

U.S. Customs Service

General Notices

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 10-2002)

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 October 2002. The last notice was published in the CUSTOMS BULLETIN on November 6, 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) 572-8710.

Dated: November 20, 2002.

JOANNE ROMAN STUMP
Chief,
Intellectual Property Rights Branch.

The list of recordations follow:

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TMM OR MSK	OWNER NAME	RES
COP0200200	20021007	20221007	THE FAIRY NECKLACES	THE ESTATE OF CICELY MARY BARKER	N
COP0200201	20021007	20221007	FLOWER FAIRIES OF THE SUMMER	THE ESTATE OF CICELY MARY BARKER	N
COP0200202	20021007	20221007	FLOWER FAIRIES OF THE TREES	THE ESTATE OF CICELY MARY BARKER	N
COP0200203	20021007	20221007	OLD RHYMES FOR ALL TIMES	THE ESTATE OF CICELY MARY BARKER	N
COP0200204	20021007	20221007	FLOWER FAIRIES OF THE WAYSIDE	THE ESTATE OF CICELY MARY BARKER	N
COP0200205	20021007	20221007	FLOWER FAIRIES OF THE SPRING	THE ESTATE OF CICELY MARY BARKER	N
COP0200206	20021007	20221007	FLOWER FAIRIES OF THE GARDEN	THE ESTATE OF CICELY MARY BARKER	N
COP0200207	20021007	20221007	FLOWER FAIRIES OF THE AUTUMN	THE ESTATE OF CICELY MARY BARKER	N
COP0200208	20021007	20221007	A FLOWER FAIRY ALPHABET	THE ESTATE OF CICELY MARY BARKER	N
COP0200209	20021021	20221021	INLINE JUMPA	BENETTON GROUP SPA	N
COP0200210	20021021	20221021	CAT JUMPA	BENETTON GROUP SPA	N
COP0200211	20021021	20221021	SPACE JUMPA	BENETTON GROUP SPA	N
COP0200212	20021021	20221021	URBAN JUMPA	BENETTON GROUP SPA	N
COP0200213	20021021	20221021	DK. SEUSS STYLE GUIDE 2001-2002	DR. SEUSS ENTERPRISES, L.P.	N
COP0200214	20021023	20221023	CATS BY NINA	LINDA C. (NINA) LYMAN	N
COP0200215	20021023	20221023	CAT PAINTINGS SERIES	LINDA C. (NINA) LYMAN	N
COP0200216	20021023	20221023	CATS BY NINA	LINDA C. (NINA) LYMAN	N
COP0200217	20021023	20221023	PEARL RIVER BRIDGE BRAND 1999 EDITION MUSHROOM SOY	GUANGDONG FOODSTUFFS IMP & EXP	N
COP0200218	20021023	20221023			N
SUBTOTAL RECORDATION TYPE 19					
TMK0200739	20021001	20120818	FUJICOLOR	FUJI PHOTO FILM CO., LTD.	N
TMK0200740	20021001	20101219	DELMAN (STYLIZED)	NINA FOOTWEAR CORPORATION	N
TMK0200741	20021001	20120512	WOLVERINE	WOLVERINE WORLD WIDE, INC.	N
TMK0200742	20021001	20121117	CHANEL	CHANEL, INC.	N
TMK0200743	20021001	20121124	CC DESIGN	CHANEL, INC.	N
TMK0200744	20021001	20120112	ADAPTEC	ADAPTEC, INC.	N
TMK0200745	20021001	20120621	A	ADAPTEC, INC.	N
TMK0200746	20021001	20100520	FORMSTRIP DESIGN	PUMA AG RUDOLF DASSLER SPORT	N
TMK0200747	20021001	20101229	PUMA STRIPE DESIGN	PUMA AG RUDOLF DASSLER SPORT	N
TMK0200748	20021001	20100428	PUMALAND	PUMA AG RUDOLF DASSLER SPORT	N
TMK0200749	20021001	20070810	CLEVELAND	ROGER CLEVELAND GOLF COMPANY INC	N
TMK0200750	20021001	20070810	CLEVELAND (BOLD STYLIZED LETTERS)	ROGER CLEVELAND GOLF COMPANY INC	N
TMK0200751	20021001	20061120	C	ROGER CLEVELAND GOLF COMPANY INC	N
TMK0200752	20021001	20091221	C6	ROGER CLEVELAND GOLF COMPANY INC	N
TMK0200753	20021001	20080719	TOUR ACTION	ROGER CLEVELAND GOLF COMPANY INC	N
TMK0200754	20021001	20081108	THE LAUNCHER	ROGER CLEVELAND GOLF COMPANY INC	N
TMK0200755	20021001	20110619	FORM FORGED	ROGER CLEVELAND GOLF COMPANY INC	N
TMK0200756	20021002	20101114	HOME INTERIORS & GIFTS	HOME INTERIORS & GIFTS, INC.	N
TMK0200757	20021002	20070426	HOME INTERIORS & GIFTS	HOME INTERIORS & GIFTS, INC.	N
TMK0200758	20021002	20120423	A AKADEMIKS	HOME INTERIORS & GIFTS, INC.	N
TMK0200759	20021002	20120312	TRI HOT	KEMISTRE & LLC	N
TMK0200760	20021002	20111009	ROBOTECH	CALLAWAY GOLF COMPANY	N
TMK0200761	20021003	20120604	MEM'S	HARMONY GOLD USA, INC.	N
TMK0200762	20021003	20120319	MEM'S	MARS, INCORPORATED	N
TMK0200763	20021003	20120319	MEM'S	MARS, INCORPORATED	N
TMK0200764	20021003	20110612	MEM'S	MARS, INCORPORATED	N
TMK0200765	20021007	20110808	DESIGN (PINE TREE)	JULIUS SAHANN LTD.	N

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TMH OR MSK	OWNER NAME	RES
THK0200766	20021007	20030713	DESIGN (PINE TREE)	JULIUS SAMANN LTD.	N
THK0200767	20021007	20030713	DESIGN (PINE TREE)	JULIUS SAMANN LTD.	N
THK0200768	20021011	20120621	DESIGN (PEN CAP)	MONTBLANC-STIMPLD.GRHH	N
THK0200769	20021011	20120621	KODAK AND DESIGN	EASTMAN KODAK COMPANY	N
THK0200770	20021011	20120915	WONDER	THE LITBMAN COMPANY	N
THK0200771	20021011	20120908	LOS VASCOS	VINA LOS VASCOS S.A.	N
THK0200772	20021011	20100208	TABLOID	BW USA INC.	N
THK0200773	20021011	20090714	'ALKERAN'	BW USA INC.	N
THK0200774	20021011	20090126	MOISTURE GLOVES	MOISTURE JAMZZ, INC.	N
THK0200775	20021011	20110327	GOLDEN ELEPHANT FRAGRANT RICE (PLUS DESIGN)	TRESPLAIN INVESTMENTS LIMITED	N
THK0200776	20021015	20090827	BURBERRY	BURBERRY LIMITED	N
THK0200777	20021015	20090827	BURBERRY	BURBERRY LIMITED	N
THK0200778	20021015	20061217	DESIGN	BURBERRY LIMITED	N
THK0200779	20021015	20021228	ELDORADO (& DESIGN)	ELDORADO COFFEE DISTRIBUTORS LTD	N
THK0200780	20021015	20120825	SAFARI	PRL USA HOLDINGS, INC.	N
THK0200781	20021015	20120102	POLO PLAYER SYMBOL	PRL USA HOLDINGS, INC.	N
THK0200782	20021015	20120102	POLO RALPH LAUREN	PRL USA HOLDINGS, INC.	N
THK0200783	20021016	20100322	JHB/JHANE BARNES	CHANE BARNES (DEL) INC.	N
THK0200784	20021016	20120528	RODNEY SWIRL DESIGN	PERRO S.P.A	N
THK0200785	20021016	20120524	RODNEY SWIRL DESIGN	PERRO S.P.A	N
THK0200786	20021016	20050134	DESIGN	GA MOEFLINE S.A	N
THK0200787	20021016	20070429	DESIGN	MARS, INCORPORATED	N
THK0200788	20021016	20070429	DESIGN	MARS, INCORPORATED	N
THK0200789	20021016	20100404	NAVITAR	NAVITAR, INC.	N
THK0200790	20021016	20110306	PICTURE PHONE DIRECT	NAVITAR, INC.	N
THK0200791	20021016	20110306	SCS	PICTURE PHONE DIRECT	N
THK0200792	20021016	20110817	HANBAO	ORTHOTEC, LLC	N
THK0200793	20021016	20100201	SL (& CHINESE CHARACTERS)	HERBA ENTERPRISE, INC.	N
THK0200794	20021016	20100822	MAN BAD (& CHINESE CHARACTERS)	HERBA ENTERPRISE, INC.	N
THK0200795	20021016	20091109	DESIGN	HERBA ENTERPRISE, INC.	N
THK0200796	20021016	20100627	DESIGN (CHINESE CHARACTERS)	HERBA ENTERPRISE, INC.	N
THK0200797	20021016	20100328	DESIGN	HERBA ENTERPRISE, INC.	N
THK0200798	20021016	20090525	DESIGN	HERBA ENTERPRISE, INC.	N
THK0200799	20021016	20070603	FASHION FAIR	JOHNSON PUBLISHING COMPANY, INC.	N
THK0200800	20021016	20120319	SECURE CARE PRODUCTS (SERVICE MARK)	SECURE CARE PRODUCTS, INC.	N
THK0200801	20021016	20091019	DOUBLE HORSE (& DESIGN)	KWOK SHING IMPORT-EXPORT, INC.	N
THK0200802	20021016	20120716	SABRITAS	SWCTI, WESSON CORP.	N
THK0200803	20021016	20120920	S & W	SWCTI, WESSON CORP.	N
THK0200804	20021017	20030625	COACH (PLUS DESIGN)	COACH SERVICES, INC.	N
THK0200805	20021017	20030625	COACH	COACH SERVICES, INC.	N
THK0200806	20021017	20030625	COACH (PLUS DESIGN)	COACH SERVICES, INC.	N
THK0200807	20021017	20070809	COACH	COACH SERVICES, INC.	N
THK0200808	20021017	20070809	COACH (PLUS DESIGN)	COACH SERVICES, INC.	N
THK0200809	20021017	20090406	BONNEY	CEDAR INVESTMENTS, INC.	N
THK0200810	20021017	20091019	OLET	CEDAR INVESTMENTS, INC.	N
THK0200811	20021017	20051015	BARBASOL	CEDAR INVESTMENTS, INC.	N
THK0200812	20021018	20110307	THE WHITE BARN CANDLE COMPANY AND DESIGN	CEDAR INVESTMENTS, INC.	N
THK0200813	20021021	20110410	BATH & BODY WORKS AND DESIGN	PERIO PRODUCTS MFG., INC.	N
THK0200814	20021021	20060507	BATH & BODY WORKS AND DESIGN	WB CANDLECO, INC.	N
THK0200815	20021021	20110118	KELLO66'S (STYLIZED)	BATHCO INC.	N
THK0200816	20021021	20110118	KELLO66'S (STYLIZED)	KELLOGG COMPANY	N

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
TMK0200815	20021022	20120625	PERMA BED 2000	SCNEE-MOREHEAD BUSINESS TRUST	N
TMK0200816	20021022	20081212	NEMPORT	LORILLARD LICENSING COMPANY LLC	N
TMK0200817	20021022	20081212	NEMPORT	LORILLARD LICENSING COMPANY LLC	N
TMK0200818	20021022	20120730	NEMPORT	LORILLARD LICENSING COMPANY LLC	N
TMK0200819	20021022	20120730	NEMPORT	LORILLARD LICENSING COMPANY LLC	N
TMK0200820	20021022	20120309	NEMPORT LABEL	LORILLARD LICENSING COMPANY LLC	N
TMK0200821	20021024	20091212	NIKE AIR	NIKE, INC.	N
TMK0200822	20021024	20100512	NIKE TRIAX SERIES	NIKE, INC.	N
TMK0200823	20021024	20070902	NIKE TRIAX SERIES	NIKE, INC.	N
TMK0200824	20021024	20100505	TAILWIND	NIKE, INC.	N
TMK0200825	20021024	20030525	NIKE	NIKE, INC.	N
TMK0200826	20021024	20041206	NIKE	NIKE, INC.	N
TMK0200827	20021024	20050124	JUST DO IT	NIKE, INC.	N
TMK0200828	20021024	20050404	DRI-FIT	NIKE, INC.	N
TMK0200829	20021024	20051010	DESIGN	NIKE, INC.	N
TMK0200830	20021024	20051003	NIKE	NIKE, INC.	N
TMK0200831	20021024	20051107	AIR MAX	NIKE, INC.	N
TMK0200832	20021024	20051226	NIKE GOLF	NIKE, INC.	N
TMK0200833	20021024	20060730	DESIGN	NIKE, INC.	N
TMK0200834	20021024	20061217	DESIGN	NIKE, INC.	N
TMK0200835	20021024	20061217	NIKE	NIKE, INC.	N
TMK0200836	20021024	20061224	NIKE	NIKE, INC.	N
TMK0200837	20021024	20071021	DESIGN	NIKE, INC.	N
TMK0200838	20021024	20080609	ACG NIKE	NIKE, INC.	N
TMK0200839	20021024	20071202	SMOOSH	NIKE, INC.	N
TMK0200840	20021024	20080609	SMOOSH	NIKE, INC.	N
TMK0200841	20021024	20081013	NIKE	NIKE, INC.	N
TMK0200842	20021024	20081208	NIKE	NIKE, INC.	N
TMK0200843	20021024	20090406	DESIGN	NIKE, INC.	N
TMK0200844	20021024	20110918	DESIGN	NIKE, INC.	N
TMK0200845	20021024	20120205	DESIGN (A BEAR WEARING A BAKER'S HAT)	CENTRAL IMPULSORA, S.A. DE C.V.	N
TMK0200846	20021024	20061014	BIMBO	CENTRAL IMPULSORA, S.A. DE C.V.	N
TMK0200847	20021025	20030426	JHANE BARNES	JHANE BARNES (DEL) INC.	N
TMK0200848	20021029	20021222	DESIGN (BASEBALL PLAYER)	NIKE, INC.	N

SUBTOTAL RECORDATION TYPE 110

TOTAL RECORDATIONS ADDED THIS MONTH 129

CANCELLATION OF CUSTOMS BROKER LICENSE DUE TO
DEATH OF THE LICENSE HOLDER

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

ACTION: Cancellation of license.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 111.51(a), the following individual Customs broker license has been cancelled due to death of the broker:

<i>Name</i>	<i>License No.</i>	<i>Port Name</i>
William J. O'Donnell	03452	Philadelphia
Rene Alvarez	04692	Miami

Dated: November 21, 2002.

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

[Published in the Federal Register, December 2, 2002 (67 FR 71615)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, November 27, 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.

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

WITHDRAWAL OF PROPOSED MODIFICATION AND
REVOCAION OF RULING LETTERS AND REVOCAION
OF TREATMENT RELATING TO TARIFF CLASSIFICATION
OF MEASURING OR CHECKING INSTRUMENTS AND
APPARATUS; MODIFICATION OF RULING LETTER AND
REVOCAION OF TREATMENT RELATING TO TARIFF
CLASSIFICATION OF GENETIC ANALYZER

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

ACTION: Notice of withdrawal of proposed modification and revocation of ruling letters and revocation of treatment relating to tariff classification of measuring or checking instruments and apparatus; modification of ruling letter relating to tariff classification of genetic analyzer.

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 withdrawing a proposal to revoke one ruling and modify another ruling relating to the tariff classification of certain measuring or checking instruments or apparatus, and to revoke any treatment Customs has previously accorded to substantially identical transactions. This notice also advises interested parties that Customs is modifying a ruling relating to the tariff classification of genetic analyzers. Notice of the proposed modification and revocation was published on October 9, 2002, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: This withdrawal of the proposed modification and revocation is effective upon publication in the CUSTOMS BULLETIN; modification of the ruling on genetic analyzers is effective for merchandise

entered or withdrawn from warehouse for consumption on or after February 10, 2003.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 572-8779.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to Customs obligations, a notice was published on October 9, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 41, proposing to affirm NY 856065, dated September 24, 1990, which classified the Autospec System, apparatus for inspecting the paper web for imperfections during the papermaking process, as other optical measuring or checking instruments, appliances and machines, in subheading 9031.40.00 (now 49.90). In addition, the notice proposed to modify HQ 955053, dated October 4, 1993, which classified an ellipsometer and combination ellipsometer/spectrophotometer, as other instruments and apparatus using optical radiations for measuring or checking quantities of heat, sound or light, in subheading 9027.50.40, Harmonized Tariff Schedule of the United States (HTSUS). The ruling classified corresponding software for both models in subheading 8524.90.40, HTSUS, as other recorded media for sound or other similarly recorded phenomena. The classification of the software was not contested. Finally, the October 9, 2002, notice proposed to revoke NY G86132, dated January 26, 2001, which classified the ABI Prism 3100 Synthetic Analyzer in subheading 9027.50.40, HTSUS. Three comments were received in response to this notice, all supporting classification of the respective merchandise in provisions of heading 9027.

We have undertaken a complete review of the matter, including but not limited to the submitted comments. These comments will be discussed in the text of the rulings we propose to issue. Pursuant to 19 U.S.C. 1625(c)(1), Customs is affirming NY 856065 to reflect the proper classification of the Autospec System in subheading 9031.49.90, HTSUS, as other optical measuring or checking instruments, appliances or machines, pursuant to the analysis in HQ 965327, which is set forth as "Attachment A" to this document. Customs is also affirming HQ 955053 to reflect the proper classification of the ellipsometer and combination ellipsometer/spectrophotometer in subheading 9027.50.40, HTSUS, pursuant to the analysis in HQ 965899, which is set forth as "Attachment B" to this document. Finally, Customs is modifying NY G86132 to reflect the proper classification of the ABI Prism 3100 Genetic Analyzer in subheading 9027.20.50, HTSUS, pursuant to the analysis in HQ 965900, which is set forth as "Attachment C" to this document.

In accordance with 19 U.S.C. 1625(c), these rulings will become effective upon publication in the CUSTOMS BULLETIN or 60 days thereafter, as appropriate.

Dated: November 22, 2002.

GAIL A. HAMILL,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

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

CLA-2 RR:CR:GC 965327 JAS
Category: Classification
Tariff No. 9031.49.90

JAMES L. SAWYER, ESQ.
KATTEN, MUCHIN ZAVIS ROSENMAN
525 West Monroe Street, Suite 1600
Chicago, IL 60661-3693

Re: NY 856065 Affirmed; Autospec Paper Web Inspection System.

DEAR MR. SAWYER:

In a letter to us, dated November 21, 2001, on behalf of ABB Automation, Inc., you requested reconsideration of NY 856065, dated September 24, 1990, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of the Autospec System (the System). In that ruling, the Area (now Port) Director of Customs, New York, classified the System, apparatus for inspecting the paper web for imperfections during the papermaking process, among other merchandise, in subheading 9031.40.00 (now 49.90), HTSUS, as measuring or checking instruments, appliances and machines, n.s.i.e., other optical instruments and appliances.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), a notice withdrawing Customs initial proposal to modify NY 856065, among other things, was published on October 9, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 41. The notice stated Customs position that the classification set forth in NY 856065 was correct. Three comments were received in response to that notice, including one from you.

We have thoroughly reviewed the classification set forth in NY 856065 and continue to believe that it is correct. In our review of this decision, full and careful consideration was given to your submissions of November 21, 2001, and June 14, 2002, legal arguments made during a teleconference with members of my staff on September 17, 2002, and your latest submission, dated November 7, 2002.

Facts:

The merchandise at issue, identified in submitted literature as the ULMA NT Web Inspection System (the System), is apparatus for detecting and locating defects such as holes, dirt, scratches and wrinkles, in the web during the papermaking process. The ULMA NT Web Inspection System and the Autospec System, are believed to be substantially identical. The System consists of the following components: (1) lamps with reflectors, (2) multiple so-called smart cameras with charged coupled device (CCD) technology, (3) one or more image processing computers, and (4) a control panel/operator interface. As imported, these components are connected together by transmission devices and electric cables.

In operation, as the paper web moves continually over a framed conveyor, the lamps, positioned in the bottom of the frame, emit high-intensity light that reflects from or penetrates into the web, depending on its coated or uncoated applications (i.e., base stock, fine writing, printing, tissue, etc.). At the same time, the cameras positioned at the top of the frame detect variations in the intensity of the light, which the computers compare and analyze and, with analog to digital conversion, present as visual images of probable defects in the web. From these, the System's control operator can take appropriate corrective action.

The HTSUS provisions under consideration are as follows:

9027	Instruments and apparatus for physical or chemical analysis, * * * for measuring or checking quantities of heat, sound or light * * *:
9027.50	Other instruments and apparatus using optical radiations (ultraviolet, visible, infrared):
9027.50.40	Electrical
*	*
*	*
9031	Measuring or checking instruments, appliances and machines, n.s.i.e. * * *:
9031.40.00 (now 49.90)	Other

Issue:

Whether the System is a good of heading 9027.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. Section XVI, Note 4, HTSUS, states, in part, that where machines interconnected by piping, by transmission devices, by electric cables or by other devices, are intended to contribute together to a clearly defined function covered by one of the headings in chapter 84 or chapter 85, the whole is to be classified in the heading appropriate to that function.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. Customs believes the ENs should always be consulted. See T.D. 89-80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

We are in agreement that the components of the System constitute a functional unit under Section XVI, Note 4, HTSUS, with the whole classifiable in the heading appropriate to

the function it performs. We further agree that subheading 9027.50.40, HTSUS, instruments and apparatus for physical and chemical analysis using optical radiations, if it applies, provides the most accurate description for the System. In your November 7, 2002, submission, you assert that heading 9027, HTSUS, applies because the System analyzes reflected light as a form of physical analysis on the paper web. You contend that our interpretation of the scope of heading 9027 is too restrictive, i.e., that the heading text lists apparatus, including polarimeters and refractometers, that utilize light for physical or chemical analysis of substances or materials other than light. In addition, apparatus for gas or smoke analysis, also listed in the 9027 heading text, analyze either gas or smoke, not light. You maintain that the System is akin, by function, to opacimeters, which are listed in the 9027 ENs. These are devices specific to the papermaking industry and used to measure the degree of whiteness, opacity or brilliance of paper pulp, paper, etc. You opine that the System identifies defects in the paper which cause a decrease in the paper's opacity. You maintain further that Customs reliance on the reference in the Harmonized Commodity Description and Coding System Explanatory Notes to heading 9031 to optical surface testers as describing the System is misplaced, inasmuch as the System lacks both a prism and lens to optically gauge the condition of a surface, as described in the 9031 EN. Finally, you cite two administrative rulings which purport to support classification of the System in heading 9027, HTSUS.

Relevant 9027 ENs describe, among other instruments and appliances, **photometers**, which are instruments for measuring the intensity of light. The light to be measured and the standard source of light are placed so that they illuminate a given surface with equal intensity. If instead of comparing two light intensities, comparison is made of their respective spectra, the instrument then used is known as a **spectrophotometer**. Photometers are widely used for various optical processes and analyses (for determining, for example, degree of concentration, degree of brilliance or transparency of solid substances; degree of exposure of photographic plates or films (densitometers); depth of color of transparent or opaque solid substances or solutions). Certain photometers used in photography or cinematography are known as **exposure meters**, and are used for measuring exposure times or for determining lens apertures. On the other hand, ENs for heading 9031, (I) MEASURING OR CHECKING INSTRUMENTS, APPLIANCES AND MACHINES, list under (B)(5) **Optical surface testers**, for gauging the condition of surfaces by means of a combination of a prism and a lens.

We remain of the opinion that the ENs indicate that the function of photometers and related instruments of heading 9027 is to ascertain or determine the quality, intensity or brilliance, or some other variable of light (i.e., to find out something about the light). However, we now agree that the heading also includes devices such as the ones you list which analyze substances or materials other than light. But, the System is not said to be one of those devices. It is significant to note that heading 9027 is divided into three categories of apparatus: instruments and apparatus for physical or chemical analysis; instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension, or the like; and instruments and apparatus for measuring or checking quantities of heat, sound or light. There is no evidence that the System *analyzes* anything. Moreover, the concepts of viscosity, porosity or the like is not at issue. It is the latter category of instruments and apparatus that must be examined. Heading 9027 is a provision governed by "use." Pursuant to Additional U.S. Rule of Interpretation 1(a), HTSUS, it is the principal use of the class or kind of goods to which the System belongs that controls. Thus, the System must be shown to belong to a class or kind of instruments or apparatus principally used to measure or check quantities of light. We continue to believe that it does not. While in the most literal sense the System does, in fact, measure or check quantities of light, its function essentially is to analyze variations and intensity of light for the purpose of identifying and locating defects in the paper web, using light as the intermediate means. Tariff provisions do not always include everything within their literal meaning. *United States v. Andrew Fisher Cycle Co., Inc.*, C.D. 3717, *rev'd*. C.A.D. 986 (1970). We remain of the opinion that in a commercial sense, persons in the papermaking industry would not purchase the System for the purpose of checking characteristics of light, but to check the condition and quality of the paper web. In our opinion, the System does not belong to a class or kind of instruments and apparatus principally used to measure or check quantities of light. It does not meet the terms of heading 9027.

We likewise remain of the opinion that the System is more akin by function to the optical surface tester described in the 9031 ENs, which uses optical phenomena as a means to

check something other than light, i.e., the condition of surfaces the quality, condition or some other variable of another good such as a paper web, chemical compounds, circuit boards, glass ampoules, etc.

The first of the two rulings you cite, NY D88130, dated March 4, 1999, classified four measurement systems utilizing CCD cameras, together with computers, for performing analytic and diagnostic functions, in subheading 9027.50.40, HTSUS. The ruling describes the merchandise as designed to "analyze and display the data captured by the camera * * * the CCD camera utilizes ultraviolet and visible radiations to obtain the data for analysis." As this description is cursory at best, there is no demonstrated similarity to the AutoSpec System so as to support a similar classification. The second ruling, NY G86132, dated January 26, 2002, concerned a fluorescence-based DNA analysis system called the ABI Prism 3100 Synthetic Analyzer. This device included an electrophoresis instrument which sorted chemically treated DNA by size of sample utilizing an electrochemical process and the influence of an electric current. Electrophoresis instruments are listed in the 9027 ENs. As the electrophoresis instrument is a significant component which the AutoSpec System lacks, NY G86132 does not govern classification here. However, there is sufficient evidence on which to conclude that the Prism Analyzer performs substantially in the manner of electrophoresis instruments classifiable in subheading 9027.20.50, HTSUS. NY G86132 is being modified to reflect this classification. See, for example, HQ 954682, dated July 14, 1994, and HQ 956789, dated November 30, 1994, in which apparatus compellingly analogous to the System was classified in provisions of heading 9031, HTSUS.

Holding:

Under the authority of GRI 1 and Section XVI, Note 4, HTSUS, the Autospec paper web inspection system is provided for in heading 9031. It is classifiable in subheading 9031.49.90, HTSUS. NY 856065, dated September 24, 1990, is affirmed.

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

[ATTACHMENT B]

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

CLA-2 RR:CR:GC 965899 JAS
Category: Classification
Tariff No. 9027.50.40

Ms. MARY E. WRIGHT
GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN & WRIGHT
 One Boston Place, Suite 1650
 Boston, MA 02108

Re: Ellipsometer and Combination Ellipsometer/Spectrophotometer; HQ 955053 Affirmed.

DEAR Ms. WRIGHT:

In HQ 955053, which we issued to you on behalf of SOPRA, Inc., on October 4, 1993, an ellipsometer and a combination ellipsometer and spectrophotometer were held to be classifiable as instruments and apparatus for physical or chemical analysis using optical radiations, in subheading 9027.50.40, Harmonized Tariff Schedule of the United States (HTSUS).

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of HQ 955053 was published on October 9, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 41. Three comments were received in response to that notice, including one from you. We have thoroughly reviewed the classification set forth in HQ 955053 and now believe that it is correct.

You state that the model MLM ellipsometer is no longer being imported so your comments are limited to the model GESP5 spectroscopic ellipsometer. However, in the interests of thoroughness and for the purpose of guidance with respect to classification of the same or similar merchandise, our analysis will cover both models.

Facts:

As described in HQ 955053, the merchandise consists of an ellipsometer (model MLM), a combination ellipsometer and spectrophotometer (model GESP5), and corresponding computer software. Model MLM is a multi-layer monitor which is composed of a spectroscopic ellipsometer with a spectral light range of 310nm to 1000nm, a robotic wafer handler, a pre-alignment station, a sample stage, an electronic cabinet, a computer, and software. The computer will be sourced in the U.S. Typical applications of the model MLM include bulk characterization, implant concentration analysis, single layer absolute thickness and refractive index measurements for films, and multi-layer thickness and composition analyses for complex structures.

Model GESP5 is a combination instrument which is capable of performing spectrophotometric measurements and polarization measurements. The system allows spectrophotometric measurement of light intensity to enable accurate measurements of scattering, transmittance, and reflectance as a function of wavelength, angle, and polarization. It is comprised of a spectroscopic ellipsometer with a spectral light range of 230nm to 1000nm, a goniometric bench, a source module, a photomultiplier, various electronic devices, a sample holder, and software.

The HTSUS provisions under consideration are as follows:

9027	[i]nstruments and apparatus for measuring or checking quantities of heat, sound or light * * *.
9027.50	Other instruments and apparatus using optical radiations (ultra-violet, visible, infrared):
9027.50.40	Electrical
*	* * * * *
9031	Measuring or checking instruments, appliances and machines, not specified or included elsewhere in [chapter 90]
	Other optical instruments and appliances:
9031.49	Other
9031.49.90	Other

Issue:

Whether the ellipsometer and the combination ellipsometer and spectrophotometer are goods provided for in heading 9027, HTSUS, or in heading 9031.

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs), taken in order. GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

We agree that if the goods are found to be described by heading 9027 then, by its terms, heading 9031 does not apply. You offer the following in support of classifying the models MLM and GESP5 in subheading 9027.50.40, HTSUS: the goods fall within the first of three categories of merchandise in heading 9027, HTSUS, i.e., apparatus for physical or chemical analysis, noting that *spectrometers* are listed in the heading text; ellipsometers are substantially similar, by function and design, to polarimeters which are instruments for physical analysis described in the ENs to heading 9027; classification in heading 9031, HTSUS, is not appropriate, as the goods are specified and included elsewhere, i.e., in heading 9027.

Note 4 to Section XVI applies to goods of Chapter 90, pursuant to Chapter 90, Note 3, HTSUS. In this regard, Section XVI, note 4, HTSUS, states, in relevant part, that machines including a combination of machines, consisting of individual components whether

separate or interconnected by piping, by transmission devices, by electric cables or by other devices intended to contribute together to a clearly defined function covered by one of the headings in chapter 84 or chapter 85, then the whole falls to be classified in the heading appropriate to that function. *HQ 955053* found that as imported, both models of ellipsometers, constituted functional units under Section XVI, Note 4, HTSUS. The ruling continued by examining the common meaning of the term "ellipsometer" and indicated that it applied to polarimeters as well. *HQ 955053* then noted that popolarimeters and photometers, as well as spectrophotometers, were listed and described in the ENs to 9027.

Initially, it appears that at least the model MLM, imported without the computer, constitutes an incomplete or unfinished functional unit, with the imported components imparting to the whole the essential character of an ellipsometer. *See HQ 965638*, dated July 16, 2002, and related cases. From the above noted definitions and descriptions of the merchandise, it was noted that ellipsometers are used in the measurement of the index and thickness of transparent layers, the index and thickness of multi-layer thin films deposited on substrates, surface and interface roughness measurements, and the determination of thickness and compactness of super thin films. Ellipsometers accomplish this purpose by using the technique of measuring the plane of polarization of rays of light as they are rotated in passing through an optically active substance. This process is described in Explanatory Note 90.27(1) for polarimeters. The conclusion then followed that both models of ellipsometers functioned as electrical instruments using optical radiations for physical analysis, classifiable under subheading 9027.50.40, HTSUS. The merchandise was found to be precluded from classification in heading 9031, HTSUS. After a complete review of the available information, including but not limited to your comments of November 7, 2002, we now believe that the above-stated analysis is accurate and supports classification of both the model MLM and the GESP5 in heading 9027, HTSUS.

Holding:

Under the authority of GRI 1 and Section XVI, Note 4, HTSUS, where appropriate, the model MLM ellipsometer and model GESP5 combination ellipsometer and spectrophotometer are provided for in heading 9027. They are classifiable in subheading 9027.50.40, HTSUS, as other electrical instruments and apparatus using optical radiations for physical or chemical analysis. For the reasons stated, *HQ 955053*, dated October 4, 1993, is affirmed.

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

[ATTACHMENT C]

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

CLA-2 RR:CR:GC 965900 JAS
Category: Classification
Tariff No. 9027.20.50

SUSAN KOHN ROSS
RODRIGUEZ, O'DONNELL, ROSS, FUERST, GONZALES & WILLIAMS
ATTORNEYS AT LAW
5777 W. Century Blvd., Suite 520
Los Angeles, CA 90045-5659

Re: ABI Prism 3100 Genetic Analyzer; NY G86132 Modified.

DEAR Ms. ROSS:

In NY G86132, which the Director of Customs National Commodity Specialist Division, New York, issued on January 26, 2001, on behalf of Applied Biosystems, the ABI Prism 3100 Genetic Analyzer (the Analyzer) was held to be classifiable in a provision of heading 9027, Harmonized Tariff Schedule of the United States (HTSUS), as electrical instru-

ments and apparatus for measuring or checking quantities of heat, sound or light using optical radiations.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY G86132 was published on October 9, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 41. Three comments were received in response to that notice, including one from you. We have thoroughly reviewed the classification set forth in NY G86132 and now believe that although the heading is correct, the subheading must be changed.

Facts:

The Analyzer is identified in NY G86132 as a DNA sequencing machine. More specifically, it is a fluorescence-based DNA analysis system using the technologies of capillary electrophoresis and laser fluorescence with CCD recording technology to analyze genetic material. After importation, the ABI is combined with a computer workstation running proprietary analysis software that performs sequencing analysis.

The Analyzer contains an electrophoresis instrument, a laser system and a so-called smart camera with charged coupled device (CCD) technology. The electrophoresis instrument sorts (by size sample) DNA that has been treated with a chemical dye. The laser causes the reporter dye to fluoresce so that analysis of the separated genetic information can be measured from the light intensity of the fluorescent dye. The CCD camera digitizes the fluoresced strands of DNA so that the digitized information can be analyzed using the computer and the proprietary software. Included in the Analyzer is a high voltage power supply to generate the direct current electric field necessary for electrophoretic separation. As imported, the Analyzer lacks the computer workstation and proprietary software.

The HTSUS provisions under consideration are as follows:

9027	[i]nstruments and apparatus for measuring or checking quantities of heat, sound or light * * *:
9027.20	Chromatographs and electrophoresis instruments:
9027.20.50	Electrical
9027.50	Other instruments and apparatus using optical radiations (ultra-violet, visible, infrared):
9027.50.40	Electrical
*	*
*	*
9031	Measuring or checking instruments, appliances and machines, not specified or included elsewhere in [chapter 90]
	Other optical instruments and appliances:
9031.49	Other
9031.49.90	Other

Issue:

Whether the Analyzer is an electrophoresis instrument of heading 9027.

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's), taken in order. GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

We agree that if the goods are found to be described by heading 9027 then, by its terms, heading 9031 does not apply. You offer the following in support of classifying the Analyzer in subheading 9027.20.50, HTSUS, as an electrophoresis instrument: Customs proposed revocation of NY G86132 was based on the erroneous premise that it was classifiable as an instrument and apparatus for measuring or checking quantities of light, language which appears in heading 9027 but which does not describe the Analyzer; the good is not surface testing apparatus of heading 9027; the Analyzer is used to perform, by physical means, a chemical analysis of genetic material using the medium of light. It performs capillary elec-

trophoresis which represents a technological improvement upon but remains substantially identical in operation to electrophoresis instruments described in the 9027 ENs as incorporating a photometric device and which operate, in part at least, by passing a direct current through a solution; the optical instrumentation in the form of a light-producing argon laser is the means by which the computer compares the results with existing data; the Analyzer falls within a class or kind of instruments principally used for physical or chemical analysis, as described in the 9027 heading text in that it is the separation by capillary *electrophoresis* that constitutes the *analysis*; and finally, classification in heading 9031, HTSUS, is not appropriate, as the goods are specified and included elsewhere, i.e., in heading 9027.

Initially, Note 4 to Section XVI applies to goods of Chapter 90, pursuant to Chapter 90, Note 3, HTSUS. In this regard, Section XVI, Note 4, HTSUS, states, in relevant part, that machines including a combination of machines, consisting of individual components whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices intended to contribute together to a clearly defined function covered by one of the headings in chapter 84 or chapter 85, then the whole falls to be classified in the heading appropriate to that function. It appears that the Analyzer, imported without the computer workstation and software, constitutes an incomplete or unfinished functional unit, with the imported components imparting to the whole the essential character of a good of heading 9027. See *HQ* 965638, dated July 16, 2002, and related cases.

Electrophoresis instruments of heading 9027 function essentially to separate or change the concentration of materials in solution for the purpose of analyzing the material. Noting the relevant 9027 ENs, essential features of these instruments include a source of direct current, a photometric device with photoelectric cell and an amp-measuring device or milliammeter, the whole being used for examining/analyzing material in solution. Simply stated, the Analyzer appears to function in substantially the same manner by using a laser light medium to measure variations and intensity of light in the fluorescent dye for the purpose of analyzing the separated genetic material. It operates by capillary electrophoresis which can be regarded as a technological advancement over traditional electrophoresis, but the essential character of the apparatus and its end use remain the same. The Analyzer performs substantially in the manner of an electrophoresis instrument classifiable in heading 9027, HTSUS.

Holding:

Under the authority of GRI 1 and Section XVI, Note 4, HTSUS, Section XVI, Note 4, HTSUS, the ABI Prism 3100 Genetic Analyzer is provided for in heading 9027. It is classifiable in subheading 9027.20.50, HTSUS, as an electrophoresis instrument, electrical. NY G86132, dated January 26, 2001, is modified to reflect this classification.

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

WITHDRAWAL OF REVOCATION OF RULING LETTERS
RELATING TO CLASSIFICATION OF SPOONS

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

ACTION: Notice of withdrawal of two Headquarters ruling letters that revoked three New York ruling letters relating to the tariff classification of spoons.

SUMMARY: This notice advises interested parties that Customs is withdrawing two Headquarters ruling letters that revoked three New York ruling letters relating to the tariff classification of spoons. These Headquarters ruling letters were inadvertently published twice, first in the October 16, 2002, CUSTOMS BULLETIN (Vol. 36, No. 42) and again in the November 6, 2002, CUSTOMS BULLETIN (Vol. 36, No. 45). The ruling letters published on November 6, 2002, are being withdrawn. The ruling letters published on October 16, 2002, remain in full force and effect.

EFFECTIVE DATE: December 11, 2002.

FOR FURTHER INFORMATION CONTACT: Bill Conrad, Regulations Branch, Office of Regulations and Rulings, 202-572-8764.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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), a general notice was published in the CUSTOMS BULLETIN on October 16, 2002, announcing that three New York ruling letters (NY) classifying spoons under the Harmonized Tariff Schedule of the United States (HTSUS) were being revoked. Attached to the notice were Headquarters ruling letter (HQ) 965032 revoking NY E86257, dated September 9, 1999, and NY E88103, dated December 20, 1999, and HQ 965794 revoking NY D86420, dated January 7, 1999. Both HQ ruling letters classified the spoons under subheading 8215.99.4060, HTSUS, as spoons, other than tablespoons, with nonmetal handles. The HQ ruling letters provided that they would become effective with respect to similar imported spoons 60 days after their publication in the CUSTOMS BULLETIN.

Subsequently, on November 6, 2002, through inadvertence, the very same general notice and HQ ruling letters were published in the CUSTOMS BULLETIN a second time. This notice announces that the general notice and HQ ruling letters published on November 6, 2002, are hereby withdrawn. Headquarters ruling letters 965032 and 965794 published on October 16, 2002, remain in full force and effect.

Dated: November 21, 2002.

GAIL A. HAMILL,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

WITHDRAWAL OF DUPLICATE NOTICE OF REVOCATION
OF RULING LETTER AND TREATMENT RELATING TO
CLASSIFICATION OF MOTOR VEHICLE PLASTIC SEAT KNOB

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

ACTION: Notice of withdrawal of a duplicate notice of revocation of ruling letter and treatment relating to tariff classification of motor vehicle plastic seat knob.

SUMMARY: This notice advises interested parties that due to a clerical error, Customs is withdrawing a duplicate notice to revoke a ruling letter pertaining to the classification of motor vehicle plastic seat knob and revoking any treatment previously accorded by the Customs Service of substantially identical transactions. Notice of the revocation was first published in the CUSTOMS BULLETIN of October 16, 2002, Vol. 36, No. 42, 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). Due to a clerical error, a duplicate notice was inadvertently published in the CUSTOMS BULLETIN of November 6, 2002, Vol. 36, No. 45. The second publication is being withdrawn.

EFFECTIVE DATE: December 11, 2002.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, General Classification Branch, 202-572-8782.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(e)(1), Tariff Act of 1930 (19 U.S.C. 1625(e)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published in the CUSTOMS BULLETIN on October 16, 2002, revoking NY G80939, dated August 18, 2000 which classified a motor vehicle plastic seat knob under sub-heading 9401.90.1080, HTSUS, which provides for seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof, parts, of seats of a kind used for motor vehicles, other. Due to a clerical error, a duplicate notice was inadvertently published in the CUSTOMS BULLETIN of November 6, 2002, Vol. 36, No. 45. The second publication is being withdrawn. The original notice of October 16, 2002, remains in effect.

Therefore, this notice advises interested parties that Customs is withdrawing its November 6, 2002, duplicate notice of revocation of the ruling set forth above.

The notice in CUSTOMS BULLETIN on October 16, 2002, revoking NY G80939 will remain in full force and effect.

Dated: November 21, 2002.

GAIL A. HAMILL,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

PROPOSED REVOCATION OF RULING LETTER RELATING TO
TARIFF CLASSIFICATION OF TENNIS BRIEFS

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

ACTION: Notice of proposed revocation of one tariff classification ruling letter and treatment relating to the classification of tennis briefs.

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 NY 869725, dated January 8, 1992, relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a women's tennis panty/brief. 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 January 10, 2003.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at 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: Beth Safeer, Textiles Branch: (202) 572-8825.

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 one ruling relating to the tariff classification of tennis briefs. Although in this notice Customs is specifically referring to the revocation of NY 869725, dated January 8, 1992 (Attachment A) relating to the tariff classification of tennis briefs under the Harmonized Tariff Schedule, 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 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 importer or their agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

Customs previously classified a tennis brief/panty under subheading 6108.21.0010, HTSUSA, which provides for "Women's or girls' slips, petticoats, briefs, panties, night-dresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted: Briefs and panties: Of Cotton: Women's." Based on our analysis of the scope of the terms of the heading in 6108, HTSUSA, and 6114, HTSUSA, the Legal

Notes, and the Explanatory Notes, tennis briefs of the type subject to this notice, are classifiable in subheading 6114.30.3070, HTSUSA, which provides for "Other garments, knitted or crocheted: Of man-made fibers: Other: Other: Women's or girls'."

Pursuant to 19 U.S.C. 1625 (c)(1), Customs intends to revoke NY 869725, dated January 8, 1992 (Attachment A) and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed ruling letter HQ 965959 (Attachment B). 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: November 26, 2002.

CYNTHIA REESE,
(for Myles Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, January 8, 1992.
CLA-2-61:S:N:N3H:354 869725
Category: Classification
Tariff No. 6108.21.0010

MR. CHARLES MERENDINO
MERSANT INTERNATIONAL LTD.
158-12 Rockaway Boulevard
Jamaica, NY 11434

Re: The tariff classification of a woman's tennis panty from Hong Kong.

DEAR MR. MERENDINO:

In your letter dated December 4, 1991, on behalf of Ellesse USA Inc. you requested a classification ruling. Sample will be returned to you, as requested.

The submitted style, style A3001 (Delia), is a knit 92% cotton and 8% spandex woman's panty. The panty has elasticized waist and leg openings and a lined cotton crotch. As per a telephone conversation with this office you state style A3000 (Diane) is identical to style A3001, except that it is manufactured in assorted solid colors. Both styles are designed to be worn as underwear by tennis players.

The applicable subheading for Styles A3000 and A3001 will be 6108.21.0010, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' slips, petticoats, briefs, panties * * * and similar articles, knitted or crocheted: briefs and panties: of cotton, women's. The duty rate will be 8.1 percent ad valorem.

Styles A3000 and A3001 fall within textile category designation 352. Based upon international textile trade agreements, products of Hong Kong are subject to visa restraints.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we

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

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

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

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

[ATTACHMENT B]

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

CLA-2 RR:CR:TE 965959 BAS
Category: Classification
Tariff No. 6114.30.3070

MR. CHARLES MERENDINO
MERSANT INTERNATIONAL LTD.
*158-12 Rockaway Boulevard
Jamaica, NY 11434*

Re: Revocation of NY 869725, dated January 8, 1992; Classification of a tennis brief; HQ 965069, dated September 18, 2002, Incorporated by Reference.

DEAR MR. MERENDINO:

This is in reference to New York Ruling Letter (NY) 869725, issued to you on January 8, 1992, in response to your letter of December 4, 1991, on behalf of Ellesse USA Inc., to the U.S. Customs Service, requesting a binding classification ruling under the Harmonized Tariff Schedule of the United States (HTSUS) for a tennis brief/panty.

In NY 869725, a knit ninety-two percent cotton and eight percent spandex women's tennis brief/panty was classified under subheading 6108.21.0010, HTSUSA, which provides for women's or girls' slips, petticoats, briefs, panties * * * and similar articles, knitted or crocheted. We have now had occasion to review that decision and found it to be in error. Accordingly, this ruling letter revokes NY 869725, dated January 8, 1992.

Facts:

The merchandise under consideration is women's tennis briefs, styles A3001 (Delia) and A3000 (Diane). The style A3001 (Delia) is constructed from ninety-two percent cotton and eight percent spandex knit fabric and has elasticized waist and leg openings and a lined cotton crotch. Style A3000 (Diane) is identical to style A3001, except that it is manufactured in assorted solid colors.

Issue:

Are the subject tennis briefs classifiable as similar to undergarments including briefs and panties under heading 6108, HTSUSA, or as other knitted or crocheted garments, in heading 6114, HTSUS?

Law and Analysis:

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

The classification of substantially similar merchandise was addressed in HQ 965069, dated September 18, 2002. The women's garments composed of ninety-two percent knit cotton and eight percent spandex, style A3001 (Delia) and style A3000 (Diane), are substantially similar in construction and function to the women's cheerleading brief classified in HQ 965069. While your initial letter stated that the tennis panty/brief at issue was designed to be worn as underwear by tennis players, research on the function of tennis panties indicates that they function in a substantially similar fashion to cheerleading briefs. Like cheerleading briefs, tennis briefs are most often worn under a short skirt. Unlike underwear, they are intended to be exposed to view when the wearer is dressed for appearance in public. While the description of the subject merchandise does not state that the panty has a pocket for tennis balls, most tennis panties also serve to store balls and are therefore exposed to public view when the wearer reaches for a ball.

In HQ 965069, it was determined that the cheerleading brief, composed of 100 percent nylon knit fabric, is classifiable in subheading 6114.30.3070, HTSUSA, which provides for "Other garments, knitted or crocheted: Of man-made fibers: Other: Other: Women's or girls'." The legal reasoning and analysis employed in HQ 965069 is attached to and made a part of this ruling letter. As the subject merchandise is substantially similar to the merchandise addressed in the aforementioned ruling, the merchandise would be classified accordingly.

Holding:

The woman's tennis brief/panty (styles A3000 and A3001) composed of ninety-two percent cotton and eight percent spandex knit fabric is properly classified in 6114.30.3070, HTSUSA, which provides for "Other garments, knitted or crocheted: Of man-made fibers: Other: Other: Women's or girls'." The general column one rate of duty is 15.1 percent *ad valorem*. The textile quota category applicable to this provision is 659. Headquarters Ruling Letter 965069 is attached to and made part of this ruling letter.

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 your client check, close to the time of shipment, the *Status 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 the 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 at the U.S. Customs Service Website at www.customs.gov.

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

CYNTHIA REESE,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)