General Notices

Notice of Availability for Public Viewing of Draft Programmatic Environmental Assessment Concerning CBP's Use of the Vehicle and Cargo Inspection System (VACIS) at Various Sea and Land Ports of Entry

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

ACTION: General notice.

SUMMARY: This document announces that a draft Programmatic Environmental Assessment (PEA) regarding potential environmental impacts resulting from Customs and Border Protection's (CBP) deployment of the Vehicle and Cargo Inspection System (VACIS) is available for public review and comment. The VACIS system will be used at various ports of entry throughout the United States and Puerto Rico and is designed to provide a significant non-intrusive (gamma ray) inspection capability to assist CBP in its mission to prevent the entry of contraband into the United States. CBP will consider comments before issuing a final PEA and will then issue a draft Supplemental Environmental Assessment covering each local site affected to assess the environmental impact on local conditions.

DATES: The draft PEA will be available for public review for a 30-day period beginning on May 12, 2004. Written comments must be received by June 28, 2004.

ADDRESSES: Written comments may be submitted to U.S. Customs and Border Protection, Suite 1575, 1300 Pennsylvania Avenue, N.W. Washington D.C. 20229, Attn: Mr. Thomas Nelson. Copies of the draft PEA will be available for viewing at the above address. Copies may also be obtained by calling 202/344–2975 and by accessing the following Internet address (click on "Recent **Federal Register** Notices"): *www.cbp.gov/xp/cgov/toolbox/legal.*

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Nelson at 202/344–2975 or at *THOMAS.Nelson@associates.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The VACIS system

CBP's Vehicle and Cargo Inspection System (the VACIS system) provides a means for combatting the smuggling of contraband, in-

cluding implements of terrorism, into the United States. The VACIS system employs a non-intrusive inspection technique that uses low energy gamma radiation technology; it allows CBP inspectors to inspect for contraband without having to physically enter into or unload motor vehicles, containers, or other conveyances. The system is designed to augment the capabilities of the CBP inspector and enhance the efficiency and effectiveness of CBP's enforcement mission. Deployment of VACIS technology is already underway and will continue at various land and sea ports of entry throughout the United States and Puerto Rico. Given the serious nature of CBP's mission to protect the nation's borders from terrorism, it is envisioned that all ports are candidates for deployment of VACIS technology in the future.

The VACIS system consists of four configurations, described as follows:

(1) A semi-permanent version designed for inspection of motor vehicles and cargo containers at Customs ports of entry (VACIS II);

(2) A truck-mounted version designed for high-portability inspection of motor vehicles and cargo containers (Mobile VACIS);

(3) A fixed version designed specifically for installation along railroad rights of way for the inspection of railroad cars (Rail VACIS); and

(4) A Fixed Pallet Gamma Ray (FPGR) system designed for inspection of items stored on pallets and in boxes or crates (Pallet VACIS).

Public review of the draft Programmatic Environmental Assessment

Pursuant to the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality (CEQ) Regulations for Implementing the NEPA (40 CFR Parts 1500–1508), and Department of the Treasury Directive 75–02 (Department of the Treasury Environmental Quality Program), CBP has prepared a draft Programmatic Environmental Assessment (PEA) covering the deployment of the VACIS system.

This notice announces a 30-day period for public review of the draft PEA and a 45-day period for submitting comments to CBP, both periods commencing on the date this document is published in the **Federal Register.**

Evaluation of environmental impact

For all proposals of major federal actions that significantly affect the quality of the human environment, NEPA requires that the environmental implications of the proposal are to be explored. To meet this requirement, a federal agency, in some instances, must produce

an Environmental Impact Statement (EIS) that examines the environmental implications (or impacts) of a major federal action. Under § 1508.18(a) of the CEQ Regulations (40 CFR 1508.18(a)), a major federal action includes new and continuing agency activities. The VACIS system is a new and continuing CBP activity. In other instances, an agency will prepare an Environmental Assessment preliminary to production of either an EIS or a Finding of No Significant Impact (FONSI). The effect of a FONSI is that an agency will not have to produce an EIS. In still other instances, the agency need not produce either an EA or an EIS.

Under Section 8b of Treasury Directive 75–02, an EA must be prepared whenever it appears that an agency action, including the continuance of any action or program already initiated, could constitute a major action significantly affecting the quality of the human environment. An EA is a concise public statement issued by a responsible federal agency that provides sufficient evidence and analysis for determining whether to prepare either an EIS or a FONSI. Under the regulation and Section 8d of Treasury Directive 75–02, an EA must describe the proposed action (or the continuing action) and the need for it; briefly describe the environmental impacts of, and alternatives to, the proposed/continued action, including mitigating measures; list the agencies and persons consulted; and provide a brief analysis for determining whether to prepare an EIS or a FONSI.

A Programmatic Environmental Assessment (PEA) is a type of EA which, with respect to a major federal action, covers relevant environmental matters in a broad and general manner, such as a national program or policy statement. The PEA is later followed by subsequent narrower statements or analyses, such as regional program statements or site-specific statements. The draft PEA announced in this notice evaluates the potential environmental impacts resulting from deployment of the VACIS system as a nationally implemented program. Among the potential impacts evaluated are those regarding: geology and soils, hydrology and water quality, wetlands, vegetation and wildlife, air quality, noise, and radiological consequences. Also, an evaluation of alternatives to the action (deployment of the system) is included, in accordance with CEQ regulations (40 CFR 1501.2(c)).

Substantive comments received from the public and agencies during the comment period will be addressed in, and included as an Appendix to, the final PEA. Notice of issuance of the final PEA will be published in the **Federal Register**, as well as in a newspaper of general circulation in each locality where any VACIS configuration is or will be deployed.

Should CBP determine, based on the information developed and evaluation of substantive comments received, that the design, new construction, and/or operation of VACIS system configurations 1 through 4 will not have a significant impact on the environment,

CBP will prepare a FONSI. Notice of the FONSI will be published in the **Federal Register** and in a newspaper of general circulation in each locality where a VACIS configuration is/will be deployed. Should CBP determine that significant environmental impacts exist due to the project, CBP will proceed with preparation of an EIS as required under the NEPA, the CEQ Regulations (40 CFR Part 1502), and the Department of the Treasury's environmental policies and procedures.

Supplemental Environmental Assessments

After issuance of the draft PEA, review of comments received, and issuance of a final PEA, Customs will issue a draft Supplemental Environmental Assessment (also known as a Supplemental Environmental Document or SED) for each affected port. Each SED will address each local deployment site within a particular port, evaluating potential environmental impacts with respect to the particular conditions present at each site. Each draft SED will solicit public comment, and substantive comments received will be included in the Appendix to a final SED. Notice of the SED will be published in the **Federal Register** and in a local newspaper of general circulation in the particular affected locality. At that time, after receipt and evaluation of comments, CBP will determine whether to prepare a FONSI or an EIS with respect to each affected port.

PUBLIC REVIEW AND COMMENTS

The draft PEA will be available for public review for a period of 30 days beginning on the date this document is published in the **Federal Register.** The draft PEA can be reviewed at the following address: U.S. Customs and Border Protection, Suite 1575, 1300 Pennsylvania Ave., N.W. Washington D.C. 20229. Contact Mr. Thomas Nelson to make arrangements at 202/344–2975. Copies of the draft PEA may be obtained by telephone request (202/344–2975) or by accessing the following Internet address (click on "Recent **Federal Register** Notices"): *http://www.cbp.gov/xp/cgov/toolbox/legal.*

Comments regarding the draft PEA may be submitted as set forth in the "**Addresses**" section of this document.

Dated: April 9, 2004

CHARLES R. ARMSTRONG,
Acting Assistant Commissioner,
Office of Information and Technology.

[Published in the Federal Register, May 12, 2004 (69 FR 26402)]

LIST OF FOREIGN ENTITIES VIOLATING TEXTILE TRANSSHIPMENT AND COUNTRY OF ORIGIN RULES

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

ACTION: General notice.

SUMMARY: This document notifies the public of foreign entities which have been issued a penalty claim under section 592 of the Tariff Act of 1930, for certain violations of the customs laws. This list is authorized to be published by section 333 of the Uruguay Round Agreements Act.

DATES: This document notifies the public of the semiannual list for the 6-month period starting March 31, 2004, and ending September 30, 2004.

FOR FURTHER INFORMATION: For information regarding any of the operational aspects, contact Gregory Olsavsky, Fines, Penalties and Forfeitures Branch, Office of Field Operations, (202) 927–3119. For information regarding any of the legal aspects, contact Willem A. Daman, Office of Chief Counsel, (202) 927–6900.

SUPPLEMENTARY INFORMATION:

Background

Section 333 of the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465, 108 Stat. 4809) (signed December 8, 1994), entitled Textile Transshipments, amended part V of title IV of the Tariff Act of 1930 by creating a section 592A (19 U.S.C. 1592a), which authorizes the Secretary of the Treasury to publish in the **Federal Register**, on a semiannual basis, a list of the names of any producers, manufacturers, suppliers, sellers, exporters, or other persons located outside the Customs territory of the United States, when these entities and/or persons have been issued a penalty claim under section 592 of the Tariff Act, for certain violations of the customs laws, provided that certain conditions are satisfied.

The violations of the customs laws referred to above are the following: (1) Using documentation, or providing documentation subsequently used by the importer of record, which indicates a false or fraudulent country of origin or source of textile or apparel products; (2) Using counterfeit visas, licenses, permits, bills of lading, or similar documentation, or providing counterfeit visas, licenses, permits, bills of lading, or similar documentation that are subsequently used by the importer of record, with respect to the entry into the Customs territory of the United States of textile or apparel products; (3) Manufacturing, producing, supplying, or selling textile or apparel

products which are falsely or fraudulently labeled as to country of origin or source; and (4) Engaging in practices which aid or abet the transshipment, through a country other than the country of origin, of textile or apparel products in a manner which conceals the true origin of the textile or apparel products or permits the evasion of quotas on, or voluntary restraint agreements with respect to, imports of textile or apparel products.

If a penalty claim has been issued with respect to any of the above violations, and no petition in response to the claim has been filed, the name of the party to whom the penalty claim was issued will appear on the list. If a petition or supplemental petition for relief from the penalty claim is submitted under 19 U.S.C. 1618, in accord with the time periods established by sections 171.2 and 171.61, Customs and Border Protection (CBP) Regulations (19 CFR 171.2, 171.61) and the petition is subsequently denied or the penalty is mitigated, and no further petition, if allowed, is received within 60 days of the denial or allowance of mitigation, then the administrative action shall be deemed to be final and administrative remedies will be deemed to be exhausted. Consequently, the name of the party to whom the penalty claim was issued will appear on the list. However, provision is made for an appeal to the Secretary of the Treasury (now delegated to the Secretary of Homeland Security) by the person named on the list, for the removal of its name from the list. If the Secretary finds that such person or entity has not committed any of the enumerated violations for a period of not less than 3 years after the date on which the person or entity's name was published, the name will be removed from the list as of the next publication of the list.

REASONABLE CARE REQUIRED

Section 592A also requires any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly produced, manufactured, supplied, sold, exported, or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labeling that are accurate as to their origin. Reliance solely upon information regarding the imported product from a person named on the list is clearly not the exercise of reasonable care. Thus, the textile and apparel importers who have some commercial relationship with one or more of the listed parties must exercise a degree of reasonable care in ensuring that the documentation covering the imported merchandise, as well as its packaging and labeling, is accurate as to the country of origin of the merchandise.

This degree of reasonable care must involve reliance on more than information supplied by the named party.

In meeting the reasonable care standard when importing textile or apparel products and when dealing with a party named on the list published pursuant to section 592A of the Tariff Act of 1930, an importer should consider the following questions in attempting to ensure that the documentation, packaging, and labeling are accurate as to the country of origin of the imported merchandise. The list of questions is not exhaustive but is illustrative.

(1) Has the importer had a prior relationship with the named party?

(2) Has the importer had any detentions and/or seizures of textile or apparel products that were directly or indirectly produced, supplied, or transported by the named party?

(3) Has the importer visited the company's premises and ascertained that the company has the capacity to produce the merchandise?

(4) Where a claim of an origin conferring process is made in accordance with 19 CFR 102.21, has the importer ascertained that the named party actually performed the required process?

(5) Is the named party operating from the same country as is represented by that party on the documentation, packaging or labeling?

(6) Have quotas for the imported merchandise closed or are they nearing closing from the main producer countries for this commodity?

(7) What is the history of this country regarding this commodity?

(8) Have you asked questions of your supplier regarding the origin of the product?

(9) Where the importation is accompanied by a visa, permit, or license, has the importer verified with the supplier or manufacturer that the visa, permit, and/or license is both valid and accurate as to its origin? Has the importer scrutinized the visa, permit or license as to any irregularities that would call its authenticity into question?

The law authorizes a semiannual publication of the names of the foreign entities and/or persons. On October 8, 2003, CBP published a notice in the **Federal Register** (68 FR 58123) which identified two (2) entities which fell within the purview of section 592A of the Tariff Act of 1930.

592A LIST

For the period ending March 30, 2004, CBP has identified no foreign entities that fall within the purview of section 592A of the Tariff Act of 1930. The two (2) entities named on the list published on October 8, 2003, have not committed any of the enumerated violations for a period of not less than three (3) years after the initial publication of their names. Accordingly, these two (2) entities are removed and,

as no new entities are named, CBP is not listing any foreign entities on the 592A list for the period starting March 31, 2004, and ending September 30, 2004.

Dated: May 6, 2004

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

[Published in the Federal Register, May 13, 2004 (69 FR 26615)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, May 12, 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.

SANDRA L. BELL,
Acting Assistant Commissioner,
Office of Regulations and Rulings.

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 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 and Border Protection (Customs) is revoking one ruling and modifying a second ruling relating to the tariff classification, under the Harmonized Tariff Schedule of the United States, (HTSUS), of abdominal training systems. Similarly, Customs is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed actions was published in the Customs Bulletin on March 10, 2004. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 25, 2004.

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)), on March 10, 2004, a notice was published in the Customs Bulletin, Volume 38, Number 11, proposing to revoke New York Ruling Letter ("NY") I82223 dated June 18, 2002 and modify NY H86520, dated December 26, 2001, regarding the tariff classification of abdominal training systems. No comments were received in response to the notice.

As stated in the proposed notice, although Customs is specifically referring to NY I82223 and NY H86520, 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.

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

Pursuant to 19 U.S.C. § 1625(c)(1), Customs is revoking NY I82223, modifying NY H86520, and revoking any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letters (HQ) 966716 (Attachment A) and HQ 966973 (Attachment B). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions that are contrary to the determination set forth in this notice.

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

DATED: May 10, 2004

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966716
May 10, 2004
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.

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 I 82223 as described below, was published in the Customs Bulletin on March 10, 2004. No comments were received in response to the notice.

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 and Border Protection (Customs) classified the Slendertone FLEX system 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 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 (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 (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 classifica-

tion 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 bar-bells; 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 put-

ting 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 EN's 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 EN's 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 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 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 8543.89.9695, HTSUSA, 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, Other." The general rate of duty in 2004 is 2.6% ad valorem Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov

EFFECT ON OTHER RULINGS:

NY I82223 dated June 18, 2002 is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

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

[ATTACHMENT B]

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

HQ 966973
May 10, 2004
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 (Customs) 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.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY H86520 as described below, was published in the Customs Bulletin on March 10, 2004. No comments were received in response to the notice.

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 (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 (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 bar-bells; 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, shinguards.

(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 EN's 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 EN's 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 to be

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 8543.89.9695, HTSUSA 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, Other." The general rate of duty in 2004 is 2.6% ad valorem Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov

EFFECT ON OTHER RULINGS:

NY H86520 dated December 26, 2001 is modified. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

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

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 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) is modifying 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 is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed modification was published in the Customs Bulletin of March 10, 2004, Vol. 38, No. 11. No comments were received.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 25, 2004.

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, a notice proposing to modify Headquarters Ruling Letter (HQ) 961942, dated October 26, 1999, was published on March 10, 2004, in Vol. 38, No. 11, of the Customs Bulletin.

As stated in the notice of proposed modification, this modification 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 one identified. 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.

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 transactions. 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 transactions should have advised CBP during this notice period. An importer's failure to advise CBP 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 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 is modifying HQ 961942 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 966842 (Attachment). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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: May 10, 2004

Cynthia Reese for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966842
May 10, 2004
CLA–2: RR:CR:TE: 966842 BtB
CATEGORY: Classification
TARIFF NO.: 4202.31.6000

PORT DIRTECTOR
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.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of HQ 961942, as described below, was published in the *Customs Bulletin*, Volume 38, Number 11, on March 10, 2004. No comments were received during the notice and comment period that closed on April 9, 2004.

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." Buxton currently imports the model 39 in several different types of cowhide leather and features the model 39 style in several of its ladies' wallets collections (the "Heiress," "Elite," and "Naturale" collections). The model 39 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.

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 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.

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 subheading EN to subheadings 4202.31, 4202.32, and 4202.39, 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 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 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 car-

rying 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 and fully opened. Because of its gussets, it can, when open, accommodate 3-dimensional personal effects not normally 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 mainly permit the user to expand the compartment to view, insert, and/or remove contents, but they do not appear designed to organize or store 3-dimensional personal effects when the compartment is closed. In fact, the gussets are not 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 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 classified 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 personal effects when the container is in the 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, and/or remove contents, they do not function to permit the storage of 3-dimensional personal effects when the compartment is zipped.

HOLDING:

HQ 961942, dated October 26, 1999, is hereby modified. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

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%.

Cynthia Reese for MYLES B. HARMON,
Director,
Commercial Ruling Division.