

Bureau of Customs and Border Protection

General Notices

(CBP. Dec. 04-09)

BONDS

APPROVAL TO USE AUTHORIZED FACSIMILE SIGNATURES AND SEALS

The use of facsimile signatures and seals on Customs bonds by the following corporate surety has been approved effective this date:

Western Surety Company

Authorized facsimile signature on file for:

John J. Sheppard, Attorney-in-fact
John K. Daily, Attorney-in-fact
Bruce S. Haskell, Attorney-in-fact
Lee V. Barther, Attorney-in-fact
John J. Sheppard, II, Attorney-in-fact

The corporate surety has provided U.S. Customs and Border Protection (CBP) with copies of the signatures to be used, copies of the corporate seal, and a Certificate of Incumbency agreeing to be bound by the facsimile signatures and seals. This approval is without prejudice to the surety's right to affix signatures and seals manually.

DATE: February 24, 2004

GLEN E. VEREB,
Chief,
Entry Procedures and Carriers Branch.

Retraction of Revocation Notice

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

ACTION: General Notice

SUMMARY: The following Customs broker license was erroneously included in a list of revoked Customs broker licenses.

Name	License	Port Name
Robert S. Leclair	11499	Providence

Customs broker license No. 11499 remains valid.

DATED: February 13, 2004

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

[Published in the Federal Register, February 24, 2004 (69 FR 8477)]

Notice of Cancellation of Customs Broker License

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

ACTION: General Notice

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

<u>Name</u>	<u>License #</u>	<u>Issuing Port</u>
UPS Customhouse Brokerage Inc.	09555	Cleveland
Freight Brokers International Inc.	03477	New York
Ameri-Can Customhouse Brokers Inc.	10765	Buffalo
Capin Brokerage Inc.	13016	Nogales
ADESA Importation Services Inc.	21103	Detroit

DATED: February 13, 2004

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

[Published in the Federal Register, February 24, 2004 (69 FR 8477)]

Notice of Cancellation of Customs Broker Permit

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

ACTION: General Notice

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

<u>Name</u>	<u>Permit #</u>	<u>Issuing Port</u>
ABX Logistics USA Inc.	055	Great Falls
GPS Customs House Brokerage Inc.	28-03-W22	San Francisco
Allstates Customs Brokerage Inc.	00-17-009	Atlanta
Su Mei-Hsia Sun	28-01-NK1	San Francisco

DATED: February 13, 2004

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

[Published in the Federal Register, February 24, 2004 (69 FR 8476)]

Notice of Cancellation of Customs Broker National Permit

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

ACTION: General Notice

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

<u>Name</u>	<u>Permit #</u>	<u>Issuing Port</u>
Capin Vyborny Inc	99-00570	Headquarters
Allstates Customs Brokerage Inc	99-00180	Headquarters
Su Mei-Hsia Sun	99-00282	Headquarters
UPS Customhouse Brokerage Inc.	99-00068	Headquarters
Freight Brokers International Inc	99-00017	Headquarters
Ameri-Can Customhouse Brokers Inc	99-00196	Headquarters
ADESA Importation Services Inc	99-00428	Headquarters

DATED: February 13, 2004

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

[Published in the Federal Register, February 24, 2004 (69 FR 8477)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, February 25, 2004,

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

Myles B. Harmon for SANDRA L. BELL,
*Acting Assistant Commissioner,
Office of Regulations and Rulings.*

**REVOCATION OF RULING LETTERS AND REVOCATION OF
TREATMENT RELATING TO TARIFF CLASSIFICATION
OF DISPOSABLE BOXER SHORTS**

AGENCY: Bureau of Customs and Border Protection; Department of Homeland Security.

ACTION: Notice of revocation of two tariff classification ruling letters and revocation of treatment relating to the classification of disposable boxer shorts.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is revoking two ruling letters relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of disposable boxer shorts. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed revocation was published in the Customs Bulletin of December 10, 2003, Vol. 37, No. 50. No comments were received.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 9, 2004.

FOR FURTHER INFORMATION CONTACT: Beth Safeer, Textiles Branch: (202) 572-8825.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on the Bureau of Customs and Border Protection 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 CBP 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 CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice proposing to revoke New York Ruling Letter (NY) H88064, dated March 1, 2002 and NY H82855, dated July 6, 2001, was published on December 10, 2003, in Vol. 37, No. 50, of the Customs Bulletin.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during this notice period. No comments were received.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer’s or CBP’s previous interpretation of the HTSUSA. Any person involved with substantially identical merchandise should have advised CBP during the notice period. An importer’s failure to advise CBP of substantially identical merchandise or of a specific ruling not identified in the proposed notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In NY H88064 and NY H82855, CBP classified disposable boxer shorts composed of 100 percent spun bond polypropylene fabric with an elasticized waistband under subheading 6210.10.7000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for “Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Of fabrics of heading 5602 or 5603: Other: Other: Disposable briefs and panties designed for one-time use.” Based on our analysis of the scope of the terms of subheadings 6210.10.7000, HTSUSA, and 6210.10.9040, HTSUSA, the Legal Notes, and the Explanatory Notes, we find that disposable boxer shorts of the type subject to this notice, should be classified in subheading 6210.10.9040, HTSUSA, the provision for “Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Of fabrics of heading 5602 or 5603: Other: Other: Other, Other.”

Pursuant to 19 U.S.C. 1625 (c)(1), CBP is revoking NY H88064 and NY H82855, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 966595 (Attachment A) and HQ 966594 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical merchandise.

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

DATED: February 18, 2004

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966595
February 18, 2004
CLA-2 RR:CR:TE 966595 BAS
CATEGORY: Classification
TARIFF NO.: 6210.10.9040

THOMAS CHAO
M.A.M. INDUSTRIES, INC.
10736 Skylark Drive
Jacksonville, Florida 32257

RE: Revocation of NY H88064, dated March 1, 2002; Classification of disposable boxer shorts

DEAR MR. CHAO:

This is in reference to New York Ruling Letter (NY) H88064, dated March 1, 2002. In NY H88064, disposable boxer shorts composed of 100 percent spun bond polypropylene fabric with an elasticized waistband were classified under subheading 6210.10.7000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for "Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Of fabrics of heading 5602 or 5603: Other: Other: Disposable briefs and panties designed for one-time use." Upon review of the ruling, the Bureau of Customs and Border Protection (CBP) has determined that the merchandise was erroneously classified. This ruling letter revokes NY H88064 and sets forth the correct classification determination.

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 H88064, as described below, was published in the *Customs Bulletin*, Volume 37, Number 50, on December 10, 2003. CBP received no comments during the notice and comment period that closed on January 9, 2004.

FACTS:

The merchandise under consideration is a disposable boxer short from China made for one time use. The garment, Item Number BX-002, is composed of non-woven 100 percent spun bond polypropylene fabric and features an elasticized waistband.

Internet research reveals that disposable boxer shorts may be used for wear while travelling, camping, before or after workout, during hospital stays and spa visits.

ISSUE:

Is the subject disposable boxer short classifiable under subheading 6210.10.7000, HTSUSA, which provides for disposable briefs and panties designed for one-time use, made up of fabrics of 5603, or under subheading 6210.10.9040, HTSUSA, which provides for other garments, made up of fabrics of heading 5602 or 5603?

LAW AND ANALYSIS:

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

SUBHEADING 6210.10.7000, HTSUSA

Heading 6210, HTSUSA, covers garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907. The boxer shorts at issue, constructed of 100 percent non-woven polypropylene fabric would be a garment made up of fabric of heading 5603, non-woven.

The issue is whether or not the boxer shorts should be classified under subheading 6210.10.7000, HTSUSA, as a disposable brief or panty, designed for one time use or under subheading 6210.10.9040, HTSUSA, as an other garment made up of fabrics of heading 5602 or 5603.

Websters II New College Dictionary, 1999, at page 138, defines briefs as "short tight-fitting underpants" and boxer shorts as "full-cut undershorts."

The Fashion Dictionary, Mary Brooks Picken, 1973, at page 37, defines briefs as "undergarments similar to drawers but shorter, shaped with crotch, fitting legs snugly" and boxers as "styles of shorts first worn in the boxing ring, and then used as swimming trunks by men. Adapted for trunks of women's and children's bathing suits."

Hisroom.com, an internet website which sells undergarments of all types, describes a brief as "the traditional men's underpant. It has a full rise, meaning it covers the body from the waist to the top of the thigh. Also has a working fly." Hisroom.com describes a boxer as "a full rise, full cut short with a 3 inch inseam. It loosely covers the body from the waist to just above mid thigh. It always has a working front fly."

The definitions indicate that briefs are tighter fitting garments that do not cover the thigh. Boxers are loose fitting garments which do cover part of the thigh. Although the boxers in this case are disposable, they are not briefs and therefore are not properly classifiable in subheading 6210.10.7000, HTSUSA.

SUBHEADING 6210.10.9040, HTSUSA

The subject disposable boxer short is properly classified in subheading 6210.10.9040, HTSUSA, the provision for "Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Of fabrics of heading 5602 or 5603: Other: Other: Other, Other."

This ruling is consistent with other rulings in which disposable non-woven polypropylene boxer shorts, disposable shorts and other non-woven polypropylene garments have been classified in subheading 6210.10.9040, HTSUSA. See NY J83528, dated April 30, 2003; NY F86301, dated May 11, 2000; NY B81958, dated March 31, 1997.

HOLDING

NY H88064, dated March 1, 2002, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

The disposable boxer short at issue, Item Number BX-002, composed of non-woven 100 percent spun bond polypropylene fabric and featuring an

elasticized waistband is classified in subheading 6210.10.9040, HTSUSA, textile category 659, the provision for "Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Of fabrics of heading 5602 or 5603: Other: Other: Other: Other." The general column one rate of duty is 16.1 percent ad valorem.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest your client check, close to the time of shipment, the Textile Status Report for Absolute Quotas, previously available on the Customs Electronic Bulletin Board (CEBB), which is available now on the CBP website at www.cbp.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.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966594
February 18, 2004
CLA-2 RR:CR:TE 966594 BAS
CATEGORY: Classification
TARIFF NO.: 6210.10.9040

DAVID HARRIS
DNA PRODUCTS, LLC
P.O. Box 306
New York, NY 10032

RE: Revocation of NY H82855, dated July 6, 2001; Classification of disposable boxer shorts

DEAR MR. HARRIS:

This is in reference to New York Ruling Letter (NY) H82855, dated July 6, 2001. In NY H82855, disposable boxer shorts composed of non-woven 100 percent polypropylene fabric with an elasticized waistband and a front fly opening were classified under subheading 6210.10.7000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for "Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Of fabrics of heading 5602 or 5603: Other: Other: Disposable briefs and panties designed for one-time use." Upon review of the ruling, the Bureau of Customs and Border Protection (CBP) has determined that the merchandise

was erroneously classified. This ruling letter revokes NY H82855 and sets forth the correct classification determination.

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 H82855, as described below, was published in the *Customs Bulletin*, Volume 37, Number 50, on December 10, 2003. CBP received no comments during the notice and comment period that closed on January 9, 2004.

FACTS:

The merchandise under consideration is a disposable boxer short from China made for one time use. The garment is composed of non-woven 100 percent polypropylene fabric and features an elasticized waistband and a front fly opening.

Internet research reveals that disposable boxer shorts may be used for wear while travelling, camping, before or after workout, during hospital stays and spa visits.

ISSUE:

Is the subject disposable boxer short classifiable under subheading 6210.10.7000, HTSUSA, which provides for disposable briefs and panties designed for one-time use, made up of fabrics of 5603, or under subheading 6210.10.9040, HTSUSA, which provides for other garments, made up of fabrics of heading 5602 or 5603?

LAW AND ANALYSIS:

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

SUBHEADING 6210.10.7000, HTSUSA

Heading 6210, HTSUSA, covers garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907. The boxer shorts at issue, constructed of 100 percent non-woven polypropylene fabric would be a garment made up of fabric of heading 5603, non-woven.

The issue is whether or not the boxer shorts should be classified under subheading 6210.10.7000, HTSUSA, as a disposable brief or panty, designed for one time use or under subheading 6210.10.9040, HTSUSA, as an other garment made up of fabrics of heading 5602 or 5603.

Websters II New College Dictionary, 1999, at page 138, defines briefs as "short tight-fitting underpants" and boxer shorts as "full-cut undershorts."

The Fashion Dictionary, Mary Brooks Picken, 1973, at page 37, defines briefs as "undergarments similar to drawers but shorter, shaped with crotch, fitting legs snugly" and boxers as "styles of shorts first worn in the boxing ring, and then used as swimming trunks by men. Adapted for trunks of women's and children's bathing suits."

Hisroom.com, an internet website which sells undergarments of all types, describes a brief as "the traditional men's underpant. It has a full rise, meaning it covers the body from the waist to the top of the thigh. Also has a working fly." Hisroom.com describes a boxer as "a full rise, full cut short

with a 3 inch inseam. It loosely covers the body from the waist to just above mid thigh. It always has a working front fly.”

The definitions indicate that briefs are tighter fitting garments that do not cover the thigh. Boxers are loose fitting garments which do cover part of the thigh. Although the boxers in this case are disposable, they are not briefs and therefore are not properly classifiable in subheading 6210.10.7000, HTSUSA.

SUBHEADING 6210.10.9040, HTSUSA

The subject disposable boxer short is properly classified in subheading 6210.10.9040, HTSUSA, the provision for “Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Of fabrics of heading 5602 or 5603: Other: Other: Other, Other.”

This ruling is consistent with other rulings in which disposable non-woven polypropylene boxer shorts, disposable shorts and other non-woven polypropylene garments have been classified in subheading 6210.10.9040, HTSUSA. See NY J83528, dated April 30, 2003; NY F86301, dated May 11, 2000; NY B81958, dated March 31, 1997.

HOLDING

NY H82855, dated July 6, 2001, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

The disposable boxer short at issue composed of non-woven 100 percent polypropylene fabric and featuring an elasticized waistband and front fly opening is classified in subheading 6210.10.9040, HTSUSA, textile category 659, the provision for “Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Of fabrics of heading 5602 or 5603: Other: Other: Other, Other.” The general column one rate of duty is 16.1 percent ad valorem.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest your client check, close to the time of shipment, the Textile Status Report for Absolute Quotas, previously available on the Customs Electronic Bulletin Board (CEBB), which is available now on the CBP website at www.cbp.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.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

**PROPOSED MODIFICATION OF A RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO TARIFF
CLASSIFICATION OF CERTAIN WALLETS OR SMALL
HANDBAGS**

AGENCY: Bureau of Customs & Border Protection; Department of Homeland Security.

ACTION: Notice of proposed modification of a tariff classification ruling letter and revocation of treatment relating to the classification of certain wallets or small handbags.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs & Border Protection (CBP) intends to modify one ruling letter relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of certain wallets or small handbags. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before April 9, 2004.

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

FOR FURTHER INFORMATION CONTACT: Brian Barulich, Textiles Branch: (202) 572-8883.

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 CBP 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 CBP 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 CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify a ruling letter relating to the tariff classification of certain wallets or small handbags. Although in this notice CBP is specifically referring to the modification of HQ 961942, dated October 26, 1999 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, an internal advice memorandum or decision or a protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

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

In HQ 961942, CBP classified a Buxton model 39 envelope-style clutch container in subheading 4202.21.6000, HTSUSA, as a handbag with outer surface of leather valued not over \$20 each. Based on our further analysis of the product and the pertinent classification criteria, we find that the Buxton model 39, should be classified in subheading 4202.31.6000, HTSUS, which provides for "Articles of a kind normally carried in the pocket or in the handbag: With outer surface of leather, of composition leather or of patent leather: Other."

Pursuant to 19 U.S.C. 1625 (c)(1), CBP intends to modify HQ 961942 and any other ruling not specifically identified, to reflect the

proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 966842 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise.

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

DATED: February 18, 2003

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 961942
October 26, 1999
CLA-2 RR:CR:TE 961942 SS
CATEGORY: Classification
TARIFF NO.: 4202.21.6000; 4202.31.6000

PORT DIRECTOR
U.S. CUSTOMS SERVICE
135 High Street, Room 350
Hartford, CT 06103

RE: Decision on Request for Internal Advice 30/97 concerning the classification of small clutch purses; Handbags; Subheading 4202.21.6000, HTSUSA; Articles of A Kind Normally Carried in the Handbag; Subheading 4202.31.6000, HTSUSA; Wallet

DEAR SIR:

This is in response to your letter dated September 18, 1997, requesting Internal Advice regarding the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of two styles of small leather clutch purses. The Request for Internal Advice was initiated by Meeks & Shepard on behalf of Buxton Company. Two samples, identified as model 39 and model 54, have been submitted.

FACTS:

The sample article, identified as model 39, is a small leather clutch purse with an outer surface composed of leather. Model 39 is also identified by the importer as an "Ensemble Clutch". The item measures approximately 4 inches in height by 7-1/2 inches in width and 1 inch in depth when empty and in the closed position. A metal zippered closure extends along three sides of the item's central com-

partment. When unzipped, gussets allow the top opening of the compartment to expand approximately 6 inches. The inside of the central compartment is divided into two smaller gusseted compartments by a zippered pouch that runs the width of the compartment. The central compartment can hold small three-dimensional items. There is a single full-width slot compartment on each inside wall of the compartment. One wall also features four slots for credit cards or similar objects. The front exterior of the article consists of a flap that folds in a bifold manner and is secured in the closed position by a strap approximately 1-1/4 inches wide and 2-1/4 inches long with a metal three positioned snap fastener. When the fold-out flap is in the open position, the article measures approximately 8 inches in height. The interior of the flap contains one slot compartment extending the full width of the article and six slots sized to contain credit cards and similar objects. Inserted permanently into the full length slot is a check book cover. Also inserted into the full width slot are 5 transparent envelopes for photos or credit cards. The spine of the flap has an opening allowing for the storage of a pen. The interior side opposite the flap features one full-width slot compartment and a transparent flat slot pocket for an identification card. The rear exterior features a zippered compartment that extends across the width of the article. The zippered compartment is gusseted on one side which allows one side of the opening to extend approximately 2 inches. The second article, model 54, also has an outer surface composed of leather. The item is identified as a "Double Flap Clutch". The item measures approximately 4 inches in height by 6-3/4 inches in width and 1 inch in depth (at its thickest point) when empty and in the closed position. The front exterior of the article features two overlapping flaps that are secured with metal snap fasteners. The first, or top flap, opens to reveal a gusseted compartment. The gussets allow the top opening to expand approximately 2 inches, allowing for easy access to the compartment. However, the snap closure restricts the carrying capability of this compartment to a thickness of approximately 1/2 inch. Towards the rear wall, there is a single zippered compartment. The rear of the zippered compartment creates a flat slot compartment against the rear wall. The second, or lower flap, secures a fold-out flap. When the fold-out flap is in the open position, the article measures approximately 7 1/4 inches in height. The interior of this fold-out flap contains two full width slots. The interior of the article opposite the fold-out flap contains two full-width slots, a transparent flat slot pocket for an identification card and five slots for credit cards or similar objects. The rear exterior features a full width slot compartment.

In the Request for Internal Advice, the importer asserts that both models are designed and marketed as ladies wallets. The importer has submitted three affidavits of persons in the leather goods industry who have attested to the fact that the articles are wallets as opposed to handbags. The importer has also submitted retail advertisements which suggest that the articles are sold in the small leather goods departments of stores. Additionally, we met with

counsel and a representative of the importer on December 21, 1998. We note that the importer made a supplemental submission dated February 19, 1999.

ISSUE:

Whether the merchandise is properly classified in subheading 4202.31, HTSUSA, as articles of a kind normally carried in the pocket or in the handbag; or in subheading 4202.21, HTSUSA, as handbags?

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification shall be determined according to the terms of the headings 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. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, and any related subheading notes and, *mutatis mandis*, to the GRIs. This matter is governed primarily by GRI 6, in that the choice in classification is between two subheadings. Heading 4202, HTSUSA, provides for, *inter alia*, travel bags, handbags, wallets, purses and similar containers. Since the merchandise is similar to handbags and/or wallets, it is covered by the heading. Subheading 4202.21, HTSUS, covers handbags with outer surface of leather while subheading 4202.31, HTSUSA, covers articles of a kind normally carried in the pocket or in the handbag with outer surface of leather. Accordingly, classification in this case depends on whether or not the items are considered handbags or articles normally carried in handbags.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The EN to subheading 4202.31, HTSUSA, the provision for articles normally carried in a handbag, states that the subheading covers "articles of a kind normally carried in the pocket or in the handbag and include spectacle cases, note-cases (bill-folds), wallets, purses, key-cases cigarette-cases, cigar-cases, pipe-cases and tobacco-pouches." Since subheading 4202.21, HTSUSA, explicitly covers handbags and the EN to subheading 4202.31, HTSUSA, indicates the subheading specifically covers wallets, we must decide whether the articles are handbags or wallets.

On June 21, 1995, this office published a General Notice in the Customs Bulletin, Volume 29, Number 25, concerning goods identified as "Wallets on a String." The attributes of both handbags and articles of a kind normally carried in the handbag were discussed. With regard to articles of a kind normally carried in the handbag, the notice stated in pertinent part:

"Such articles include wallets, which may be described as flat cases or containers fitted to hold credit/identification cards, paper currency, coins and in some instances a checkbook holder.

In order to be classified as a flatgood, the article must fit comfortably in a handbag or pocket. For example, rectangular or square cases measuring approximately 7 1/2 inches by 4 1/2 inches, or 4 3/4 inches by 4 1/2 inches, in their closed position, have been classified as flatgoods.

The addition of a wrap-around zipper does not in and of itself transform a flatgood into a handbag, particularly where the zipper functions merely to secure its contents in the closed or carrying position. Specifically, the presence of a zipper which simply holds the two halves of a wallet or similar container together, so that cards, currency or other articles in fitted compartments do not fall out, does not transform the case into a handbag." With respect to handbags the notice stated:

"A hand bag functions as a carry-all container for various small personal effects:

A container which is not fitted to hold articles such as credit/identification cards, paper currency, coins or checkbook holder is classifiable as a handbag. Therefore, a clutch bag or an evening bag measuring, for example, 7 1/2 inches by 4 1/2 inches, shall be classified as a handbag.

The determinative feature of a handbag is its ability to hold several objects not associated with a wallet. A bag which may accommodate articles such as a hairbrush, cosmetics, keys or other loose personal effects shall be classified as a handbag, even if it also incorporates the features of a flat case fitted to hold the items set forth above.

The presence of gusseted and/or zippered compartments will be taken into consideration in a determination of whether a case has generic carrying capacity. The presence of a wrap-around zipper may be an indication that the container is a carry-all if the zipper creates an inner space suitable for carrying three-dimensional objects."

In Headquarters Ruling Letter (HRL) 959919, dated January 26, 1998, we discussed the fact that the term "wallet" is not defined in the HTSUSA, nor in the applicable EN, but noted the following definitions from lexicographic sources:

"Essential Terms of Fashion: A Collection of Definitions, Charlotte M. Calasibetts, Fairchild Publications, 1986; an item used to carry paper money, credit cards, photographs and sometimes with a change purse or space for a check book or pad.

The Fashion Dictionary, Mary Brooks Picken, Funk & Wagnalls, 1973: 1. Flat purse or pocketbook, for carrying either paper money or coins.

Webster's New Collegiate Dictionary, G. & C. Meriam Co., 1977: 1. A bag for carrying miscellaneous articles while traveling; 2A. billfold B. a pocketbook with compartments for change, photographs, cards and keys.

Webster's New World Dictionary, Third College Edition, Simon & Schuster, Inc., 1988: 1. [Archaic] a knapsack; 2. A flat pocketbook, as of leather, with compartments for paper, money, cards, etc.; billfold."

With respect to model 54, we note that the article is fitted to hold items such as credit cards, identification cards, paper currency, and

is capable of being carried in a handbag. We find that the article is not designed to hold 3-dimensional items and will be principally used as an article carried in the handbag. The gusseted compartment, although it expands to a width of 2 inches, does not provide a generic capacity for loose personal effects. If 3-dimensional items are placed into the gusseted compartment, the compartment will not snap shut. If forced, the snap may engage, but the clutch noticeably bulges where the 3-dimensional articles are located and appears awkward. Thus, we conclude that model 54 is most specifically described by the term "wallet".

Model 39, however, is not so easily classified. The three-sided zipper and generous gussets make the determination difficult. Furthermore, a portion of the challenge in classifying articles that walk the fine line between "handbag" and "wallet" is due to the difficulty in visualizing items covered by prior rulings despite the detailed descriptions provided. However, we were able to locate three rulings and two samples on almost identical merchandise which all found that the items involved were classifiable as handbags.

The description of the "Zip Clutch", the article involved in HRL 960180, dated August 12, 1997, indicates that the item classified as a handbag is almost identical to Model 39. The "Zip Clutch" was described as having very similar dimensions and features as model 39. The "Zip Clutch" was fitted to hold items such as credit cards, paper currency, and photos, and was of a size suitable for carrying in a handbag. However, Customs determined that the article was also designed to hold 3-dimensional items not associated with the capacities of a flatgood. In classifying the "Zip Clutch" as a handbag, emphasis was placed on the three-sided zippered compartment with gusseted pockets which provided a generic carrying capacity for a variety of loose personal effects (e.g., lipstick, pens, a set of keys, etc.).

A review of HRL 959509, dated February 25, 1999, indicates that sample item Y8940B was similar to model 39. Upon examining the sample, we discovered that the merchandise was almost identical. Y8940 had approximately the same dimensions and features as model 39. The article had a similar central compartment which was zippered on three sides and opened to reveal a double gusseted, full-width pocket that was divided by a zippered flat pocket. Customs found that the article was designed to hold 3-dimensional items not associated with the capacities of a wallet or flatgood. In classifying Y8940 as a handbag, Customs focused on the large gusseted pocket which expanded to a width of 5 inches and provided a generic carrying capacity for loose personal effects such as a small hairbrush, set of keys, cosmetics, etc.

Similarly in HRL 959512, dated February 25, 1999, the description of item PLDFN 9520 indicated that the ruling covered similar merchandise and an examination of the sample involved revealed almost identical merchandise. The "additional zippered compartment which opens to reveal a double-gusseted, full width pocket with a divider" described in the ruling was zippered on three sides similar to model 39. Customs determined that PLDFN 9520 was designed to hold 3-dimensional items not associated with the capacities of a

wallet or flatgood. In classifying PLDFN 9520 as a handbag, Customs stressed the fact that the gusseted pockets provided a generic carrying capacity for loose personal effects.

Based on the three prior rulings involving almost identical merchandise, model 39 is classifiable as a handbag. Model 39 has a three-sided zippered compartment with a double gusseted full width pocket that creates an inner space suitable for carrying 3-dimensional objects. The generic compartments make model 39 capable of holding several objects, other than those associated with a wallet, and, thus, model 39 functions as a carry-all container for various small personal effects. In conclusion, model 39 meets the description of a handbag as set forth in the guidelines dated June 21, 1995.

HOLDING:

As per the analysis discussed above, model 54 is properly classifiable in subheading 4202.31.6000, HTSUSA, as an article of a kind normally carried in the pocket or in the handbag with outer surface of leather. The general column one rate of duty is 8 percent. Model 39 is properly classifiable in subheading 4202.21.6000, HTSUSA, as a handbag with an outer surface of leather if valued not over \$20 each. The general column one rate of duty is 10%.

You are to mail this decision to the internal advice applicant no later than 60 days from the date of this letter. On that date, the Office of Regulations and Rulings will make the decision available to Customs personnel, and to the public on the Customs Home page on the World Wide Web at www.customs.ustreas.gov, by means of the Freedom of Information Act, and other methods of public distribution.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966842
CLA-2: RR:CR:TE: 966842 BTB
CATEGORY: Classification
TARIFF NO.: 4202.31.6000

PORT DIRECTOR
BUREAU OF CUSTOMS AND BORDER PROTECTION
135 High Street, Room 350
Hartford, CT 06103

RE: Modification of HQ 961942; certain wallets or small handbags

DEAR PORT DIRECTOR:

This is in reference to Headquarters Ruling Letter (HQ) 961942, dated October 26, 1999, issued to you by this office regarding the classification, under

the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of two envelope-style clutch containers, the Buxton model 39 ("model 39") and the Buxton model 54 ("model 54"). HQ 961942 was initiated by a Request for Internal Advice filed by Meeks & Shepard on behalf of Buxton Company. We have reviewed HQ 961942 and, with respect to model 39, have determined that the ruling is in error. Therefore, this ruling modifies HQ 961942.

FACTS:

In HQ 961942, Customs classified model 39 in subheading 4202.21.6000, HTSUSA, as a handbag with an outer surface of leather. The model 39 is a small envelope-style clutch container with an outer surface composed of leather. Model 39 is also identified by the importer as an "Ensemble Clutch." The item measures approximately 4 inches in height by 7-1/2 inches in width by 1 inch in depth when empty and in the closed position. A metal zippered closure extends along three sides of the item's central compartment. When unzipped, gussets allow the top opening of the central compartment to expand approximately 6 inches. The inside of the central compartment is divided into two smaller gusseted compartments by a zippered pouch that runs the width of the compartment. There is a single full-width slot compartment on each inside wall of the compartment. One wall also features four slots for credit cards or similar objects. The front exterior of the article consists of a flap that folds in a bifold manner and is secured in the closed position by a strap approximately 1-1/4 inches wide and 2-1/4 inches long with a metal snap fastener. When the fold-out flap is in the open position, the article measures approximately 8 inches in height. The interior of the flap contains one slot compartment extending the full width of the article and six slots sized to contain credit cards and similar objects. Inserted permanently into the full-width slot is a check book cover. Also inserted into the full-width slot are 5 transparent envelopes for photos or credit cards. The spine of the flap has an opening allowing for the storage of a thin pen. The interior side opposite the flap features one full-width slot compartment and a transparent flat slot pocket for an identification card. The rear exterior features a zippered compartment that extends across the width of the article. The zippered compartment is gusseted on one side which allows that side of the opening to expand approximately 2 inches. A small design of a flower is embossed into the leather in the lower-right side of the front exterior.

ISSUE:

Whether the merchandise is properly classified in subheading 4202.31, HTSUSA, as an article of a kind normally carried in the pocket or in the handbag, or in subheading 4202.21, as a handbag.

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. If the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official in-

terpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

Heading 4202, HTSUSA, provides for, *inter alia*, travel bags, handbags, wallets, purses and similar containers. Since the merchandise is similar to handbags and/or wallets, it is covered by the heading. Subheading 4202.21, HTSUSA, covers handbags with outer surface of leather while subheading 4202.31, HTSUSA, covers articles of a kind normally carried in the pocket or in the handbag with outer surface of leather. Accordingly, classification in this case depends on whether or not the item is considered a handbag or an article normally carried in handbags.

The EN to subheading 4202.31, HTSUSA, states that the subheading covers "articles of a kind normally carried in the pocket or in the handbag and include spectacle cases, note-cases (bill-folds), wallets, purses, key-cases, cigarette-cases, cigar-cases, pipe-cases and tobacco-pouches." Since subheading 4202.21, HTSUSA, explicitly covers handbags and the EN to subheading 4202.31, HTSUSA, indicates the subheading specifically covers wallets, we must decide whether model 39 is properly classified as a handbag or a wallet.

On June 21, 1995, this office published a General Notice in the Customs Bulletin, Volume 29, Number 25, entitled "The Tariff Classification of 'Wallets on a String'" that discussed the attributes of both articles of a kind normally carried in the handbag and handbags. In regard to articles of a kind normally carried in the handbag, the notice states in pertinent part:

Such articles include wallets, which may be described as *flat* cases or containers *fitted* to hold credit/identification cards, paper currency, coins and in some instances a checkbook holder. . . .

In order to be classifiable as a flatgood, the article must fit comfortably in a handbag or pocket. For example, rectangular or square cases measuring approximately 7 1/2 inches by 4 1/2 inches, or 4 3/4 inches by 4 1/2 inches, in their closed position, have been classified as flatgoods.

Combining the characteristics of two flatgoods does not transform a flatgood into a handbag. Thus, the addition of a spectacle case holder to what is otherwise nothing more than a flat case with a carrying strap has been classified as a flatgood.

The addition of a wrap-around zipper does not in and of itself transform a flatgood into a handbag, particularly where the zipper functions merely to secure its contents in the closed or carrying position. Specifically, the presence of a zipper which simply holds the two halves of a wallet or similar container together, so that cards, currency or other articles in fitted compartments do not fall out, does not transform the case into a handbag.

With respect to handbags, the notice states:

A hand bag functions as a carry-all container for various small personal effects:

A container which is not *fitted* to hold articles such as credit/identification cards, paper currency, coins or a checkbook holder is classifiable as a handbag. Therefore, a clutch bag or an evening bag mea-

suring, for example, 7 1/2 inches by 4 1/2 inches, shall be classified as a handbag.

The determinative feature of a handbag is its ability to hold several objects not associated with a wallet. A bag which may accommodate articles such as a hairbrush, cosmetics, keys and other loose personal effects shall be classified as a handbag, even if it also incorporates the features of a flat case fitted to hold the items set forth above.

The presence of gusseted and/or zippered compartments will be taken into consideration in a determination of whether a case has generic carrying capacity. The presence of a wrap-around zipper may be an indication that the container is a carry-all if the zipper creates an inner space suitable for carrying three dimensional items.

As stated in HQ 953774, dated August 2, 1993, the classification of envelope-style clutch containers proceeds on a case-by-case basis. In prior rulings involving similarly-sized envelope-style clutch containers, we have considered a container's shape and size, as well as the types, shapes and sizes of its compartments, fittings and openings, to determine if the item is classifiable as a wallet or as a handbag. Generally, if an envelope-style clutch container can fit comfortably into a pocket or handbag, is fitted to hold items normally associated with a wallet such as currency, photos, identification or credit cards, and checkbooks, and is not designed to hold 3-dimensional items not associated with the capacities of a wallet or flatgood, the container would be classifiable as an article normally carried in the pocket or in the handbag.

We have ruled the presence of wrap-around zipper closures (*See* HQ 957632, dated March 24, 1995), snap closures (*See* HQ 959185, dated February 10, 1997), spectacle cases (*See* HQ 957632), belt loops (*See* HQ 959185), shoulder straps (*See* HQ 956017, dated June 10, 1994), and check book covers (*See* HQ 953774) do not preclude an envelope-style clutch container from being classified as a wallet. However, the addition of such features are steps in the direction of an article being classified as a handbag, as the article begins to take the character of a carry-all container. As stated in the June 21, 1995 General Notice and repeated in numerous rulings, the determinative feature of a handbag is its ability to hold several objects not associated with a wallet.

Model 39's central compartment top opening expands to approximately 6 inches when unzipped. Because of its gussets, it can accommodate many 3-dimensional personal effects not associated with a wallet. However, when the compartment is zipped in the closed position, the compartment is less than one inch thick. Its ability to accommodate personal effects other than small, narrow items such as coins or flat items such as paper currency or credit cards when closed is very limited. The gussets allow the user to open and easily expand the compartment to view, insert or remove contents, but they do not easily permit the storage of 3-dimensional personal effects when the compartment is closed. In fact, the gussets are neither visible nor functional when the item's central compartment is zipped. Although a few small 3-dimensional items can be stuffed into the compartment and the zipper forced shut, the result is a container with a distended and somewhat awkward appearance. Prolonged storage of small 3-dimensional items could disfigure the container's sleek leather outer surface. Additionally, most of model 39's other compartments (those under the fold out flap, the interior

side compartment opposite the fold out flap, and the rear exterior compartment) can only hold flat items such as paper currency or credit cards. The spine can hold a thin pen, likely for use with a checkbook that the item is designed to hold.

We find that model 39 is classifiable as an article normally carried in the pocket or in the handbag. Model 39's compartments are fitted to hold items normally associated with a wallet such as currency, photos, identification or credit cards, and a checkbook. These compartments cannot easily accommodate small 3-dimensional items such as a small hairbrush, cosmetics, keys or other personal effects when the container is in closed position. Although model 39 has a wrap-around zipper along the three sides of its central compartment, we find that it functions mainly to secure its contents in the closed position and does not create an inner space suitable for carrying three-dimensional objects. Similarly, while the gussets expand the central compartment to view, insert or remove its contents, they do not function to permit the storage of 3-dimensional personal effects when the compartment is zipped.

HOLDING:

Model 39 is properly classified in subheading 4202.31.6000, HTSUSA, as an article normally carried in the pocket or in the handbag with outer surface of leather. The general column one rate of duty is 8%.

MYLES B. HARMON,
Director,
Commercial Ruling Division.

19 CFR PART 177

PROPOSED REVOCATION AND MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF ABDOMINAL TRAINING SYSTEMS

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

ACTION: Notice of proposed revocation of tariff classification of one ruling, and modification of a second ruling and revocation of treatment with respect to the tariff classification of abdominal training systems

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke one ruling and modify a second ruling relating to the tariff classification, under the Harmonized Tariff Schedule of the United States, (HTSUS), of abdominal training systems. Similarly, Customs proposes to revoke

any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before April 9, 2004.

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

FOR FURTHER INFORMATION CONTACT: Robert Dinerstein, General Classification Branch, at (202) 572-8721.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(1)), this notice advises interested parties that Customs intends to revoke a ruling relating to the tariff classification of the Slendertone FLEX abdominal training system and modify a ruling letter concerning the tariff classification of the Fast Abs abdomi-

nal training system. Although in this notice Customs is specifically referring to New York Ruling Letter (“NY”) NY I82223, dated June 18, 2002 (Attachment A), and NY H86520 dated December 26, 2001 (Attachment B), this notice covers any rulings on this merchandise that may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

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

In NY I82223 and NY H86520 Customs classified products claimed to electronically stimulate and improve tone and strength of the abdominal muscles known as the Slendertone FLEX Abdominal Training System and Fast Abs System in subheading 9506.91.00, HTSUS, which provides for “Articles and equipment for general physical exercise, gymnastics or athletics; part and accessories thereof.” Based on additional information submitted by an importer, it is now Customs’ position that the Slendertone FLEX and Fast Abs systems are classified in subheading 8543.89.96, HTSUS, which provides for “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter parts thereof: Other machines and apparatus Other: Other: Other: Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), Customs intends to revoke NY I82223 and modify NY H86520. Customs also intends to revoke 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 966716 (Attachment C) and HQ 966973 (Attachment D). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions that are contrary to the determi-

nation set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

DATED: February 18, 2004

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY I82223
June 18, 2002
CLA-2-95:RR:NC:2:224 I82223
CATEGORY: Classification
TARIFF NO.: 9506.91.0030

STEVE ENDERSON
W.J. BYRNES & CO.
100 Rollins Road
Millbrae CA 94030

RE: The tariff classification of a powered muscle stimulator from Ireland and Mexico.

DEAR MR. ENDERSON:

In your letter dated May 7, 2002, you requested a tariff classification ruling on behalf of Slendertone Distribution Inc.

The merchandise is described as the Slendertone FlexTM. It is a battery operated muscle stimulation system specifically designed, it is claimed, to electronically stimulate and improve the tone, strength and firmness of the abdominal muscles. The Slendertone FlexTM consists of an electronic stimulator module that generates the electronic stimulation signals, and an abdominal electrode belt that connects the signals from the stimulator to the skin electrodes located in the inner surface of the belt. The unit comes with an instruction manual, a set of AAA batteries, and a carry pouch. The sample is being returned at your request.

Unlike the merchandise subject of the Customs ruling referenced in your inquiry, the primary purpose of the subject muscle stimulator is said to be the exercise of the abdominal muscles. Accordingly, the applicable subheading for the Slendertone FlexTM will be 9506.91.0030, Harmonized Tariff Schedule of the United States (HTS), which provides for "[a]rticles and equipment for general physical exercise, gymnastics or athletics; parts and accessories thereof." The rate of duty will be 4.6 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is im-

ported. If you have any questions regarding the ruling, contact National Import Specialist Tom McKenna at 646-733-3025.

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

[ATTACHMENT B]

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

NY H86520

December 26, 2001

CLA-2-95:RR:NC:2:224 H86520

CATEGORY: Classification

TARIFF NO.: 9506.91.0030; 8506.50.0000

MARIA DA ROCHA
D & D CUSTOMHOUSE BROKERAGE
701 Newark Avenue, Suite LL1
Elizabeth, NJ 07208

RE: The tariff classification of "Fast Abs" from China.

DEAR MS. DA ROCHA:

In your letter dated December 4, 2001, you requested a tariff classification ruling, on behalf of Products of Tomorrow, your client.

You are requesting the tariff classification on a product known as "Fast Abs". The "Fast Abs" system includes: 1 Torso Adjustable Comfort Zone Belt, 1 Leg and Arm Adjustable Comfort Zone Belt, 1 Advanced Muscle Stimulator Pad with Adjustable Tabs, 1 Advanced Muscle Stimulator Unit and 2 Lithium Batteries. The system also includes a firming gel that provides the conduit from the belt's impulses to the muscle. The gel must be applied to the two contact spots on the inside of the unit, and also to the skin which will be touching the contact points. The "Fast Abs" system is correctly classified in Chapter 95 of the HTS as other exercise equipment. The samples will be returned, as requested.

The applicable subheading for the "Fast Abs" imported in three different ways (the complete set, the set without the power gel, and the "Power Units" alone) will be 9506.91.0030, Harmonized Tariff Schedule of the United States (HTS), which provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter . . . parts and accessories thereof: Other: Articles and equipment for general physical exercise, gymnastics or athletics; parts and accessories thereof: Other." The rate of duty will be 4.6% ad valorem.

The applicable subheading for the lithium batteries when imported separately will be 8506.50.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for "primary cells and primary batteries; parts thereof: Lithium." The rate of duty will be 2.7% ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Tom McKenna at 646-733-3025.

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966716
CLA-2 RR:CR:GC 966716 RSD
CATEGORY: Classification
TARRIF NO. 8543.89.96

MUNFORD PAGE HALL II, ESQ.
DORSEY & WHITNEY
1001 Pennsylvania Avenue, NW.
Suite 400 South
Washington, D.C. 20004-2533

RE: Revocation of NY I82223, Slendertone FLEX Abdominal Training System

DEAR MR. HALL:

This is in response to your letter dated September 9, 2003, on behalf of Complex Technologies, Inc. (Complex), requesting reconsideration of ruling NY I82223, dated June 18, 2002, concerning the tariff classification of the Slendertone FLEX abdominal training system under the Harmonized Tariff Schedule of the United States ("HTSUS"). A sample of the product was submitted for our consideration.

FACTS:

The Slendertone FLEX is a battery-operated muscle stimulation apparatus which is designed to deliver electronic stimulation signals that are supposed to strengthen and tone the abdominal muscles without the wearer having to be physically active. It is composed of five basic parts: (1) the main "flex" electrical unit which generates electronic stimulation signals and houses the batteries; (2) the belt, which is made of 100% nylon binding; (3) three adhesive pads which adhere to the belt and conduct the signals from the electrical unit to the abdominal muscles; (4) a nylon travel pouch; and (5) three AAA batteries. The Slendertone FLEX is generally representative of a class of products designed for use by a healthy person where electrical muscle stimulation is applied through skin contact electrodes for the purposes of improving the tone, strength, and firmness of a focused muscles group. This class of electrically powered muscle stimulator is said to stimulate the muscles and to produce beneficial therapeutic effects by assisting in the contraction and relaxation of the focused muscles and the elimination of body fat.

In NY I82223, Customs classified the Slendertone FLEX system in sub-heading 9506.91.00, HTSUS, which provides for articles and equipment for general physical exercise . . . other, articles and equipment for general physical exercise, gymnastics, or athletics; parts and accessories thereof, other.

ISSUE:

Whether the Slendertone FLEX system is classified in heading 9506, HTSUS, as articles and equipment for general physical exercise or in heading 8543, HTSUS, as electrical machines and apparatus having individual functions, not specified or included elsewhere in Chapter 85.

LAW AND ANALYSIS:

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

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

The HTSUS provisions under consideration are as follows:

- 8543 Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
 - Other machines and apparatus:
- 8543.89 Other:
 - Other:
 - Other:
- 8543.89.96 Other.
 - * * * * *
- 9506 Articles and equipment for general physical exercise, gymnastics athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:
 - Other:
- 9506.91.00 Articles and equipment for general physical exercise, gymnastics or athletics; parts and accessories thereof.

In NY I82223 Customs determined that the Slendertone FLEX system was classified in subheading 9506.91.00, HTSUS. In NY H86520 dated December 26, 2001, Customs held that a similar product called a "Fast Abs System" was classified in subheading 9506.91.00, HTSUS. However, in NY D88729 dated March 29, 1999, Customs ruled that an electronic muscle stimulator was classified in subheading 8543.89.96, HTSUS. Customs also ruled in NY A84349 dated July 2, 1996, that the Electro-Muscular Slimmer, a battery operated device, which was supposed to produce beneficial therapeutic effects by supplying electrical pulses to muscles, was classified in subheading 8543.89.90, HTSUS. (This provision is identical to the current subheading 8543.89.96, HTSUS.) Therefore, in classifying the Slendertone FLEX, we must determine whether it is an article for general physical exercise classified in heading 9506, HTSUS, or in heading 8543, HTSUS as an electrical machine and apparatus having individual functions, not specified or included elsewhere in chapter 85 of the HTSUS.

EN 95.06 provides that this heading covers:

(A) **Articles and equipment for general physical exercise, gymnastics or athletics, e.g.:**

Trapeze bars and rings; horizontal and parallel bars; balance beams, vaulting horses; pommel horses; spring boards; climbing ropes and ladders; wall bars; Indian clubs; dumb-bells and barbells; medicine balls; rowing, cycling and other exercising apparatus; chest expanders; hand grips; starting blocks; hurdles; jumping stands and standards; vaulting poles; landing pit pads; javelins, discuses, throwing hammers and putting shots; punch balls (speed bags) and punch bags (punching bags); boxing or wrestling rings; assault course climbing walls.

(B) **Requisites for other sports and outdoor games (other than toys presented in sets, or separately, of heading 95.03), e.g.:**

- (1) Snow-skis and other snow-ski equipment, (e.g., ski-fastenings (ski-bindings), ski brakes, ski poles).
- (2) Water-skis, surfboards, sailboards and other water-sport equipment, such as diving stages (platforms), chutes, divers' flippers and respiratory masks of a kind used without oxygen or compressed air bottles, and simple underwater breathing tubes (generally known as "snorkels") for swimmers or divers.
- (3) Golf clubs and other golf equipment, such as golf balls, golf tees.
- (4) Articles and equipment for table-tennis (ping-pong), such as tables (with or without legs), bats (paddles), balls and nets.
- (5) Tennis, badminton or similar rackets (e.g., squash rackets), whether or not strung.
- (6) Balls, other than golf balls and table-tennis balls, such as tennis balls, footballs, rugby balls and similar balls (including bladders and covers for such balls); water polo, basketball and similar valve type balls; cricket balls.
- (7) Ice skates and roller skates, including skating boots with skates attached.

- (8) Sticks and bats for hockey, cricket, lacrosse, etc.; chistera (jai alai scoops); pucks for ice hockey; curling stones.
- (9) Nets for various games (tennis, badminton, volleyball, football, basketball, etc.).
- (10) Fencing equipment: fencing foils, sabres and rapiers and their parts (e.g. blades, guards, hilts and buttons or stops), etc.
- (11) Archery equipment, such as bows, arrows and targets.
- (12) Equipment of a kind used in children's playgrounds (e.g. swings, slides, see-saws and giant strides).
- (13) Protective equipment for sports or games, e.g., fencing masks and breast plates, elbow and knee pads, cricket pads, shin-guards.
- (14) Other articles and equipment, such as requisites for deck tennis, quoits or bowls; skate boards; racket presses; mallets for polo or croquet; boomerangs; ice axes; clay pigeons and clay pigeon projectors; bobsleighs (bobsleds), luges and similar non-motorised vehicles for sliding on snow or ice.
[Emphasis in original.]

In order to be classified in heading 9506, HTSUS, the articles must qualify as equipment for "general physical exercise." Such equipment includes machines such as rowing, cycling, treadmill, stair steppers, and other exercising apparatus, dumbbells, barbells, climbing ropes, medicine balls, chest expanders and grips. Consequently, we must determine whether applying electrical stimulus to the abdominal muscles constitutes "general physical exercise." However, neither the legal notes nor the ENs provide a definition by what is meant by the phrase "articles and equipment for general physical exercise."

A tariff term that is not defined in the HTSUS or in the ENs is construed in accordance with its common and commercial meanings, which are presumed to be the same. *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 American Heritage® Dictionary of the English Language: (4th ed., 2000) defines the term "exercise" in the following manner:

Activity that requires physical or mental exertion, especially when performed to develop or maintain fitness: *took an hour of vigorous daily exercise at a gym*. **4.** A task, problem, or other effort performed to develop or maintain fitness.

The *Cambridge Advanced Learner's Dictionary*, defines "exercise" when used as a noun as "physical activity that you do to make your body strong and healthy: Swimming is my favourite form of exercise. You really should **take** more **exercise**. I **do** stomach exercises most days" [emphasis in original.] It further defines exercise as a *verb* as: "to do physical activities to make your body strong and healthy: She exercises most evenings usually by running. A work-out in the gym will exercise all the major muscle groups."

Based on these definitions, it appears that for something to be considered exercise it must involve some physical activity. EN 95.06 follows this under-

standing of exercise when it lists examples of the kind of items that are considered exercise equipment classified in heading 9506, HTSUS. An individual exercising with any of the items listed in EN 95.06 would have to be engaged in some physical activity or movement. For example, exercising with Indian clubs; dumb-bells and bar-bells; medicine balls; rowing; cycling; and other exercising apparatus, etc. involves active movement on the part of an individual. Moreover, none of the items listed in EN 95.06 as articles and equipment for general physical exercise, gymnastics or athletics are electrical devices that can be used passively.

In this instance, we believe that no real physical activity is involved in using the Slendertone FLEX. It is a self-operating electronic device. The user of the Slendertone FLEX attaches the belt around his waist area and electrical impulses are transmitted to the abdominal muscles to stimulate them. The process of stimulating the abdominal muscles is done entirely by the Slendertone FLEX. Other than attaching the belt and turning it on, the user does not have to engage in any other active physical movement. Significantly, the Slendertone FLEX is marketed to people who want the results of exercising without having to engage in an exercise activity. For example, it is claimed that an individual can use the Slendertone FLEX while sitting on a couch and watching television, while the electrical stimulation signals are transmitted to the abdominal muscles.

Accordingly, because the Slendertone FLEX does not involve any active participation on the part of the user, we conclude that it is not classified in heading 9506, HTSUS, as articles and equipment for general physical exercise. The alternative proposed classification for the Slendertone FLEX is in heading 8543, HTSUS.

EN 8543 states:

The electrical appliances and apparatus of this heading must have individual functions. The introductory provisions of Explanatory Note to heading 84.79 concerning machines and mechanical appliances having individual functions apply, *mutatis mutandis*, to the appliances and apparatus of this heading.

Most of the appliances of this heading consist of an assembly of electrical goods or parts (valves, transformers, capacitors, chokes, resistors, etc.) operating wholly electrically. However, the heading also includes electrical goods incorporating mechanical features **provided** that such features are subsidiary to the electrical function of the machine or appliances.

[Emphasis in original.]

The Slendertone FLEX is a battery-powered electrical apparatus that transmits electronic signals in order to stimulate the abdominal muscles. Thus, it has an individual function (i.e., its function can be performed distinctly from and independently of any other device) of stimulating the abdominal muscles. It is also not described elsewhere in chapter 85 of the HTSUS. Accordingly, we find that the Slendertone FLEX fits the language of heading 8543, HTSUS. Specifically, we conclude that the Slendertone Flex is classified in subheading 8543.89.96, HTSUS.

HOLDING:

The Slendertone FLEX Abdominal Training System is classified in subheading 8543.89.96, HTSUS which provides for "Electrical machines and ap-

paratus, having individual functions, not specified or included elsewhere in this chapter parts thereof: Other machines and apparatus Other: Other: Other: Other.”

EFFECT ON OTHER RULINGS:

NY I82223 dated June 18, 2002 is revoked.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

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

HQ 966973
CLA-2 RR:CR:GC 966973 RSD
CATEGORY: Classification
TARRIF NO. 8543.89.96

MS. MARIA DA ROCHA
D & C CUSTOMSHOUSE BROKERAGE
701 Newark Avenue, Suite LL1
Elizabeth, New Jersey 07208

RE: Modification of NY H86520; “Fast Abs” System

DEAR MS. DA ROCHA:

On December 26, 2001, the National Commodity Specialist Division of Customs and Border Protection issued to you, on behalf of Product of Tomorrow, a ruling, NY H86520, concerning the classification of the Fast Abs Abdominal Training system (Fast Abs). In NY H86520, Customs held that the Fast Abs system was classified in subheading 9506.91.00, Harmonized Tariff Schedule of the United States (HTSUS). In addition, NY H86520 held that the accompanying lithium batteries were classified in subheading 8506.50.00. We have reconsidered the classification of the Fast Abs system and now believe that it is incorrect. This ruling sets forth the correct classification of the Fast Abs system.

FACTS:

The Fast Abs was described in NY H86520 as a battery-operated muscle stimulation apparatus which is designed to deliver electronic stimulation signals that are supposed to strengthen and tone the abdominal muscles. It includes a torso adjustable comfort zone belt, a leg and arm adjustable comfort zone belt, an advanced muscle stimulator pad with adjustable tabs, an advanced muscle stimulator unit and two lithium batteries. The system also includes a firming gel that provides the conduit from the belt's impulses to the muscle. The gel must be applied to the two contact spots on the inside of the unit, and also the skin that will be touching the contact points. The electrical muscle stimulation is applied through skin contact electrodes for the purposes of improving the tone, strength, and firmness of a focused muscles group. The Fast Abs system is an electrically powered muscle stimulator

that is said to stimulate the muscles and to produce beneficial therapeutic effects by assisting in the contraction and relaxation of the focused muscles and the elimination of body fat.

In NY H86520, Customs classified the Fast Abs in subheading 9506.91.00, HTSUS, which provides for articles and equipment for general physical exercise . . . other, articles and equipment for general physical exercise, gymnastics, or athletics; parts and accessories thereof, other.

ISSUE:

Whether the Fast Abs is classified in heading 9506, HTSUS, as articles and equipment for general physical exercise or in heading 8543, HTSUS as electrical machines and apparatus having individual functions, not specified or included elsewhere in Chapter 85.

LAW AND ANALYSIS:

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

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

The HTSUS provisions under consideration are as follows:

- 8543 Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
 - Other machines and apparatus:
- 8543.89 Other:
 - Other:
 - Other:
- 8543.89.96 Other.
 - * * * * *
- 9506 Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:
 - Other:

9506.91.00 Articles and equipment for general physical exercise, gymnastics or athletics; parts and accessories thereof.

In NY H86520, Customs held that the Fast Abs system was classified in subheading 9506.91.00, HTSUS as articles and equipment for general physical exercise. In NY I82223 dated June 18, 2002, Customs determined that a similar product called the “Slendertone FLEX System” was classified in subheading 9506.91.00, HTSUS. However, in NY D88729, dated March 29, 1999, Customs ruled that an electronic muscle stimulator was classified in subheading 8543.89.96, HTSUS. Customs also ruled in NY A84349 dated July 2, 1996, that the Electro-Muscular Slimmer, a battery operated device, which was supposed to produce beneficial therapeutic effects by supplying electrical pulses to muscles was classified in subheading 8543.89.90, HTSUS. (This provision is identical to the current subheading 8543.89.96, HTSUS.) Therefore, in classifying the Fast Abs, we must determine whether it is an article for general physical exercise classified in heading 9506, HTSUS, or in heading 8543, HTSUS as an electrical machine and apparatus having individual functions, not specified or included elsewhere in chapter 85 of the HTSUS.

EN 95.06 provides that this heading covers:

(A) **Articles and equipment for general physical exercise; gymnastics or athletics, e.g.:**

Trapeze bars and rings; horizontal and parallel bars; balance beams, vaulting horses; pommel horses; spring boards; climbing ropes and ladders; wall bars; Indian clubs; dumb-bells and barbells; medicine balls; rowing, cycling and other exercising apparatus; chest expanders; hand grips; starting blocks; hurdles; jumping stands and standards; vaulting poles; landing pit pads; javelins, discuses, throwing hammers and putting shots; punch balls (speed bags) and punch bags (punching bags); boxing or wrestling rings; assault course climbing walls.

(B) **Requisites for other sports and outdoor games (other than toys presented in sets, or separately, of heading 95.03), e.g:**

- (1) Snow-skis and other snow-ski equipment, (e.g., ski-fastenings (ski-bindings), ski brakes, ski poles).
- (2) Water-skis, surfboards, sailboards and other water-sport equipment, such as diving stages (platforms), chutes, divers' flippers and respiratory masks of a kind used without oxygen or compressed air bottles, and simple underwater breathing tubes (generally known as “snorkels”) for swimmers or divers.
- (3) Golf clubs and other golf equipment, such as golf balls, golf tees.
- (4) Articles and equipment for table-tennis (ping-pong), such as tables (with or without legs), bats (paddles), balls and nets.
- (5) Tennis, badminton or similar rackets (e.g., squash rackets), whether or not strung.
- (6) Balls, other than golf balls and table-tennis balls, such as tennis balls, footballs, rugby balls and similar balls (including

bladders and covers for such balls); water polo, basketball and similar valve type balls; cricket balls.

- (7) Ice skates and roller skates, including skating boots with skates attached.
- (8) Sticks and bats for hockey, cricket, lacrosse, etc.; chistera (jai alai scoops); pucks for ice hockey; curling stones.
- (9) Nets for various games (tennis, badminton, volleyball, football, basketball, etc.).
- (10) Fencing equipment: fencing foils, sabres and rapiers and their parts (e.g. blades, guards, hilts and buttons or stops), etc.
- (11) Archery equipment, such as bows, arrows and targets.
- (12) Equipment of a kind used in children's playgrounds (e.g. swings, slides, see-saws and giant strides).
- (13) Protective equipment for sports or games, e.g., fencing masks and breast plates, elbow and knee pads, cricket pads, shin-guards.
- (14) Other articles and equipment, such as requisites for deck tennis, quoits or bowls; skate boards; racket presses; mallets for polo or croquet; boomerangs; ice axes; clay pigeons and clay pigeon projectors; bobsleighs (bobsleds), luges and similar non-motorised vehicles for sliding on snow or ice.
[Emphasis in original.]

In order to be classified in heading 9506, HTSUS, the articles must qualify as equipment for "general physical exercise." Such equipment includes machines such as rowing, cycling, treadmill, stair steppers, and other exercising apparatus, dumbbells, barbells, climbing ropes, medicine balls, chest expanders and grips. Consequently, we must determine whether applying electrical stimulus to the abdominal muscles constitutes "general physical exercise." However, neither the legal notes nor the ENs provide a definition by what is meant by the phrase "articles and equipment for general physical exercise."

A tariff term that is not defined in the HTSUS or in the ENs is construed in accordance with its common and commercial meanings, which are presumed to be the same. *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 American Heritage® Dictionary of the English Language: (4th. ed., 2000) defines the term "exercise" in the following manner:

Activity that requires physical or mental exertion, especially when performed to develop or maintain fitness: *took an hour of vigorous daily exercise at a gym*. **4.** A task, problem, or other effort performed to develop or maintain fitness.

A second dictionary, *Cambridge Advanced Learner's Dictionary*, defines "exercise" when used as a noun as "physical activity that you do to make your body strong and healthy: Swimming is my favourite form of exercise. You really should **take** more **exercise**. I **do** stomach exercises most days."

[Emphasis in original.] It further defines “exercise” as a verb as: “to do physical activities to make your body strong and healthy: She exercises most evenings usually by running. A work-out in the gym will exercise all the major muscle groups.”

Based on these definitions, it appears that for something to be considered exercise it must involve some physical activity. EN 95.06 follows this understanding of exercise when it lists examples of the kind of items that are considered exercise equipment classified in heading 9506, HTSUS. An individual exercising with any of the items listed in EN 95.06 would have engage in some physical activity or movement. For example, exercising with Indian clubs; dumb-bells and bar-bells; medicine balls; rowing; cycling; and other exercising apparatus, etc. involves active movement on the part of an individual. Moreover, none of the items listed in EN 95.06 as articles and equipment for general physical exercise, gymnastics or athletics are electrical devices that can be used passively.

In this instance, we believe that no real physical activity is involved in using the Fast Abs. It is a self-operating electronic device. The user of the Fast Abs attaches the belt around his waist area and electrical impulses are transmitted to the abdominal muscles to stimulate them. The process of stimulating the abdominal muscles is done entirely by the Fast Abs. Other than attaching the belt and turning it on, the user does not engage in any other active physical movement. Significantly, the Fast Abs is designed for people who want the results of exercising without having to engage in an exercise activity.

Accordingly, because the Fast Abs does not involve any active participation on the part of the user, we conclude that it is not classified in heading 9506, HTSUS, as articles and equipment for general physical exercise. The alternative proposed classification for the Fast Abs is heading 8543, HTSUS. EN 8543 states:

The electrical appliances and apparatus of this heading must have individual functions. The introductory provisions of Explanatory Note to heading 84.79 concerning machines and mechanical appliances having individual functions apply, *mutatis mutandis*, to the appliances and apparatus of this heading.

Most of the appliances of this heading consist of an assembly of electrical goods or parts (valves, transformers, capacitors, chokes, resistors, etc.) operating wholly electrically. However, the heading also includes electrical goods incorporating mechanical features **provided** that such features are subsidiary to the electrical function of the machine or appliance.

[Emphasis in original.]

The Fast Abs is a battery-powered electrical apparatus that transmits electronic signals in order to stimulate the abdominal muscles. Thus, it has an individual function (i.e., its function can be performed distinctly from and independently of any other device) of stimulating the abdominal muscles. It is also not described elsewhere in chapter 85 of the HTSUS. Accordingly, we find that the Fast Abs system fits within the language of heading 8543, HTSUS. Specifically, we conclude that the Fast Abs system is classified in subheading 8543.89.96, HTSUS.

HOLDING:

The Fast Abs Abdominal Training system is classified in subheading 8543.89.96, HTSUS which provides for: "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter parts thereof: Other machines and apparatus Other: Other: Other: Other."

EFFECT ON OTHER RULINGS:

NY H86520 dated December 26, 2001 is modified.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

19 CFR Part 177

**PROPOSED REVOCATION OF RULING LETTER AND
TREATMENT RELATING TO TARIFF CLASSIFICATION
OF PLASTIC IDENTIFICATION BADGES**

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

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to the tariff classification of plastic identification badges under the Harmonized Tariff Schedule of the United States ("HTSUS").

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling concerning the tariff classification of plastic identification badges and to revoke any treatment Customs has previously accorded to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before April 9, 2004.

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

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, General Classification Branch: (202) 572-8776.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke New York Ruling Letter ("NY") F81413, dated January 5, 2000. In NY F81413, merchandise described as plastic identification badges were classified under subheading 7117.90.7500, HTSUS, which provides for imitation jewelry: other: other: valued over 20 cents per dozen pieces or parts: other: of plastics. NY F81413 is set forth as "Attachment A" to this document. It is now Customs position that the badges are classified under subheading 3926.90.98, HTSUS, which provides for other articles of plastics, other, other.

Although in this notice Customs is specifically referring to one ruling, this notice covers any rulings on similar merchandise that may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases; no further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, other than the referenced ruling (see above), should advise Customs during this notice period.

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

Pursuant to 19 U.S.C. § 1625(c)(1), Customs intends to revoke NY F81413, and any other ruling not specifically identified, to reflect the proper rationale for classification of the merchandise pursuant to the analysis set forth in Proposed HQ 966569 (*see* "Attachment B" to this document).

Additionally, pursuant to 19 U.S.C. § 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: February 18, 2004

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY F81413
January 5, 2000
CLA-2-71:RR:NC:SP:233 F81413
CATEGORY: Classification
TARIFF NO.: 7117.90.7500

MS. LISA THATCHER
AVERY DENNISON
19721 Jasmine Street
Fontana, CA 92337

RE: The tariff classification of identification badges.

DEAR MS. THATCHER:

In your letter dated December 21, 1999 you requested a tariff classification ruling.

The submitted sample consists of identification badges in the following styles:

- 1. Part #77711 74520 is a badge made of a neck hanging plastic badge holder with heavyweight cardstock insert, 4" x 3" in size, valued over 20 cents per dozen pieces.**
- 2. Part #77711 74536 is a badge made of a plastic badge holder with a metal clip with heavyweight cardstock insert, 4" x 3" in size, valued over 20 cents per dozen pieces.**
- 3. Part #77711 74540 is a badge made of a plastic badge holder with a metal pin with heavyweight cardstock insert, 4" x 3" in size, valued over 20 cents per dozen pieces.**

The essential character of the above-described badges is the plastic holder.

The applicable subheading for the identification badges will be 7117.90.7500, Harmonized Tariff Schedule of the United States (HTS), which provides for imitation jewelry: other: other: valued over 20 cents per dozen pieces or parts: other: of plastics.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lawrence Mushinske at 212-637-7061.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966569
CLA-2 RR:CR:GC 966569 AML
CATEGORY: Classification
TARIFF NO.: 3926.90.98

MS. LISA THATCHER
AVERY DENNISON
OFFICE PRODUCTS NORTH AMERICA
*50 Pointe Drive
Brea, CA 92821*

RE: NY F81413 revoked; Plastic identification badges

DEAR MS. THATCHER:

This is in reference to your letter, dated May 19, 2003, to the National Commodity Specialist Division, New York, requesting reconsideration of New York Ruling Letter ("NY") F81413, dated January 5, 2000, regarding the classification of several styles of plastic identification badges, under the Harmonized Tariff Schedule of the United States ("HTSUS"). Your letter and samples of the articles were forwarded to this office for reply. We have reconsidered the classification determination made in NY F81413 and determined that it is incorrect. This letter sets forth the correct classification of the plastic identification badges.

FACTS:

The articles under consideration are plastic identification badges. They were described in NY F81413 as follows:

1. Part #77711 74520 is a badge made of a neck hanging plastic badge holder with heavyweight cardstock insert, 4" x 3" in size, valued over 20 cents per dozen pieces.
2. Part #77711 74536 is a badge made of a plastic badge holder with a metal clip with heavyweight cardstock insert, 4" x 3" in size, valued over 20 cents per dozen pieces.
3. Part #77711 74540 is a badge made of a plastic badge holder with a metal pin with heavyweight cardstock insert, 4" x 3" in size, valued over 20 cents per dozen pieces.

After determining that "The essential character of the above-described badges is the plastic holder," NY F81413 held that the articles were classified under subheading 7117.90.75, HTSUS, which provides for imitation jewelry: other: other: valued over 20 cents per dozen pieces or parts: other: of plastics.

ISSUE:

Whether the subject merchandise is classifiable under heading 3926, HTSUS, which provides for other articles of plastics; or under heading 7117, HTSUS, which provides for imitation jewelry?

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") in accordance with the General Rules of Interpre-

tation (“GRIs”). GRI 1 states, in part, that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to the remaining GRIs, applied sequentially. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

The HTSUS provisions under consideration are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.98	Other.
	* * *
7117	Imitation jewelry:
7117.90	Other:
	Other:
	Valued not over 20 cents per dozen pieces or parts:
	Other:
7117.90.75	Of plastics.

Subheading 3926.90.98, HTSUS, is a so-called “basket” provision within Chapter 39, in which classification “is appropriate only when there is no tariff category that covers the merchandise more specifically.” (*Apex Universal, Inc., v. United States*, 22 C.I.T. 465 (1998).) Further, the ENs to Chapter 39 exclude “imitation jewellery of heading 7117” from classification therein. Therefore, we are first addressing the competing provision within Chapter 71 that was determined to be appropriate for classification in NY F81413. Only if classification in heading 7117, HTSUS, is precluded will we address classification under heading 3926, HTSUS.

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise. Customs believes the ENs should always be consulted. See T.D. 89–80, published in the *Federal Register* August 23, 1989 (54 FR 35127, 35128).

Note 11 to Chapter 71 provides, in pertinent part, that “for the purposes of heading 7117, the expression “imitation jewellery” means articles of jewellery within the meaning of paragraph (a) of Note 9 above.” Note 9(a) provides in pertinent part that:

the expression “articles of jewellery” means:

(a) Any small objects of personal adornment (gem-set or not) (for example, rings, bracelets, necklaces, brooches, earrings, watchchains, fobs, pendants, tiepins, cufflinks, dressstuds, religious or other medals and insignia) . . .

The ENs to heading 7117 provide, in pertinent part, that:

For the purposes of this heading, the expression **imitation jewelry**, as defined in Note 11 to this Chapter, is restricted to small objects of personal adornment, such as those listed in paragraph (A) of the Explanatory Note to heading 7113, *e.g.*, rings, bracelets (other than wrist-watch bracelets), necklaces, earrings, cufflinks, etc., **but not including** buttons and other articles of **heading 96.06**, or dress combs, hairslides or the like, and hairpins of **heading 96.15** (bold emphasis in original) . . .

No argument has been presented nor do we believe that the articles at issue are designed or intended to be articles of personal adornment. Rather, the articles are designed and used functionally—they are used and reused (by simply replacing the paper inserts) to display the name of the wearer at a convention, meeting or other function. That is, the paramount function of the articles is to temporarily display the name of the wearer on an article of clothing.

We conclude, based upon consideration of the provisions of heading 7117, HTSUS, the Chapter Notes and the ENs thereto, that the articles are not classified under heading 7117, HTSUS.

An article is to be classified according to its condition as imported. See, *XTC Products, Inc. v. United States*, 771 F.Supp. 401, 405 (1991). See also, *United States v. Citroen*, 223 U.S. 407 (1911). In their condition as imported, the plastic identification badges are articles of molded plastic. In accordance with GRI 1, the articles are classified under heading 3926, HTSUS, which provides for other articles of plastics.

This conclusion comports in part with a prior ruling: in Headquarters Ruling Letter (“HQ”) 965072, dated September 19, 2001, we considered and rejected classification under heading 7117, HTSUS, and classified a plastic sleeve suspended from a textile lanyard with a swivel hook (laminated to enclose the information to be displayed and designed for use at a specific, one-time event) under heading 6307, HTSUS.

HOLDING:

The plastic identification badges (style numbers 77711 74520, 77711 74536 and 77711 74540) are classified under subheading 3926.90.98, HTSUS, which provides for other articles of plastics, other, other.

EFFECT ON OTHER RULINGS:

NY F81413 is **REVOKED**.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF RADAR APPARATUS THAT MEASURES LIQUID LEVELS

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

ACTION: Notice of proposed revocation of ruling letter and treatment relating to the tariff classification of radar apparatus that measures liquid levels.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (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 proposing to revoke a ruling pertaining to the tariff classification of radar apparatus that measures liquid levels under the Harmonized Tariff Schedule of the United States ("HTSUS"). Similarly, Customs is proposing to revoke any treatment previously accorded by Customs to substantially identical transactions. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before April 9, 2004.

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

FOR FURTHER INFORMATION CONTACT: Deborah Stern, General Classification Branch (202) 572-8785.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of radar apparatus that measures liquid levels. Although in this notice Customs is specifically referring to one ruling (NY 873105), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No additional rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

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

In NY 873105, dated May 1, 1992 (Attachment A), Customs classified a depth and level gauging unit that measured levels of liquid using electromagnetic radar waves in subheading 9026.10.60, HTSUS, which provides in part for instruments and apparatus for measuring or checking the flow, level, pressure or other variable of liquids or gases. However, Note 1(h) to Chapter 90, HTSUS, excludes radar apparatus of heading 8526, HTSUS, from classification within the

chapter. As the depth and level gauging unit utilizes radar for measurement, it is radar apparatus, and thus excluded from Chapter 90, HTSUS.

Therefore, it is now Customs position that the depth and level gauging unit, which measures liquid levels using radar, is classified in subheading 8526.10.00, which provides for "Radar apparatus, radio navigational aid apparatus and radio remote control apparatus: Radar apparatus."

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY 873105, and any other ruling not specifically identified, to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analysis set forth in HQ 966930 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. Before taking this action, we will give consideration to any written comments timely received.

Dated: February 18, 2004

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments



[ATTACHMENT A]

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

NY 873105

MAY 1, 1992

CLA-2-90:S:N:N1:102 873105

CATEGORY: Classification

TARIFF NO.: 9026.10.6000

MR. MICHAEL B. SPERANZA
B.E. SPERANZA INC.
9013 Indianapolis Blvd.
Highland, IN 46322

RE: The tariff classification of a liquid level measuring system from Sweden

DEAR MR. SPERANZA:

In your letter dated April 2, 1992 you requested a tariff classification ruling. The system in question is the DDS non contacting depth and level gauging unit. It utilizes electromagnetic radar waves to measure the level of liquids in containers. The literature submitted depicts the principal use as being in the metallurgical fields, notably in such areas as liquid steel level in a blast furnace or liquid iron level in a transport ladle. The system works by bouncing radar waves off of the liquid surface and calculating the elapsed

time from point of transmission to point of reception. The system can perform 6 measurements per second over a level range of from .5 meters to 28 meters. The results of these measurements are calculated by a digital central processing unit.

The applicable subheading for the non contacting depth and level gauging system will be 9026.10.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for instruments and apparatus for measuring or checking the flow or level of liquids, other, other. The rate of duty will be 4.7 percent ad valorem.

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

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

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

[ATTACHMENT B]

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

HQ 966930

CLA-2 RR: CR: GC 966930 DBS

CATEGORY: Classification

TARIFF NO.: 8526.10.00

MR. MICHAEL B. SPERANZA
B.E. SPERANZA INC.
*9013 Indianapolis Blvd.
Highland, IN 46322*

RE: Revocation of NY 873105; Radar apparatus

DEAR MR. SPERANZA:

On May 1, 1992, the Area Director of Customs New York Seaport issued to you New York Ruling Letter (NY) 873105, classifying a depth and level gauging unit for measuring liquids in subheading 9026.10.60, Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed this ruling and found it to be incorrect. This ruling sets forth the correct classification.

FACTS:

The following facts were set forth in NY 873105:

The system in question is the DDS non-contacting depth and level gauging unit. It utilizes electromagnetic radar waves to measure the level of liquids in containers. The literature submitted depicts the principal use as being in the metallurgical fields, notably in such areas as liquid steel level in a blast furnace or liquid iron level in a transport ladle. The system works by bouncing radar waves off of the liquid surface and calculating the elapsed time from point of transmission to point of reception.

The system can perform 6 measurements per second over a level range of from .5 meters to 28 meters. The results of these measurements are calculated by a digital central processing unit.

ISSUE:

Whether apparatus that measures liquid levels by using radar is classified in heading 9026, HTSUS, as apparatus for measuring and checking levels of liquids or in heading 8526, HTSUS, as radar apparatus.

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.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

8526 Radar apparatus, radio navigational aid apparatus and radio remote control apparatus:

8526.10.00 Radar apparatus

* * *

9026 Instruments and apparatus for measuring or checking the flow, level, pressure or other variable of liquids or gases (for example, flow meters, level gauges, manometers, heat meters), excluding instruments and apparatus of heading 9014, 9015, 9028 or 9032; parts and accessories thereof:

9026.10 For measuring or checking the flow or level of liquids:

Other:

9026.10.60 Other

* * *

Section XVI, Note 1(m), HTSUS, excludes articles of Chapter 90, HTSUS, from classification in Chapters 84 and 85, HTSUS. Therefore, we must first determine whether the instant apparatus is classified within Chapter 90, HTSUS. Note 1(h) to Chapter 90 excludes, in pertinent part, radar apparatus of heading 8526, HTSUS.

The term "radar apparatus" is not specifically defined in the HTSUS. Tariff terms are construed in accordance with their common and commercial meaning. See *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. See *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982). McGraw-Hill Encyclopedia of Science & Technology (1995) provides in pertinent part, as follows:

Radar operates by transmitting electromagnetic energy into the surroundings and detecting energy reflected by objects. If a narrow beam of this energy is transmitted by the directive antenna, the direction from which reflections come and hence the bearing of the object may be estimated. The distance to the reflecting object is estimated by measuring the period between the transmission of the radar pulse and reception of the echo . . . Many different kinds of radar have been developed for a wide range of purposes, but they all use electromagnetic radiation (radio waves) to detect and measure certain characteristics of objects (or targets) in their vicinity.

In addition, according to the ENs, radar height measuring apparatus (radio altimeters) is among the goods included in heading 8526, HTSUS. Therefore, articles that measure height or other characteristics by using radar waves, as described above, are included within the scope of radar apparatus of heading 8526, HTSUS.

The DDS non-contacting depth and level gauging unit measured liquid levels by radar waves. By virtue of the explanation of radar above, as well as the specific inclusion of height measurement in the ENs to heading 8526, HTSUS, it is evident that the measurement of liquid levels is clearly within the scope of the term radar apparatus. Therefore, it is excluded from classification within Chapter 90, HTSUS. For the same reasons, it is classified in heading 8526, HTSUS. Accordingly, we find NY 873105 to be in error.

HOLDING:

The DDS non-contacting depth and level gauging unit is classified in sub-heading 8526.10.00, HTSUS, which provides for "Radar apparatus, radio navigational aid apparatus and radio remote control apparatus: Radar apparatus."

EFFECT ON OTHER RULINGS:

NY 873105, dated May 1, 1992, is hereby REVOKED.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

PROPOSED MODIFICATION AND REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF TEXTILE TOOL HOLDERS

AGENCY: Bureau of Customs & Border Protection; Department of Homeland Security.

ACTION: Notice of proposed modification and revocation of tariff classification ruling letters and revocation of treatment relating to textile tool holders.

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 & Border Protection (CBP) intends to modify one ruling letter and revoke two ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of textile tool holders. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before April 9, 2004.

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

FOR FURTHER INFORMATION CONTACT: 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 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 CBP 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 CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, col-

lect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify one ruling letter and revoke two ruling letters relating to the tariff classification of textile tool holders. Although in this notice CBP is specifically referring to the modification of New York Ruling Letter (NY) G85500, dated January 4, 2001 (attachment A), and the revocation of NY J80360, dated February 5, 2003, and NY J81807, dated March 6, 2003 (attachments B and C), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

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

In NY G85500, NY J80360 and NY J81807, CPB erroneously classified various textile tool holders under heading 6307, HTSUS, as other made up articles. However, based on an earlier decision of the Court of International Trade, *Rooster Products, Inc. v. United States*, decided June 1, 2000, *Slip Op.* 2000-60 (*Ct. Int'l Trade*), these items are *ejusdem generis* with tool bags and are properly classified in heading 4202, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY G85500 and to revoke NY J803601 and NY J81807, and to revoke any ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 966830, HQ 966907 and HQ 966908 (attachments D, E and F). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any

treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice.

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

DATED: February 23, 2004

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments



[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY G85500
January 4, 2001
LA-2-42:RR:NC:341:G85500
CATEGORY: Classification
TARIFF NO.: 4202.92.9060; 4202.92.9026; 6307.90.9989

MR. JAMES C. TUTTLE
LAW OFFICES OF JAMES C. TUTTLE
82 Wall Street, Suite 1105
New York, NY 10005

RE: The tariff classification of tote bag, holsters, and a bucket organizer from China.

DEAR MR. TUTTLE:

In your letter dated December 15th, 2000, on behalf of Arden Companies, you requested a classification ruling.

The samples submitted with your request are identified as "Garden Tote; #G20001, "Garden Pouch"; #G40301, "Garden Tool Belt"; #G40251, and "Tool Caddy" (a style number was not submitted).

The tool caddy is commonly known as a bucket organizer or "bucket pockets". It is designed to be placed over a bucket to organize tools. The exterior surface consists of a fabric backed embossed compact plastic sheeting. There are eight pockets of textile mesh material that cover the width of the organizer.

Style G20001 is a bag fitted to contain tools. It has double handles, a large center compartment with bottom stiffener and 6 vinyl pockets and 8 exterior textile mesh pockets. The bag body is of fabric backed embossed compact plastic sheeting. The exterior surface of the bag consists of the plastic sheeting and the textile mesh material neither of which imparts the essential character of the bag. Classification of the bag will be according to General Rule of Interpretation 3(c).

Style G40301 is a tool holder similar to a holster. It is worn on a belt and has two exterior pockets of mesh man-made textile materials. The base is of

a fabric backed embossed compact plastic sheeting of which the plastic sheeting forms the exterior surface. The exterior man-made textile mesh imparts the essential character.

Style G40251 is a tool belt with a permanently attached holder. The holder has three pockets of mesh man-made textile materials. The base is of a fabric backed embossed compact plastic sheeting of which the plastic sheeting forms the exterior surface.

The applicable subheading for #G20001 will be 4202.92.9060, Harmonized Tariff Schedule of the United States (HTS), which provides for trunks, suitcases, vanity cases . . . other. The duty rate will be 18.6% ad valorem in the year 2000 and 18.3% ad valorem in the year 2001.

The applicable subheading for #G40301 will be 4202.92.9026, Harmonized Tariff Schedule of the United States (HTS), which provides for trunks, suitcases, vanity cases . . . of man-made fibers. The duty rate will be 18.6% ad valorem in the year 2000 and 18.3% ad valorem in the year 2001.

The applicable subheading for #G40251 and "tool caddy" will be 6307.90.9989, Harmonized Tariff Schedule of the United States (HTS), which provides for other made up articles, including dress patterns . . . other. The duty rate will be 7% ad valorem in the year 2000 and 7% ad valorem in the year 2001.

Items classifiable under HTS subheading 4202.92.9026 fall within textile category designation 670. Based upon international textile trade agreements products of China are subject to quota and the requirement of a visa.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kevin Gorman at 212-637-7091.

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

[ATTACHMENT B]

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

NY J80360

February 5, 2003

CLA-2-63:RR:NC:TA:351 J80360

CATEGORY: Classification

TARIFF NO.: 6307.90.9889

MS. DANA L. BOUNDS
UPS FREIGHT SERVICES, INC.
1600 Genessee, Suite 450
Kansas City, MO 64102

RE: The tariff classification of "Bucket Organizer" from China.

DEAR MS. BOUNDS:

In your letter dated January 17, 2003, on behalf of Midwest Quality Glove, Inc., you requested a tariff classification ruling. The sample is being returned as requested.

The sample submitted is a "Bucket Organizer," style number 56. It is made of 100 percent polyester woven textile fabric that has been visibly coated on one side with polyvinyl plastic. It is designed to fit inside and around the outside of a 5-gallon bucket. It features 10 outside pockets, 4 inside pockets. It has corner textile straps with a metal snap fastener to secure it to the bucket.

The applicable subheading for the "Bucket Organizer" will be 6307.90.9889, Harmonized Tariff Schedule of the United States (HTS), which provides for other made up articles . . . Other. The rate of duty will be 7 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mitchel Bayer at 646-733-3102.

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

[ATTACHMENT C]

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

NY J81807

March 6, 2003

CLA-2-63:RR:NC:TA:351 J81807

CATEGORY: Classification

TARIFF NO.: 6307.90.9889

MS. LINDA LEE
FISKARS BRANDS, INC.
2537 Daniels Street
Madison, WI 53718

RE: The tariff classification of a garden bucket tool caddy from China.

DEAR MS. LEE:

In your letter dated February 5, 2003 you requested a tariff classification ruling. The sample is being returned as requested.

The sample submitted is a garden bucket tool caddy made of woven textile fabric. It is designed to fit around the outside of a 5-gallon bucket. It features open pockets that cover the width of the caddy. It also has a compartment to store packages of seeds. A corner strap with hook and loop fastener secures it to the bucket.

The applicable subheading for the garden bucket tool caddy will be 6307.90.9889, Harmonized Tariff Schedule of the United States (HTS), which provides for other made up articles . . . Other. The rate of duty will be 7 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mitchel Bayer at 646-733-3102.

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

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966830
CLA-2 RR:CR:TE 966830 RH
CATEGORY: Classification
TARIFF NO.: 4202.92.9026

MR. MICHAEL GUNTER
UPS SUPPLY CHAIN SOLUTIONS
1600 Genessee, Suite 450
Kansas City, MO 64102

RE: Proposed Revocation of NY J80360; Tool Bucket Organizer; Heading 4202; *Rooster Products, Inc. v. United States*, decided June 1, 2000, *Slip. Op. 2000-60 (Ct. Int'l Trade)*

DEAR MR. GUNTER:

This is in reply to your letter of October 28, 2003, on behalf of Midwest Quality Glove, Inc., requesting reconsideration of New York Ruling Letter (NY) J89587, dated October 17, 2003.

In NY J89587, Customs (now Customs and Border Protection (CBP)) classified a tool bucket organizer under subheading 4202.92.9026 of the Harmonized Tariff Schedule of the United States (HTSUS). Several months later, in NY J80360, dated February 5, 2003, CBP issued another ruling to your client that classified a similar tool bucket organizer under subheading 6307.90.9889, HTSUS.

For the reasons set forth below, tool holders are classifiable under heading 4202, HTSUS. Accordingly, NY J80360 is the incorrect ruling.

FACTS:

A description of the tool bucket organizer in NY J80360 reads as follows:

The sample submitted is a "Bucket Organizer," style number 56. It is made of 100 percent polyester woven textile fabric that has been visibly coated on one side [the inner surface] with polyvinyl plastic. It is designed to fit inside and around the outside of a 5-gallon bucket. It features 10 outside pockets, [and] 4 inside pockets. It has corner textile straps with a metal snap fastener to secure it to the bucket.

ISSUE:

Is the tool bucket organizer classified in heading heading 4202, HTSUS, as a "tool bag" or "similar container", or in heading 6307 HTSUS, as an "other made up article"?

LAW AND ANALYSIS:

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

Heading 4202, HTSUS, reads in its entirety:

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

Ruling on Cross Motions for Summary Judgement, the court in *Rooster Products, Inc. v. United States*, decided June 1, 2000, *Slip. Op.* 2000-60 (*Ct. Int'l Trade*), held that CBP properly classified a tool holder under heading 4202, as a form of a tool bag, or alternatively, as a similar container, and provided clear guidance for interpreting the term "tool bag" in heading 4202.

The tool holder in the *Rooster Products* case had two large flared pockets, a couple of smaller pockets, and two loops. The pockets were designed to hold smaller tools as well as nails, bolts, and similar small items. The loops were designed for larger tools to hang from, such as a hammer or a pair of pliers. When the tool holder was used in its intended manner it was worn like an apron around the individual's waist conforming to the contours of the individual's body.

The court rejected Plaintiff's argument that since the tool holder was not specifically named in the heading, it was not classifiable under heading 4202, HTSUS, and pointed out that an *eo nomine* provision without terms of limitation includes **all forms** of the article in the absence of a contrary legislative intent. The court further found that the Plaintiff did not overcome the presumption that both the common and commercial meaning of a tariff term are the same. Thus, using various lexicographic sources, the court determined that the defining characteristics of a "bag" are that it must be a container of flexible material with an opening at the top, and that it does not have to close or be capable of closing.

After examining the tool holder, the court concluded that it possessed all the characteristics of a tool bag and that it was, therefore, classifiable *eo nomine* as a form of tool bag under heading 4202, HTSUS. Additionally, the court found that the tool holder possessed the essential characteristics or purposes uniting the listed exemplars and did not have a more specific primary purpose that was inconsistent with the listed exemplars, *i.e.*, storage, protection, organization and carriage. The court determined that the tool holder protects and stores items while it is in use by "preventing its contents from falling to the ground" and by "holding its contents while work is performed." Thus, the court said that even if the tool holder were not classifiable *eo nomine* as a form of tool bag, it was still correctly classified through the application of *ejusdem generis* as a similar container.

In light of the court's rationale in *Rooster Products*, it is clear that the scope of heading 4202 is broad enough to encompass all forms of tool bags, including the tool bucket organizer at issue. The tool organizer's function is to store and protect items while in use, preventing its contents from falling to the ground, and holding its contents while work is performed. Accordingly, the tool bucket organizer is correctly classified under heading 4202, HTSUS.

HOLDING:

NY J80360 is REVOKED. The tool bucket organizer is correctly classified under subheading 4202.92.9026, HTSUS, which provides for "Trunks, suitcases, vanity cases, attache cases briefcases . . . holsters and similar containers; traveling bags . . . tool bags . . . and similar containers . . . : Other: With outer surface of sheeting of plastic or of textile materials: Other: Other: With outer surface of textile materials: Other: Of man-made fibers." It is dutiable at the general column one rate at 17.6 percent *ad valorem*, and the textile category is 670.

There are no applicable quota/visa requirements for members of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries.

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 Textile Status Report for Absolute Quotas, available on the CBP website at www.cbp.gov.

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

MYLES B. HARMON,
Director;
Commercial Rulings Division.

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966907
CLA-2 RR:CR:TE 966907 RH
CATEGORY: Classification
TARIFF NO.: 4202.92.9026

MR. JAMES C. TUTTLE
LAW OFFICES OF JAMES C. TUTTLE
82 Wall Street, Suite 1105
New York, NY 10005

RE: Proposed Modification of NY G85500; Tool Caddy; Tool Organizer; Heading 4202; *Rooster Products, Inc. v. United States*, decided June 1, 2000, *Slip. Op. 2000-60 (Ct. Int'l Trade)*

DEAR MR. TUTTLE:

On January 4, 2001, Customs (now Customs and Border Protection (CBP)), issued New York Ruling Letter (NY) G85500 to you on behalf of your client, Arden Companies. In that ruling, CBP classified a tool caddy (a style number was not submitted) commonly known as a bucket organizer or

“bucket pockets” under heading 6307 of the Harmonized Tariff Schedule of the United States (HTSUS), as an other made up article. We also classified two other textile tool holders (style G20001 and style G40301) under heading 4202, HTSUS, and a textile belt with permanently attached holster (style G40251) under heading 6307, HTSUS.

For the reasons set forth below, we find that the tool bucket organizer is classifiable under heading 4202, HTSUS. Accordingly, NY G85500 is modified to reflect that change.

FACTS:

A description of the tool holder at issue in this ruling was described in NY G85500 as follows:

The tool caddy is commonly known as a bucket organizer or “bucket pockets”. It is designed to be placed over a bucket to organize tools. The exterior surface consists of a fabric backed embossed compact plastic sheeting. There are eight pockets of textile mesh material that cover the width of the organizer.

ISSUE:

Is the tool bucket organizer classified in heading 4202, HTSUS, as a “tool bag” or “similar container”, or in heading 6307 HTSUS, as an “other made up article”?

LAW AND ANALYSIS:

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

Heading 4202, HTSUS, reads in its entirety:

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

Ruling on Cross Motions for Summary Judgement, the court in *Rooster Products, Inc. v. United States*, decided June 1, 2000, *Slip. Op.* 2000–60 (*Ct. Int'l Trade*), held that CBP properly classified a tool holder under heading 4202, as a form of a tool bag, or alternatively, as a similar container, and provided clear guidance for interpreting the term “tool bag” in heading 4202.

The tool holder in the *Rooster Products* case had two large flared pockets, a couple of smaller pockets, and two loops. The pockets were designed to hold smaller tools as well as nails, bolts, and similar small items. The loops were designed for larger tools to hang from, such as a hammer or a pair of pliers. When the tool holder was used in its intended manner it was worn

like an apron around the individual's waist conforming to the contours of the individual's body.

The court rejected Plaintiff's argument that since the tool holder was not specifically named in the heading, it was not classifiable under heading 4202, HTSUS, and pointed out that an *eo nomine* provision without terms of limitation includes **all forms** of the article in the absence of a contrary legislative intent. The court further found that the Plaintiff did not overcome the presumption that both the common and commercial meaning of a tariff term are the same. Thus, using various lexicographic sources, the court determined that the defining characteristics of a "bag" are that it must be a container of flexible material with an opening at the top, and that it does not have to close or be capable of closing.

After examining the tool holder, the court concluded that it possessed all the characteristics of a tool bag and that it was, therefore, classifiable *eo nomine* as a form of tool bag under heading 4202, HTSUS. Additionally, the court found that the tool holder possessed the essential characteristics or purposes uniting the listed exemplars and did not have a more specific primary purpose that was inconsistent with the listed exemplars, *i.e.*, storage, protection, organization and carriage. The court determined that the tool holder protects and stores items while it is in use by "preventing its contents from falling to the ground" and by "holding its contents while work is performed." Thus, the court said that even if the tool holder were not classifiable *eo nomine* as a form of tool bag, it was still correctly classified through the application of *ejusdem generis* as a similar container.

In light of the court's rationale in *Rooster Products*, it is clear that the scope of heading 4202 is broad enough to encompass all forms of tool bags, including the tool bucket organizer at issue. The tool organizer's function is to store and protect items while in use, preventing its contents from falling to the ground, and holding its contents while work is performed. Accordingly, it is correctly classified under heading 4202, HTSUS.

HOLDING:

NY G85500 is MODIFIED. The tool bucket organizer is correctly classified under subheading 4202.92.9026, HTSUS, which provides for "Trunks, suitcases, vanity cases, attaches cases briefcases . . . holsters and similar containers; traveling bags . . . tool bags . . . and similar containers . . . : Other: With outer surface of sheeting of plastic or of textile materials: Other: Other: With outer surface of textile materials: Other: Of man-made fibers." It is dutiable at the general column one rate at 17.6 percent *ad valorem*, and the textile category is 670.

There are no applicable quota/visa requirements for members of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries.

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 Textile Status Report for Absolute Quotas, available on the CBP website at www.cbp.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories,

your client should contact the local CBP office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966908
CLA-2 RR:CR:TE 966908 RH
CATEGORY: Classification
TARIFF NO.: 4202.92.9026

MS. LINDA LEE
FISKARS BRANDS, INC.
2537 Daniels Street
Madison, WI 53718

RE: Proposed Revocation of NY J81807; Garden Bucket Organizer; Heading 4202; *Rooster Products, Inc. v. United States*, decided June 1, 2000, *Slip. Op. 2000-60 (Ct. Int'l Trade)*

DEAR MS. LEE:

On March 6, 2003, Customs (now Customs and Border Protection (CBP)), issued New York Ruling Letter (NY) J81807 to your company concerning the classification of a garden bucket tool caddy. In that ruling, CBP classified the tool caddy under heading 6307 of the Harmonized Tariff Schedule of the United States (HTSUS), as an other made up article.

For the reasons set forth below, we find that the tool caddy is classifiable under heading 4202, HTSUS. Accordingly, NY J81807 is revoked.

FACTS:

A description of the tool caddy in NY J81807 reads as follows:

The sample submitted is a garden bucket tool caddy made of woven textile fabric. It is designed to fit around the outside of a 5-gallon bucket. It features open pockets that cover the width of the caddy. It also has a compartment to store packages of seeds. A corner strap with hook and loop fastener secures it to the bucket.

ISSUE:

Is the garden tool bucket caddy classified in heading 4202, HTSUS, as a "tool bag" or "similar container", or in heading 6307 HTSUS, as an "other made up article"?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the

goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

Heading 4202, HTSUS, reads in its entirety:

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

Ruling on Cross Motions for Summary Judgement, the court in *Rooster Products, Inc. v. United States*, decided June 1, 2000, *Slip. Op.* 2000-60 (*Ct. Int'l Trade*), held that CBP properly classified a tool holder under heading 4202, as a form of a tool bag, or alternatively, as a similar container, and provided clear guidance for interpreting the term “tool bag” in heading 4202.

The tool holder in the *Rooster Products* case had two large flared pockets, a couple of smaller pockets, and two loops. The pockets were designed to hold smaller tools as well as nails, bolts, and similar small items. The loops were designed for larger tools to hang from, such as a hammer or a pair of pliers. When the tool holder was used in its intended manner it was worn like an apron around the individual's waist conforming to the contours of the individual's body.

The court rejected Plaintiff's argument that since the tool holder was not specifically named in the heading, it was not classifiable under heading 4202, HTSUS, and pointed out that an *eo nomine* provision without terms of limitation includes **all forms** of the article in the absence of a contrary legislative intent. The court further found that the Plaintiff did not overcome the presumption that both the common and commercial meaning of a tariff term are the same. Thus, using various lexicographic sources, the court determined that the defining characteristics of a “bag” are that it must be a container of flexible material with an opening at the top, and that it does not have to close or be capable of closing.

After examining the tool holder, the court concluded that it possessed all the characteristics of a tool bag and that it was, therefore, classifiable *eo nomine* as a form of tool bag under heading 4202, HTSUS. Additionally, the court found that the tool holder possessed the essential characteristics or purposes uniting the listed exemplars and did not have a more specific primary purpose that was inconsistent with the listed exemplars, *i.e.*, storage, protection, organization and carriage. The court determined that the tool holder protects and stores items while it is in use by “preventing its contents from falling to the ground” and by “holding its contents while work is performed.” Thus, the court said that even if the tool holder were not classifiable *eo nomine* as a form of tool bag, it was still correctly classified through the application of *ejusdem generis* as a similar container.

In light of the court's rationale in *Rooster Products*, it is clear that the scope of heading 4202 is broad enough to encompass all forms of tool bags, including the tool bucket organizer at issue. The tool bucket caddy's function is to store and protect items while in use, preventing its contents from fall-

ing to the ground, and holding its contents while work is performed. Accordingly, the tool bucket organizer is correctly classified under heading 4202, HTSUS.

HOLDING:

NY J81807 is REVOKED. The garden tool bucket caddy is correctly classified under subheading 4202.92.9026, HTSUS, which provides for "Trunks, suitcases, vanity cases, attaches cases briefcases . . . holsters and similar containers; traveling bags . . . tool bags . . . and similar containers . . . : Other: With outer surface of sheeting of plastic or of textile materials: Other: Other: With outer surface of textile materials: Other: Of man-made fibers." It is dutiable at the general column one rate at 17.6 percent *ad valorem*, and the textile category is 670.

There are no applicable quota/visa requirements for members of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries.

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 Textile Status Report for Absolute Quotas, available on the CBP website at www.cbp.gov.

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.

19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN METAL COUPLINGS AND CONNECTORS

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

ACTION: Notice of proposed revocation of tariff classification ruling letters and revocation of treatment relating to the classification of certain metal couplings and connectors.

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 U.S. Customs and Border Protection (Customs) intends

to revoke two ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain metal couplings and connectors. Similarly, Customs proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before April 9, 2004.

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

FOR FURTHER INFORMATION CONTACT: David Salkeld, General Classification Branch, at (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 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke two ruling letters relating to the tariff classification of certain metal couplings and

connectors. Although in this notice Customs is specifically referring to the revocation of New York Ruling Letter (NY) I81109, dated April 26, 2002, and NY A82216, dated April 17, 1996 (Attachments A and B, respectively), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

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

In NY I81109 and NY A82216, Customs classified certain metal couplings and connectors. In NY I81109, Customs classified steel couplings and connectors under subheading 7326.90.85, HTSUS, which provides for "Other articles of iron and steel: Other: Other: Other: Other." In NY A82216, Customs classified zinc couplings and connectors under subheading 7307.00.60, HTSUS, which provides for "Other articles of zinc: Other."

Based on our analysis of the scope of the terms of headings 7307, 7326, 7906 and 7907, HTSUS, the Legal Notes, and the Explanatory Notes and new information, we now believe the following: the threaded steel couplings subject to this notice are classified in subheading 7307.92.30, which provides for "Tube or pipe fittings (for example, couplings, elbows, sleeves) of iron or steel: Other: Threaded elbows, bends and sleeves: Sleeves (couplings);" the other steel connectors subject to this notice are classified in subheading 7307.99.50, which provides for "Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel: Other: Other: Other;" and the zinc couplings and connectors subject to this notice are classified in subheading 7906.00.00, HTSUS, which provides for "Zinc tubes, pipes and tube or pipe fittings (for example, couplings, elbows, sleeves)."

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY I81109 and NY A82216 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letters (HQs) 966958 and 966965 (Attachments C and D respectively). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions that is contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

DATED: February 24, 2004

John Elkins for MYLES B. HARMON,
Director;
Commercial Rulings Division.

[ATTACHMENT A]

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

NY I81109

April 26, 2002

CLA-2-73:RR:NC:NI:113 I81109

CATEGORY: Classification

TARIFF NO.: 7326.90.8586

MR. JIM WICKSTEAD
CIRCLE INTERNATIONAL, INC.
991 Supreme Drive
Bensenville, IL 60106

RE: The tariff classification of compression fittings from India.

DEAR MR. WICKSTEAD:

In your letter dated April 17, 2002, you requested a ruling on behalf of E.P.C. international, Inc. on tariff classification.

The samples you provided are connectors for junction boxes. Your request includes metallic setscrew connectors, metallic setscrew couplings, metallic compression connectors, and metallic compression fittings. The items are manufactured from mild steel and are zinc-plated. They are used to connect conduits together.

The applicable subheading for this product will be 7326.90.8586, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of iron or steel, other. The general rate of duty will be 2.9 percent ad valorem.

Articles classifiable under subheading 7326.90.8586, HTS, which are products of India are currently entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. The GSP, however, is subject to modification and periodic

suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse. To obtain current information on GSP, check the Customs Web site at www.customs.gov. At the Web site, click on "CEBB" and then search for the term "GSP".

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist James Smyth at 646-733-3018.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY A82216
April 17, 1996
CLA-2-79:RR:NC:GI:115 A82216
CATEGORY: Classification
TARIFF NO.: 7907.00.6000

MS. GAIL LEVY
SAMUEL SHAPIRO & COMPANY, INC.
World Trade Center
Suite 1200
401 East Pratt St.
Baltimore, MD 21202-3104

RE: The tariff classification of couplings and connectors from Russia.

DEAR MS. LEVY:

In your letter dated April 3, 1996, you requested a tariff classification ruling, on behalf of your client, OMI Industries, Inc., Columbus, OH.

The subject items are described as follows:

- 1) 1/2" compression coupling
- 2) 1/2" screw coupling
- 3) 1/2" compression connector
- 4) 3/4" screw connector

These items are used in the electrical field and have many universal applications. All are made of Zamac #3, which is a zinc die cast.

The applicable subheading for the zinc couplings will be 7907.90.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of zinc, other. The duty rate will be 4.6% ad valorem.

Articles classifiable under subheading 7907.00.6000, HTS, which are products of Russia, are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

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

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

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966958
CLA-2 RR:CR:GC 966958 DSS
CATEGORY: Classification
TARIFF NO.: 7307.92.30, 7307.99.50

MR. JIM WICKSTEAD
CIRCLE INTERNATIONAL, INC.
991 Supreme Drive
Bensenville, IL 60106

RE: Revocation of NY I81109; Zinc-plated steel compression fittings from India

DEAR MR. WICKSTEAD:

This letter is pursuant to the Bureau of Customs and Border Protection's (Customs) reconsideration of New York Ruling letter (NY) I81109, dated April 26, 2002. We have reviewed the classification in NY I81109 and have determined that it is incorrect. This ruling sets forth the correct classification.

FACTS:

In NY I81009, we classified certain zinc-plated steel compression fittings from India. The articles were described in NY I81109 as follows:

The samples you provided are connectors for junction boxes. Your request includes metallic setscrew connectors, metallic setscrew couplings, metallic compression connectors, and metallic compression fittings. The items are manufactured from mild steel and are zinc-plated. They are used to connect conduits together.

In NY I81109, we classified the instant articles under subheading 7326.90.85, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other articles of iron or steel: Other: Other: Other: Other."

ISSUE:

Whether the instant articles are classified as steel pipe fittings under heading 7307, HTSUS, or as other articles of iron and steel under heading 7326, HTSUS.

LAW AND ANALYSIS:

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

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. *See* T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

7307 Tube or pipe fittings (for example, couplings, elbows, sleeves) of iron or steel:

Other:

7307.92 Threaded elbows, bends and sleeves:

7307.92.30 Sleeves (couplings)

* *

7307.99 Other:

7307.99.50 Other

* * *

7326 Other articles of iron or steel:

7326.90 Other:

Other:

Other:

7326.90.85 Other

EN 73.07 provides in pertinent part as follows:

This heading covers fittings of iron or steel, mainly used for connecting the bores of two tubes together, or for connecting a tube to some other apparatus, or for closing the tube aperture. This heading **does not** however **cover** articles used for installing pipes and tubes but which do not form an integral part of the bore (e.g., hangers, stays and similar supports which merely fix or support the tubes and pipes on walls, clamping or tightening bands or collars (hose clips) used for clamping flexible tubing or hose to rigid piping, taps, connecting pieces, etc.) (heading **73.25** or **73.26**) [emphasis in original].

The connection is obtained:

—by screwing, when using cast iron or steel threaded fittings;

—or by welding, when using butt-welding or socket-welding steel fittings. In the case of butt-welding, the ends of the fittings and of the tubes are square cut or chamfered;

—or by contact, when using removable steel fittings.

This heading therefore includes flat flanges and flanges with forged collars, elbows and bends and return bends, reducers, tees, crosses, caps and plugs, lap joint stub-ends, fittings for tubular railings and structural elements, off sets, multi-branch pieces, couplings or sleeves, clean out traps, nipples, unions, clamps and collars.

In NY I81109, we concluded that the instant articles were articles of steel not provided for elsewhere in the HTSUS. Because heading 7326, HTSUS, covers all articles of iron or steel not elsewhere specified or included (see EN 73.26), the goods will be provided for in heading 7326, HTSUS, only if they are described in that heading and if they are not provided for in another heading (in this instance, heading 7307).

New information has been presented to Customs, however, that has caused us to view the classification in NY I81109 as incorrect. This information indicates that the connectors and couplings serve to connect the bores of two tubes together or to connect a tube to some other apparatus (*i.e.*, a junction box). Therefore, we find that the instant articles are within the scope of the description provided in the heading text of 7307 and EN 73.07, above. Accordingly, we find that the instant articles are provided for in heading 7307, HTSUS. Some of the fittings are threaded, which indicates that the connection is made by screwing. These connectors and couplings are classified under subheading 7307.92.30, HTSUS, which provides for, “Tube or pipe fittings (for example, couplings, elbows, sleeves) of iron or steel: Other: Threaded elbows, bends and sleeves: Sleeves (couplings).” The other fittings of nonalloy steel where the connection is not threaded (e.g., compression connectors), are classified in subheading 7307.99.50, HTSUS, which provides for, “Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel: Other: Other: Other.”

HOLDING:

In accordance with the above discussion, at GRI 1 the instant fittings fall under heading 7307, HTSUS.

The threaded couplings are classified under subheading 7307.92.30, HTSUS, which provides for, “Tube or pipe fittings (for example, couplings, elbows, sleeves) of iron or steel: Other: Threaded elbows, bends and sleeves: Sleeves (couplings).”

The other fittings are classified in subheading 7307.99.50, HTSUS, which provides for, “Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel: Other: Other: Other.”

EFFECT ON OTHER RULINGS:

NY I81109 is REVOKED.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966965
CLA-2 RR:CR:GC 966965 DSS
CATEGORY: Classification
TARIFF NO.: 7906.00.00

MS. GAIL LEVY
SAMUEL SHAPIRO & COMPANY, INC.
World Trade Center, Suite 1200
401 East Pratt Street
Baltimore, MD 21202-3104

RE: Revocation of NY A82216; Zinc couplings and connectors from Russia

DEAR MS. LEVY:

This letter is pursuant to the Bureau of Customs and Border Protection's (Customs) reconsideration of New York Ruling Letter (NY) A82216, dated April 17, 1996. We have reviewed the classification in NY A82216 and have determined that it is incorrect. This ruling sets forth the correct classification.

FACTS:

In NY A82216, we classified certain zinc couplings and connectors from Russia. The articles were described in NY A82216 as follows:

- 1) 1/2" compression coupling
- 2) 1/2" screw coupling
- 3) 1/2" compression connector
- 4) 3/4" screw connector

These items are used in the electrical field and have many universal applications. All are made of Zamac #3, which is a zinc die cast.

In NY A82216, we classified the instant articles under subheading 7907.00.60, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other articles of zinc: Other."

ISSUE:

Whether the instant articles are classified as zinc pipe fittings under heading 7906, HTSUS, or as other articles of zinc under heading 7907, HTSUS.

LAW AND ANALYSIS:

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

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in

ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. *See* T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

7906.00.00 Zinc tubes, pipes and tube or pipe fittings (for example, couplings, elbows, sleeves)

* * *

7907.00 Other articles of zinc:

7907.00.60 Other

EN 73.07 (which applies to EN 79.06 by appropriate substitution of terms) provides in pertinent part as follows:

This heading covers fittings of iron or steel, mainly used for connecting the bores of two tubes together, or for connecting a tube to some other apparatus, or for closing the tube aperture. This heading **does not** however **cover** articles used for installing pipes and tubes but which do not form an integral part of the bore (e.g., hangers, stays and similar supports which merely fix or support the tubes and pipes on walls, clamping or tightening bands or collars (hose clips) used for clamping flexible tubing or hose to rigid piping, taps, connecting pieces, etc.) (heading **73.25** or **73.26**) [emphasis in original].

The connection is obtained:

- by screwing, when using cast iron or steel threaded fittings;
- or by welding, when using butt-welding or socket-welding steel fittings. In the case of butt-welding, the ends of the fittings and of the tubes are square cut or chamfered;
- or by contact, when using removable steel fittings.

This heading therefore includes flat flanges and flanges with forged collars, elbows and bends and return bends, reducers, tees, crosses, caps and plugs, lap joint stub-ends, fittings for tubular railings and structural elements, off sets, multi-branch pieces, couplings or sleeves, clean out traps, nipples, unions, clamps and collars.

In NY A82216, we concluded that the instant articles were articles of zinc not provided for elsewhere in the HTSUS. Because heading 7907, HTSUS, covers all articles of zinc not elsewhere specified or included (see EN 79.07), the goods will be provided for in heading 7907, HTSUS, only if they are described in that heading and if they are not provided for in another heading (in this instance, heading 7906).

New information has been presented to Customs, however, that has caused us to view the classification in NY A82216 as incorrect. This information indicates that the instant fittings serve to connect the bores of two tubes together or to connect a tube to some other apparatus (*i.e.*, a junction box). Therefore, we find that the instant articles are within the scope of the heading text of 7906 and the description provided in EN 73.07, above (and by extension EN 79.06). Accordingly, we find that the instant articles are provided for in heading 7906, HTSUS. We find that they are classified under subheading 7906.00.00, HTSUS, as: “Zinc tubes, pipes and tube or pipe fittings (for example, couplings, elbows, sleeves).”

HOLDING:

In accordance with the above discussion, at GRI 1, the correct classification for the instant fittings is under subheading 7906.00.00, HTSUS, which provides for “Zinc tubes, pipes and tube or pipe fittings (for example, couplings, elbows, sleeves).”

EFFECT ON OTHER RULINGS:

NY A82216 is REVOKED.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CHILDREN’S ANIMAL BLANKETS

AGENCY: Bureau of Customs & Border Protection; Department of Homeland Security.

ACTION: Notice of revocation of two tariff classification ruling letters and revocation of treatment relating to the classification of children’s animal blankets.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs & Border Protection (CBP) is revoking two ruling letters relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a child’s animal blanket. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed revocation was published in the Customs Bulletin of December 3, 2003, Vol. 37, No. 49. One comment was received.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 9, 2004.

FOR FURTHER INFORMATION CONTACT: Beth Safeer, Textiles Branch: (202) 572-8825.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.”

These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP 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 CBP 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 CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice proposing to revoke F89046, dated, July 19, 2000, was published on December 3, 2003, in Vol. 37, No. 49, of the Customs Bulletin.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUSA. An importer's failure to advise CBP of substantially identical merchandise or of a specific ruling not identified in the proposed notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

During the comment period an importer advised CBP that in NY F88845, dated July 5, 2000, (Attachment A) substantially identical merchandise had also been classified under subheading 6307.90.9989, HTSUSA. We have now had the opportunity to review NY F88845 and we agree that it should be revoked.

In NY F89046 and NY F88845, CBP classified a "Blanket Buddy" and an "Animal Head Security Buddy", both from China under subheading 6307.90.9989 HTSUSA, which provides for "Other made up articles, including dress patterns: Other: Other: Other: Other:

Other.” Based on our analysis of the scope of the terms of headings 9503 and 6307, the Legal Notes, and the Explanatory Notes, we find that children’s animal blankets of the type subject to this notice are more accurately described as toys than as other made up textile articles and should be classified in subheading 9503.90.0080, HTSUSA, which provides for “Other toys; reduced-size models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other: Other.” Note (1)(t) to Section XI, HTSUSA, specifically precludes toys from classification in that section.

Pursuant to 19 U.S.C. 1625 (c)(1), CBP is revoking NY F89046, NY F88845, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 966809 (Attachment B) and HQ 966843 (Attachment C). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise.

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

DATED: February 25, 2004

Gail A. Hamill for MYLES HARMON,
Director,
Commercial Rulings Division.

Attachments



[ATTACHMENT A]

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

NY F88845

July 5, 2000

CLA-2-63:RR:NC:TA:351 F88845

CATEGORY: Classification

TARIFF NO.: 6307.90.9989

MS. LINDA CAROPRESO
AGRA-SERVICES BROKERAGE CO., INC.
221-20 147th Avenue
Jamaica, NY 11413

RE: The tariff classification of an “Animal Head Security Buddy” from China.

DEAR MS. CAROPRESO:

In your letter dated June 14, 2000, on behalf of H.J. Rashti & Co., Inc., New York, New York, you requested a tariff classification ruling.

The submitted sample is an "Animal Head Security Buddy," item number J133. It is made of a rectangular shaped textile panel. The panel is constructed of brushed knit fabric with a woven textile binder sewn around the edges. It features in one corner a stuffed head of an animal and a ribbon tied into a bow underneath the stuffed head. In the opposite corner is a textile patch with the embroidered word "Carter's." It measures approximately 21" x 19-1/2".

The applicable subheading for the "Animal Head Security Buddy" will be 6307.90.9989, Harmonized Tariff Schedule of the United States (HTS), which provides for other made up article . . . Other. The rate of duty will be 7 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mitchel Bayer at 212-637-7086.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966809
February 25, 2004
CLA-2 RR:CR:TE 966809 BAS
CATEGORY: Classification
TARIFF NO.: 9503.90.0080

JILL BURNS
MSAS GLOBAL LOGISTICS, INC.
10205 N.W. 19th Street
Miami, Florida 33172

RE: Revocation of NY F89046, dated July 19, 2000; Classification of the "Blanket Buddy" from China

DEAR MS. BURNS:

This is in reference to New York Ruling Letter (NY) F89046, issued to you on July 19, 2000. In NY F89046, a "Blanket Buddy" from China was classified under subheading 6307.90.9989, HTSUSA, which provides for "Other made up articles, including dress patterns: Other: Other: Other: Other: Other."

Upon review of the ruling, the Bureau of Customs and Border Protection (CBP) has determined that the merchandise was erroneously classified. This ruling letter revokes NY F89046 and sets forth the correct classification determination.

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 F89046, as described below, was published in the Customs Bulletin, Volume 37, Number 49, on December 3, 2003. CBP received comments from one party during the notice and comment period that closed on January 2, 2004.

FACTS:

The merchandise under consideration is a child's "Blanket Buddy," item number 17069. It is constructed of a stuffed animal head, ears, and arms attached onto a knit pile fabric lined with polyester satin woven fabric. The stuffed head is either a hippopotamus, dog, bunny or lamb.

ISSUE:

Is the subject "Blanket Buddy" classifiable under heading 6307, HTSUSA, which covers other made up articles or heading 9503, HTSUSA, which covers toys?

LAW AND ANALYSIS:

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

HEADING 9503, HTSUSA:

Heading 9503, HTSUSA, covers "Other toys; reduced-size ("scale") models and similar recreation models, working or not; puzzles of all kinds; parts and accessories thereof." The Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level. The EN to heading 9503, HTSUSA, state that the heading covers toys intended essentially for the amusement of persons. These include toys representing animals or non-human creatures. The "Blanket Buddy" is a toy which is a representation of an animal or non-human creature and is intended for the amusement of children. Depending on the actual toy, we have consistently classified "blankie" type toys in different subheadings within heading 9503. NY H85796, December 26, 2001; NY H83023, dated July 23, 2001; NY G84760, dated December 20, 2000; NY F81811, February 1, 2000; and NY F88296, dated June 14, 2000.

In general, toys that depict full-bodied animals have been classified either in subheading 9503.41, HTSUSA or subheading 9503.49, HTSUSA. NY G84760, dated December 20, 2000; NY F91911, dated February 1, 2000; NY F88296, dated June 14, 2000. Because the animal depicted on the "Blanket Buddy" is not a "full bodied" representation of an animal, it is not properly classifiable in subheading 9503.90.0080, HTUSA, as "Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other: Other." This is consistent with other rulings in which we have classified other than full bodied animal representations attached to children's blankets, in subheading 9503.90.0080, HTSUSA. NY H85796, dated December 26, 2001; NY H83023, dated July 23, 2001

HEADING 6307, HTSUSA

Heading 6307, HTSUSA, is the provision for other made up articles. The EN to Heading 6307 state that the heading covers made up articles of any textile material which are **not included** more specifically in other headings of Section XI or elsewhere in the Nomenclature. Since the "Blanket Buddy" is described more specifically, by heading 9503, HTSUSA, the basket provision would not be the appropriate heading in which the subject merchandise should be classified.

Note (1)(t) to Section XI, furthermore, states that the section does not cover articles of Chapter 95, for example, toys. Having concluded that the "Blanket Buddy" is a toy, it is therefore precluded from classification in Section XI, HTSUSA.

HOLDING:

NY F89046, dated July 19, 2000, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

The "Blanket Buddy" is classified in subheading 9503.90.0080, HTSUSA, which provides for "Other toys; reduced-size models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other: Other." The general column one rate of duty is free.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966843
February 25, 2004
CLA-2 RR:CR:TE 966843 BAS
CATEGORY: Classification
TARIFF NO.: 9503.90.0080

MS. DESPINA KEEGAN
SERKO & SIMON LLP
CUSTOMS & INTERNATIONAL TRADE LAW
1700 Broadway
31st Floor
New York, New York 10019

RE: Revocation of NY F88845, dated July 5, 2000; Classification of the "Animal Head Security Buddy" from China

DEAR MS. KEEGAN:

This is in reference to a proposed notice of revocation published in the Customs Bulletin of December 3, 2003. In response to that notice, you sent us comments on December 23, 2003, on behalf of your client, H.J. Rashti & Co. Inc. You indicated that your client had received a ruling, New York Ruling Letter (NY) F88845, issued on July 5, 2000 in which an "Animal Head Security Buddy" blanket from China was classified under subheading

6307.90.9989, HTSUSA, which provides for "Other made up articles, including dress patterns: Other: Other: Other: Other: Other: Other." You stated that you believed that NY F88845 should be revoked in accordance with proposed HQ 966809.

Upon review of the ruling, the Bureau of Customs and Border Protection (CBP) has determined that the merchandise was erroneously classified. This ruling letter revokes NY F88845 and sets forth the correct classification determination.

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 F89046, dated July 19, 2000, concerning substantially identical merchandise, as described below, was published in the Customs Bulletin, Volume 37, Number 49, on December 3, 2003. During the notice and comment period that closed on January 2, 2004, the only comment we received was your notification informing us that NY F88845 concerned substantially similar merchandise.

FACTS:

The merchandise under consideration is a child's "Animal Security Buddy," item number J133. It is constructed of a rectangular shaped textile panel of brushed knit fabric with a woven textile binder sewn around the edges. It features in one corner a stuffed head of an animal and a ribbon tied into a bow underneath the stuffed head. In the opposite corner is a textile patch with the embroidered word "Carter's." The blanket measures approximately 21" x 19-1/2".

ISSUE:

Is the subject "Animal Head Security Buddy" classifiable under heading 6307, HTSUSA, which covers other made up articles or heading 9503, HTSUSA, which covers toys?

LAW AND ANALYSIS:

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

HEADING 9503, HTSUSA:

Heading 9503, HTSUSA, covers "Other toys; reduced-size ("scale") models and similar recreation models, working or not; puzzles of all kinds; parts and accessories thereof." The Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level. The EN to heading 9503, HTSUSA, state that the heading covers toys intended essentially for the amusement of persons. These include toys representing animals or non-human creatures. The "Animal Head Security Buddy" is a toy which is a representation of an animal or non-human creature and is intended for the amusement of children. Depending on the actual toy, we have consistently classified "blankie" type toys in different subheadings within heading 9503. NY H85796, December 26, 2001; NY H83023, dated July 23, 2001; NY G84760, dated December 20, 2000; NY F81811, February 1, 2000; and NY F88296, dated June 14, 2000.

In general, toys that depict full-bodied animals have been classified either in subheading 9503.41, HTSUSA or subheading 9503.49, HTSUSA. NY G84760, dated December 20, 2000; NY F91911, dated February 1, 2000; NY F88296, dated June 14, 2000. Because the animal depicted on the "Animal Head Security Buddy" is not a "full bodied" representation of an animal, it is properly classifiable in subheading 9503.90.0080, HTSUSA, as "Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other: Other." This is consistent with other rulings in which we have classified other than full bodied animal representations attached to children's blankets, in subheading 9503.90.0080, HTSUSA. NY H85796, dated December 26, 2001; NY H83023, dated July 23, 2001.

HEADING 6307, HTSUSA

Heading 6307, HTSUSA, is the provision for other made up articles. The EN to Heading 6307 state that the heading covers made up articles of any textile material which are **not included** more specifically in other headings of Section XI or elsewhere in the Nomenclature. Since the "Animal Head Security Buddy" is described more specifically, by heading 9503, HTSUSA, heading 6307, HTSUSA, a "basket" provision would not be the appropriate heading in which the subject merchandise should be classified.

Note (1)(t) to Section XI, furthermore, states that the section does not cover articles of Chapter 95, for example, toys. Having concluded that the "Animal Head Security Buddy" is a toy, it is therefore precluded from classification in Section XI, HTSUSA.

HOLDING:

NY F88845, dated July 5, 2000, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

The "Animal Head Security Buddy" is classified in subheading 9503.90.0080, HTSUSA, which provides for "Other toys; reduced-size models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other: Other." The general column one rate of duty is free.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF KARAOKE MACHINES

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

ACTION: Notice of proposed revocation of two ruling letters and revocation of treatment relating to the tariff classification of karaoke machines.

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

DATE: Comments must be received on or before April 9, 2004.

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

FOR FURTHER INFORMATION CONTACT: Keith Rudich, Commercial Rulings Division, (202) 572-8782.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke two ruling letters pertaining to the tariff classification of karaoke machines. Although in this notice Customs is specifically referring to NY I87338 and NY I85746, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the two identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

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

In NY I87338, dated November 4, 2002, set forth as "Attachment A" to this document, Customs found that two models of karaoke machines, one with the additional component of a cassette player/recorders, were classified in subheading 8528.22.00, HTSUS, as reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus, video monitors and video projectors, video monitors, black and white or other monochrome. Customs has reviewed the matter and determined that the correct classification of the model of karaoke machines without the recording device is in subheading 8519.99.00, HTSUS, as turntables, record players, cassette players and other sound reproducing apparatus, not incorporating a sound recording device, other sound reproducing apparatus, other. The correct classification of the model of karaoke machine with a recording device is in subheading 8543.89.96, HTSUS, as electrical machines and apparatus, having individual functions, not specified or included

elsewhere in this chapter, parts thereof, other machines and apparatus, other, other, other, other.

In NY I85746, dated September 5, 2002, set forth as "Attachment B" to this document, Customs found that a karaoke machine with a recording device was classified in subheading 8520.33.00, HTSUS, as magnetic tape recorders and other sound recording apparatus, whether or not incorporating a sound reproducing device, other magnetic tape recorders incorporating sound reproducing apparatus, other, cassette type. Customs has reviewed the matter and determined that the correct classification of the karaoke machine is in subheading 8543.89.96, HTSUS, as electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter, parts thereof, other machines and apparatus, other, other, other, other.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY I87338 and NY I85746 and revoke any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letters (HQ) 966608 and 966976, respectively (Attachments C and D, respectively, to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: February 25, 2004

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

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

NY I87338
November 4, 2002
CLA-2-85:RR:NC:1:108 I87338
CATEGORY: Classification
TARIFF NO.: 8528.22.0000

MR. JOSEPH HOFFACKER
BARTHCO TRADE CONSULTANTS
7575 Holstein Avenue
Philadelphia PA 19153

RE: The tariff classification of Karaoke Systems from China.

DEAR MR. HOFFACKER:

In your letter dated October 10, 2002, on behalf of your client, The Singing Machine Company, you requested a tariff classification ruling.

The items in question are described as "singing machines". They are denoted as the CDG Karaoke System, model STVG-500 and the CDG Karaoke System, model SMVG-600.

The CDG Karaoke System, model STVG-500 is a device composed of a 5.5 inch black and white video monitor, capable of accepting a video signal from a VCR, a CD and graphics player, a single cassette player/recorder and a wired microphone all configured in the same housing. The unit is equipped with features such as, a video output for an additional TV connection, audio/video auxiliary outputs, 2 digit LED CD and Graphics indicator, a function switch, two microphone inputs, microphone volume control, microphone echo control, pitch control, auto voice control, balance music/voice control, master volume control and AC power operation.

The CDG Karaoke System, model SMVG-600 is a device composed of a 5.5 inch black and white monitor, capable of accepting a video signal from a VCR, a CD and graphics player, an adjustable focus camera and a wired microphone all configured in the same housing. The unit is equipped with features such as, a play/pause LED indicator, a program and repeat LED indicator, a CD and graphics LED indicator, master volume control, auto voice control, echo control, microphone volume control, brightness, contrast and v-hold adjustments for the monitor, audio, video and auxiliary inputs/ outputs and built-in speakers.

Based upon the descriptive literature these devices are designed for multiple entertainment activities that include video viewing, live action viewing, audio playing and recording and karaoke singing.

GRI 2b states that if a product is a mixture or combination of materials or substance that are, prima facie, classifiable in two or more headings, then GRI 3 applies. This office is of the opinion that both particular models of the Karaoke Systems are composite goods. Both are composed of both audio and video components that allow the user to operate the device for multiple activities at the user's discretion. They will therefore be classified in accordance with GRI 3.

GRI 3b provides that mixtures, composite goods consisting of different materials or made up of different components, shall be classified as if they

consisted of the material component, which gives them their essential character.

Based upon the nature and operation, of each model, this office is of the opinion that neither the audio nor video capabilities impart an essential character. Both the audio and video components comprise an equal role in terms of use, value and physical characteristics. Therefore classification will be in accordance with GRI 3c which states when goods cannot be classified by reference to 3a or 3b; they shall be classified under the heading which occurs last in numerical order among those which merit equal consideration.

The applicable subheading for the CDG Karaoke System, models STVG-500 and SMVG-600 will be 8528.2200, Harmonized Tariff Schedule of the United States (HTS), which provides for Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors: Video monitors: Black and white or other monochrome. The rate of duty will be 5 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Michael Contino at 646-733-3014.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY I85746
September 5, 2002
CLA-2-85:RR:NC:1:108 I85746
CATEGORY: Classification
TARIFF NO.: 8520.33.9000, 8524.51.3040

MS. CHERYL SANTOS
CVS
One CVS Drive
Woonsocket, RI 02895

RE: The tariff classification of a Karaoke machine from China

DEAR MS. SANTOS:

In your letter dated August 23, 2002 you requested a tariff classification ruling.

The item in question is marketed as the "Nu-Tronix Karaoke for Kids Machine". It is denoted as CVS model number 159678.

The Karaoke machine is battery operated and is configured, in the same housing with a cassette player/recorder. It is packaged for retail sale

(sample submitted) along with two pre-recorded audiocassette tapes, lyric sheets and instruction booklet and a microphone.

The Karaoke machine is designed as a sing-a-long device using both the pre-recorded cassette tapes or by one's own vocal rendition of a popular song and the cassette player/recorder allows one to both play and record cassette tapes separate from the sing-a-long capability. The device does have a volume control, separate controls for each function and internal speakers. It is a fully functional electronic device with several capabilities.

EN X to GRI 3b provides for the purpose of this rule, the term "goods put up in sets for retail sale" shall be taken to mean goods which:

Consist of at least two different articles, which are, prima facie, classifiable in different headings.

B. Consist of products put up together to meet a particular need or carry out a specific activity; and

C. Are put up in a manner suitable for sale to users without repackaging (e.g. in boxes or cases or on boards).

All the aforementioned articles are prima facie classifiable in different headings. Together each enables one to use the Karaoke machine for its intended purpose of sing-a-long to pre-recorded music and also to play and record music and audio renditions of music. The enclosed retail sample is clear evidence that the product will be sold to the user without any repackaging. It is the opinion of this office that the Nu-Tronix Karaoke for Kids Machine and its accompanied items constitute a set in accordance with Explanatory Note X.

In accordance, in part, with GRI 3b . . . goods put up in sets for retail sale, which cannot be classified by reference to GRI 3a, shall be classified as if they consisted of the material or component which gives them their essential character.

EN VIII to GRI 3b states that the factor, which determines essential character, will vary as between different kinds of goods. It may for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the goods.

It is the opinion of this office that the item which imparts the essential character of this particular set is the Karaoke machine, combined in the same housing with a cassette player/recorder. This item is clearly the dominant feature of the set based upon its value and role in relation to the other items within the set.

GRI 2b states that if a product is a mixture or combination of materials or substance that are, prima facie, classifiable in two or more headings, then GRI 3 applies. This office is of the opinion that the Karaoke device is a composite good because it is composed of both a sound reproducing device and a sound recording device. It will therefore be classified in accordance with GRI 3.

GRI 3b provides that mixtures, composite goods consisting of different materials or made up of different components, shall be classified as if they consisted of the material component, which gives them their essential character.

Based upon the nature and operation of this particular Karaoke device this office is of the opinion that neither the sound reproducing capability nor the sound recording capability imparts the essential character. The device is

configured with controls for each function allowing each to operate independently based upon the user's discretion. It is advertised, on the retail packaging as children's sing-along tape player and recorder. Therefore classification will be in accordance with GRI 3c which states when goods cannot be classified by reference to 3a or 3b; they shall be classified under the heading which occurs last in numerical order among those which merit equal consideration.

Legal Note 6 to Chapter 85 requires, in part, that records, tapes and other media of heading 8523 or 8524 remain classified in those headings when entered with the apparatus for which they are intended. For the purposes of this note, the term "apparatus for which they are intended" refers to apparatus which reads or plays the media or which records or writes on the media. The functioning of the Karaoke device combined with a cassette player/recorder, clearly demonstrates that it qualifies as an intended apparatus for the purpose of Legal Note 6 to Chapter 85. Therefore the contained recorded cassette tapes will remain classified in their particular heading.

The applicable subheading for the Nu-Tronix Karaoke for Kids set will be 8520.33.9000, Harmonized Tariff Schedule of the United States (HTS), which provides for Magnetic tape recorders and other sound recording apparatus, whether or not incorporating a sound reproducing device: Other magnetic tape recorders incorporating sound reproducing apparatus: Other, cassette type . . . Other: Other. The rate of duty will be free.

The applicable subheading for the two pre-recorded cassette tapes will be 8524.51.3040, Harmonized Tariff Schedule of the United States (HTS), which provides for records, tapes and other recorded media for sound or other similarly recorded phenomena, including matrices and masters for the production of records, but excluding products of chapter 37: Other magnetic tapes: Of a width not exceeding 4mm: Other . . . Sound recordings on cassette tapes. The rate of duty will 4.8cents/sq. meter of recording surface.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Michael Contino at 646-733-3014.

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

[ATTACHMENT C]

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

HQ 966608

CLA-2 RR:CR:GC 966608 KBR

CATEGORY: Classification

TARIFF NO.: 8519.99.00, 8543.89.96.

MR. JOHN P. DONOHUE
DONOHUE & DONOHUE
232 South Fourth Street
Philadelphia, PA 19106

RE: Reconsideration of NY I87338; Karaoke Systems

DEAR MR. DONOHUE:

This is in reference to New York Ruling Letter (NY) I87338 issued by Customs National Commodity Specialist Division, New York, on November 4, 2002, with respect to the Singer Machine Co., Inc. That ruling concerned the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of karaoke systems imported from China. You have requested that we reconsider this ruling. We have reviewed NY I87338 and determined that the classification provided for the karaoke systems is incorrect.

FACTS:

NY I87338 concerned CDG Karaoke Systems models STVG-500 and SMVG-600, imported from China. Model STVG-500 is a device that allows the user to sing along with background music and on-screen lyrics, either alone or with a group of people, for entertainment. This floor standing device is composed of speakers, a 5.5 inch black and white video monitor capable of accepting a video signal from a VCR, a CD+Graphics player, a single cassette player/recorder, a CD-ROM, and a wired microphone, all configured in a wooden cabinet. Also included are the electrical cables necessary for connection to a power source and to a television. Along with the normal controls for the monitor, cassette player/recorder and CD player, the cabinet also has microphone volume, echo and auto voice controls and a pitch control.

The SMVG-600 is a portable karaoke machine composed of self contained speakers, a black and white monitor, a CD and CD+Graphics player, a wired microphone, a built-in video camera, a CD-ROM, all included in one housing. Also included are the necessary cables for connection to a power source and/or television. As with the STVG-500 model, along with the normal controls for the monitor, cassette player/recorder and CD player, the housing also has microphone volume, echo and auto voice controls.

You state that while karaoke systems were first introduced in the 1970's, video monitors were not added to karaoke systems until almost 30 years later. You state that the video monitor in upper level karaoke machine models comprises no more than 8-10% of the production costs. For lower level karaoke machine models, you state the video monitor comprises no more than 18-20% of the production costs.

In NY I87338, it was determined that the karaoke machines were classified in subheading 8528.22.00, HTSUS, as reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or

video recording or reproducing apparatus; video monitors and video projectors: video monitors: black and white or other monochrome. We have reviewed that ruling and determined that the classification is incorrect. This ruling sets forth the correct classifications.

ISSUE:

What is the classification under the HTSUS, of karaoke machines, models STVG-500 and SMVG-600?

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). Under GRI 1, merchandise is classifiable 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 on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

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).

The HTSUS provisions under consideration are as follows:

- 8519 Turntables, record players, cassette players and other sound reproducing apparatus, not incorporating a sound recording device:
 - Other sound reproducing apparatus:
 - 8519.99.00 Other
 - * * * * *

- 8520 Magnetic tape recorders and other sound recording apparatus, whether or not incorporating a sound reproducing device:
 - Other magnetic tape recorders incorporating sound reproducing apparatus:
 - 8520.33.00 Other, cassette type
 - * * * * *

- 8528 Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors:
 - Video monitors:
 - 8528.22.00 Black and white or other monochrome
 - * * * * *

8543 Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:

Other machines and apparatus:

8543.89 Other:

Other:

Other:

8543.89.96 Other

The articles at issue are two models of karaoke machines imported by The Singing Machine Co., Inc., models STVG-500 and SMVG-600. The devices are intended to allow the user to sing along with background music and view the lyrics for singing on the device's video monitor. There is a microphone which allows the user's voice to be transmitted and amplified to play through the device's speakers along with the background music. Noteworthy distinctions between the two models are that model STVG-500 contains a cassette player/recorder which allows the user to record his performance and model SMVG-600 contains a built in video camera but no recording capability. Taken individually, the different functions of the components of the karaoke machine would be classified in different headings of Chapter 85, HTSUS.

Because of the machines' multiple components, NY I87338 cited GRI 3 to determine the classification of the karaoke machines. However, we must first consider classification of these multi-function articles of Chapter 85, HTSUS, pursuant to GRI 1. *See* HQ 966530 (September 4, 2003), HQ 966531 (September 4, 2003) and HQ 966072 (September 4, 2003). To classify the articles according to GRI 1, we must first look to the relevant section and chapter notes. HTSUS Section XVI, Note 3 provides:

Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

We find that the subject karaoke machines are composite machines within the meaning of Note 3. We further find that the principal function of the karaoke machines is as a sound reproduction device. The reason a person would use the instant karaoke machines is to reproduce sounds to sing along to. The additional features of a monitor which displays the words, a cassette deck to record the performance, and a built-in camera to record the performance, are all ancillary to the main function of allowing a person to sing to reproduced music. The additional features were developed well after karaoke machines were first sold. A person could, and conceivably would, fully use the instant machines for their intended purpose without using the additional features.

Customs has previously found that a basic karaoke machine (one without a cassette recorder, a monitor, or a built-in video camera) is classified in sub-heading 8519.99.00, HTSUS. *See* NY C88162 (June 9, 1998) and NY J82864

(April 3, 2003) (involving another model of “Singing Machine”). Customs also classified karaoke machines in this same provision when they included components such as cassette players, monitors or cameras. *See* NY J84858 (June 4, 2003) (karaoke machine with a cassette player), NY J88831 (September 22, 2003) (karaoke machine with a monitor) and NY I83939 (July 11, 2002) (karaoke machine with a video camera). In NY I85748 (September 5, 2002), Customs ruled that the most important component of a karaoke machine with a live action camera was determined by the sound reproducing equipment of the karaoke machine, not the accessory feature of the live action camera.

Conversely, in NY H80326 (May 3, 2001) (involving karaoke machines with several additional components notably an AM/FM radio) and NY J80054 (January 21, 2003) (involving a combination karaoke machine, color television and VCR (video cassette recorder)), Customs found that the articles were not classified pursuant to GRI 3(b) under heading 8519, HTSUS, but were classified pursuant to GRI 3(c). *See* NY F82080 (February 2, 2000) (classifying karaoke machines, AM/FM radio and cassette player/recorder similarly but without GRI 3 analysis). GRI 3(c) states that when a composite good cannot be classified pursuant to GRI 3(a) or (b) it must be classified under the heading which occurs last in numerical order among those headings which equally merit consideration. With respect to the goods in NY H80326, NY J80054, and NY F82080, the AM/FM radio feature and the color television/VCR allow a user to use the device for a purpose other than as a karaoke machine—simply as a radio or television or video player. This is distinguishable from the instant karaoke machines because there is not one principal function for these other articles. The instant karaoke machines will realistically only be used for their karaoke ability.

Therefore, pursuant to GRI 1 and Section XVI, Note 3, we find that the principal function of the instant karaoke machines is determined by their sound reproducing function. Model SMVG-600 is classified under subheading 8519.99.00, HTSUS, as turntables, record players, cassette players and other sound reproducing apparatus, not incorporating a sound recording device, other sound reproducing apparatus, other. However, heading 8519, HTSUS, specifically excludes articles with a sound recording device. Therefore, because it has recording capability, Model STVG-500 is not classified under heading 8519, HTSUS.

You believe that heading 8520, HTSUS, should be the appropriate classification for the instant karaoke machines. However, heading 8520, HTSUS, which involves magnetic tape recorders and other sound recording apparatus, whether or not incorporating a sound reproducing device, is also not appropriate for the Model STVG-500 karaoke machine. Although one component of the karaoke machine may be classified in heading 8520, HTSUS, as we have stated above, the principal function of the article is as a sound reproducing apparatus. To classify the article in heading 8520, HTSUS, would be to classify the article as if its principal function was that of a recording device, which is not the case here. Because there is no heading which *eo nomine* provides for sound reproducing apparatus with recording capability, Model STVG-500 is classified in subheading 8543.89.96, HTSUS, as electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter, other machines and apparatus, other, other, other.

HOLDING:

Karaoke machine Model SMVG-600 is classified under subheading 8519.99.00, HTSUS, as turntables, record players, cassette players and other sound reproducing apparatus, not incorporating a sound recording device, other sound reproducing apparatus, other. Model STVG-500 is classified in subheading 8543.89.96, HTSUS, as electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter, other machines and apparatus, other, other, other, other.

EFFECT ON OTHER RULINGS:

NY I87338 dated November 4, 2002, is revoked.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966976
CLA-2 RR:CR:GC 966976 KBR
CATEGORY: Classification
TARIFF NO.: 8543.89.96

MS. CHERYL SANTOS
CVS
One CVS Drive
Woonsocket, RI 02895

RE: Reconsideration of NY I85746; Karaoke Machine

DEAR MS. SANTOS:

This is in reference to New York Ruling Letter (NY) I85746, issued to you by the Customs National Commodity Specialist Division, New York, on September 5, 2002. That ruling concerned the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a karaoke machine imported from China. We have reviewed NY I85746 and determined that the classification provided for the karaoke machine is incorrect.

FACTS:

NY I85746 concerned Nu-Tronix Karaoke for Kids Machine model 159678, imported from China. The karaoke machine is a device that allows the user to sing along with background music, either alone or with a group of people, for entertainment. The karaoke machine is battery operated and is configured in the same housing with a cassette player/recorder. It is packaged for retail sale along with two pre-recorded audiocassette tapes, lyric sheets, instruction booklet and a microphone. Only the karaoke machine is subject to this ruling. The recording device allows the user both to play and record cassette tapes separate from the sing-a-long capability. The device has a volume control, separate controls for each function and internal speakers.

Other machines and apparatus:

8543.90

Other:

Other:

Other:

8543.89.96

Other

The article at issue is a karaoke machine model 159678. The device is intended to allow the user to sing along with background music. There is a microphone which allows the user's voice to be transmitted and amplified to play through the device's speakers along with the background music. The karaoke machine contains a cassette player/recorder which allows the user to record his performance. Taken individually, the different functions of the components of the karaoke machine would be classified in different headings of Chapter 85, HTSUS.

Because of the machine's multiple components, NY I87338 cited GRI 3 to determine the classification of the karaoke machine. However, we must first consider classification of this multi-function article of Chapter 85, HTSUS, pursuant to GRI 1. *See* HQ 966530 (September 4, 2003), HQ 966531 (September 4, 2003) and HQ 966072 (September 4, 2003). To classify the article according to GRI 1, we must first look to the relevant section and chapter notes. HTSUS Section XVI, Note 3 provides:

Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

We find that the principal function of the instant karaoke machine is as a sound reproduction device. The reason a person would use the instant karaoke machine is to reproduce sounds to sing along to. The additional feature of a cassette deck to record the performance is ancillary to the main function of allowing a person to sing to reproduced music. A person could, and conceivably would, fully use the instant machine for its intended purpose without using the additional feature.

Customs has previously found that a basic karaoke machine (one without a cassette recorder, a monitor, or a built-in video camera) is classified in sub-heading 8519.99.00, HTSUS. *See* NY C88162 (June 9, 1998) and NY J82864 (April 3, 2003) (involving another model of "Singing Machine"). Customs also classified karaoke machines in this same provision when they included components such as cassette players, monitors or cameras. *See* NY J84858 (June 4, 2003) (karaoke machine with a cassette player), NY J88831 (September 22, 2003) (karaoke machine with a monitor) and NY I83939 (July 11, 2002) (karaoke machine with a video camera). In NY I85748 (September 5, 2002), although determined under GRI 3, Customs ruled that the most important component of a karaoke machine with a live action camera was determined by the sound reproducing equipment of the karaoke machine, not the accessory feature of the live action camera.

Conversely, in NY H80326 (May 3, 2001) (involving karaoke machines with several additional components notably an AM/FM radio) and NY J80054 (January 21, 2003) (involving a combination karaoke machine, color television and VCR (video cassette recorder)), Customs found that the articles were not classified pursuant to GRI 3(b) under heading 8519, HTSUS, but were classified pursuant to GRI 3(c). See NY F82080 (February 2, 2000) (classifying karaoke machines, AM/FM radio and cassette player/recorder similarly but without GRI 3 analysis). GRI 3(c) states that when a composite good cannot be classified pursuant to GRI 3(a) or (b) it must be classified under the heading which occurs last in numerical order among those headings which equally merit consideration. With respect to the goods in NY H80326, NY J80054, and NY F82080, the AM/FM radio feature and the color television/VCR allow a user to use the device for a purpose other than as a karaoke machine—simply as a radio or television or video player. This is distinguishable from the instant karaoke machine because there is not one principal function for these other articles. The instant karaoke machine will realistically only be used for its karaoke ability.

Therefore, pursuant to GRI 1 and Section XVI, Note 3, we find that the principal function of the instant karaoke machine is determined by its sound reproducing function. Therefore, a basic karaoke machine would be classified under subheading 8519.99.00, HTSUS, as turntables, record players, cassette players and other sound reproducing apparatus, not incorporating a sound recording device, other sound reproducing apparatus, other. However, heading 8519, HTSUS, specifically excludes articles with a sound recording device. Therefore, because it has recording capability, the instant karaoke machine, model 159678, is not classified under heading 8519, HTSUS.

NY I85746 ruled that the instant karaoke machine was classified in heading 8520, HTSUS. However, heading 8520, HTSUS, which involves magnetic tape recorders and other sound recording apparatus, whether or not incorporating a sound reproducing device, is also not appropriate for the model 159678 karaoke machine. Although one component of the karaoke machine may be classified in heading 8520, HTSUS, as we have stated above, the principal function of the article is as a sound reproducing apparatus. To classify the article in heading 8520, HTSUS, would be to classify the article as if its principal function was that of a recording device, which is not the case here. Because there is no heading which *eo nomine* provides for sound reproducing apparatus with recording capability, model 159678 is classified in subheading 8543.89.96, HTSUS, as electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter, other machines and apparatus, other, other, other, other.

HOLDING:

Karaoke machine Model 159678 is classified in subheading 8543.89.96, HTSUS, as electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter, other machines and apparatus, other, other, other, other.

EFFECT ON OTHER RULINGS:

NY I85746 dated September 5, 2002, is revoked.

MYLES B. HARMON,
Director,
Commercial Rulings Division.


19 CFR PART 177**PROPOSED MODIFICATION OF RULING LETTERS RELATING TO TARIFF CLASSIFICATION OF CERTAIN MULTIPLE SWITCHES**

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

ACTION: Notice of proposed modification of ruling letters relating to certain multiple switches.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify two ruling letters pertaining to certain multiple switches. While the final classification determinations under the Harmonized Tariff Schedule of the United States ("HTSUS") accorded this merchandise are correct, Customs believes that the reasoning in the **LAW AND ANALYSIS** section is incorrect. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before April 9, 2004.

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

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

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify two ruling letters pertaining to automotive switches which contain multiple replications of the same type of device joined in a single housing. Although in this notice Customs is specifically referring to two rulings, HQ 964533 and HQ 958708, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

In HQ 964533, dated October 2, 2000 ("Attachment A" to this document), Customs revoked a previous ruling, HQ 963621, dated August 31, 2000, which classified certain automotive switches under sub-heading 8536.50.90, HTSUS. In HQ 964533 Customs took the position that because the subject merchandise consisted of three individual switches joined in a common housing, it was classified under heading 8537, HTSUS, which provides for other bases, equipped with two or more apparatus of heading 8536 or 8537, for electric control or the distribution of electricity. Customs based this decision

upon its interpretation of *Universal Electronics, Inc. v. United States*, 112 F.3D 488 (1997), *aff'g* 20 CIT 337 (1996).

Customs has had an opportunity to reexamine the issue, and now believes that its interpretation of *Universal* as set for in HQ 964533 is erroneous. Nonetheless, the switches were properly classified in heading 8537, HTSUS, based upon the terms of the heading. Furthermore, in HQ 964533 Customs found erroneous the reasoning found in HQ 963621 as to why Customs believed heading 8537 did not apply to the wiper switch and motor vehicle steering column switch. While Customs still believes that the reasoning in HQ 963621 is erroneous, it is based not upon the holding in *Universal*, but rather the analysis set forth in HQ 966188.

Further, this notice clarifies Customs Headquarters ruling letter HQ 958708 (set forth as Attachment B), which revoked the classification and treatment of certain membrane switch assemblies. That ruling, published in the February 28, 1996, CUSTOMS BULLETIN, Vol. 30, No. 9, revoked HQ 088964, which classified certain membrane switch assemblies in subheading 8517.90.30, Harmonized Tariff Schedule of the United States ("HTSUS"). While the determination of HQ 968708 that the goods are classified in subheading 8537.10.90, HTSUS, is correct, Customs feels that the Law and Analysis section of HQ 958708 is not clear as to the reasoning of that final determination. Therefore, we are clarifying 958708 by modifying it with HQ 966298, which sets forth our reasoning for the final determination on the subject merchandise.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify HQ 964533, HQ 958708 and any other ruling not specifically identified to the extent that they do not reflect the proper interpretation of *Universal* or classification of multiple switches pursuant to the analysis set forth in proposed HQ 966188 ("Attachment C") and proposed HQ 966298 ("Attachment D"). The classification determinations of HQ 964533 and HQ 958708 are affirmed. Before taking this action, we will give consideration to any written comments timely received.

DATED: February 25, 2004

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

8537	. . . other bases, equipped with two or more apparatus of heading 8536 or 8537, for electric control or the distribution of electricity . . . :
8537.10	For a voltage not exceeding 1,000 V:
8537.10.90	Other
	* * * *
8708	Parts and accessories of the motor vehicles of headings 8701 to 8705:
	Other parts and accessories of bodies (including cabs):
8708.29	Other:
8708.99.80	Other

ISSUE:

Whether the wiper switch and the 3-in-1 steering column switch are automotive parts or accessories or electrical apparatus of Chapter 85.

LAW AND ANALYSIS:

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

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

Initially, Section XVI, Note 1(l), HTSUS, excludes articles of Section XVII. Heading 8708, other parts and accessories of motor vehicles, is in Section XVII. But, Section XVII, Note 2(f), HTSUS, excludes from the expressions "parts" and "parts and accessories" electrical machinery and equipment of Chapter 85. So, the question is whether these switches are described by a provision in Chapter 85.

In your two ruling requests, both dated May 27, 1999, from which **NY E81997** and **NY E81998** resulted, you cited heading 8537 for possible consideration. The rulings that were issued, however, contained no discussion of that provision. However, in *Universal Electronics, Inc. v. United States*, (CAFC Slip Op. 96-1345, April 24, 1997), the U.S. Court of Appeals for the Federal Circuit affirmed a decision of the Court of International Trade (Slip Op. 96-48, March 7, 1996), in classifying hand-held remote controls for televisions and stereos as other bases, equipped with two or more apparatus of heading 8536 or 8537, for electric control or the distribution of electricity, in subheading 8537.10.00 (now 10.90), HTSUS. In that case, a user pushing a specified button or switch on the remote completes an electrical circuit. This sends voltage through a microcontroller in the remote to a microcontroller on the television or stereo which, in turn, sends the necessary amount of

electricity to effect the channel change. This, in effect, is apparatus containing multiple switches for electric control or the distribution of electricity. We also find that the CAFC decision is in concert with previous Customs rulings, **HQ 958711** and **HQ 958708**, both dated February 6, 1996, and with **HQ 958451**, dated February 8, 1996. These decisions classified switch assemblies, containing multiple switches in various configurations, used to connect circuits in telephones, computer keyboards, calculators, and children's games in subheading 8537.10.90, HTSUS.

HQ 963621 included an explanation of why Customs believed heading 8537 did not apply to the wiper switch and the motor vehicle steering column switch. However, in view of Universal Electronics, and the cited rulings, this explanation is incorrect and no longer represents Customs position on this or similar merchandise.

HOLDING:

Under the authority of GRI 1, the wiper switch and the 3-in-1 steering column switch are provided for in heading 8537. They are classifiable in subheading 8537.10.90, HTSUS.

EFFECT ON OTHER RULINGS:

HQ 963621, dated August 31, 2000, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 958708
FEBRUARY 6, 1996
CLA-2 RR:TC:MM 958708 JAS
CATEGORY: Classification
TARIFF NO.: 8537.10.90

MR. J. G. BRADFORD
AT&T
Guilford Center, P.O. Box 2500
Greensboro, NC 27420-5000

RE: HQ 088964 Revoked; Membrane Switch Assembly, Keypad With Two Flexible Membrane Circuits Having Carbon Ink Circuitry Printed on Them, Paper Spacers and Plastic Graphics; Parts of Electrical Apparatus for Line Telephony or Telegraphy, Heading 8517; Touch Operated Switch for Making/Breaking Electric Contact in Multiline Telephone Systems, Nidec Corporation v. U.S., Section XVI, Note 2

DEAR MR. BRADFORD:

In HQ 088964, dated July 23, 1991, we responded to your letter of February 25, 1991, and advised that a membrane switch assembly for multiline telephone sets was classifiable in subheading 8517.90.30, Harmonized Tariff

Schedule of the United States (HTSUS), as parts of electrical apparatus for line telephony or telegraphy, telephone sets.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification/revocation of HQ 088964 was published on January 3, 1996, in the Customs Bulletin, Volume 30, Number 1. The one comment received in response to this notice favored the proposal. The commenter noted that the merchandise in issue is plainly described by the language of heading 8537, and that neither the heading text nor the Harmonized Commodity Description and Coding System Explanatory Notes contains limiting language that reduces the scope of heading 8537 to encompass only large scale equipment.

FACTS:

Switch assemblies come in various configurations and are often used with printed circuit boards to connect circuits in telephones, computer keyboards, calculators, and children's games. The membrane switch assembly which is the subject of this inquiry is described in HQ 088964 as usually including two flexible membrane circuits, adhesive paper spacers, plastic graphics, and in some variations, molded plastic housings or backplates. The flexible membranes have a carbon ink circuitry printed on them. The switches are assembled in layers and bonded with the self-contained adhesive of the spacers and graphics. The switches vary in size from 2 inches to 8 inches in width and from 4 inches to 18 inches in length, including insertible tails (electrical connectors).

The provisions under consideration are as follows:

8517	Electrical apparatus for line telephony or telegraphy, including such apparatus for carrier-current line systems; parts thereof:
8517.90	Parts:
	Other parts, incorporating printed circuit assemblies:
8517.90.12	Parts for telephone sets . . . 8.5 percent
	* * * *
8537	Boards, panels (including numerical control panels), consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity * * *:
8537.10	For a voltage not exceeding 1,000 V:
8537.10.90	Other . . . 4.8 percent

ISSUE:

Whether the membrane switch assembly is a good included in heading 8537.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall

be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

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

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

HQ 088964 cited with approval *United States v. General Electric Company*, 441 F. 2d 1186, 58 CCPA 152, C.A.D. 1021 (1971). This case, decided under the HTSUS predecessor tariff code, the Tariff Schedules of the United States (TSUS), held that item 685.90, TSUS—the predecessor provision of heading 8537—was not a “specific” provision for purposes of General Interpretative Rule 10(ij), TSUS. Under Rule 10(ij), a parts provision shall not prevail over a specific provision. This case was believed to be instructive in interpreting the provisions of heading 8537. Initially, we note that the phraseology of item 685.90 and that of heading 8537 are similar but not identical, so that whether General Electric is instructive as to the scope of heading 8537 is unclear. Moreover, Section XVI, Note 2(a) does not require that a heading of Chapter 84 or Chapter 85 be specific; the heading need merely include the good in issue. It is our opinion that the switch membrane assembly is a good included in heading 8537. The use of dial keypads or function keys for telephone sets, goods substantially similar to the membrane switch assembly in issue, involves depressing a key on a keypad to divert an electrical signal so that a printed wiring board (PWB) in the telephone recognizes the key typed. This essentially joins two ends of the electrical path on the PWB, completing an electrical circuit.

Relevant ENs at p. 1391, state that the goods of heading 85.37 consist of an assembly of apparatus of the kind referred to in headings 85.35 and 85.36 (e.g., switches and fuses) on a board, panel, console, etc., or mounted in a cabinet, desk, etc., for electric control or distribution of electricity. The membrane switch assembly in issue consists of individual switches bonded together in layers. It meets the description in heading 8537 as a base equipped with two or more apparatus of headings 8535 or 8536 (i.e., switches) for electric control or the distribution of electricity, as required by Section XVI, Note 2(a), HTSUS.

HOLDING:

Under the authority of GRI 1, the membrane switch assembly is provided for in heading 8537. It is classifiable in subheading 8537.10.90, HTSUS.

HQ 088964, dated July 23, 1991, is hereby revoked. In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after its publication in the Customs Bulletin. Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

[ATTACHMENT C]

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

HQ 966188
CLA-2 RR:CR:GC 966188 TPB
CATEGORY: Classification
TARIFF NO.: 8537.10.90

MR. ROBERT J. RESETAR
PORSCHE CARS NORTH AMERICAN, INC.
980 Hammond Drive, Suite 1000
Atlanta, GA 30328

RE: Wiper Switch and Motor Vehicle Steering Column Switch; HQ 964533
Analysis Modified, Classification Affirmed.

DEAR MR. RESETAR:

This is in reference to HQ 964533, issued to you on October 2, 2000, in which a wiper switch and steering column switch for motor vehicles were held to be classifiable under subheading 8537.10.90, Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for other bases, equipped with two or more apparatus of heading 8536 or 8537, for electric control or the distribution of electricity . . . for a voltage not exceeding 1,000 volts. That ruling revoked a previous ruling issued to you, HQ 963621, dated August 31, 2000, which classified those parts in subheading 8536.50.90, HTSUS. HQ 964533 indicated that the change in Customs position stemmed from its interpretation of *Universal Electronics, Inc. v United States*, 112 F.3d 488 (1997), *affg* 20 CIT 337 (1996), which indicated that multiple switches for electronic control are classified under heading 8537.

We have had an opportunity to re-examine the issue and find that Customs interpretation of *Universal* was incorrect. However, the plain language of the heading indicates that the automotive switches were correctly classified under heading 8537, HTSUS. Thus, for the reasons set forth below, HQ 964533 is modified to the extent that it does not reflect our understanding of *Universal*, but the classification of the switches is affirmed.

FACTS:

The article presently at issue is a 3-in-1 switch mounted on the steering column behind the steering wheel of a motor vehicle. It incorporates three

individual levers mounted together, each consisting of a windshield wiper speed switch, a cruise control on/off/setting switch, and a turn signal and high/low headlight switch.

ISSUE:

Whether the wiper switch and the 3-in-1 steering column switch are automotive parts or accessories or electrical apparatus of Chapter 85.

LAW AND ANALYSIS:

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

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

The HTSUS provisions under consideration are as follows:

8536	Electrical apparatus for switching or protecting electrical circuits or for making connections to or in electrical circuits . . . for a voltage not exceeding 1,000 V:
8536.50	Other switches:
8536.50.90	Other
8537	. . . other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity . . . :
8537.10	For a voltage not exceeding 1,000 V:
8537.10.90	Other
8708	Parts and accessories of the motor vehicles of headings 8701 to 8705:
	Other parts and accessories of bodies (including cabs):
8708.99	Other:
	Other:
	Other:
8708.99.80	Other

Initially, Section XVI, Note 1(l), HTSUS, excludes articles of Section XVII. Heading 8708, parts and accessories of motor vehicles, is in Section XVII. But, Section XVII, Note 2(f), HTSUS, excludes from the expressions “parts” and “parts and accessories” electrical machinery and equipment of Chapter 85. The question, therefore, is whether these switches are described by a provision in Chapter 85.

In your original two ruling requests, both dated May 27, 1999, from which NY E81997 and NY E81998 resulted, you cited heading 8537, HTSUS, for possible consideration. The rulings that were issued, however, contained no discussion of that provision. Heading 8537, HTSUS, provides for other bases, equipped with two or more apparatus of heading 8535 or 8536.

The wiper switch consists of a single lever that performs separate switching functions and the 3-in-1 steering column switch consists of three individual switches joined in a common housing, each of which controls a separate function within the vehicle. Because these devices contain multiple switches, each of which is an apparatus found in heading 8536, HTSUS, they meet the plain language of heading 8537.

In *Universal*, the Court of Appeals for the Federal Circuit affirmed a decision by the Court of International Trade classifying hand-held remote control units under subheading 8537.10.00, HTSUS. However, the merchandise in *Universal* consisted of both switches and terminals. Because there was a combination of different types of devices that are classified under heading 8536, heading 8537, HTSUS was applicable. Here, we have multiples of a single type of device, i.e. switches. The court in *Universal* did not explicitly address a position on multiple replications of a single type of device. It ruled on devices containing both switches and terminals. Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents. *Webster v. Fall*, 266 U.S. 507, 511 (1925). Therefore, the finding in *Universal* is not a precedent with respect to the merchandise presently before us.

Customs believes that heading 8536 covers individual apparatus of the type named in the heading. Multiples of a single type of apparatus meet the plain language of heading 8537, HTSUS, since they are “two or more” of the apparatus. Because both the wiper switch and the 3-in-1 steering column switch are provided for in heading 8537, Section XVII, Note 2(f), HTSUS, eliminates heading 8708 from consideration.

HQ 964533 cited to several other Customs rulings, i.e. HQ 958711 and HQ 958708, both dated February 6, 1996 and HQ 958451, dated February 8, 1996, that classified apparatus with multiple devices in heading 8537, HTSUS. Although HQ 964533 indicated that these were classified for the same reasons as the CAFC did in *Universal*, HQ 958708 actually contained both switches and connectors, which dictated classification under heading 8537, HTSUS. The merchandise in HQ 958711 and HQ 958451 was classified under heading 8537, HTSUS, in accordance with a plain text reading of the heading, i.e. the goods contained two or more apparatus of heading 8535 or 8536, rather than by application of *Universal*.

Finally, HQ 964533 rejected the reasoning found in HQ 963621, dated August 31, 2000, based on Customs view of *Universal*. This view was first expressed in HQ 963218, dated May 24, 2000. That ruling classified junction boxes and power distribution boxes which contained relays and fuses in heading 8537, HTSUS. Customs indicated in HQ 963218 that heading 8536, HTSUS, provides for “multiples of one . . . apparatus.” While Customs still believes this view is invalid, it is because of Customs understanding of the plain language of heading 8537, HTSUS, and not because of the holding in *Universal*. For that reason, the observation that heading 8536, HTSUS, provides for multiples of apparatus of heading 8535 or 8536, HTSUS, is again rejected, due to a plain text reading of heading 8537, HTSUS.

HOLDING:

For the reasons stated above, under the authority of GRI 1, Customs affirms that the 3-in-1 steering column switch is provided for in heading 8537, specifically, subheading 8537.10.90, HTSUS.

EFFECT ON OTHER RULINGS:

HQ 964533 is modified to the extent that it reflects Customs understanding of *Universal*. The views in HQ 963218 and HQ 963621 on the distinction between headings 8536 and 8537, HTSUS, is rejected and hereby modified.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966298
CLA-2 RR: CR: GC 966298 TPB
CATEGORY: Classification
TARIFF NO.: 8537.10.90

MR. J. G. BRADFORD
AT&T
Guilford Center, P.O. Box 2500
Greensboro, NC 27420-5000

RE: HQ 958708 Clarified and Modified; Membrane Switch Assembly.

DEAR MR. BRADFORD:

This is in reference to HQ 958708, issued to you on February 6, 1996, which revoked HQ 088964. HQ 958708 classified certain membrane switch assemblies under subheading 8537.10.90, Harmonized Tariff Schedule of the United States ("HTSUS"). During the process of reviewing rulings, we discovered that while the final classification of the merchandise in question was correct, the reasoning set forth in the Law and Analysis section of HQ 958708 required clarification as to why the membrane switch assembly was classified in that subheading. This ruling clarifies that decision.

FACTS:

The facts of the case as indicated in HQ 958708 are as follows:

Switch assemblies come in various configurations and are often used with printed circuit boards to connect circuits in telephones, computer keyboards, calculators, and children's games. The membrane switch assembly which is the subject of this inquiry is described in HQ 088964 as usually including two flexible membrane circuits, adhesive paper spacers, plastic graphics, and in some variations, molded plastic housings or backplates. The flexible membranes have a carbon ink circuitry printed on them. The switches are assembled in layers and bonded with the self-contained adhesive of the spacers and graphics. The switches vary in size from 2 inches to 8 inches in width and from 4 inches to 18 inches in length, including insertible tails (electrical connectors).

ISSUE:

Whether the membrane switch assembly is a good included in heading 8537.

LAW AND ANALYSIS:

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

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The HTSUS provisions under consideration are as follows:

8517	Electrical apparatus for line telephony or telegraphy, including such apparatus for carrier-current line systems; parts thereof:
8517.90	Parts:
	Other parts, incorporating printed circuit assemblies:
8517.90.12	Parts for telephone sets
8537	Boards, panels (including numerical control panels), consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity:
8537.10	For a voltage not exceeding 1,000 V:
8537.10.90	Other

HQ 088964, which HQ 958708 revoked, classified the membrane switch assemblies in heading 8517, HTSUS. We hereby incorporate by reference the Law and Analysis section of HQ 958708 as to why the switch assemblies are classified under heading 8537, HTSUS, but add the following discussion by way of clarification.

The switch assemblies in question, as described in the Facts section of this ruling, contain individual switches bonded together in layers. The switch assemblies also include insertible tails (electrical connectors). Thus, the switch assemblies satisfy the terms of heading 8537, as bases equipped with two or more apparatus of headings 8535 or 8536 (i.e., switches and connectors) for electrical control or the distribution of electricity.

HOLDING:

For the reasons stated above, under authority of GRI 1, the membrane switch assembly is classified under subheading 8537.10.90, HTSUS, as: “Boards, panels (including numerical control panels), consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535

or 8536, for electric control or the distribution of electricity: For a voltage not exceeding 1,000 V: Other.”

EFFECT ON OTHER RULINGS:

HQ 958708 is clarified by the discussion above and the classification is affirmed.

MYLES B. HARMON,
Director,
Commercial Rulings Division.