

Bureau of Customs and Border Protection

General Notices

NOTICE OF CANCELLATION OF CUSTOMS BROKER LICENSE

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

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license and any and all associated local and national permits are canceled without prejudice.

<i>Name</i>	<i>License No.</i>	<i>Issuing Port</i>
George S. Engers	7283	Miami
HECNY Brokerage Services, Inc.	5356	San Francisco
Robert A. Leslie	5481	San Francisco

These brokers hold multiple Customs broker licenses. They continue to hold other valid Customs broker licenses.

Dated: March 11, 2003.

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

[Published in the Federal Register, April 1, 2003 (68 FR 15735)]

NOTICE OF CANCELLATION OF CUSTOMS BROKER LICENSE

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

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license and any and all associated local and national permits are canceled without prejudice.

<i>Name</i>	<i>License No.</i>	<i>Issuing Port</i>
Beluga International Company	16842	Tampa
Serko & Simon International Trade Services, Inc. . .	20949	New York
Yamato Customs Brokers USA, Inc.	9198	Los Angeles
Suarez International, Inc.	11763	Nogales
Jeffrey E. Brown	9703	Boston
James B. Fong	3248	San Francisco
Northwest Customs Brokers, Inc.	15651	Seattle

Dated: March 11, 2003.

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

[Published in the Federal Register, April 1, 2003 (68 FR 15735)]

NOTICE OF CANCELLATION OF CUSTOMS BROKER PERMIT

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

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker local permits are canceled without prejudice.

<i>Name</i>	<i>License No.</i>	<i>Issuing Port</i>
Jill R. Ellsworth	35-01-066	Minneapolis
Phoenix International Freight Services, Inc.	163	Seattle
Daniel Delgado-White	88-57	Buffalo
Robert Stein	88-52	Buffalo
Thomas Iuppa	88-51	Buffalo
Neill F. Stroth	28-01-DZ8	San Francisco

Dated: March 11, 2003.

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

[Published in the Federal Register, April 1, 2003 (68 FR 15735)]

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NOTICE OF CANCELLATION OF
CUSTOMS BROKER NATIONAL PERMIT

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

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker national permit is canceled without prejudice.

<i>Name</i>	<i>License No.</i>	<i>Issuing Port</i>
Neill F. Stroth	99-00129	Headquarters

Dated: March 11, 2003.

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

[Published in the Federal Register, April 1, 2003 (68 FR 15736)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, April 2, 2003.

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

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

MODIFICATION OF RULING LETTERS AND REVOCATION OF
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
PLASTIC CLIPS WITH METAL SPRINGS

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

ACTION: Notice of modification of ruling letters and revocation of treatment relating to the classification of plastic clips with metal springs.

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 eight ruling letters pertaining to the tariff classification of certain plastic clips with metal springs and revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed modifications and revocation of treatment was published in the CUSTOMS BULLETIN of February 19, 2003, Vol. 37, No. 8. No comments were received.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after June 16, 2003.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Bornstein, General Classification Branch, (202) 572-8786.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on February 19, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 8, proposing to modify New York Ruling Letters (NYs) I86172, dated September 20, 2002; H83785, dated August 10, 2001; H80474 and H80473, dated May 11, 2001; D87503 and B84870, dated February 16, 1999; D82271, dated September 25, 1998; and C86939, dated April 28, 1998, pertaining to the tariff classification of plastic clips with metal springs under the Harmonized Tariff Schedule of the United States (HTSUS). No comments were received in reply to the notice.

As stated in the proposed notice, these modifications will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised the Customs Service 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 is revoking any treatment previously accorded by the Customs Service 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 HTSUS. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer’s failure to advise the Customs Service 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 this notice.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying NYs I86172, H83785, H80474, H80473, D87503, B84870, D82271, and C86939 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letters 966173, 966176, 966180, 966179, 966177, 966178, 966181, and 966182, respectively, (see "Attachments A-H," to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

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

Dated: March 27, 2003.

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

[Attachments]

[ATTACHMENT A]

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

Washington, DC, March 27, 2003.

CLA-2 RR:CR:GC 966173 BJB
Category: Classification
Tariff No. 3926.90.98

MS. JENNY DAVENPORT
WALMART STORES, INC.
Mail Stop #0410-L-32
601 North Walton
Bentonville, AR 72716-0410

Re: Modification of NY I86172; Plastic clip with metal spring.

DEAR MS. DAVENPORT:

This is in reference to New York Ruling I86172, which the Director, Customs National Commodity Specialist Division, New York, New York, issued to you on September 20, 2002. This ruling concerned the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of several articles, including a plastic clip with a metal spring.

We have reviewed the ruling in NY I86172, and have determined the classification with respect to the subject plastic clip is incorrect. This ruling modifies NY I86172 with respect to this good and sets forth the correct classification.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057 (1993), a notice of proposed modification was published on February 19, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 8, proposing to modify NY I86172, dated September 20, 2002, and to revoke the tariff treatment pertaining to the tariff classification of a "plastic clip with a metal spring."

Facts:

The merchandise was identified as a "plastic clip with metal spring," packaged with other goods, including: a 12-inch plastic doll and doll clothing, a plastic mirror, 3-dimensional

stickers, toy backpack for the doll, rubber bands, a rubber eraser, plastic ruler, pencil, pencil sharpener and notebook. The eraser, ruler, pencil, pencil sharpener, and notebook, although imported and packaged together with the other goods, were held to be only for a child's use, and not for use with the doll. Thus, as goods not put up together to meet a particular need, or carry out a specific activity, the goods were not a set as provided for under the HTSUS, and each good was classified separately.

The subject clip has two plastic sides with finger tabs at the top and straight edges at the bottom of each side. The underside of each side is fitted with molded plastic moorings which anchor a small metal spring. Pressing inward on the finger tabs opens the clip's baseline edges. The clip's span when fully opened is limited to approximately 0.50 of an inch. Only a few pieces of notepaper may be placed between the baseline edges at a time.

In NY I86172, the subject clip was classified under subheading 8308.90.90, HTSUS, which provides for, "[c]lasp[s], frames with clasps, buckle clasps, hooks, eyes, eyelets and the like and parts thereof, of base metal, of a kind used for * * * or other madeup articles; tubular or bifurcated rivets of base metal; beads and spangles of base metal: Other, including parts: Other[.]"

Issue:

Whether the subject plastic clip with metal spring is classifiable as a clasp of base metal under heading 8308, HTSUS, or an other article of plastics under heading 3926, HTSUS?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). Under General Rule of Interpretation (GRI) 1, 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.

The HTSUS (2003) provisions under consideration are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.98	Other
*	* * * * *
8308	Clasps, frames with clasps, buckle clasps, hooks, eyes, eyelets and the like and parts thereof, of base metal, of a kind used for * * * or other madeup articles; tubular or bifurcated rivets of base metal; beads and spangles of base metal:
8308.90	Other, including parts:
8308.90.90	Other
*	* * * * *

As noted above, in NY I86172, at GRI 1, the subject plastic clip was classified under subheading 8308.90.90, HTSUS, as "[c]lasp[s] * * *, of base metal, * * *: Other, including parts: Other[.]" However, at GRI 1, two headings describe the good in part. This clip is described in heading 3926, HTSUS, as an other article of plastics, and heading 8308, HTSUS, as a clasp of base metal. As the plastic clip is *prima facie* classifiable in more than one heading, it is necessary to resort to GRI 2.

GRI 2(a) does not apply. GRI 2(b), in pertinent part, provides:

"Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3."

GRI 3 provides, "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 * * *, 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."

GRI 3(b) provides, in pertinent part:

“(b) Mixtures, composite goods consisting of different materials or made up of different components, * * *, 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 understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN V to GRI 3(a), in pertinent part, provides that:

“when two or more headings each refer to part only of the materials contained in mixed or composite goods * * * 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 than the others. In such cases, the classification shall be determined by [GRIs] 3(b) or 3(c).”

The subject good is one in which different materials or components form a practically inseparable whole. We must, therefore, resort to GRI 3(b).

EN VII to GRI 3(b), provides that, in

“all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.”

The term “essential character” is not defined within the HTSUS, GRIs or ENs. EN VIII to GRI 3(b), however, provides the following guidance:

“[t]he 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.”

This clip has two plastic sides that form a baseline edge where the two sides meet, and only its spring is made of base metal. *Merriam-Webster's Collegiate Dictionary*, 10th Ed., (1999) (p. 211), defines a “clasp” as: “a device (as a hook) for holding objects or parts together[.]”

EN 83.08 (p. 1378), in pertinent part, provides that the heading includes:

“(C) Clasps, fasteners, and frames with clasps, for handbags, purses, brief-cases, executive-cases or other travel goods, or for books or wrist-watches; * * *.”

EN 83.08(C) describes clasps of base metal used to securely close or join the sides or ends of a good together (*e.g.*, briefcases). Thus, the sides of a briefcase, which when left open leave the briefcase's interior and contents exposed, are held securely closed by the interconnecting parts of a metal clasp mounted at corresponding points on each side of the case. Unlike the goods described in the heading and EN 83.08(C) the subject plastic clip is not designed to secure a good closed, or secure its contents. The subject clip is designed to be attached to light correspondence or small pieces of notepaper to organize them. The metal spring improves the clip's capacity to remain in place once it is attached to the article it is intended to highlight. Thus, although this clip has a metal spring, its function does not make the subject good a clasp of base metal described in heading 8308, HTSUS.

Heading 3926, HTSUS, in pertinent part, provides for “[o]ther articles of plastics[.]” This clip has colorful plastic sides and baseline edges. Its finger tabs, shaped for the placement of reflective stickers are also of plastic. Nearly the entire article is plastic in terms of bulk, quantity, and weight.

In NY I86172, we viewed this clip's metal spring as imparting its essential character, and therefore, it was classified as a clasp of base metal described in heading 8308, HTSUS. We are now of the view that this clip is predominately of plastic, which imparts its essential character, and should be classified accordingly.

EN 39.26, in pertinent part, provides that the heading “covers articles * * * [that] include: (5) Paperweights, paper-knives, blotting pads, pen-rests, bookmarks, etc.” The goods described in EN 39.26 are of a kind used on a table or desk, at the office, school, or home to organize paperwork. As noted, the subject clip has a function complementary to these goods.

At GRI 3(b), we find that the subject plastic clip is classifiable in heading 3926, HTSUS, which provides for, in pertinent part, “other articles of plastics * * * [.]”

Holding:

Based on the foregoing findings, at GRI 3(b), the subject plastic clip with metal spring is classifiable in subheading 3926.90.98, HTSUS, which provides for “[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other[.]”

Effect on Other Rulings:

NY I86172, dated September 20, 2002, is MODIFIED. 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, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
Washington, DC, March 27, 2003.

CLA-2 RR:CR:GC 966176 BJB
Category: Classification
Tariff No. 3926.90.98

MR. DENNIS SHOSTAK
THE PAPER MAGIC GROUP INC.
*100 North Sixth Street, Suite 899C
Minneapolis, MN 55403*

Re: Modification of NY H83785; Plastic clips with metal springs.

DEAR MR. SHOSTAK:

This is in reference to New York Ruling H83785, which the Director, Customs National Commodity Specialist Division, New York, New York, issued to you on August 10, 2001. This ruling concerned the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of four plastic clips, each with a metal spring, and self-adhesive plastic tape with a disposable plastic dispenser.

We have reviewed the ruling in NY H83785, and have determined the classification with respect to the subject plastic clips is incorrect. This ruling modifies NY H83785 with respect to these goods and sets forth the correct classification.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057 (1993), a notice of proposed modification was published on February 19, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 8, proposing to modify NY H83785, dated August 10, 2001, and to revoke the tariff treatment pertaining to the tariff classification of a “plastic clip with a metal spring.”

Facts:

The merchandise was identified as “four spring clips,” each with “flower-shaped plastic jaws and a metal spring,” packaged with other goods, including: self-adhesive plastic tape on a disposable plastic dispenser. The goods were “blister-packed” together. Although packaged together, these goods were determined not to have been put up together to meet a particular need, or carry out a specific activity. Thus, the goods were not a set, as provided for under the HTSUS, and each good was classified separately.

In NY H83785, the subject clips were classified under subheading 8308.90.90, HTSUS, which provides for, “[c]lasp, frames with clasps, buckle clasps, hooks, eyes, eyelets and the like and parts thereof, of base metal, of a kind used for * * * or other madeup articles;

tubular or bifurcated rivets of base metal; beads and spangles of base metal: Other, including parts: Other[.]”

Issue:

Whether the subject plastic clips with metal springs are classifiable as clasps of base metal under heading 8308, HTSUS, or as other articles of plastics under heading 3926, HTSUS?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). Under General Rule of Interpretation (GRI) 1, 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.

The HTSUS (2003) provisions under consideration are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.98	Other
*	* * * * *
8308	Clasps, frames with clasps, buckle clasps, hooks, eyes, eyelets and the like and parts thereof, of base metal, of a kind used for * * * or other madeup articles; tubular or bifurcated rivets of base metal; beads and spangles of base metal:
8308.90	Other, including parts:
8308.90.90	Other
*	* * * * *

As noted above, in NY H83785, at GRI 1, the subject plastic clips were classified under subheading 8308.90.90, HTSUS, as “[c]lasps * * *, of base metal, * * *: Other, including parts: Other[.]” However, at GRI 1, two headings describe the goods in part. These clips are described in heading 3926, HTSUS, as other articles of plastics, and heading 8308, HTSUS, as clasps of base metal. As the plastic clips are *prima facie* classifiable in more than one heading, it is necessary to resort to GRI 2.

GRI 2(a) does not apply. GRI 2(b), in pertinent part, provides:

“Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.”

GRI 3 provides, “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 * * *, 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.”

GRI 3(b) provides, in pertinent part:

“(b) Mixtures, composite goods consisting of different materials or made up of different components, * * *, 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 understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. Customs believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN V to GRI 3(a), in pertinent part, provides that:

“when two or more headings each refer to part only of the materials contained in mixed or composite goods * * * 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 than the others. In such cases, the classification shall be determined by [GRIs] 3(b) or 3(c).”

The subject goods are those in which different materials or components form a practically inseparable whole. We must, therefore, resort to GRI 3(b).

EN VII to GRI 3(b), provides that, in

“all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.”

The term “essential character” is not defined within the HTSUS, GRIs or ENs. EN VIII to GRI 3(b), however, provides the following guidance:

“[t]he 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.”

Each clip has two plastic sides that form a baseline edge where the two sides meet, and only its spring is made of base metal. *Merriam-Webster's Collegiate Dictionary*, 10th Ed., (1999) (p. 211), defines a “clasp” as: “a device (as a hook) for holding objects or parts together[.]”

EN 83.08 (p. 1378), in pertinent part, provides that the heading includes:

“(C) Clasps, fasteners, and frames with clasps, for handbags, purses, brief-cases, executive-cases or other travel goods, or for books or wrist-watches; * * *.”

EN 83.08(C) describes clasps of base metal used to securely close or join the sides or ends of a good together (*e.g.*, briefcases). Thus, the sides of a briefcase, which when left open leave the briefcase's interior and contents exposed, are held securely closed by the interconnecting parts of a metal clasp mounted at corresponding points on each side of the case. Unlike the goods described in the heading and EN 83.08(C) the subject plastic clips are not designed to secure a good closed, or secure its contents. The subject clips are designed to be attached to light correspondence or small pieces of notepaper to organize them. The metal spring in each clip improves the good's capacity to remain in place once it is attached to the article it is intended to highlight. Thus, although each clip has a metal spring, its function does not make the subject goods clasps of base metal described in heading 8308, HTSUS.

Heading 3926, HTSUS, in pertinent part, provides for “[o]ther articles of plastics[.]” Each clip is made of plastic except for its spring. Nearly the entire article is plastic in terms of bulk, quantity, and weight.

In NY H83785, we viewed the clips' metal spring as imparting the essential character, and therefore, they were classified as clasps of base metal described in heading 8308, HTSUS. We are now of the view that these clips are predominately of plastic, which imparts their essential character, and should be classified accordingly.

EN 39.26, in pertinent part, provides that the heading “covers articles * * * [that] include: (5) Paperweights, paper-knives, blotting pads, pen-rests, bookmarks, etc.” The goods described in EN 39.26 are of a kind used on a table or desk, at the office, school, or home to organize paperwork. As noted, the subject clips have a function complementary to these goods.

At GRI 3(b), we find that the subject plastic clips are classifiable in heading 3926, HTSUS, which provides for, in pertinent part, “other articles of plastics * * * [.]”

Holding:

Based on the foregoing findings, at GRI 3(b), the four subject flower-shaped, plastic clips with metal springs are classifiable in subheading 3926.90.98, HTSUS, which provides for “[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Other[.]”

Effect on Other Rulings:

NY H83785, dated August 10, 2001, is modified as to the plastic clip with metal spring. 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, Director,
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
Washington, DC, March 27, 2003.

CLA-2 RR:CR:GC 966180 BJB
Category: Classification
Tariff No. 3926.90.98

MS. LORIANNE ALDINGER
RITE AID CORPORATION
30 Hunter Lane
Camp Hill, PA 17011

Re: Modification of NY H80474; Plastic clips with metal springs.

DEAR MS. ALDINGER:

This is in reference to New York Ruling H80474, which the Director, Customs National Commodity Specialist Division, New York, New York, issued to you on May 11, 2001. This ruling concerned the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of several articles, including plastic clips, each with a metal spring.

We have reviewed the ruling in NY H80474, and have determined the classification with respect to the subject plastic clips is incorrect. This ruling modifies NY H80474 with respect to these goods and sets forth the correct classification.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057 (1993), a notice of proposed modification was published on February 19, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 8, proposing to modify NY H80474, dated May 11, 2001, and to revoke the tariff treatment pertaining to the tariff classification of a "plastic clip with a metal spring."

Facts:

The merchandise was identified as "plastic clips" each with a metal spring, packaged with other goods, including: backpacks made of textile material of man-made fibers, a pad of paper, vinyl-coated metal paper clips, plastic clothespins, plastic rings, rubber bands, and two felt-tipped pens. Customs determined that these goods were not adapted to one another, and not put up to meet one particular need or carry out a specific activity. Thus, as goods not put up together to meet a particular need, or carry out a specific activity, they were not a set as provided for under the HTSUS, and each good was classified separately.

In NY H80474, the subject clips were classified under subheading 8308.90.90, HTSUS, which provides for, "[c]lasps, frames with clasps, buckle clasps, hooks, eyes, eyelets and the like and parts thereof, of base metal, of a kind used for * * * or other madeup articles; tubular or bifurcated rivets of base metal; beads and spangles of base metal: Other, including parts: Other[.]"

Issue:

Whether the subject plastic clips with metal springs are classifiable as clasps of base metal under heading 8308, HTSUS, or an other articles of plastics under heading 3926, HTSUS?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). Under General Rule of Interpretation (GRI) 1, 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.

The HTSUS (2003) provisions under consideration are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.98	Other
*	* * * * *
8308	Clasps, frames with clasps, buckle clasps, hooks, eyes, eyelets and the like and parts thereof, of base metal, of a kind used for * * * or other madeup articles; tubular or bifurcated rivets of base metal; beads and spangles of base metal:
8308.90	Other, including parts:
8308.90.90	Other
*	* * * * *

As noted above, in NY H80474, at GRI 1, the subject plastic clips were classified under subheading 8308.90.90, HTSUS, as “[c]lasps * * *, of base metal, * * *: Other, including parts: Other[.]” However, at GRI 1, two headings describe the goods in part. These clips are described in heading 3926, HTSUS, as other articles of plastics, and heading 8308, HTSUS, as clasps of base metal. As the plastic clips are *prima facie* classifiable in more than one heading, it is necessary to resort to GRI 2.

GRI 2(a) does not apply. GRI 2(b), in pertinent part, provides:

“Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.”

GRI 3 provides, “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 * * *, 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.”

GRI 3(b) provides, in pertinent part:

“(b) Mixtures, composite goods consisting of different materials or made up of different components, * * *, 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 understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. Customs believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN V to GRI 3(a), in pertinent part, provides that:

“when two or more headings each refer to part only of the materials contained in mixed or composite goods * * * 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 than the others. In such cases, the classification shall be determined by [GRIs] 3(b) or 3(c).”

The subject goods are those in which different materials or components form a practically inseparable whole. We must, therefore, resort to GRI 3(b).

EN VII to GRI 3(b), provides that, in

“all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.”

The term “essential character” is not defined within the HTSUS, GRIs or ENs. EN VIII to GRI 3(b), however, provides the following guidance:

“[t]he 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.”

Each clip has two plastic sides that form a baseline edge where the two sides meet, and only its spring is made of base metal. *Merriam-Webster's Collegiate Dictionary*, 10th Ed., (1999) (p. 211), defines a “clasp” as: “a device (as a hook) for holding objects or parts together[.]”

EN 83.08 (p. 1378), in pertinent part, provides that the heading includes:

“(C) Clasps, fasteners, and frames with clasps, for handbags, purses, brief-cases, executive-cases or other travel goods, or for books or wrist-watches; * * *.”

EN 83.08(C) describes clasps of base metal used to securely close or join the sides or ends of a good together (*e.g.*, briefcases). Thus, the sides of a briefcase, which when left open leave the briefcase's interior and contents exposed, are held securely closed by the interconnecting parts of a metal clasp mounted at corresponding points on each side of the case. Unlike the goods described in the heading and EN 83.08(C) the subject plastic clips are not designed to secure a good closed, or secure its contents. The subject clips are designed to be attached to light correspondence or small pieces of notepaper to organize them. The metal spring in each clip improves the good's capacity to remain in place once it is attached to the article it is intended to highlight. Thus, although each clip has a metal spring, its function does not make the subject goods clasps of base metal described in heading 8308, HTSUS.

Heading 3926, HTSUS, in pertinent part, provides for “[o]ther articles of plastics[.]” Each clip is made of plastic except for its spring. Nearly the entire article is plastic in terms of bulk, quantity, and weight.

In NY H80474, we viewed the clips' metal spring as imparting the essential character, and therefore, they were classified as clasps of base metal described in heading 8308, HTSUS. We are now of the view that these clips are predominately of plastic, which imparts their essential character, and should be classified accordingly.

EN 39.26, in pertinent part, provides that the heading “covers articles * * * [that] include: (5) Paperweights, paper-knives, blotting pads, pen-rests, bookmarks, etc.” The goods described in EN 39.26 are of a kind used on a table or desk, at the office, school, or home to organize paperwork. As noted, the subject clips have a function complementary to these goods.

At GRI 3(b), we find that the subject plastic clips are classifiable in heading 3926, HTSUS, which provides for, in pertinent part, “other articles of plastics * * * [.]”

Holding:

Based on the foregoing findings, at GRI 3(b), the subject plastic clips with metal springs are classifiable in subheading 3926.90.98, HTSUS, which provides for “[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other[.]”

Effect on Other Rulings:

NY H80474, dated May 11, 2001, is modified as to the plastic clip with metal spring. 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, Director,
Commercial Rulings Division.)

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
 BUREAU OF CUSTOMS AND BORDER PROTECTION,
 Washington, DC, March 27, 2003.
 CLA-2 RR:CR:GC 966179 BJB
 Category: Classification
 Tariff No. 3926.90.98

Ms. LORIANNE ALDINGER
 RITE AID CORPORATION
 30 Hunter Lane
 Camp Hill, PA 17011

Re: Modification of NY H80473; Plastic clips with metal springs.

DEAR MS. ALDINGER:

This is in reference to New York Ruling H80473, which the Director, Customs National Commodity Specialist Division, New York, New York, issued to you on May 11, 2001. This ruling concerned the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of several articles, including plastic clips, each with a metal spring.

We have reviewed the ruling in NY H80473, and have determined the classification with respect to the subject plastic clips is incorrect. This ruling modifies NY H80473 with respect to these goods and sets forth the correct classification.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057 (1993), a notice of proposed modification was published on February 19, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 8, proposing to modify NY H80473, dated May 11, 2001, and to revoke the tariff treatment pertaining to the tariff classification of a "plastic clip with a metal spring."

Facts:

The merchandise was identified as "plastic clips," each with a metal spring, packaged with other goods, including: backpacks made of textile material of man-made fibers, a pad of paper, vinyl-coated metal paper clips, plastic clothespins, plastic rings, rubber bands, and two felt-tipped pens. Customs determined that these goods were not adapted to one another, and not put up to meet one particular need or carry out a specific activity. Thus, as goods not put up together to meet a particular need, or carry out a specific activity, they were not a set as provided for under the HTSUS, and each good was classified separately.

In NY H80473, the subject clips were classified under subheading 8308.90.90, HTSUS, which provides for, "[c]lasps, frames with clasps, buckle clasps, hooks, eyes, eyelets and the like and parts thereof, of base metal, of a kind used for * * * or other madeup articles; tubular or bifurcated rivets of base metal; beads and spangles of base metal: Other, including parts: Other[.]"

Issue:

Whether the subject plastic clips with metal springs are classifiable as clasps of base metal under heading 8308, HTSUS, or as other articles of plastics under heading 3926, HTSUS?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). Under General Rule of Interpretation (GRI) 1, 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.

The HTSUS (2003) provisions under consideration are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.98	Other
*	* * * * *

8308	Clasps, frames with clasps, buckle clasps, hooks, eyes, eyelets and the like and parts thereof, of base metal, of a kind used for * * * or other madeup articles; tubular or bifurcated rivets of base metal; beads and spangles of base metal:
8308.90	Other, including parts:
8308.90.90	Other
*	* * * * *

As noted above, in NY H80473, at GRI 1, the subject plastic clips were classified under subheading 8308.90.90, HTSUS, as “[c]lasps * * *, of base metal, * * *: Other, including parts: Other[.]” However, at GRI 1, two headings describe the good in part. These clips are described in heading 3926, HTSUS, as other articles of plastics, and heading 8308, HTSUS, as clasps of base metal. As the plastic clips are *prima facie* classifiable in more than one heading, it is necessary to resort to GRI 2.

GRI 2(a) does not apply. GRI 2(b), in pertinent part, provides:

“Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.”

GRI 3 provides, “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 * * *, 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.”

GRI 3(b) provides, in pertinent part:

“(b) Mixtures, composite goods consisting of different materials or made up of different components, * * *, 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 understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. Customs believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN V to GRI 3(a), in pertinent part, provides that:

“when two or more headings each refer to part only of the materials contained in mixed or composite goods * * * 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 than the others. In such cases, the classification shall be determined by [GRIs] 3(b) or 3(c).”

The subject goods are those in which different materials or components form a practically inseparable whole. We must, therefore, resort to GRI 3(b).

EN VII to GRI 3(b), provides that, in

“all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.”

The term “essential character” is not defined within the HTSUS, GRIs or ENs. EN VIII to GRI 3(b), however, provides the following guidance:

“[t]he 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.”

Each clip has two plastic sides that form a baseline edge where the two sides meet, and only its spring is made of base metal. *Merriam-Webster’s Collegiate Dictionary*, 10th Ed.,

(1999) (p. 211), defines a “clasp” as: “a device (as a hook) for holding objects or parts together[.]”

EN 83.08 (p. 1378), in pertinent part, provides that the heading includes:

“(C) Clasps, fasteners, and frames with clasps, for handbags, purses, brief-cases, executive-cases or other travel goods, or for books or wrist-watches; * * *.”

EN 83.08(C) describes clasps of base metal used to securely close or join the sides or ends of a good together (*e.g.*, briefcases). Thus, the sides of a briefcase, which when left open leave the briefcase’s interior and contents exposed, are held securely closed by the inter-connecting parts of a metal clasp mounted at corresponding points on each side of the case. Unlike the goods described in the heading and EN 83.08(C) the subject plastic clips are not designed to secure a good closed, or secure its contents. The subject clips are designed to be attached to light correspondence or small pieces of notepaper to organize them. The metal spring in each clip improves the good’s capacity to remain in place once it is attached to the article it is intended to highlight. Thus, although each clip has a metal spring, its function does not make the subject goods clasps of base metal described in heading 8308, HTSUS.

Heading 3926, HTSUS, in pertinent part, provides for “[o]ther articles of plastics[.]” Each clip is made of plastic except for its spring. Nearly the entire article is plastic in terms of bulk, quantity, and weight.

In NY H80473, we viewed the clips’ metal spring as imparting the essential character, and therefore, they were classified as a clasp of base metal described in heading 8308, HTSUS. We are now of the view that these clips are predominately of plastic, which imparts their essential character, and should be classified accordingly.

EN 39.26, in pertinent part, provides that the heading “covers articles * * * [that] include: (5) Paperweights, paper-knives, blotting pads, pen-rests, bookmarks, etc.” The goods described in EN 39.26 are of a kind used on a table or desk, at the office, school, or home to organize paperwork. As noted, the subject clips have a function complementary to these goods.

At GRI 3(b), we find that the subject plastic clips are classifiable in heading 3926, HTSUS, which provides for, in pertinent part, “other articles of plastics * * *[.]”

Holding:

Based on the foregoing findings, at GRI 3(b), the subject plastic clips, each with a metal spring are classifiable in subheading 3926.90.98, HTSUS, which provides for “[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other[.]”

Effect on Other Rulings:

NY H80473, dated May 11, 2001, is modified as to the plastic clip with metal spring. 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, Director,
Commercial Rulings Division.)

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
Washington, DC, March 27, 2003.

CLA-2 RR:CR:GC 966177 BJB
Category: Classification
Tariff No. 3926.90.98

MR. STEPHEN WONG
OCEANLAND
8054 East Garvey Avenue
Rosemead, CA 91770

Re: Modification of NY D87503; Plastic clip with metal spring.

DEAR MR. WONG:

This is in reference to New York Ruling D87503, which the Director, Customs National Commodity Specialist Division, New York, New York, issued to you on February 16, 1999. This ruling concerned the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of several articles, including a plastic clip with a metal spring.

We have reviewed the ruling in NY D87503, and have determined the classification with respect to the subject plastic clip is incorrect. This ruling modifies NY D87503 with respect to this good and sets forth the correct classification.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057 (1993), a notice of proposed modification was published on February 19, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 8, proposing to modify NY D87503, dated February 16, 1999, and to revoke the tariff treatment pertaining to the tariff classification of a "plastic clip with a metal spring."

Facts:

The merchandise was identified as a "plastic clip with metal spring," packaged with other goods, including: backpacks made of textile material of man-made fibers, a pad of paper, vinyl-coated metal paper clips, plastic clothespins, plastic rings, rubber bands, and two felt-tipped pens. Customs determined that these goods were not adapted to one another, and not put up to meet one particular need or carry out a specific activity. Thus, as goods not put up together to meet a particular need, or carry out a specific activity, they were not a set as provided for under the HTSUS, and each good was classified separately.

In NY D87503, the subject clip was classified under subheading 8308.90.90, HTSUS, which provides for, "[c]lasps, frames with clasps, buckle clasps, hooks, eyes, eyelets and the like and parts thereof, of base metal, of a kind used for * * * or other madeup articles; tubular or bifurcated rivets of base metal; beads and spangles of base metal: Other, including parts: Other[.]"

Issue:

Whether the subject plastic clip with metal spring is classifiable as a clasp of base metal under heading 8308, HTSUS, or an other article of plastics under heading 3926, HTSUS?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). Under General Rule of Interpretation (GRI) 1, 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.

The HTSUS (2003) provisions under consideration are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.98	Other
*	* * * * *

8308	Clasps, frames with clasps, buckle clasps, hooks, eyes, eyelets and the like and parts thereof, of base metal, of a kind used for * * * or other madeup articles; tubular or bifurcated rivets of base metal; beads and spangles of base metal:
8308.90	Other, including parts:
8308.90.90	Other
*	*
*	*
*	*
*	*
*	*
*	*

As noted above, in NY D87503, at GRI 1, the subject plastic clip was classified under subheading 8308.90.90, HTSUS, as “[c]lasps * * *, of base metal, * * *. Other, including parts: Other[.]” However, at GRI 1, two headings describe the good in part. This clip is described in heading 3926, HTSUS, as an other article of plastics, and heading 8308, HTSUS, as a clasp of base metal. As the plastic clip is *prima facie* classifiable in more than one heading, it is necessary to resort to GRI 2.

GRI 2(a) does not apply. GRI 2(b), in pertinent part, provides:

“Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.”

GRI 3 provides, “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 * * *, 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.”

GRI 3(b) provides, in pertinent part:

“(b) Mixtures, composite goods consisting of different materials or made up of different components, * * *, 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 understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. Customs believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN V to GRI 3(a), in pertinent part, provides that:

“when two or more headings each refer to part only of the materials contained in mixed or composite goods * * * 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 than the others. In such cases, the classification shall be determined by [GRIs] 3(b) or 3(c).”

The subject good is one in which different materials or components form a practically inseparable whole. We must, therefore, resort to GRI 3(b).

EN VII to GRI 3(b), provides that, in

“all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.”

The term “essential character” is not defined within the HTSUS, GRIs or ENs. EN VIII to GRI 3(b), however, provides the following guidance:

“[t]he 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.”

This clip has two plastic sides that form a baseline edge where the two sides meet, and only its spring is made of base metal. *Merriam-Webster’s Collegiate Dictionary*, 10th Ed.,

(1999) (p. 211), defines a “clasp” as: “a device (as a hook) for holding objects or parts together[.]”

EN 83.08 (p. 1378), in pertinent part, provides that the heading includes:

“(C) Clasps, fasteners, and frames with clasps, for handbags, purses, brief-cases, executive-cases or other travel goods, or for books or wrist-watches; * * *.”

EN 83.08(C) describes clasps of base metal used to securely close or join the sides or ends of a good together (*e.g.*, briefcases). Thus, the sides of a briefcase, which when left open leave the briefcase’s interior and contents exposed, are held securely closed by the interconnecting parts of a metal clasp mounted at corresponding points on each side of the case. Unlike the goods described in the heading and EN 83.08(C) the subject plastic clip is not designed to secure a good closed, or secure its contents. The subject clip is designed to be attached to light correspondence or small pieces of notepaper to organize them. The metal spring improves the clip’s capacity to remain in place once it is attached to the article it is intended to highlight. Thus, although this clip has a metal spring, its function does not make the subject good a clasp of base metal described in heading 8308, HTSUS.

Heading 3926, HTSUS, in pertinent part, provides for “[o]ther articles of plastics[.]” This clip is made of plastic except for its spring. Nearly the entire article is plastic in terms of bulk, quantity, and weight.

In NY D87503, we viewed this clip’s metal spring as imparting its essential character, and therefore, it was classified as a clasp of base metal described in heading 8308, HTSUS. We are now of the view that this clip is predominately of plastic, which imparts its essential character, and should be classified accordingly.

EN 39.26, in pertinent part, provides that the heading “covers articles * * * [that] include: (5) Paperweights, paper-knives, blotting pads, pen-rests, bookmarks, etc.” The goods described in EN 39.26 are of a kind used on a table or desk, at the office, school, or home to organize paperwork. As noted, the subject clip has a function complementary to these goods.

At GRI 3(b), we find that the subject plastic clip is classifiable in heading 3926, HTSUS, which provides for, in pertinent part, “other articles of plastics * * * [.]”

Holding:

Based on the foregoing findings, at GRI 3(b), the subject plastic clip with metal spring is classifiable in subheading 3926.90.98, HTSUS, which provides for “[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other[.]”

Effect on Other Rulings:

NY D87503, dated February 16, 1999, is modified as to the plastic clip with metal spring. 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, Director,
Commercial Rulings Division.)

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY,
 BUREAU OF CUSTOMS AND BORDER PROTECTION,
 Washington, DC, March 27, 2003.
 CLA-2 RR:CR:GC 966178 BJB
 Category: Classification
 Tariff No. 3926.90.98

MS. LAUREN HONG
 THE DISNEY STORE, INC.
 101 North Brand Boulevard, Suite 1000
 Glendale, CA 91203-2671

Re: Modification of NY B84870; Plastic clip with metal spring.

DEAR MS. HONG:

This is in reference to New York Ruling B84870, which the Director, Customs National Commodity Specialist Division, New York, New York, issued to you on February 16, 1999. This ruling concerned the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of several articles, including a plastic clip with a metal spring.

We have reviewed the ruling in NY B84870, and have determined the classification with respect to the subject plastic clip is incorrect. This ruling modifies NY B84870 with respect to this good and sets forth the correct classification.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057 (1993), a notice of proposed modification was published on February 19, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 8, proposing to modify NY B84870, dated February 16, 1999, and to revoke the tariff treatment pertaining to the tariff classification of a "plastic clip with a metal spring."

Facts:

The merchandise was identified as a "plastic clip with metal spring," packaged with other goods, including: a plastic box with a lid opening and handle, a lock and key, that when empty may be used as a coin bank; 3 colored pencils; a plastic ruler; a plastic pencil sharpener; a rubber eraser; a sheet of printed stickers; and a small address book. Although packaged together for retail sale, Customs determined that these goods served several different purposes, and were not put up together to meet a particular need, or carry out a specific activity. Therefore, these goods were not a set, as provided for under the HTSUS, and each good was classified separately.

In NY B84870, the subject clip was classified under subheading 8308.90.90, HTSUS, which provides for, "[c]lasps, frames with clasps, buckle clasps, hooks, eyes, eyelets and the like and parts thereof, of base metal, of a kind used for * * * or other madeup articles; tubular or bifurcated rivets of base metal; beads and spangles of base metal: Other, including parts: Other[.]"

Issue:

Whether the subject plastic clip with metal spring is classifiable as a clasp of base metal under heading 8308, HTSUS, or an other article of plastics under heading 3926, HTSUS?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). Under General Rule of Interpretation (GRI) 1, 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.

The HTSUS (2003) provisions under consideration are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.98	Other
*	* * * * *

8308	Clasps, frames with clasps, buckle clasps, hooks, eyes, eyelets and the like and parts thereof, of base metal, of a kind used for * * * or other madeup articles; tubular or bifurcated rivets of base metal; beads and spangles of base metal:
8308.90	Other, including parts:
8308.90.90	Other
*	* * * * *

As noted above, in NY B84870, at GRI 1, the subject plastic clip was classified under sub-heading 8308.90.90, HTSUS, as “[c]lasps * * *, of base metal, * * *: Other, including parts: Other[.]” However, at GRI 1, two headings describe the good in part. This clip is described in heading 3926, HTSUS, as an other article of plastics, and heading 8308, HTSUS, as a clasp of base metal. As the plastic clip is *prima facie* classifiable in more than one heading, it is necessary to resort to GRI 2.

GRI 2(a) does not apply. GRI 2(b), in pertinent part, provides:

“Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.”

GRI 3 provides, “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 * * *, 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.”

GRI 3(b) provides, in pertinent part:

“(b) Mixtures, composite goods consisting of different materials or made up of different components, * * *, 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 understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. Customs believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN V to GRI 3(a), in pertinent part, provides that:

“when two or more headings each refer to part only of the materials contained in mixed or composite goods * * * 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 than the others. In such cases, the classification shall be determined by [GRIs] 3(b) or 3(c).”

The subject good is one in which different materials or components form a practically inseparable whole. We must, therefore, resort to GRI 3(b).

EN VII to GRI 3(b), provides that, in

“all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.”

The term “essential character” is not defined within the HTSUS, GRIs or ENs. EN VIII to GRI 3(b), however, provides the following guidance:

“[t]he 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.”

This clip has two plastic sides that form a baseline edge where the two sides meet, and only its spring is made of base metal. *Merriam-Webster’s Collegiate Dictionary*, 10th Ed.,

(1999) (p. 211), defines a “clasp” as: “a device (as a hook) for holding objects or parts together[.]”

EN 83.08 (p. 1378), in pertinent part, provides that the heading includes:

“(C) Clasps, fasteners, and frames with clasps, for handbags, purses, brief-cases, executive-cases or other travel goods, or for books or wrist-watches; * * *.”

EN 83.08(C) describes clasps of base metal used to securely close or join the sides or ends of a good together (*e.g.*, briefcases). Thus, the sides of a briefcase, which when left open leave the briefcase’s interior and contents exposed, are held securely closed by the inter-connecting parts of a metal clasp mounted at corresponding points on each side of the case. Unlike the goods described in the heading and EN 83.08(C) the subject plastic clip is not designed to secure a good closed, or secure its contents. The subject clip is designed to be attached to light correspondence or small pieces of notepaper to organize them. The metal spring improves the clip’s capacity to remain in place once it is attached to the article it is intended to highlight. Thus, although this clip has a metal spring, its function does not make the subject good a clasp of base metal described in heading 8308, HTSUS.

Heading 3926, HTSUS, in pertinent part, provides for “[o]ther articles of plastics[.]” This clip is made of plastic except for its spring. Nearly the entire article is plastic in terms of bulk, quantity, and weight.

In NY B84870, we viewed this clip’s metal spring as imparting its essential character, and therefore, it was classified as a clasp of base metal described in heading 8308, HTSUS. We are now of the view that this clip is predominately of plastic, which imparts its essential character, and should be classified accordingly.

EN 39.26, in pertinent part, provides that the heading “covers articles * * * [that] include: (5) Paperweights, paper-knives, blotting pads, pen-rests, bookmarks, etc.” The goods described in EN 39.26 are of a kind used on a table or desk, at the office, school, or home to organize paperwork. As noted, the subject clip has a function complementary to these goods.

At GRI 3(b), we find that the subject plastic clip is classifiable in heading 3926, HTSUS, which provides for, in pertinent part, “other articles of plastics * * * [.]”

Holding:

Based on the foregoing findings, at GRI 3(b), the subject plastic clip with metal spring is classifiable in subheading 3926.90.98, HTSUS, which provides for “[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other[.]”

Effect on Other Rulings:

NY B84870, dated February 16, 1999, is modified as to the plastic clip with metal spring. 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, Director,
Commercial Rulings Division.)

[ATTACHMENT G]

DEPARTMENT OF HOMELAND SECURITY,
 BUREAU OF CUSTOMS AND BORDER PROTECTION,
 Washington, DC, March 27, 2003.
 CLA-2 RR:CR:GC 966181 BJB
 Category: Classification
 Tariff No. 3926.90.98

MS. LAUREN HONG
 THE DISNEY STORE, INC.
 101 North Brand Boulevard, Suite 1000
 Glendale, CA 91203-2671

Re: Modification of NY D82271; Plastic clip with metal spring.

DEAR MS. HONG:

This is in reference to New York Ruling D82271, which the Director, Customs National Commodity Specialist Division, New York, New York, issued to you on September 25, 1998. This ruling concerned the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of several articles, including a plastic clip with a metal spring.

We have reviewed the ruling in NY D82271, and have determined the classification with respect to the subject plastic clip is incorrect. This ruling modifies NY D82271 with respect to this good and sets forth the correct classification.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057 (1993), a notice of proposed modification was published on February 19, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 8, proposing to modify NY D82271, dated September 25, 1998, and to revoke the tariff treatment pertaining to the tariff classification of a "plastic clip with metal spring."

Facts:

The merchandise was identified as a "plastic clip with metal spring," packaged with other goods, including: 2 pencils, 9 felt-tipped markers, a plastic ruler, a pencil sharpener, a pair of plastic scissors, and a molded plastic carrying case. Although packaged together, Customs determined that these goods were not put up together to meet a particular need, or carry out a specific activity. Therefore, these goods were not a set as provided for under the HTSUS, and each good was classified separately.

In NY D82271, the subject clip was classified under subheading 8308.90.90, HTSUS, which provides for, "[c]lasp[s], frames with clasps, buckle clasps, hooks, eyes, eyelets and the like and parts thereof, of base metal, of a kind used for * * * or other madeup articles; tubular or bifurcated rivets of base metal; beads and spangles of base metal: Other, including parts: Other[.]"

Issue:

Whether the subject plastic clip with metal spring is classifiable as a clasp of base metal under heading 8308, HTSUS, or an other article of plastics under heading 3926, HTSUS?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). Under General Rule of Interpretation (GRI) 1, 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.

The HTSUS (2003) provisions under consideration are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.98	Other
*	*
*	*
*	*
*	*
*	*
8308	Clasps, frames with clasps, buckle clasps, hooks, eyes, eyelets and the like and parts thereof, of base metal, of a kind used for * * * or other madeup articles; tubular or bifurcated rivets of base metal; beads and spangles of base metal:

8308.90	Other, including parts:
8308.90.90	Other
*	*
*	*
*	*
*	*
*	*
*	*

As noted above, in NY D82271, at GRI 1, the subject plastic clip was classified under subheading 8308.90.90, HTSUS, as “[c]lasp[s] * * *, of base metal, * * *: Other, including parts: Other[.]” However, at GRI 1, two headings describe the good in part. This clip is described in heading 3926, HTSUS, as an other article of plastics, and heading 8308, HTSUS, as a clasp of base metal. As the plastic clip is *prima facie* classifiable in more than one heading, it is necessary to resort to GRI 2.

GRI 2(a) does not apply. GRI 2(b), in pertinent part, provides:

“Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.”

GRI 3 provides, “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 * * *, 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.”

GRI 3(b) provides, in pertinent part:

“(b) Mixtures, composite goods consisting of different materials or made up of different components, * * *, 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 understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. Customs believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN V to GRI 3(a), in pertinent part, provides that:

“when two or more headings each refer to part only of the materials contained in mixed or composite goods * * * 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 than the others. In such cases, the classification shall be determined by [GRIs] 3(b) or 3(c).”

The subject good is one in which different materials or components form a practically inseparable whole. We must, therefore, resort to GRI 3(b).

EN VII to GRI 3(b), provides that, in

“all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.”

The term “essential character” is not defined within the HTSUS, GRIs or ENs. EN VIII to GRI 3(b), however, provides the following guidance:

“[t]he 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.”

This clip has two plastic sides that form a baseline edge where the two sides meet, and only its spring is made of base metal. *Merriam-Webster’s Collegiate Dictionary*, 10th Ed., (1999) (p. 211), defines a “clasp” as: “a device (as a hook) for holding objects or parts together[.]”

EN 83.08 (p. 1378), in pertinent part, provides that the heading includes:

“(C) Clasps, fasteners, and frames with clasps, for handbags, purses, brief-cases, executive-cases or other travel goods, or for books or wrist-watches; * * *.”

EN 83.08(C) describes clasps of base metal used to securely close or join the sides or ends of a good together (*e.g.*, briefcases). Thus, the sides of a briefcase, which when left open leave the briefcase’s interior and contents exposed, are held securely closed by the interconnecting parts of a metal clasp mounted at corresponding points on each side of the case. Unlike the goods described in the heading and EN 83.08(C) the subject plastic clip is not designed to secure a good closed, or secure its contents. The subject clip is designed to be attached to light correspondence or small pieces of notepaper to organize them. The metal spring improves the clip’s capacity to remain in place once it is attached to the article it is intended to highlight. Thus, although this clip has a metal spring, its function does not make the subject good a clasp of base metal described in heading 8308, HTSUS.

Heading 3926, HTSUS, in pertinent part, provides for “[o]ther articles of plastics[.]” This clip is made of plastic except for its spring. Nearly the entire article is plastic in terms of bulk, quantity, and weight.

In NY D82271, we viewed this clip’s metal spring as imparting its essential character, and therefore, it was classified as a clasp of base metal described in heading 8308, HTSUS. We are now of the view that this clip is predominately of plastic, which imparts its essential character, and should be classified accordingly.

EN 39.26, in pertinent part, provides that the heading “covers articles * * * [that] include: (5) Paperweights, paper-knives, blotting pads, pen-rests, bookmarks, etc.” The goods described in EN 39.26 are of a kind used on a table or desk, at the office, school, or home to organize paperwork. As noted, the subject clip has a function complementary to these goods.

At GRI 3(b), we find that the subject plastic clip is classifiable in heading 3926, HTSUS, which provides for, in pertinent part, “other articles of plastics * * * [.]”

Holding:

Based on the foregoing findings, at GRI 3(b), the subject plastic clip with metal spring is classifiable in subheading 3926.90.98, HTSUS, which provides for “[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other[.]”

Effect on Other Rulings:

NY D82271, dated September 25, 1998, is modified as to the plastic clip with metal spring. 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, Director,
Commercial Rulings Division.)

[ATTACHMENT H]

DEPARTMENT OF HOMELAND SECURITY,
 BUREAU OF CUSTOMS AND BORDER PROTECTION,
 Washington, DC, March 27, 2003.
 CLA-2 RR:CR:GC 966182 BJB
 Category: Classification
 Tariff No. 3926.90.98

MS. LAUREN HONG
 THE DISNEY STORE, INC.
 101 North Brand Boulevard, Suite 1000
 Glendale, CA 91203-2671

Re: Modification of NY C86939; Plastic clip with metal spring.

DEAR MS. HONG:

This is in reference to New York Ruling C86939, which the Director, Customs National Commodity Specialist Division, New York, New York, issued to you on April 28, 1998. This ruling concerned the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of several articles, including a plastic clip with a metal spring.

We have reviewed the ruling in NY C86939, and have determined the classification with respect to the subject plastic clip is incorrect. This ruling modifies NY C86939 with respect to this good and sets forth the correct classification.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057 (1993), a notice of proposed modification was published on February 19, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 8, proposing to modify NY C86939, dated April 28, 1998, and to revoke the tariff treatment pertaining to the tariff classification of a "plastic clip with a metal spring."

Facts:

The merchandise was identified as a "plastic clip with metal spring," packaged with other goods, including: forty sheets of heart-shaped memo paper, a pencil sharpener, two pencils, a ruler, an eraser, and a child's molded plastic carrying case. The carrying case, though heart-shaped, was not specially shaped or fitted to contain the other articles. Customs determined that the carrying case was of a type used to contain and transport any of a number of a child's possessions. Customs held that these goods were not mutually complementary, not adapted to one another, and not put up to meet one particular need or carry out a specific activity. Therefore, these goods were not a set as provided for under the HTSUS, and each good was classified separately.

In NY C86939, the subject clip was classified under subheading 8308.90.90, HTSUS, which provides for, "[c]lasps, frames with clasps, buckle clasps, hooks, eyes, eyelets and the like and parts thereof, of base metal, of a kind used for * * * or other madeup articles; tubular or bifurcated rivets of base metal; beads and spangles of base metal: Other, including parts: Other[.]"

Issue:

Whether the subject plastic clip with metal spring is classifiable as a clasp of base metal under heading 8308, HTSUS, or an other article of plastics under heading 3926, HTSUS?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). Under General Rule of Interpretation (GRI) 1, 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.

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.98	Other
*	* * * * *

8308 Clasps, frames with clasps, buckle clasps, hooks, eyes, eyelets and the like and parts thereof, of base metal, of a kind used for * * * or other madeup articles; tubular or bifurcated rivets of base metal; beads and spangles of base metal:

8308.90 Other, including parts:

8308.90.90 Other

As noted above, in NY C86939, at GRI 1, the subject plastic clip was classified under sub-heading 8308.90.90, HTSUS, as “[c]lasps * * *, of base metal, * * *: Other, including parts: Other[.]” However, at GRI 1, two headings describe the good in part. This clip is described in heading 3926, HTSUS, as an other article of plastics, and heading 8308, HTSUS, as a clasp of base metal. As the plastic clip is *prima facie* classifiable in more than one heading, it is necessary to resort to GRI 2.

GRI 2(a) does not apply. GRI 2(b), in pertinent part, provides:

“Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.”

GRI 3 provides, “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 * * *, 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.”

GRI 3(b) provides, in pertinent part:

“(b) Mixtures, composite goods consisting of different materials or made up of different components, * * *, 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 understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. Customs believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN V to GRI 3(a), in pertinent part, provides that:

“when two or more headings each refer to part only of the materials contained in mixed or composite goods * * * 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 than the others. In such cases, the classification shall be determined by [GRIs] 3(b) or 3(c).”

The subject good is one in which different materials or components form a practically inseparable whole. We must, therefore, resort to GRI 3(b).

EN VII to GRI 3(b), provides that, in

“all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.”

The term “essential character” is not defined within the HTSUS, GRIs or ENs. EN VIII to GRI 3(b), however, provides the following guidance:

“[t]he 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.”

This clip has two plastic sides that form a baseline edge where the two sides meet, and only its spring is made of base metal. *Merriam-Webster’s Collegiate Dictionary*, 10th Ed., (1999) (p. 211), defines a “clasp” as: “a device (as a hook) for holding objects or parts together[.]”

EN 83.08 (p. 1378), in pertinent part, provides that the heading includes:

“(C) Clasps, fasteners, and frames with clasps, for handbags, purses, brief-cases, executive-cases or other travel goods, or for books or wrist-watches; * * *.”

EN 83.08(C) describes clasps of base metal used to securely close or join the sides or ends of a good together (*e.g.*, briefcases). Thus, the sides of a briefcase, which when left open leave the briefcase’s interior and contents exposed, are held securely closed by the interconnecting parts of a metal clasp mounted at corresponding points on each side of the case. Unlike the goods described in the heading and EN 83.08(C) the subject plastic clip is not designed to secure a good closed, or secure its contents. The subject clip is designed to be attached to light correspondence or small pieces of notepaper to organize them. The metal spring improves the clip’s capacity to remain in place once it is attached to the article it is intended to highlight. Thus, although this clip has a metal spring, its function does not make the subject good a clasp of base metal described in heading 8308, HTSUS.

Heading 3926, HTSUS, in pertinent part, provides for “[o]ther articles of plastics[.]” This clip is made of plastic except for its spring. Nearly the entire article is plastic in terms of bulk, quantity, and weight.

In NY C86939, we viewed this clip’s metal spring as imparting its essential character, and therefore, it was classified as a clasp of base metal described in heading 8308, HTSUS. We are now of the view that this clip is predominately of plastic, which imparts its essential character, and should be classified accordingly.

EN 39.26, in pertinent part, provides that the heading “covers articles * * * [that] include: (5) Paperweights, paper-knives, blotting pads, pen-rests, bookmarks, etc.” The goods described in EN 39.26 are of a kind used on a table or desk, at the office, school, or home to organize paperwork. As noted, the subject clip has a function complementary to these goods.

At GRI 3(b), we find that the subject plastic clip is classifiable in heading 3926, HTSUS, which provides for, in pertinent part, “other articles of plastics * * * [.]”

Holding:

Based on the foregoing findings, at GRI 3(b), the subject plastic clip with metal spring is classifiable in subheading 3926.90.98, HTSUS, which provides for “[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other[.]”

Effect on Other Rulings:

NY C86939, dated April 28, 1998, is modified as to the plastic clip with metal spring. 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, Director,
Commercial Rulings Division.)

PROPOSED REVOCATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
CLASSIFICATION OF INSULATED FOOD OR BEVERAGE
BAG/STADIUM SEAT CUSHION

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

ACTION: Notice of proposed revocation of a tariff classification ruling letter and revocation of any treatment relating to the classification of a combination insulated food or beverage bag and seat cushion.

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 letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a combination insulated food or beverage bag and seat cushion. Similarly, Customs proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before May 16, 2003.

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

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Textiles Branch, (202) 572-8822.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

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 letter pertaining to the tariff classification of a combination utility pack/cooler bag and seat cushion. Although in this notice, Customs is specifically referring to the revocation of New York Ruling Letter (NY) D85922, dated January 6, 1999 (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 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 (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 HTSUSA. 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 issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY D85922, Customs ruled that the subject goods were classifiable within subheading 9404.90.2000, HTSUSA, which provides for "Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: Other: Pillows, cushions and similar furnishings: Other." Since the issuance of that ruling, Customs has reviewed the classification of this item and has determined that the cited ruling is in error. We have determined that this item is a composite article and should be classified pursuant to a GRI 3(b) analy-

sis with the essential character of the article imparted by the insulated food or beverage bag and not the cushion component. As such, we find that the article is properly classified in subheading 4202.92, HTSUSA, which provides *eo nomine* for insulated food or beverage bags.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY D85922 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 965893 (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 transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

Dated: March 31, 2003.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY
BUREAU OF CUSTOMS AND BORDER PROTECTION,
New York, NY, January 6, 1999.

CLA-2-94:RR:NC:TA:349 D85922
Category: Classification
Tariff No. 9404.90.2000

MS. LINNEA BUCHER
CARMICHAEL INTERNATIONAL SERVICE
533 Glendale Boulevard
Los Angeles, CA 90026-5097

Re: The tariff classification of a stadium seat cushion from Thailand.

DEAR MS. BUCHER:

In your letter dated December 10, 1998 you requested a classification ruling on behalf of Markoff Industries.

The submitted sample is a combination stadium seat cushion and utility pack/cooler bag. The outer shell is made from plastic coated woven nylon. This item folds in the middle and possesses two handles and a detachable shoulder strap secured with plastic buckles used for carrying purposes. When folded, the utility side features two "Velcro" closing pockets, a zippered pocket and a mesh pocket for a 1 liter drink bottle. There are pockets on each side of gusset, one with pen loops and the other with an elasticized umbrella pocket. The utility side has a zippered main compartment which is insulated and lined with vinyl. The cushion side is comprised of a solid piece of foam and is inserted into the cover through a zippered opening. This blue stadium seat cushion measures approximately 13.5 x 15.5 inches when folded. As requested the sample is being returned.

The applicable subheading for the stadium seat cushion will be 9404.90.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for mattress supports;

articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: other: pillows, cushions and similar furnishings: other. The duty rate will be 6 percent ad valorem.

Presently, the above subheading is not assigned a textile category designation and items classified therein are not subject to quota or visa requirements.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist John Hansen at 212-466-5854.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
Washington, DC.

CLA-2 RR:CR:TE 965893 ASM
Category: Classification
Tariff No. 4202.92.1000

MS. LINNEA BUCHER
CARMICHAEL INTERNATIONAL SERVICE
533 Glendale Boulevard
Los Angeles, CA 90026-5097

Re: Revocation of NY D85922; The tariff classification of a combination insulated food or beverage bag/stadium seat cushion from Thailand.

DEAR MS. BUCHER:

This is in regard to New York Ruling Letter (NY) D85922, issued to you on January 6, 1999. We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. This ruling revokes NY D85922 by providing the correct classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) for an article which combines an insulated food or beverage bag and a stadium seat cushion.

Facts:

The subject goods are described as a combination utility pack/cooler bag and stadium seat cushion with an outer shell made from plastic coated woven nylon. According to the description contained in NY D85922, the item folds in the middle and possesses two handles and a detachable shoulder strap secured with plastic buckles used for carrying purposes. When folded, the utility side features two "Velcro"™ closing pockets, a zippered pocket and a mesh pocket for a 1 liter drink bottle. There are pockets on each side of the gusset, one with pen loops and the other with an elasticized umbrella pocket. The utility side has a zippered main compartment that is insulated and lined with vinyl. The cushion side is comprised of a solid piece of foam and is inserted into the cover through a zippered opening. The blue stadium seat cushion measures approximately 13.5 inches x 15.5 inches when folded.

In NY D85922, Customs found that the subject goods were classified within subheading 9404.90.2000, HTSUSA, which provides for "Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: Other: Pillows, cushions and similar furnishings: Other."

Issue:

What is the proper classification for the merchandise?

Law and Analysis:

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

In Headquarters Ruling Letter (HQ) 962297, dated April 5, 2002, an article identified as the “Adventure Pack” is described as a portable, soft-sided, insulated cooler bag, with a detachable stadium seat cushion. In HQ 962297, Customs determined that the “Adventure Pack” qualified as a composite good and applied a GRI 3(b) analysis. Thus, it was finally determined that the essential character of the merchandise was afforded by the insulated cooler bag and that the article was properly classified in subheading 4202.92.1000, HTSUSA, which provides for “* * * Insulated food or beverage bags: Other.” As we noted in HQ 962297, pursuant to Presidential Proclamation 7515 of December 18, 2001, effective January 10, 2002, the term “insulated food or beverage bags” is now included in the text of heading 4202, HTSUSA.

In NY D85922 the subject article was also described as a combination cooler bag and stadium seat cushion with an outer shell made from plastic coated woven nylon. However, Customs erroneously classified the article pursuant to the pillow cushion or similar furnishing within subheading 9404.90.2000, HTSUSA. Thus, the basis for the revocation of NY D85922 is that HQ 962297 has set forth legal analysis which characterizes a substantially similar article as a “composite good” pursuant to a GRI 3(b) analysis and finally determined that the essential character of the article was represented by the insulated food or beverage bag component *not* the pillow/cushion component.

In view of the foregoing, it is our determination that NY D85922 incorrectly classified the combination cooler bag/stadium seat cushion. The article is a composite good and in applying a GRI 3(b) analysis we find that the essential character of the good is conveyed by the insulated food or beverage bag component which is *eo nomine* provided for in subheading 4202.92.10, HTSUSA. Finally, we are presuming that the article, which is described as having an outer shell made from plastic coated woven nylon, has an outer surface of plastic. If this is incorrect, you should advise this office during this notice period and prior to publication of the final notice in the CUSTOMS BULLETIN.

Holding:

NY D85922 is hereby revoked.

The subject merchandise, identified in NY D85922 as a combination utility pack/cooler bag and stadium seat cushion, is correctly classified in subheading 4202.92.1000, HTSUSA, which provides for “Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Insulated food or beverage bags: Other”. The general column one duty rate is 3.4 percent *ad valorem*.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO TARIFF
CLASSIFICATION OF BATTERY PACKS FOR MOBILE
CELLULAR TELEPHONES

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

ACTION: Notice of proposed revocation of ruling letter and treatment relating to tariff classification of battery packs for mobile cellular telephones.

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 pertaining to the tariff classification of battery packs for mobile cellular telephones 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 action.

DATE: Comments must be received on or before May 16, 2003.

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

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch, (202) 572-8780.

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 responsi-

bilities 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 a ruling letter pertaining to the classification of battery packs for mobile cellular telephones. Although in this notice Customs is specifically referring to one ruling, HQ 965130, 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, 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 HQ 965130 dated March 27, 2002, set forth as Attachment A to this document, Customs classified the battery packs in subheading 8529.90.99, HTSUS, as: "Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528: Other: Other: Other."

It is now Customs position that the battery packs are classified in subheading 8507.80.80, HTSUS, as: "Electric storage batteries, including separators therefor * * *: Other storage batteries: Other." Proposed HQ 966268 revoking HQ 965130 is set forth as Attachment B.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke HQ 965130 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 966268. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously ac-

corded by Customs to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: March 31, 2003.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
Washington, DC, March 27, 2002.

CLA-2 RR:CR:GC 965130 AML
Category: Classification
Tariff No. 8529.90.99

PORT DIRECTOR
U.S. CUSTOMS SERVICE
OTAY MESA
*9777 Via de la Amistad
San Diego, CA 92154*

Re: Protest 2501-01-100012; Battery packs for mobile cellular telephones.

DEAR PORT DIRECTOR:

The following is our decision regarding Protest 2501-01-100012, dated February 14, 2001, filed by counsel on behalf of Sanyo Energy (USA) Corporation, against your classification of battery packs for mobile cellular telephones, under the Harmonized Tariff Schedule of the United States (HTSUS). Technical drawings were provided for our consideration.

Facts:

The articles at issue are battery packs (model #s F41000729 (Nokia), F41000712 (Nokia), and F41000934 (Qualcomm)) that are specifically designed for use with mobile cellular telephones. We confirmed with your office that the fourth model, F41000894 (Nokia), is not included in any of the subject entries; however, we confirmed that the model (albeit under model 166060501, which the protestant states is identical to F41000894) is subject of a protest (5501-01-100073) at the port of Dallas/Ft. Worth. Because of the similarity of articles and issues, we include that model in the instant analysis. The protestant describes the articles as follows:

The subject battery packs are specially designed to be used with particular models of mobile cellular phones. Each model of battery pack is made specifically for one cellular telephone manufacturer and can only be used with selected models of that manufacturer's phones. There is no commercial use for the battery packs other than with the cellular telephones for which they were specifically produced.

The battery packs, while manufactured to be used solely with specific brands and models of mobile cellular telephone, have the following similar components: one or more rechargeable storage batteries, a protective device that can shut off the battery pack when it reaches extreme temperatures (either heat or cold), a printed circuit board assembly ("PCBA") with functions that vary with the requirements needed and the model of phone, and a plastic housing that provides protection and housing for the components previously mentioned as well as serving as a significant portion of the back/body of the telephone.

The specific models of battery packs have the following components in addition to the battery cells:

Model F41000712: contains 3 nickel metal hydride (NiMH) batteries separated by a breaker to protect against temperature anomalies, and the PCBA which is comprised of a resistor (which enables the phone to identify the type of battery pack attached to the telephone allowing proper charging through the charging circuit), a thermistor (which prevents batteries from charging or discharging at high or low temperatures), a capacitor (a filter which prevents signal noise). The plastic housing comprises approximately 75% of the back of the telephone.

Model F41000729: is similar to model F41000712 in size and shape, uses NiMH batteries equipped with a breaker, contains a small motor that provides a vibrate function, and the PCBA which is comprised of a thermistor, five resistors, two diodes, five capacitors, a transistor and a printed circuit board. Some of the components provide the same functions described in F41000712; others process incoming calls. The plastic housing comprises approximately 75% of the back of the telephone.

Model F41000934: utilizes a lithium ion battery, with a PCBA comprised of four resistors, five capacitors, a transistor and a thermistor, as well as an application specific integrated circuit (ASIC). The ASIC prevents overcharging, short circuits, and temperature anomaly damage. There is an additional component in this model called an "HS-BUS." It is an assembly consisting of six metal pins in a plastic housing, four metal contacts, and two leads that connect to the PCBA. The plastic housing comprises approximately 40% of the back of the telephone.

Model F411000894 (or 166060501): utilizes a lithium ion battery and contains a poly-switch to protect it against temperature anomalies. The PCBA is comprised of fifteen components: four resistors, seven capacitors, a diode, a transistor, a thermistor, as well as an application specific integrated circuit (ASIC). The ASIC performs similar functions to that in F41000934. The components are enclosed and sealed in a plastic housing which is designed to fit into a cavity in the telephone.

The articles were entered in January and February, 2000, and the entries were liquidated on November 17, December 1 and 22, 2000, with classification under subheading 8507.80.80, HTSUS, which provides for electric storage batteries, including separators therefor, whether or not rectangular (including square) parts thereof, other storage batteries, other. The protest was filed on February 14, 2001.

Issue:

Whether the battery packs at issue are classifiable as storage batteries under heading 8507, HTSUS, or as other parts suitable for use solely or principally with the apparatus of headings 8525 to 8528, under heading 8529, HTSUS?

Law and Analysis:

Initially we note that the protest was timely filed (i.e., within 90 days after but not before the notice of liquidation; see 19 U.S.C. 1514 (c)(3)(A)) and the matter is protestable (see 19 U.S.C. 1514 (a)(2) and (5)).

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 HTSUS provisions under consideration are as follows:

8507	Electric storage batteries, including separators therefor, whether or not rectangular (including square); parts thereof:
8507.80	Other storage batteries:
8507.80.80	Other.
*	*
*	*
*	*
*	*
*	*
8529	Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528:
8529.90	Other:
8529.90.99	Other.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding

on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise. Customs believes the ENs should always be consulted. See T.D. 89 80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The battery packs are clearly classifiable in Chapter 85, which provides for, inter alia, electrical machinery and equipment and parts thereof. Section XVI (in which Chapter 85 is found), Note 2, HTSUS, states that:

[s]ubject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

(a) Parts which are goods included in any of the headings of chapters 84 and 85 (other than headings 8485 and 8548) are in all cases to be classified in their respective headings;

(b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;

(c) All other parts are to be classified in heading 8485 or 8548.

Subject to certain exceptions not relevant here, goods that are identifiable parts of machines or apparatus of Chapter 84 or Chapter 85 are classifiable in accordance with Section XVI, Note 2, HTSUS. *Nidec Corporation v. United States*, 861 F. Supp. 136, aff'd, 68 F.3d 1333 (1995). Parts, which are goods included in any of the headings of Chapters 84 and 85, are in all cases to be classified in their respective headings. See Note 2(a). Other parts, if suitable for use solely or principally with a particular machine, or with a number of machines of the same heading, are to be classified with the machines of that kind. See Note 2(b).

The protestant alleges that the articles in question are parts that are suitable for use solely or principally with a particular kind of electronic device: a mobile cellular telephone. Therefore, in accordance with the section note, we must determine whether the articles are classifiable as electric storage batteries or as parts of a mobile cellular telephone.

The ENs to heading 8507, HTSUS, provide, in pertinent part, as follows:

Electric accumulators (storage batteries) are used to store electricity and supply it when required. A direct current is passed through the accumulator producing certain chemical changes (charging); when the terminals of the accumulator are subsequently connected to an external circuit these chemical changes reverse and produce a direct current in the external circuit (discharging). This cycle of operations, charging and discharging, can be repeated for the life of the accumulator.

Accumulators consist essentially of a container holding the electrolyte in which are immersed two electrodes fitted with terminals for connection to an external circuit. In many cases the container may be subdivided, each subdivision (cell) being an accumulator in itself; these cells are usually connected together in series to produce a higher voltage. A number of cells so connected is called a battery. A number of accumulators may also be assembled in a larger container.

* * * * *

The protestant states that the instant merchandise will be used to power specific models of cellular phones. In support of this contention, the protestant states that the battery packs are designed and manufactured for use with a specific brand and model of cellular telephone and for no other purpose. We find, in accordance with Note 2(b) to Section XVI, that the articles are "solely or principally" intended for such use.

In Headquarters Ruling Letter (HQ) 963208, dated July 14, 2000, we noted that, in relation to headings 8506 and 8507, HTSUS, that:

[T]here appears to be some ambiguity in the use of the terms "cells" and "batteries," both in the tariff headings themselves, and to a lesser extent, in the ENs. Neither term is defined in either the tariff or the ENs. A tariff term that is not defined in the HTSUS or in the ENs is construed in accordance with its common and commercial meaning. *Nippon Kogaku (USA) Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982). Reference to lexicographic author-

ities is proper when determining the meaning of a tariff term. *Hasbro Industries, Inc. v. U.S.*, 703 F. Supp. 941 (CIT 1988), *aff'd*, 879 F.2d 838 (1989).

In HQ 963208, we cited the following definitions of the term “battery”:

Van Nostrand’s Scientific Encyclopedia (D. Van Nostrand Company, Inc., 1968) describes a “battery” as follows:

The most common usage of the word is in reference to a collection of chemical cells, normally connected in a series, for the production or storage of electrical energy.

The McGraw Hill Multimedia Encyclopedia of Science and Technology (Version 2.0, © 1995) defines “battery,” as follows:

A device which transforms chemical energy into electric energy. The term is usually applied to a group of two or more electric cells connected together electrically. In common usage, the term battery is also applied to a single cell, such as a flashlight battery.

The subject articles are not “single cells such as a flashlight battery.” Instead, the cells that store power are components (combined in a housing that comprises a significant portion of the body of the phone with a temperature sensor and a PCBA) in a distinct article designed for use solely with specific models of cellular phones. While we are cognizant of the fundamental and longstanding tariff classification principle that Congress did not intend to foreclose the classification of future innovations and technological advancements in tariff provisions (See *Simmon Omega, Inc. v. United States*, 83 Cust. Ct. 14, C.D. 4815 (1979)), we believe that the articles in question are more aptly described as parts of cellular telephones than as “batteries.” Articles that are integral, constituent components of another article, without which that article could not operate in its intended capacity, have been held to be “parts” under the HTSUS. See *United States v. Willoughby Camera Stores, Inc.*, 21 CCPA 322 (1933), *Bauerhin Technologies Ltd., et al v. United States*, 110 F.3d. 774 (Fed. Cir. 1997), and related cases.

Mobile cellular telephones are classifiable under heading 8525, HTSUS. The subject battery packs, which have specific characteristics and are designed and used solely with specific models and brands of mobile cellular telephone, are parts of mobile cellular telephones. They comprise significant portions of the back/body of the telephones and contain components that control and enhance integral functions of the articles. Not all battery packs are “parts” of the articles for which they are designed and manufactured to provide power. That determination can only be made on a case-by-case basis. See for example HQ 954061, dated May 13, 1993, in which we held that a general use battery pack not designed for any specific purpose and not similar in construction to the subject goods was classifiable under heading 8507, HTSUS. See also HQ 958944, dated February 11, 1998, in which we held that a battery pack specifically designed to operate radio-controlled toy vehicles was classifiable under heading 9503, HTSUS. HQ 958944 noted that the tariff classification was based on the particular facts presented in the matter.

In an effort to achieve uniformity in the interpretation of the Harmonized System (HS) at the international level, Customs regards rulings from other countries that classify identical or substantially similar merchandise as instructive. However, such rulings do not constitute the official interpretation of the HS. For this and other reasons, these rulings shall not be treated as dispositive and Customs is not bound by them. Nevertheless, a ruling from Revenue Canada was brought to our attention by counsel for the protestant. In the ruling (*Nokia Products Ltd. v. Deputy Minister of National Revenue*, Appeal No. AP-99-082 (July 26, 2000)), the Canadian International Trade Tribunal (CITT) classified cellular telephone battery packs that are substantially similar in design and function to those at issue under heading 8529 of the Canadian Tariff (and not under heading 8507 of the Canadian Tariff). The Canadian ruling is consistent with our classification under the HTSUS.

Holding:

Under the authority of GRI 1 and Section XVI, Note 2(b), HTSUS, the battery packs for use with mobile cellular phones are classified under subheading 8529.90.99, HTSUS, which provides for parts suitable for use solely or principally with the apparatus of headings 8525 to 8528; other: other.

The protest should be GRANTED. In accordance with Section 3A(11)(b) of Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, you are to mail this decision, together with the Customs Form 19, to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry or entries in accordance

with the decision must be accomplished prior to mailing the decision. Sixty (60) days from the date of the decision, the Office of Regulations and Rulings will make the decision available to Customs personnel, and to the public on the Customs Home Page on the World Wide Web at www.customs.gov, by means of the Freedom of Information Act, and other methods of public distribution.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
Washington, DC.

CLA-2 RR:CR:GC 966268 GOB
Category: Classification
Tariff No. 8507.80.80

GAIL T. CUMINS
SHARRETT, PALEY, CARTER & BLAUVELT, PC.
67 Broad Street
New York, NY 10004

Re: Revocation of HQ 965130; Battery Packs for Mobile Cellular Telephones.

DEAR MS. CUMINS:

This letter is with respect to HQ 965130 dated March 27, 2002, issued with respect to Protest 2502-02-100012. You filed that protest on behalf of Sanyo Energy (USA) Corporation. We have reviewed the classification in HQ 965130 and have determined that it is incorrect. This ruling sets forth the correct classification. This ruling has no effect on the entries which were the subject of Protest 2502-02-100012.

Facts:

In HQ 965130, the battery packs were described as follows:

The articles at issue are battery packs (model #s F41000729 (Nokia), F41000712 (Nokia), and F41000934 (Qualcomm) that are specifically designed for use with mobile cellular telephones

* * * * *

The battery packs, while manufactured to be used solely with specific brands and models of mobile cellular telephone[s], have the following similar components: one or more rechargeable storage batteries, a protective device that can shut off the battery pack when it reaches extreme temperatures (either heat or cold), a printed circuit board assembly ("PCBA") with functions that vary with the requirements needed and the model of phone, and a plastic housing that provides protection and housing for the components previously mentioned as well as serving as a significant portion of the back/body of the phone.

In HQ 965130, we classified the battery packs in subheading 8529.90.99, HTSUS, as: "Parts suitable for use solely or principally with the apparatus of headings 8525 to 8529: Other: Other: Other."

Issue:

Are the subject battery packs for mobile cellular telephones provided for in heading 8507, HTSUS, as electric storage batteries, or in heading 8529, HTSUS, as parts suitable for use solely or principally with the apparatus of headings 8525 to 8529?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). 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's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's 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:

8507	Electric storage batteries, including separators therefor, whether or not rectangular (including square); parts thereof:
8507.80	Other:
8507.80.80	Other
*	* * * * *
8529	Parts suitable for use solely or principally with the apparatus of headings 8525 to 8529:
8529.90	Other:
	Other:
8529.90.99	Other

Additional U.S. Rule of Interpretation 1(c) provides as follows:

1. In the absence of special language or context which otherwise requires:

(c) a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for "parts" or "parts and accessories" shall not prevail over a specific provision for such part or accessory;

Note 2 to Section XVI, HTSUS, provides in pertinent part as follows:

Subject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

(a) Parts which are goods included in any of the headings of chapters 84 and 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8485, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;

(b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate
* * *

(c) All other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate, or failing that, in heading 8485 or 8548.

In HQ 965130 we referred to a ruling from Revenue Canada (*Nokia Products Ltd. v. Deputy Minister of National Revenue*, Appeal No. AP-99-082 (July 26, 2000)) in which the Canadian International Trade Tribunal classified cellular telephone battery packs in heading 8529 of the Canadian Tariff. This issue, and the Revenue Canada position, were recently considered by the Harmonized System Committee. In HSC 30 in November 2002 (Annex H/26 to Doc. NCO655E2), the Harmonized System Committee, by a vote of 40 to 0 with two abstentions, decided that battery packs for cellular telephones were classified in heading 8507, as opposed to heading 8529, by application of GRI 1. As stated in T.D. 89-80, decisions in the *Compendium of Classification Opinions* should be treated in the same manner as the EN's, i.e., while neither legally binding nor dispositive, they provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. T.D. 89-80 further states that EN's and decisions in the *Compendium of Classification Opinions* "should receive considerable weight."

In HQ 953767 dated April 19, 1993, Customs classified a cellular telephone battery in subheading 8507.30.00, HTSUS.

In NY D83733 dated November 18, 1998, Customs classified a lithium-ion rechargeable battery for a cellular telephone in subheading 8507.80.80, HTSUS.

Subject to certain exceptions that are not relevant here, goods that are identifiable as parts of machines or apparatus of Chapter 84 or Chapter 85 are classifiable in accordance with Note 2 to Section XVI, HTSUS. See *Nidec Corporation v. United States*, 861 F. Supp. 136, *aff'd* 68 F. 3d 1333 (1995). Parts which are goods included in headings of Chapters 84

and 85 are in all cases to be classified in their respective headings. *See* Note 2(a) to Section XVI, HTSUS.

Pursuant to Additional U.S. Rule of Interpretation 1(c) and Note 2 to Section XVI, HTSUS, we find that the subject battery packs for mobile cellular telephones are provided for in heading 8507, HTSUS, and are classified in subheading 8507.80.80, HTSUS, as: “Electric storage batteries, including separators therefor, whether or not rectangular (including square); parts thereof: Other: Other.”

This determination is consistent with the Harmonized System Committee decision described above.

As indicated above, this ruling has no effect on the entries which were the subject of Protest 2502-02-100012, as Customs no longer has jurisdiction over those entries. *See San Francisco Newspaper Printing Co. v. United States*, 620 F. Supp. 738 (CIT 1985).

Holding:

The subject battery packs for mobile cellular telephones are provided for in heading 8507, HTSUS, and are classified in subheading 8507.80.80, HTSUS, as: “Electric storage batteries, including separators therefor, whether or not rectangular (including square); parts thereof: Other: Other.”

Effect on Other Rulings:

HQ 965130 is revoked.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF SANDBOX COVERS

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

ACTION: Notice of revocation of classification ruling letters and treatment relating to the classification of sandbox covers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking two rulings pertaining to the tariff classification under the Harmonized Tariff Schedule of the United States (“HTSUS”), of sandbox covers. Similarly, Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. Notice of the proposed revocation was published on January 29, 2003, Vol. 37, No. 5, of the CUSTOMS BULLETIN. No comments were received.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 16, 2003.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Bornstein, General Classification Branch, (202) 572-8786.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice proposing to revoke HQ 961120, dated October 18, 1998, and NY I81451, dated May 22, 2002, which classified sandbox covers in subheading 9503.90.00, HTSUS, was published on January 29, 2003, Volume 37, Number 5, of the CUSTOMS BULLETIN. No comments were received in response to this notice.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by the Customs Service 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 the comment period. An importer's failure to advise the Customs Service 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 im-

portations of merchandise subsequent to the effective date of the final notice of this proposed action.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking HQ 961120 and NY I81451, and any other ruling not specifically identified, in order to reflect the proper classification of sandbox covers pursuant to the analysis for in Headquarters Ruling Letters (HQs) 966135 and 966140, set forth as attachments (Attachments A and B, respectively) to this notice. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

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

Dated: March 28, 2003.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY
BUREAU OF CUSTOMS AND BORDER PROTECTION,
Washington, DC, March 28, 2003.

CLA-2 RR:CR:GC 966135 BJB
Category: Classification
Tariff No. 9506.99.60

MR. WILLIAM C. NEAL
THE LITTLE TIKES COMPANY
2180 Barlow Road
Hudson, OH 44236

Re: Revocation of HQ 961120; Sandbox covers.

DEAR MR. NEAL:

On October 14, 1998, this office issued you Headquarters Ruling Letter (HQ) 961120, classifying a "sandbox canopy and cover" under the Harmonized Tariff Schedule of the United States (HTSUS), in subheading 9503.90.00, HTSUS, as "[o]ther toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: [o]ther: [p]arts and accessories[.]"

We have reviewed the ruling in HQ 961120, and have determined the classification to be incorrect. This ruling revokes HQ 961120 and sets forth the correct classification.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057 (1993), a notice of proposed modification was published on January 29, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 5, proposing to revoke HQ 961120, dated October 14, 1998, and to revoke the tariff treatment pertaining to the tariff classification of a "sand box canopy and cover."

Facts:

The merchandise is identified as a sun canopy and cover for a sandbox, model #682570000 (sandbox cover), made for use with the "Sun & Shade Sandbox," model

#4850. The sandbox cover is made of “either nylon or polyester woven fabric” measuring approximately 40-inches by 42-inches. The cover has four textile fabric tabs, each with a hemmed hole, to secure the cover to plastic buttons attached at the tops of the sandbox’s four posts.

The cover is designed to provide shade as a canopy when the sandbox is in use, and protective cover, attached to the base of the sandbox, when it is not.

Issue:

Whether the sandbox cover is classifiable under heading 9503, HTSUS, as “[o]ther toys; * * *; parts and accessories thereof[.]” heading 9506, HTSUS, as “outdoor games, not specified or included elsewhere in this chapter; * * *; parts and accessories thereof[.]” or elsewhere in the HTSUS?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). Under General Rule of Interpretation (GRI) 1, 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.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. Customs believes the ENs should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The HTSUS (2003) provisions under consideration are as follows:

6307	Other made up articles, including dress patterns:
6307.90	Other:
6307.90.98	Other
*	* * * * *
9503	Other toys; reduced-size (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:
9503.90	Other
*	* * * * *
9506	Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:
	Other:
9506.99	Other:
9506.99.60	Other
*	* * * * *

An article is to be classified according to its condition as imported. See *XTC Products, Inc. v. United States*, 771 F. Supp. 401, 405 (1991). See also *United States v. Citroen*, 223 U.S. 407 (1911). In its condition, as imported, the subject good is a sandbox cover made of nylon or polyester fabric.

At GRI 1, heading 6307, HTSUS, provides for “[o]ther made up articles, including dress patterns[.]” However, Note 1(t) to Section XI, (which covers heading 6307, HTSUS), provides that the section does not cover: “[a]rticles of chapter 95 (for example, toys, games, sports requisites and nets)[.]” Therefore, if the sandbox cover is a good classifiable under heading 9503, or 9506, HTSUS, it cannot be classifiable under Chapter 63, HTSUS.

Heading 9503, HTSUS, provides for, in pertinent part, “[o]ther toys * * *; parts and accessories thereof[.]” and heading 9506, HTSUS, provides for, in pertinent part, “[a]rticles and equipment for * * * other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; * * *; parts and accessories thereof[.]”

Since articles and equipment for outdoor playground games provide some amusement, the issue is whether or not the sandbox provides the “amusement” and “play” of an “other toy” described in heading 9503, HTSUS. The determination of whether the sandbox (model 4850), for which the subject cover is designed, is classifiable as an “other toy” or as an “outdoor game,” is not *prima facie* clear.

In HQ 961120, the issue before Customs was whether the subject sandbox cover was an accessory to a sandbox. Customs determined that the cover was classifiable in heading 9503, HTSUS, which provides for, in pertinent part, “parts or accessories” of “[o]ther toy[s.]” The sandbox, as *dicta*, was classified in heading 9503, HTSUS, as an “[o]ther toy[.]”

With regard to heading 9503, HTSUS, the term “toy” is not specifically defined in the tariff, or the ENs. The ENs to Chapter 95, HTSUS, provide that: “this chapter covers toys of all kinds whether designed for the amusement of children or adults.”

It is Customs position that a toy is essentially a plaything, something that is intended and designed for the amusement of children or adults, and which by its very nature and character is reasonably fitted for no other purpose. Customs views the “amusement” requirement as indicating that toys should be designed and used principally for amusement and that they not serve a utilitarian purpose. *See* Additional U.S. Rule of Interpretation 1(a), HTSUS. Further, Customs defines “principal use” as that use which exceeds each other single use of the article.

A sandbox is designed to hold sand in a prescribed area and provide a play environment for children’s playground games. A sandbox itself does not provide the manipulative play value or frivolous amusement characteristic of toy playthings. In this case, children play with the sand in the sandbox, they do not play with the sandbox. Any amusement derived from playing in the sandbox, *e.g.*, from its shape, digging in the sand, and tumbling, is incidental or secondary to its utility of providing a play environment and keeping the sand in one area on the playground. Thus, a sandbox, in its entirety, is not a toy “designed and used principally for amusement” and cannot be classifiable under heading 9503, HTSUS.

Heading 9506, HTSUS, in pertinent part, provides for articles and equipment for outdoor games, not specified elsewhere in the chapter. This describes certain outdoor playground equipment and games. Sandboxes are specifically designed for outdoor playground use and therefore fit within the scope of the heading.

EN 95.06(B), in pertinent part, provides that “[t]his heading covers:

(B) **Requisites for other sports and outdoor games (other than toys presented in sets, or separately, of heading 95.03) * * * [.]”**

* * * * *
 (12) Equipment of a kind used in children’s playgrounds (e.g., swings, slides, see-saws and giant strides).”

EN 95.06 (B)(12) describes specific examples of equipment of a kind used in children’s playgrounds, including swings, slides, and see-saws. This sandbox is made of plastic; sturdy enough to hold 300 pounds of sand. It is also made to be stored out-of-doors in all kinds of weather. It has rounded corners and surfaces designed for child safety. Sandboxes, and the swings, slides, and see-saws described in EN 95.06 (B)(12), all provide outdoor activity bases on children’s playgrounds that are similar in nature. Thus, the sandbox is specifically described under heading 9506, HTSUS, as articles and equipment for outdoor games.

Note 3, Chapter 95, HTSUS, provides that subject to Note 1, Chapter 95, “parts and accessories which are suitable for use solely or principally with articles of this chapter are to be classified with those articles.” General ENs to Chapter 95, HTSUS, provide, in pertinent part, that “[e]ach of the headings of this Chapter also covers identifiable parts and accessories of articles of this Chapter which are suitable for use solely or principally therewith, and provided they are not articles excluded by Note 1 to this Chapter.” (Emphasis in the original). Sandbox covers are not excluded by Note 1 to Chapter 95, HTSUS.

The United States Court of Appeals for the Federal Circuit has held that canopies solely dedicated for use with child safety seats, and not designed or sold to be used independently, were properly classified as “parts” of the car safety seats (*Bauerhin Technologies Ltd. Partnership v. United States*, 110 F.3d 774 (Fed. Cir. 1997)). Like the safety seat canopies in *Bauerhin*, the subject sandbox covers are solely dedicated for use with LTC sandboxes, specifically designed to be securely attached to the tops of the sandbox’s four poles or to the sides of the box. Similarly, the subject cover is not designed or sold to be used independently.

Thus, the sandbox cover is classifiable under heading 9506, HTSUS, which provides for, in pertinent part, “[a]rticles and equipment for * * * outdoor games, not specified or included elsewhere in this chapter; * * *; parts and accessories thereof[.]” Having established that the subject merchandise satisfies the terms provided in heading 9506, HTSUS, at GRI 1, consideration of any other headings is precluded.

Our determination is supported by New York Ruling (NY) 895598, dated March 28, 1994, where Customs determined that “equipment principally designed for use by children in an outdoor playground activity is classified for tariff purposes in Heading 9506, HTSUS[.]”

Holding:

Based on the foregoing findings, at GRI 1, the subject sandbox cover, model #682570000, is classifiable in subheading 9506.99.60, HTSUS, which provides for “[a]rticles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Other: * * * Other[.]”

Effect on Other Rulings:

HQ 961120, dated October 14, 1998, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
Washington, DC, March 28, 2003.
CLA-2 RR:CR:GC 966140 BJB
Category: Classification
Tariff No. 9506.99.60

MS. HOPE BAILEY
SCHENKER, INC.
*1300 Diamond Springs Road
Virginia Beach, VA 23455*

Re: Revocation of HQ NY I81451; Sandbox cover.

DEAR MS. BAILEY:

This is in reference to New York Ruling Letter (NY) I81451, issued to you on behalf of The Little Tikes Company (LTC), on May 22, 2002, by the Director, Customs National Commodity Specialist Division, New York, New York, concerning the classification of a “sandbox cover,” under the Harmonized Tariff Schedule of the United States (HTSUS).

In NY I81451, it was determined that a sandbox cover was classifiable under subheading 6307.90.98, HTSUS (2002), as “[o]ther made up articles, including dress patterns: Other: Other[.]”

We have reviewed the ruling in NY I81451, and have determined the classification to be incorrect. This ruling revokes NY I81451 and sets forth the correct classification.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057 (1993), a notice of proposed modification was published on January 29, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 5, proposing to revoke NY I81451, dated May 22, 2002, and to revoke the tariff treatment pertaining to the tariff classification of a “sandbox cover.”

Facts:

The merchandise was identified as a cover of man-made textile panels sewn together, and designed, for a sandbox (sandbox cover), measuring approximately 50-inches by 50-inches square. The edges of the cover are hemmed with an elastic fabric sewn into each corner and textile straps attached to one side of the cover to secure it to the sandbox.

Issue:

Whether the sandbox cover is classifiable under heading 6307, HTSUS, as “[o]ther made up articles[;]” 9503, HTSUS, as “[o]ther toys; * * *; parts and accessories thereof[;]”

heading 9506, HTSUS, as “outdoor games, not specified or included elsewhere in this chapter; * * *; parts and accessories thereof[;]” or elsewhere in the HTSUS?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). Under General Rule of Interpretation (GRI) 1, 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.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. Customs believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The HTSUS (2003) provisions under consideration are as follows:

6307	Other made up articles, including dress patterns:
6307.90	Other:
6307.90.98	Other
*	* * * * *
9503	Other toys; reduced-size (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:
9503.90	Other
*	* * * * *
9506	Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:
	Other:
9506.99	Other:
9506.99.60	Other
*	* * * * *

An article is to be classified according to its condition as imported. *See XTC Products, Inc. v. United States*, 771 F. Supp. 401, 405 (1991). *See also United States v. Citroen*, 223 U.S. 407 (1911). In its condition, as imported, the subject good is a sandbox cover made of nylon or polyester fabric.

At GRI 1, heading 6307, HTSUS, provides for “[o]ther made up articles, including dress patterns[.]” However, Note 1(t) to Section XI, (which covers heading 6307, HTSUS), provides that the section does not cover: “[a]rticles of chapter 95 (for example, toys, games, sports requisites and nets)[.]” Therefore, if the sandbox cover is a good classifiable under heading 9503, or 9506, HTSUS, it cannot be classifiable under Chapter 63, HTSUS.

Heading 9503, HTSUS, provides for, in pertinent part, “[o]ther toys * * *; parts and accessories thereof[.]” and heading 9506, HTSUS, provides for, in pertinent part, “[a]rticles and equipment for * * * other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; * * *; parts and accessories thereof[.]”

Since articles and equipment for outdoor playground games provide some amusement, the issue is whether or not the sandbox provides the “amusement” and “play” of an “other toy” described in heading 9503, HTSUS. The determination of whether a sandbox for which the subject cover is designed is classifiable as an “other toy” or as an “outdoor game,” is not *prima facie* clear.

With regard to heading 9503, HTSUS, the term “toy” is not specifically defined in the tariff, or the ENs. The ENs to Chapter 95, HTSUS, provide that: “this chapter covers toys of all kinds whether designed for the amusement of children or adults.”

It is Customs position that a toy is essentially a plaything, something that is intended and designed for the amusement of children or adults, and which by its very nature and character is reasonably fitted for no other purpose. Customs views the “amusement” requirement as indicating that toys should be designed and used principally for amusement and that they not serve a utilitarian purpose. *See* Additional U.S. Rule of Interpretation 1(a), HTSUS. Further, Customs defines “principal use” as that use which exceeds each other single use of the article.

A sandbox is designed to hold sand in a prescribed area and provide a play environment for children's playground games. A sandbox itself does not provide the manipulative play value or frivolous amusement characteristic of toy playthings. In this case, children play with the sand in the sandbox, they do not play with the sandbox. Any amusement derived from playing in the sandbox, *e.g.*, from its shape, digging in the sand, and tumbling, is incidental or secondary to its utility of providing a play environment and keeping the sand in one area on the playground. Thus, a sandbox is not a toy "designed and used principally for amusement," and cannot be classifiable under heading 9503, HTSUS.

Heading 9506, HTSUS, in pertinent part, provides for articles and equipment for outdoor games, not specified elsewhere in the chapter. This describes certain outdoor playground equipment and games. Sandboxes are specifically designed for outdoor playground use and therefore fit within the scope of the heading.

EN 95.06(B), in pertinent part, provides that "[t]his heading covers:

(B) **Requisites for other sports and outdoor games (other than toys presented in sets, or separately, of heading 95.03) * * * [.]**"

* * * * *

(12) Equipment of a kind used in children's playgrounds (*e.g.*, swings, slides, see-saws and giant strides)."

EN 95.06 (B)(12) describes specific examples of equipment of a kind used in children's playgrounds, including swings, slides, and see-saws. Much of the literature available about LTC sandboxes on the internet provides that they are sturdy and geared for playground use. LTC sandbox, model #4850, for example (not subject of this ruling), is covered by a smaller 40-inch by 42-inch cover but sturdy enough to hold 300 pounds of sand, and to be stored out-of-doors in all kinds of weather. Generally, LTC sandboxes have rounded corners and surfaces designed for child safety. Sandboxes, and the swings, slides, and see-saws described in EN 95.06 (B)(12), all provide outdoor activity bases on children's playgrounds that are similar in nature. Thus, sandboxes are specifically described under heading 9506, HTSUS, as articles and equipment for outdoor games.

Note 3, Chapter 95, HTSUS, provides that subject to Note 1, Chapter 95, "parts and accessories which are suitable for use solely or principally with articles of this chapter are to be classified with those articles." General ENs to Chapter 95, HTSUS, provide, in pertinent part, that "[e]ach of the headings of this Chapter also covers identifiable parts and accessories of articles of this Chapter which are suitable for use solely or principally therewith, and provided they are not articles excluded by Note 1 to this Chapter." (Emphasis in the original). Sandbox covers are not excluded by Note 1 to Chapter 95, HTSUS.

The United States Court of Appeals for the Federal Circuit has held that canopies solely dedicated for use with child safety seats, and not designed or sold to be used independently, were properly classified as "parts" of the car safety seats (*Bauerhin Technologies Ltd. Partnership v. United States*, 110 F.3d 774 (Fed. Cir. 1997)). Like the safety seat canopies in *Bauerhin*, the subject sandbox cover is solely dedicated for use with an LTC sandbox, specifically designed to be fitted to the corners of the base, and attached to at least one side, of the box. Similarly, the subject cover is not designed or sold to be used independently.

Thus, this sandbox cover is classifiable under heading 9506, HTSUS, which provides for, in pertinent part, "[a]rticles and equipment for * * * outdoor games, not specified or included elsewhere in this chapter; * * *; parts and accessories thereof[.]" Having established that the subject merchandise satisfies the terms provided in heading 9506, HTSUS, at GRI 1, consideration of any other headings is precluded and we conclude that NY I81451 was in error.

Our determination is supported by New York Ruling (NY) 895598, dated March 28, 1994, where Customs determined that "equipment principally designed for use by children in an outdoor playground activity is classified for tariff purposes in Heading 9506, HTSUS[.]"

Holding:

Based on the foregoing findings, at GRI 1, the subject sandbox cover, is classifiable in subheading 9506.99.60, HTSUS, which provides for "[a]rticles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor

games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Other: Other: Other[.]”

Effect on Other Rulings:

NY I81451, dated May 22, 2002, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

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