cotton denim baseball caps.

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 letter relating to the tariff classification of polyurethane plastic-coated, woven cotton denim baseball caps under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Similarly, Customs intends to revoke any treatment previously accorded by it to substantially identical merchandise that is contrary to the position set forth in this notice. Comments are invited as to the correctness of the proposed action.

DATE: Comments must be received on or before September 13, 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. Comments submitted may be inspected at U.S. Customs Service, 799 9<sup>th</sup> Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Teresa Frazier, Textiles Branch (202) 572-8821.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**". These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on 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 revoke a ruling letter relating to the classification of polyurethane plastic-coated, woven cotton baseball caps. Although in this notice Customs is specifically referring to Headquarters Ruling Letter (HQ) 960302, dated May 9, 1997, this notice covers any rulings on such 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. We note that HQ 084912, dated July 21, 1989, modified HQ 084261, dated June 15, 1989, properly reclassifying the items at issue. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the issues subject to this notice, should advise Customs during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by 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 Annotated (HTSUSA). Any person involved in substantially identical

transactions should advise Customs during the 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 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 the final decision on this notice.

In HQ 960302, dated May 9, 1997, Customs classified a polyurethane plastic-coated, woven cotton baseball cap, in subheading 6505.90.2590, HTSUSA, which 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: Other: Of cotton, flax or both: Other, Other." Since the issuance of this ruling, Customs has reviewed the classification of the baseball cap and has determined that the cited ruling is in error. Accordingly, we intend to revoke HQ 960302, as we find that the polyurethane plastic-coated, woven cotton baseball cap should be classified in subheading 6505.90.2060, HTSUSA, the provision for "Hats and other headgear \* \* \*: Other: Of cotton, flax or both: Not knitted: Certified hand-loomed and folklore products; and headwear of cotton, Other."

Pursuant to 19 U.S.C. §1625(c)(1), Customs intends to revoke HQ 960302 (see "Attachment A" to this document) and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 963537 (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: July 24, 2002.

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

[Attachments]



[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
Washington, DC, May 9, 1997.

CLA-2 RR:TC:TE 960302 jb  
Category: Classification  
Tariff No. 6505.90.2590

KENNETH G. WEIGEL, ESQ.  
NANCY KAO, ESQ.  
KIRKLAND & ELLIS  
655 Fifteenth St, N.W.  
Washington, DC 20005

Re: Classification of polyurethane coated denim baseball cap; fabric of heading 5903, HTSUS; GRI 1; chapter 65.

DEAR MR. WEIGEL AND MS. KAO:

This is in response to your letter addressed to our New York office, dated February 14, 1997, on behalf of your client, Humphreys Incorporated, requesting a binding ruling for a polyurethane coated denim baseball cap. In that letter you state that if the classification determined by our New York office for the subject merchandise is not consistent with what you believe to be the proper classification for the subject baseball cap, that this office have the opportunity to review the New York determination. A sample of the baseball cap was submitted for examination.

*Facts:*

The subject baseball cap is made of 100 percent cotton woven denim fabric coated with polyurethane. The baseball cap is made of six panels of fabric sewn together to form the crown, and a stiff visor. The top of the cap has metal-rimmed eyelet holes and a button peak, and at the base of the rear of the crown there is an adjustable plastic strap to conform to the wearer's head. The front of the cap also features an embroidered logo.

You state that the polyurethane coating is applied to the fabric before the fabric is cut and sewn into the completed cap. The polyurethane coating is transparent but is visible to the naked eye and gives the cap its shiny appearance. The polyurethane coating covers the top surface of the crown and both sides of the visor.

Our New York office has determined that the subject baseball hat is classifiable in heading 6505, HTSUS, based on the textile component. In your opinion, as the subject baseball cap is made of both plastic and textile materials, it is classifiable in both heading 6505, HTSUS, which provides for, among other things, hats and other headgear, of cotton, and heading 6506, HTSUS, which provides for, among other things, other headgear of rubber or plastics. Accordingly, you state a proper analysis must address either the essential character of the baseball cap, as per GRI 3(b), or if an essential character determination is not possible, a classification based on what occurs last in numerical order of those classifications meriting consideration. In either case, you state that the proper classification of the subject merchandise is in heading 6506, HTSUS.

*Issue:*

Whether the subject merchandise is classified in heading 6505, HTSUS, which provides for, among other things, hats and other headgear, of cotton, or heading 6506, HTSUS, which provides for, among other things, other headgear of rubber or plastics?

*Law and Analysis:*

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRI's). GRI 1 requires that classification be determined according to the terms of the headings and any relative section or chapter notes, taken in order. Where goods cannot be classified solely on the basis of GRI 1, the remaining GRI's will be applied, in the order of their appearance.

In order to determine the proper classification for the subject merchandise, Customs must first make a determination regarding the fabric composition of the subject baseball cap. Heading 5903, HTSUS, provides for, textile fabrics impregnated, coated, covered or

laminated with plastics, other than those of heading 5902. Note 2(a) to chapter 59, states, in part, heading 5903 applies to:

Textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square meter and whatever the nature of the plastic material (compact or cellular), other than:

- (1) Fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually chapters 50 to 55, 58 or 60); for the purpose of this provision, no account should be taken of any resulting change of color;
  - (2) Products which cannot, without fracturing, be bent manually around a cylinder of a diameter of 7 mm, at a temperature between 15°C and 30°C (usually chapter 39);
  - (3) Products in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of color (chapter 39);
  - (4) Fabrics partially coated or partially covered with plastics and bearing designs resulting from these treatments (usually chapters 50 to 55, 58 or 60);
  - (5) Plates, sheets or strip of cellular plastics, combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (chapter 39);
- or
- (6) Textile products of heading 5811.

In the case of the subject merchandise, as the textile fabric from which the baseball cap is made is not covered by the listed exceptions in Note 2(a), the baseball cap is constructed of a textile fabric provided for in heading 5903, HTSUS. Accordingly, our analysis is governed by GRI 1, and not as you assert, GRI 3(b) or (c).

Chapter 65, HTSUS, 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 subject baseball cap is made of woven cotton denim. Although chapter 65, HTSUS, does not contain a provision for headgear made up of fabrics of heading 5903, HTSUS, it does provide for headgear made up from other textile fabric. It follows that as fabric of heading 5903 is textile fabric, the baseball cap is classifiable within chapter 65. Accordingly, the subject baseball cap is properly classifiable in heading 6505, HTSUS.

*Holding:*

The subject merchandise is classifiable in subheading 6505.90.2590, HTSUSA, which 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: other: of cotton, flax or both: not knitted: other; other. The applicable rate of duty is 7.8 percent ad valorem and the quota category is 859.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent negotiations and changes, we suggest that your client check, close to the time of shipment, the Status Report On Current Import Quotas (Restraint Levels), an issuance of the U.S. Customs Service, which is updated weekly and is available at the local Customs office.

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

JOHN DURANT,  
*Director,*  
*Tariff Classification Appeals Division.*

[ATTACHMENT B]

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

CLA-2 RR:TC:TE 963537 TMF  
Category: Classification  
Tariff No. 6505.90.2060

KENNETH G. WEIGEL, ESQ.  
KIRKLAND & ELLIS  
655 Fifteenth Street, NW  
Washington, DC 20005

Re: Revocation of HQ 960302; polyurethane-coated baseball cap; headgear/headwear.

DEAR MR. WEIGEL:

In Headquarters Ruling Letter (HQ) 960302, issued to you, May 9, 1997, on behalf of your client, Humphrey's International, a polyurethane-coated denim baseball cap was classified in subheading 6505.90.2590, Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"), which 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: Other: Of cotton, flax or both: Other: Other."

Upon review of HQ 960302, Customs has determined that this merchandise was erroneously classified. Therefore, this ruling revokes HQ 960302.

*Facts:*

The baseball cap at issue in HQ 960302 was made of 100 percent woven cotton denim fabric that was coated with polyurethane material. It had six panels of fabric that were sewn together to form the crown, and a stiff visor. The top of the cap had metal-rimmed eyelet holes and a button peak, and at the base of the rear of the crown, there was an adjustable plastic strap to conform to the wearer's head. The front of the cap also featured an embroidered logo.

The polyurethane coating was applied to the fabric before the fabric was cut and sewn into the completed cap. The coating was transparent but visible to the naked eye and gave the cap a shiny appearance. The polyurethane coating covered the top surface of the crown and both sides of the visor.

*Issue:*

Whether the polyurethane-coated denim baseball cap is classified in subheading 6505.90.2060, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for headwear of cotton, or in subheading 6505.90.2590, HTSUSA, as headgear of cotton?

*Law and Analysis:*

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

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

The HTSUSA provisions under consideration are as follows:

6505	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:
6505.90	Other: Of cotton, flax or both: Not knitted:

6505.90.20	Certified hand-loomed and folklore products; and headwear of cotton,
6505.90.2060	Other
* * * * *	
6505.90.25	Other,
6505.90.2590	Other

The merchandise at issue is a woven cotton denim baseball cap that covers entirely the wearer's head. A cap is a type of headgear. *Merriam Webster's Collegiate Dictionary*, Tenth Edition (1999), defines headgear as a covering or protective device for the head. Rulings issued by Customs have based the definition of headgear on the *Random House Dictionary of the English Language*, Unabridged Edition (1983), which describes headgear as "any covering for the head, esp. a hat, cap, bonnet, etc." See HQ 087539, dated September 20, 1990.<sup>1</sup> In the instant case, the merchandise is described as a baseball cap that meets both definitions aforementioned. Further, the merchandise meets the definition of the term "cap," defined in *Merriam*, as "a head covering especially with a visor and no brim."

We refer to the General Explanatory Note to Chapter 65, which offers an expansive definition of the term "headgear":

With the **exception** of the articles listed below [see footnote 2] this Chapter covers hat-shapes, hat-forms, hat bodies and hoods, and hats and 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.).

It also covers hair-nets of any material and certain specified fittings for headgear.

The hats and other headgear of this Chapter may incorporate trimmings of various kinds and of any material, including trimmings made of the materials of Chapter 71.

The instant cap is a type of headgear that is composed by sewing cut components of polyurethane-coated denim material together. The EN to heading 6505 state that the heading covers:

Hats and headgear (whether or not lined or trimmed) made directly by knitting or crocheting (whether or not fulled or felted), or made up from lace, felt or other textile fabric in the piece, whether or not the fabric has been oiled, waxed, rubberised or otherwise impregnated or coated.

It also includes hat-shapes made by sewing, but **not** hat-shapes or headgear made by sewing or otherwise assembling plaits or strips (heading 65.04).

The EN also state, in pertinent part, that the heading includes "Headgear made up from woven fabric, lace, net fabric, etc., such as chefs' hats, nuns' head-dresses, nurses' or waitresses' caps, etc., having clearly the character of headgear." As the instant article is a type of headgear made of plastic-coated, woven cotton denim material, it is classifiable within this heading.

In HQ 960302, the issue was whether the merchandise was classified according to its polyurethane coating or the denim textile fabric (both of which are provided, respectively within headings 6505 and 6506, HTSUSA). Customs resolved the issue by determining by

<sup>1</sup> In HQ 087539, it is noted that "Certain articles (wigs, shawls, veils) which may be worn on the head are excluded from Chapter 65 either by the Chapter Notes or the Explanatory Notes, while other articles such as headphones are provided for in heading 8518, HTSUSA. Finally, we do not consider headbands, sweatbands and barrettes, which are worn on the head or in the hair in order to keep hair out of the eyes or off the forehead to be classifiable as headgear."

<sup>2</sup> The noted exceptions to Chapter 65 are as follows:

- (a) Headgear for animals (heading 42.01).
- (b) Shawls, scarves, mantillas, veils and the like (heading 61.17 or 62.14).
- (c) Headgear showing signs of appreciable wear and presented in bulk, bales, sacks or similar bulk packings (heading 63.09).
- (d) Wigs and the like (heading 67.04).
- (e) Asbestos headgear (heading 68.12).
- (f) Dolls' hats, other toy hats or carnival articles (Chapter 95).
- (g) Various articles used as hat trimmings (buckles, clasps, badges, feathers, artificial flowers, etc.) when not incorporated in headgear (appropriate headings).

application of the exclusionary Note 2(a) to Chapter 59<sup>3</sup>, that the constituent material of the subject merchandise was not excluded from classification within heading 5903 (as none of the listed exceptions applied), and accordingly classified the merchandise according to GRI 1.

Although we concur in part with the analysis of HQ 960302 with respect to the application of GRI 1 for determination of whether heading 6506 was an appropriate heading, we do not find it be controlling since the subject merchandise is provided *eo nomine* within subheading 6505.90.2060 as it is composed of cotton woven material.

In pertinent part, subheading 6505.90.20 provides *eo nomine* for headwear of cotton. We thus find that the instant cap, which is composed of plastic-coated, 100 percent cotton, is properly classified in subheading 6505.90.2060, HTSUSA. For additional rulings consistent with this determination, see HQ 958958, dated September 12, 1997 (classifying three separate styles of cotton caps within subheading 6505.90.2060, HTSUSA) and HQ 087825, dated September 5, 1990 (modifying HQ 087060, dated August 17, 1990 and classifying a woven 100% cotton twill cap within subheading 6505.90.2060).

*Holding:*

HQ 960302, dated May 9, 1997, is hereby revoked.

The polyurethane plastic-coated, cotton denim baseball cap is classified in subheading 6506.90.2060, HTSUSA, textile category 359, which provides for "Hats and other headgear \* \* \*: Other: Of cotton, flax or both: Not knitted: Certified hand-loomed and folklore products; and headwear of cotton, Other." The general column one duty rate is 7.6 percent *ad valorem*.

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

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

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

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<sup>3</sup> Note 2(a) to chapter 59, states that heading 5903 applies to: Textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square meter and whatever the nature of the plastic material (compact or cellular), other than:

- (1) Fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually chapters 50 to 55, 58 or 60); for the purpose of this provision, no account should be taken of any resulting change of color;
- (2) Products which cannot, without fracturing, be bent manually around a cylinder of a diameter of 7 mm, at a temperature between 15°C and 30°C (usually chapter 39);
- (3) Products in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of color (chapter 39);
- (4) Fabrics partially coated or partially covered with plastics and bearing designs resulting from these treatments (usually chapters 50 to 55, 58 or 60);
- (5) Plates, sheets or strip of cellular plastics, combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (chapter 39); or
- (6) Textile products of heading 5811.

PROPOSED REVOCATION OF RULING LETTER AND  
TREATMENT RELATING TO TARIFF CLASSIFICATION OF A  
CERTAIN WOMAN'S UPPER BODY GARMENT

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

ACTION: Notice of proposed revocation of a tariff classification ruling letter and treatment relating to the classification of a certain woman's 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 intends to revoke one ruling relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a certain woman's upper body garment. 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 September 13, 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 U.S. Customs Service, 799 9th Street, N.W., Washington D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Timothy Dodd, Textiles Branch: (202) 572-8819.

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 re-

quirements. 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 revoke one ruling relating to the tariff classification of a certain woman's upper body garment. Although in this notice Customs is specifically referring to one New York Ruling Letter (NY), 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) E81679, dated June 17, 1999, the Customs Service classified a certain woman's upper body garment under subheading 6110.30.3055, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of man-made fibers: Other: Other: Other: Other: Women's or girls'." NY E81679 is set forth as "Attachment A" to this document.

It is now Customs determination that the proper classification for the certain woman's upper body garment is subheading 6114.30.1020, HTSUSA, which provides for "Other garments, knitted or crocheted: Of man-made fibers: Tops: Women's or girls'." Proposed Headquarters Ruling Letter (HQ) 965600 revoking NY E81679 is set forth as "Attachment B" to this document.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY E81679, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set

forth in Proposed HQ 965600, *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: July 30, 2002.

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

[Attachments]

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[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
New York, NY, June 17, 1999.  
CLA-2-61:RR:NC:TA:359 E81679  
Category: Classification  
Tariff No. 6110.30.3055

MR. DAVID J. EVAN  
GRUNFELD, DESIDERIO, LEBOWITZ & SILVERMAN  
245 Park Avenue, 33rd Floor  
New York, NY 10167-3397

Re: The tariff classification of a woman's pullover from China.

DEAR MR. EVAN:

In your letter dated April 30, 1999, on behalf of **Mast Industries, Inc.**, you requested a tariff classification ruling.

The submitted sample, **style number F84245**, is a woman's pullover that is constructed from 78% acrylic, 14% nylon, 8% spandex, knit fabric. The outer surface of the garment measures more than 9 stitches per 2 centimeters in the horizontal direction. The garment reaches the waist and has one long sleeve. There is shoulder coverage over one shoulder while the other shoulder is bare. Your sample is being returned as requested.

The applicable subheading for the pullover will be 6110.30.3055, Harmonized Tariff Schedule of the United States (HTS), which provides for women's pullovers, knitted: of man-made fibers: other. The duty rate will be 33.1% ad valorem.

The pullover falls within textile category designation 639. Based upon international textile trade agreements products of China are subject to quota and the requirement of a visa.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mike Crowley at 212-637-6077.

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 965600 ttd  
Category: Classification  
Tariff No. 6114.30.1020

MR. DAVID J. EVAN  
GRUNFELD, DESIDERIO, LEBOWITZ & SILVERMAN  
245 Park Avenue, 33rd Floor  
New York, NY 10167-3397

Re: Revocation of New York Ruling Letter E81679, dated June, 17, 1999; Classification of a Woman's Upper Body Garment.

DEAR MR. EVAN:

This letter concerns New York Ruling Letter (NY) E81679, dated June 17, 1999, issued to you on behalf of Mast Industries, Inc., regarding the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a woman's pullover. After review of that ruling, Customs has determined that the classification of the woman's knit upper body garment in subheading 6110.30.3055, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes NY E81679.

*Facts:*

In NY E81679, Customs classified the merchandise at issue under subheading 6110.30.3055, HTSUSA, which provides for, among other things, women's man-made fiber pullovers. In that ruling, the subject article was described as follows:

The submitted sample, style number F84245, is a woman's pullover that is constructed from 78% acrylic, 14% nylon, 8% spandex, knit fabric. The outer surface of the garment measures more than 9 stitches per 2 centimeters in the horizontal direction. The garment reaches the waist and has one long sleeve. There is shoulder coverage over one shoulder while the other shoulder is bare.

*Issue:*

What is the proper classification for the woman's knit upper body garment?

*Law and Analysis:*

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

Following GRI 1, there are two headings under consideration: heading 6110, HTSUSA, which provides for, *inter alia*, women's knitted sweaters, pullovers and similar articles and heading 6114, HTSUSA, which provides for, *inter alia*, other women's knitted garments.

Heading 6110, HTSUSA, covers "[s]weaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted." A recent informed compliance publication on apparel terminology describes sweaters as:

knit garments that cover the body from the neck or shoulders to the waist or below (as far as the mid-thigh or slightly below the mid-thigh). Sweaters may have any type of pocket treatment or any type of collar treatment, including a hood, or no collar, or any type of neckline. They may be pullover style or have a full or partial front or back opening. They may be sleeveless or have sleeves of any length. Those sweaters provided for at the statistical level (9<sup>th</sup> and 10<sup>th</sup> digit of the tariff number) have a stitch count of 9 or fewer stitches per 2 centimeters measured on the outer surface of the

fabric, in the direction in which the stitches are formed. Also included in these statistical provisions are garments, known as sweaters, where, due to their construction (e.g., open-work raschel knitting), the stitches on the outer surface cannot be counted in the direction in which the stitches are formed. Garments with a full-front opening but which lack the proper stitch count for classification as a sweater may be considered “sweater-like” cardigans of heading 6110.

See, U.S. Customs Service, *What Every Member of the Trade Community Should Know About: Apparel Terminology Under the HTSUS*, 34 Cust. B. & Dec. 52, 153 (Dec 27, 2000).

Furthermore, reference to *The Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, CIE 13/88 (*Guidelines*) is appropriate in this case. The *Guidelines* were developed and revised in accordance with the HTSUSA to ensure uniformity, to facilitate statistical classification, and to assist in the determination of the appropriate textile categories established for the administration of the Arrangement Regarding International Trade in Textiles. The *Guidelines* provide a similar description for sweaters. Notably, the *Guidelines* indicate that garments commercially known as sweaters or pullovers cover the upper body from the neck or shoulders to the waist or below. The EN to heading 6110, HTSUSA, also indicate that the heading covers garments designed to cover the upper parts of the body.

Customs has consistently found that in order for a garment to be classified in heading 6110, HTSUSA, the garment must, at a minimum, feature adequate “coverage” of the upper part of the body. See HQ 965231, dated November 19, 2001; HQ 963597, dated December 21, 1999; HQ 962161, dated December 29, 1998; and HQ 962123, dated December 29, 1998. In the rulings cited, Customs found that garments with an upper back that was cut straight across from side seam to side seam lacked adequate shoulder coverage and failed to meet the requisite coverage requirement for classification in heading 6110, HTSUSA. The styling of the subject garment: shoulder coverage over one shoulder while the other shoulder is bare, lacks adequate shoulder coverage to satisfy the requisite coverage requirement for classification in heading 6110, HTSUSA. See HQ 965231 (cited above), (wherein Customs found that a pullover garment with one shoulder styling and a diagonally cut neckline, similar to the subject garment, did not meet the requisite adequate coverage of the upper body to be classified in heading 6110).

Heading 6114, HTSUSA, provides for “[o]ther garments, knitted or crocheted.” The EN to heading 6114 state that, “this heading covers knitted or crocheted garments which are not included more specifically in the preceding headings of this Chapter.” Accordingly, the subject garment, which because of distinct styling features is precluded from classification in headings 6106 and 6110, HTSUSA, is properly classified as an other garment of heading 6114. See HQ 963597 (cited above).

Subheading 6114.30.1020, HTSUSA, provides for “Other garments, knitted or crocheted: Of man-made fibers: Tops: Women’s or girls.” As the subject garment is made of man-made materials and is intended for women or girls, the remaining inquiry is whether the subject garment satisfies the definition of a “top.”

The apparel terminology compliance publication describes “tops” as:

Upper body garments that are not included more specifically in headings 6101–6113. Tops generally have limited coverage of the neck and shoulder area, and/or do not reach the waist. Garments lacking coverage of the neck and shoulder area may have shoulder straps, a halter neckline, or no straps. The front and/or back of the garment may be cut straight across from side seam to side seam. Terms sometimes used to describe these garments are halter-tops, tube tops or camisoles. All of these garments are classified in the specific subheading for tops in 6114.

See, U.S. Customs Service, *What Every Member of the Trade Community Should Know About: Apparel Terminology Under the HTSUS*, 34 Cust. B. & Dec. 52, 153 (Dec 27, 2000).

The *Guidelines* provide a similar description of “tops.” Notably, the *Guidelines* specify that tops include tube-type garments which may or may not be waist length, having a straight top (with or without attached shoulder straps), and off-the-shoulder tops, which do not have a “neck-area” as required by the “shirt and blouse” *Guidelines*.

In this case, applying the description from the apparel terminology informed compliance publication, the subject garment provides only limited coverage to the shoulder area. Moreover, it is clear from both sources that a “top” may reach the waist. As the subject garment satisfies the definition of a “top,” it is properly classified under subheading 6114.30.1020, HTSUSA, as “Other garments, knitted or crocheted: Of man-made fibers: Tops: Women’s or girls.”

*Holding:*

The women's knit top is classified in subheading 6114.30.1020, HTSUSA, which provides for "[o]ther garments, knitted or crocheted: Of man-made fibers: Tops: women's or girls'." The general column one duty rate is 28.6 percent *ad valorem* and the item falls within textile category designation 639.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest your client check, close to the time of shipment, the *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](http://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, your client should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

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

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PROPOSED MODIFICATION OF RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO TARIFF  
CLASSIFICATION OF CERTAIN UNFINISHED SHOE LACING  
MATERIALS

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 unfinished shoe lacing materials.

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 unfinished shoe lacing materials. 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 September 13, 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 U.S.

Customs Service, 799 9th Street, N.W., Washington D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Timothy Dodd, Textiles Branch: (202) 572-8819.

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 unfinished shoe lacing materials. Although in this notice Customs is specifically referring to one New York Ruling Letter (NY), 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 in-

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) G82846, dated November 20, 2000, the Customs Service classified certain unfinished shoe lacing materials in the piece under subheading 5808.10.7000, HTSUSA, which provides for "Braids in the piece \* \* \*: Other: Of cotton or man-made fibers." NY G82846 is set forth as "Attachment A" to this document.

It is now Customs determination that the proper classification for the certain unfinished shoe lacing materials in the piece is subheading 5806.32.2000, HTSUSA, which provides for "Narrow woven fabrics, other than goods of heading 5807; \* \* \* Other woven fabrics: Of man-made fibers: Other." Proposed Headquarters Ruling Letter (HQ) 965492 modifying, in part, NY G82846 is set forth as "Attachment B" to this document.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify NY G82846, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed HQ 965492, *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: July 30, 2002.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
New York, NY, November 20, 2000.  
CLA-2-63:RR:NC:TA:351 G82846  
Category: Classification  
Tariff No. 6307.90.5050,  
6307.90.5020, and 5808.10.7000

KERRY W. KEATING  
PRESIDENT AND CEO  
MITCHELLACE, INC.  
830 Murray Street  
P.O. Box 89  
Portsmouth, OH 45662-0089

Re: The tariff classification of shoe laces and lacings from Honduras made of U.S. components; eligibility under CBERN.

DEAR MR. KEATING:

In your letter dated October 11, 2000, you requested a tariff classification ruling on footwear laces and lacing imported in the piece and also a ruling on the eligibility of the merchandise under the Caribbean Basin Economic Recovery Act (CBERA). That letter was a follow-up to one of August 22, which we had to return for more information. Please note for the future that our usual procedure is to limit such requests to no more than five (5) items.

You have submitted numerous samples of two types of footwear laces, some of which are flat braid and the balance tubular braid. You state that all braided laces and lacing, by which we assume you mean the tubular braids, "are braided on machines that have 8 carriers, 16 carriers or 44 carriers. Yarn is received on cones. The yarn is then wound onto braider bobbins. When loaded the bobbin is then placed on the carriers." You state that the woven laces, by which we assume you mean the flat braids, "are woven on needle looms. A varying number of ends of yarn are wound onto beams. The size braid determines the size of yarn to be used and the number of ends used. The beams are loaded behind the loom and threaded in certain patterns."

In an E-mail message of November 17 to National Import Specialist Mitchel Bayer, you attempted to clarify the difference between, on the one hand, your round braid laces and, on the other hand, cordage: "Our round shoe laces are made on braiders or looms that are tubular and in fact in most cases has a filler running through the center. Cordage is made on a solid cord braider and is not tubular such as blind cords or solid cords or ropes. It would seem us that flat and round shoe laces would be classified the same," presumably under subheading 6307.90 of the Harmonized Tariff Schedule of the United States (HTS), an opinion you stated in an earlier telephone conversation.

Your letter states that the finished laces may be imported in either of two ways: as packaged pairs, or in bulk to be paired and packaged in this country. The lacing, imported on rolls as piece goods ("continuous length"), is to be made up into finished footwear laces (cut to length and tipped) in this country. Please note that the imported finished footwear laces are considered "made up articles" for tariff purposes.

The applicable subheading for the following styles of finished shoe laces, 440TP, 440C, 4437TP, L4860, 4463SP, L8244SP, L1008, 4470SP, 5653TP, 344TP, L1017, 7441TP, 367, and 5441TP, all of flat braid, some of cotton and the balance of man-made fibers, will be 6307.90.50, HTS, which provides for "Other made-up articles: \* \* \* Other: \* \* \* Corset lacings, footwear lacings, or similar lacings." Those of cotton will be classified in 6307.90.5010; those of man-made fibers will be classified in 6307.90.5020. The general rate of duty will be 3.2 percent ad valorem.

The applicable subheading for these same styles, if imported in the piece (lacing), will be 5808.10.7000, HTS, which provides for "Braids in the piece \* \* \*: other: of cotton or man-made fibers." The general rate of duty will be 7.8 percent ad valorem.

Subheading 6307.90.5010 falls within textile category designation 369. Subheading 6307.90.5020 falls within textile category designation 669. Subheading 5808.10.7000 falls within textile category designation 229. However, based upon international textile trade agreements, products of Honduras are not at this time subject to quota restrictions or the requirement of a visa.

The question of classification for the following styles of finished shoelaces, 828, 1668, 1310R, 35 R, L1200, 16-287, 16310, 736SP, B811P, and 2152TP, all of tubular braid and made of either polyester or nylon, is being referred to the Office of Regulations and Rulings, U.S. Customs Service Headquarters, 1300 Pennsylvania Avenue, N.W., Washington D.C. 20229. A ruling will be issued to you from that office.

You also seek a ruling on the eligibility of this merchandise under the Caribbean Basin Economic Recovery Act ("CBERA"). The CBERA states that "textile and apparel articles which are subject to textile agreements" are not eligible for the duty-free treatment provided by the CBERA. 19 U.S.C. §2703(b)(1). The Customs Regulations repeat this prohibition against textile and apparel articles subject to textile agreements receiving duty-free CBERA treatment at 19 C.F.R. §10.191(b)(2)(i). Goods classifiable under subheadings 5808.10.7000 or 6307.90.50, HTS, are subject to textile agreements, even though there are none in effect at this time with regards to Honduras. Thus, the laces which are the subject of this ruling are not entitled to duty-free treatment under CBERA.

Your original letter stated that the laces are manufactured from "100% USA raw materials. It is our understanding that there is no duty if USA raw materials are being used." Please be advised that there is no provision of law that allows duty-free treatment for goods produced with American components, unless the process is the mere assembly of such components; what you describe is a manufacturing, not assembly, process. Thus, duty-free treatment for your imported laces and lacing is not allowable.

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.*

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[ATTACHMENT B]

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

CLA-2 RR:CR:TE 965492 ttd  
Category: Classification  
Tariff No. 5806.32.2000

MR. KERRY W. KEATING  
PRESIDENT AND CEO  
MITCHELLACE, INC.  
*830 Murray Street*  
*P.O. Box 89*  
*Portsmouth, OH 45662-0089*

Re: Modification of New York Ruling Letter G82846, dated November 20, 2000; Classification of Unfinished Shoe Lacings and Shoelaces.

DEAR MR. KEATING:

This letter concerns New York Ruling Letter (NY) G82846, issued to you on November 20, 2000, regarding the tariff classification of certain unfinished shoe lacings in the piece, and finished shoelaces under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After review of that ruling, Customs has determined that the classification of four out of the fourteen styles of unfinished shoe lacings in the piece in heading 5808, HTSUSA, was incorrect. For the reasons that follow, this ruling modifies, in part, NY G82846.

*Facts:*

The articles at issue are four styles of unfinished shoelacings in the piece, identified as style numbers L1017, L4860, L8244SP and L1008. In NY G82846, we incorrectly deter-

mined that when imported in the piece, these four styles would be classified under sub-heading 5808.10.7000, HTSUSA, which provides for “Braids in the piece \* \* \*: Other: Of cotton or man-made fibers.”

We note that the Customs National Commodity Specialist Division (NCSA) classified fourteen of twenty-four samples in NY G82846 and then forwarded the remaining ten styles to the Office of Regulations & Rulings to determine their proper tariff classification. In HQ 965230, dated April 30, 2002, we classified the remaining ten styles. In the process of completing HQ 965230, Customs inquired about the meaning of the letter “L” in the style number, of a related style (style number L811P considered in HQ 965230). You informed us that the “L” denotes “loom.” Based on the fact that each style currently at issue has an “L” in the style number, we presume that each one was also made on a “loom.” Accordingly, based on this assumption, this characteristic distinguishes the subject styles from being made on a braiding machine.

*Issue:*

What is the proper classification of the four styles of unfinished shoelacing material in the piece?

*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 5808, HTSUSA, provides for, *inter alia*, braids in the piece. The EN to heading 5808, HTSUSA, provide in pertinent part:

(1) **Flat or tubular braids.**

\* \* \* \* \*

Braid is made on special machines known as braiding or spindle machines.

\* \* \* \* \*

In this case, based on our presumption that “L” denotes “loom,” the subject styles were not made on special braiding or spindle machines. Accordingly, none of the four styles at issue are properly classifiable under heading 5808, HTSUSA, as braids in the piece.

Heading 5806, HTSUSA, provides for, among other things, narrow woven fabrics, other than goods of heading 5807. Heading 5807, HTSUSA, provides for “Labels, badges and similar articles of textile materials, in the piece, in strips or cut to shape or size, not embroidered.” As the subject unfinished shoe lacing materials are not labels, badges or similar articles, they are precluded from classification in heading 5807, and therefore potentially classifiable in heading 5806.

In HQ 965230, issued to you on April 30, 2002, Customs classified style number L1200, in the piece, under subheading 5806.32.2000, HTSUSA. Style number L1200 was described as a tubular narrow woven fabric with a textile core. Before issuing that ruling, we inquired about the meaning of the letter “L” in the style number, of a related style (style number L811P also considered in HQ 965230). In response, you informed us that the “L” denotes “loom.” Assuming the “L” in the style number denotes “loom”, we found that style number L1200 is distinguished from being made on a braiding machine. Therefore, we found that style number L1200 was not properly classified in heading 5808, HTSUSA, as braids, in the piece. Rather, style number L1200, in the piece, was properly classified in subheading 5806.32.2000, HTSUSA, which provides for narrow woven fabrics of man-made fibers other than ribbon.

Assuming again that the “L” in the style number denotes “loom”, style numbers L1017, L4860, L8244SP and L1008 are more accurately described as narrow woven fabrics. Accordingly, like style number L1200 in HQ 965230, the four styles, in the piece, are properly classified in heading 5806, HTSUSA, as narrow woven fabric of man-made fibers other than ribbon.



*Holding:*

Based on the assumption that the “L” in each style number represents “loom,” style numbers L1017, L4860, L8244 and L1008, in the piece, are classifiable subheading 5806.32.2000, HTSUSA, which provides for “Narrow woven fabrics, other than goods of heading 5807; \* \* \* Other woven fabrics: Of man-made fibers: Other.” The current rate of duty is 6.4 percent *ad valorem* and the textile restraint category is 229.

NY G82846 is hereby modified, in part.

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](http://www.customs.gov).

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

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

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PROPOSED MODIFICATION AND REVOCATION OF RULING  
LETTERS AND REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF NURSING PADS AND THE  
COUNTRY OF ORIGIN OF NURSING PADS

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

ACTION: Notice of proposed modification of a country of origin ruling letter, revocation of a tariff classification ruling letter and revocation of treatment relating to the classification and country of origin of nursing pads.

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 and modify one ruling relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), and the country of origin of nursing pads composed of woven fabrics formed in China, the United States and assembled in Canada. Customs also proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before September 13, 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: U.S. Customs Service, 799 9<sup>th</sup> Street, N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at: (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: J. Steven Jarreau, Textiles Classification Branch: (202) 572-8817

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 emerged 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 to 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 letter relating to the country of origin and to revoke one ruling letter relating to the tariff classification of nursing pads composed of woven fabrics formed in China, the United States and assembled in Canada.

Although in this notice Customs is specifically referring to one Headquarters Ruling Letter and one New York Ruling Letter, 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 those identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, an internal advice memorandum or decision or a protest review decision) on the merchandise subject to this notice, which classified the merchandise contrary to this notice or which determined a contrary country of origin, should advise Customs during this comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)) as amended by sec-

tion 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 HTSUSA. 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 importation of merchandise subsequent to the effective date of the final decision on this notice.

The Customs Service in Headquarters Ruling Letters (HQ) 961238 (April 21, 1998) addressed the importer's entitlement to preferential tariff treatment pursuant to the North American Free Trade Agreement (NAFTA) and the country of origin of two styles of nursing pads. One style of nursing pad was composed entirely of woven cotton fabric formed in China and cut, joined together and edge-sewn in Canada. The second style of nursing pad was composed of woven cotton fabric formed in China, woven nylon fabric with a polyurethane coating formed in the United States and then cut, joined together and edge-sewn in Canada. The Customs Service in HQ 961238, relying on the merchandise being classified in subheading 6217.10.9510, HTSUSA, held that neither style nursing pad qualified for preferential tariff treatment pursuant to the NAFTA and that the country of origin of both styles of nursing pads was Canada. Headquarters Ruling Letter 961238 (April 21, 1998) is set forth as "Attachment A" to this document.

The Customs Service in New York (NY) Ruling Letter C81609 (Nov. 19, 1997) classified both styles of nursing pads in subheading 6217.10.9510, HTSUSA. New York Ruling Letter C81609 is set forth as "Attachment B" to this document.

It is now Customs determination that both styles of nursing pads are properly classified in subheading 6307.90.9889, HTSUSA, pursuant to the legal reasoning and analysis set forth in HQ 965711 (July 24, 2002) and proposed HQ 965750. Headquarters Ruling Letter 965711 is set forth as "Attachment C" to this document and proposed Headquarters Ruling Letter 965750 is set forth as "Attachment D" to this document.

It is now also Customs determination that the country of origin of both styles of nursing pads is China, pursuant to the legal reasoning and analysis set forth in proposed HQ 964387. The country of origin of the nursing pad composed entirely of woven cotton fabric formed in China and cut, joined together and edge-sewn in Canada is provided by 19 C.F.R. 102.21(c)(2). Paragraph (c)(2) of section 102.21, pursuant to paragraph (e), applicable when the country of origin can not be determined pursuant paragraph (c)(1), provides that the country of origin of goods classified in subheading 6307.90, HTSUS, shall be the country in which the fabric-making process occurred.

The country of origin of the nursing pad composed of woven cotton fabric formed in China, woven nylon fabric with a polyurethane coating formed in the United States and then cut, joined together and edge-sewn in Canada is provided by 19 C.F.R. 102.21(c)(4). Paragraph (c)(4) provides that the country of origin of goods that could not be determined pursuant to section 102.21(c)(1), (2) or (3), shall be the country in which the most important assembly or manufacturing process occurred. Proposed HQ 964387 is set forth as "Attachment E" to this document.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY C81609 and to modify HQ 961238, and any other rulings not specifically identified to reflect the proper classification and country of origin of the merchandise. 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: July 24, 2002.

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

[Attachments]

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[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*Washington, DC, April 21, 1998.*  
CLA-2 RR:TC:TE 961238 jb  
Category: Classification

MR. OWEN HAIRSINE  
ZEOTROPE HOLDINGS, LTD.  
*12993 80th Avenue  
Surrey, British Columbia  
Canada V3W 3B1*

Re: Modification of NY C81609, dated November 19, 1997; country of origin of nursing pads; 102.21(c)(2); tariff shift.

DEAR MR. HAIRSINE:

On, November 19, 1997, our New York office issued to you New York Ruling Letter (NY) C81609 addressing the classification and country of origin of two styles of cotton nursing pads. A review of the file has revealed that although the classification determination for the subject merchandise is accurate, an inaccurate determination was made with respect to the origin of the subject merchandise. Additionally, we note that your question with respect to coverage under the North American Free Trade Agreement (NAFTA) for this merchandise was left unanswered. Accordingly, this letter will set out the proper analysis and country of origin determination for this merchandise.

*Facts:*

The subject merchandise consists of two styles of nursing pads, one with a breathable waterproof nylon backing, and one without this backing, made of 100 percent cotton wo-

ven fabric. As stated in your letter, dated November 2, 1997, the manufacturing operations for this merchandise are as follows:

China cotton flannelette fabric is formed (for both styles)

United States polyurethane coated nylon taffeta is formed (for style with waterproof backing only)

Canada cotton flannelette is cut into six pieces; three pieces with a triangle shape and three pieces with a half moon shape for styles with waterproof backing only, the waterproof breathable nylon is cut into two pieces (a triangle and a half moon) triangle and moon pieces are joined together using an off the arm seamier sewing machine for styles with waterproof backing only, the two nylon pieces are joined on a single needle sewing machine edge of the nursing pad is closed by using a serging sewing machine for styles with waterproof backing only, the cotton and nylon are attached by serging the edges of both pieces six nursing pads are packaged.

*Issue:*

1. Does the subject merchandise qualify for NAFTA treatment?
2. What is the proper country of origin for the subject merchandise?

*Law and Analysis:*

*NAFTA Eligibility*

The subject nursing pads undergo processing operations in Canada which is a party to the North American Free Trade Agreement (NAFTA). General Note 12, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), incorporates Article 401 of the NAFTA into the HTSUSA. Note 12(a) provides, in pertinent part:

\* \* \* \* \*

(i) Goods that originate in the territory of a NAFTA party under the terms of subdivision (b) of this note and that qualify to be marked as goods of Canada under the terms of the marking rules \* \* \* and are entered under a subheading for which a rate of duty appears in the "Special" subcolumn followed by the symbol "CA" in parentheses, are eligible for such duty rate \* \* \*. [Emphasis added]

Accordingly, the nursing pads at issue will be eligible for the "Special" "CA" rate of duty provided it is a NAFTA "originating" good under General Note 12(b), HTSUSA, and it qualifies to be marked as a good of Canada. Note 12(b) provides in pertinent part.

For 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, or

(B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or

(iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials; or

\* \* \* \* \*

The subject merchandise qualifies for NAFTA treatment only if the provisions of General Note 12(b)(ii)(A) are met, that is, if the merchandise is transformed in the territory of Canada so that the non-originating material (the fabric formed in China) undergoes a change in tariff classification as described in subdivision (t).

As the nursing pads are classifiable in subheading 6217.10.9510, HTSUSA, subdivision (t), Chapter 62, rule 38, applies. That note states that:

A change to headings 6213 through 6217 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54, or headings 5508 through 5516, 5801 through 5802 or 6001 through

6002, provided that the good is both cut and sewn or otherwise assembled in the territory of one or more of the NAFTA parties.

When the fabric for the subject nursing pads leave China it is classifiable within headings 5204 through 5212. As the headings covering woven fabrics of cotton are excepted by subdivision (t), chapter 62, rule 38, the terms of the note are not met. Accordingly, the subject nursing pads do not qualify for NAFTA treatment.

*Country of origin*

On December 8, 1994, the President signed into law the Uruguay Round Agreements Act. Section 334 of that Act provides new rules of origin for textiles and apparel entered, or withdrawn from warehouse, for consumption, on and after July 1, 1996. On September 5, 1995, Customs published Section 102.21, Customs Regulations, in the Federal Register, implementing Section 334 (60 FR 46188). Thus, effective July 1, 1996, the country of origin of a textile or apparel product shall be determined by sequential application of the general rules set forth in paragraphs (c)(1) through (5) of Section 102.21.

Paragraph (c)(1) states that "The country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced." As the subject merchandise is not wholly obtained or produced in a single country, territory or insular possession, paragraph (c)(1) of Section 102.21 is inapplicable.

Paragraph (c)(2) states that "Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which the foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section."

Paragraph (e) states that "The following rules shall apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section:"

6215-6217 If the good consists of two or more component parts, a change to an assembled good of heading 6215 through 6217 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.

The subject merchandise is classified in heading 6217, HTSUS. As the subject nursing pads are wholly assembled in a single country, Canada, the country of origin of the nursing pads is Canada.

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

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[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*New York, NY, November 19, 1997.*  
CLA-2-62:RR:NC:3:353 C81609  
Category: Classification  
Tariff No. 6217.10.9510

MR. OWEN HAIRSINE  
ZEOTROPE HOLDINGS LTD.  
*12993-80th Ave.,  
Surrey, British Columbia  
Canada V3W 3B1*

Re: The tariff classification of nursing pads from China.

DEAR MR. HAIRSINE:

In your letter dated November 2, 1997, you requested a classification ruling.

The submitted samples are nursing pads which you state are composed of 100% cotton woven fabric. The nursing pads are of two styles. Both styles are comprised of three pieces

of fabric with a triangle shape and three with a half moon type shape. One style has a breathable coated nylon fabric on one side. The stated principal use in the United States for the pads are as an accessory to Nursing Brassiere.

The applicable subheading for the nursing pads will be 6217.10.9510, Harmonized Tariff Schedule of the United States (HTS), which provides for "Other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212: Accessories: Other, Of cotton. The duty rate will be 15.2% ad valorem.

The nursing pads fall within textile category designation 359. Based upon international textile trade agreements products of China are subject to quota and the requirement of a visa.

The designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes. To obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Martin Weiss at 212-466-5881.

ROBERT B. SWIERUPSKI,

*Director,*

*National Commodity Specialist Division.*

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[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,

U.S. CUSTOMS SERVICE,

*Washington, DC, July 24, 2002.*

CLA-2 RR:CR:TE 965711 jsj

Category: Classification

Tariff No. 6307.90.9889

MS. ESTELLE LEE  
PRESIDENT, TL CARE  
P.O. Box 77087  
San Francisco, CA 94107

Re: Nursing Pads; Breast Pads; Paper Absorbent Component; Textile Wadding Absorbent Component; Woven Textile Fabric Absorbent Component; Nonwoven Textile Fabric, But Not Wadding Absorbent Component; General Rules of Interpretation 1 and 3(b); Essential Character; Headings 4818, 5601 and 6307, HTSUS; Not Clothing Accessories, Heading 6217, HTSUS; Woven Cotton Absorbent Component; Subheading 6307.90.9889, HTSUSA.

DEAR MS. LEE:

The purpose of this correspondence is to respond to your request dated April 25, 2002. The correspondence in issue requested a binding classification ruling of the merchandise described as a "nursing pad."

This ruling is being issued subsequent to the following: (1) A review of your submission dated April 25, 2002; and (2) An examination of the sample that accompanied your ruling request.

*Facts:*

The article in issue, identified as a nursing pad, is designed to be placed in the brassiere of nursing mothers to absorb excess milk. It is circular or slightly conical in shape and

measures five (5) inches in diameter. The nursing pad is composed entirely of four (4) layers of 100 percent woven cotton fabric stated to be flannel. No other materials form a part of this article. The circumference is sewn.

This merchandise is also commonly referred to as “breast pads.” The Customs Service, for convenience purposes, will refer to this item as a nursing pad.

The Customs Service is advised that the country of manufacture is China.

*Issue:*

What is the classification, pursuant to the Harmonized Tariff Schedule of the United States Annotated, of the above-described nursing pad composed entirely of woven cotton fabric<sup>1</sup>?

*Law and Analysis:*

The federal agency responsible for initially interpreting and applying the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is the U.S. Customs Service.<sup>2</sup> The Customs Service, in accordance with its legislative mandate, classifies imported merchandise pursuant to the General Rules of Interpretation (GRI) and the Additional U.S. Rules of Interpretation.<sup>3</sup>

General Rule of Interpretation 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.” *General Rule of Interpretation 1*. General Rule of Interpretation 1 further states that merchandise which cannot be classified in accordance with the dictates of GRI 1 should be classified pursuant to the other General Rules of Interpretation, provided the HTSUSA chapter headings or notes do not require otherwise. According to the Explanatory Notes (EN), the phrase in GRI 1, “provided such headings or notes do not otherwise require,” is intended to “make it quite clear that the terms of the headings and any relative Section or Chapter Notes are paramount.” *General Rules for the Interpretation of the Harmonized System, Rule 1, Explanatory Note (V)*.

The Explanatory Notes constitute the official interpretation of the Harmonized System at the international level. *See* Joint Explanatory Statement *supra* note 2, at 549. The Explanatory Notes, although neither legally binding nor dispositive of classification issues, do provide commentary on the scope of each heading of the HTSUS. The EN’s are generally indicative of the proper interpretation of the headings. *See* T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989); *Lonza, Inc. v. United States*, 46 F. 3<sup>rd</sup> 1098, 1109 (Fed. Cir. 1995).

The Customs Service, observing the dictates of GRI 1, to classify merchandise according to the terms of the headings and the section and chapter notes, has encountered significant difficulty in the classification of nursing pads. Nursing pads, as previously explained, are items used by nursing mothers to absorb excess breast milk during lactation. Nursing pads may be used for other purposes, but it is Customs conclusion that any use of nursing pads other than by nursing mothers to absorb excess milk is fugitive.

The difficulty encountered by Customs in classifying this merchandise stems from two facts: (1) Nursing pads are not designated *eo nomine* in the tariff schedule; and (2) The manufacturers of nursing pads utilize different materials, primarily different absorbent material, to construct their products. Customs commenced the classification of this merchandise with this understanding.

Customs survey of nursing pads indicates that they are manufactured utilizing primarily four types of absorbent material: (1) Paper and/or paper pulp; (2) Textile wadding; (3) Woven textile fabrics; and (4) Nonwoven textile fabrics that are not wadding. It is not Customs intention to suggest that this list is exclusive. Other absorbent materials may be used in the manufacture of nursing pads either presently or in the future. The four primary types of absorbent material addressed above, for the purposes of this ruling letter, are not in composition with any type of super absorbent chemical compound.

<sup>1</sup> All aspects of this article are composed of woven cotton fabric, including the absorbent layer.

<sup>2</sup> *See* 19 U.S.C. 1500 (West 1999) (providing that the Customs Service is responsible for fixing the final appraisal, classification and amount of duty to be paid); *See also* Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 100–576, at 549 (1988) *reprinted in* 1988 U.S. Code Cong. and Adm. News 1547, 1582 [hereinafter Joint Explanatory Statement].

<sup>3</sup> *See* 19 U.S.C. 1202 (West 1999); *See generally*, *What Every Member of The Trade Community Should Know About: Tariff Classification*, an Informed Compliance Publication of the Customs Service available on the World Wide Web site of the Customs Service at [www.customs.gov](http://www.customs.gov), search “Importing & Exporting” and then “U.S. Customs Informed Compliance Publications.”



Since the tariff schedule does not designate nursing pads, *eo nomine*, that is by name, in any of the headings, Customs has determined that it is not possible to classify all nursing pads in a single heading. Failing to confirm a single heading into which all nursing pads may be properly classified, Customs re-examined the GRI's, gave careful thought to the ruling requests and protests currently pending in the Office of Regulations and Rulings and reviewed the classification history of this line of merchandise. The decision was made, pursuant to the requirements of the GRI's, to classify each article on its own merits.

The Customs Service, pursuant to the principles of "informed compliance" and "shared responsibilities" set forth in the Customs Modernization Act,<sup>4</sup> has determined that in order for the trade community to understand Customs reasoning, it is important to address in this ruling letter Customs thought process with regards to the classification of nursing pads. It is Customs judgment because of the different ways in which different types of nursing pads are manufactured that providing comprehensive analysis of the classification of the different types of nursing pads will result in a more uniform and correct classification of this merchandise.

Simply addressing TL Care's nursing pad would meet Customs legal obligation, but that would only inform Customs field personnel and the trade of the classification of one type of nursing pad. Only a complete and thorough discussion of the classification of the different types of nursing pads can result in the uniformity sought by Customs and the accurate classification of merchandise required of the trade.

The Customs Service will initially provide analysis of the headings that the agency has concluded are relevant to the classification of nursing pads. This ruling letter will conclude with the classification of the TL Care nursing pad.

It is the understanding of the Customs Service, as previously stated, that there are four primary types of nursing pads based on absorbent properties. The primary types of nursing pads include those with the following types of absorbent material: (1) Paper; (2) Textile wadding; (3) Woven textile fabrics; and (4) Nonwoven textile fabrics that are not wadding. Customs will address the classification, at the heading level, of nursing pads with each of these absorbent materials.

It is important to note that nursing pads are generally not composed entirely of the same material that provides the nursing pad with its absorbent capability. Although Customs focus, as will be addressed subsequently, will be on the material or substance that provides a nursing pad with its absorbent capability, proper application of the GRI's mandate that Customs not ignore the other materials or substances which make-up a particular style of nursing pads.

### ***Nursing Pads of Heading 4818***

#### ***Nursing Pads Composed Entirely if Materials Enumerated in Heading 4818***

Commencing the classification of nursing pads composed entirely of paper pulp, paper, cellulose wadding or webs of cellulose fibers, these nursing pads, in accordance with the dictates of GRI 1, are classified according to the terms of heading 4818, HTSUS. Heading 4818, HTSUS, provides for the classification of: Toilet paper and similar paper \* \* \* of a kind used for household or sanitary purposes; \* \* \* *diapers, tampons, bed sheets and similar household, sanitary or hospital articles*, articles of apparel and clothing accessories, of paper pulp, paper, cellulose wadding or webs of cellulose fibers. (Emphasis added).

Explanatory Note 48.18 provides that heading 4818, HTSUS, addresses the classification of "household, sanitary or other hospital articles \* \* \* of paper pulp, paper, cellulose wadding or webs of cellulose fibres." *Explanatory Note 44.18*. Sanitary articles, in accordance with the definition of "sanitary" in Webster's New Collegiate Dictionary are articles "of or relating to health." *Webster's New Collegiate Dictionary*, G. & C. Merriam Company (1977). It is the judgment of this office that nursing pads, designed to absorb excess milk from nursing mothers, are sanitary articles for the purposes of the tariff schedule and are similar to diapers and tampons, the sanitary articles designated *eo nomine* in heading 4818, HTSUS.

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<sup>4</sup> See generally North American Free Trade Implementation Act, Pub. L. 103-183, 107 Stat. 2057 (1993); See also Customs Modernization and Informed Compliance Act: Hearing on H.R. 3935 Before the House Comm. on Ways and Means, Subcomm. On Trade, 102<sup>nd</sup> Cong. 91 (1992) (statement of Carol Hallett, Commissioner, U. S. Customs Service) "Customs must do a better job of informing the trade community of how Customs does business; and the trade community must do a better job to assure compliance with U. S. trade laws."

It is, therefore, Customs determination that nursing pads composed entirely of paper pulp, paper, cellulose wadding or webs of cellulose fibers are properly classified, pursuant to GRI 1, in heading 4818, HTSUS.

*Nursing Pads With Components of Paper Pulp, Paper, Cellulose Wadding or Webs of Cellulose fibers and of Textile Fabrics*

Nursing pads for which the absorbent capability is provided by paper pulp, paper, cellulose wadding or webs of cellulose fibers, but which are not composed entirely of the materials enumerated in heading 4818, may not be classified pursuant to GRI 1 in heading 4818, HTSUS. These nursing pads generally have an absorbent inner layer or layers composed of paper pulp, paper, cellulose wadding or webs of cellulose fibers, but the outer layer or layers, those layers not primarily designed and intended to provide the article with its absorbent property, may generally be composed of one or more textile fabrics. The outer layer or layers may be, among other fabrics, lace, nonwoven fabrics or woven fabrics.

Nursing pads with an outer component of a textile fabric or fabrics and with an inner absorbent component of paper pulp, paper, cellulose wadding or webs of cellulose fibers may not be classified pursuant to GRI 1. A review of the terms of the headings of the HTSUS and the relevant section and chapter notes does not establish a heading into which an article of this nature may be properly classified, pursuant to GRI 1.

Having determined that General Rule of Interpretation 1 does not resolve this classification matter, the Customs Service reviewed GRI 2. Since nursing pads composed of an outer component of textile fabrics and with an inner absorbent component of the materials enumerated in heading 4818, HTSUS, that is, paper pulp, paper, cellulose wadding or webs of cellulose fibers, are not incomplete, unfinished, unassembled or disassembled articles, GRI 2(a) does not offer assistance. General Rule of Interpretation 2(b) does provide classification guidance.

General Rule of Interpretation 2(b) provides, in part, that “[t]he classification of goods consisting of more than one material or substance shall be classified according to the principles of rule 3.” Since the nursing pad subject to this discussion is composed of both a textile fabric component and a component of materials enumerated in heading 4818, HTSUS, it is composed of more than one material and resort must be had to GRI 3.

The initial sentence of General Rule of Interpretation 3 provides that “[w]hen, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be \* \* \*

according to GRI 3(a), (b) or (c). The nursing pads subject to this discussion are, *prima facie*, classifiable in two headings. They are classifiable as “made up articles” of heading 6307, HTSUS, because of the textile fabric component and also as an article of heading 4818, HTSUS, because of their similarity to the *eo nomine* articles and composition of paper pulp, paper, cellulose wadding or webs of cellulose fibers.

General Rule of Interpretation 3(a) states that “when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods \* \* \* those headings are to be regarded as equally specific in relation to the goods, even if one of them gives a more complete or precise description of the goods.” The nursing pad subject to this discussion is a composite good<sup>5</sup> and the headings under classification consideration each refer to only part of the materials in the good. Customs will, for that reason, turn to GRI 3(b).

General Rule of Interpretation 3(b) provides, in part, that “composite goods \* \* \* made up of different components \* \* \* which cannot be classified by reference to 3(a), shall be classified as if they consisted of the \* \* \* component which gives them their essential character, insofar as this criterion is applicable.” The GRI’s do not provide a definition for the phrase “essential character,” but the EN’s suggest an illustrative list of factors to consider. Explanatory Note Rule 3(b) (VIII) states that the factors that may be relevant to the determination of “essential character” “will vary between different kinds of goods,” but may include the nature of the material or component, its bulk, its quantity, its weight, its value or the role played by the constituent material in relation to the use of the good. *General Rules for the Interpretation of the Harmonized System, Rule 3 (b) Explanatory Note (VIII)*.

It is the conclusion of the Customs Service that the absorbent component composed of a material enumerated in heading 4818, HTSUS, is the component that gives the nursing

<sup>5</sup> See generally *General Rules for the Interpretation of the Harmonized System, Rule 3(b) Explanatory Note (IX)* (providing, in part, that composite goods include goods made up of different components in which “the components are attached to each other to form a practically inseparable whole”).

pad its essential character. The absorbent material component plays the greatest role in the nursing pad, the absorption of excess milk during lactation. It is also the component that provides the nursing pad with its greatest bulk.

It is, therefore, Customs determination that nursing pads composed of an outer component of a textile fabric or fabrics and with an inner absorbent component of paper pulp, paper, cellulose wadding or webs of cellulose fibers are properly classified, pursuant to GRI 3(b), in heading 4818, HTSUS, as a similar sanitary article.

### ***Nursing Pads of Textile Wadding—Heading 5601***

#### *Composed Entirely of Textile Wadding*

Commencing the classification of nursing pads composed entirely of textile wadding, these nursing pads, pursuant to GRI 1, are properly classified in heading 5601, HTSUS. Heading 5601, HTSUS, provides for the classification of “Wadding of textile materials and articles thereof; textile fibers, not extending 5 mm in length (flock), textile dust and mill neeps.”

Wadding, as described by the EN’s is “made by superimposing several layers of carded or air-laid textile fibres one on the other, and then compressing them in order to increase the cohesion of the fibres.” *Explanatory Note 56.01(A)*. It is noted that in order for an article to be wadding, the fibers must be readily separable, such as is possible with cotton balls frequently found in medicine bottles. *See Explanatory Note 56.01(A)*.

Heading 5601, HTSUS, provides for the classification of articles of “[w]adding of textile materials.” The Explanatory Notes reinforce the classification of nursing pads composed entirely of textile wadding in heading 5601, HTSUS. Explanatory Note 56.01(A)(2) sets forth that “[s]anitary towels and tampons, napkins (diapers) and napkin liners for babies and similar sanitary articles consisting of wadding, whether or not with knitted or loosely woven open-work covering” are classified in heading 5601, HTSUS. Customs, as previously addressed, has concluded that nursing pads are similar to sanitary articles.

It is, therefore, Customs determination that nursing pads composed entirely of textile wadding are properly classified, pursuant to GRI 1, in heading 5601, HTSUS, as articles of wadding of textile materials.

#### *Nursing Pads With Components of Textile Wadding and of Textile Fabrics*

Nursing pads for which the absorbent capability is provided by textile wadding, but which are not composed entirely of textile wadding, may not be classified pursuant to GRI 1 in heading 5601, HTSUS. These nursing pads generally have an absorbent inner component of textile wadding, but also have outer components, not primarily designed and intended to provide the article with its absorbent property, composed of one or more textile fabrics. The outer components may be, among other fabrics, lace, nonwoven fabrics that are not wadding or woven fabrics.

Nursing pads composed of an outer component of textile fabric and with an inner absorbent component of textile wadding may not be classified pursuant to GRI 1. A review of the terms of the headings of the HTSUS and the relevant section and chapter notes does not establish a heading into which an article of this nature is properly classifiable, pursuant to GRI 1.

Having determined that General Rule of Interpretation 1 does not resolve this classification matter, the Customs Service reviewed GRI 2. Since nursing pads composed of an outer component of textile fabrics and an inner absorbent component of textile wadding are not incomplete, unfinished, unassembled or disassembled articles, GRI 2(a) does not offer assistance. General Rule of Interpretation 2(b) does provide classification guidance.

General Rule of Interpretation 2(b) provides, in part, that “[t]he classification of goods consisting of more than one material or substance shall be classified according to the principles of rule 3.” Since the nursing pad subject to this discussion is composed of both textile fabrics and textile wadding, it is composed of more than one material and resort must be had to GRI 3.

The initial sentence of General Rule of Interpretation 3 provides that “[w]hen, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be \* \* \*

according to GRI 3(a), (b) or (c). The nursing pads subject to this discussion are, *prima facie*, classifiable in two headings. They are classifiable as “made up articles” of heading 6307, HTSUS, because of the textile fabric component and also as an article of “[w]adding of textile materials” of heading 5601, HTSUS, because of the textile wadding component. *See* Headings 5601 and 6307, HTSUS.

General Rule of Interpretation 3(a) states that “when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods \* \* \* those headings are to be regarded as equally specific in relation to the goods, even if one of them gives a more complete or precise description of the goods.” The nursing pad subject to this discussion is a composite good and the headings under classification consideration each refer to only part of the materials in the good. Customs will, for that reason, turn to GRI 3(b).

General Rule of Interpretation 3(b) provides, in part, that “composite goods \* \* \* made up of different components \* \* \* which cannot be classified by reference to 3(a), shall be classified as if they consisted of the \* \* \* component which gives them their essential character, insofar as this criterion is applicable.” The GRI’s do not provide a definition for the phrase “essential character,” but the EN’s suggest an illustrative list of factors to consider. Explanatory Note Rule 3(b) (VIII) states that the factors which may be relevant to the determination of “essential character” “will vary between different kinds of goods,” but may include the nature of the material or component, its bulk, its quantity, its weight, its value or the role played by the constituent material in relation to the use of the good. *General Rules for the Interpretation of the Harmonized System, Rule 3 (b) Explanatory Note (VIII)*.

It is the conclusion of the Customs Service that the inner absorbent component composed of textile wadding is the component that gives the nursing pad its essential character. The absorbent component plays the greatest role in the nursing pad, the absorption of excess milk during lactation. It is also the component that provides the nursing pad with its greatest bulk.

It is, therefore, Customs determination that nursing pads composed of an outer component of textile fabrics and with an inner absorbent component of textile wadding are properly classified, pursuant to GRI 3(b), in heading 5601, HTSUS, as articles of wadding of textile materials.

#### ***Nursing Pads of Woven Fabric or of Nonwoven Fabric, But Not Wadding—Heading 6307***

Heading 6307, HTSUSA, a residual heading, provides for the classification of “Other made up articles, including dress patterns.” It is Customs determination, pursuant to GRI 1, that heading 6307, HTSUSA, and no other heading, provides for the classification of nursing pads composed entirely of woven textile fabrics or of nonwoven textile fabrics that are not wadding.<sup>6</sup>

The expression “made up,” as used in heading 6307, HTSUSA, is defined in Section XI, note 7. “Made up,” pursuant to the section note, means articles,

- (a) Cut otherwise than into squares or rectangles;
- (b) Produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dust-ers, towels, tablecloths, scarf squares, blankets);
- (c) Hemmed or with rolled edges, or with a knotted fringe at any of the edges, but excluding fabrics the cut edges of which have been prevented from unravelling by whipping or by other simple means;
- (d) Cut to size and having undergone a process of drawn thread work;
- (e) Assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded); or
- (f) Knitted or crocheted to shape, whether presented as separate items or in the form of a number of items in the length.

The Explanatory Notes to heading 6307, HTSUSA, indicate that this heading is intended to include made up articles of any textile material, provided the articles are “**not included** more specifically in other headings of Section XI or elsewhere in the Nomenclature.” *Explanatory Note 63.07*. Explanatory Note 63.07 further provides that made up articles include “[s]anitary towels (**excluding those of heading 56.01**).”<sup>7</sup> *Explanatory Note 63.07 (14)*. The EN’s do not define “sanitary towels,” but a review of the Explanatory Notes to heading 5601, HTSUS, suggests that sanitary towels are similar to “[s]anitary \* \* \* tampons, napkins (diapers) and napkin liners for babies and similar sanitary articles

<sup>6</sup> A nonwoven textile fabric may upon initial examination appear to be wadding. If the textile fibers are not “readily separable,” the material is not wadding, but rather a nonwoven textile fabric.

<sup>7</sup> The sanitary towels excluded from heading 6307, HTSUS, would be those with an absorbent component of textile wadding, the material of heading 5601, HTSUS, articles.

\* \* \* *Explanatory Note 56.01(A)(3)*. These sanitary articles are similar to those addressed in the analysis of heading 4818, HTSUS. The reasoning set forth concerning sanitary articles of heading 4818, HTSUS, is equally applicable to sanitary towels and articles of heading 6307, HTSUS.

It is, therefore, Customs determination that nursing pads composed entirely of woven textile fabrics or of nonwoven textile fabrics that are not wadding are not included more specifically elsewhere in the schedule, that they are described by section XI, note 7 and are properly classified at the heading level in heading 6307, HTSUS. Sanitary towels referenced in the Explanatory Notes, which Customs notes is not a term routinely employed in the United States, are a type of sanitary article. Nursing pads, as addressed previously, are sanitary articles.

#### ***Clothing Accessories and Heading 6217***

The Customs Service has previously issued ruling letters classifying nursing pads, with regard to the material or substance that afforded the article its absorbent capability, in heading 6217, HTSUS. Heading 6217, HTSUS, provides, in part, for the classification of "Other made up *clothing accessories* \* \* \*" (Emphasis added). Customs has now determined, subsequent to an exhaustive review of the tariff schedule and the Explanatory Notes, that nursing pads are not clothing accessories and should not be classified in heading 6217, HTSUS.

Customs conclusion that nursing pads were clothing accessories was based on a review of the Explanatory Notes and the decision that nursing pads are "accessories," that is, that they are secondary or subordinate in importance to clothing articles, adding to the beauty, convenience and effectiveness of the article. It is now Customs determination that nursing pads are not "accessories" and that Explanatory Note 62.17, when read in its entirety, does not support the classification of nursing pads in heading 6217, HTSUS.

Explanatory Note 62.17 lists twelve categories of articles that should be classified as clothing accessories, or as parts of garments or clothing accessories. The items enumerated in EN 62.17 include: dress shields; shoulder or other pads; belts of all kinds (including bandoliers) and sashes; muffs; sleeve protectors; sailor's collars; epaulettes and brassards; labels, badges, emblems, "flashes" and the like; frogs and lanyards; separately presented removable linings for raincoats and similar garments; pockets, sleeves, collars, collarettes, wimples, fallals of various kinds, cuffs, yokes, lapels and similar items; and stockings, socks and sockettes.

Customs had previously placed considerable emphasis on the similarities between dress shields and shoulder pads, and nursing pads. It is now the determination of this office that Customs should not focus on only dress shields and shoulder pads when attempting to draw analogies to nursing pads, but must take into consideration all of the items listed in the Explanatory Note.

Nursing pads, like dress shields, are worn in addition to the wearer's clothing and do protect the wearer's clothing from perspiration staining. Dress shields, unlike nursing pads, are principally intended to protect the wearer's clothing. While nursing pads will protect the wearer's brassiere and outer garment from possible staining, its primary use is to absorb excess milk, not protect the wearer's clothing, particularly the brassiere. Nursing mothers wear nursing brassieres for a limited period of time and concerns about staining are minimal. Customs notes that nursing pads are generally purchased from maternity stores or drug stores, where as dress shields are generally purchased in fabric stores.

Shoulder pads are designed and intended to complement the wearer's clothing and, unlike nursing pads, have no protective function. Customs, as previously discussed, has concluded that the use of nursing pads for any purpose other than the absorption of excess milk during lactation is fugitive. Should pads, in this regard, are not analogous to nursing pads.

A review of all of the items listed in EN 62.17 convinces Customs that nursing pads are not properly classified in heading 62.17, HTSUS. While nursing pads do have similarities with dress shields and shoulder pads, particularly dress shields, Customs concludes that a fair and accurate interpretation of EN 62.17 necessitates that nursing pads be compared to all of the items listed. When the features and uses of nursing pads are weighted against the features and uses of all of the items enumerated in EN 62.17, it is evident to Customs that nursing pads are not sufficiently analogous and should not be classified in heading 6217, HTSUS. Nursing pads have little or nothing in common with items such as belts, sashes muffs, sleeve protectors, sailor's collars, epaulettes, brassards, labels, badges, em-

blems, "flashes," frogs, lanyards, removable linings for raincoats, pockets, sleeves, collars, collarlettes, wimples, fallals, cuffs, yokes, lapels, stockings, socks and sockettes.

The Customs Service is aware of HQ 963488 (May 2, 2000) and NY D82853 (Oct. 16, 1998) classify similar nursing pads as clothing accessories in heading 6217, HTSUS. Customs is re-examining the classification of this merchandise in heading 6217, HTSUS. If a decision is made to reclassify the merchandise in the identified ruling letters, the Customs Service will proceed in accordance with 19 U.S.C. 1625 (c).

***TL Care's Nursing Pad of Woven Cotton Fabric***

Commencing classification of the TL Care nursing pad, in accordance with the dictates of GRI 1, the Customs Service examined the headings of the HTSUSA. Heading 6307, HTSUSA, a residual heading, provides for the classification of "Other made up articles, including dress patterns." It is Customs determination, as previously set forth in this ruling letter, that heading 6307, HTSUSA, and no other heading, provides for the classification of nursing pads composed entirely of woven cotton fabric.

It is Customs determination that nursing pads composed entirely of woven cotton fabric are not included more specifically elsewhere in the schedule and that they are articles assembled by sewing, gumming or otherwise as describe by section XI, note 7 (e). Nursing pads, as previously resolved, are sanitary articles similar to sanitary towels.

Continuing the classification of TL Care's nursing pad composed solely of four layers of 100 percent woven cotton fabric, the article is classified in subheading 6307.90.9889, HTSUSA. Subheading 6307.90.9889, HTSUSA, provides for the classification of:

- 6307 Other made up articles, including dress patterns:
- 6307.90 Other:
- 6307.90.98 Other,
- Other:
- 6307.90.9889 Other.

***Holding:***

The TL Care nursing pad, composed entirely of woven cotton fabric, is classified in subheading 6307.90.9889, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty is seven (7) percent, *ad valorem*.

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

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[ATTACHMENT D]

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

CLA-2 RR:CR:TE 965750 jsj  
Category: Classification  
Tariff No. 6307.90.9889

MR. OWEN HAIRSINE  
ZEOTROPE HOLDINGS, LTD.  
12993 80<sup>th</sup> Avenue  
Surrey, British Columbia  
Canada V3W 3B1

Re: Reconsideration and Revocation of NY C81609 (Nov. 19, 1997); Nursing Pads; Breast Pads; Woven Absorbent Material; Subheading 6307.90.9889, HTSUSA; HQ 965711 (July 24, 2002) Incorporated by Reference.

DEAR MR. HAIRSINE:

The purpose of this correspondence is to advise you that the Customs Service has reconsidered New York Ruling Letter C81609 (Nov. 19, 1997).

The Customs Service in New York Ruling Letter C81609 classified two nursing pads, one composed entirely of woven cotton fabric and the other composed of woven cotton fabric with an outer layer of polyurethane coated woven nylon fabric, in subheading 6217.10.9510, HTSUSA. The Customs Service has reviewed NY C81609 and determined that it is not correct.

Customs is revoking NY C81609. The nursing pads, one composed entirely of woven cotton fabric and the other composed of woven cotton fabric with an outer layer of polyurethane coated woven nylon fabric, are classified in subheading 6307.90.9889, HTSUSA. The reasoning and analysis addressing Customs decision is provided in this ruling letter.

*Facts:*

The articles in issue are two styles of nursing pads.

Style one is composed solely of 100 percent woven cotton fabric. The fabric is cut into three pieces with triangular shapes and three pieces in the shape of half-moons.

Style two is identical to style one, with the exception that it has a breathable polyurethane coated woven nylon fabric on one side of the article. It is Customs understanding that it is the woven cotton fabric which provides this article with its absorbent capability.

*Issue:*

What is the classification, pursuant to the Harmonized Tariff Schedule of the United States Annotated, of the above-described nursing pads, one composed entirely of woven cotton fabric and the other composed of woven cotton fabric with an outer layer of polyurethane coated woven nylon fabric?

*Law and Analysis:*

The Customs Service in Headquarters Ruling Letter 965711 (July 24, 2002) provided classification analysis, at the heading level for heading 6307, HTSUS, for nursing pads substantially similar to those in this ruling letter, composed entirely of woven cotton fabric and composed of woven cotton fabric with an outer layer of polyurethane coated woven nylon fabric. Heading 6307, HTSUS, a residual or basket provision, provides for the classification of “[o]ther made up articles, including dress patterns.”

The legal reasoning and analysis addressing the classification, at the heading level, in heading 6307, HTSUS, of nursing pads composed entirely of woven cotton fabric and composed of woven cotton fabric with an outer layer of polyurethane coated woven nylon fabric set forth in HQ 965711 is incorporated into this ruling letter by reference. Headquarters Ruling Letter 965711 is attached to and made a part of this ruling letter.

Continuing the classification of Zeotrope Holdings’ nursing pad, at the subheading level, Zeotrope’s nursing pads composed entirely of woven cotton fabric and composed of woven cotton fabric with an outer layer of polyurethane coated woven nylon fabric are classified in subheading 6307.90.9889, HTSUSA. Subheading 6307.90.9889, HTSUSA, provides for:

6307	Other made up articles, including dress patterns:
6307.90	Other:
	Other:
6307.90.98	Other,
	Other:
6307.90.9889	Other.

*Holding:*

New York Ruling Letter C81609 (Nov. 19, 1997) is revoked.

The Zeotrope Holdings, Ltd. nursing pads composed entirely of woven cotton fabric and composed of woven cotton fabric with an outer layer of polyurethane coated woven nylon fabric are classified in subheading 6307.90.9889, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty for subheading 6307.90.9889, HTSUSA, is seven (7) percent, *ad valorem*.

The legal reasoning and analysis of Headquarters Ruling Letter 965711 (July 24, 2002) is incorporated by reference. Headquarters Ruling Letter 965711 is attached to and made a part of this ruling letter.

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

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
Washington, DC.  
CLA-2 RR:CR:TE 964387 jsj  
Category: Classification  
Tariff No. 6307.90.9889

MR. OWEN HAIRSINE  
ZEOTROPE HOLDINGS, LTD.  
12993 80<sup>th</sup> Avenue  
Surrey, British Columbia  
Canada V3W 3B1

Re: Reconsideration and Modification of HQ 961238 (April 21, 1998); Nursing Pads; Breast Pads; Country of Origin; Woven Absorbent Material; Subheading 6307.90.9889, HTSUSA; NY C81609 (Nov. 19, 1997) Modified by HQ 961238 and Revoked by HQ 965750; HQ 965711 (July 24, 2002).

DEAR MR. HAIRSINE:

The purpose of this correspondence is to advise you that the Customs Service has reconsidered Headquarters Ruling Letter 961238 (April 21, 1998).

The Customs Service in Headquarters Ruling Letter 961238 stated that nursing pads composed entirely of woven cotton fabric and nursing pads composed of woven cotton fabric with an outer layer of nylon fabric were classified in subheading 6217.10.9510, HTSUSA. Headquarters Ruling Letter 961238, based on the articles being classified in heading 6217, HTSUS, held that the nursing pads were not entitled to preferential tariff treatment pursuant to the North American Free Trade Agreement (NAFTA) and that their country of origin was Canada.

The Customs Service has reviewed the classification ruling in NY C81609, classifying the nursing pads in subheading 6217.10.9510, HTSUSA, and determined that it is not correct. New York Ruling Letter C81609 is being revoked by HQ 965750 pursuant to the analysis set forth in HQ 965711 (July 24, 2002).

The Customs Service in this ruling letter is modifying HQ 961238. The conclusion concerning the NAFTA preferential tariff treatment eligibility determination is correct, although the reasoning based on the classification ruling is not accurate. Since the conclusion is correct, that the merchandise is not eligible for NAFTA preferential tariff treatment, that aspect of HQ 961238 will not be disturbed.

The Customs Service in this ruling letter is modifying that aspect of HQ 961238 that addressed the country of origin determinations. Headquarters Ruling Letter 961238, based on the merchandise being classified in subheading 6217.10.9510, HTSUSA, ruled that the country of origin of the merchandise was Canada. It is Customs decision in this ruling letter that the country of origin is not Canada. The reasoning and analysis addressing Customs decision concerning the correct country of origin is set forth in this letter.

*Facts:*

The articles in issue are two styles of nursing pads.

Style one is composed solely of 100 percent woven cotton fabric. The fabric is cut into three pieces with triangular shapes and three pieces in the shape of a half-moon.

Style two is identical to style one, with the exception that it has a woven nylon fabric with a polyurethane coating on one side of the article. It is Customs understanding that the woven cotton fabric provides the article with its absorbent capability.

The woven cotton fabric for both styles of nursing pads is formed in China. The woven nylon fabric with a polyurethane coating is formed and coated in the United States. The cotton and nylon fabrics are cut, joined and edge sewn in Canada.

*Issue:*

What is the country of origin of above-described nursing pad, identified by the Customs Service as style one, which is composed entirely of woven cotton fabric formed in China and cut, joined together and edge-sewn in Canada?

What is the country of origin of above-described nursing pad, identified by the Customs Service as style two, which is composed of woven cotton fabric formed in China, woven nylon fabric with a polyurethane coating formed in the United States and then cut, joined together and edge-sewn in Canada?



*Law and Analysis**Classification*

The Customs Service in Headquarters Ruling Letter 965711 (July 24, 2002) provided classification analysis, at the heading level for heading 6307, HTSUS, for nursing pads substantially similar to those in this ruling letter composed entirely of woven cotton fabric and nursing pads composed of woven cotton fabric with an outer layer of nylon fabric. Heading 6307, HTSUS, a residual or basket provision, provides for the classification of “[o]ther made up articles, including dress patterns.”

The legal reasoning and analysis addressing the classification, at the heading level, in heading 6307, HTSUS, of substantially similar nursing pads set forth in HQ 965711 is incorporated into this ruling letter by reference. Headquarters Ruling Letter 965711 is attached to and made a part of this ruling letter.

The classification of Zeotrope Holding’s nursing pads, composed entirely of woven cotton fabric and those composed of woven cotton fabric with an outer layer of nylon fabric are classified in proposed Headquarters Ruling Letter 965750 in subheading 6307.90.9889, HTSUSA. Subheading 6307.90.9889, HTSUSA, provides for:

6307	Other made up articles, including dress patterns:
6307.90	Other:
	Other:
6307.90.98	Other,
	Other:
6307.90.9889	Other.

*Country of Origin**Nursing Pads Composed Entirely of Woven Cotton Fabric Formed in China and Assembled in Canada*

The Uruguay Round Agreements Act, particularly section 334, codified at 19 U.S.C. 3592, sets forth the rules of origin for textile and apparel products. Customs, pursuant to the legislative authority extended to the Secretary of the Treasury, published regulations implementing the principles set forth by Congress.

Section 102.21 of Customs regulations establishes, with specifically delineated exceptions, that “this section shall control the determination of the country of origin of imported textile and apparel products for purposes of the Customs laws.” 19 C.F.R. 102.21. Textile and apparel products that are encompassed within the scope of section 102.21 are any goods classifiable in Chapters 50 through 63 of the HTSUSA, as well as goods classifiable under other specifically enunciated subheadings that include subheading 6307.90, HTSUS. *See* 19 C.F.R. 102.21 (b)(5).

The nursing pad, identified as style one, is classified in subheading 6307.90.9889, HTSUSA. The nursing pads are, therefore, considered “textile products” for the purposes of section 102.21 country of origin determinations. 19 C.F.R. 102.21 (b)(5).

The country of origin of textile and apparel products is determined by the sequential application of paragraphs (c)(1) through (c)(5) of section 102.21. Paragraph (c)(1) provides that “[t]he country of origin of a textile or apparel product is the single country, territory or insular possession in which the good was wholly obtained or produced.” Since the fabric of which the nursing pad is composed is formed in China and then cut, joined and edge-sewn in Canada, the origin of the assembled nursing pad cannot be determined by reference to paragraph (c)(1).

Paragraph (c)(2) of section 102.21 provides that where the country of origin cannot be determined according to paragraph (c)(1), resort should next be to paragraph (c)(2). The country of origin, according to paragraph (c)(2), is “the single country, territory or insular possession in which each foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e)” of section 102.21. Paragraph (e), as applicable to the instant determination, establishes a tariff shift rule that provides “The country of origin of a good classifiable under subheading 6307.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.” Section 102.21 (b)(2) defines “fabric-making process” to mean “any manufacturing operation that begins with polymers, fibers, filaments (including strips), yarns, twine, cordage, rope, or strips and results in a textile fabric.” 19 C.F.R. 102.21 (b)(2).

Paragraph (c)(2) confers the country of origin of the style one nursing pad. The country of origin of the assembled nursing pad is China because the “fabric comprising the good was formed by a fabric-making process” in China. 19 C.F.R. 102.21 (c)(2).

*Nursing Pads Composed of Woven Cotton Fabric Formed in China, Nylon Woven Fabric With a Polyurethane Coating Formed in the United States and Assembled in Canada*

Commencing the country of origin determination of the style two nursing pad, composed of woven cotton fabric formed in China, woven nylon fabric with a polyurethane coating formed in the United States and assembled in Canada, the Customs Service again referenced section 102.21 of Customs Regulations. Paragraph (c)(1), for the reasons assigned in the origin analysis of the style one nursing pad, does not confer the origin of the style two nursing pad.

Paragraph (c)(2) also fails to confer origin. Paragraph (e), as addressed above and as applicable pursuant to paragraph (c)(2), establishes a tariff shift rule for articles classified in subheading 6307.90, HTSUS. The rule references “*the country* in which the fabric comprising the good was formed by a fabric-making process.” (Emphasis added). The style two nursing pad is comprised of fabrics formed in two countries, the United States and China, precluding the application of paragraph (c)(2).

Paragraph (3) of section 102.21, to which resort must be had since neither paragraphs (c)(1) nor (c)(2) determine the origin of the nursing pad, addresses knit to shape goods and goods that are not knit to shape, but which are wholly assembled in a single country, territory or insular possession. See 19 C.F.R. 102.21 (c)(3). Paragraph (3) does not confer origin for two reasons. The Zeotrope nursing pad is not a knit to shape good as addressed in subparagraph (c)(3)(i) and, although the nursing pad is assembled entirely in Canada, subparagraph (c)(3)(ii) excepts goods classified in subheading 6307.90, HTSUS, from its application. Customs must now examine paragraph (c)(4) of section 102.21.

Paragraph (c)(4) of section 102.21 provides:

Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1), (2) or (3) of this section, the country of origin of the good is the single country, territory, or insular possession in which the most important assembly or manufacturing process occurred.

It is the determination of this office that section 102.21 (c)(4) confers origin on the style two Zeotrope nursing pad. The “most important assembly or manufacturing process” in the manufacture of the style two Zeotrope nursing pad occurs in China. 19 C.F.R. 102.21 (c)(4).

The woven cotton fabric manufactured in China is the most important part of the style two nursing pad. This aspect of the style two nursing pad is capable of functioning as a complete nursing pad, as is reflected by the fact that the style one nursing pad only consists of woven cotton fabric. The coated nylon fabric made in the United States provides the style two nursing pad with an added feature, a moisture-resistant barrier, not available in the style one nursing pad, but it is not essential to the functioning of the article.

It is additionally the determination of the Custom Service that the cutting, joining and sewing that occurs in Canada is outweighed in importance by the cotton fabric-making process that occurs in China. This position, resting the country of origin determination on the fabric-making process, rather than the assembly process, carries out the intent and purpose of Congress in the enactment of textile and apparel rules of origin in section 334 of the Uruguay Round Agreements Act. See HQ 958972 (April 9, 1996).

*Holding:*

Headquarters Ruling Letter 961238 (April 21, 1998) is modified.

The country of origin of the style one Zeotrope Holdings, Ltd. nursing pad, composed entirely of woven cotton fabric formed in China that is cut, joined together and edge-sewn in Canada, is China.

The country of origin of the style two Zeotrope Holdings, Ltd. nursing pad, composed of woven cotton fabric formed in China, woven nylon fabric with a polyurethane coating formed in the United States and that is cut, joined together and edge-sewn in Canada, is China.

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

PROPOSED REVOCATION OF RULING LETTERS AND  
REVOCATION OF TREATMENT RELATING TO THE TARIFF  
CLASSIFICATION OF NURSING PADS WITH ABSORBENT  
NONWOVEN FABRIC

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

ACTION: Notice of proposed revocation of tariff classification ruling letters and revocation of treatment relating to the classification of nursing pads manufactured with absorbent nonwoven fabric.

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 two rulings relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of nursing pads manufactured with absorbent nonwoven fabric. Customs also proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before September 13, 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: U.S. Customs Service, 799 9<sup>th</sup> Street, N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202): 572-8768.

FOR FURTHER INFORMATION CONTACT: J. Steven Jarreau, Textiles Classification Branch: (202) 572-8817

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 revoke two ruling letters relating to the tariff classification of nursing pads manufactured with absorbent non-woven fabric.

Although in this notice Customs is specifically referring to one New York Ruling Letter and one Headquarters Ruling Letter, 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 those identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, an internal advice memorandum or decision or a protest review decision) on the merchandise subject to this notice, which classified the merchandise contrary to this notice, should advise Customs during this 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 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 HTSUSA. 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 importation of merchandise subsequent to the effective date of the final decision on this notice.

The Customs Service in New York Ruling Letter D82853 classified nursing pads with an initial layer of knit fabric, a second layer of a non-woven fabric, a third layer, which provides the article with its absorbent capability, of a nonwoven polyester fabric and a fourth layer of a woven fabric in subheading 6217.10.9510, HTSUSA. New York Ruling Letter D82853 is set forth as "Attachment A" to this document.

It is now Customs determination that nursing pads with a knit component, nonwoven components and a woven component, in which the absorbent capability is provided by one of the nonwoven components, are properly classified in subheading 6307.90.9889, HTSUSA. Proposed

Headquarters Ruling Letter 963826, revoking NY D82853, is set forth as "Attachment B" to this document.

The Customs Service in Headquarters Ruling Letter 963488 classified nursing pads with an outer layer of a nonwoven fabric, a second outer layer of a woven fabric and an absorbent inner layer of a nonwoven polyester and rayon fabric in subheading 6217.10.9510, HTSUSA. Headquarters Ruling Letter 963488 is set forth as "Attachment C" to this document.

It is now Customs determination that nursing pads with an outer layer of a nonwoven fabric, a second outer layer of a woven fabric and an absorbent inner layer of a nonwoven polyester and rayon fabric are properly classified in subheading 6307.90.9889, HTSUSA. Proposed Headquarters Ruling Letter 964388, revoking HQ 963488, is set forth as "Attachment D" to this document.

The legal reasoning and analysis set forth in HQ 965711 (July 24, 2002) is incorporated into and made a part of proposed HQ 963826 and HQ 964388. Headquarters ruling letter 965711 is set forth as "Attachment E" to this document.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY D82853 and HQ 963488 and any other rulings not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 965711 (July 24, 2002), which is incorporated by reference in proposed HQ 963826 and HQ 964388. 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: July 30, 2002.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
New York, NY, October 16, 1998.  
CLA-2-62:RR:NC:3:353 D82853  
Category: Classification  
Tariff No. 6217.10.9510

MS. CARLA CRAVALHO  
HELLMANN INTERNATIONAL FORWARDERS, INC.  
448 Grandview Drive  
South San Francisco, CA 94080

Re: The tariff classification of a washable breast pad from China.

DEAR MS. CRAVALHO:

In your letter dated September 25, 1998, on behalf of Mantex Trading, Inc., you requested a classification ruling.

The submitted sample is a washable breast pad that is used to prevent leakage of breast milk in breast feeding mothers. The item is made of four layers of fabric consisting of an outer layer of 100% nylon lace fabric, a woven 100% polyester fabric lining, 100% polyester fabric padding and a bottom layer of woven 100% cotton flannel fabric.

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

In the instant case the item's purpose is to keep bras and garments dry by absorbing breast milk. The portion of the breast pad that touches the skin and allows for absorption, that is the bottom layer of cotton fabric, gives the item its essential character.

The applicable subheading for the washable breast pad will be 6217.10.9510, Harmonized Tariff Schedule of the United States (HTS), which provides for "Other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212: Accessories: Other: Other \* \* \* Of cotton." The duty rate will be 15.1% ad valorem.

The washable breast pad falls within textile category designation 359. Based upon international textile trade agreements products of China are subject to quota and the requirement of a visa.

The designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes. To obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kenneth Reidlinger at 212-466-5881.

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 963826 jsj  
Category: Classification  
Tariff No. 6307.90.9889

MS. CARLA CRAVALHO  
HELLMANN INTERNATIONAL FORWARDERS, INC.  
448 Grandview Drive  
South San Francisco, CA 94080

Re: Reconsideration and Revocation of NY D82853 (Oct. 16, 1998); Nursing Pads; Breast Pads; Nonwoven Absorbent Material; Subheading 6307.90.9889, HTSUSA; HQ 965711 (July 24, 2002) Incorporated by Reference.

DEAR MS. CRAVALHO:

The purpose of this correspondence is to advise you that the Customs Service has reconsidered NY D82853 (Oct. 16, 1998) issued to you on the behalf of your client, Mantex Trading, Inc.

The Customs Service in New York Ruling Letter D82853 classified nursing pads with an initial layer of knit fabric, a second layer of a nonwoven fabric, a third layer, which provides the article with its absorbent capability, of a nonwoven polyester fabric and a fourth layer of a woven fabric in subheading 6217.10.9510, HTSUSA. The Customs Service has reviewed NY D82853 and determined that it is not correct.

Customs is revoking NY D82853 and reclassifying nursing pads with a knit component, nonwoven components and a woven component, in which the absorbent capability is provided by one of the nonwoven components, in subheading 6307.90.9889, HTSUSA. The reasoning and analysis addressing Customs decision is provided in this ruling letter and HQ 965711 (July 24, 2002) which is incorporated by reference.

*Facts:*

The article in issue, identified as a nursing pad, is designed to be placed in the brassiere of nursing mothers to absorb excess milk. Mantex's nursing pad is circular, four and one-fourth (4 ¼) inches in diameter and composed of four layers.

The initial layer, which will come into contact with the brassiere, is composed of 100 percent nylon lace. The second layer is a 100 percent nonwoven polyester fabric lining. The third layer, which affords the article its absorbent capability, is composed of 100 percent nonwoven polyester fabric. The fourth and final layer, which will come into contact with the wearer's skin, is composed of 100 percent woven cotton flannel fabric.

The Customs Service specifically notes that the nonwoven polyester fabric that affords the nursing pad its absorbent capability is not wadding.

The Customs Service is advised that the country of manufacture is China.

*Issue:*

What is the classification, pursuant to the Harmonized Tariff Schedule of the United States Annotated, of the above-described nursing pad with a knit component, nonwoven components and a woven component, in which the absorbent capability is provided by one of the nonwoven components?

*Law and Analysis:*

The Customs Service in Headquarters Ruling Letter 965711 (July 24, 2002) provided classification analysis, at the heading level, for a substantially similar nursing pad. Customs, in HQ 965711, discussed the classification of a nursing pad with an absorbent nonwoven fabric component and concluded that it should be classified in heading 6307, HTSUS. Heading 6307, HTSUS, a residual or basket provision, provides for the classification of "[o]ther made up articles, including dress patterns."

The legal reasoning and analysis addressing the classification, at the heading level, in heading 6307, HTSUS, of a nursing pad with multiple components, in which the absorbent capability is provided by a nonwoven component, set forth in HQ 965711 is incorporated into this ruling letter by reference. Headquarters Ruling Letter 965711 is attached to and made a part of this ruling letter.

The Customs Service is cognizant that HQ 965711 did not address the classification of nursing pads with knit textile fabric components. The reasoning applied in HQ 965711 regarding nursing pads with woven and nonwoven textile fabric components in which those components do not provide the nursing pads with their absorbent capability is, however, equally analogous.

Continuing the classification of the Mantex nursing pad, at the subheading level, Mantex's nursing pad with a knit component, nonwoven components and a woven component, in which the absorbent capability is provided by one of the nonwoven components, is classified in subheading 6307.90.9889, HTSUSA. Subheading 6307.90.9889, HTSUSA, provides for:

- 6307 Other made up articles, including dress patterns:
- 6307.90 Other:
- 6307.90.98 Other:
- 6307.90.9889 Other:

*Holding:*

The Mantex Trading, Inc. nursing pad with a knit component, nonwoven components and a woven component, in which the absorbent capability is provided by one of the nonwoven components, is classified in subheading 6307.90.9889, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty for subheading 6307.90.9889, HTSUSA, is seven (7) percent, *ad valorem*.

The legal reasoning and analysis of Headquarters Ruling Letter 965711 (July 24, 2002) is incorporated by reference. Headquarters Ruling Letter 965711 is attached to and made a part of this ruling letter.

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

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*Washington, DC, May 2, 2000.*  
CLA-2 RR:CR:TE 963488 jb  
Category: Classification  
Tariff No. 6217.10.9530

MS. JOANNA CHEUNG  
HONG KONG ECONOMIC AND TRADE OFFICE  
*1520 18th Street, N.W.*  
*Washington, DC 20036*

Re: Classification of nursing pads.

DEAR MS. CHEUNG:

This is in response to a letter, dated November 5, 1999, from Ms. Fiona Chau, on behalf of Gerber Products Company, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of nursing pads. A sample was submitted to this office for review.

*Facts:*

The submitted sample consists of a nursing pad which is round in shape and measures approximately 4 inches in diameter. The composition of the nursing pad is as follows: the front consists of a nonwoven 100 percent polypropylene fabric, the back consists of a woven 100 percent cotton fabric and the center is filled with wadding. All three layers are sewn together with overlock stitching.



You state that the importer attempted entry for this merchandise with a category 669 (non-apparel) visa and was denied by Customs in Chicago which required a 659 (clothing accessory) visa for this merchandise. You ask that this office review the classification of this merchandise and find that the proper classification for this merchandise is as a non-apparel item.

*Issue:*

What is the proper classification for the subject merchandise?

*Law and Analysis:*

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI). GRI 1 requires that classification be determined according to the terms of the headings and any relative section or chapter notes. Where goods cannot be classified solely on the basis of GRI 1, the remaining GRI will be applied, in the order of their appearance.

First, we would like to emphasize that classification of merchandise in the HTSUS is based on the terms of the headings and not on a comparison of statistical suffixes and textile quota categories. Accordingly, any comparison that is executed is between the competing headings, based on the terms of the headings and any applicable section or chapter notes.

Customs, in requesting a 659 visa for this merchandise, believes the subject merchandise to be a clothing accessory of heading 6217, HTSUS. You however, appear to believe that this merchandise is best described as an article of wadding, classified in heading 5601, HTSUS, with corresponding quota category 669. We note that similar merchandise has been the subject of past Customs rulings which have held that the merchandise is classified in heading 6307, HTSUS, which provides for other made up textile articles. This office is currently in the process of reviewing those rulings.

Heading 6217, HTSUS, provides for, other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212. It has been Customs position that clothing accessories bear some relation to clothing, are intended for use with clothing and are of secondary importance to clothing. Additionally, accessories have been viewed by Customs as articles of secondary or subordinate importance or items not in themselves essential, but adding to the beauty, convenience or effectiveness of something else. The Explanatory Notes to the Harmonized Commodity Description and Coding System (EN) to heading 6217, HTSUS, state, in part, that the heading covers inter alia:

(1) Dress shields, usually of rubberised fabric or of rubber covered with textile material. Dress shields wholly of plastics or of rubber are excluded (headings 39.26 and 40.15 respectively).

(2) Shoulder or other pads. They are usually made of wadding, felt, or textile waste covered with textile fabric. Shoulder and other pads consisting of rubber (usually cellular rubber) not covered with textile material are excluded (heading 40.15).

Heading 5601, HTSUS, provides for, among other things, articles of wadding. The EN to this heading state, in part, that this heading also covers wadding in the piece or cut to length, and articles of wadding other than those covered more specifically by other headings of the Nomenclature. Among the articles of wadding listed as not being classified under this heading are clothing pads of heading 6117 or 6217.

In the case of the subject merchandise, heading 6217 and heading 5601, HTSUS, both appear to describe the subject merchandise. As such, we turn to GRI 3 for guidance, which states:

When, by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

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

(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

Based on GRI 3(a), and a review of this merchandise, it is our view that the subject merchandise is more specifically described as an other madeup clothing accessory and not an article of wadding; the latter which is descriptive of almost anything which might include wadding. We find further support for classification of this merchandise as clothing accessories in the EN to both heading 6217 and 5601, HTSUS. The submitted nursing pads are akin to the dress shields and other "pads" enumerated in the EN to heading 6217. Similar to the dress shields, the nursing pads at issue provide protection against moisture (leakage) and personal comfort. Additionally, as explicitly stated in the EN to heading 5601, HTSUS, clothing pads are precluded from classification in that heading. We see no difference between the nursing pads at issue, which are used in conjunction with women's clothing, and the "clothing pads" excluded from heading 5601, HTSUS. Furthermore, the classification of nursing pads as accessories to garments of heading 6217, is consistent with Customs position that these articles, although not in themselves essential, add to the beauty, convenience or effectiveness of the primary garments with which they will be worn.

However, as the nursing pads are composed of different fabrics, we must turn to GRI 3 for a proper classification determination at the subheading level.

The subject nursing pads are composed of a nonwoven polypropylene fabric, cotton fabric and wadding. As no one heading accurately describes the subject merchandise, that is, only referring in part to the composition of the nursing pads, a determination cannot be made pursuant to GRI 3(a). Similarly, a determination cannot readily be made pursuant to a GRI 3(b), essential character. All three fabrics contribute equally to the efficacy of these articles. The cotton fabric, the side of the pad which will face the wearer's skin, is necessary for purposes of comfort, to ensure that an already sensitive area will not be further abraded. The wadding is also important for reasons of moisture absorption. Finally, the role of the nonwoven polypropylene backing, which will face the garment, is also important in terms of providing an additional barrier between the moisture absorbed by the wadding and the garment. As such, the classification of this merchandise is pursuant to GRI 3(c), the heading which occurs last in numerical order. Accordingly, the nursing pads are classifiable as either "of cotton" or "of man-made fibers" depending upon the fabric which determines the classification. As the subheading for "of man-made fibers" appears after that of "of cotton" in the tariff, the nursing pads are classified in subheading 6217.10.9530, HTSUSA.

For purposes of clarification, we note that we are precluded from classifying the subject merchandise in heading 6307, HTSUS, a basket provision for textile articles which are not elsewhere more specifically provided for under the tariff, because heading 6217, HTSUS, specifically describes the subject merchandise.

*Holding:*

The subject nursing pads are classified in subheading 6217.10.9530, HTSUSA, which provides for, other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212: other: other: of man-made fibers. The applicable general column one rate of duty is 15 percent ad valorem and the quota category is 659.

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 the consignee check, close to the time of shipment, the Status on Current Import Quotas (Restraint Levels), an issuance of the U.S. Customs Service, which is updated weekly and is available at the local Customs office.

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

JOHN DURANT,  
Director,  
Commercial Rulings Division.

[ATTACHMENT D]

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

CLA-2 RR:CR:TE 964388 jsj  
Category: Classification  
Tariff No. 6307.90.9889

MR. JAMES L. SAWYER  
KATTEN MUCHIN ZAVIS  
525 West Monroe Street  
Suite 1600  
Chicago, IL 60661-3693

Re: Reconsideration and Revocation of HQ 963488 (May 2, 2000); Nursing Pads; Breast Pads; Nonwoven Absorbent Material; Subheading 6307.90.9889, HTSUSA; HQ 965711 (July 24, 2002) Incorporated by Reference.

DEAR MR. SAWYER:

The purpose of this correspondence is to respond to your request dated August 17, 2001. The correspondence in issue requested, on the behalf of your client, Gerber Products Company (Gerber), reconsideration of HQ 963488 (May 2, 2000).

This reconsideration is being issued subsequent to the following: (1) A review of your submission dated August 17, 2001; (2) An examination of the sample nursing pad in issue in HQ 963488; and (3) A meeting conducted at Customs Headquarters on December 19, 2001, between a member of my staff and counsel for Gerber.

The Customs Service has reviewed HQ 963488 in which Gerber's nursing pad was classified in subheading 6217.10.9530, HTSUSA. It is Customs determination that HQ 963488 is not correct. Customs is revoking HQ 963488 and reclassifying the Gerber nursing pad.

Gerber's nursing pad, in which the absorbent capability is provided by a nonwoven polyester and rayon fabric, is properly classified in subheading 6307.90.9889, HTSUSA. The reasoning and analysis addressing this change is provided in this ruling letter and in HQ 965711, which is incorporated by reference.

*Facts:*

The article in issue, identified as a nursing pad, is designed to be placed in the brassiere of nursing mothers to absorb excess milk. Gerber's nursing pad is circular, four (4) inches in diameter and composed of three layers. The initial layer, which will come into contact with the brassiere, is composed of a nonwoven 100 percent polypropylene fabric. The middle layer, which affords the article its absorbent quality, is composed of a nonwoven polyester and rayon fabric. The third layer, which will come into contact with the wearer's skin, is composed of 100 percent woven cotton fabric.

The Customs Service specifically notes that the nonwoven polyester and rayon fabric is not wadding.

The Customs Service is advised that the country of manufacture is Hong Kong.

*Issue:*

What is the classification, pursuant to the Harmonized Tariff Schedule of the United States Annotated, of the above-described nursing pad which has two outer layers, one of a nonwoven fabric and the other of a woven fabric, and an inner absorbent layer composed of a nonwoven polyester and rayon fabric?

*Law and Analysis:*

The Customs Service in Headquarters Ruling Letter 965711 (July 24, 2002) provided classification analysis, at the heading level, for a substantially similar nursing pad. Customs, in HQ 965711, discussed the classification of a nursing pad with woven and nonwoven fabric components, in which the absorbent capability is provided by a nonwoven fabric component, and concluded that it should be classified in heading 6307, HTSUS. Heading 6307, HTSUS, a residual or basket provision, provides for the classification of "[o]ther made up articles, including dress patterns."

The legal reasoning and analysis addressing the classification, at the heading level, in heading 6307, HTSUS, of a nursing pad for which the absorbent capability is provided by a

nonwoven fabric and the outer layers are of woven and/or nonwoven fabrics, set forth in HQ 965711 is incorporated into this ruling letter by reference. Headquarters Ruling Letter 965711 is attached to and made a part of this ruling letter.

Continuing the classification of Gerber's nursing pad, at the subheading level, Gerber's nursing pad, for which the absorbent capability is provided by a nonwoven fabric and the outer layers are a woven fabric and a nonwoven fabric, is classified in subheading 6307.90.9889, HTSUSA. Subheading 6307.90.9889, HTSUSA, provides for:

6307 Other made up articles, including dress patterns:  
6307.90 Other:  
Other:  
6307.90.98 Other,  
Other:  
6307.90.9889 Other.

*Holding:*

Headquarters Ruling Letter 963488 (May 2, 2000) has been reconsidered and is revoked.

The Gerber nursing pads for which the absorbent capability is provided by an inner layer of a nonwoven fabric and the outer layers are a woven fabric and a nonwoven fabric are classified in subheading 6307.90.9889, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty for subheading 6307.90.9889, HTSUSA, is seven (7) percent, *ad valorem*.

The legal reasoning and analysis of Headquarters Ruling Letter 965711 (July 24, 2002) is incorporated by reference. Headquarters Ruling Letter 965711 is attached to and made a part of this ruling letter.

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

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[ATTACHMENT E]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*Washington, DC, July 24, 2002.*  
CLA-2 RR:CR:TE 965711 jsj  
Category: Classification  
Tariff No. 6307.90.9889

MS. ESTELLE LEE  
PRESIDENT, TL CARE  
P.O. Box 77087  
San Francisco, CA 94107

Re: Nursing Pads; Breast Pads; Paper Absorbent Component; Textile Wadding Absorbent Component; Woven Textile Fabric Absorbent Component; Nonwoven Textile Fabric, But Not Wadding Absorbent Component; General Rules of Interpretation 1 and 3(b); Essential Character; Headings 4818, 5601 and 6307, HTSUS; Not Clothing Accessories, Heading 6217, HTSUS; Woven Cotton Absorbent Component; Subheading 6307.90.9889, HTSUSA.

DEAR MS. LEE:

The purpose of this correspondence is to respond to your request dated April 25, 2002. The correspondence in issue requested a binding classification ruling of the merchandise described as a "nursing pad."

This ruling is being issued subsequent to the following: (1) A review of your submission dated April 25, 2002; and (2) An examination of the sample that accompanied your ruling request.

*Facts:*

The article in issue, identified as a nursing pad, is designed to be placed in the brassiere of nursing mothers to absorb excess milk. It is circular or slightly conical in shape and measures five (5) inches in diameter. The nursing pad is composed entirely of four (4) layers of 100 percent woven cotton fabric stated to be flannel. No other materials form a part of this article. The circumference is sewn.

This merchandise is also commonly referred to as “breast pads.” The Customs Service, for convenience purposes, will refer to this item as a nursing pad.

The Customs Service is advised that the country of manufacture is China.

*Issue:*

What is the classification, pursuant to the Harmonized Tariff Schedule of the United States Annotated, of the above-described nursing pad composed entirely of woven cotton fabric<sup>1</sup>?

*Law and Analysis:*

The federal agency responsible for initially interpreting and applying the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is the U.S. Customs Service.<sup>2</sup> The Customs Service, in accordance with its legislative mandate, classifies imported merchandise pursuant to the General Rules of Interpretation (GRI) and the Additional U.S. Rules of Interpretation.<sup>3</sup>

General Rule of Interpretation 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.” *General Rule of Interpretation 1*. General Rule of Interpretation 1 further states that merchandise which cannot be classified in accordance with the dictates of GRI 1 should be classified pursuant to the other General Rules of Interpretation, provided the HTSUSA chapter headings or notes do not require otherwise. According to the Explanatory Notes (EN), the phrase in GRI 1, “provided such headings or notes do not otherwise require,” is intended to “make it quite clear that the terms of the headings and any relative Section or Chapter Notes are paramount.” *General Rules for the Interpretation of the Harmonized System, Rule 1, Explanatory Note (V)*.

The Explanatory Notes constitute the official interpretation of the Harmonized System at the international level. See Joint Explanatory Statement *supra* note 2, at 549. The Explanatory Notes, although neither legally binding nor dispositive of classification issues, do provide commentary on the scope of each heading of the HTSUS. The EN’s are generally indicative of the proper interpretation of the headings. See T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989); *Lonza, Inc. v. United States*, 46 F. 3<sup>rd</sup> 1098, 1109 (Fed. Cir. 1995).

The Customs Service, observing the dictates of GRI 1, to classify merchandise according to the terms of the headings and the section and chapter notes, has encountered significant difficulty in the classification of nursing pads. Nursing pads, as previously explained, are items used by nursing mothers to absorb excess breast milk during lactation. Nursing pads may be used for other purposes, but it is Customs conclusion that any use of nursing pads other than by nursing mothers to absorb excess milk is fugitive.

The difficulty encountered by Customs in classifying this merchandise stems from two facts: (1) Nursing pads are not designated *eo nomine* in the tariff schedule; and (2) The manufacturers of nursing pads utilize different materials, primarily different absorbent material, to construct their products. Customs commenced the classification of this merchandise with this understanding.

Customs survey of nursing pads indicates that they are manufactured utilizing primarily four types of absorbent material: (1) Paper and/or paper pulp; (2) Textile wadding; (3) Woven textile fabrics; and (4) Nonwoven textile fabrics that are not wadding. It is not Customs intention to suggest that this list is exclusive. Other absorbent materials may be used in the manufacture of nursing pads either presently or in the future. The four prima-

<sup>1</sup> All aspects of this article are composed of woven cotton fabric, including the absorbent layer.

<sup>2</sup> See 19 U.S.C. 1500 (West 1999) (providing that the Customs Service is responsible for fixing the final appraisement, classification and amount of duty to be paid); See also Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 100–576, at 549 (1988) reprinted in 1988 U.S. Code Cong. and Adm. News 1547, 1582 [hereinafter Joint Explanatory Statement].

<sup>3</sup> See 19 U.S.C. 1202 (West 1999); See generally, *What Every Member of The Trade Community Should Know About: Tariff Classification*, an Informed Compliance Publication of the Customs Service available on the World Wide Web site of the Customs Service at [www.customs.gov](http://www.customs.gov), search “Importing & Exporting” and then “U.S. Customs Informed Compliance Publications.”

ry types of absorbent material addressed above, for the purposes of this ruling letter, are not in composition with any type of super absorbent chemical compound.

Since the tariff schedule does not designate nursing pads, *eo nomine*, that is by name, in any of the headings, Customs has determined that it is not possible to classify all nursing pads in a single heading. Failing to confirm a single heading into which all nursing pads may be properly classified, Customs re-examined the GRI's, gave careful thought to the ruling requests and protests currently pending in the Office of Regulations and Rulings and reviewed the classification history of this line of merchandise. The decision was made, pursuant to the requirements of the GRI's, to classify each article on its own merits.

The Customs Service, pursuant to the principles of "informed compliance" and "shared responsibilities" set forth in the Customs Modernization Act,<sup>4</sup> has determined that in order for the trade community to understand Customs reasoning, it is important to address in this ruling letter Customs thought process with regards to the classification of nursing pads. It is Customs judgment because of the different ways in which different types of nursing pads are manufactured that providing comprehensive analysis of the classification of the different types of nursing pads will result in a more uniform and correct classification of this merchandise.

Simply addressing TL Care's nursing pad would meet Customs legal obligation, but that would only inform Customs field personnel and the trade of the classification of one type of nursing pad. Only a complete and thorough discussion of the classification of the different types of nursing pads can result in the uniformity sought by Customs and the accurate classification of merchandise required of the trade.

The Customs Service will initially provide analysis of the headings that the agency has concluded are relevant to the classification of nursing pads. This ruling letter will conclude with the classification of the TL Care nursing pad.

It is the understanding of the Customs Service, as previously stated, that there are four primary types of nursing pads based on absorbent properties. The primary types of nursing pads include those with the following types of absorbent material: (1) Paper; (2) Textile wadding; (3) Woven textile fabrics; and (4) Nonwoven textile fabrics that are not wadding. Customs will address the classification, at the heading level, of nursing pads with each of these absorbent materials.

It is important to note that nursing pads are generally not composed entirely of the same material that provides the nursing pad with its absorbent capability. Although Customs focus, as will be addressed subsequently, will be on the material or substance that provides a nursing pad with its absorbent capability, proper application of the GRI's mandate that Customs not ignore the other materials or substances which make-up a particular style of nursing pads.

### ***Nursing Pads of Heading 4818***

#### *Nursing Pads Composed Entirely of Materials Enumerated in Heading 4818*

Commencing the classification of nursing pads composed entirely of paper pulp, paper, cellulose wadding or webs of cellulose fibers, these nursing pads, in accordance with the dictates of GRI 1, are classified according to the terms of heading 4818, HTSUS. Heading 4818, HTSUS, provides for the classification of:

Toilet paper and similar paper \* \* \* of a kind used for household or sanitary purposes; \* \* \* *diapers, tampons, bed sheets and similar household, sanitary or hospital articles*, articles of apparel and clothing accessories, of paper pulp, paper, cellulose wadding or webs of cellulose fibers. (Emphasis added).

Explanatory Note 48.18 provides that heading 4818, HTSUS, addresses the classification of "household, sanitary or other hospital articles \* \* \* of paper pulp, paper, cellulose wadding or webs of cellulose fibres." *Explanatory Note 44.18*. Sanitary articles, in accordance with the definition of "sanitary" in Webster's New Collegiate Dictionary are articles "of or relating to health." *Webster's New Collegiate Dictionary*, G. & C. Merriam Company (1977). It is the judgment of this office that nursing pads, designed to absorb excess milk from nursing mothers, are sanitary articles for the purposes of the tariff schedule and are

<sup>4</sup> See generally North American Free Trade Implementation Act, Pub. L. 103-183, 107 Stat. 2057 (1993); See also Customs Modernization and Informed Compliance Act: Hearing on H.R. 3935 Before the House Comm. on Ways and Means, Subcomm. On Trade, 102<sup>nd</sup> Cong. 91 (1992) (statement of Carol Hallett, Commissioner, U. S. Customs Service) "Customs must do a better job of informing the trade community of how Customs does business; and the trade community must do a better job to assure compliance with U. S. trade laws."

similar to diapers and tampons, the sanitary articles designated *eo nomine* in heading 4818, HTSUS.

It is, therefore, Customs determination that nursing pads composed entirely of paper pulp, paper, cellulose wadding or webs of cellulose fibers are properly classified, pursuant to GRI 1, in heading 4818, HTSUS.

*Nursing Pads With Components of Paper Pulp, Paper, Cellulose Wadding or Webs of Cellulose Fibers and of Textile Fabrics*

Nursing pads for which the absorbent capability is provided by paper pulp, paper, cellulose wadding or webs of cellulose fibers, but which are not composed entirely of the materials enumerated in heading 4818, may not be classified pursuant to GRI 1 in heading 4818, HTSUS. These nursing pads generally have an absorbent inner layer or layers composed of paper pulp, paper, cellulose wadding or webs of cellulose fibers, but the outer layer or layers, those layers not primarily designed and intended to provide the article with its absorbent property, may generally be composed of one or more textile fabrics. The outer layer or layers may be, among other fabrics, lace, nonwoven fabrics or woven fabrics.

Nursing pads with an outer component of a textile fabric or fabrics and with an inner absorbent component of paper pulp, paper, cellulose wadding or webs of cellulose fibers may not be classified pursuant to GRI 1. A review of the terms of the headings of the HTSUS and the relevant section and chapter notes does not establish a heading into which an article of this nature may be properly classified, pursuant to GRI 1.

Having determined that General Rule of Interpretation 1 does not resolve this classification matter, the Customs Service reviewed GRI 2. Since nursing pads composed of an outer component of textile fabrics and with an inner absorbent component of the materials enumerated in heading 4818, HTSUS, that is, paper pulp, paper, cellulose wadding or webs of cellulose fibers, are not incomplete, unfinished, unassembled or disassembled articles, GRI 2(a) does not offer assistance. General Rule of Interpretation 2(b) does provide classification guidance.

General Rule of Interpretation 2(b) provides, in part, that “[t]he classification of goods consisting of more than one material or substance shall be classified according to the principles of rule 3.” Since the nursing pad subject to this discussion is composed of both a textile fabric component and a component of materials enumerated in heading 4818, HTSUS, it is composed of more than one material and resort must be had to GRI 3.

The initial sentence of General Rule of Interpretation 3 provides that “[w]hen, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be \* \* \*

according to GRI 3(a), (b) or (c). The nursing pads subject to this discussion are, *prima facie*, classifiable in two headings. They are classifiable as “made up articles” of heading 6307, HTSUS, because of the textile fabric component and also as an article of heading 4818, HTSUS, because of their similarity to the *eo nomine* articles and composition of paper pulp, paper, cellulose wadding or webs of cellulose fibers.

General Rule of Interpretation 3(a) states that “when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods \* \* \* those headings are to be regarded as equally specific in relation to the goods, even if one of them gives a more complete or precise description of the goods.” The nursing pad subject to this discussion is a composite good<sup>5</sup> and the headings under classification consideration each refer to only part of the materials in the good. Customs will, for that reason, turn to GRI 3(b).

General Rule of Interpretation 3(b) provides, in part, that “composite goods \* \* \* made up of different components \* \* \* which cannot be classified by reference to 3(a), shall be classified as if they consisted of the \* \* \* component which gives them their essential character, insofar as this criterion is applicable.” The GRI’s do not provide a definition for the phrase “essential character,” but the EN’s suggest an illustrative list of factors to consider. Explanatory Note Rule 3(b) (VIII) states that the factors that may be relevant to the determination of “essential character” “will vary between different kinds of goods,” but may include the nature of the material or component, its bulk, its quantity, its weight, its value or the role played by the constituent material in relation to the use of the good. *General Rules for the Interpretation of the Harmonized System, Rule 3 (b) Explanatory Note (VIII)*.

<sup>5</sup> See generally *General Rules for the Interpretation of the Harmonized System, Rule 3(b) Explanatory Note (IX)* (providing, in part, that composite goods include goods made up of different components in which “the components are attached to each other to form a practically inseparable whole”).

It is the conclusion of the Customs Service that the absorbent component composed of a material enumerated in heading 4818, HTSUS, is the component that gives the nursing pad its essential character. The absorbent material component plays the greatest role in the nursing pad, the absorption of excess milk during lactation. It is also the component that provides the nursing pad with its greatest bulk.

It is, therefore, Customs determination that nursing pads composed of an outer component of a textile fabric or fabrics and with an inner absorbent component of paper pulp, paper, cellulose wadding or webs of cellulose fibers are properly classified, pursuant to GRI 3(b), in heading 4818, HTSUS, as a similar sanitary article.

### ***Nursing Pads of Textile Wadding—Heading 5601***

#### *Composed Entirely of Textile Wadding*

Commencing the classification of nursing pads composed entirely of textile wadding, these nursing pads, pursuant to GRI 1, are properly classified in heading 5601, HTSUS. Heading 5601, HTSUS, provides for the classification of “Wadding of textile materials and articles thereof; textile fibers, not extending 5 mm in length (flock), textile dust and mill neps.”

Wadding, as described by the EN’s is “made by superimposing several layers of carded or air-laid textile fibres one on the other, and then compressing them in order to increase the cohesion of the fibres.” *Explanatory Note 56.01(A)*. It is noted that in order for an article to be wadding, the fibers must be readily separable, such as is possible with cotton balls frequently found in medicine bottles. *See Explanatory Note 56.01(A)*.

Heading 5601, HTSUS, provides for the classification of articles of “[w]adding of textile materials.” The Explanatory Notes reinforce the classification of nursing pads composed entirely of textile wadding in heading 5601, HTSUS. Explanatory Note 56.01(A)(2) sets forth that “[s]anitary towels and tampons, napkins (diapers) and napkin liners for babies and similar sanitary articles consisting of wadding, whether or not with knitted or loosely woven open-work covering” are classified in heading 5601, HTSUS. Customs, as previously addressed, has concluded that nursing pads are similar to sanitary articles.

It is, therefore, Customs determination that nursing pads composed entirely of textile wadding are properly classified, pursuant to GRI 1, in heading 5601, HTSUS, as articles of wadding of textile materials.

#### *Nursing Pads With Components of Textile Wadding and of Textile Fabrics*

Nursing pads for which the absorbent capability is provided by textile wadding, but which are not composed entirely of textile wadding, may not be classified pursuant to GRI 1 in heading 5601, HTSUS. These nursing pads generally have an absorbent inner component of textile wadding, but also have outer components, not primarily designed and intended to provide the article with its absorbent property, composed of one or more textile fabrics. The outer components may be, among other fabrics, lace, nonwoven fabrics that are not wadding or woven fabrics.

Nursing pads composed of an outer component of textile fabric and with an inner absorbent component of textile wadding may not be classified pursuant to GRI 1. A review of the terms of the headings of the HTSUS and the relevant section and chapter notes does not establish a heading into which an article of this nature is properly classifiable, pursuant to GRI 1.

Having determined that General Rule of Interpretation 1 does not resolve this classification matter, the Customs Service reviewed GRI 2. Since nursing pads composed of an outer component of textile fabrics and an inner absorbent component of textile wadding are not incomplete, unfinished, unassembled or disassembled articles, GRI 2(a) does not offer assistance. General Rule of Interpretation 2(b) does provide classification guidance.

General Rule of Interpretation 2(b) provides, in part, that “[t]he classification of goods consisting of more than one material or substance shall be classified according to the principles of rule 3.” Since the nursing pad subject to this discussion is composed of both textile fabrics and textile wadding, it is composed of more than one material and resort must be had to GRI 3.

The initial sentence of General Rule of Interpretation 3 provides that “[w]hen, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be \* \* \*

according to GRI 3(a), (b) or (c). The nursing pads subject to this discussion are, *prima facie*, classifiable in two headings. They are classifiable as “made up articles” of heading 6307, HTSUS, because of the textile fabric



component and also as an article of “[w]adding of textile materials” of heading 5601, HTSUS, because of the textile wadding component. *See* Headings 5601 and 6307, HTSUS.

General Rule of Interpretation 3(a) states that “when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods \* \* \* those headings are to be regarded as equally specific in relation to the goods, even if one of them gives a more complete or precise description of the goods.” The nursing pad subject to this discussion is a composite good and the headings under classification consideration each refer to only part of the materials in the good. Customs will, for that reason, turn to GRI 3(b).

General Rule of Interpretation 3(b) provides, in part, that “composite goods \* \* \* made up of different components \* \* \* which cannot be classified by reference to 3(a), shall be classified as if they consisted of the \* \* \* component which gives them their essential character, insofar as this criterion is applicable.” The GRI’s do not provide a definition for the phrase “essential character,” but the EN’s suggest an illustrative list of factors to consider. Explanatory Note Rule 3(b) (VIII) states that the factors which may be relevant to the determination of “essential character” “will vary between different kinds of goods,” but may include the nature of the material or component, its bulk, its quantity, its weight, its value or the role played by the constituent material in relation to the use of the good. *General Rules for the Interpretation of the Harmonized System, Rule 3 (b) Explanatory Note (VIII)*.

It is the conclusion of the Customs Service that the inner absorbent component composed of textile wadding is the component that gives the nursing pad its essential character. The absorbent component plays the greatest role in the nursing pad, the absorption of excess milk during lactation. It is also the component that provides the nursing pad with its greatest bulk.

It is, therefore, Customs determination that nursing pads composed of an outer component of textile fabrics and with an inner absorbent component of textile wadding are properly classified, pursuant to GRI 3(b), in heading 5601, HTSUS, as articles of wadding of textile materials.

***Nursing Pads of Woven Fabric or of Nonwoven Fabric, But Not Wadding—  
Heading 6307***

Heading 6307, HTSUSA, a residual heading, provides for the classification of “Other made up articles, including dress patterns.” It is Customs determination, pursuant to GRI 1, that heading 6307, HTSUSA, and no other heading, provides for the classification of nursing pads composed entirely of woven textile fabrics or of nonwoven textile fabrics that are not wadding.<sup>6</sup>

The expression “made up,” as used in heading 6307, HTSUSA, is defined in Section XI, note 7. “Made up,” pursuant to the section note, means articles,

- (a) Cut otherwise than into squares or rectangles;
- (b) Produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dust-ers, towels, tablecloths, scarf squares, blankets);
- (c) Hemmed or with rolled edges, or with a knotted fringe at any of the edges, but excluding fabrics the cut edges of which have been prevented from unravelling by whipping or by other simple means;
- (d) Cut to size and having undergone a process of drawn thread work;
- (e) Assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded); or
- (f) Knitted or crocheted to shape, whether presented as separate items or in the form of a number of items in the length.

The Explanatory Notes to heading 6307, HTSUSA, indicate that this heading is intended to include made up articles of any textile material, provided the articles are “**not included** more specifically in other headings of Section XI or elsewhere in the Nomenclature.” *Explanatory Note 63.07*. Explanatory Note 63.07 further provides that made up articles include “[s]anitary towels (**excluding** those of **heading 56.01**).”<sup>7</sup> *Explanatory Note 63.07 (14)*. The EN’s do not define “sanitary towels,” but a review of the Explanatory

<sup>6</sup> A nonwoven textile fabric may upon initial examination appear to be wadding. If the textile fibers are not “readily separable,” the material is not wadding, but rather a nonwoven textile fabric.

<sup>7</sup> The sanitary towels excluded from heading 6307, HTSUS, would be those with an absorbent component of textile wadding, the material of heading 5601, HTSUS, articles.

Notes to heading 5601, HTSUS, suggests that sanitary towels are similar to “[s]anitary \* \* \* tampons, napkins (diapers) and napkin liners for babies and similar sanitary articles \* \* \*.” *Explanatory Note 56.01(A)(3)*. These sanitary articles are similar to those addressed in the analysis of heading 4818, HTSUS. The reasoning set forth concerning sanitary articles of heading 4818, HTSUS, is equally applicable to sanitary towels and articles of heading 6307, HTSUS.

It is, therefore, Customs determination that nursing pads composed entirely of woven textile fabrics or of nonwoven textile fabrics that are not wadding are not included more specifically elsewhere in the schedule, that they are described by section XI, note 7 and are properly classified at the heading level in heading 6307, HTSUS. Sanitary towels referenced in the Explanatory Notes, which Customs notes is not a term routinely employed in the United States, are a type of sanitary article. Nursing pads, as addressed previously, are sanitary articles.

#### ***Clothing Accessories and Heading 6217***

The Customs Service has previously issued ruling letters classifying nursing pads, without regard to the material or substance that afforded the article its absorbent capability, in heading 6217, HTSUS. Heading 6217, HTSUS, provides, in part, for the classification of “Other made up *clothing accessories* \* \* \*” (Emphasis added). Customs has now determined, subsequent to an exhaustive review of the tariff schedule and the Explanatory Notes, that nursing pads are not clothing accessories and should not be classified in heading 6217, HTSUS.

Customs conclusion that nursing pads were clothing accessories was based on a review of the Explanatory Notes and the decision that nursing pads are “accessories,” that is, that they are secondary or subordinate in importance to clothing articles, adding to the beauty, convenience and effectiveness of the article. It is now Customs determination that nursing pads are not “accessories” and that Explanatory Note 62.17, when read in its entirety, does not support the classification of nursing pads in heading 6217, HTSUS.

Explanatory Note 62.17 lists twelve categories of articles that should be classified as clothing accessories, or as parts of garments or clothing accessories. The items enumerated in EN 62.17 include: dress shields; shoulder or other pads; belts of all kinds (including bandoliers) and sashes; muffs; sleeve protectors; sailor’s collars; epaulettes and brassards; labels, badges, emblems, “flashes” and the like; frogs and lanyards; separately presented removable linings for raincoats and similar garments; pockets, sleeves, collars, collarlettes, wimples, fallals of various kinds, cuffs, yokes, lapels and similar items; and stockings, socks and sockettes.

Customs had previously placed considerable emphasis on the similarities between dress shields and shoulder pads, and nursing pads. It is now the determination of this office that Customs should not focus on only dress shields and shoulder pads when attempting to draw analogies to nursing pads, but must take into consideration all of the items listed in the Explanatory Note.

Nursing pads, like dress shields, are worn in addition to the wearer’s clothing and do protect the wearer’s clothing from perspiration staining. Dress shields, unlike nursing pads, are principally intended to protect the wearer’s clothing. While nursing pads will protect the wearer’s brassiere and outer garment from possible staining, its primary use is to absorb excess milk, not protect the wearer’s clothing, particularly the brassiere. Nursing mothers wear nursing brassieres for a limited period of time and concerns about staining are minimal. Customs notes that nursing pads are generally purchased from maternity stores or drug stores, where as dress shields are generally purchased in fabric stores.

Shoulder pads are designed and intended to complement the wearer’s clothing and, unlike nursing pads, have no protective function. Customs, as previously discussed, has concluded that the use of nursing pads for any purpose other than the absorption of excess milk during lactation is fugitive. Should pads, in this regard, are not analogous to nursing pads.

A review of all of the items listed in EN 62.17 convinces Customs that nursing pads are not properly classified in heading 62.17, HTSUS. While nursing pads do have similarities with dress shields and shoulder pads, particularly dress shields, Customs concludes that a fair and accurate interpretation of EN 62.17 necessitates that nursing pads be compared to all of the items listed. When the features and uses of nursing pads are weighted against the features and uses of all of the items enumerated in EN 62.17, it is evident to Customs that nursing pads are not sufficiently analogous and should not be classified in heading

6217, HTSUS. Nursing pads have little or nothing in common with items such as belts, sashes muffs, sleeve protectors, sailor's collars, epaulettes, brassards, labels, badges, emblems, "flashes," frogs, lanyards, removable linings for raincoats, pockets, sleeves, collars, collarlettes, wimples, fallals, cuffs, yokes, lapels, stockings, socks and sockettes.

The Customs Service is aware of HQ 963488 (May 2, 2000) and NY D82853 (Oct. 16, 1998) classify similar nursing pads as clothing accessories in heading 6217, HTSUS. Customs is re-examining the classification of this merchandise in heading 6217, HTSUS. If a decision is made to reclassify the merchandise in the identified ruling letters, the Customs Service will proceed in accordance with 19 U.S.C. 1625(c).

***TL Care's Nursing Pad of Woven Cotton Fabric***

Commencing classification of the TL Care nursing pad, in accordance with the dictates of GRI 1, the Customs Service examined the headings of the HTSUSA. Heading 6307, HTSUSA, a residual heading, provides for the classification of "Other made up articles, including dress patterns." It is Customs determination, as previously set forth in this ruling letter, that heading 6307, HTSUSA, and no other heading, provides for the classification of nursing pads composed entirely of woven cotton fabric.

It is Customs determination that nursing pads composed entirely of woven cotton fabric are not included more specifically elsewhere in the schedule and that they are articles assembled by sewing, gumming or otherwise as describe by section XI, note 7 (e). Nursing pads, as previously resolved, are sanitary articles similar to sanitary towels.

Continuing the classification of TL Care's nursing pad composed solely of four layers of 100 percent woven cotton fabric, the article is classified in subheading 6307.90.9889, HTSUSA. Subheading 6307.90.9889, HTSUSA, provides for the classification of:

6307	Other made up articles, including dress patterns:
6307.90	Other:
	Other:
6307.90.98	Other,
	Other:
6307.90.9889	Other.

***Holding:***

The TL Care nursing pad, composed entirely of woven cotton fabric, is classified in subheading 6730.90.9889, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty is seven (7) percent, *ad valorem*.

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

PROPOSED REVOCATION OF A RULING LETTER AND  
REVOCATION OF TARIFF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF LAMSTUDS

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to revoke one ruling letter pertaining to the tariff classification of lamstuds and to revoke any treatment previously accorded by Customs to substantially identical merchandise. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before September 13, 2002.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. To arrange to inspect comments submitted, contact Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Rebecca Hollaway, Textiles Branch, (202) 572-8814.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke one ruling letter pertaining to the tariff classification of lamstuds. Although in this notice Customs is specifically referring to one ruling, New York Ruling Letter (NY) F84037, dated March 27, 2000, (attachment A), 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 ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice which is contrary to the position set forth in the proposed ruling letter, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)(2)), 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 Harmonized Tariff Schedule. Any person involved in substantially identical transactions 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 a rebuttable presumption of a lack of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY F84037, Customs found that the lamstud products were specially constructed for use as structural wood members in modular homes and that the manufacturing process provided extra stability and dedicated the product for use as builder's carpentry. Thus, we classified the merchandise under subheading 4418.90.4040, HTSUS. However, we discovered that lamstud products are also used in non-structural applications and that the manufacturing process does not confer any specific dedication of the product. We now find that the lamstud manufacturing process produces general use lumber that has been edge-jointed and glued together. Customs intends to revoke the above mentioned ruling letter and reclassify the lamstuds described therein under subheading 4421.90.9740, HTSUS. Customs further intends to revoke any other ruling not specifically identified, in order to classify this merchandise under subheading 4421.90.9740, HTSUS. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially

identical merchandise. Before taking this action, we will give consideration to any written comments timely received.

Proposed HQ 964620 is set forth as Attachment B to this document.

Dated: July 31, 2002.

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

[Attachments]

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[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
New York, NY, March 27, 2000.  
CLA-2-44:RR:NC:2:230 F84037  
Category: Classification  
Tariff No. 4418.90.4040

MR. JAMES F. MORGAN  
PBB USA, INC.  
883-D Airport Park Rd.  
Glen Burnie, MD 21061

Re: The tariff classification of laminated wall studs and ceiling framing members ("Lamstuds") from Canada.

DEAR MR. MORGAN:

In your letter dated March 2, 2000, on behalf of your principal, IBL Incorporated of Quebec, Canada, you requested a tariff classification ruling.

The ruling was requested on a product manufactured by your principal and referred to as "Lamstuds" (trademarked, patent pending). Lamstuds are specially constructed for use as framework in modular homes. They consist of several pieces of wood (S-P-F) laminated together in a particular manner to produce stable structural wood members.

Two sample sections of Lamstuds were submitted. The actual measurements of the samples are as follows: 1-7/16" thick x 3-7/16" wide x 16-1/4" long and 1-7/16" thick x 5-3/8" wide x 15-1/8" long. The samples are assembled wood products composed of tongued and grooved pieces of wood which have been edge-glued and finger-jointed together.

Based on the samples and the information submitted, the Lamstuds are constructed as follows:

1. Each short piece of wood (1-3/4" to 5" wide) is cleared of defects, e.g., knots.
2. Each wood piece is cut to a precise length, i.e., 12" to 36" and put in a respective accumulator.
3. Each piece is double tongued and grooved on the edges.
4. The double T&G wood pieces are pressed together producing edge-glued boards.
5. The edge-glued wood is now cut into boards of 2 x 4's or 2 x 6's, nominal.
6. The short pieces of 2 x 4's or 2 x 6's (12" to 36" long) are finger-jointed to produce various lengths (including PET—precision end trimmed) from 7 to 16 feet.

Lamstuds will be imported in various nominal dimensions, such as, 2" x 4" x 8', 2" x 6" x 8', 2" x 4" x 9' and 2" x 6" x 9' for use as kitchen wall studs and 2" x 6" x 12', 2" x 6" x 14' and 2" x 6" x 16' for use as ceiling framing members.

Classification of goods under the Harmonized Tariff Schedule of the United States (HTSUS) is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relevant section or chapter notes.

Heading 4418, HTSUS, provides for:

Builders' joinery and carpentry of wood, including cellular wood panels and assembled parquet panels; shingles and shakes.

The Explanatory Notes' (EN's) to the HTSUS constitute the official interpretation of the tariff at the international level. Although not legally binding, the EN's provide a commentary on the scope of each heading and are thus useful in ascertaining the classification of merchandise under the HTSUS.

The EN's to heading 4418 state in pertinent part:

This heading applies to woodwork, \* \* \* used in the construction of any kind of building, etc., in the form of assembled goods or as recognizable unassembled pieces \* \* \*.

The term "joinery" applies more particularly to builders' fittings (such as doors, windows, shutters, stairs, door or window frames), whereas the term "carpentry" refers to woodwork (such as beams, rafters and roof struts) used for structural purposes \* \* \*.

The subject Lamstuds satisfy the above EN description. They are fabricated structural components of walls and ceilings, in the form of assembled goods. Thus, they are classifiable according to the terms of heading 4418.

The applicable subheading for the Lamstuds will be 4418.90.4040, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for builders' joinery and carpentry of wood; other; other; other fabricated structural wood members. The general rate of duty will be 3.2 percent ad valorem.

The holding set forth above applies only to the specific factual situation and merchandise description as identified in the ruling request. This position is clearly set forth in 19 CFR 177.9(b)(1). This section states that a ruling letter is issued on the assumption that all of the information furnished in connection with the ruling letter and incorporated therein, either directly, by reference, or by implication, is accurate and complete in every material respect.

This ruling is being issued under the assumption that the subject goods, in their condition as imported into the United States, conform to the facts and the description as set forth both in the ruling request and in this ruling. In the event that the facts or merchandise are modified in any way, you should bring this to the attention of Customs and you should resubmit for a new ruling in accordance with 19 CFR 177.2. You should also be aware that the material facts described in the foregoing ruling may be subject to periodic verification by the Customs Service.

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 Paul Garretto at 212-637-7009.

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 964620 RH  
Category: Classification  
Tariff No. 4421.90.9740

MR. JAMES F. MORGAN  
SENIOR CONSULTANT  
TRADE & REGULATORY SERVICES  
PBB GLOBAL LOGISTICS  
883-D Airport Park Road  
Glen Burnie, MD 21061

Re: Proposed Revocation of NY F84037; Request for Tariff Classification Ruling on Lamstuds; Heading 4421; Heading 4418; Edge-glued lumber.

DEAR MR. MORGAN:

This is in reply to your letter of September 13, 2000, on behalf of IBL Inc., requesting a ruling on the classification of "lamstuds."

We have also reviewed New York Ruling Letter (NY) F84037, dated March 27, 2000, issued to you, on behalf of IBL, Inc., concerning the classification of lamstuds constructed for use as framework in modular homes. The manufacture of the wood in that case is identical to the manufacture of the wood in your current request.

In NY F84037, we held that the lamstuds were fabricated structural components of walls and ceilings, in the form of assembled goods, and were classifiable under subheading 4418.90.4040 of the Harmonized Tariff Schedule of the United States (HTSUS). However, after further review of the facts in both submissions we find that NY F84037 is incorrect. The correct classification of the lamstuds is under heading 4421, HTSUS, as other articles of wood.

*Facts:*

You describe the manufacture of the lamstuds in both submissions as follows:

1. Each short piece of wood (1-3/4" to 5" wide) is cleared of defects, e.g., knots;
2. Each wood piece is cut to a precise length, e.g., 12" to 36" and put into a respective accumulator;
3. Each piece is double tongued and grooved on the edges;
4. The double tongued and grooved wood pieces are then pressed together forming edge-glued boards;
5. The edge-glued wood is now cut into boards, and the short pieces are finger-jointed to produce various lengths, then precision end-trimmed to the finished size desired.

In the instant ruling request, you state that the lamstuds will be used as door panels, floor joists, door lintels and ceiling rafters.

*Issue:*

What is the correct classification of the lamstuds?

*Law and Analysis:*

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order.

Chapter 44, HTSUS, provides for, among other things, wood and articles of wood. This chapter is structured so that less processed wood appears at the beginning of the chapter followed by more advanced wood in later headings within the same chapter. Thus, for example, heading 4403, HTSUS, is a general provision for wood in the rough, whether or not stripped of bark or sapwood or roughly squared, and heading 4421, HTSUS, is a basket provision for more advanced articles of wood that cannot be classified elsewhere in the chapter.



Additionally, the Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. The EN's are not legally binding. However, they do represent the considered views of classification experts of the Harmonized System Committee. It has therefore been the practice of the Customs Service to follow, whenever possible, the terms of the EN's when interpreting the HTSUS.

Heading 4418 provides for, among other things, builder's joinery and carpentry of wood. The EN to heading 4418, HTSUS, state in pertinent part:

This heading applies to woodwork, including that of wood marquetry or inlaid wood, used in the construction of any kind of building, etc., in the form of assembled goods or as recognizable unassembled pieces (e.g., prepared with tenons, mortises, dovetails or other similar joints for assembly), whether or not with their metal fittings such as hinges, locks, etc.

The term "joinery" applies more particularly to builders' fittings (such as doors, windows, shutters, stairs, door or window frames), whereas the term "carpentry" refers to woodwork (such as beams, rafters and roof struts) used for structural purposes or in scaffoldings, arch supports, etc., and includes assembled shuttering for concrete constructional work. \* \* \*

In NY F84037, we determined that the lamstud products were specially constructed for use as structural wood members in modular homes and that the manufacturing process provided extra stability and dedicated the product for use as builder's carpentry.

However, the present ruling request shows that the lamstud products are also used in non-structural applications and that the manufacturing process does not confer any specific dedication of the product. We now find that the lamstud manufacturing process produces general use lumber that has been edge-jointed and glued together.

In Headquarters Ruling Letter (HQ) 088292, dated February 21, 1991, Customs held that a 4" square hemlock post composed of edge-glued lumber, not otherwise worked, was classified in heading 4421, HTSUS, as opposed to heading 4418, HTSUS. The ruling reads in pertinent part:

The merchandise as imported is not sufficiently finished to constitute either joinery or carpentry \* \* \* Both joinery and carpentry consist of articles which have been subject to some form of millwork or other working associated with a specific end product. The imported blanks may be suitable for any number of purposes, including manufacture into builders' joinery. However, at the time of importation that ultimate use is not evident from the condition of the goods. In our opinion they are not sufficiently advanced to be considered articles of heading 4418, HTSUS.

Moreover, Customs has consistently classified square cut edge-glued lumber, not otherwise worked than cut to size, in heading 4421, HTSUS. See NY 836623, dated March 2, 1989; NY 838097, dated April 6, 1989; NY 844916, dated September 20, 1989; and NY F88847, dated July 19, 2000.

We note that subheading 4418.90.20, HTSUS, provides for "Edge-glued lumber." However, the terms of a subheading at the 8-digit level such as this can only be read in light of the terms of the superior headings. In this case, the superior heading, 4418, HTSUS, provides for specific articles, namely builders' joinery and carpentry. However, if as in this case, the merchandise does not fit within the scope of the heading, the heading must be discounted, and examination of its subheadings is precluded. Thus, although "edge-glued lumber" may describe the goods, we are precluded by the superior heading from classifying the goods under subheading 4418.90.20, HTSUS.

Following the same reasoning in HQ 088292, we find that the lamstud products are not sufficiently advanced to be considered builder's joinery or carpentry of wood and are correctly classified under subheading 4421.90.9740, HTSUS.

*Holding:*

NY F84037 is hereby REVOKED. The lamstuds are classified under subheading 4421.90.9740, HTSUS. They are dutiable at the general column one rate at 3.3 percent *ad valorem*.

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