

Bureau of Customs and Border Protection

General Notices

AUTOMATED COMMERCIAL ENVIRONMENT (ACE): NATIONAL CUSTOMS AUTOMATION PROGRAM TEST OF AUTOMATED TRUCK MANIFEST FOR TRUCK CARRIER ACCOUNTS; DEPLOYMENT SCHEDULE

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

ACTION: General notice.

SUMMARY: The Bureau of Customs and Border Protection, in conjunction with the Department of Transportation, Federal Motor Carrier Safety Administration, is currently conducting a National Customs Automation Program (NCAP) test concerning the transmission of automated truck manifest data. This document announces the next two groups, or clusters, of ports to be deployed for this test.

EFFECTIVE DATES: The cluster of ports identified individually in this notice, deploying in the State of Arizona, was deployed as of July 25, 2005. The cluster of ports identified individually in this notice, deploying in the State of North Dakota, will be deployed as of August 15, 2005. Comments concerning this notice and all aspects of the announced test may be submitted at any time during the test period.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Fitzpatrick via e-mail at Thomas.Fitzpatrick@dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

The National Customs Automation Program (NCAP) test concerning the transmission of automated truck manifest data for truck carrier accounts was announced in a General Notice published in the **Federal Register** (69 FR 55167) on September 13, 2004. That notice stated that the test of the Automated Truck Manifest will be conducted in a phased approach, with primary deployment scheduled for no earlier than November 29, 2004. The document identified the

ports of Blaine, Washington, and Buffalo, New York, as the original deployment sites.

The September 13, 2004, notice stated that subsequent deployment of the test will occur at Champlain, New York; Detroit, Michigan; Laredo, Texas; Otay Mesa, California; and Port Huron, Michigan, on dates to be announced. The notice stated that the Bureau of Customs and Border Protection (CBP) would announce the implementation and sequencing of truck manifest functionality at these ports as they occur. The test is to be expanded eventually to include ACE Truck Carrier Account participants at all land border ports, and subsequent releases of ACE will include all modes of transportation. The September 13, 2004, notice announced that additional participants and ports will be selected throughout the duration of the test.

Implementation of the Test

The test commenced in Blaine, Washington in December 2004, but not at Buffalo, New York. In light of experience with the implementation of the test in Blaine, Washington, CBP decided to change the implementation schedule and published a General Notice in the Federal Register on May 31, 2005 (70 FR 30964) announcing the changes.

As noted in the May 31, 2005, General Notice, the next deployment sites will be brought up as clusters. One site in the cluster will be identified as the "model site" for the cluster. This deployment strategy will allow for more efficient equipment set-up, site check-outs, port briefings and central training.

The ports identified belonging to the first cluster announced in the May 31, 2005, General Notice included the original port of implementation Blaine, Washington. Sumas, Washington, was designated as the model port. The other ports of deployment in the cluster included the following: Point Roberts, WA; Oroville, WA (including sub ports); Boundary, WA; Danville, WA; Ferry, WA; Frontier, WA; Laurier, WA; Metaline Falls, WA; Nighthawk, WA; and Lynden, WA.

NEW CLUSTERS

Through this Notice, CBP announces the next two clusters of ports to be brought up for purposes of implementation of the test. The test was deployed as of July 25, 2005 at the following ports in the State of Arizona: Douglas, AZ; Naco, AZ; Lukeville, AZ; Sasabe, AZ; and Nogales, AZ. Douglas, AZ, will be the model port for this cluster. The cluster of ports in the State of North Dakota, at which the test will be deployed on August 15, 2005, will consist of: Pembina, ND; Neche, ND; Noyes, ND; Walhalla, ND; Maida, ND; Hannah, ND; Sarles, ND; and Hansboro, ND. Pembina, ND, will be the model port for this cluster.

Previous NCAP Notices Not Concerning Deployment Schedules

On Monday, March 21, 2005, a General Notice was published in the **Federal Register** (70 FR 13514) announcing a modification to the NCAP test to clarify that all relevant data elements are required to be submitted in the automated truck manifest submission. That notice did not announce any change to the deployment schedule and is not affected by publication of this notice. All requirements and aspects of the test, as set forth in the September 13, 2004 notice, as modified by the March 21, 2005 notice, continue to be applicable.

DATED: July 20, 2005

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

[Published in the Federal Register, July 29, 2005 (70 FR 43892)]

19 CFR PARTS 101 AND 122**ESTABLISHING A NEW PORT OF ENTRY IN THE
TRI-CITIES AREA OF TENNESSEE AND VIRGINIA AND
TERMINATING THE USER-FEE STATUS OF TRI-CITIES
REGIONAL AIRPORT****DHS Docket Number DHS-2005-0050**

AGENCY: Customs and Border Protection, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Department of Homeland Security regulations pertaining to the Bureau of Customs and Border Protection's field organization by establishing a new port of entry in the Tri-Cities area of the States of Tennessee and Virginia, including the Tri-Cities Regional Airport. The new port of entry would include the same geographical boundaries of the current Customs and Border Protection User Fee Port No. 2082, which encompasses Sullivan County, Tennessee; Washington County, Tennessee; and Washington County, Virginia. The user-fee status of Tri-Cities Regional Airport, located in Blountville, Tennessee, will be terminated. These changes will assist the Bureau of Customs and Border Protection in its continuing efforts to provide better service to carriers, importers and the general public.

DATES: Comments must be received on or before September 27, 2005.

ADDRESSES: You may submit comments, identified by Docket Number DHS–2005–0050, by one of the following methods:

- EPA Federal Partner EDOCKET Web Site: <http://www.epa.gov/feddocket>. Follow instructions for submitting comments on the web site.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail and Hand Delivery/Courier: Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and docket number DHS–2005–0050. All comments received will be posted without change to <http://www.epa.gov/feddocket>, including any personal information provided. Docket: For access to the docket to read background documents or comments received, go to <http://www.epa.gov/feddocket>. You may also access the Federal eRulemaking Portal at <http://www.regulations.gov>. Submitted comments may also be inspected at the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dennis Dore, Office of Field Operations, 202–344–2776.

SUPPLEMENTARY INFORMATION:

BACKGROUND

As part of its continuing efforts to provide better service to carriers, importers, and the general public, the Department of Homeland Security (DHS), Bureau of Customs and Border Protection (CBP) is proposing to amend 19 CFR 101.3(b)(1) by establishing a new port of entry at Tri-Cities Regional Airport and the area which it services in the states of Tennessee and Virginia. The new port of entry would include the same geographical boundaries of the current CBP User Fee Port No. 2082, which encompasses Sullivan County, Tennessee; Washington County, Tennessee; and Washington County, Virginia. The boundaries would include Tri-Cities Regional Airport, located in Blountville, Tennessee, which currently operates and is listed as a user-fee airport at 19 CFR 122.15(b). This proposed change of status for Tri-Cities Regional Airport from a user-fee airport to inclusion within the boundaries of a port of entry would subject the airport to the passenger processing fee provided for at 19 U.S.C. 58c(a)(5)(B).

Port of Entry Criteria

The criteria considered by CBP in determining whether to establish a port of entry are found in Treasury Decision (T.D.) 82-37 (Revision of Customs Criteria for Establishing Ports of Entry and Stations, 47 FR 10137), as revised by T.D. 86-14 (51 FR 4559) and T.D. 87-65 (52 FR 16328). Under these criteria, CBP will evaluate whether there is a sufficient volume of import business (actual or potential) to justify the expense of maintaining a new office or expanding service at an existing location. Specifically, CBP will consider whether the proposed port of entry location can:

- (1) Demonstrate that the benefits to be derived justify the Federal Government expense involved;
- (2) Except in the case of land border ports, be serviced by at least two major modes of transportation (rail, air, water, or highway); and
- (3) Except in the case of land border ports, have a minimum population of 300,000 within the immediate service area (approximately a 70-mile radius).

In addition, one of the following actual or potential workload criteria (minimum number of transactions per year), or an appropriate combination thereof, must be met in the area to be serviced by the proposed port of entry:

- (1) 15,000 international air passengers;
- (2) 2,500 formal consumption entries (each valued over \$2,000), with the applicant location committing to optimal use of electronic data input means to permit integration with any CBP system for electronic processing of entries, with no more than half of the 2,500 entries being attributed to one private party;
- (3) For land border ports, 150,000 vehicles;
- (4) 2,000 scheduled international aircraft arrivals (passengers and/or crew); or
- (5) 350 cargo vessel arrivals.

Finally, facilities at the proposed port of entry must include, where appropriate, wharfage and anchorage adequate for oceangoing vessels, cargo and passenger facilities, warehouse space for the secure storage of imported cargo pending final CBP inspection and release, and administrative office space, inspection areas, storage areas, and other space as necessary for regular CBP operations.

Tri-Cities' Workload Statistics

The proposal in this document to establish the Tri-Cities area as a port of entry is based on CBP's analysis of the following information:

1. Tri-Cities is serviced by three modes of transportation:
 - (a) rail (The Norfolk Southern Railway and the CSX Corporation);
 - (b) air (Tri-Cities Regional Airport); and
 - (c) highway (three major U.S. highways: I-81; I-26; and U.S. 23).

2. The current population within a 60-mile service area of the Tri-Cities Regional Airport is 1,905,491.

3. Regarding the five actual or potential workload criteria, 3,522 entries were filed at Tri-Cities Regional User Fee Airport in 2003, with no more than half of the entries attributable to any one private party. The airport has averaged 3,540 entries annually over the past several years with the average value of each entry being \$24,620. In the past eight (8) years, Tri-Cities has experienced a growth rate of 409 percent in the number of entries filed. Approximately 251 companies (primarily importers) are currently serviced by the airport.

CBP facilities are already in place at the Tri-Cities Regional User Fee Airport. CBP believes that the establishment of this port will provide significant benefits to the local community, further enhancing the economic growth that is already being experienced in this area, by providing enhanced business competitiveness for existing enterprises and enabling the retention and expansion of the number of jobs in the area.

The Tri-Cities Regional Airport is committed to continue making the optimal use of electronic data transfer capability to permit integration with the CBP Automated Commercial System for processing entries. This commitment is shown in the current financial support, furnished by the Tri-Cities Airport Commission, of an interstate dedicated data line and computer upgrades. Since October 1, 2003, two companies, each with the automated capacity to interface with CBP, have occupied established offices in the Tri-Cities Airport.

Description of Proposed Port of Entry Limits

The geographical limits of the proposed Tri-Cities, TN/VA, port of entry would be as follows:

The contiguous outer boundaries of Sullivan County, Tennessee; Washington County, Tennessee; and Washington County, Virginia.

PROPOSED AMENDMENTS TO REGULATIONS

If the proposed port of entry designation is adopted, the list of CBP ports of entry at 19 CFR 101.3(b)(1) will be amended to add Tri-Cities, TN/VA, as a port of entry in Tennessee, and "Tri-City Regional Airport" will be deleted from the list of user-fee airports at 19 CFR 122.15(b). Note that the regulations currently refer to the airport as "Tri-City" rather than the correct "Tri-Cities."

COMMENTS

Before adopting this proposal, consideration will be given to any written comments that are timely submitted to CBP. All such comments received from the public pursuant to this notice of proposed rulemaking will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and 19 CFR 103.11(b),

during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, Customs and Border Protection, Department of Homeland Security, 799 9th Street, NW, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768. Comments may also be accessed on the EPA Partner EDOCKET Web Site or Federal eRulemaking Portal. For additional information on accessing comments via the EPA Partner EDOCKET Web Site or Federal eRulemaking Portal, see the "ADDRESSES" section of this document.

AUTHORITY

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66, and 1624.

THE REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

With DHS approval, CBP establishes, expands and consolidates CBP ports of entry throughout the United States to accommodate the volume of CBP-related activity in various parts of the country. The Office of Management and Budget has determined that this regulatory action is not significant within the meaning of Executive Order 12866. This proposed rule also will not have a significant economic impact on a substantial number of small entities. Accordingly, it is certified that this document is not subject to the additional requirements of the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

SIGNING AUTHORITY

The signing authority for this document falls under 19 CFR 0.2(a) because the establishment of a new port of entry and the termination of the user-fee status of an airport are not within the bounds of those regulations for which the Secretary of the Treasury has retained sole authority. Accordingly, this notice of proposed rulemaking may be signed by the Secretary of Homeland Security (or his or her delegate).

Date: July 25, 2005

MICHAEL CHERTOFF,
Secretary.

[Published in the Federal Register, July 29, 2005 (70 FR 43808)]

DATES AND DRAFT AGENDA OF THE THIRTY-SIXTH SESSION OF THE HARMONIZED SYSTEM COMMITTEE OF THE WORLD CUSTOMS ORGANIZATION

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security, and U.S. International Trade Commission.

ACTION: Publication of the dates and draft agenda for the thirty-sixth session of the Harmonized System Committee of the World Customs Organization.

SUMMARY: This notice sets forth the dates and draft agenda for the next session of the Harmonized System Committee of the World Customs Organization.

DATE: July 26, 2005

FOR FURTHER INFORMATION CONTACT: Joan A. Jackson, Staff Assistant, International Agreements Staff, U.S. Customs and Border Protection (202-572-8831), or David Beck, Acting Director, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission (202-205-2592).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The United States is a contracting party to the International Convention on the Harmonized Commodity Description and Coding System ("Harmonized System Convention"). The Harmonized Commodity Description and Coding System ("Harmonized System"), an international nomenclature system, forms the core of the U.S. tariff, the Harmonized Tariff Schedule of the United States. The Harmonized System Convention is under the jurisdiction of the World Customs Organization (established as the Customs Cooperation Council).

Article 6 of the Harmonized System Convention establishes a Harmonized System Committee ("HSC"). The HSC is composed of representatives from each of the contracting parties to the Harmonized System Convention. The HSC's responsibilities include issuing classification decisions on the interpretation of the Harmonized System. Those decisions may take the form of published tariff classification opinions concerning the classification of an article under the Harmonized System or amendments to the Explanatory Notes to the Harmonized System. The HSC also considers amendments to the legal text of the Harmonized System. The HSC meets twice a year in Brussels, Belgium. The next session of the HSC will be the thirty-sixth, and it will be held from September 19, 2005 to September 30, 2005.

In accordance with section 1210 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418), the Department of Home-

land Security, represented by U.S. Customs and Border Protection, the Department of Commerce, represented by the Census Bureau, and the U.S. International Trade Commission (“ITC”), jointly represent the U.S. government at the sessions of the HSC. The Customs and Border Protection representative serves as the head of the delegation at the sessions of the HSC.

Set forth below is the draft agenda for the next session of the HSC. Copies of available agenda-item documents may be obtained from either Customs and Border Protection or the ITC. Comments on agenda items may be directed to the above-listed individuals.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachment



WORLD CUSTOMS ORGANIZATION
 ORGANISATION MONDIALE DES DOUANES
 Established in 1952 as the Customs Co-operation Council
 Créée en 1952 sous le nom de Conseil de coopération douanière

HARMONIZED SYSTEM
 COMMITTEE

NC0939E1d

-
 36th Session

O. Eng.

Brussels, 13 July 2005.

DRAFT AGENDA FOR THE 36TH SESSION
 OF THE HARMONIZED SYSTEM COMMITTEE

From : Monday, 19 September 2005 (3.30 p.m.)
To : Friday, 30 September 2005

N.B. : Monday, 19 September 2005 (10.00 a.m. – 1.00 p.m.) : Pre-session Working Party
 (to examine the questions under Agenda Item V)

Monday, 19 September 2005 (2.30 p.m. – 3.30 p.m.) : Adoption of the Report of the
 31st session of the Review Sub-Committee

I. ADOPTION OF THE AGENDA

- | | |
|--------------------------|------------------|
| 1. Draft Agenda | NC0939E1d |
| 2. Draft Timetable | NC0940B1c |

II. REPORT BY THE SECRETARIAT

- | | |
|--|------------------------|
| 1. Position regarding Contracting Parties to the HS Convention and related matters | NC0942E1a |
| 2. Report on the last meetings of the Policy Commission (53 rd Session) and the Council (105 th /106 th Sessions) | NC0943E1a |
| 3. Approval of decisions taken by the Harmonized System Committee at its 35 th Session | NG0100E1a
NC0941E1a |
| 4. Capacity building activities of the Nomenclature and Classification Sub-Directorate | NC0944E1a |
| 5. Co-operation with other international organisations | NC0945E1a |
| 6. New information provided on the WCO Web site | NC0946E1a |
| 7. Publication of the HS 2007 Explanatory Notes | NC0947E1a |

NC0939E1d

8.	Corrections to amendments of the Explanatory Notes adopted by the Committee at its 35 th Session	NC0984E1a
9.	Other	
III. <u>GENERAL QUESTIONS</u>		
1.	Study with a view to better understanding why certain Recommendations have not achieved a greater level of acceptance	NC0948E1a
2.	Study on possibility of amending the HS outside the review cycle framework	NC0949E1a
3.	Development of Correlation Tables	NC0950E1a
4.	Insertion of pictures in the Compendium of Classification Opinions	NC0951E1a
5.	Use of references to specific administrations in reports	NC0952E1a
IV. <u>REPORT OF THE REVIEW SUB-COMMITTEE</u>		
1.	Report of the 31 st Session of the Review Sub-Committee	NR0578E1A B1b (RSC/31)
2.	Matters for decision	NC0953E1a
3.	Possible amendment of the Explanatory Note to heading 22.08 (HS 2007)	NC0992E1a
V. <u>REPORT OF THE PRESESSIONAL WORKING PARTY</u>		
1.	Possible amendment of the Subheading Explanatory Note to subheadings 1517.10 and 1517.90	NC0954E1a Annex A
2.	Amendments to the Compendium of Classification Opinions to reflect the decision to classify a product by the name " <u>Spirulina Platensis</u> " in subheading 2102.20	NC0954E1a Annex B
3.	Amendments to the Compendium of Classification Opinions and to the Explanatory Notes to reflect the decision to classify a liquid micronutrient preparation in subheading 3824.90	NC0954E1a Annex C
4.	Amendments to the Compendium of Classification Opinions to reflect the decision to classify bio-diesel in subheading 3824.90 and a possible amendment of the Explanatory Note	NC0954E1a Annex D

2.

NC0939E1d

VI. FURTHER STUDIES

1. Classification of a product containing 98.5 % of sodium sulphate (Reservation by the Russian Administration) NC0955E1a
2. Classification of footwear with outer soles of textiles (Reservation by the Chinese Administration) NC0956E1a
3. Classification of pegfilgrastim (INN) (Reservation by the Swiss Administration) NC0957E1a
4. Classification of graduated urinary drainage bags and meters (Reservation by the US Administration) NC0958E1a
5. Possible amendment of the Explanatory Note to heading 21.02 with a view to clarifying the classification of a product by the name "Spirulina Platensis" NC0959E1a
6. Classification of concentrated elderberry juice NC0960E1a
7. Classification of a product containing more than 99.2 % of sodium sulphate NC0961E1a
8. Classification of treated titanium dioxide (product submitted by the EC) and a possible amendment to the Compendium of Classification Opinions NC0962E1a
9. Classification of separately presented indoor and outdoor units of air conditioning systems NC0963E1a
10. Classification of reach stackers NC0919E1a
(HSC/35)
NC0986E1a
NC0993E1a
11. Classification of an audio compact disc manufacturing system NC0964E1a
12. Classification of set top boxes (request from WTO) NC0965E1a
13. Classification of dining room sets and similar furniture combinations NC0966E1a
14. Classification of Haygrove tunnel components NC0931E1a
(HSC/35)
NC0967E1a
15. Classification of shelved furniture NC0968E1a
16. Study aimed at determining whether or not there is a contradiction between the legal texts and exclusion (b) of the Explanatory Note to heading 95.04 (page 1917), arising from the classification of the "PS2" NC0969E1a
17. Possible amendment of the Explanatory Notes to headings 49.07

NC0939E1d

and 97.05 (Proposal by the EC) NC0970E1aVII. NEW QUESTIONS

1. Possible amendment of the Explanatory Note with respect to asbestos (Proposal by the Swiss Administration) NC0971E1a
2. Possible amendment of the Explanatory Note to headings 28.38, 28.41, 29.31 and 38.08 NC0972E1a
3. Classification of new INN products (INN list 92) NC0973E1a
4. Study on the scope of Note 2 to Chapter 30 and of subheading 3002.10 NS0112E1b
Annexes A/1
and A/2
(SSC/20)
NC0974E1a
5. Classification of tubes with reagents NC0975E1a
6. Classification of certain flooring panels NC0976E1a
7. Possible amendment of Explanatory Note to heading 51.10 NC0977E1a
8. Classification of spray guns NC0978E1a
9. Classification of certain halogen lamps for guns (Request from the Swiss Administration) NC0979E1a
10. **Deleted**
11. Possible amendment of the Explanatory Notes to headings 90.18 and 90.19 NC0981E1a
12. Classification of a product by the name "P-Touch 7000/8000" tape cassette NC0983E1a
13. Classification of certain power modules, used in electrical converters NC0985E1a
14. Possible amendment of the Explanatory Note to heading 57.03 (Proposal by the EC) NC0987E1a
15. Classification of certain dried hams NC0988E1a
16. Classification of ivermectin (INN) and similar products NC0989E1a
17. Possible amendment of the Explanatory Note to heading 22.01 .. NC0990E1a
18. **Deleted**

VIII. ADDITIONAL LIST

4.

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NC0939E1d

IX. OTHER BUSINESS

1. List of questions which might be examined at a future session NC0982E1a

X. DATES OF NEXT SESSIONS

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.

Washington, DC, July 27, 2005,

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



19 CFR PART 177

PROPOSED MODIFICATION AND REVOCATION OF RULING
LETTERS AND REVOCATION OF TREATMENT RELATING TO
TARIFF CLASSIFICATION OF CERTAIN SYNTHETIC “PUMICE
STONES” COMPRISED OF GLASS, PLASTIC OR
AGGLOMERATED STONE

AGENCY: U.S. Customs and Border Protection (“CBP”), Department of Homeland Security.

ACTION: Notice of proposed modification and revocation of ruling letters and revocation of treatment relating to the tariff classification of certain synthetic “pumice stones” comprised of foamed glass, plastic or agglomerated material under the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”).

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 CBP intends to modify seven rulings and to revoke four rulings concerning the tariff classification of certain synthetic “pumice stones” comprised of foamed glass, plastic or agglomerated material and to revoke any treatment CBP has previously accorded to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before September 9, 2005.

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 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 New York Ruling Letters ("NYs") D84445, D84446, D84447, dated November 25, 1998; NY F85435, dated April 17, 2000; NY D80071, dated August 5, 1998; NY H80586, dated May 22, 2001 and NY A84500, dated June 21, 1996, and to revoke Headquarters Ruling Letter ("HQ") 085886, dated February 22, 1990; NY 834656, dated January 17, 1989; HQ 086282, dated May 7, 1990 and NY 831549, dated September 20, 1988. In the aforemen-

tioned rulings, merchandise variously described as synthetic or artificial pumice and abrasive articles comprised of foamed glass or plastic, and agglomerated pumice stone was classified under either subheading 3304.99.50, HTSUS, which provides for beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: manicure or pedicure preparations: other: other: other; or subheading 3307.90.00, HTSUS, which provides for other pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included. In reaching these conclusions, we reasoned generally that the articles were *ejusdem generis* with the cosmetic or toilet preparations of headings 3304 and 3307, HTSUS. NYs D84445, D84446, D84447, NY F85435, NY D80071, NY H80586, NY A84500, HQ 085886, NY 834656, HQ 086282, and NY 831549 are set forth as Attachments A through K, respectively, to this document.

We have reconsidered the classification of the merchandise and have determined that the “pumice stones” comprised of various substances are distinguishable from the beauty, cosmetic and toilet preparations classified under headings 3304 and 3307 HTSUS (set forth above). At General Rule of Interpretation (“GRI”) 1, none of the “pumice” stones are *prima facie* classifiable as either type (3304 or 3307, HTSUS) of preparation. We conclude in the proposed rulings that the merchandise should be classified, at GRI 1 and according to the relevant Chapter and Explanatory Notes, in consideration of their respective constituent materials.

Although in this notice CBP is specifically referring to eleven rulings, this notice covers any rulings on similar merchandise that may exist but have not been specifically identified. CBP 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 rulings (see above), 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 transactions. Any person involved in substantially identical transactions should advise 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 his agents for importations of merchandise subsequent to this notice.

Pursuant to 19 U.S.C. §1625(c)(1), CBP intends to modify NYs D84445, D84446, D84447, NY F85435, NY D80071, NY H80586 and NY A84500 and to revoke HQ 085886, NY 834656, HQ 086282 and NY 831549 as they pertain to the classification of certain natural, artificial or synthetic “pumice stone” comprised of foamed glass, plastic or other agglomerated material, and any other ruling not specifically identified, to reflect the proper classification of the merchandise as follows:

In Proposed HQ 966861 (*see* “Attachment L” to this document which proposes revocation of HQ 085866 and NY 834866), the glass manicure/pedicure articles are classified under subheading 7013.99.5000, HTSUSA, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): other glassware: other: other: other: valued over \$0.30 but not over \$3 each.

In proposed HQ 966867 (*see* “Attachment M” to this document which proposes revocation of HQ 086282 and NY 831549), the glass manicure/pedicure articles are classified under subheading 7013.99.5000, HTSUSA, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): other glassware: other: other: other: valued over \$0.30 but not over \$3 each; and the plastic manicure/pedicure articles are classified under subheading 3924.90.5500, HTSUSA, which provides for tableware, kitchenware, other household articles and toilet articles, of plastics: toilet articles, of plastics: other: other.

In proposed HQ 966876 (*see* “Attachment N” to this document which proposes modification of NYs D84445, D84446, D84447, F85435, D80071, and H80586), the glass manicure/pedicure articles are classified under subheading 7013.99.5000, HTSUSA, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): other glassware: other: other: other: valued over \$0.30 but not over \$3 each; and the plastic manicure/pedicure articles are classified under subheading 3924.90.5500, HTSUSA, which provides for tableware, kitchenware, other household articles and toilet articles, of plastics: toilet articles, of plastics: other: other; and the manicure/pedicure articles that are comprised of natural pumice; *i.e.*, the foot pumice stone in NY D80071, is classified under subheading 6804.30.0000, HTSUSA, which provides for other millstones, grindstones, grinding wheels and the like: other: hand sharpening or polishing stones. The constituent material of the synthetic pumice body

smoother in F85435 is unknown; it is classifiable according to the analysis contained and criteria set forth in proposed HQ 966876.

In Proposed HQ 966877, (see "Attachment O" to this document which proposes to modify NY A84500), the manicure/pedicure articles that are comprised of agglomerated pumice is classified under subheading 6804.30.0000, HTSUSA, which provides for other millstones, grindstones, grinding wheels and the like: other: hand sharpening or polishing stones.

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

Dated: July 26, 2005

**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 D84445
November 25, 1998
CLA-2-33:RR:NC:2:240 D84445
CATEGORY: Classification
TARIFF NO.: 3304.99.5000; 3307.30.1000; 3307.30.5000;
3401.11.5000; 3924.90.5500; 4417.00.8090;
7323.99.9060; 9019.10.2050

MS. HELEN NEWELL
POLARDREAMS INTERNATIONAL LTD.
602 W. Burlington
Fairfield, IA 52556

RE: The tariff classification of Gift Basket HB03, "Sapphire Spirit Bath and Body Care Collection" from China, Korea and New Zealand, packaged in China

DEAR MS. NEWELL:

In your letter dated October 29, 1998 you requested a tariff classification ruling.

A sample of Gift Basket HB03, "Sapphire Spirit Bath and Body Care Collection" was submitted with your inquiry. The chrome bath caddy is filled with a package of bath salts with a wooden scoop, a bottle of bath gel, a square bath soap in a plastic soap dish, a wooden massager, a body sponge and a synthetic foot pumice stone. The soap is manufactured in New Zealand. The foot pumice stone is manufactured in Korea. The remaining articles are manufactured

in China. The components are assembled and packaged in China. The Gift Basket HB03 is not considered a set for Customs purposes. Each item will be classified separately.

The applicable subheading for the Bath Salts will be 3307.30.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for Bath salts, whether or not perfumed. The rate of duty will be 5.8 percent ad valorem.

The applicable subheading for the Bath Gel will be 3307.30.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Perfumed bath salts, and other bath preparations. The rate of duty will be 4.9 percent ad valorem.

The applicable subheading for the synthetic Foot Pumice Stone will be 3304.99.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Other. The rate of duty will be 1 percent ad valorem.

The applicable subheading for the Soap will be 3401.11.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Soap and organic surface-active products and preparations, in the form of bars, cakes, molded pieces or shapes, and paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent: For toilet use (including medicated products): Other. The rate of duty will be 0.2 cents per kilo plus 0.7 percent ad valorem.

The applicable subheading for the Body Sponge and Soap Dish will be 3924.90.5500, Harmonized Tariff Schedule of the United States (HTS), which provides for Tableware, kitchenware, other household articles and toilet articles, of plastics: Other:

Other. The rate of duty will be 3.4 percent ad valorem.

The applicable subheading for the Wooden Scoop will be 4417.00.8090, Harmonized Tariff Schedule of the United States (HTS), which provides for Tools, tool bodies, tool handles, broom or brush, bodies and handles, of wood; boot or shoe lasts and trees, of wood: Other. The rate of duty will be 5.7 percent ad valorem.

The applicable subheading for the Chrome Bath Caddy will be 7323.99.9060, Harmonized Tariff Schedule of the United States (HTS), which provides for Table, kitchen or other household articles. The rate of duty will be 3.4 percent ad valorem.

The applicable subheading for the Wooden Massager will be 9019.10.2050, Harmonized Tariff Schedule of the United States (HTS), which provides for Mechano-therapy appliances; massage apparatus; psychological aptitude-testing apparatus; parts and accessories thereof: Other: Other. The rate of duty will be 0.8 percent ad valorem.

Cosmetic and toiletry products may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (301) 443-3380.

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 Stephanie Joseph at 212-466-5768.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY D84446
November 25, 1998
CLA-2-33:RR:NC:2:240 D84446
CATEGORY: Classification
TARIFF NO.: 3304.99 5000; 3307.30.1000;
3307.30.5000; 3924.10.5000; 3924.90.5500;
4202.92.4500; 4417.00.8090; 9603.29.8090

MS. HELEN NEWELL
POLARDREAMS INTERNATIONAL LTD.
602 W. Burlington
Fairfield, IA 52556

RE: The tariff classification of Gift Basket HB05, "Aroma-Therapy Bath and Body Care Collection" from China, Korea and Taiwan, packaged in China

DEAR MS. NEWELL:

In your letter dated October 29, 1998 you requested a tariff classification ruling.

A sample of Gift Basket HB05, "Aroma-Therapy Bath and Body Care Collection" was submitted with your inquiry. The carrying bag is filled with foil bag of bath salts with a wooden scoop, a plastic bottle of foam bath, a synthetic foot pumice stone, bath salts in a plastic canning jar, a heart shaped massage brush, a body sponge and a body sponge stack (sling). The carrying bag is manufactured of polyvinyl chloride (PVC). It provides useful function of storage, protection and portability of the contents. The foot pumice stone is manufacture in Korea. The canning jar plastic container is manufactured in Taiwan. The remaining articles are manufactured in China. The components are assembled and packaged in China. The components are assembled and packaged in China. The Gift Basket HB05 is not considered a set for Customs purposes. Each item will be classified separately.

The applicable subheading for the synthetic Foot Pumice Stone will be 3304.99.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Other. The rate of duty will be 1 percent ad valorem.

The applicable subheading for the Bath Salts will be 3307.30.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for Bath salts, whether or not perfumed. The rate of duty will be 5.8 percent ad valorem. The applicable subheading for the Foam Bath will be 3307.30.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Perfumed bath salts, and other bath preparations. The rate of duty will be 4.9 percent ad valorem.

The applicable subheading for the Plastic Container for the Bath Salts will be 3924.10.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Tableware, kitchenware, other household articles and toilet articles, of plastics: Other. The rate of duty will be 3.4 percent ad valorem.

The applicable subheading for the Body Sponge and Body Sponge Stack (Sling) will be 3924.90.5500, Harmonized Tariff Schedule of the United States (HTS), which provides for Tableware, kitchenware, other household articles and toilet articles, of plastics: Other: Other. The rate of duty will be 3.4 percent ad valorem.

The applicable subheading for the Carrying Bag will be 4202.92.4500, Harmonized Tariff Schedule of the United States (HTS), which provides for Travel, sports and similar bags. The rate of duty will be 20 percent ad valorem.

The applicable subheading for the Wooden Scoop will be 4417.00.8090, Harmonized Tariff Schedule of the United States (HTS), which provides for Tools, tool bodies, tool handles, broom or brush, bodies and handles, of wood; boot or shoe lasts and trees, of wood: Other. The rate of duty will be 5.7 percent ad valorem.

The applicable subheading for the Massage Brush will be 9603.29.8090, Harmonized Tariff Schedule of the United States (HTS), which provides for Toothbrushes, shaving brushes, hair brushes, nail brushes, eyelash brushes, and other toilet brushes for use on the person, including such brushes constituting parts of appliances: Other: Valued over 40 cents each: Other. The rate of duty will be 0.3 cents each plus 3.6 percent ad valorem. Cosmetic and toiletry products may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (301) 443-3380.

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 Stephanie Joseph at 212-466-5768.

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY D84447
November 27, 1998
CLA-2-33:RR:NC:2:240 D84447
CATEGORY: Classification
TARIFF NO.: 3304.99.5000; 3307.30.1000; 3307.30.5000;
3401.11.5000; 3924.10.5000; 6302.99.2000;
7323.99.9060; 9603.29.8090

MS. HELEN NEWELL
POLARDREAMS INTERNATIONAL LTD.
602 W. Burlington
Fairfield, IA 52556

RE: The tariff classification Gift Basket HB 18 "Aroma-Therapy Mind Ease Bath and Body Care Collection" from China, Korea, New Zealand and Taiwan, packaged in China

DEAR MS. NEWELL:

In your letter dated October 29, 1998 you requested a tariff classification ruling.

A sample of Gift Basket HB 18, "Aroma-Therapy Mind Ease Bath and Body Care Collection" was submitted with your inquiry. The wire bread basket is filled with bath salts in a plastic canning jar, a bottle of foam bath, a bottle of body lotion, a bar of soap, a nail brush, a synthetic foot pumice stone and a sisal back scrubber. The foot pumice stone is made in Korea. The soap is manufactured in New Zealand. The wire basket and canning jar container are made in Taiwan. The remaining articles are made in China. The components are assembled and packaged in China. The Gift Basket HB 18 is not considered a set for Customs purposes. Each item will be classified separately.

The applicable subheading for the Body Lotion will be 3304.99.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Other. The rate of duty will be 1 percent ad valorem.

The applicable subheading for the synthetic Foot Pumice Stone will be 3304.99.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Beauty or make-up preparations and

preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Other. The rate of duty will be 1 percent ad valorem.

The applicable subheading for the Bath Salts will be 3307.30.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for Bath salts, whether or not perfumed. The rate of duty will be 5.8 percent ad valorem. The applicable subheading for the Foam Bath will be 3307.30.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Perfumed bath salts, and other bath preparations. The rate of duty will be 4.9 percent ad valorem.

The applicable subheading for the Soap will be 3401.11.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Soap and organic surface-active products and preparations, in the form of bars, cakes, molded pieces or shapes, and paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent: For toilet use (including medicated products): Other. The rate of duty will be 0.2 cents per kilo plus 0.7 percent ad valorem.

The applicable subheading for the Plastic Canning Jar will be 3924.10.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Tableware, kitchenware, other household articles and toilet articles, of plastics: Other. The rate of duty will be 3.4 percent ad valorem.

The applicable subheading for the Sisal Back Scrubber will be 6302.99.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for Bed linen, table linen, toilet linen and kitchen linen: Other: Of other textile materials: Other. The rate of duty will be 9.1 percent ad valorem.

The back scrubber falls within textile category designation 899. Based upon international textile trade agreements products of Taiwan are subject to the requirement of a visa.

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. Part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes. To obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

The applicable subheading for the Wire Bread Basket will be 7323.99.9060, Harmonized Tariff Schedule of the United States (HTS), which provides for Table, kitchen or other household articles. The rate of duty will be 3.4 percent ad valorem. The applicable subheading for the nail brush will be 9603.39.8090, Harmonized Tariff Schedule of the United States (HTS), which provides for Toothbrushes, shaving brushes, hair brushes, nail brushes, eyelash brushes, and other toilet brushes for use on the person, including such brushes constituting parts of appliances: Other: Valued over 40

cents each: Other. The rate of duty will be 0.3 cents each plus 3.6 percent ad valorem.

Cosmetic and toiletry products may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (301) 443-3380.

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 Stephanie Joseph at 212-466-5768.

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

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY F85435
April 17, 2000
CLA-2-33:RR:NC:2:240 F85435
CATEGORY: Classification
TARIFF NO.: 3304.99.5000; 3307.30.1000;
3307.30.5000; 4417.00.8090; 6302.99.2000;
7323.99.9060; 9603.29.8090

MS. HELEN NEWELL
POLARDREAMS INTERNATIONAL LTD.
1948 Highway 1 North
Fairfield, IA 52556-9020

RE: The tariff classification of Chrome Caddy Bath and Body Care Gift Set JB50 from China

DEAR MS. NEWELL:

In your letter dated March 28, 2000 you requested a tariff classification ruling.

A sample of the Chrome Caddy Bath and Body Care Gift Set JB50 was submitted with your inquiry. Two chrome stackable bath caddies are imported filled with bath and body care products. All products are manufactured and packaged in China. The bath and body care products consist of a bottle of body lotion, a bottle of milk bath, a paper bag of foot soak bath salts with a wooden scoop, a bottle of tub therapy bath foam, bath salt crystals in a milk tin container, a wooden exfoliating brush, a sisal back scrubber with wooden handles, and a synthetic round pumice body smoother. The chrome

caddies are not the usual packing for the bath and body care products. The products do not constitute a set for tariff purposes. Each item will be separately classified.

The applicable subheading for the body lotion and the pumice body smoother will be 3304.99.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Other. The rate of duty will be free.

The applicable subheading for the foot soak bath salts and the bag of bath salt crystals will be 3307.30.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for Perfumed bath salts and other bath preparations: Bath salts, whether or not perfumed. The rate of duty will be 5.8 percent ad valorem.

The applicable subheading for the milk bath and the tub therapy bath foam will be 3307.30.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Perfumed bath salts and other bath preparations: Other. The rate of duty will be 4.9 percent ad valorem.

The applicable subheading for the wooden scoop be 4417.00.8090, Harmonized Tariff Schedule of the United States (HTS), which provides for Tools, tool bodies, tool handles, broom or brush bodies and handles, of wood; boot or shoe lasts and trees, of wood: Other . . . Other. The rate of duty will be 5.1 percent ad valorem.

The applicable subheading for the sisal back scrubber with wooden handles will be 6302.99.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for Bed linen, table linen, toilet linen and kitchen linen: Of other textile materials: Other. The rate of duty will be 8.8 percent ad valorem. The scrubber falls within textile category designation 899. 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 may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes. To obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report on current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

The applicable subheading for the chrome stackable bath caddies and the milk tin container will be 7323.99.9060, Harmonized Tariff Schedule of the United States (HTS), which provides for Table, kitchen or other household articles: Of iron or steel: Other: Other. The rate of duty will be 3.4 percent ad valorem.

The applicable subheading for the wooden exfoliating brush will be 9603.29.8090, Harmonized Tariff Schedule of the United States (HTS), which provides for Toothbrushes, shaving brushes, hair brushes, nail brushes, eyelash brushes and other toilet brushes for use on the person, including such brushes constituting parts of ap-

pliances: Other: Valued over 40 cents each . . . Other. The rate of duty will be 0.3 cents each plus 3.6 percent ad valorem.

Cosmetic and toiletry products may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (301) 443-3380.

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 Stephanie Joseph at 212-637-7066.

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

[ATTACHMENT E]

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

NY D80071

August 5, 1998

CLA-2-33:RR:NC:2:240 D80071

CATEGORY: Classification

TARIFF NO.: 3304.30.0000; 3304.99.5000; 3307.30.1000;
3307.30.5000; 3307.49.0000; 3401.11.5000;
3924.90.5500; 4417.00.8090; 6302.99.2000;
7323.99.9060; 9019.10.2050; 9603.29.4090

MS. HELEN NEWELL
POLARDREAMS INTERNATIONAL LTD.
602 W. Burlington
Fairfield, IA 52556

RE: The tariff classification of a Bath and Body Care Collection Gift Basket GB 121 from China, Korea, Taiwan and New Zealand

DEAR MS. NEWELL:

In your letter dated July 1, 1998 you requested a tariff classification ruling.

A sample of the Bath and Body Care Collection Gift Basket GB 121 was submitted with your inquiry. The item contains a collection of products used for bath and body care. The articles are put up for retail sale in a wire caddy. The gift set contains a bottle of Bath and Shower Gel, a package of Bath Salts with wooden scooper, a bottle of Foam Bath, Body Lotion, Nail Brush, a bar of Body Soap, a Soap Dish, Eye Mask, Room Fragrance Gel, Bath Cloth, Body Sponge, Wooden Massager and Foot Pumice Stone. The Bath and Body Care Collection Gift Basket is not considered a set for Customs purposes.

All items will be separately classified. The Soap is manufactured in New Zealand. The Foot Pumice Stone is made in Korea and the Eye Mask is made in Taiwan. The remaining articles are made in China.

The applicable subheading for the Bath & Shower Gel and Foam Bath will be 3307.30.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Perfumed bath salts and other bath preparations: Other. . . . The rate of duty will be 4.9 percent ad valorem.

The applicable subheading for the Bath Salts will be 3307.30.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for Bath salts whether or not perfumed. . . . The rate of duty will be 5.8 percent ad valorem.

The applicable subheading for the Wooden Scooper will be 4417.00.8090, Harmonized Tariff Schedule of the United States which provides for Tools, tool bodies, tool handles, broom or brush bodies and handles, of wood; boot or shoe lasts and trees, of wood: Other. . . . Other. . . .

The rate of duty will be 5.7 percent ad valorem.

The applicable subheading for the Body Lotion will be 3304.99.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Beauty or make-up preparations and preparations for the care of the skin (other than medicaments): Other: Other: Other. . . . The rate of duty will be 1 percent ad valorem.

The applicable subheading for the Nail Brush will be 9603.29.4090, Harmonized Tariff Schedule of the United States (HTS), which provides for . . . Other toilet brushes for use on the person . . . Other: Valued not over 40 cents each. . . . Other. . . . The rate of duty will be .2 cents each plus 7 percent ad valorem.

The applicable subheading for the Body Soap will be 3401.11.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Soap and organic surface-active products and preparations, in the form of bars, cakes, molded pieces or shapes, and paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent: For toilet use (including medicated products): Other. . . . The rate of duty will be 0.2 cents per kilo plus 0.7 percent ad valorem.

The applicable subheading for the Body Sponge and Soap Dish will be 3924.90.5500, Harmonized Tariff Schedule of the United States (HTS), which provides for Tableware, kitchenware, other household articles and toilet articles, of plastics: Other: Other. . . . The rate of duty will be 3.4 percent ad valorem.

The applicable subheading for the Room Fragrance Gel will be 3307.49.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for Preparations for perfuming or deodorizing rooms, including odoriferous preparations used during religious rites: Other. . . . The rate of duty will be 6 percent ad valorem.

The Body Cloth, made from ramie fabric, is an open worked material. The cloth measures approximately 9 inches square and the edges are finished with an overlock stitch. The applicable subheading for the Body Cloth will be 6302.99.2000, Harmonized Tariff

Schedule of the United States (HTS), which provides for Bed linen, table linen, toilet linen and kitchen linen: Other: Of other textile materials: Other. . . . The rate of duty will be 9.1 percent ad valorem.

The cloth falls within textile category designation 899. Based upon international textile trade agreements products of China are subject to the requirement of a visa.

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. Part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes. To obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

The applicable subheading for the Wooden Massager will be 9019.10.2050, Harmonized Tariff Schedule of the United States (HTS), which provides for Mechano-therapy appliances; message apparatus; psychological aptitude-testing apparatus; parts and accessories thereof. . . . Other. . . . The rate of duty will be 0.8 percent ad valorem.

The applicable subheading for the Foot Pumice Stone will be 3304.30.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for Beauty or make-up preparations and preparations for the care of the skin (other than medicaments): Manicure or pedicure preparations. . . . The rate of duty will be 1 percent ad valorem.

The applicable subheading for the Wire Caddy will be 7323.99.9060, Harmonized Tariff Schedule of the United States (HTS), which provides for Table, kitchen or other household articles and parts thereof, of iron or steel: Other:

Not coated or plated with precious metal: Other: Other: Other. . . . The rate of duty will be 3.4 percent ad valorem.

A ruling on the Soothing Eye Pillow can not be issued at this time. The classification issue is presently before Headquarters. You may wish to resubmit your request at a future date.

Cosmetic and toiletry products are subject to the requirements of the Federal Food, Drug, and Cosmetic Act, which is administered by the U.S. Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (301) 443-6553.

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 Stephanie Joseph at 212-466-5768.

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

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY H80586
May 22, 2001
CLA-2-33:RR:NC:2:240 H80586
CATEGORY: Classification
TARIFF NO.: 3304.30.0000; 3304.99.5000;
3307.30.5000; 3401.11.5000; 6302.99.2000;
7323.99.9060; 9603.29.8090

MS. JOANN BENSON
POLARDREAMS INTERNATIONAL LTD.
1948 Hwy. 1 North
Fairfield, IA 52556

RE: The tariff classification of Bath and Body Gift Set from China

DEAR MS. BENSON:

In your letter dated April 23, 2001, you requested a tariff classification ruling.

A sample of the Bath and Body Gift Set, Item # KB161, was submitted with your inquiry. The gift set contains a collection of products used for bath and body care. The articles are packed together in a two-tire chrome wire caddy. The wire caddy measures 10 inches high, 4 ½ inches in depth and 6 ½ inches wide. The gift set contains foam bath, body lotion, a bar of body soap, a wooden double sided oval nail brush valued over .40 cents, a sisal back scrubber and a synthetic foot pumice stone. The items are sold and marketed as a set, however, the wire caddy is not usual packaging for the products. The Bath and Body Gift Set is not considered a set for Customs purposes. All items will be separately classified.

The applicable subheading for the synthetic foot pumice stone will be 3304.30.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Manicure or pedicure preparations. . . . The rate of duty will be free.

The applicable subheading for the body lotion will be 3304.99.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or

sun tan preparations; manicure or pedicure preparations: Other: Other: Other. . . . The rate of duty will be free.

The applicable subheading for the foam bath will be 3307.30.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Perfumed bath salts and other bath preparations: Other. . . . The rate of duty will be 4.9 percent ad valorem.

The applicable subheading for the body soap will be 3401.11.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Soap and organic surface-active products and preparations, in the form of bars, cakes, molded pieces or shapes, and paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent: For toilet use (including medicated products): Other. . . . The rate of duty will be free.

The applicable subheading for the sisal back scrubber will be 6302.99.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for Bed linen, table linen, toilet linen and kitchen linen: Of other textile materials: Other. . . . The rate of duty will be 8.7 percent ad valorem. The scrubber falls within textile category designation 899. 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 may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes. To obtain the most current information available, we suggest that you check, close to the time of shipments, the Status Report on current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at you local Customs office.

The applicable for the wire caddy will be 7323.99.9060, Harmonized Tariff Schedule of the United States (HTS), which provides for Table, kitchen or other household articles: Of iron or steel: Other: Other. . . . The rate of duty will be 3.4 percent ad valorem.

The applicable subheading for the nail brush will be 9603.29.8090, Harmonized Tariff Schedule of the United States (HTS), which provides for Toothbrushes, shaving brushes, hair brushes, nail brushes, eyelash brushes and other toilet brushes for use on the person, including such brushes constituting parts of appliances: Other: Valued over 40 cents each. . . . Other. . . . The rate of duty will be 0.3 cents each plus 3.6 percent ad valorem.

Perfumery, cosmetic and toiletry products are subject to the requirements of the Federal Food, Drug, and Cosmetic Act, which is administered by the U.S. Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (301) 443-6553.

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 mer-

chandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stephanie Joseph at 212-637-7066.

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

[ATTACHMENT G]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY A84500
Jun 21 1996
CLA-2-33:RR:NC:FC:240 A84500
CATEGORY: Classification
TARIFF NO.: 3304.99.5000; 9603.29.4090; 9603.29.8090

MS. KIM YOUNG
BDP INTERNATIONAL INC.
2721 Walker Rd. NW
Grand Rapids, MI 49504.

RE: The tariff classification of an artificial "Pumice Sponge", a "Pumice Stone with Nail Brush" and an artificial "Pumice Stone" from Taiwan

DEAR MS. YOUNG:

In your letter dated May 31, 1996 you requested a tariff classification ruling on behalf of your client Meijer Inc.

Three samples of the above "pumice" products were submitted with your inquiry. The "Pumice Sponge" Style # 93189 UPC# 0-41250-05813 and the "Pumice Stone" Style #61-K-01 UPC# 0-41250-62844, are both artificial pumice products composed of polyurethane foam, calcium stearate and calcium carbonate. Both products are used for the removal of rough skin. "Pumice Stone with Nail Brush" UPC # 0-41250-94983, is a natural pumice stone with an attached plastic nail brush. The combination product is used to remove rough skin and reduce callus build-up.

The applicable subheading for the artificial "Pumice Sponge" and the artificial "Pumice Stone" will be 3304.99.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: other. The rate of duty will be 2.9 percent ad valorem.

The applicable subheading for the "Pumice Stone with Nail Brush", if valued not over 40 cents each, will be 9603.29.4090, Harmonized Schedule of the United States (HTS), which provides for toothbrushes, shaving brushes, hair brushes, nail brushes, eyelash

brushes and other toilet brushes for use on the person, including such brushes constituting parts of appliances: other: valued not over 40 cents each: other. The rate of duty will be 0.2 cents each plus 7 percent ad valorem. The applicable subheading for the "Pumice Stone with Nail Brush", if valued over 40 cents each, will be 9603.29.4090, Harmonized Schedule of the United States (HTS), which provides for toothbrushes, shaving brushes, hair brushes, nail brushes, eyelash brushes and other toilet brushes for use on the person, including such brushes constituting parts of appliances: other: valued over 40 cents each: other. The rate of duty will be 0.3 cents each plus 3.6 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 imported. If you have any questions regarding the ruling, contact National Import Specialist Stephanie Joseph at 212-466-5768.

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

[ATTACHMENT H]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 085886
February 22, 1990
CLA-2 CO:R:C:G 085886 WAW
CATEGORY: Classification
TARIFF NO.: 3307.90.0000

MR. GARY BRUNELL
A. N. DERINGER, INC.
30 West Service Road
Champlain, N.Y. 12919-9703

RE: Pumice-like Stone

DEAR MR. BRUNELL:

This letter is in response to your request, on behalf of your client Crabtree & Evelyn, for a reconsideration of New York Ruling Letter 834656, dated January 17, 1989, concerning the tariff classification of a pumice-like stone under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). A sample of the merchandise at issue was included along with your request.

FACTS:

The subject merchandise is described as a pink, heart-shaped pumice-like stone. Based on a U.S. Customs Service laboratory report, we have determined that the subject merchandise consists of foamed glass. Moreover, the importer has stated in his submissions that the sample article is not agglomerated. The sample is packaged for sale in a plastic wrapper which is slightly scented to give the product a perfume-like odor. The pumice-like stone is designed to buff off rough or stained skin on the hands or feet. The subject merchandise will be imported from France.

In New York Ruling Letter 834656, dated January 17, 1989, the pumice-like stone was classified under subheading 3307.90.0000, HTSUSA, which provides for other pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included. Items classified under this subheading are subject to a rate of duty of 5.4 percent ad valorem. The importer maintains that classification of the subject merchandise under subheading 3307.90.0000, HTSUSA, is improper and suggests that the product is more properly classified under subheading 2513.19.0000, HTSUSA.

ISSUE:

Whether the sample merchandise is classifiable under subheading 3307.90.0000, HTSUSA, or under some other provision of the tariff?

LAW AND ANALYSIS:

The General Rules of Interpretation (GRI's) set forth the manner in which merchandise is to be classified under the HTSUSA.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff and any relative section or chapter notes and, unless otherwise required, according to the remaining GRI's, taken in order.

Subheading 2513.19.0000, HTSUSA, provides for pumice; emery; natural corundum, natural garnet and other natural abrasives, whether or not heat-treated. Legal Note 1 to Chapter 25 states that:

... the headings of this Chapter cover only products which are in the crude state or which have been washed (even with chemical substances eliminating the impurities without changing the structure of the product), crushed, ground, powdered, levigated, sifted, screened, concentrated by flotation, magnetic separation or other mechanical or physical processes (except crystallisation), but not products which have been roasted, calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading.

(emphasis added)

Since the sample merchandise consists of foamed glass and is not a crude or natural pumice, it is precluded from classification under

Chapter 25 pursuant to the above-stated Legal Note. Thus, subheading 2513.19.0000, HTSUSA, is not intended to cover this type of merchandise.

It is the position of this office that New York Ruling Letter 834656 properly classified the sample article under subheading 3307.90.0000, HTSUSA. Subheading 3307.90.0000, HTSUSA, provides for pre-shave, shaving or after-shave preparations, inter alia, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties. The rule of ejusdem generis is applicable in this case. The rule states in pertinent part that where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described. In determining whether an item is embraced within a class, courts look to the enumerated articles to ascertain the characteristic which they possess in common, and if there is such, whether the article involved has this characteristic. *Kotake Co., Ltd. v. United States*, 58 Cust. Ct. 196, C.D. 2934, 266 F. Supp. 385 (1967). In the instant case, the pumice-like stone falls within the same class, or nature as cosmetic or toilet preparations. It is a toilet article intended to be used in the bath for grooming purposes. Moreover, the article is not more specifically covered elsewhere in the nomenclature. It is clear from the language of the tariff that Congress did not intend to limit the scope of subheading 3307.90.0000, HTSUSA, to include only those articles specifically enumerated in the subheading. Accordingly, based on the foregoing analysis, it is the position of this office that the pumice-like stone is classifiable under subheading 3307.90.0000, HTSUSA.

HOLDING:

The sample article is classifiable under subheading 3307.90.0000, HTSUSA. The applicable rate of duty is 5.4 percent ad valorem.

New York Ruling Letter 834656, dated January 17, 1989, is hereby affirmed.

**JOHN DURANT,
Director,
*Commercial Rulings Division.***

[ATTACHMENT I]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

NY 834656

JAN 17 1989

CLA-2-46~S:N:N1:230 834656

CATEGORY: Classification

TARIFF NO.: 4602.10.5000; 3307.10.2000; 3307.90.0000

MR. R. A. SAUNDERS
A.N. DERINGER, INC.
30 West Service Road
Champlain, NY 12919-9703

RE: The tariff classification of loofah pads, travel pack, pumice stone and powder leaves booklet from Taiwan, England and France

DEAR MR. SAUNDERS:

In your letter dated December 2, 1988, you requested a tariff classification ruling. The request was made on behalf of your client, Crabtree and Evelyn, Ltd.

Samples of the various articles were submitted. The natural loofah pad consists only of loofah which has been cut and compressed. The loofah body scrubber consists of an oval loofah pad backed with a terry fabric and an elastic strip. The loofah pads are products of Taiwan.

The travel pack for men consists of a 25 milliliter bottle of aftershave, a 7.5 gram tube of shaving cream, a 25 milliliter bottle of shampoo and a 25 milliliter bottle of conditioner. They are packed and sold together in a retail paper box. All are products of England.

The pumice stone is a coarse textured product in the shape of a heart. It is used for smoothing the skin. The pumice stone is made in France.

The powder leaves booklet is a small book of rose tinted sheets of paper covered on one side with powder. The sheets are used by detaching and applying the powder side to the face. The powder leaves booklet is a product of England.

The applicable subheading for the natural loofah and the loofah body scrubber will be 4602.10.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for articles of loofah. The rate of duty will be 3 percent ad valorem.

The applicable subheading for the men's travel pack will be 3307.10.2000, HTS, which provides for pre-shave, shaving or after-shave preparations, containing alcohol. The rate of duty will be 11 cents per kilogram plus 4.5 percent ad valorem.

The applicable subheading for the pumice stone and the powder leaves booklet will be 3307.90.0000, HTS, which provides for other pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic

or toilet preparations, not elsewhere specified or included. The rate of duty will be 5.4 percent ad valorem.

Cosmetics are subject to the regulations and rulings of the Food and Drug Administration (FDA). Questions regarding FDA requirements may be addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20857. The telephone number is (301) 443-3370.

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 J]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 086282
May 7, 1990
CLA-2 CO:R:C:G 086282 SLR
CATEGORY: Classification
TARIFF NO.: 3304.99.0000

CHIEF
NATIONAL IMPORT SPECIALIST DIVISION BRANCH
*3 U.S. Customs 6 World Trade Center
New York, New York 10048*

RE: Reconsideration of NYRL 831549 Skin Abrasive Articles from Spain and Taiwan

DEAR Ms. PETERSON:

On September 20, 1988, your office issued New York Ruling Letter (NYRL) 831549 classifying certain skin abrasive articles as skin care preparations in subheading 3304.99, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). You have asked that we reconsider that ruling.

FACTS:

The submitted samples include items L167, L168, L169, 1000R, and 1036R. These products are used to erode or rub away dead skin cells on the hands and feet.

Items L167 (fish shaped), L168 (foot shaped), and L169 (heart shaped) consist of glass. Items 1000R and 1036R (both rectangular blocks) consist of plastic (polyurethane resin).

Although these products are called “pumice,” they do not contain pumice or any other stone.

ISSUE:

Are the subject items classifiable as skin care preparations in subheading 3304.99, HTSUSA?

LAW AND ANALYSIS:

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

Heading 3304, HTSUSA, provides for “[b]eauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations.” The Explanatory Notes, which represent the official interpretation of the tariff at the international level, offer guidance in understanding the scope of the headings.

The Explanatory Note to Heading 3304 makes no mention of skin care abrasives such as the items in issue. Nonetheless, correlative language does appear in the Explanatory Notes which accompany Heading 6804. The Explanatory Note to Heading 6804 indicates that that heading (which provides for hand-held sharpening or polishing stones) does not include “[p]erfumed pumice stones put up in blocks, tablets or similar prepared forms of heading 33.04.”

While the subject articles are neither perfumed nor made from pumice, they perform the same function as the perfumed pumice blocks deemed classifiable in Heading 3304. Accordingly, skin abrasive articles of glass or plastic are classifiable in subheading 3304.99.0000, HTSUSA.

HOLDING:

We affirm NYRL 831549 of September 20, 1988.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT K]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY 831549
Sep 20 1988
CLA-2-3B:S:N:N1:240.831549
CATEGORY: Classification
TARIFF NO.: 3304.99.0050

MR. EDWARD J. MURRAY
ALLIED OF CHICAGO, INC.
190 Carpenter Avenue
Wheeling, Illinois 60090

RE: The tariff classification of skin abrasive articles from Taiwan, Spain, West Germany, and South Korea.

DEAR MR. MURRAY:

In your letter dated July 29, 1988, you requested a tariff classification ruling under the Harmonized Tariff Schedule of the United States (HTS), which is scheduled to replace the Tariff Schedules of the United States (TSUS) on January 1, 1989.

Various samples, which were identified as "pumice", were submitted together with your inquiry. These items are abrasive articles made primarily of glass which has been heated in a kiln. The items are in different sizes, shapes and colors. They are used in the bath to smooth away rough, dead skin cells while cleansing and polishing the skin. No samples have been furnished of item 1080, a "pumice stone with nail brush." Without a sample of this item we are unable to classify this item under the Harmonized System.

The applicable HTS subheading for the skin abrasive articles will be 3304.99.0050, which provides for beauty or make-up preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations; other. The rate of duty will be 4.9 percent ad valorem.

Articles classifiable under subheading 3304.99.0050, HTS, which are the products of Taiwan and South Korea, are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. Note: Effective January 2, 1989, Presidential Proclamation 5787, excludes Hong Kong, South Korea, Singapore and Taiwan from the preferential treatment afforded them under the Generalized System of Preferences (GSP).

This classification represents the present position of the Customs Service regarding the dutiable status of the merchandise under the HTS. If there are changes before enactment, this advice may not continue to be applicable.

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 docu-

ments have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

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

[ATTACHMENT L]

**DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966861
CLA-2 RR:CR:GC 966861 AML
CATEGORY: Classification
TARIFF NO.: 7013.99.5000**

MR. GARY BRUNELL
A. N. DERINGER, INC.
30 West Service Road
Champlain, N.Y. 12919-9703

RE: Glass manicure/pedicure articles; HQ 085886 and NY 834656 revoked

DEAR MR. BRUNELL:

This is in regard to Headquarters Ruling Letter (“HQ”) 085886, dated February 22, 1990, and New York Ruling Letter (“NY”) 834656, dated January 17, 1989, issued to you on behalf Crabtree & Evelyn, concerning the tariff classification of pumice-like manicure/pedicure “stones” comprised of foamed glass under the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”). HQ 085886, which affirmed classification of the articles under heading 3307, HTSUS (set forth below), was issued in response to your request for reconsideration of NY 834656. We have reconsidered the classification decisions made in HQ 085886 and NY 834656 and determined that they are incorrect. This ruling sets forth the proper classification of the foamed glass manicure/pedicure articles.

FACTS:

We described the articles in HQ 085886 as follows:

The subject merchandise is described as a pink, heart-shaped, pumice-like “stone.” Based on a U.S. Customs Service laboratory report, we have determined that the subject merchandise consists of foamed glass. Moreover, the importer has stated in his submissions that the sample article is not agglomerated. The sample is packaged for sale in a plastic wrapper which is slightly scented to give the product a perfume-like odor. The pumice-like stone is designed to buff off rough or stained skin on the hands or feet. We further observed in HQ 085886 that:

In New York Ruling Letter 834656, dated January 17, 1989, the pumice-like stone was classified under subheading 3307.90.0000, HTSUSA, which provides for other pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, de-

depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included.

We concluded that, although the articles were composed entirely of foamed glass, they were *ejusdem generis* with the cosmetic or toilet preparations of heading 3307, HTSUS, *i.e.*, the foamed glass “stones” were “toilet article[s] intended to be used in the bath for grooming purposes.” HQ 085886 at p. 2.

ISSUE:

Whether the foamed glass manicure/pedicure articles are classifiable under heading 3304, HTSUS, which provides for: “[b]eauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations”; heading 3307, HTSUS, which provides for “[p]re-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included”; or under heading 7013, HTSUS, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018)?

LAW AND ANALYSIS:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (“GRIs”). GRI 1, HTSUS, provides, in part, that “for legal purposes, classification shall be determined according to terms of the headings 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 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:

3304	Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations:
3304.30.00	Manicure or pedicure preparations
	Other:
	Other:
3304.99.50	Other.
	* * *
3307	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:

3307.90.00	Other.
	* * *
7013	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):
	Glassware of a kind used for table (other than drinking glasses) or kitchen purposes other than that of glass-ceramics: Other glassware:
7013.99	Other:
	Other:
	Other:
7013.99.50	Valued over \$0.30 but not over \$3 each.
	* * *

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). The article at issue is a “pumice-like” stone comprised of foamed glass that is shaped like a heart. The article is intended to be used as a manicure/pedicure implement.

The foamed glass article is *prima facie* classifiable in Chapter 70, HTSUSA, which provides for articles of glass (we note that in *Los Angeles Tile Jobbers, Inc. v. United States*, 63 Cust. Ct. 248, C.D. 3904 (1969), the Court stated that “all articles of glass are generally defined as ‘glassware’.” (63 Cust. Ct. at 250 citing Webster’s Third New International Dictionary (1968); see also Webster’s New World Dictionary, Third College Edition, at 573 (1988), defining “glassware” as “articles made of glass”).

When interpreting and implementing the HTSUS, the Explanatory Notes (“ENs”) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. U.S. Customs and Border Protection (“CBP”) believes the ENs should always be consulted. See, T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

In accordance with the edicts of GRI 1, we consider the headings which *prima facie* describe the article by name or use. Stones comprised of *bona fide* natural pumice are classified under heading 6804, specifically subheading 6804.30.0000, HTSUSA, which provides for millstones, grindstones, grinding wheels and the like . . . hand sharpening or polishing stones, and parts thereof, of natural stone, of agglomerated natural or artificial abrasives. See NY B88174, dated August 18, 1997, NY H85283, dated September 6, 2001, NY A85730, dated July 24, 1996, NY G86299, dated February 6, 2001 and NY I88832, dated December 4, 2002. Both the requester and CBP acknowledged when the subject rulings were issued that the articles were neither natural pumice nor agglomerated stone. In this re-

gard, the ENs to Chapter 68 provide that “glass and glassware, including articles of glass-ceramics, fused quartz or other fused silica, are classified in Chapter 70.” Therefore, we conclude that the articles cannot be classified under heading 6804, HTSUS.

We next consider whether the articles should remain classified within Chapter 33 as manicure and pedicure preparations under heading 3304, HTSUS, or whether the articles are classifiable under heading 3307, HTSUS, as described above. Note 3 to Chapter 33 provides that:

Headings 3303 to 3307 apply, *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use.

Note 4 to Chapter 33 provides that:

The expression “perfumery, cosmetic or toilet preparations” in heading 3307 applies, *inter alia*, to the following products: scented sachets; odoriferous preparations which operate by burning; perfumed papers and papers impregnated or coated with cosmetics; contact lens or artificial eye solutions; wadding, felt and nonwovens, impregnated, coated or covered with perfume or cosmetics; animal toilet preparations.

The General ENs to Chapter 33 provide, in pertinent part, that:

Headings 33.03 to 33.07 include products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use (see Note 3 to this Chapter).

The products of headings 33.03 to 33.07 remain in these headings whether or not they contain subsidiary pharmaceutical or disinfectant constituents, or are held out as having subsidiary therapeutic or prophylactic value (see Note 1 (d) to Chapter 30)[for informational reference, Note 1(d) to Chapter 30 provides that Chapter 30 does not cover “[p]reparations of headings 3303 to 3307, even if they have therapeutic or prophylactic properties.”]. However, prepared room deodorisers remain classified in heading 33.07 even if they have disinfectant properties of more than a subsidiary nature.

Preparations (*e.g.*, varnish) and unmixed products (*e.g.*, unperfumed powdered talc, fuller’s earth, acetone, alum) which are suitable for other uses in addition to those described above are classified in these headings only when they are:

(a) In packings of a kind sold to the consumer and put up with labels, literature or other indications that they are for use as perfumery, cosmetic or toilet preparations, or as room deodorisers; or

(b) Put up in a form clearly specialised to such use (e.g., nail varnish put up in small bottles furnished with the brush required for applying the varnish)[bold emphasis in original].

* * *

Heading 3304, HTSUS, contains a provision for manicure and pedicure preparations. The ENs to heading 3304 provide the following guidance in regard to the preparations classifiable thereunder:

(B) MANICURE OR PEDICURE PREPARATIONS

This part covers nail polishes, nail varnishes, nail varnish removers, cuticle removers and other preparations for use in manicure or pedicure.

The heading does not cover:

- (a) Medicinal preparations used to treat certain skin complaints, e.g., creams for the treatment of eczema (heading 30.03 or 30.04).**
- (b) Foot deodorants and preparations for treating nails or claws on animals (heading 33.07).**

The ENs to heading 3307 provide, in pertinent part, that:

(I) Pre-shave, shaving or after-shave preparations, such as shaving creams and foams containing soaps or other organic surface-active agents (see Note 1 (c) to Chapter 34); “after-shave” lotions, alum blocks and styptic pencils.

(II) Personal (body) deodorants and antiperspirants.

(III) Bath preparations, such as perfumed bath salts and preparations for foam baths, whether or not containing soap or other organic surface-active agents (see Note 1 (c) to Chapter 34).

(IV) Preparations for perfuming or deodorising rooms, including odoriferous preparations used during religious rites.

* * *

(V) Other products, such as:

- (1) Depilatories [hair removal products].**
- (2) Scented sachets containing parts of aromatic plants used for perfuming linen cupboards.**
- (3) Perfumed papers and papers impregnated or coated with cosmetics.**
- (4) Contact lens or artificial eye solutions . . .**
- (5) Wadding, felt and nonwovens impregnated, coated or covered with perfume or cosmetics.**
- (6) Animal toilet preparations, such as dog shampoos, and plumage-improving washes for birds [bold emphasis in original].**

At GRI 1, the article composed of foamed cellular glass, its stated purpose being a manicure/pedicure implement, is not, *prima facie*, classifiable under either heading 3304 or 3307, HTSUS. None of the

substances contemplated in the respective headings or ENs are comprised of glass in any form, but rather are composed of creams, oils, lotions, vinegars, powders, paper, scented plant matter and the like. The article at issue is solid and composed of glass. It is neither perfumed nor agglomerated. (We are cognizant that the article is packaged in a scented, plastic container that causes the scent to permeate the foamed glass. However, we do not consider the article itself to be scented or perfumed for tariff purposes, especially when contrasted with the exemplars in the heading and ENs.) Given these characteristics, we conclude that the foamed glass “stone” or implement cannot be construed to be a “preparation.”

In HQ 960964, date August 17, 1998, in classifying a callus remover under heading 8214, HTSUS, we made the following conclusions concerning the classification of cosmetics:

EN 33.04(B) covering manicure or pedicure preparations states that “[t]his part covers nail polishes, nail varnishes, nail varnish removers, cuticle removers and other preparations for use in manicure or pedicure.” The term “preparation” is not defined in the HTSUS or the ENs. However, Webster’s New World Dictionary (3d edition) defines a “preparation” as “something prepared for a special purpose, as a medicine, cosmetic, condiment, etc.” Manufactured implements and tools are notably absent from this list. Also, the ENs list no type of manufactured implement or tool as being encompassed by heading 3304, HTSUS. Rather, they describe polishes, varnishes and removers which are akin to salves, lotions or creams.

The callus remover at issue here is a manufactured good consisting of a one-piece plastic handle and head frame with two surfaces, one abrasive and one with an attached metal grater. As such, this merchandise is clearly not among the universe of “preparations” classified in heading 3304, HTSUS. HQ 960964 at p. 3.

The foamed glass article is a solid article of manufacture as opposed to a formulation or preparation. A single constituent material was worked to create a distinct article. Thus, while the glass article at issue may be used for manicure or pedicure purposes, we find that the glass article does not constitute a cosmetic preparation (as it is comprised of a single, solid ingredient) and therefore cannot fall to be classified under either heading 3304 or 3307, HTSUS. The article at issue is akin to the callous remover classified in HQ 960964, set forth above, as it is an implement that yields a cosmetic effect, rather than constituting a cosmetic preparation in and of itself.

The article in question, upon importation, is an implement for removing, smoothing or abrading rough or dead skin from the hands or feet. The article, by composition, is *prima facie* classifiable as a glass article under heading 7013, HTSUS.

Heading 7013, HTSUS, provides for “glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018).” The CIT has stated that the canon of construction *ejusdem generis*, which means literally, “of the same class or kind,” teaches that “where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” *Nissho-Iwai American Corp. v. United States* (“*Nissho*”), 10 CIT 154, 156 (1986). The CIT further stated in *Nissho* that “[a]s applicable to customs classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Nissho*, p. 157. Reasonable paraphrasing of the goods enumerated in the superior heading 7013 (of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes) is to describe those articles as household or toilet articles. “The general word or phrase is held to refer to things of the same kind as those specified.” *Sports Graphics, Inc. v. United States*, 24 Fed. 3d 1390, 1392 (Fed. Cir. 1994).

We find that the foamed glass article is a household or toilet article of glass, classified under heading 7013, HTSUS.

HOLDING:

The foamed glass manicure/pedicure articles are classified under subheading 7013.99.5000, HTSUSA, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): other glassware: other: other: other: valued over \$0.30 but not over \$3 each. The 2005 general, column 1 duty rate is 30% *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:

HQ 085866 and NY 834656 are revoked.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

cc: National Commodity Specialist Division
 NIS Bunin
 NIS Joseph

[ATTACHMENT M]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966867
CLA-2 RR:CR:GC 966867 AML
CATEGORY: Classification
TARIFF NO.: 3924.90.5500; 7013.99.5000

MR. EDWARD J. MURRAY
ALLIED OF CHICAGO, INC.
190 Carpenter Avenue
Wheeling, IL 60090

RE: Skin abrasive articles; HQ 086282 and NY 831549 revoked

DEAR MR. MURRAY:

This is in regard to Headquarters Ruling Letter ("HQ") 086282, dated May 7, 1990, and New York Ruling Letter ("NY") 831549, dated September 20, 1988, issued to you concerning the tariff classification of pumice-like manicure/pedicure articles composed of glass or plastic under the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"). HQ 086282, which classified the articles under heading 3304, HTSUS, was issued in response to your request for reconsideration of NY 831549. We have reconsidered the classification decisions made in HQ 086282 and NY 831549 and determined that they are incorrect. This ruling sets forth the proper classification of the glass or plastic manicure/pedicure articles.

FACTS:

We described the articles in HQ 086282 as follows:

The submitted samples include items L167, L168, L169, 1000R, and 1036R. These products are used to erode or rub away dead skin cells on the hands and feet.

Items L167 (fish shaped), L168 (foot shaped), and L169 (heart shaped) consist of glass. Items 1000R and 1036R (both rectangular blocks) consist of plastic (polyurethane resin). Although these products are called "pumice," they do not contain pumice or any other stone.

HQ 086282 continues:

The Explanatory Note to Heading 3304 makes no mention of skin care abrasives such as the items in issue. Nonetheless, correlative language does appear in the Explanatory Notes which accompany Heading 6804. The Explanatory Note to Heading 6804 indicates that that heading (which provides for hand-held sharpening or polishing stones) does not include "[p]erfumed pumice stones put up in blocks, tablets or similar prepared forms of heading 33.04."

In affirming NY 831549, we concluded that:

While the subject articles are neither perfumed nor made from pumice, they perform the same function as the perfumed pumice blocks deemed classifiable in Heading 3304. Accordingly,

skin abrasive articles of glass or plastic are classifiable in sub-heading 3304.99.00, HTSUSA. HQ 086282 at p. 2.

ISSUE:

Whether the glass or plastic “pumice” articles for manicure/ pedicure purposes are classifiable under heading 3304, HTSUS, which provides for: “[b]eauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations”; under heading 3307, HTSUS, which provides for “pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included”; heading 3924, HTSUS, which provides for, among other things, other household articles and toilet articles, of plastics; heading 6804, HTSUS, which provides for, among other things, natural or agglomerated grindstones and polishing stones; or under subheading 7013, HTSUS, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018)?

LAW AND ANALYSIS:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (“GRIs”). GRI 1, HTSUS, provides, in part, that “for legal purposes, classification shall be determined according to terms of the headings 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 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:

- 3304 Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations:
- 3304.30.00 Manicure or pedicure preparations
- Other:
- Other:
- 3304.99.50 Other.
- * * *
- 3307 Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:

3307.90.00	Other.
	* * *
3924	Tableware, kitchenware, other household articles and toilet articles, of plastics: toilet articles, of plastics:
3924.90	Other:
3924.90.55	Other.
	* * *
6804	Millstones, grindstones, grinding wheels and the like, without frameworks, for grinding, sharpening, polishing, trueing or cutting, hand sharpening or polishing stones, and parts thereof, of natural stone, of agglomerated natural or artificial abrasives, or of ceramics, with or without parts of other materials:
	Other millstones, grindstones, grinding wheels and the like:
	Other:
6804.30.00	Hand sharpening or polishing stones.
	* * *
7013	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):
	Glassware of a kind used for table (other than drinking glasses) or kitchen purposes other than that of glass-ceramics: Other glassware:
7013.99	Other:
	Other:
	Other:
7013.99.50	Valued over \$0.30 but not over \$3 each.
	* * *

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). The manicure/pedicure articles composed of glass or plastic in various shapes and colors are “pumice-like” and are intended to be used as implements to remove rough or dead skin from the hands or feet.

The glass articles are *prima facie* classifiable in Chapter 70, HTSUSA, which provides for articles of glass (we note that in *Los Angeles Tile Jobbers, Inc. v. United States*, 63 Cust. Ct. 248, C.D. 3904 (1969), the Court stated that “all articles of glass are generally de-

defined as ‘glassware’.” (63 Cust. Ct. at 250 citing Webster’s Third New International Dictionary (1968); see also Webster’s New World Dictionary, Third College Edition, at 573 (1988), defining “glassware” as “articles made of glass”).

Similarly, the articles of plastic are *prima facie* classifiable in Chapter 39, HTSUS, which provides for articles of plastics.

When interpreting and implementing the HTSUS, the Explanatory Notes (“ENs”) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. U.S. Customs and Border Protection (“CBP”) believes the ENs should always be consulted. See, T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

In accordance with the edicts of GRI 1, we consider the headings which *prima facie* describe the article by name or use. Stones comprised of *bona fide* natural pumice are classified under heading 6804, specifically subheading 6804.30.0000, HTSUSA, which provides for millstones, grindstones, grinding wheels and the like . . . hand sharpening or polishing stones, and parts thereof, of natural stone, of agglomerated natural or artificial abrasives, or of ceramics with or without parts of other materials: hand sharpening or polishing stones. See NY B88174, dated August 18, 1997, NY H85283, dated September 6, 2001, NY A85730, dated July 24, 1996, NY G86299, dated February 6, 2001 and NY I88832, dated December 4, 2002. Both the requester and CBP acknowledged when the subject rulings were issued that the articles are neither natural pumice nor agglomerated stone. Additionally, the ENs to Chapter 68 provide that “glass and glassware, including articles of glass-ceramics, fused quartz or other fused silica, are classified in Chapter 70.” Therefore, we conclude that the articles cannot be classified under heading 6804, HTSUS.

We next consider whether the articles should remain classified within Chapter 33 as manicure and pedicure preparations under heading 3304, HTSUS, or whether the articles are classifiable under heading 3307, HTSUS as described above. Note 3 to Chapter 33 provides that:

Headings 3303 to 3307 apply, *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use.

Note 4 to Chapter 33 provides that:

The expression “perfumery, cosmetic or toilet preparations” in heading 3307 applies, *inter alia*, to the following products: scented sachets; odoriferous preparations which operate by burning; perfumed papers and papers impregnated or coated with cosmetics; contact lens or artificial eye solutions; wadding, felt and nonwovens, impregnated, coated or covered with perfume or cosmetics; animal toilet preparations.

The General ENs to Chapter 33 provide, in pertinent part, that:

Headings 33.03 to 33.07 include products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use (see Note 3 to this Chapter).

The products of headings 33.03 to 33.07 remain in these headings whether or not they contain subsidiary pharmaceutical or disinfectant constituents, or are held out as having subsidiary therapeutic or prophylactic value (see Note 1 (d) to Chapter 30)[for informational reference, Note 1(d) to Chapter 30 provides that Chapter 30 does not cover “[p]reparations of headings 3303 to 3307, even if they have therapeutic or prophylactic properties.”]. However, prepared room deodorisers remain classified in heading 33.07 even if they have disinfectant properties of more than a subsidiary nature.

Preparations (*e.g.*, varnish) and unmixed products (*e.g.*, unperfumed powdered talc, fuller’s earth, acetone, alum) which are suitable for other uses in addition to those described above are classified in these headings only when they are:

(a) In packings of a kind sold to the consumer and put up with labels, literature or other indications that they are for use as perfumery, cosmetic or toilet preparations, or as room deodorisers; or

(b) Put up in a form clearly specialised to such use (*e.g.*, nail varnish put up in small bottles furnished with the brush required for applying the varnish)[bold emphasis in original].

* * *

Heading 3304, HTSUS, contains a provision for manicure and pedicure preparations. The ENs to heading 3304 provide the following guidance in regard to the preparations classifiable thereunder:

(B) MANICURE OR PEDICURE PREPARATIONS

This part covers nail polishes, nail varnishes, nail varnish removers, cuticle removers and other preparations for use in manicure or pedicure.

The heading does not cover:

(a) Medicinal preparations used to treat certain skin complaints, *e.g.*, creams for the treatment of eczema (heading 30.03 or 30.04).

(b) Foot deodorants and preparations for treating nails or claws on animals (heading 33.07).

The ENs to heading 3307 provide, in pertinent part, that:

(I) Pre-shave, shaving or after-shave preparations, such as shaving creams and foams containing soaps or other organic surface-active agents (see Note 1 (c) to Chapter 34); “after-shave” lotions, alum blocks and styptic pencils.

(II) Personal (**body**) deodorants and antiperspirants.

(III) **Bath preparations, such as** perfumed bath salts and preparations for **foam baths, whether or not containing soap or other organic surface-active agents** (see Note 1 (c) to Chapter 34).

(IV) **Preparations for perfuming or deodorising rooms, including odoriferous preparations used during religious rites.**

* * *

(V) Other products, **such as:**

- (1) Depilatories [**hair removal products**].
- (2) Scented sachets containing parts of aromatic plants **used for perfuming linen cupboards**.
- (3) Perfumed papers and papers impregnated or coated with cosmetics.
- (4) Contact lens or artificial eye solutions . . .
- (5) Wadding, felt and nonwovens **impregnated, coated or covered with perfume or cosmetics**.
- (6) Animal toilet preparations, **such as dog shampoos, and plumage-improving washes for birds** [**bold emphasis in original**].

At GRI 1, the articles composed of glass or plastics, their stated purpose being manicure/pedicure implements, are not, *prima facie*, classifiable under either heading 3304 or 3307, HTSUS. None of the substances contemplated in the respective headings or ENs are comprised of glass or plastics in any form, but rather are composed of creams, oils, lotions, vinegars, powders, paper, scented plant matter and the like. The articles at issue are solid and composed of glass or plastics. They are neither perfumed nor agglomerated. We conclude that the glass or plastic “pumice” cannot be construed to be a “preparation.”

In HQ 960964, date August 17, 1998, in classifying a callus remover under heading 8214, HTSUS, we made the following conclusions concerning the classification of cosmetics:

EN 33.04(B) covering manicure or pedicure preparations states that “(t)his part covers nail polishes, nail varnishes, nail varnish removers, cuticle removers and other preparations for use in manicure or pedicure.” The term “preparation” is not defined in the HTSUS or the ENs. However, Webster’s New World Dictionary (3d edition) defines a “preparation” as “something prepared for a special purpose, as a medicine, cosmetic, condiment, etc.” Manufactured implements and tools are notably absent from this list. Also, the ENs list no type of manufactured implement or tool as being encompassed by heading 3304, HTSUS. Rather, they describe polishes, varnishes and removers which are akin to salves, lotions or creams.

The callus remover at issue here is a manufactured good consisting of a one-piece plastic handle and head frame with two surfaces, one abrasive and one with an attached metal grater. As such, this merchandise is clearly not among the universe of

“preparations” classified in heading 3304, HTSUS. HQ 960964 at p. 3.

Neither the CIT nor the CAFC have rendered a decision interpreting the term “preparations” vis-à-vis heading 3304 or 3307, HTSUS. Cf. *Mita Copystar v. United States*, 17 CIT 374 (CIT 1993), which concerned the definition of the term “chemical preparations”; *United States v. P. John Hanrahan, Inc.*, 45 C.C.P.A. 120, C.A.D. 684, 1958, in which the court analyzed the definition of the term “preparation” as fit for human consumption; *Nestle Refrigerated Food Co. v. United States*, 18 CIT 661 (CIT 1994), in which the court, in determining the tariff classification a tomato product, recited the rules (*i.e.*, consulted lexicographic sources, etc.) concerning the definition of the term “preparation.”

While the term “preparation” has been broadly interpreted as it appears in other chapters of the tariff schedule, we conclude that further analysis of the term for purposes of chapter 33 is required. See *Avenues in Leather, Inc. v. United States*, 317 F.3d 1399, CAFC 2003, in which the Court of Appeals for the Federal Circuit acknowledged, citing *United States v. Stone & Downer Co.*, 274 U.S. 225, 71 L. Ed. 1013, 47 S. Ct. 616, Treas. Dec. 42211 (1927), that “the doctrine of issue preclusion does not hold sway over classification disputes under U.S. Customs law.”

In the absence of a contrary legislative intent, tariff terms that are not defined in an HTSUS section or chapter note, or clearly described in an EN, are construed in accordance with their 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). Dictionaries, scientific authorities and other reliable lexicographic sources are often consulted; and, where the term under consideration is technical in nature, appropriate technical sources of information should be consulted. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982).

The following electronic sources provide the following definitions of the term “preparations”:

Webster’s English Dictionary (www.math.chalmers.se) provides the following definition:

1: the action or process of making something ready for use or service or of getting ready for some occasion, test, or duty 2: a state of being prepared:
READINESS 3: a preparatory act or measure 4: something that is prepared; specif : a medicinal substance fitted for use.

“Hyperdic.net” provides the following definition and examples:

Meaning: A substance prepared according to a formula.
Broader: compound
chemical compound
Synonyms: formulation

“Hyperdictionary.com” provides a similar definition, *i.e.*, a substance prepared according to a formula, as well as the following elaboration:

4. That which is prepared, made, or compounded by a certain process or for a particular purpose; a combination.

Specifically:

- (a) Any medicinal substance fitted for use.
- (b) Anything treated for preservation or examination as a specimen.
- (c) Something prepared for use in cookery.

See similarly, “define.ansme.com”.

At Dorland’s Medical Dictionary online (see “mercksource.com”), the following definitions and examples are provided:

preparation 1. the act or process of making ready. 2. a medicine made ready for use. 3. an anatomic or pathologic specimen made ready and preserved for study.

At “thefreedictionary.com” the following definitions are provided:

preparation - a substance prepared according to a formula
cleanser, cleanser, cleansing agent - a preparation used in cleaning something
chemical compound, compound - (chemistry) a substance formed by chemical union of two or more elements or ingredients in definite proportion by weight
polish - a preparation used in polishing

See also HQ 965997, dated December 19, 2002.

We find from the above-cited rulings and lexicographic sources that a preparation in Chapter 33 of the tariff connotes a mixture of two or more liquid or colloidal substances compounded together for a specific use. All of the exemplars provided by the ENs to headings 3304 and 3307 comply with this basic definition, given that all of the substances are mixtures or compounds comprised of at least two distinct component or constituent materials.

The glass or plastic articles are products of manufacture as opposed to a formulation or preparation. A single constituent material was worked to create a distinct article. Thus, while the glass or plastic articles at issue may be used for manicure or pedicure purposes, we find that the articles do not constitute a preparation and therefore cannot be classified under either heading 3304 or 3307, HTSUS. The articles at issue are akin to the callous remover classified in HQ 960964, set forth above, as they are implements that yield a cosmetic effect, rather than constituting a cosmetic preparation in and of themselves.

The glass articles in question, upon importation, are implements for removing, smoothing or abrading rough or dead skin from the hands or feet. The articles, by composition, are *prima facie* classifiable as glass articles under heading 7013, HTSUS.

Heading 7013, HTSUS, provides for “glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018).” The CIT has stated that the canon of construction *ejusdem generis*, which means literally, “of the same class or kind,” teaches that “where particular words of description are followed by general terms, the latter will be re-

garded as referring to things of a like class with those particularly described.” *Nissho-Iwai American Corp. v. United States* (“*Nissho*”), 10 CIT 154, 156 (1986). The CIT further stated in *Nissho* that “[a]s applicable to customs classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Nissho*, p. 157. Reasonable paraphrasing of the goods enumerated in the superior heading 7013 (of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes) is to describe those articles as household or toilet articles. “The general word or phrase is held to refer to things of the same kind as those specified.” *Sports Graphics, Inc. v. United States*, 24 Fed. 3d 1390, 1392 (Fed. Cir. 1994).

We find that the glass articles are household or toilet articles of glass, classified under heading 7013, HTSUS.

Similarly, the plastic articles for personal use are *prima facie* classifiable as toilet articles of plastics under heading 3924, HTSUS. The ENs to heading 3924, HTSUS, provide, in relevant part that:

This heading covers the following articles of plastics:

* * *

(C) Other household articles such as ash trays, hot water bottles, matchbox holders, dustbins, buckets, watering cans, luncheon boxes, curtains, drapes, table covers and fitted furniture dust-covers (slipovers).

(D) Toilet articles (whether for domestic or non-domestic use) such as toilet sets (ewers, bowls, etc.), sanitary pails, bed pans, urinals, chamber-pots, spittoons, douche cans, eye baths; soap dishes, towel rails, tooth-brush holders, toilet paper holders, towel hooks and similar articles for bathrooms, toilets or kitchens, not intended for permanent installation in or on walls.

The plastic articles for personal use are classified under heading 3924, HTSUS.

HOLDING:

The glass manicure/pedicure articles (items L167 (fish shaped), L168 (foot shaped), and L169 (heart shaped)) are classified under subheading 7013.99.5000, HTSUSA, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): other glassware: other: other: other: valued over \$0.30 but not over \$3 each. The 2005 general, column 1 duty rate is 30% *ad valorem*.

The plastic articles (items 1000R and 1036R) are classified under subheading 3924.90.5500, HTSUSA, which provides for tableware, kitchenware, other household articles and toilet articles, of plastics: toilet articles, of plastics: other: other. The 2005 general, column 1 duty rate is 3.4% *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:

HQ 086282 and NY 831549 are revoked.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

cc: National Commodity Specialist Division
NIS Bunin
NIS Joseph

[ATTACHMENT N]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966876
CLA-2 RR:CR:GC 966876 AML
CATEGORY: Classification

TARIFF NO.: 3924.90.5500; 6804.30.0000; 7013.99.5000

MS. HELEN NEWELL
POLARDREAMS INTERNATIONAL LTD.
602 W. Burlington
Fairfield, IA 52556

RE: Skin abrasive articles; NYs D84445, D84446, D84447, F85435, D80071,
and H80586 modified

DEAR MS. NEWELL:

This is in regard to New York Ruling Letters (“NYs”) D84445, D84446, D84447, dated November 25, 1998; NY F85435, dated April 17, 2000; NY D80071, dated August 5, 1998 and NY H80586, dated May 22, 2001, issued to you concerning the tariff classification of various bath and body gift sets containing, among other things, either natural pumice stones or pumice-like manicure/pedicure articles composed of synthetic or agglomerated “pumice” under the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”). We have reconsidered the classification decisions made in the aforementioned rulings and have determined that they are incorrect as they pertain to the articles composed of natural or synthetic pumice. This ruling sets forth the proper classification of the manicure/pedicure articles.

FACTS:

We described the relevant articles in NY D84445, D84446 and D84447 as “synthetic pumice stone” and classified those articles under subheading 3304.99.50, HTSUS, which provides for beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: other.

We described the pertinent article in NY F85435 as a synthetic round pumice body smoother and classified that article under subheading 3304.99.50, HTSUS.

We described the relevant article in NY D80071 as a “foot pumice stone” and classified it under subheading 3304.99.50, HTSUS [from this description we infer that the article is comprised of natural

pumice]. We described the pertinent article in NY H80586 as a synthetic foot pumice stone and classified it under subheading 3304.99.50, HTSUS.

ISSUE:

Whether the natural, glass or plastic “pumice” articles for manicure/pedicure purposes are classifiable under heading 3304, HTSUS, which provides for: “[b]eauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations”; under heading 3307, HTSUS, which provides for “pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included”; heading 3924, HTSUS, which provides for, among other things, other household articles and toilet articles, of plastics; heading 6804, HTSUS, which provides for, among other things, natural or agglomerated grindstones and polishing stones; or under subheading 7013, HTSUS, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018)?

LAW AND ANALYSIS:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (“GRIs”). GRI 1, HTSUS, provides, in part, that “for legal purposes, classification shall be determined according to terms of the headings 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 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:

3304	Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations:
3304.30.00	Manicure or pedicure preparations
	Other:
	Other:
3304.99.50	Other.
	* * *
3307	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:

3307.90.00	Other. * * *
3924	Tableware, kitchenware, other household articles and toilet articles, of plastics: toilet articles, of plastics:
3924.90	Other:
3924.90.55	Other. * * *
6804	Millstones, grindstones, grinding wheels and the like, without frameworks, for grinding, sharpening, polishing, trueing or cutting, hand sharpening or polishing stones, and parts thereof, of natural stone, of agglomerated natural or artificial abrasives, or of ceramics, with or without parts of other materials: Other millstones, grindstones, grinding wheels and the like: Other:
6804.30.00	Hand sharpening or polishing stones. * * *
7013	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): Glassware of a kind used for table (other than drinking glasses) or kitchen purposes other than that of glass-ceramics: Other glassware:
7013.99	Other: Other: Other:
7013.99.50	Valued over \$0.30 but not over \$3 each. * * *

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). The articles at issue are either natural pumice stone or “pumice-like” articles comprised of glass or plastic in various shapes and colors. The articles are intended to be used as manicure/pedicure implements. The glass articles are *prima facie* classifiable in Chapter 70, HTSUS, which provides for articles of glass (we note that in *Los Angeles Tile Jobbers, Inc. v. United States*, 63 Cust. Ct. 248, C.D. 3904 (1969), the Court stated that “all articles of glass are generally de-

defined as ‘glassware’.” (63 Cust. Ct. at 250 citing Webster’s Third New International Dictionary (1968); see also Webster’s New World Dictionary, Third College Edition, at 573 (1988), defining “glassware” as “articles made of glass”).

Similarly, the articles of plastic are *prima facie* classifiable in Chapter 39, HTSUS, which provides for articles of plastics.

Likewise, the articles comprised of natural pumice are *prima facie* classifiable under heading 6804, HTSUS.

When interpreting and implementing the HTSUS, the Explanatory Notes (“ENs”) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. U.S. Customs and Border Protection (“CBP”) believes the ENs should always be consulted. See, T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

In accordance with the edicts of GRI 1, we consider the headings which *prima facie* describe the article by name or use. Stones comprised of actual, *bona fide*, natural pumice are classified under heading 6804, specifically subheading 6804.30.0000, HTSUSA, which provides for millstones, grindstones, grinding wheels and the like . . . hand sharpening or polishing stones, and parts thereof, of natural stone, of agglomerated natural or artificial abrasives, or of ceramics with or without parts of other materials: hand sharpening or polishing stones. See NY B88174, dated August 18, 1997, NY H85283, dated September 6, 2001, NY A85730, dated July 24, 1996, NY G86299, dated February 6, 2001 and NY I88832, dated December 4, 2002. See also the ENs to heading 6804: certain stones (*e.g.*, pumice) are also used for toilet, manicure and pedicure purposes; the ENs provide further that perfumed pumice stone put up in blocks, tablets or similar prepared forms are classified in heading 3304, HTSUS. Both the requester and CBP acknowledged when the subject rulings were issued that, with the exception of the foot pumice stone in NY D80071, the articles are neither natural pumice nor agglomerated stone. Additionally, the ENs to Chapter 68 provide that “glass and glassware, including articles of glass-ceramics, fused quartz or other fused silica, are classified in Chapter 70.” Therefore, we conclude that only the foot pumice stone in NY D80071 is *prima facie* classifiable under heading 6804, HTSUS. Given the description of the foot pumice stone in NY D80071, we conclude that it is comprised of actual, *bona fide*, natural pumice, classified under heading 6804, HTSUS. The remaining articles cannot be so classified.

The composition of the synthetic pumice body smoother in F85435, issued in April 2000 is unknown. The file for that ruling was lost on September 11, 2001. Given the description of the article as being “synthetic,” we set forth the possible classification below, excluding heading 6804, HTSUS, as discussed above.

We next consider whether the articles should remain classified within Chapter 33 as manicure and pedicure preparations under heading 3304, HTSUS, or whether the articles are classifiable under heading 3307, HTSUS. Note 3 to Chapter 33 provides that:

Headings 3303 to 3307 apply, *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use. Note 4 to Chapter 33 provides that:

The expression “perfumery, cosmetic or toilet preparations” in heading 3307 applies, *inter alia*, to the following products: scented sachets; odoriferous preparations which operate by burning; perfumed papers and papers impregnated or coated with cosmetics; contact lens or artificial eye solutions; wadding, felt and nonwovens, impregnated, coated or covered with perfume or cosmetics; animal toilet preparations.

The General ENs to Chapter 33 provide, in pertinent part, that:

Headings 33.03 to 33.07 include products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use (see Note 3 to this Chapter).

The products of headings 33.03 to 33.07 remain in these headings whether or not they contain subsidiary pharmaceutical or disinfectant constituents, or are held out as having subsidiary therapeutic or prophylactic value (see Note 1 (d) to Chapter 30) [for informational reference, Note 1(d) to Chapter 30 provides that Chapter 30 does not cover “[p]reparations of headings 3303 to 3307, even if they have therapeutic or prophylactic properties.”]. However, prepared room deodorisers remain classified in heading 33.07 even if they have disinfectant properties of more than a subsidiary nature.

Preparations (*e.g.*, varnish) and unmixed products (*e.g.*, unperfumed powdered talc, fuller’s earth, acetone, alum) which are suitable for other uses in addition to those described above are classified in these headings only when they are:

(a) In packings of a kind sold to the consumer and put up with labels, literature or other indications that they are for use as perfumery, cosmetic or toilet preparations, or as room deodorisers; or

(b) Put up in a form clearly specialised to such use (*e.g.*, nail varnish put up in small bottles furnished with the brush required for applying the varnish). [Bold emphasis in original.]

* * *

Heading 3304, HTSUS, contains a provision for manicure and pedicure preparations. The ENs to heading 3304 provide the following guidance in regard to the preparations classifiable thereunder:

(B) MANICURE OR PEDICURE PREPARATIONS

This part covers nail polishes, nail varnishes, nail varnish removers, cuticle removers and other preparations for use in manicure or pedicure.

The heading does not cover:

- (a) Medicinal preparations used to treat certain skin complaints, e.g., creams for the treatment of eczema (heading 30.03 or 30.04).
- (b) Foot deodorants and preparations for treating nails or claws on animals (heading 33.07)[bold emphasis in original].

The ENs to heading 3307 provide, in pertinent part, that:

This heading covers:

- (I) Pre-shave, shaving or after-shave preparations, such as shaving creams and foams containing soaps or other organic surface-active agents (see Note 1 (c) to Chapter 34); “after-shave” lotions, alum blocks and styptic pencils.
- (II) Personal (body) deodorants and antiperspirants.
- (III) Bath preparations, such as perfumed bath salts and preparations for foam baths, whether or not containing soap or other organic surface-active agents (see Note 1 (c) to Chapter 34).
- (IV) Preparations for perfuming or deodorising rooms, including odoriferous preparations used during religious rites.

* * *

(V) Other products, such as:

- (1) Depilatories [hair removal products].
- (2) Scented sachets containing parts of aromatic plants used for perfuming linen cupboards.
- (3) Perfumed papers and papers impregnated or coated with cosmetics.
- (4) Contact lens or artificial eye solutions . . .
- (5) Wadding, felt and nonwovens impregnated, coated or covered with perfume or cosmetics.
- (6) Animal toilet preparations, such as dog shampoos, and plumage-improving washes for birds [bold emphasis in original].

At GRI 1, the articles composed of glass or plastics, their stated purpose being manicure/pedicure implements, are not, *prima facie*, classifiable under either heading 3304 or 3307, HTSUS. None of the substances contemplated in the respective headings or ENs are comprised of glass or plastics in any form, but rather are composed of creams, oils, lotions, vinegars, powders, paper, scented plant matter and the like. The articles at issue are solid and composed of glass or plastics. They are neither perfumed nor agglomerated. We conclude that the glass or plastic “pumice” cannot be construed to be a “preparation.”

In HQ 960964, date August 17, 1998, in classifying a callus remover under heading 8214, HTSUS, we made the following conclusions concerning the classification of cosmetics:

EN 33.04(B) covering manicure or pedicure preparations states that “(t)his part covers nail polishes, nail varnishes, nail varnish removers, cuticle removers and other preparations for

use in manicure or pedicure.” The term “preparation” is not defined in the HTSUSA or the ENs. However, Webster’s New World Dictionary (3d edition) defines a “preparation” as “something prepared for a special purpose, as a medicine, cosmetic, condiment, etc.” Manufactured implements and tools are notably absent from this list. Also, the ENs list no type of manufactured implement or tool as being encompassed by heading 3304, HTSUS. Rather, they describe polishes, varnishes and removers which are akin to salves, lotions or creams.

The callus remover at issue here is a manufactured good consisting of a one-piece plastic handle and head frame with two surfaces, one abrasive and one with an attached metal grater. As such, this merchandise is clearly not among the universe of “preparations” classified in heading 3304, HTSUS. HQ 960964 at p. 3.

Neither the CIT nor the CAFC has rendered a decision interpreting the term “preparations” vis-à-vis heading 3304 or 3307, HTSUS. And while the term “preparations” has been broadly interpreted as it appears in other chapters of the tariff schedule, we conclude that further analysis of the term for purposes of chapter 33 is required.

In the absence of a contrary legislative intent, tariff terms that are not defined in an HTSUSA section or chapter note, or clearly described in an EN, are construed in accordance with their 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). Dictionaries, scientific authorities and other reliable lexicographic sources are often consulted; and, where the term under consideration is technical in nature, appropriate technical sources of information should be consulted. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982).

The following electronic sources provide the following definitions of the term “preparations”:

Webster’s English Dictionary (www.math.chalmers.se) provides the following definition:

1: the action or process of making something ready for use or service or of getting ready for some occasion, test, or duty 2: a state of being prepared:

READINESS 3: a preparatory act or measure 4: something that is prepared; specifically: a medicinal substance fitted for use.

“Hyperdic.net” provides the following definition and examples:

Meaning: A substance prepared according to a formula.

Broader: compound

chemical compound

Synonyms: formulation

“Hyperdictionary.com” provides a similar definition, *i.e.*, a substance prepared according to a formula, as well as the following elaboration:

4. That which is prepared, made, or compounded by a certain process or for a particular purpose; a combination.

Specifically:

- (a) Any medicinal substance fitted for use.
- (b) Anything treated for preservation or examination as a specimen.
- (c) Something prepared for use in cookery.

See similarly, “define.ansme.com”.

At Dorland’s Medical Dictionary online (see “mercksource.com”), the following definitions and examples are provided:

preparation 1. the act or process of making ready. 2. a medicine made ready for use. 3. an anatomic or pathologic specimen made ready and preserved for study.

At “thefreedictionary.com” the following definitions are provided:

preparation - a substance prepared according to a formula formulation

cleaner, cleanser, cleansing agent - a preparation used in cleaning something

chemical compound, compound - (chemistry) a substance formed by chemical union of two or more elements or ingredients in definite proportion by weight

polish - a preparation used in polishing

See also HQ 965997, dated December 19, 2002.

We find from the above-cited rulings and lexicographic sources that a preparation in Chapter 33 of the tariff denotes a mixture of two or more liquid or colloidal substances compounded together for a specific use. All of the exemplars provided by the ENs to headings 3304 and 3307 comply with this basic definition, given that all of the substances are mixtures or compounds comprised of at least two distinct component or constituent materials.

The glass or plastic articles are products of manufacture as opposed to a formulation or preparation. A single constituent material was worked to create a distinct article. Thus, while the glass or plastic articles at issue may be used for manicure or pedicure purposes, we find that the articles do not constitute a preparation and therefore cannot be classified under either heading 3304 or 3307, HTSUS. The articles at issue are akin to the callous remover classified in HQ 960964, set forth above, as they are implements that yield a cosmetic effect, rather than constituting a cosmetic preparation in and of themselves.

The glass articles in question, upon importation, are implements for removing, smoothing or abrading rough or dead skin from the hands or feet. The articles, by composition, are *prima facie* classifiable as glass articles under heading 7013, HTSUS.

Heading 7013, HTSUS, provides for “glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018).” The CIT has stated that the canon of construction *ejusdem generis*, which means literally, “of the same class or kind,” teaches that “where particular words of

description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” *Nissho-Iwai American Corp. v. United States* (“*Nissho*”), 10 CIT 154, 156 (1986). The CIT further stated in *Nissho* that “[a]s applicable to customs classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Nissho*, p. 157. Reasonable paraphrasing of the goods enumerated in the superior heading 7013 (of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes) is to describe those articles as household or toilet articles. “The general word or phrase is held to refer to things of the same kind as those specified.” *Sports Graphics, Inc. v. United States*, 24 Fed. 3d 1390, 1392 (Fed. Cir. 1994).

We find that the glass articles are household or toilet articles of glass, classified under heading 7013, HTSUS.

Similarly, the plastic articles for personal use are *prima facie* classifiable as toilet articles of plastics under heading 3924, HTSUS. The ENs to heading 3924, HTSUS, provide, in relevant part that:

This heading covers the following articles of plastics:

* * *

(C) Other household articles such as ash trays, hot water bottles, matchbox holders, dustbins, buckets, watering cans, luncheon boxes, curtains, drapes, table covers and fitted furniture dust-covers (slipovers).

(D) Toilet articles (whether for domestic or non-domestic use) such as toilet sets (ewers, bowls, etc.), sanitary pails, bed pans, urinals, chamber-pots, spittoons, douche cans, eye baths; soap dishes, towel rails, tooth-brush holders, toilet paper holders, towel hooks and similar articles for bathrooms, toilets or kitchens, not intended for permanent installation in or on walls.

The plastic articles for personal use are classified under heading 3924, HTSUS.

The synthetic pumice body smoother in NY F85435 is classified according to the criteria set forth above and holding set forth below: if it is comprised of agglomerated pumice (the possibility of which we are dubious), it is classified under heading 6804, HTSUS; if comprised of glass, it is classified under heading 7013, HTSUS; if comprised of plastic, it is classified under heading 3924, HTSUS.

HOLDING:

The manicure/pedicure article that is comprised of natural pumice; *i.e.*, the foot pumice stone in NY D80071, is classified under sub-heading 6804.30.0000, HTSUSA, which provides for other millstones, grindstones, grinding wheels and the like: other: hand sharpening or polishing stones. The 2005 general, column 1 duty rate is free.

The glass manicure/pedicure articles are classified under sub-heading 7013.99.5000, HTSUSA, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): other glass-

ware: other: other: other: valued over \$0.30 but not over \$3 each. The 2004 general, column 1 duty rate is 30% *ad valorem*.

The plastic articles are classified under subheading 3924.90.5500, HTSUSA, which provides for tableware, kitchenware, other household articles and toilet articles, of plastics: toilet articles, of plastics: other: other. The 2004 general, column 1 duty rate is 3.4% *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:

NYs D84445, D84446, D84447, F85435, D80071, and H80586 are modified as they pertain to natural or synthetic pumice stones.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

cc: National Commodity Specialist Division
NIS Bunin
NIS Joseph

[ATTACHMENT O]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966877
CLA-2 RR:CR:GC 966877 AML
CATEGORY: Classification
TARIFF NO.: 6804.30.0000

MS. KIM YOUNG
BDP INTERNATIONAL INC.
2721 Walker Rd. NW
Grand Rapids, MI 49504

RE: Agglomerated "pumice" sponge and stone; NY A84500 modified

DEAR MS. YOUNG:

This is in regard to New York Ruling Letter ("NY") A84500, dated June 21, 1996, issued to you on behalf Meijer, Inc., concerning the tariff classification of, among other things, a "pumice sponge" (Style # 93189 UPC# 0-41250-05813) and agglomerated "pumice stones" (style # 61-K-01; UPC # 41250-62844) composed of polyurethane foam, calcium stearate and calcium carbonate under the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"). We have reconsidered the classification decision made in NY A84500 and determined that it is incorrect as it pertains to the classification of the agglomerated "pumice sponge" and "pumice stone." This ruling sets forth the proper classification of the agglomerated manicure/pedicure articles.

FACTS:

We described the relevant articles in NY A84500 as follows:

The "Pumice Sponge" Style # 93189 UPC# 0-41250-05813 and the "Pumice Stone" Style #61-K-01 UPC# 0-41250-62844, are

both artificial pumice products composed of polyurethane foam, calcium stearate and calcium carbonate. Both products are used for the removal of rough skin.

We concluded that, although the articles were composed entirely of agglomerated artificial stone, they were classified under heading 3304, specifically subheading 3304.99.5000, HTSUSA, which provides for beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: other.

ISSUE:

Whether the agglomerated artificial “pumice sponge” and “pumice stone” for manicure/pedicure purposes are classifiable under heading 3304, HTSUS, which provides for beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations; or under heading 6804, HTSUS, which provides for, among other things, natural or agglomerated grindstones and polishing stones?

LAW AND ANALYSIS:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (“GRIs”). GRI 1, HTSUS, provides, in part, that “for legal purposes, classification shall be determined according to terms of the headings 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 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:

- 3304 Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations:
- 3304.30.00 Manicure or pedicure preparations
- Other:
- Other:
- 3304.99.50 Other.
- * * *
- 6804 Millstones, grindstones, grinding wheels and the like, without frameworks, for grinding, sharpening, polishing, trueing or cutting, hand sharpening or polishing stones, and parts thereof, of natural stone, of agglomerated natural or artificial abrasives, or of ceramics, with or without parts of other materials:

**Other millstones, grindstones, grinding wheels
and the like:**

Other:

6804.30.00 **Hand sharpening or polishing stones.**

* * *

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). The articles at issue are a “pumice-like” stone and “pumice-like” sponge comprised of polyurethane foam, calcium stearate and calcium carbonate. The articles are intended to be used as manicure/pedicure implements.

When interpreting and implementing the HTSUS, the Explanatory Notes (“ENs”) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. U.S. Customs and Border Protection (“CBP”) believes the ENs should always be consulted. See, T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

In accordance with the edicts of GRI 1, we consider the headings which *prima facie* describe the article by name or use. We initially consider whether the articles should remain classified within Chapter 33 as manicure and pedicure preparations under heading 3304, HTSUS. Note 3 to Chapter 33 provides that:

Headings 3303 to 3307 apply, *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use.

The General ENs to Chapter 33 provide, in pertinent part, that:

Headings 33.03 to 33.07 include products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use (see Note 3 to this Chapter).

The products of headings 33.03 to 33.07 remain in these headings whether or not they contain subsidiary pharmaceutical or disinfectant constituents, or are held out as having subsidiary therapeutic or prophylactic value (see Note 1 (d) to Chapter 30)[we note, for informational reference, that Note 1(d) to Chapter 30 provides that Chapter 30 does not cover “[p]reparations of headings 3303 to 3307, even if they have therapeutic or prophylactic properties.”]. However, prepared room deodorisers remain classified in heading 33.07 even if they have disinfectant properties of more than a subsidiary nature.

Preparations (*e.g.*, varnish) and unmixed products (*e.g.*, unperfumed powdered talc, fuller’s earth, acetone, alum) which are

suitable for other uses in addition to those described above are classified in these headings only when they are:

(a) In packings of a kind sold to the consumer and put up with labels, literature or other indications that they are for use as perfumery, cosmetic or toilet preparations, or as room deodorisers; or

(b) Put up in a form clearly specialised to such use (e.g., nail varnish put up in small bottles furnished with the brush required for applying the varnish)[bold emphasis in original].

* * *

Heading 3304, HTSUS, contains a provision for manicure and pedicure preparations. The ENs to heading 3304 provide the following guidance in regard to the preparations classifiable thereunder:

(B) MANICURE OR PEDICURE PREPARATIONS

This part covers nail polishes, nail varnishes, nail varnish removers, cuticle removers and other preparations for use in manicure or pedicure.

The heading does not cover:

(a) Medicinal preparations used to treat certain skin complaints, e.g., creams for the treatment of eczema (heading 3003 or 3004).

(b) Foot deodorants and preparations for treating nails or claws on animals (heading 3307).

At GRI 1, the articles composed of agglomerated, artificial stone, their stated purpose being manicure/pedicure implements, are not *prima facie* classifiable under heading 3304, HTSUS. None of the substances contemplated in the superior heading or ENs are comprised of agglomerated artificial stone in any form, but rather are composed of creams, oils, lotions, vinegars, powders, paper, scented plant matter and the like. The articles at issue are solid and composed of plastic binder and stone. However, they are not perfumed (see the EN to heading 6804 which indicates that that heading (which provides for hand-held sharpening or polishing stones) does not include “[p]erfumed pumice stones put up in blocks, tablets or similar prepared forms of heading 3304”). Given these characteristics, we conclude that neither the “stone” nor “sponge” can be construed to be a “preparation.”

In HQ 960964, date August 17, 1998, in classifying a callus remover under heading 8214, HTSUS, we made the following conclusions concerning the classification of cosmetics:

EN 33.04(B) covering manicure or pedicure preparations states that “(t)his part covers nail polishes, nail varnishes, nail varnish removers, cuticle removers and other preparations for use in manicure or pedicure.” The term “preparation” is not defined in the HTSUSA or the ENs. However, Webster’s New World Dictionary (3d edition) defines a “preparation” as “something prepared for a special purpose, as a medicine, cosmetic, condiment, etc.” Manufactured implements and tools are notably ab-

sent from this list. Also, the ENs list no type of manufactured implement or tool as being encompassed by heading 3304, HTSUSA. Rather, they describe polishes, varnishes and removers which are akin to salves, lotions or creams.

The callus remover at issue here is a manufactured good consisting of a one-piece plastic handle and head frame with two surfaces, one abrasive and one with an attached metal grater. As such, this merchandise is clearly not among the universe of “preparations” classified in heading 3304, HTSUS.

Neither the CIT nor the CAFC have rendered a decision interpreting the term “preparations” vis-à-vis heading 3304 or 3307, HTSUS. Cf. *Mita Copystar v. United States*, 17 CIT 374 (CIT 1993), which concerned the definition of the term “chemical preparations”; *United States v. P. John Hanrahan, Inc.*, 45 C.C.P.A. 120, C.A.D. 684, 1958, in which the court analyzed the definition of the term “preparation” as fit for human consumption; *Nestle Refrigerated Food Co. v. United States*, 18 CIT 661 (CIT 1994), in which the court, in determining the tariff classification a tomato product, recited the rules (*i.e.*, consulted lexicographic sources, etc.) concerning the connotation of the term “preparation.”

While the term “preparation” has been broadly interpreted as it appears in other chapters of the tariff schedule, we conclude that further analysis of the term for purposes of chapter 33 is required. See *Avenues in Leather, Inc. v. United States*, 317 F.3d 1399, CAFC 2003, in which the Court of Appeals for the Federal Circuit acknowledged, citing *United States v. Stone & Downer Co.*, 274 U.S. 225, 71 L. Ed. 1013, 47 S. Ct. 616, *Treas. Dec. 42211* (1927), that “the doctrine of issue preclusion does not hold sway over classification disputes under U.S. Customs law.”

In the absence of a contrary legislative intent, tariff terms that are not defined in an HTSUSA section or chapter note, or clearly described in an EN, are construed in accordance with their 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). Dictionaries, scientific authorities and other reliable lexicographic sources are often consulted; and, where the term under consideration is technical in nature, appropriate technical sources of information should be consulted. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982).

The following electronic sources provide the following definitions of the term “preparations”:

Webster’s English Dictionary ([.math.chalmers.se](http://math.chalmers.se)) provides the following definition:

1: the action or process of making something ready for use or service or of getting ready for some occasion, test, or duty **2:** a state of being prepared:
READINESS 3: a preparatory act or measure **4:** something that is prepared; **specif :** a medicinal substance fitted for use.

“Hyperdic.net” provides the following definition and examples:

Meaning: A substance prepared according to a formula.

**Broader: compound
chemical compound**

Synonyms: formulation

“Hyperdictionary.com” provides a similar definition, *i.e.*, a substance prepared according to a formula, as well as the following elaboration:

4. That which is prepared, made, or compounded by a certain process or for a particular purpose; a combination.

Specifically:

(a) Any medicinal substance fitted for use.

(b) Anything treated for preservation or examination as a specimen.

(c) Something prepared for use in cookery.

See similarly, “define.ansme.com”.

At Dorland’s Medical Dictionary online (see “mercksource.com”), the following definitions and examples are provided:

preparation 1. the act or process of making ready. 2. a medicine made ready for use. 3. an anatomic or pathologic specimen made ready and preserved for study.

At “thefreedictionary.com” the following definitions are provided:

preparation - a substance prepared according to a formula formulation

cleaner, cleanser, cleansing agent - a preparation used in cleaning something

chemical compound, compound - (chemistry) a substance formed by chemical union of two or more elements or ingredients in definite proportion by weight

polish - a preparation used in polishing

See also HQ 965997, dated December 19, 2002.

We find from the rulings and lexicographic sources that a preparation in Chapter 33 of the tariff connotes a mixture of two or more substances compounded together for a specific use. All of the exemplars provided by the ENs to heading 3304 comply with this basic definition, given that all of the substances are mixtures or compounds comprised of at least two distinct component or constituent materials. The articles at issue are akin to the callous remover classified in HQ 960964, set forth above, as they are implements that yield a cosmetic effect, rather than constituting a cosmetic preparation in and of themselves.

Stones comprised of *bona fide*, natural pumice are classified under heading 6804, specifically subheading 6804.30.0000, HTSUSA, which provides for millstones, grindstones, grinding wheels and the

like . . . hand sharpening or polishing stones, and parts thereof, of natural stone, of agglomerated natural or artificial abrasives, or of ceramics with or without parts of other materials: hand sharpening or polishing stones. See NY B88174, dated August 18, 1997, NY H85283, dated September 6, 2001, NY A85730, dated July 24, 1996, NY G86299, dated February 6, 2001 and NY I88832, dated December 4, 2002. See also the ENs to heading 6804: certain stones (*e.g.*, pumice) are also used for toilet, manicure and pedicure purposes; the ENs provide further that *perfumed* pumice stone put up in blocks, tablets or similar prepared forms are classified in heading 3304, HTSUS. Both the requester and CBP acknowledged when the subject ruling was issued that the articles are not natural pumice but in fact are agglomerated plastic and calcium carbonate, a type of artificial stone. See our discussion of the term agglomerated stone vis-à-vis heading 6810, HTSUS, in HQ 956098, dated May 16, 1994:

Artificial stone is an imitation of natural stone obtained by agglomerating pieces of natural stone or crushed or powdered natural stone (limestone, marble, granite, porphyry, serpentine, etc.) with lime or cement or other binders (*e.g.*, plastics). Articles of artificial stone include those of “terrazzo”, “granito”, etc . . . (emphasis added).

* * *

EN 68.10 specifically states that artificial stone consists of natural stone (*i.e.*, calcium carbonate) agglomerated with binders (*i.e.*, poly-resin). We are of the opinion that the crucial factor which makes a product an article of artificial stone is the uniform blending of the natural stone material with the binding material. Pursuant to EN 68.10, the figurines at issue are articles of artificial stone. They are made from poly-resin and calcium carbonate.

The articles in question, upon importation, are implements for removing, smoothing or abrading rough or dead skin from the hands or feet. The articles, by composition, are agglomerated stone classified under heading 6804, HTSUS.

HOLDING:

The agglomerated manicure/pedicure articles (a “pumice sponge” (Style # 93189 UPC# 0-41250-05813) and agglomerated “pumice stones” (style # 61-K-01; UPC # 41250-62844)) are classified under subheading 6804.30.0000, HTSUS, which provides for millstones, grindstones, grinding wheels and the like . . . hand sharpening or polishing stones, and parts thereof, of natural stone, of agglomerated natural or artificial abrasives, or of ceramics with or without parts of other materials: hand sharpening or polishing stones. The general, column one duty rate is free.

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 A84500 is modified.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

cc: National Commodity Specialist Division
NIS Bunin
NIS Joseph

**PROPOSED REVOCATION OF RULING LETTER AND
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
CERTAIN SOCKS AND OTHER HOSIERY**

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

ACTION: Notice of proposed revocation of a ruling letter and revocation of treatment relating to the tariff classification of certain socks, other hosiery, and/or footwear without applied soles.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) intends to revoke a ruling letter pertaining to the tariff classification of certain socks, other hosiery, and/or footwear without applied soles, and to revoke any treatment previously accorded by CBP to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before September 9, 2005.

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 CBP, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by contacting Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Greg Deutsch, Textiles Branch, at (202) 572-8811.

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, as amended (19 U.S.C. § 1625(c)(1)), this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the tariff classification of certain socks, other hosiery, and/or footwear without applied soles. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) 809412, this notice covers any rulings relating to the specific issues of tariff classification set forth in the ruling, 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 additional 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 issues subject to this notice, should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(2)), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise 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 subsequent to the effective date of the final decision on this notice.

In NY 809412, dated April 28, 1995, items identified as “Disposable Foot Socks” and made of 100 percent nylon knit fabric were classified in subheading 6307.90.9989, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for “Other made up articles, including dress patterns: Other: Other,

Other: Other.” NY 809412 is set forth as Attachment A to this document.

Upon review of NY 809412, we find that the items at issue constitute socks or other hosiery, including footwear without applied soles, merchandise that is specifically covered under heading 6115, HTSUSA. The “Disposable Foot Socks” should be classified in sub-heading 6115.93.9020, HTSUSA, which, in pertinent part, provides for “Panty hose . . . stockings, socks and other hosiery, including . . . footwear without applied soles, knitted or crocheted: Other: Of synthetic fibers: Other: Other, Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP intends to revoke NY 809412 and any other rulings not specifically identified, to reflect the proper classification of the “Disposable Foot Socks” according to the analysis in proposed Headquarters Ruling Letter (HQ) 967810, which is set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment that CBP may have previously accorded to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: July 22, 2005

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 809412
April 28, 1995
CLA-2-63:S:N:N6:345 809412
CATEGORY: Classification
TARIFF NO.: 6307.90.9989

MR. ED SHAPIRO
CSL, INC.
4500 W. 31st Street
Chicago, Illinois 60623-4836

RE: The tariff classification of “Disposable Foot Socks from China.

DEAR MR. SHAPIRO:

In your letter dated April 6, 1995, you requested a tariff classification ruling.

The samples submitted are described as “Disposable Foot Socks” made of 100 percent nylon knit fabric. They are tubular, measuring approximately

15 centimeters long by 4.5 centimeters wide and 10 centimeters long by 8 centimeters wide, with one side sewn close. They can be stretched when put on the foot. They are worn prior to trying on shoes in a shoe store. They are used once and then disposed of. They will be packed in bulk, in boxes of one gross.

The applicable subheading for the "Disposable Foot Socks will be 6307.90.9989, Harmonized Tariff Schedule of the United States (HTS), which provides for other made up articles . . . Other: Other, Other. The rate of duty will be 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 967810
CLA-2 RR:CR:TE 967810 GGD
CATEGORY: Classification
TARIFF NO.: 6115.93.9020

MR. ED SHAPIRO
CSL, INC.
4500 West 31st Street
Chicago, Illinois 60623-4836

RE: Revocation of NY 809412; Disposable Foot Socks; Socks and Other Hosiery Including Footwear Without Applied Soles; Heading 6115; Not Other Made Up Textile Articles.

DEAR MR. SHAPIRO:

In New York Ruling Letter (NY) 809412, issued to you April 28, 1995, goods described as "Disposable Foot Socks" were classified in subheading 6307.90.9989 (now 6307.90.9889), Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provided for "Other made up articles, including dress patterns: Other: Other, Other: Other." We have reviewed NY 809412 and have found it to be in error. Therefore, this ruling revokes NY 809412.

FACTS:

In NY 809412, the two samples at issue were described as tubular "Disposable Foot Socks" made of 100 percent nylon knit fabric, one of which measured approximately 15 centimeters (cm.) long by 4.5 cm. wide, the other approximately 10 cm. long by 8 cm. wide, and each had one of its ends sewn

closed. The items could be stretched when put on the foot. They were to be worn while trying on shoes in a shoe store, then disposed of after use.

ISSUE:

Whether the merchandise identified as “Disposable Foot Socks” is properly classified as other made-up textile articles in subheading 6307.90.9889, HTSUSA; or as “. . . socks and other hosiery, including . . . footwear without applied soles” in subheading 6115.93.9020, HTSUSA.

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 GRI may then be applied. The Explanatory Notes 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.

Among other merchandise, chapter 64, HTSUSA, covers footwear. Note 1(b) to chapter 64 states that “[t]his chapter does not cover: Footwear of textile material, without an outer sole glued, sewn or otherwise affixed or applied to the upper (section XI).” Section XI, HTSUSA, the section under which chapters 61 and 63 fall, covers textiles and textile articles. Note 1(n) to section XI states that “[t]his section does not cover: Footwear or parts of footwear, gaiters or leggings or similar articles of chapter 64.” Chapter 61, HTSUSA, covers articles of apparel and clothing accessories, knitted or crocheted. Chapter 63, HTSUSA, covers other made up textile articles, needlecraft sets, worn clothing, worn textile articles, and rags. Among other goods, heading 6115, HTSUSA, covers “. . . stockings, **socks and other hosiery, including . . . footwear without applied soles. . .**” [Emphasis added.] Heading 6307, HTSUSA, covers “Other made up articles, including dress patterns.” In pertinent part, the EN to heading 6307 state that “[t]his 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.” [Emphasis in original.]

The “Disposable Foot Socks” at issue are textile articles designed to be worn inside other footwear for sanitary purposes. The articles appear to constitute “socks and other hosiery, including . . . footwear without applied soles,” goods which are specifically named in the text of heading 6115, HTSUSA. As indicated by the EN to heading 6307, made up textile articles that are included more specifically in other headings of Section XI (e.g., heading 6115) are not covered by heading 6307.

CBP has issued several rulings that support classification of the “Disposable Foot Socks” under heading 6115, HTSUSA, as “stockings, socks and other hosiery, including . . . footwear without applied soles, knitted or crocheted.” See, e.g., NY D82252, dated September 23, 1998 (knitted disposable foot sock used for sanitary purposes by potential buyers in retail shoe stores, then thrown away, classified in subheading 6115.93.9020); NY H80268, dated May 18, 2001 (knitted disposable tube socks classified in subheading 6115.93.9020); NY R00232, dated April 28, 2004 (knitted tube sock with plastic traction dots classified in subheading 6115.93.9020); and NY L83047,

dated April 8, 2005 (knitted slipper sock without separately applied outer sole classified in subheading 6115.93.9020).

In light of the above analysis and of CBP's consistent classification treatment of goods substantially similar to the "Disposable Foot Socks," we find that the items are classified in subheading 6115.93.9020, HTSUSA.

HOLDING:

NY 809412, dated April 28, 1995, is hereby revoked.

The items identified as "Disposable Foot Socks" are classified in subheading 6115.93.9020, HTSUSA, the provision for "Panty hose . . . stockings, socks and other hosiery, including . . . footwear without applied soles, knitted or crocheted: Other: Of synthetic fibers: Other: Other, Other." The general column one duty rate is 14.6 percent ad valorem.

Merchandise classified in subheading 6115.93.9020, HTSUSA, falls within textile category 632. Quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent negotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas," which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at <http://otexa.ita.doc.gov>.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTER AND
TREATMENT RELATING TO THE TARIFF CLASSIFICATION
OF A WRESTLING CHAMPIONSHIP BELT

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 a wrestling championship belt.

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 the Bureau of Customs and Border Protection (CBP) intends to revoke a ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated

(HTSUSA), of a wrestling championship belt. 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 September 9, 2005.

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, Tariff Classification and Marking 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 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 revoke a ruling letter relating to the tariff classification of a wrestling championship belt. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) K86424, dated June 25, 2004, (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 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 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. Any person involved with substantially identical transactions should advise 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 NY K86424, CBP classified a wrestling championship belt under subheading 3926.20.9050, HTSUSA, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Articles of apparel and clothing accessories (including gloves, mittens and mitts): Other: Other: Other."

Based on our analysis of the scope of the terms of heading 3926, HTSUS, the Legal Notes, and the Explanatory Notes, we now believe the wrestling championship belt is classified under subheading 8306.29.0000, HTSUSA, which provides for "Belts, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base metal; mirrors of base metal; and base metal parts thereof: Statuettes and other ornaments, and parts thereof: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY K86424, and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ 967749) (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 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: July 25, 2005

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

[ATTACHMENT A]

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

NY K86424

June 25, 2004

CLA-2-39:RR:NC:3:353 K86424

CATEGORY: Classification

TARIFF NO.: 3926.20.9050

MR. ROBERT P. KENNEALLY
FEDEX TRADE NETWORKS
150 Eastern Avenue
Chelsea, MA 02150

RE: The tariff classification of a Wrestling Championship Belt from China.

DEAR MR. KENNEALLY:

In your letter dated June 01, 2004, on behalf of Figures Toy Company, you requested a tariff classification ruling. As requested, the sample will be returned to you.

The submitted sample is an Item # 53734 Tag Team Championship Replica Belt. You state that the belt is constructed of PVC simulated leather with affixed metal medallions. The belt comes in a fitted fabric case with a zipper.

You propose classification under subheading 8306.29.0000 as other ornaments of base metal. However, the metal is mere decoration on the belt, the PVC simulated leather gives the belt its form and structure. In addition, descriptive literature states that the replica is "Molded directly from the original belt. It is the same thickness and length as the original belt and measures 4 feet 4 inches in length . . . It is fastened by 8 snaps on each side. Fits up to a 44 inch waist."

The applicable subheading for the Item # 53734 Tag Team Championship Replica Belt will be 3926.20.9050, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of apparel and clothing accessories of plastics. The rate of duty will be 5% 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 Kenneth Reidlinger at 646-733-3053.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967749
CLA-2 RR:CTF:TCM 967749 DSS
CATEGORY: Classification
TARIFF NO.: 8306.29.0000

MR. ROBERT P. KENNEALLY
FEDEX TRADE NETWORKS
150 Eastern Avenue
Chelsea, MA 02150

RE: Wrestling championship belt from China; NY K86424 Revoked

DEAR MR. KENNEALLY:

This letter is in reference to New York Ruling Letter (NY) K86424, dated June 25, 2004, which was issued to you on behalf of Figures, Inc. (importer) by the Director, National Commodity Specialist Division, Bureau of Customs and Border Protection (CBP), with respect to the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a World Wrestling Entertainment™ replica championship belt. After reviewing NY K86424, CBP has determined that the classification of the championship belt under subheading 3926.20.9050, HTSUSA, is incorrect.

FACTS:

In NY K86424, we classified a World Wrestling Entertainment™ (WWE) article advertised as a “Tag Team Championship Replica Belt” (belt) under subheading 3926.20.9050, HTSUSA, which provides for other articles of apparel and clothing accessories made of plastic. We described the belt as follows:

The submitted sample is Item # 53734 Tag Team Championship Replica Belt. You state that the belt is constructed of PVC simulated leather with affixed metal medallions. The belt comes in a fitted fabric case with a zipper.

You propose classification under subheading 8306.29.0000 as other ornaments of base metal. However, the metal is mere decoration on the belt, the PVC simulated leather gives the belt its form and structure. In addition, descriptive literature states that the replica is “Molded directly from the original belt. It is the same thickness and length as the original belt and measures 4 feet 4 inches in length . . . It is fastened by 8 snaps on each side. Fits up to 44 inch waist. . . .”

A sample has been submitted to CBP. The sample is similar to the description given in NY K86424. The sample weighs five pounds. The World Wrestling Entertainment™ logo adorns the plastic belt portion and base metal medallions. The base metal medallions appear plated in a shiny metal similar in appearance to gold, however, its exact composition is unknown. The metal medallions exhibit various other scenes depicting wrestlers in various poses, as well as crowns and other symbols. The center plate is approximately 10 inches high by 12 inches long and states: “World Wrestling Entertainment™ Tag team Champions.”

The importer of this merchandise has submitted new information indicating that both the metal components and the PVC belt portion contribute

relatively equally to the bulk or weight of the article. However, substantially more of the value of the article is provided by the metal medallions.

ISSUE:

Whether the instant championship belt is classified under heading 3926, HTSUS, as an other article of plastic, or under heading 8306, HTSUS, as other ornaments of base metal.

LAW AND ANALYSIS:

Classification under the HTSUSA 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 Harmonized System. CBP 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 (2004) are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.20	Articles of apparel and clothing accessories (including gloves, mittens and mitts):
	Other:
3926.20.90	Other.
	* *
3926.40.00	Statuettes and other ornamental articles.
	* * * *
8306	Belts, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base metal; mirrors of base metal; and base metal parts thereof:
	Statuettes and other ornaments, and parts thereof:
8306.29.00	Other.

Based upon new information on this article and similar articles, and our own research it has become apparent that the belt is not apparel or a clothing accessory of plastic.

Heading 3926, HTSUS, is a "basket" provision for articles of plastics. EN 39.26 provides the following guidance in regard to heading 3926, HTSUS:

This heading covers articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter) or of other materials of headings 39.01 to 39.14.

They include:

- (1) Articles of apparel and clothing accessories (**other than** toys) made by sewing or sealing sheets of plastics, e.g., aprons, belts, babies' bibs, raincoats, dress-shields, etc. Detachable plastic hoods remain classified in this heading if presented with the plastic raincoats to which they belong . . .
- (3) Statuettes and other ornamental articles [emphasis in original]. . .

The importer argues that the championship belt is correctly classified under heading 8306, HTSUS. EN 83.06, states, in pertinent part, that:

(B) STATUETTES AND OTHER ORNAMENTS

This group comprises a wide range of ornaments of base metal (whether or not incorporating subsidiary non-metallic parts) of a kind **designed essentially for decoration**, e.g., in homes, offices, assembly rooms, places of religious worship, gardens.

It should be noted that the group **does not include** articles of more specific headings of the Nomenclature, even if those articles are suited by their nature or finish as ornaments.

The group covers articles which have no utility value but are wholly ornamental, and articles whose only usefulness is to contain or support other decorative articles or to add to their decorative effect, for example:

- (1) Busts, statuettes and other decorative figures; ornaments (including those forming parts of clock sets) for mantelpieces, shelves, etc. (animals, symbolic or allegorical figures, etc.); sporting or art trophies (cups, etc.); wall ornaments incorporating fittings for hanging (plaques, trays, plates, medallions **other than** those for personal adornment); artificial flowers, rosettes and similar ornamental goods of cast or forged metal (usually of wrought iron); knick-knacks for shelves or domestic display cabinets [emphasis in original]. . .

The instant championship belt is an article of plastic in part only. It also contains medallions of base metal. There is no specific heading for a good consisting of these items attached together. Thus, for tariff purposes, the product constitutes a good consisting of two or more substances or materials. Accordingly, it may not be classified solely on the basis of GRI 1. Further, GRI 2(a) is inapplicable because it applies to incomplete or unfinished articles, and the product is imported in a finished condition. According to GRI 2(b), the classification of goods consisting of more than one material or substance shall be according to the principles of GRI 3.

GRI 3(a) states that when, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods. As the subject product is a composite good, we must apply GRI 3(b), which provides that composite goods are to be classified according to the component that gives the good its essential character.

EN VIII to GRI 3(b) explains that “[t]he factor which determines the 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 the constituent material in relation to the use of the goods.”

New information presented to CBP, and our own research has caused us to reconsider the classification in NY K86424. In NY K86424 CBP classified this article as apparel or a clothing accessory of plastic. In NY K86424, CBP stated, in relevant part, “However, the metal is mere decoration on the belt, the PVC simulated leather gives the belt its form and structure.” Implicit in this analysis, is that the PVC belt component provided the essential character of the article. However, we now believe that the PVC belt portion of the article does not impart its essential characteristic.

The championship belt in question is not a clothing accessory. It does not exhibit the relationship with clothing necessary to be considered an accessory to clothing nor does it adorn or accent clothing. Furthermore, the belt does not serve a utilitarian purpose, such as securing pants. In fact, because of its weight (five pounds) any wearing of the belt for an extended period of time would likely be a fugitive use. It is primarily meant for display or decoration.

Therefore, we must consider other criteria in determining essential character, as outlined above. Both the metal components and the PVC belt portion contribute relatively equally to the bulk or weight of the article. However, substantially more of the value of the article is provided by the metal medallions. Moreover, it is the metal medallions that provide the majority of the decorative aspects of the belt. We conclude that the essential character of the replica championship belt is provided by the medallions of base metal, which provide the indispensable aspect to the belt — its decorative appeal.

Other CBP rulings have classified similar type of articles as decorative articles. In NY 806371, dated February 10, 1995, CBP found that lapel pins mounted in a frame for display were not meant to be worn but were meant to be hung as a decoration. Therefore, those lapel pins were classified under heading 8306, HTSUS. In NY H81608, dated May 16, 2001, lapel pins were either mounted in a frame or presentation box upon importation, or the pins were imported as a set and mounted into frames in the United States. In these rulings, CBP stated that the pins were not meant to be worn, and were, in fact too large to be worn on the person, but instead were to be displayed as a decoration. Research of Internet sites advertising championship belts of this type indicate they are not worn as apparel or clothing accessories, because of their size, weight and overall cost. *See, e.g.,* www.midwestwrestling.com, www.wrestlingsuperstore.com, and www.championshipbelts.com. Instead, they are used for display in the home.

Therefore, we find that the instant articles are within the scope of the description provided in the heading text of 8306, HTSUS. This conclusion is supported by EN 83.06, cited above. Based on the foregoing analysis, the instant replica championship belts are classified under subheading 8306.29.0000, HTSUSA.

With regard to the fitted fabric case with a zipper in which the belt is imported, we believe that GRI 5(a) is applicable. GRI 5(a) provides, in relevant part:

Camera cases, musical instrument cases, . . . and similar containers, specially shaped or fitted to contain a specific article or set of articles,

suitable for long-term use and entered with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

Based on the available information, the fitted fabric case meets the terms of GRI 5(a) and is classified with the championship belt.

HOLDING:

At GRI 3(b), the instant merchandise is provided for in heading 8306, HTSUSA. It is classified under subheading 8306.29.0000, HTSUSA, as “Belts, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base metal; mirrors of base metal; and base metal parts thereof: Statuettes and other ornaments, and parts thereof: Other.” The 2005 column one, general rate of duty is free.

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/tata/hts.

EFFECT ON OTHER RULINGS:

NY K86424 is REVOKED.

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division.

**REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF A
PLASTIC-COATED LEATHER COSMETICS BAG**

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the tariff classification of a coated leather cosmetics bag.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is revoking a ruling letter pertaining to the tariff classification of a cosmetics bag with outer surface of plastic-coated leather, and revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published on June 22, 2005, in the *Customs Bulletin*, Volume 39, Number 26.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 9, 2005.

FOR FURTHER INFORMATION CONTACT: Greg Deutsch, Tariff Classification and Marking Branch, at (202) 572-8811.

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, as amended (19 U.S.C. § 1625(c)(1)), a notice proposing to revoke New York Ruling Letter (NY) J88218, dated December 3, 2003, was published on June 22, 2005, in the *Customs Bulletin*, Volume 39, Number 26. No comments were received in response to the notice. As stated in the notice of proposed revocation, the notice covered any rulings relating to the specific issues of tariff classification set forth in the ruling, which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, an internal advice memorandum or decision, or a protest review decision) on the issues subject to the notice should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. § 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the 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 subsequent to the effective date of the final decision on this notice.

In NY J88218, dated December 3, 2003, a zippered cosmetics bag identified by Product Profile (PP) number 1015940, and made up of a grain leather that was coated or covered on the exterior surface with a clear plastic film, was classified in subheading 4202.12.2050, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which in pertinent part provides for “Trunks . . . vanity cases . . . and similar containers: With outer surface of plastics or of textile materials: With outer surface of plastics, Other. . . .”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY J88218 and any other rulings not specifically identified, to reflect the proper classification of the cosmetic bag according to the analysis in Headquarters Ruling Letter (HQ) 967505, which is set forth as the “Attachment” to this document. 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 60 days after publication in the *Customs Bulletin*.

DATED: July 25, 2005

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967505
July 25, 2005
CLA-2 RR:CTF:TCM 967505 GGD
CATEGORY: Classification
TARIFF NO.: 4202.11.0090

MR. DANNY GABRIEL
AVON PRODUCTS, INC.
1251 Avenue of the Americas
New York, New York 10020

RE: Revocation of NY J88218; Cosmetics Bag with Outer Surface of Plastic-Coated Leather; EN to Subheadings 4202.11, 4202.21, 4202.31 and 4202.91

DEAR MR. GABRIEL:

In New York Ruling Letter (NY) J88218, issued to you December 3, 2003, a cosmetics bag was classified in subheading 4202.12.2050, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). This subheading provides, in pertinent part, for “Trunks . . . vanity cases . . . and similar containers: With outer surface of plastics or of textile materials: With outer sur-

face of plastics, Other. . .” We have reviewed NY J88218 and have found it to be in error. Therefore, this ruling revokes NY J88218.

Pursuant to section 625(c), 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 revocation of NY J88218 was published on June 22, 2005, in the *Customs Bulletin*, Volume 39, Number 26. No comments were received in response to the notice.

FACTS:

In NY J88218, the item at issue, identified by Product Profile (PP) number 1015940, was described as a zippered cosmetics bag made-up of a grain leather that was coated or covered on the exterior surface with a film of plastics. The interior was lined with a rayon satin textile material. You indicated that the exterior surface consisted of a composite of pigments and dyes, mica, leather wax and leather binders. The Customs and Border Protection (CBP) Laboratory verified that the exterior surface’s constituent material consisted of clear plastics. It was found that classification as a container with outer surface of leather was precluded by the application of law as described in Headquarters Ruling Letter (HQ) 963618, dated August 2, 2002.

The Harmonized System Committee recently adopted a new Subheading Explanatory Note in heading 4202. Please find the enclosed memorandum (TC# TCF 05–0858) dated February 23, 2005, from CBP’s Acting Executive Director of Trade Compliance and Facilitation, Office of Field Operations, to CBP’s Directors of Field Operations, for dissemination to port personnel, brokers, and other interested importing parties. On web-based forms of the Harmonized System Explanatory Notes, the new EN is inserted on page 792 before the present EN to subheadings 4202.31, .32, and .39. The new subheading EN states:

“Subheadings 4202.11, 4202.21, 4202.31 and 4202.91

For the purposes of these subheadings, the expression “with outer surface of leather” includes leather coated with a thin layer of plastics or synthetic rubber which is invisible to the naked eye (usually less than 0.15 mm in thickness), to protect the leather surface, no account being taken of a change in colour or shine.”

For classification purposes, the new EN essentially allows a layer of plastic or synthetic rubber to be present on the otherwise uncoated leather surface of trunks, cases, bags, wallets, pouches, and similar containers of heading 4202, if the layer is: 1) invisible to the naked eye; and 2) present to protect the leather surface.

ISSUE:

Whether the cosmetics bag identified by Product Profile no. 1015940 is classified in subheading 4202.12.2050, HTSUSA, as a vanity case having an outer surface of plastics; or in subheading 4202.11.0090, HTSUSA, as a vanity case with an outer surface of leather.

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 GRI may then be applied. The Explanatory Notes 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.

In NY J88218, CBP found that the bag at issue had an outer surface of sheeting of plastic, following the analysis applied in HQ 963618. In HQ 967504, dated April 28, 2005, this office reviewed HQ 963618, concluding that the classification result was correct, but that aspects of that ruling's legal analysis should be clarified.

The handbag at issue in HQ 963618 was constructed of two types of materials: 1) a textile-backed plastic sheeting, and 2) a plastic-coated split leather. To classify the bag, CBP employed a longstanding "visible and tactile" standard (*See, e.g.*, HQ 954021, dated November 1, 1993), and a definition of "sheeting" (i.e., "material in the form of a continuous thin covering or coating") that was derived by the Court of International Trade in *Sarne Handbags Corp. v. United States*, 100 F. Supp. 2d 1126 (Ct. Int'l Trade 2000). In *Sarne*, the court applied chapter 42's Additional U.S. Note 2, and the definition of "sheeting" to classify a handbag composed of plastic-coated textile material, and held that the bag had an outer surface of sheeting of plastic. The *Sarne* court's analysis and rationale remain relevant to coated textile material but, upon further consideration and in light of the new EN, not to coated leather.

Recognizing what are now commonly accepted practices in the leather industry, and mindful of the new subheading EN in heading 4202, CBP considers containers of split leather or grain leather coated with a protective layer of plastic or synthetic rubber that is invisible to the naked eye to have an outer surface of leather. To this extent, and to the extent that certain rulings previously considered for revocation were found to be correct, the analysis used in HQ 963618 was clarified.

In the instant case, a clear plastic film is coated only on grain leather in order to protect, not change, its natural appearance. We find that the bag has an outer surface of leather. As stated in the enclosed memorandum, questions as to outer surface material, its visibility, etc., will often require resolution on a case by case basis. Importers are advised to use reasonable care in classifying their goods, and encouraged to submit binding ruling requests, with samples, to U.S. Customs and Border Protection, Customs Information Exchange (Attn: Binding Rulings Section), One Penn Plaza, 10th Floor, New York, New York 10119.

HOLDING:

NY J88218, dated December 3, 2003, is hereby revoked.

The zippered cosmetics bag identified by Product Profile (PP) number 1015940, is classified in subheading 4202.11.0090, HTSUSA, the provision for "Trunks . . . vanity Cases . . . and similar containers: With outer surface of leather, of composition leather, or of patent leather, Other." The general column one rate of duty is 8 percent ad valorem.

NY J88218, dated December 3, 2003, 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*.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

PROPOSED MODIFICATION OF RULING LETTER AND
REVOCAION OF TREATMENT RELATING TO TARIFF
CLASSIFICATION OF A CARRYING CASE

AGENCY: U.S. Customs and 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 a carrying case.

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 (CBP) intends to modify one ruling letter relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a "Survival Kit 2" carrying case. 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 September 9, 2005.

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 the 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 Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Shirley Greitzer, Textiles Branch: (202) 572-8823.

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 CBP 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 CBP 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 one ruling relating to the tariff classification of the carrying case component of the "Survival Kit 2" carrying case and stand. Although in this notice CBP is specifically referring to the modification of New York Ruling Letter (NY) L81479, dated December 22, 2004 (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 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 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 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 apply-

ing a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP previous interpretation of the HTSUSA. Any person involved with substantially identical transactions should advise 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 NY L81479, CBP classified the carrying case component of a "Survival Kit 2" (which consists of a keyboard carrying case and a keyboard stand) under subheading 4202.92.9026, HTSUSA, which provides for other containers and cases with outer surface of textile materials, other, other, of man-made fibers. CBP has reviewed the classification of the carrying case and has determined that the proper classification for the case is in subheading 4202.92.5000, HTSUSA, the provision for musical instrument cases.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY L81479 and to revoke or modify any other rulings not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 967510 (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 transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: July 22, 2005

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY L81479
December 22, 2004
CLA-2-92:RR:NC:MM:114 L81479
CATEGORY: Classification
TARIFF NO.: 9209.94.4000, 4202.92.9026

MR. DENNIS HECK
YAMAHA CORPORATION OF AMERICA
6600 Orangethorpe Avenue
P.O. Box 6600
Buena Park, CA 90622-6600

RE: The tariff classification of The Survival Kit 2 from China

DEAR MR. HECK:

In your letter dated October 21, 2004 you requested a classification ruling.

The Survival Kit 2 consists of a nylon keyboard carrying case with shoulder strap and an X-Style collapsible keyboard stand. The carrying case fits all 49 and 61 key Yamaha portable keyboards except the Tyros, PSR8000, 9000, GX76 and 9000 Pro Series keyboards. The case has a large flat zippered pocket that allows the user to store a music rest, sheet music, etc. The carrying case also has a large exterior pocket to carry other gear. The case's dimensions are 46 inches by 20 inches.

You suggest that the Survival Kit 2 is classifiable as a set under subheading 9209.94.4000, HTS, which provides for parts and accessories for the musical instruments of heading 9207: collapsible musical instrument stands.

The Survival Kit 2 is not classifiable as a set because it does not satisfy GRI 3(b). The carrying case and keyboard stand are presented put up for retail sale as a kit; however, the two articles do not meet a particular need or carry out a specific activity. The carrying bag is used to carry the X-Style keyboard stand, a keyboard and other articles during travel. The X-Style keyboard stand is used to hold the keyboard while the keyboard is in use. The two articles in the Survival Kit 2 have individual uses. Each article is separately classified in the Harmonized Tariff Schedules.

The applicable subheading for the X-Style Keyboard Stand will be 9209.94.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for parts and accessories for the musical instruments of heading 9207: collapsible musical instrument stands. The duty rate will be 5.7 percent ad valorem.

The applicable subheading for the carrying bag with shoulder strap will be 4202.92.9026, Harmonized Tariff Schedule of the United States (HTS), which provides for other containers and cases with outer surface of textile materials, other, other, of man-made fibers. The duty rate will be 17.6 percent ad valorem.

The carrying case falls within textile category designation 670 and is not currently subject to quota and visa requirements. Quota

and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information as to whether quota and visa requirements apply to this merchandise, we suggest that you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" available at our web site at www.cbp.gov. In addition, you will find current information on textile import quotas, textile safeguard actions and related issues at the web site of the Office of Textiles and Apparel, at otexa.ita.doc.gov.

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 Barbara Kiefer at 646-733-3019.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967510
CLA-2 RR:CR:TE 967510
CATEGORY: Classification
TARIFF NO.: 4202.92.5000

MR. DENNIS HECK
IMPORT COMPLIANCE MANAGER
YAMAHA CORPORATION OF AMERICA
6600 Orangethorpe Ave. P.O. Box 6600
Buena Park, CA 90622-6600

RE: Request for Reconsideration of NY L81479, dated December 22, 2004; "Survival Kit 2" Carrying Case; Modification; 4202.92.5000, HTSUSA

DEAR MR. HECK:

This is in reply to your request dated January 10, 2005, to Customs and Border Protection's (CBP's) National Commodity Specialist Division, for reconsideration of New York Ruling Letter (NY) L81479, dated December 22, 2004, concerning the classification of the carrying case component of the "Survival Kit 2". You contend that the carrying case is classified under subheading 4202.92.5000, HTSUSA. Your letter was referred to this office for reply.

FACTS:

In NY L81479, CBP determined that the "Survival Kit 2", consisting of a nylon textile keyboard carrying case with shoulder strap and

an X-Style collapsible keyboard stand was not a set and that each article was separately classified. The X-Style keyboard stand was classified in subheading 9209.94.4000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for “Parts and accessories for the musical instruments of heading 9207: collapsible musical instrument stands.” The carrying case was classified in subheading 4202.92.9026, HTSUSA, the provision for other containers and cases with outer surface of man-made fibers.

We have reviewed NY L81479 and find that the correct classification of the carrying case component of the “Survival Kit 2” is subheading 4202.92.5000, HTSUSA, the provision for musical instrument cases. Therefore, this ruling modifies NY L81479.

The submitted sample is a zippered soft-sided nylon textile case. It has a padded middle layer and a nylon textile lining. The case measures approximately 46 inches by 20 inches by 2 inches. There is an outside zippered pocket approximately 12 inches by 12 inches and two inches in depth on one side of the bag. In addition it has an outside zippered compartment. The packaging states that the case fits all 49 and 61 key Yamaha portable keyboards.

ISSUE:

What is the proper classification of the “Survival Kit 2” carrying case?

LAW AND ANALYSIS:

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

Heading 4202, HTSUSA, provides for: Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper.

“Musical instrument cases” are specifically provided for in subheading 4202.92.5000, HTSUSA.

You advise that the keyboard carrying case is specifically designed, marketed, and sold exclusively for certain Yamaha model electronic keyboards classified in heading 9207, which covers musical instruments, the sound of which must be electronically amplified. You state that CBP has ruled that electronic keyboard carrying cases are classified in subheading 4202.92.5000, HTSUSA. See Port Director Ruling Letter (PD) C84466, dated February 26, 1998, NY 872322, dated March 30, 1992, and NY K80829, dated December 15, 2003.

The sample before us is a soft-sided carrying case specially designed to provide storage, protection and portability for 49 key and 61 key portable electronic keyboards. CBP has ruled that keyboards with 49 keys are musical instruments (NY K88356 (August 3, 2004)), and that a Yamaha electronic keyboard is a musical instrument (NY C88491 (June 19, 1998)).

The zippered keyboard case is designed to contain keyboards similar to those above. It is suitable to effectively transport a keyboard, while it organizes, stores and protects it. As such the zippered case bears substantial similarity to musical instrument cases and it is properly classified in subheading 4202.92.5000, HTSUSA.

HOLDING:

NY L81479, dated December 22, 2004, is hereby MODIFIED.

The "Survival Kit 2" carrying case is classified in subheading 4202.92.5000, HTSUSA, the provision for "... musical instrument cases . . . : Other: With outer surface of sheeting of plastic or of textile materials: Musical instrument cases." The general column one duty rate is 4.2% ad valorem.

MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.