U.S. Customs Service

General Notices

GRANT OF "LEVER-RULE" PROTECTION

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

ACTION: Notice of grant of "Lever-Rule" protection.

SUMMARY: Pursuant to 19 CFR §133.2(f), this notice advises interested parties that Customs has granted "Lever-Rule" protection to Lladro U.S.A., Inc. for certain "Lladro" porcelain and ceramic vases, statuettes, and figurines, bearing alpha-numeric codes which have been removed. Notice of the receipt of an application for "Lever-Rule" protection was published in the CUSTOMS BULLETIN on May 22, 2002.

FOR FURTHER INFORMATION CONTACT: George F. McCray, Esq., Intellectual Property Rights Branch, Office of Regulations & Rulings, (202) 572–8707.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 CFR §133.2(f), this notice advises interested parties that Customs has granted "Lever-Rule" protection for certain "Lladro" porcelain and ceramic vases, statuettes, and figurines, bearing an alpha-numeric codes which have been removed.

In accordance with the holding in the Eleventh Circuit case of *Davidoff & CIE v. PLD Int'l Corp.* 263 F. 3d 1297 (11th Cir. 2001), Customs has determined that the aforementioned gray market products differ materially physically from the Lladro U.S.A. products authorized for sale in the U.S. in that the removal of the alpha-numeric serial numbers serves to damage the "commercial magnetism" of the trademark. Just as the court in *Davidoff* held that such obliteration "degrades the appearance of the bottles" and makes them "materially different from that originally sold", we agree that the removal of serial numbers from expensive pieces of porcelain constitutes a material physical difference in that purchasers of such altered Lladro products may be precluded from participating in the Lladro Assurance Program and/or may be discouraged from purchasing such products altogether on the grounds that they may appear to have been tampered with.

ENFORCEMENT

Importation of the subject "Lladro" porcelain and ceramic vases, statuettes, and figurines, bearing an alpha-numeric codes which have been

removed is restricted, *unless* the labeling requirements of 19 CFR §133.23(b) are satisfied.

Dated: February 6, 2003.

JOANNE ROMAN STUMP,
Chief, Intellectual Property Rights Branch.
Office of Regulations & Rulings.

NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING BOWLING PINSETTERS

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

ACTION: Notice of final determination.

SUMARY: This document provides notice that Customs has issued a final determination concerning the country of origin of certain bowling pinsetters which are installed at military facilities in the United States and which will be offered to the United States Government. The final determination found that based upon the facts presented, the country of origin of the bowling pinsetters is the United States.

DATE: The final determination was issued on February 7, 2003. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of February 13, 2003.

FOR FURTHER INFORMATION CONTACT: Karen S. Greene, Special Classification and Marking Branch, Office of Regulations and Rulings (202–572–8838).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on February 7, 2003, pursuant to Subpart B of Part 177, Customs Regulations (19 CFR Part 177, Subpart B), Customs issued a final determination concerning the country of origin of certain bowling pinsetters offered to the United States Government. The U.S. Customs ruling number is HQ 562583. This final determination was issued at the request of Brunswick Corporation, under procedures set forth at 19 CFR Part 177, Subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). The final determination concluded that, based upon the facts presented, the assembly in the United States of numerous foreign and U.S. subassemblies and parts to create the pinsetters and the installation of the pinsetters in facilities in the United States result in a substantial transformation of the foreign subassemblies. Accordingly, the country of origin of the bowling pinsetters is the United States.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the Federal Register within 60 days of the date the final determination is issued. Section 177.30, Customs Regulations (19 CFR 177.30), states that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the Federal Register.

Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of (date of publication in the Federal Register).

Dated: February 7, 2003.

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

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 7, 2003.

MAR–05 RR:CR:SM 562583 KSG
Category: Marking

RICHARD M. BELANGER, ESQ.
SIDLEY AUSTIN BROWN & WOOD LLP
1501 K Street, N.W.
Washington, DC 20005

Re: Country of origin of bowling pinsetters; substantial transformation; 19 CFR 177.22; procurement.

DEAR MR. BELANGER:

This is in response to your letters dated November 18, 2002, and January 17, 2003, on behalf of Brunswick Corporation, requesting a final determination of origin pursuant to 19 CFR 177.22(c) regarding U.S. Government procurement of certain bowling pinsetters assembled in the United States.

Facts:

Brunswick Corporation is the importer of the components of the bowling pinsetters and therefore, is a party-in-interest as defined in 19 CFR 177.22(d).

This case involves the GS–X model of bowling pinsetters, which are automated machines designed to return bowling balls, pick up standing bowling pins and clear the deck at bowling facilities. The pinsetters are sold to military installations and other U.S. Government entities. This request involves a contract for installation of the GS–X pinsetters at bowling alleys located inside the United States. Brunswick anticipates that it will enter into contracts in the future for facilities at U.S. military bases in foreign countries as well as in the United States.

The GS–X pinsetter is typically sold in sets of two mechanical subassemblies and one electrical controller assembly plus other parts, although Brunswick may occasionally sell a single mechanical assembly with an attached electrical controller. The electrical assembly is manufactured in the United States by Controls, Inc., an unrelated company.

The mechanical assemblies are comprised of seven subassemblies consisting of thousands of components from numerous countries. The mechanical assemblies consist of three major parts: 1) the central block; 2) the "six-pack"; and 3) the ball accelerator. The central block is a large steel box that contains four subassemblies: the sweep wagon subassembly; the setting table subassembly; the drive frame subassembly; and the distributor subassemblies. Included in the drive frame subassembly are three motors, including the distributor motor, the sweep motor and the table motor. The distributor subassembly, which resembles a conveyor belt assembly line, takes the pins from the pin elevator subassembly and places them in the setting table subassembly. The setting table subassembly picks up the standing pins from the lane and takes them again from the distributor subassembly before setting them down on the lane. Between the time when the setting table picks up the standing pins and sets them down again, the sweep wagon subassembly sweeps away felled pins. The drive frame subassembly houses three of the motors that are needed to run the central block and six-pack.

The six-pack assembly contains the pin elevator subassembly with two pin elevators and the ball pit subassembly with two ball cushions and two rollers. The pin elevator subassembly receives the pins from the ball pit subassembly and raises them into the distributor subassembly. The ball pit subassembly handles the initial impact of the pins and ball and cycles them through the pinsetter to get ready for the next ball.

The ball accelerator includes the ball accelerator motor. The ball accelerator subassembly returns the ball to the bowler.

In addition to the above-described mechanical subassemblies, the complete pinsetter, as installed, contains the U.S.-origin electrical controller assembly as well as other U.S. parts.

In foreign country X, Brunswick constructs the large steel frame that houses the central block. Numerous other parts from various countries are also shipped to foreign country X for assembly of the seven principal subassemblies of the mechanical assembly. Brunswick then attaches the distributor subassembly to the steel casing of the central block. The six remaining subassemblies and the central block casing are then shipped to a manufacturing facility in Muskegon, Michigan.

I. Processing performed at Michigan plant

In the United States (Muskegon, Michigan), Brunswick integrates the sweep wagon and setting table subassemblies, as well as the three motors of the drive frame subassembly, into the central block.

The integration of the sweep wagon mechanical subassembly involves installing it into the central block in a front orientation at a 45 degree diagonal position, with the right end being placed into the right sweep track first. Brunswick then adjusts the rollers to a minimum clearance of five millimeters on each side between the roller screw, taking care to ensure that adequate clearance is maintained during the entire length of travel by manually running the wagon forward and aft. Brunswick then attaches the sweep wagon to the sweep crank arms with nylon bushings, large flat shim washers and retaining rings. This procedure is then repeated on the opposite side. Finally, Brunswick adjusts the clearance to an average of ten millimeters between the gutter adapter and the flat gutter, with slots and screws provided in both adapters. This final adjustment must be made at the midpoint of wagon travel to allow the necessary clearance at extreme front and rear positions.

Brunswick integrates the setting table mechanical subassembly into the central block. This process involves the initial placement of spacers onto the corners of the test stand deck. The assembly team then delivers the setting table to the test stand deck and sets it onto the spacers, ensuring that the spacers are clear of the spotting tong attachment screws that protrude from the underside of the setting table. Brunswick then manually turns the setting table drive pulley on the left side of the drive frame to drop the left and right deck racks to the lowest point. The deck rack teeth are aligned to the drive gear teeth and plumb. Brunswick removes the hex nuts and lock washers from the setting table studs and installs the feet of the deck rack onto studs. Brunswick then rotates the bottom hex nuts until the first interference is detected against the deck rack feet. The top hardware is reinstalled and tightened. Brunswick manually turns the setting table drive pulley in the opposite direction to raise the setting table slightly so that the spacers can be removed. The setting table is re-lowered to the lowest position. Brunswick verifies that a 5 to 15 millimeter gap exists on all points between the setting table frame and the deck of the test stand. If proper clearance is not correct, or if the table frame is not level, appropriate adjustments are made. The top sections are then assembled for the telescoping square drive shafts for each of the setting table pivot shafts, and the spotting tongs with hardware are

provided. Finally, Brunswick assembles and routes the setting table function switch and solenoid cable into the panduit channel at the front of the machine.

Brunswick integrates the distributor motor of the drive frame subassembly into the central block. This involves the assembly and placement of the motor pulley to the motor shaft. A 60 Hz sheave must be facing away from the motor assembly. The motor and mount assembly must first be placed into the forward motor location in the left drive frame and then be assembled into the frame with bushing, spacer and hitch pins. Brunswick then assembles the tension spring from the mount to the frame. Brunswick assembles the V-belt to the motor pulley and drive pulley.

The sweep motor of the drive frame subassembly is integrated into the central block. This involves a process identical to the assembly of the distributor motor described above except that the assembly is located in the middle motor location of the drive frame.

The setting table step motor of the drive frame subassembly is integrated into the central block. This involves a process identical to the assembly of the distributor and sweep motors described above except that the assembly is located in the rear motor location of the drive frame.

After assembly of the three subassemblies into the central block, the fully assembled central block is quality tested at the Michigan facility. Each central block undergoes 400 cycles of testing, which can take several hours.

Counsel states that the processing performed at the Michigan facility requires complex and detail-oriented labor and precise calibrations performed by highly skilled employees.

II. Processing performed at Bowling Facility

At the bowling facility, the ball pit and pin elevator subassemblies are joined to create the six-pack component of the mechanical assembly. The central block, six-pack, and ball accelerator are then assembled to form the mechanical assemblies, after which the U.S.-made electrical controller assembly and other miscellaneous parts are integrated into the mechanical assemblies to form the GS–X pinsetter. The GS–X pinsetter is installed into the bowling facility. This process takes approximately 20 hours of skilled labor per pinsetter, using tools and large moving equipment specially constructed for that particular installation. The project manager and field foreman manage the quality-assurance procedures and certify that each pinsetter is installed and functioning according to Brunswick specifications, which counsel states surpass those of the American Bowling Congress.

Issue:

Whether the bowling pinsetters are substantially transformed in the United States so that they become products of the United States for U.S. Government procurement purposes.

Law and Analysis:

Under Subpart B of Part 177, 19 CFR 177.21 *et seq*., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq*.), the Customs Service issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. 2518(4)(B):

> An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 CFR 177.22(a).

If the manufacturing or combining process is a minor one which leaves the identity of the imported article intact, a substantial transformation has not occurred. *See Uniroyal Inc. v. United States*, 3 CIT 220, 542 F. Supp. 1026 (CIT 1982). Assembly operations which are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. *See* C.S.D. 80–111, C.S.D. 85–25, and C.S.D. 90–97.

Customs ruled in Headquarters Ruling Letter ("HRL") 561734, dated March 22, 2001, 66 Fed. Reg. 17222, that Sharp multifunctional machines (printer, copier and fax machine) assembled in Japan were a product of Japan for procurement purposes. The ma-

chines were comprised of 227 parts (108 parts sourced from Japan, 92 parts from Thailand, 3 parts from China, and 24 parts from other countries) and eight subassemblies, each of which was also assembled in Japan. Further, the scanner unit (one of the eight subassemblies) which was assembled in Japan was characterized as "the heart of the machine." *See also* HRL 561568, dated March 22, 2001, 66 Fed. Reg. 17222.

In HRL 560433, dated September 19, 1997, Customs held that the assembly in the United Kingdom of audio/video stereo receivers from 16 subassemblies and other components originating from various countries resulted in a substantial transformation. Customs noted in that ruling that numerous skilled workers assembled the stereo receivers from numerous components and hundreds of raw materials. In HRL 734045, dated October 8, 1991, Customs held that foreign subassemblies and other components imported into Hong Kong which were processed and assembled with other Hong Kong components to make laptop and notebook personal computers were substantially transformed as a result of the Hong Kong operations.

In HRL 558919, dated March 20, 1995, Customs held that an extruder subassembly manufactured in England was substantially transformed in the United States when it was wired and combined with U.S. components (motor, electrical controls and extruder screw) to create a vertical extruder. In HRL 559887, dated October 3, 1996, Customs held that swivel joints and torsion spring balance assemblies from India were substantially transformed when assembled in the U.S. with U.S.-origin components to produce top and bottom loading/unloading arms (petroleum handling equipment). Therefore, the loading arms were considered products of the United States. Customs recently ruled in HRL 562502, dated November 8, 2002, that a Chinese-origin transfer feeder unit and Chinese-origin outer covers were substantially transformed when assembled in Japan with a Japanese-origin laser scanner unit to produce a printer engine. "When taken together, the manufacture of the laser scanner unit and the final assembly of the printer engine is complex and meaningful." Therefore, for procurement purposes, the printer engines were considered to be products of Japan.

In this case, the complex assembly of the central block from three subassemblies, including the incorporation of three motors from the drive frame subassembly into the central block, combined with the subsequent assembly of the central block, six-pack, ball accelerator, and U.S.-origin electrical controller assembly and the installation of the pinsetters in bowling facilities in the United States, when taken together, result in a substantial transformation of the foreign-origin subassemblies involved. The processing in the United States requires precise calibration and involves the assembly of numerous parts and subassemblies and highly skilled labor. The name, character and use of the foreign-origin subassemblies and parts change as a result of the processing and other assembly operations performed in the United States. Therefore, pursuant to 19 U.S.C. 2518(4)(B), and 19 CFR 177.22(a), we find that the country of origin of the bowling pinsetters is the United States.

Holding:

Based on the facts presented, the components imported into the United States that are used in the manufacture of the bowling pinsetters involved in this case are substantially transformed in the United States. Accordingly, pursuant to 19 U.S.C. 2518(4)(B), and 19 CFR 177.22(a), the country of origin of the bowling pinsetters is the United States.

Notice of this final determination will be given in the Federal Register as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that Customs reexamine the matter anew and issue a new final determination.

Any party-at-interest may, within 30 days after publication of the Federal Register notice referenced above, seek judicial review of this final determination before the Court of International Trade.

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

[Published in the Federal Register, February 13, 2003 (68 FR 7407)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, February 12, 2003.

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

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

REVOCATION AND MODIFICATION OF RULING LETTERS AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF WOMEN'S KNIT GARMENTS

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

ACTION: Notice of revocation of one tariff classification ruling letter and modification of one tariff classification ruling letter and treatment relating to the classification of women's knit garments.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking one ruling and modifying one ruling relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain women's knit garments. Similarly, Customs is revoking any treatment previously accorded by it to substantially identical merchandise. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 28, 2003.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the January 2, 2003, CUSTOMS BULLETIN, Volume 37, Number 1, proposing to revoke New York Ruling Letter (NY) I84948, dated August 26, 2002, and to modify NY H87322, dated February 15, 2002, relating to the tariff classification of certain women's knit garments.

In New York Ruling Letter (NY) I84948, dated August 26, 2002, the Customs Service classified five styles of women's knit garments under heading 6110, HTSUSA, which provides for "sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted." In NY H87322, dated February 15, 2002, the Customs Service classified four out of five styles of women's knit garments under heading 6104, HTSUSA, which provides for "Women's * * * dresses."

It is now Customs determination that the proper classification for the women's knit garment is heading 6108, HTSUSA, which provides for "Women's or girls' slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted."

Headquarters Ruling Letter (HQ) 965874 revoking NY I84948 and modifying NY H87322 is set forth in the "Attachment" to this document.

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

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY I84948 and modifying NY H87322 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the

analyses set forth in HQ 965874, *supra*. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise.

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

Dated: February 6, 2003.

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

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 6, 2003.

CLA–2–61:RR:CR:TE ttd
Category: Classification
Tariff No. 6108.91.0030 and 6108.92.0030

MS. AMANDA WILSON
DILLARD'S, INC.
CUSTOMS COMPLIANCE DEPT.
1600 Cantrell Road
Little Rock, AR 72201

Re: Revocation of New York Ruling Letter (NY) I84948, dated August 26, 2002; Modification of NY H87322, dated February 15, 2002; Classification of Women's Knit Garments.

DEAR MS. WILSON:

This is in response to your letter of August 30, 2002, requesting reconsideration of New York Ruling Letter (NY) I84948, regarding classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of certain women's knit garments. After review of NY I84948, Customs has determined that the classification of the merchandise considered under heading 6110, HTSUSA, was incorrect. In addition, after reviewing NY H87322, also issued to your company, we have concluded that the classification of similar merchandise in heading 6104, HTSUSA, was partially incorrect. For the reasons that follow, this ruling revokes NY I84948 and modifies, in part, NY H87322. Samples were submitted.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY I84948 and proposed modification of NY was published on January 2, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 1. As explained in the notice, the period within which to submit comments on this proposal was until February 3, 2003. No comments were received in response to this notice.

Facts:

In I84948, dated August 26, 2002, five styles of women's knit garments were classified under heading 6110, HTSUSA, which provides for, *inter alia*, sweaters, pullovers * * * and similar articles, knitted. The items were described as follows:

> The outer surface of each of the five garments measures more than 9 stitches per 2 centimeters in the horizontal direction. Each of the five garments extends from the

shoulder to the mid-thigh area. Style S31DW270 is a 100% cotton, sleeveless pullover that features a scoop neckline, 2 side slits, and a hemmed bottom.

Style S31DW271 is a 55% cotton, 45% polyester cardigan that features a hood, short hemmed sleeves, a full front opening with a zipper closure, 2 side seam pockets in the waist area, 2 side slits, and a hemmed bottom.

Style S31DW272 is a pullover that is constructed from 100% polyester, openwork net fabric. The garment features a round neckline with a V-front, long hemmed sleeves, 2 side seam pockets in the waist area, 2 side slits, and a hemmed bottom.

Style S31DW279 is a cardigan that is constructed from 100% polyester, openwork net fabric. The garment features a hood, long hemmed sleeves, a full front opening with a zipper closure, front pouch pockets in the waist area, 2 side slits, and a hemmed bottom.

Style S31DW384 is a pullover that is constructed from 60% cotton, 40% polyester openwork, net fabric. The garment features a V-neckline, short hemmed sleeves, and a hemmed bottom.

In NY H87322, dated February 15, 2002, four styles of women's knit garments (S21DW311, S21DW317 S21DW318 and S21DW316) were classified in heading 6104, HTSUSA, which provides for, *inter alia*, knitted women's dresses. One style (S21DW310) was classified in heading 6108, HTSUSA, which provides for women's slips * * * nightdresses * * * bathrobes * * * and similar articles, knitted. The articles were described as follows:

Style S21DW310 is a 55% cotton, 45% polyester, jacquard knit robe that extends from the shoulders to the mid-thigh area. The robe features a hood, short hemmed sleeves, a full front opening with a zipper closure, 2 front patch pockets below the waist, and a hemmed bottom.

Style number S21DW311 is a 55% cotton, 45% polyester, jacquard knit sleeveless dress that extends from the shoulders to the mid-thigh area. The dress features a round neckline, a full front opening with a zipper closure, 2 sideseam pockets below the waist, and a hemmed bottom.

Style number S21DW316 is a 100% polyester, openwork, knit sleeveless tank-style dress that extends to the mid-thigh area. The dress features shoulder straps, a scoop neck and a scoop back, and a hemmed bottom.

Style number S21DW317 is a 60% cotton, 40% polyester, openwork knit dress that extends to the mid-thigh area. The dress features a round neckline, short hemmed sleeves, a full front opening with a zipper closure, 2 front patch pockets below the waist, 2 side slits, and a hemmed bottom.

Style number S21DW318 is a 60% cotton, 40% polyester, openwork knit dress that extends to the mid-thigh area. The dress features a V-neckline and short sleeves.

Issue:

What is the proper classification of the subject merchandise?

Law and Analysis:

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level. While neither binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

Following GRI 1, there are three headings under consideration: heading 6104, HTSUSA, which provides for, *inter alia*, women's knitted dresses; heading 6110, HTSUSA, which provides for, *inter alia*, women's knitted sweaters, pullovers and similar articles; and heading 6108, HTSUSA, which provides for, *inter alia*, women's knitted bathrobes, dressing gowns, and similar articles.

Heading 6104, HTSUSA, provides for, among other things, knit dresses. In Headquarters Ruling Letter (HQ) 958741, dated March 28, 1996, Customs found that the garment considered was more casual than what is generally considered a dress. We noted that the cut and styling of the submitted garment was significantly different than most garments commonly recognized in the trade as dresses. Weighing the characteristics of the garment

in HQ 958741, we concluded that it was "too relaxed in both cut and style, lacking in structure and coverage, to be worn alone as a dress."

In this case, in NY H87322, Customs incorrectly classified four of the subject styles, identified as S21DW311, S21DW316, S21DW317, and S21DW318, under heading 6104, HTSUSA, as women's dresses. After further review of each of the submitted samples, we now find that three of those styles (S21DW317, S21DW318, and S21DW316), like the garment considered in HQ 958741, lack the appropriate structure and coverage to be worn alone as a dress. In particular, the three styles, identified as S21DW316, S21DW317 and S21DW318, each features a see-through open-work knit construction which fails to conceal undergarments like a dress. Moreover, we have determined that style S21DW311, while it could be worn as a dress, such a use would be fugitive to its intended use as a beach cover-up. Like the garment considered in HQ 958741, each of the subject articles is "too relaxed in both cut and style, lacking in structure and coverage, to be worn alone as a dress." Accordingly, these four articles are not classifiable in heading 6104, HTSUSA, as women's dresses.

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

> knit garments that cover the body from the neck or shoulders to the waist or below (as far as the mid-thigh or slightly below the mid-thigh). Sweaters may have any type of pocket treatment or any type of collar treatment, including a hood, or no collar, or any type of neckline. They may be pullover style or have a full or partial front or back opening. They may be sleeveless or have sleeves of any length. Those sweaters provided for at the statistical level (9^{th} and 10^{th} digit of the tariff number) have a stitch count of 9 or fewer stitches per 2 centimeters measured on the outer surface of the fabric, in the direction in which the stitches are formed. Also included in these statistical provisions are garments, known as sweaters, where, due to their construction (e.g., open-work raschel knitting), the stitches on the outer surface cannot be counted in the direction in which the stitches are formed. Garments with a full-front opening but which lack the proper stitch count for classification as a sweater may be considered "sweater-like" cardigans of heading 6110.

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

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

In NY I84948, dated August 26, 2002, Customs classified five styles of women's garments, identified as S31DW270, S31DW271, S31DW272, S31DW279 and S31DW384, as sweater-like cardigans and pullovers of heading 6110, HTSUSA. Regarding the classification of the garments considered in NY I84948 as being similar to sweaters, we disagree. The garments lack the general appearance of sweaters and are not commercially recognized as sweaters. Merely because they cover the upper body and are worn as outer-garments (in this case, over swimwear) does not make them classifiable as a sweater. As the articles lack the general characteristics of the garments of heading 6110, HTSUSA, they are not classifiable as sweaters and similar articles.

Heading 6108, HTSUSA, provides for "Women's or girls' slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted." The EN provide the following relevant guidance as to the scope of heading 6108:

> This heading covers two separate categories of knitted or crocheted clothing for women or girls, namely * * * and nightdresses, pyjamas, negliges, bathrobes (including beachrobes), dressing gowns and similar articles.

The *Guidelines* state the following to describe the characteristics of dressing gowns, which include bath robes, beach robes, lounging robes and similar apparel:

> Physical characteristics which are expected in garments included in this category include:
>
> 1) Looseness.
> 2) Length, reaching to the mid-thigh or below.
> 3) Usually a full or partial opening, with or without a means of closure.
> 4) Sleeves are usually, but not necessarily, present.

In HQ 964641, dated May 21, 2001, Customs stated the following:

> "beachrobes," included in the parenthetical following bathrobes, have the same features and functions as bathrobes, although they are worn in a different setting. They are designed to be worn after the wearer has been in the water. They absorb water, provide warmth, protect the body, and cover the body for modesty purposes.

In HQ 088266, dated March 22, 1991, Customs classified a women's knit cover-up in subheading 6108.91.0030, HTSUSA. The garment considered was designed as loose fitting, with short sleeves, and extended from the shoulder to the mid-thigh or below. Notwithstanding that the garment lacked a full or partial opening, we determined that it was properly classified in heading 6108, HTSUSA, as a beach cover-up. In that ruling, we noted that the full or partial opening characteristic is prefaced with the term "usually" which meant it was not absolutely required.

Customs indicated in HQ 962385, dated July 27, 1999, that a crucial factor in the classification of a garment is the garment itself. *See* HQ 962385 wherein Customs classified a women's robe in heading 6108, HTSUSA. As stated in *Mast Industries v. United States*, 9 CIT 549, 552 (1985), aff'd, 786 F. 2d 1144 (1986), at 552, "the merchandise itself may be strong evidence of use." When presented with a garment which is ambiguous in appearance, Customs looks to other factors such as environment of sale, advertising and marketing, recognition in the trade of virtually identical merchandise, and documentation incidental to the purchase and sale of the merchandise. In HQ 962385, we noted that these factors should be considered in totality and that no one factor is determinative of classification.

In this case, the subject garments are recognizable as beach cover-ups. They are designed as loose fitting, with either long-sleeves, short-sleeves or no sleeves at all, and extend from the shoulder to the mid-thigh. Accordingly, the simple design, looseness and length of each of the garments under consideration are typical features of beach cover-up garments. Moreover, the subject garments are designed to be worn after the wearer has been in the water and protect the body and cover the body for modesty purposes. To varying degrees, each robe also serves to absorb water and provide warmth, regardless of the fact that none are made of terry cloth material. In addition, the submitted hangtags and design specifications for the garments indicate that they will be marketed and sold exclusively as beach cover-ups. Notably, the court in *Mast Industries* observed that most consumers use a garment in the manner in which it is marketed. Therefore, we find it unlikely that the subject garments will be principally used as something other than beach cover-ups. Therefore, like the garment in HQ 088266, the subject garments are properly classified in heading 6108, HTSUSA, as beach cover-ups. This finding is consistent with NY H80783, dated June 20, 2001, wherein Customs classified similar beach robes under heading 6108, HTSUSA. *See also* HQ 964641, dated May 21, 2001 and HQ 962385, dated July 27, 1999.

Holding:

The styles identified as S21DW311, S21DW317, S21DW318, S31DW270, S31DW271 and S31DW384 are classified under subheading 6108.91.0030, HTSUSA, which provides for "Women's or girls' slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted: Other: Of cotton, Other: Women's." The general column one duty rate is 8.6 percent *ad valorem* and the items fall within textile category designation 350.

The styles identified as S31DW272, S31DW279 and S21DW316 are classified under subheading 6108.92.0030, HTSUSA, which provides for "Women's or girls' slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted: Other: Of man-made fibers, Other: Women's." The general column one duty rate is 16.2 percent *ad valorem* and the items fall within textile category designation 650.

NY I84948 is hereby REVOKED. NY H87322 is hereby MODIFIED, in part. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

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

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

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

MODIFICATION OF RULING LETTER CONCERNING STATUTORY REQUIREMENTS OF 19 U.S.C. SECTION 1520(c)(1)

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

ACTION: Notice of proposed modification of ruling letter to modify a misstatement of the statutory requirements of 19 U.S.C. Section 1520(c)(1).

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs is modifying a sentence in a ruling that misstated a statutory requirement of 19 U.S.C. Section 1520(c)(1). Notice of the proposed action was published on January 2, 2003 in Volume 37, Number 1 of the CUSTOMS BULLETIN.

EFFECTIVE DATE: This modification is effective on or after April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Ada Loo, Duty and Refund Determination Branch: (202) 572–8869.

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)), a notice proposing to modify ruling letter, HQ 227822 dated February 27, 1998, concerned a petition pursuant to 19 U.S.C. Section 1520(c)(1), was published in the CUSTOMS BULLETIN, Volume 37, Number 1 on January 2, 2003. One comment was received in response to this notice.

As stated in the proposed notice, this modification will cover any rulings on the misstatement of the statutory requirements of 19 U.S.C. Section 1520(c)(1) which may exist but have not been specifically identified that are contrary to the position set forth in this notice. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one 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 subject to this notice should have advised Customs during the comment period.

According to the subject ruling, the protestant filed a petition, pursuant to 19 U.S.C. Section 1520(c)(1), seeking a refund under the Harbor Maintenance Fee (HMF) provisions (26 USC Section 4462, et seq.) which was properly denied. The notice indicated our intention to modify HQ 227822 due to the misstatement of a statutory requirement outlined in 19 U.S.C. Section 1520(c)(1). This misstatement of the law does not affect the outcome of the subject ruling.

Comment:

One comment was received in response to this notice. The comment agreed with the proposed modification.

Response:

On page 3, in the fourth paragraph, the fifth sentence reads, "[o]ne of the statutory requirements for a request to reliquidate is that it must be filed within one year from the date of liquidation." This statement is misleading as to the correct procedural application of 19 U.S.C. Section 1520 (c)(1). A request for reliquidation of entry or reconciliation can be "*brought to the attention* of the Customs Service * * *." 19 U.S.C. Section 1520 (c)(1) (emphasis added), rather than being filed.

The Court of International Trade has held that "[t]he one year provision applies only to bringing the mistake to the attention of the customs service." *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 68 Cust. Ct. 17, 22 (1972). As a result, a request does not have to be filed but can be made orally, so long as the request is brought to the attention of Customs within one year after the date of liquidation. Thus, the ruling is being modified to reflect the correct application of the law.

In addition, the Court has disregarded a petitioner's claim because they failed to "bring the alleged errors to the attention of customs in the required manner, that is to say, within the proper time and with sufficient particularity to allow remedial action." *Hambro Automotive Corp. v. United States,* 81 Cust. Ct. 29, 31 (1978), *see also United China & Glass Co.v. United States*, 66 Cust. Ct. 207. The alleged error, in this case, involved an error in the construction of the law. The failure to bring this to the attention of Customs has no effect on the decision or the analysis of the ruling because it is a harmless error. Such an error is harmless because it cannot be corrected under 19 U.S.C. §1520 (c)(1), even if the petition for the error was made timely.

Pursuant to 19 U.S.C. § 1625(c)(1), Customs is modifying HQ 227822, by ruling HQ 229846, which is set forth as the Attachment to this document, to correct the misstatement of the law, concerning the statutory requirements of 19 U.S.C. Section 1520 (c)(1). Additionally, pursuant to 1625(c)(2), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: February 7, 2003.

WILLIAM G. ROSOFF,
(for Myles B. Harmon, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 7, 2003.
LIQ–9–01/12/15 RR:CR:DR 229846 AL
Category: Liquidation

PORT DIRECTOR
U.S. CUSTOMS SERVICE
Num. 1 Puntilla Street
San Juan, PR 00901

Attn: Protest Officer, Hampton Carter

Re: Protest and Application for Further Review No. 4909–97–100055; Harbor Maintenance Fee; Exemption; 26 U.S.C. §4462(b)(1)(B) and (C); Mistake of Fact; 19 U.S.C. §1520(c).

DEAR SIR/MADAM:

On February 27, 1998, our office issued a ruling letter, HQ 227822, regarding a protest and application for further review of case no. 4909–97–10055. Upon review of HQ 227822,

Customs discovered a misstatement of the statutory requirements of 19 U.S.C. Section 1520(c)(1). The holding of HQ 227822 remains the same but modifications have been made to this ruling letter to clarify any misinterpretations of the statute. Accordingly, this ruling letter sets forth the modifications of HQ 227822.

Facts:

There are thirty-three entries which are the subject of this protest. The entries cover shipments of petroleum products shipped from St. Croix, U.S. Virgin Islands by Hess Oil Virgin Islands Corporation and unloaded for consumption in San Juan, Puerto Rico and consigned to protestant. All entries were liquidated with the assessment of the harbor maintenance fee (HMF). The earliest liquidation date covered by this protest is June 28, 1996, and the most recent is dated February 14, 1997.

According to the file, protestant filed a 19 U.S.C. § 1520(c)(1) petition with your office on June 26, 1997, seeking a refund of the HMF. Your denial of the petition is dated October 20, 1997. You denied the 1520(c)(1) petition on the grounds that assessment of the HMF was a mistake of law not correctable under this statutory provision. The subject protest was filed on November 6, 1997.

Protestant is seeking a refund of the HMF based on the exemption provided for in 26 U.S.C § 4462. Protestant is alleging that (as a matter of equity), because Customs has not amended its regulations to conform with the statutory language, the period to file claims and protests against the assessment of the HMF should be extended until the applicable regulations are amended. Protestant also contends that your office's failure to correctly apply the statute is not a mistake of law. This conclusion is based on Protestant's interpretation that, because the applicable regulations have not been amended, your office correctly interpreted and applied the regulations.

Issue:

Should the subject protest be granted?

Law and Analysis:

Initially, we note that the protest, with application for further review, was timely filed under the statutory and regulatory provisions for protests (see 19 U.S.C. § 1514 and 19 CFR Part 174) and that the decision protested, assessment of the harbor maintenance fees, is a protestable decision (see 19 U.S.C. § 1514(a)(5) and 26 U.S.C. § 4462(f)). We also note that refusal to reliquidate an entry under section 1520(c) is a protestable decision under section 1514 (19 U.S.C. 1514(a)(7)).

The statutory authority for the harbor maintenance fee is found in the Water Resources Development Act of 1986 (Pub. L. 99–662; 100 Stat. 4082, 4266; 26 U.S.C. _4461 et seq.) Under this statute, a fee is imposed for the use of a port, defined as any channel or harbor or component thereof in the United States which is not an inland waterway, is open to public navigation, and at which Federal funds have been used since 1977 for construction, maintenance, or operation. Pursuant to 26 U.S.C. § 4462(b), no tax shall be imposed with respect to—

* * * * * * *

> (B) cargo loaded on a vessel in Alaska, Hawaii, or any possession of the United States for transportation to the United States mainland, Alaska, Hawaii, or such a possession for ultimate use or consumption in the United States mainland, Alaska, Hawaii, or such a possession,
>
> (C) the unloading of cargo described in subparagraph (A) or (B) in Alaska, Hawaii, or any possession of the United States, or in the United States mainland, respectively, or * * *

The Customs Regulations implementing this provision are found at 19 CFR Part 24. The applicable regulation provides that "possessions" of the United States include Puerto Rico and the U.S. Virgin Islands. See 19 CFR 24.24(c)(4)(ii)(C).

As indicated in the FACTS portion of this ruling, the consumption entries under protest covered merchandise loaded on a vessel in the U.S. Virgin Islands and unloaded in San Juan, Puerto Rico. Thus, both movements (i.e., the loading and unloading) are exempt from the HMF pursuant to 26 U.S.C. § 4462(b).

According to information provided by your office, the port determined that such movements between insular possessions were subject to the HMF based on your reading of the applicable regulation and required that the HMF be paid. The regulation (19 CFR 24.24(c)(4)(i)(B)) was not amended to conform to the 1988 statutory change which ex-

empts such movements from the HMF. A regulatory provision does not override statutory language. Thus, the fact that the regulation has not been amended to include movements for ultimate consumption in an insular possession does not negate the fact that statutorily these movements are exempt from the HMF.

Having said that, we disagree with protestant's contention that the Customs officer's failure to follow 26 U.S.C. § 4662(b) is not a mistake of law. The courts have defined mistake of law as mistakes which occur "* * * where the facts are known, but their legal consequences are not known or are believed to be different than they really are" (Executone Information Systems v. United States, 96 F. 3d 1383, 1386 (Fed. Cir. 1996) (emphasis in original), citing Hambro Automotive Corporation v. United States, 66 CCPA 113, 118, C.A.D. 1231, 603 F. 2d 850 (1979); see also, Degussa Canada Ltd. v. United States, 87 F. 3d 1301 (Fed. Cir. 1996)). The instant protest falls squarely within that definition. Customs was aware that the entries covered movements between two insular possessions but incorrectly believed that these movements were subject to the HMF. This is a mistake of law which is not correctable under 19 U.S.C. § 1520(c)(1).

We note that these entries were made after December 8, 1993, the date of enactment of the North American Free Trade Agreement Implementation Act (NAFTA). That Act amended the entry statute (19 U.S.C. § 1484) to require importers to use reasonable care in making entry and permitting Customs to rely on the accuracy of the information submitted by importers. See H. Rept. No. 103–361, Part 1, p. 136 (Nov. 15, 1993).

Finally, protestant contends that failure to refund these paid fees would be equivalent to compensating the government for its inaction in amending timely the Customs regulations. Equity is inapplicable in this instance. As stated by the Court of International Trade in San Francisco Newspaper Printing Co. v. United States, 9 CIT 517 (1985), "[a] time limitation that is a jurisdictional prerequisite is not subject to waiver or estoppel." (citations omitted) Congress has enacted a statutory scheme within which an importer can request that Customs correct any perceived mistakes in the liquidation of an entry, i.e., through a §1514 protest or a §1520(c)(1) petition (except for mistakes of law). One of the statutory requirements for a request to reliquidate is that it must be brought to the attention of Customs within one year from the date of liquidation. The Customs Service does not have any discretionary authority to waive this statutory requirement. Thus, since neither a timely protest nor a timely petition was filed and, given our conclusion that liquidation resulted from a mistake of law, there is no relief available to protestant.

Finally, protestant contends that the erroneous deposits of the HMF were made because the ABI program was erroneous. It appears that protestant is misinformed as to the nature of the ABI filing process. The software program used by ABI filers is not provided by Customs; rather, the software is sold by private vendors. Thus, protestant is incorrect when it alleges that Customs required the payment of the HMF through the ABI program. The onus is on the ABI filer to know when it is appropriate to pay the HMF. If the software program being used by the filer requires that the HMF be calculated then it is up to the filer to discuss this problem with the software vendor.

Holding:

The subject protest against the denial of a 19 U.S.C. § 1520(c)(1) petition should be DENIED. The petition was untimely because it was not filed within the statutory time frame. Thus, the subject protest is also untimely.

WILLIAM G. ROSOFF,
(for Myles B. Harmon, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF GARAGE DOOR ROLLERS

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

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of garage door rollers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking one ruling letter pertaining to the tariff classification of garage door rollers under the Harmonized Tariff Schedule of the United States ("HTSUS"). Customs also is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published in the CUSTOMS BULLETIN on January 2, 2003. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 28, 2003.

FOR FURTHER INFORMATION CONTACT: David S. Salkeld, General Classification Branch, (202) 572–8781.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the CUSTOMS BULLETIN on

January 2, 2003, proposing to revoke NY D89002, dated April 8, 1999, which involved the classification of garage door rollers. No comments were received in response to the notice.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should have advised Customs during the comment 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.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY D89002 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 966024. 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: February 10, 2003.

JAMES A. SEAL,
(for Myles B. Harmon, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 10, 2003.

CLA–2 RR:CR:GC 966024 DSS
Category: Classification
Tariff No. 8302.41.60

MR. R. KEVIN WILLIAMS
RODRIGUEZ, O'DONNELL, ROSS, FUREST, GONZALEZ & WILLIAMS, P.C.
20 North Wacker Drive
Suite 1416
Chicago, IL 60606

Re: Request for Reconsideration of NY D89002; Garage Door Rollers.

DEAR MR. WILLIAMS:

This is our decision on your request for reconsideration of New York Ruling letter (NY) D89002, on behalf of your client Canimex, filed against classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of garage door rollers under subheading 8482.10.10. You submitted this request to the Director, National Commodity Specialist Division, who forwarded it to this office for reply. Three samples were included in your submission. After review of NY D89002, Customs has determined that the classification of garage door rollers under subheading 8482.10.10, HTSUS, is incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modification) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), a notice was published on January 2, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 1, proposing to revoke NY D89002. No comments were received in response to this notice.

Facts:

In NY D89002, dated April 8, 1999, we classified garage door rollers as integral shaft bearings under subheading 8482.10.10, HTSUS. You argue that the subject garage door rollers are properly classified under subheading 8302.41.60, HTSUS, as base metal mountings, fittings, and similar articles suitable for buildings.

The rollers consist of steel balls positioned between an outer ring formed from cold-rolled strip steel and a cold rolled steel shaft. The stem is an integral shaft which serves as the inner race of the bearing and extends beyond the face of the bearing to facilitate mounting of the bearing in a suitable fitting, which you describe as a roller bracket, which mounts the roller on a sectional garage door. In NY D89002, the shafts of the garage door rollers were grooved, but the stems of the garage door rollers you submitted were not grooved. Two of the samples submitted contained outer rings of steel; the other sample contained an outer ring of plastic.

You state that garage door rollers are also referred to as track rollers in the industry, and are defined as a "roller assembly for guiding the door sections along a track" by the Door and Access Systems Manufacturers Association (DASMA).

A garage door roller is mounted to a sectional garage door using a roller bracket. The rollers travel in a track and guide the garage door as it is raised and lowered. The rollers facilitate the raising and lowering of the garage door by the path prescribed by the track (*i.e.*, they keep the garage door in the correct lateral position as it is raised and lowered). You state that the weight of the garage door is not carried by the rollers or the tracks during the opening and closing operation, but is borne by the springs in the door system which serve as the counterbalance to the weight of the door. You also state that the rollers and track do support the weight of the door when it is in the horizontal (open) position.

The HTSUS provisions under consideration are as follows:

8302	Base metal mountings, fittings, and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal; and base metal parts thereof:
* * * * * * *	
	Other mountings, fittings and similar articles, and parts thereof:

8302.41		Suitable for buildings:				
*	*	*	*	*	*	*
		Other:				
8302.41.60		Of iron or steel of aluminum or of zinc				
*	*	*	*	*	*	*
8482	Ball or roller bearings, and parts thereof:					
8482.10	Ball bearings:					
8482.10.10	Ball bearings with integral shafts					

Issue:

What is the proper tariff classification for the subject garage door rollers?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. Pursuant to GRI 3(b), when goods are *prima facie* classifiable under two or more headings, classification shall be effected as follows:

> (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to [GRI] 3(a) [i.e., by the heading which provides the most specific description], shall be classified as if they consisted of the material or component which gives them their essential character, insofar as the criterion is applicable.

In interpreting the headings and subheadings, Customs looks to the Harmonized Commodity Description and Coding System Explanatory Notes (ENs). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUS. It is Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 8302 is contained in Chapter 83 and Section XV, HTSUS; Heading 8482 is contained in Chapter 84 and Section XVI, HTSUS. According to Note 1, Section XVI, HTSUS, parts of general use, as defined in Note 2, Section XV, cannot be classified in section XVI. Parts of general use are defined by reference to "the articles of heading 8301, 8302, 8308 or 8310," according to Note 2 to Section XV. EN 83.02 provides in relevant part:

> This heading covers general purpose classes of base metal accessory fittings and mountings, such as are used largely on furniture, doors, windows, coachwork, etc. Goods within such general classes remain in this heading even if they are designed for particular uses (e.g., door handles or hinges for automobiles). This heading does not, however, extend to goods forming an essential part of the structure of the article, such as window frames or swivel devices for revolving chairs.

The heading covers:

* * * * * * *

(D) Mountings, fittings, and similar articles suitable for buildings

This group includes:

* * * * * * *

(3) Fittings for sliding doors or windows of shops, garages, sheds, hangars, etc. (e.g., grooves and tracks, runners and rollers) [emphasis in original].

You state that the subject garage door rollers are specifically designed for use with the standard size tracks used with garage doors in the United States and are sold solely to companies in the garage door industry. You claim that the garage door rollers are not suitable for any other use.

Relevant ENs for Chapter 84 state that heading 8482 covers ball, roller, or needle roller type bearings that enable friction to be considerably reduced. They may be designed to give radial support or to resist thrust. This EN states further that normally, bearings consist of two concentric rings or races enclosing the balls or rollers, and a cage which keeps them in place and ensures that their spacing remains constant.

In other articles of this type, similar to track rollers and cam followers, the outer portion of the wheel or ring is significantly reinforced in thickness to provide weight-carrying cap-

ability. In addition, the inner and outer diameter surfaces are slightly contoured to permit the wheels to fit into and roll smoothly in the track. Known by various names, articles that function to position, hold and guide moving machine parts, as well as reduce friction during such movement, have been held to be ball or roller bearings of heading 8482. *See THK America, Inc. v. United States*, 17 CIT 1169 (1993), and lexicographic sources cited. Although, *prima facie*, these rollers would appear to function similarly to the description of ball bearings cited above, there is one fundamental difference between ball bearings and the subject garage doors rollers. While ball and roller bearings function to position, hold and guide moving machine parts the subject rollers function to position, hold and guide moving sections of a garage door, not machine parts.

We conclude that the rollers fall within the definition of rollers in EN 83.02. The term "roller" is not defined in the HTSUS or the ENs. When terms are not so defined, tariff terms are construed in accordance with their common and commercial meaning. *Nippon Kogasku (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). The term "roller" is broadly defined as "a revolving cylinder over or on which something is moved or on which is used to press, shape, spread or smooth something." *Merriam-Webster's Collegiate Dictionary* (10^{th} ed. 2002). Thus, it appears that the subject garage door rollers fall within the common meaning of the term "roller."

Therefore, based on the foregoing analysis it appears that the articles fall within the common meaning of the term "rollers" and are classifiable under subheading 8302.41.60, HTSUS, as base metal mountings, fittings, and similar articles suitable for buildings.

In regard to the roller with the plastic outer ring, we feel that this particular roller is a composite good, with the essential character of the roller provided by the steel portion of the roller. EN Rule 3(b)(IX) states, in part, that:

> For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separate components, provided these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

In this case, we are of the opinion that the garage door roller with the plastic outer ring is a composite good. According to GRI 3(b), classification must be made according to the essential character of the good. In general, essential character has been construed to mean the attribute which strongly marks or serves to distinguish what an article is or that which is indispensable to the structure, core or condition of the article. EN Rule 3(b)(VIII) provides factors which help determine the essential character of goods. The factors listed in EN Rule 3(b)(VIII) include the nature of the material or component, bulk, quantity, weight or value, or the role of a constituent material in relation to the use of the goods.

The components of the article, the steel roller shaft and bearings and plastic outer ring, are adapted one to the other, mutually complementary, and together form a whole which would not normally be offered for sale in separate parts. The bearings of the roller assembly fit into the outer ring which fits into the track. Based on the information submitted, we determine that the essential character of the roller is provided by the steel portion of the roller; it provides the bulk of the weight and form of the roller and attaches to the garage door itself, through a roller bracket. Thus, we find that the garage door roller with the plastic outer ring would be classified similarly to the other garage door rollers provided which are comprised entirely of steel.

Thus, based on the foregoing analysis, we conclude that the subject garage door rollers are within the common meaning of the term "rollers" and are classifiable under subheading 8302.41.60, HTSUS. Since the garage door rollers are parts of general use classified in subheading 8302.41.60, HTSUS, they are excluded from classification under subheading 8482.10.10, HTSUS, according to Note 1, Section XVI.

Holding:

In accordance with the above discussion, the correct classification for the subject garage door rollers is under subheading, 8302.41.60, HTSUS, which provides for "Base metal mountings, fittings, and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hatpegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal; and base metal parts thereof: * * * Other mountings, fittings and

similar articles, and parts thereof: * * * Suitable for buildings: * * * Other: * * * Of iron or steel of aluminum or of zinc."

Effect on Other Rulings:

NY D89002 is REVOKED. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

JAMES A. SEAL,
(for Myles B. Harmon, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A QUILT

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the tariff classification of a quilt.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification of a quilt under the Harmonized Tariff Schedule of the United States (HTSUS). Customs is also revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published on January 8, 2003, in Volume 37, Number 2, of the CUSTOMS BULLETIN. Customs received no comments in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Rebecca Hollaway, Textiles Branch, at (202) 572–8814.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by Title VI, notice proposing to revoke New York Ruling Letter (NY) I82843, dated July 2, 2002, and to revoke any treatment accorded to substantially identical merchandise was published in the January 8, 2003, CUSTOMS BULLETIN, Volume 37, Number 2. Customs received no comments.

In NY I82843, Customs classified a quilt (referred to as a Beach Roll-Up) under subheading 9404.90.8020, HTSUS, as an article of bedding or similar furnishing. However, due to the irregular size of the quilt Customs now finds that the classification of the quilt is under subheading 6304.92.0000, as other furnishing articles, excluding those of heading 9404.

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

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

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY I82843, and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 965829, which is attached to this document. Additionally, pursuant

to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

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

Dated: February 11, 2003.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 11, 2003.

CLA–2 RR:CR:TE 965829 RH
Category: Classification
Tariff No. 6304.92.0000

LAWRENCE R. PILON, ESQ.
HODES KEATING & PILON
39 South LaSalle Street, Suite 1020
Chicago, IL 60603–1731

Re: Revocation of NY I82843; Classification of a Beach Roll-Up; Heading 9404; Heading 6304.

DEAR MR. PILON:

This is in reply to your letter of August 15, 2002, on behalf of LTD Commodities, Inc., requesting reconsideration of New York Ruling Letter (NY) I82843, dated July 2, 2002, concerning the classification of a beach quilt roll-up. We have reviewed NY I82843 and have found it to be in error. Therefore, this ruling revokes NY I82843.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY I82843 was published on January 8, 2003, in Vol. 37, No. 2 of the CUSTOMS BULLETIN.

Facts:

A description of the merchandise in NY I82843 reads as follows:

> The submitted sample is referred to as the BIK-Beach Quilt Roll-Up. This composite item consists if [sic] a quilt, inflatable pillow and a storage/carry bag. The outer shell of the quilt is made from 100 percent cotton woven fabrics and it is stuffed with a polyester fiberfill. The face side features a Hawaiian style print and the back is plain white. It is quilted through all three layers and measures 76 x 85 inches. The edges are finished with a strip of binding fabric. An approximately 10 x 14 inch fabric pocket is sewn along the edge of one side. This pocket contains a 9.5 x 13.5 inch inflatable plastic bladder. The cylindrical storage and carrying bag measures approximately 25 inches high and 8 inches in diameter. It is made from the Hawaiian print fabric and features a drawstring closure, carry strap and a mesh bottom panel. The storage and carrying bag is specifically designed to contain the rolled up quilt. The quilt conveys the essential character of this product.

Customs classified the beach quilt under subheading 9404.90.8020 of the Harmonized Tariff Schedule of the United States (HTSUS), as an article of bedding or similar furnishing.

You argue that the merchandise is properly classified under subheading 6307.90.9889, HTSUS, as "Other made up textile articles, including dress patterns."

Issue:

What is the proper classification of the subject merchandise?

Law and Analysis:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order.

Heading 9404, HTSUS, 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."

You argue that neither the specific terms of subheading 9404.90.8020 nor the more general terms of heading 9404 describe the merchandise at issue because it is not intended, designed, marketed, nor used as a bedcover, nor is it similar to quilts, eiderdowns, and comforters.

In HQ 957410, dated February 3, 1995, Customs held that implicit in an article being considered "bedding" is that it be capable of serving a primary function of covering a bed sufficiently so as to make such use practicable. We further held that while Customs is reluctant to provide specific dimensions and a dividing line for goods that are potentially classifiable as quilts or bedding, those goods with the general appearance of bedding which slightly deviate from the standard quilt sizes and could still adequately cover an entire bed so that use as a quilt is reasonable and likely, would also be classifiable under Heading 9404, HTSUS. The standard sizes listed in the ruling are as follows:

Mattress Sizes	Quilts and Bedspreads
Twin 39″ X 75″	66″ X 86″
Full 54″ X 75″	81″ X 86″
Queen 60″ X 80″	86″ X 86″
King 78″ X 80″	100″ X 90″

A detailed discussion on heading 9404 is set forth in the LAW and ANALYSIS portion of HQ 957410, which is attached for your convenience.

Both your submission and the advertising literature states that the instant quilt measures 74 inches by 84 inches. We note that the original sample examined by the National Import Specialist measured 76 inches by 85 inches, and our measurements of the instant sample are 74.5 inches by 84.5 inches.

Based on our examination of the sample, we find that it has the general appearance and construction of a quilt. However, in our opinion the size of the quilt (both the original and present sample) "deviates significantly" from the standard size mattresses and bedding listed in HQ 957410.

We further find that the quilt is classifiable under heading 6304, HTSUS, which provides for "Other furnishing articles, excluding those of heading 9404", notwithstanding the pillow and bladder component. See NY H81473, dated June 13, 2001, NY H86638, dated January 14, 2002, and NY F82823, dated February 24, 2000, in which we held that irregular size quilts with a pocket feature were classified in heading 6304.

Finally, we disagree with you that the beach roll-up is classifiable in heading 6307, HTSUS. The items in the rulings cited to support your claim are distinguishable from your client's quilt and possess features that are not characteristic of bedding. For example, in NY G86366, dated January 30, 2001, NY G86128, dated January 24, 2001, and NY D80795, dated August 1, 1998, the beach "mats" or "blankets" were filled with "foam" and were tightly woven of synthetic fibers or were coated with plastic to give them moisture resistant or waterproof qualities, features that are not present in your client's quilt.

Holding:

NY I82843 is REVOKED. The subject article is classifiable in subheading 6304.92.0000, HTSUS, which provides for "Other furnishing articles, excluding those of heading 9404: Other: Not knitted or crocheted, of cotton." It is dutiable at the general column one rate at 6.4 percent *ad valorem*.

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

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

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 3, 1995.

CLA–2 CO:R:C:T 957410 CAB
Category: Classification
Tariff No. 6304.92.0000

DIANE WEINBERG, ESQ.
SANDLER, TRAVIS & ROSENBERG, P.A.
505 Park Avenue
New York, NY 10022–1106

Re: Classification of wallhangings/throws; quilt; Heading 9404; Heading 6304.

DEAR MS. WEINBERG:

This is in response to your inquiry of November 10, 1994, on behalf of American Pacific Enterprises, Inc., requesting a tariff classification for merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Samples were submitted for examination.

Facts:

The submitted samples are referred to as quilted patchwork throws/wallhangings. The outershell of the articles are constructed of 100 percent woven cotton material and are filled with 100 percent polyester fiber fill. One of the samples which measures 50 X 50 inches has a pieced patchwork design which depicts a Christmas tree and presents. The design contains embroidery and applique using ribbons and bows. The other sample which measures 50 X 60 inches contains appliques of a farmhouse, pieced patchwork, and farm animals. Both samples contain rod pockets for displaying them on the wall as wallhangings.

Issue:

Whether the instant articles are classifiable under Heading 9404, HTSUSA, which provides for articles of bedding and similar furnishings or under Heading 6304, HTSUSA, which provides for other textile furnishings?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order.

As stated above, the subject articles are potentially classifiable under two distinct headings, Heading 6304, HTSUSA, or Heading 9404, HTSUSA.

Heading 9404, HTSUSA, 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. The Explanatory Notes to the Harmonized Commodity Description and Coding System (EN), although not legally binding, are the official inter-

pretation of the nomenclature at the international level. The EN to Heading 9404, HTSUSA, state, in pertinent part:

This heading covers:

* * * * * * *

(B) Articles of bedding and similar furnishing which are sprung or stuffed or internally fitted with any material (cotton, wool, horsehair, down, synthetic fibres, etc.), or are of cellular rubber or plastics * * *. For example:

* * * * * * *

(2) Quilts and bedspreads (including counterpanes, and also quilts for baby-carriages), eiderdowns and duvets (whether of down or any other filling), mattress-protectors (a kind of thin mattress placed between the mattress itself and the mattress support), bolsters, pillows, cushions, pouffes, etc.

The Modern Textile and Apparel Dictionary, (1973), defines a quilt as "usually a bed covering of two thicknesses of material with wool, cotton, or down batting in between for warmth." Webster's II New Riverside University Dictionary, (1984), defines a quilt as "a bed covering consisting of two layers of fabric with a layer of batting or feathers between and stitched firmly together, usually in a decorative pattern. It defines bedding as "bedclothes, which are coverings, such as sheets and blankets, used on a bed." Webster's New World Dictionary, (1988), defines bedding as "mattresses and bedclothes." In order to determine if the subject articles are classifiable under Heading 9404, HTSUSA, Customs must decide whether they are considered bedding for tariff classification purposes.

In your submission, you contend that the instant articles are "quilted wallhangings/throws" and are classifiable as other textile furnishings under Heading 6304, HTSUSA. You further state that the quilted wallhangings/throws are not classifiable in Heading 9404, HTSUSA, as articles of bedding and similar furnishings, because they are too small to cover a bed. There is no mention in the nomenclature or the EN that specifies that articles that are potentially classifiable under Heading 9404, HTSUSA, must be able to cover a bed. However, it is Customs opinion, that implicit in an article being considered "bedding" is that it be capable of serving a primary function of covering a bed sufficiently so as to make such use practicable.

After conferring with numerous mattress and bed linen manufacturers in the United States, Customs has discovered that there are standard commercial sizes for mattresses and bed coverings. The standard sizes are as follows:

Mattress Sizes	Quilts and Bedspread Sizes
Twin 39 X 75	66 X 86
Full 54 X 75	81 X 86
Queen 60 X 80	86 X 86
King 78 X 80	100 X 90

Customs checked with various manufacturers of crib mattresses and received various dimensions for crib mattresses. The varied dimensions are as follow:

Mattress	Sizes
Crib	27 X 51
	27 X 51 5/8
	27 X 54
	28 X 52
	27 1/2 X 52

Depending on the particular bedding manufacturer, the dimensions of crib quilts varied greatly.

You maintain that your client's customers will only tolerate plus or minus 5 inches on the width or length of a quilt designed to fit a standard size mattress. Therefore, any purported quilt that is significantly more or less than the aforementioned standard quilt sizes will probably be unacceptable to potential buyers as it will not fit a standard size mattress properly.

Moreover, if the alleged quilt significantly deviates from the standard mattress size, it will fail to perform a fundamental purpose of a quilt, i.e, to adequately cover a bed.

The preceding discussion leads us to the question of whether the subject articles are quilts for tariff classification purposes. The subject articles are comprised of two layers of material with a layer of batting in between and decorative stitching sewn on their surface. The subject articles also contain a rod pocket to facilitate hanging them on a wall. The rod pocket is a consideration in the tariff classification process, nevertheless, Customs views it

as a convenience to the purchaser and not determinative of the classification. Thus, the instant articles meet the definitions for quilts provided in the lexicographic sources. However, the dimensions of the subject articles are 50 X 60 and 60 X 60, respectively. After viewing, these dimensions in light of the standard size mattresses and bedding listed, it is clear to Customs that the subject articles would not sufficiently cover any of the standard size mattresses. Either the subject articles would be too small to adequately cover the twin, full, queen, or king size mattresses or too large for the crib size mattresses. As the subject articles deviate significantly from the stated standard sizes for quilts and therefore would be incapable of adequately covering a bed, Customs is of the opinion that they are not quilts for tariff classification purposes.

It is important to note that except for the irregular dimensions, the subject articles do have the general appearance and construction of a quilt. Therefore, if the subject articles were to meet the standard measurements for the crib, twin, full, queen, or king size quilts as recognized in domestic industry, they would be classified under Heading 9404, HTSUSA. Customs is aware that in certain limited instances, goods will be imported as quilts and veer slightly from the standard quilt sizes. Thus, Customs is reluctant to provide specific dimensions and a dividing line for goods that are potentially classifiable as quilts or bedding. Consequently, those goods with the general appearance of bedding which slightly deviate from the standard quilt sizes and could still adequately cover an entire bed so that use as a quilt is reasonable and likely, would also be classifiable under Heading 9404, HTSUSA.

As mentioned above, you contend that the instant articles are wallhangings/throws and are properly classifiable under Heading 6304, HTSUSA, which provides for other textile furnishing articles, excluding those of Heading 9404. The EN to Heading 6304, HTSUSA, state, in pertinent part:

* * * * * * *

These articles include wall hangings and textile furnishings for ceremonies (e.g., weddings or funerals); mosquito nets; bedspreads (but not including bed coverings of heading 94.04); cushion covers, loose covers for furniture, * * *. In Headquarters Ruling Letter (HRL) 087551, dated November 9, 1990, Customs was faced with the issue of the proper tariff classification of an article described therein as a "bed throw". The article measured 46 inches by 60 inches and had fringe on all four sides. Customs determination was, as follows:

> Both the sample articles (46 X 60) and the imported article (54 X 60) are too small to cover a bed; moreover, bed throws commonly have fringe on only three sides. Thus, Customs does not consider the instant article to be a bed throw but instead, views it as similar to a furniture throw or cover. In either case, however, the article is classifiable as a furnishing of heading 6304.

In this instance, the subject article has the general appearance of a quilt. However, it also contains a rod pocket that the you claim is present to facilitate its use as a wall hanging. The subject articles, which measures 50 X 60 and 60 X 60 are very close to the dimensions of the articles at issue in HRL 087551. The subject goods as well as the articles at issue in HRL 087551 significantly deviate from all of the standard size quilts and would not sufficiently cover a standard size mattress. Such a deviation leads Customs to believe that the subject article is not a quilt for tariff classification purposes. Moreover, you have submitted advertising evidence that manifests the intent of the importer to market the merchandise at issue as items that cover a chair or decorative items for the wall. Accordingly, the subject wallhangings/throws are classifiable under Heading 6304, HTSUSA, as other textile furnishings.

Holding:

Based on the foregoing, the subject merchandise is classified in subheading 6304.92.0000, HTSUSA, which provides for other furnishings articles, excluding those of heading 9404, not knitted or crocheted, of cotton. The applicable rate of duty is 7.1 percent ad valorem and the textile restraint category is 369.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, The Status on Current Import Quo-

tas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

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

JOHN DURANT,
Director,
Commercial Rulings Division.