

U.S. Customs Service

General Notices

FEES FOR CUSTOMS SERVICES AT USER FEE AIRPORTS

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This document advises the public of an increase in the fees charged user fee airports by Customs for providing Customs services at these designated facilities. These fees are based on actual costs incurred by Customs in purchasing equipment and providing training and one Customs inspector on a full-time basis, and, thus, merely represent reimbursement to Customs for services rendered. The fees to be increased are the initial fee charged for a user fee airport's first year after it signs a Memorandum of Agreement with Customs to become a user fee airport, and the annual fee thereafter charged user fee airports.

EFFECTIVE DATE: The new fees will be effective October 1, 2002, and will be reflected in quarterly, user fee airport billings issued on or after that date.

FOR FURTHER INFORMATION CONTACT: Cynthia Sargent, Budget Division, Office of Finance (202) 927-0609.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 236 of the Trade and Tariff Act of 1984 (Public Law 98-573, 98 Stat. 2992) (codified at 19 U.S.C. 58b), as amended, authorizes the Secretary of the Treasury to make Customs services available at certain specified airports and at any other airport, seaport, or other facility designated by the Secretary pursuant to specified criteria, and to charge a fee for providing such services. (The list of user fee airports is found at § 122.15 of the Customs Regulations (19 CFR 122.15).) The fee that is charged is in an amount equal to the expenses incurred by the Secretary in providing Customs services at the designated facility, which includes purchasing equipment and providing training and inspectional services, i.e., the salary and expenses of individuals employed by the Secretary to provide the Customs services. The fees being raised are the initial fee charged a user fee airport after it signs a Memorandum of Agreement

with Customs so that it can begin operations (currently set at \$118,000), and the annual fee subsequently charged so that user fee airports can continue to offer Customs services at their facilities (currently set at \$88,500). The notice announcing the current user fee rates was published in the Federal Register (66 FR 48739) on September 21, 2001. The user fees charged a user fee airport are typically set forth in a Memorandum of Agreement between the user fee facility and Customs. While the amount of these fees are agreed to be at flat rates, they are periodically adjustable, as costs and circumstances change.

ADJUSTMENT OF USER FEE AIRPORT FEES

Customs has determined that, in order for the user fee to fully reimburse Customs for expenses incurred in providing requested services, the initial fee must be increased from \$118,000 to \$129,125, and the recurring annual fee subsequently charged must be increased from \$88,500 to \$115,400. Since inception, Headquarters has administered the program through the assignment of resources on a part time basis. The Headquarters' costs have been included in the fees. The program has experienced significant growth and, consequently, related costs for providing Headquarters' administrative services have increased to a level necessary for Customs to dedicate a permanent resource at Headquarters to manage and administer the program on a full time basis. The added resource will enable Customs to more adequately and efficiently manage the program. The increase in the recurring annual fee covers the increased costs. The new fees will be effective October 1, 2002, and will be reflected in quarterly, user fee airport billings issued on or after that date.

Dated: September 6, 2002.

CAROL A. DUNHAM,
*Acting Assistant Commissioner,
Office of Finance.*

[Published in the Federal Register, September 12, 2002 (67 FR 57866)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, September 11, 2002.

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

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

PROPOSED REVOCATION OF RULING LETTER AND
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
“TALKING” PHOTOGRAPH ALBUMS

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

ACTION: Notice of proposed revocation of ruling letter and revocation of treatment relating to the tariff classification of “talking” photograph albums under the Harmonized Tariff Schedule of the United States (“HTSUS”).

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

DATE: Comments must be received on or before October 25, 2002.

ADDRESS: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations & Rulings. Attention: Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs Service, 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: 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, which emerge from the law, are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke New York Ruling Letter (NY) H81668, dated June 8, 2001, which pertains to the tariff classification of "talking" photograph albums. NY H81668 is set forth as "Attachment A" to this document.

Although in this notice Customs is specifically referring to one ruling, NY H81668, this notice covers any rulings on similar merchandise that may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases; no further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, other than the referenced rulings (see above) should advise Customs during this notice period.

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

in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY H81668 as it pertains to the classification of "talking" photograph albums, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed HQ 965483 (*see* "Attachment B" to this document).

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

Dated: September 6, 2002.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, June 8, 2001.

CLA-2-39:RR:NC:SP:222 H81668
Category: Classification
Tariff No. 3924.90.5500

MS. MINDY AVANTS
FRITZ COMPANIES, INC.
1600 Genessee, Suite 450
Kansas City, MO 64102

Re: The tariff classification of a photo album from China.

DEAR MS. AVANTS:

In your letter dated May 10, 2001, on behalf of your client Gerson Company, you requested a tariff classification ruling.

The submitted sample is identified as item number 98510. It is a photo album that is composed of hard paperboard covered with plastic. This album contains 12 plastic pages that can store 24 pictures. Each page is electronically attached to a digital voice recorder. The recorder is used to store up to 10 seconds of messages relating to each individual picture. The digital voice recorder operates on two "AA" size batteries. The photo album imparts the essential character to this item.

The sample is returned as you requested.

The applicable subheading for the photo album with plastic pages will be 3924.90.5500, Harmonized Tariff Schedule of the United States (HTS), which provides for * * * other household articles * * * of plastics: other, other. The rate of duty will be 3.4 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 Alice Masterson at 212-637-7090.

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

[ATTACHMENT B]

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

CLA-2 CO:RR:CR:GC 965483 AML
Category: Classification
Tariff No. 8520.90.00

MR. TAYLOR PILLSBURY
MEEKS, SHEPPARD & PILLSBURY, LLP
100 Newport Center Drive
Suite 220
Newport Beach, CA 92660

Re: Reconsideration of NY H81668; "talking photo album".

DEAR MR. PILLSBURY:

This is in reference to your letter, dated November 27, 2001, to the National Commodity Specialist Division, New York, on behalf of the Gerson Company, requesting reconsideration of New York Ruling Letter (NY) H81668, issued to a customs broker on behalf of Gerson on June 8, 2001, which concerned the classification of a "talking photo album" under the Harmonized Tariff Schedule of the United States (HTSUS). NY H61668 classified the "talking photo album" under subheading 3924.90.55, HTSUS, which provides for other articles of plastic. We regret the delay in responding.

Facts:

The item at issue was described in NY H81668 as follows:

The submitted sample is identified as item number 98510. It is a photo album that is composed of hard paperboard covered with plastic. This album contains 12 plastic pages that can store 24 pictures. Each page is electronically attached to a digital voice recorder. The recorder is used to store up to 10 seconds of messages relating to each individual picture. The digital voice recorder operates on two "AA" size batteries.

Issue:

Whether the "talking photo album is classifiable under subheading 3924.90.55, HTSUS, which provides for other household articles of plastics; or under subheading 8520.90.00, HTSUS, which provides for other magnetic tape recorders and other sound recording apparatus?

Law and Analysis:

The General Rules of Interpretation (GRIs) to the HTSUS govern the classification of goods in the tariff schedule. GRI 1 states in pertinent part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes[.]"

The 2001 HTSUS headings and subheadings under consideration are as follows:

3924	Tableware, kitchenware, other household articles and toilet articles, of plastics:
3924.90	Other:
3924.90.55	Other.
*	* * * * *
8520	Magnetic tape recorders and other sound recording apparatus, whether or not incorporating a sound reproducing device:
8520.90.00	Other.

An article is to be classified according to its condition as imported. See *XTC Products, Inc. v. United States*, 771 F.Supp. 401, 405 (1991). See also *United States v. Citroen*, 223 U.S. 407 (1911). In its condition as imported, the “talking photo album” is *prima facie* classifiable under two separate headings of the tariff: heading 3924, HTSUS, as a household article of plastic and under heading 8520, HTSUS as a recording device. Thus, the article is not classifiable at GRI 1. GRI 2 (b) provides in pertinent part that “the classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.” GRI 3(b) provides that “mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.”

Thus, under GRI 3(b), classification of the composite article is determined on the basis of the component that gives it its essential character. EN Rule 3(b)(VIII) lists as factors to help determine the essential character of such goods the nature of the materials or components, their bulk, quantity, weight or value, and the role of a constituent material in relation to the use of the goods.

We are unable to determine the “indispensable function” (See *Better Home Plastics v. United States*, 916 F. Supp. 1265 (CIT 1996), *affirmed* 119 F.3d 969 (Fed. Cir. 1997)) of the “talking photo albums”; that is, we conclude that the components in tandem impart the essential character to the article. In this matter, both the recording device and the photo holders perform complimentary functions for the whole. Therefore, we are unable to determine the essential character of the article pursuant to GRI 3(b) and must resort to GRI 3(c), *i.e.*, the goods shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

Heading 8520, HTSUS, which provides for other magnetic recording devices, is the heading that appears last in numerical order among those being considered. The articles will be so classified.

Holding:

The “talking photo albums” are classifiable under subheading 8520.90.00, HTSUS, which provides for other magnetic recording devices.

Effect on Other Rulings:

NY H81668 is revoked.

MYLES B. HARMON,
 Acting Director,
 Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
THE “TRACHORSE” SELF-PROPELLED VEHICLE

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

ACTION: Notice of proposed revocation of classification ruling letter relating to the classification of the TracHorse self-propelled vehicle.

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

DATE: Comments must be received on or before October 25, 2002.

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

FOR FURTHER INFORMATION CONTACT: Bill Conrad, Regulations Branch, (202) 572–8764.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter Title VI) became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community’s responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as

amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify, and value imported merchandise, and to provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)) by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the classification of the TracHorse self-propelled vehicle. Although in this notice, Customs is specifically referring to one ruling, Headquarters Ruling (HQ) 964163, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject of this notice should advise the Customs Service during this notice period.

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

In Customs ruling HQ 964163, a protest decision dated January 29, 2001 (Protest 2904-00-100030), Customs classified a product referred to as the TracHorse, a self-propelled vehicle for transporting various loads (which also provides a hydraulic power source for tools) in subheading 8704.90.00, HTSUS, which provides for: Motor vehicles for the transport of goods: Other. This ruling letter is set forth in "Attachment A" to this document. Since the issuance of that ruling, Customs has reconsidered the ruling and determined that the classification should be changed. It is now Customs position that the subject article is classifiable under subheading 8709.19.0060, HTSUS, as a self-propelled works truck of the type used in factories, warehouses, dock areas, or airports for short distance transport of goods; * * *: Vehicles: Other, Other.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke HQ 964163 and any other ruling not specifically identified to reflect the proper classification of the subject merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) 965702 (*see* "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: September 4, 2002.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, January 29, 2001.
CLA-2 RR:CR:GC 964163 JAS
Category: Classification
Tariff No. 8704.90.00

PORT DIRECTOR OF CUSTOMS
8337 NE Alderwood Road
Portland, OR 97220

Re: Protest 2904-00-100030; TracHorse.

DEAR PORT DIRECTOR:

This is our decision on Protest 2904-00-100030, filed against your classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of the TracHorse. The entries under protest were liquidated on January 7 and 28, 2000, and this protest timely filed on February 25, 2000.

Facts:

The TracHorse is described in submitted literature as a self-propelled mobile hydraulic power unit. It is a manually-operated, tracked vehicle with front-mounted 20 hp. engine and rear-mounted hydraulic tilt bed with drop-down removable side panels. The TracHorse can climb up to a 60° incline, turn 360° on its center, and has a 1,000 lb. rated load capacity. It can operate hydraulic tools and is advertised primarily for use by the railroad industry to transport tools and equipment to and from job sites and to remove debris. Protestant describes the vehicle as a "motorized wheelbarrow with tracks * * * consist[ing] of a loader with hydraulic lift for dumping."

The TracHorse was entered under a provision in HTS heading 8428 as wagon tippers and similar railway wagon handling equipment. The entry was liquidated under a provision of HTS heading 8704 as motor vehicles for the transport of goods. Counsel for the protestant makes the following argument in support of classification under HTS heading 8701 as pedestrian controlled tractors: (1) the TracHorse is within the HTSUS definition of the term "tractors" in that it is constructed essentially for hauling or pushing another vehicle, appliance or load; (2) the TracHorse is a pedestrian controlled tractor of the type described in Harmonized Commodity Description and Coding System Explanatory Notes

(ENs) to heading 87.01; (3) because the TracHorse is tracked and not wheeled, it does not qualify as a motor vehicle; and, (4) the heading 8704 classification is inconsistent with a Headquarters ruling on similar merchandise.

The HTSUS provisions under consideration are as follows:

8428	Other lifting, handling, loading or unloading machinery
*	*
8701	Tractors (other than tractors of heading 8709):
8701.10.00	Pedestrian controlled tractors
*	*
8704	Motor vehicles for the transport of goods:
	Other, with compression-ignition internal combustion piston engine (diesel or semi-diesel):
8704.21.00	G.V.W. not exceeding 5 metric tons
8704.90.00	Other

Issue:

Whether the TracHorse is a tractor of heading 8701 or a motor vehicle of heading 8704.

Law and Analysis:

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

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. Customs believes the ENs should always be consulted. *See* T.D. 89-80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Chapter 87, Note 2, HTSUS, defines “tractors” as vehicles constructed essentially for hauling or pushing another vehicle, appliance or load, whether or not they contain subsidiary provision for the transport, in connection with the main use of the tractor, of tools, seeds, fertilizers or other goods. The cited ENs for heading 87.01 describe on p. 1544 both wheeled or track-laying vehicles constructed essentially for hauling or pushing. They may contain subsidiary provision for the transport of tools and other goods, or provision for fitting with working tools as a subsidiary function. Included are pedestrian controlled tractors, described as small agricultural tractors equipped with a single driving axle carried on one or two wheels; like normal tractors, they are designed for use with interchangeable implements which they may operate by means of a general purpose power take-off. They are not usually fitted with a seat and are steered by two handles. The ENs state that similar pedestrian controlled tractors are also used for industrial purposes.

Tractors of heading 8701, pedestrian controlled or otherwise, are designed to drag, push or pull. Any capability they may have to transport goods and operate working tools is clearly subsidiary. On the other hand, the vehicles of heading 8704 are designed and constructed essentially for transport purposes, i.e., to carry or convey. In this case, the TracHorse can operate tools by means of its hydraulics, but its rear-mounted hydraulic tilt bed and 1,000 lb. load rating clearly evidences a primary transport capability. The protestant’s own characterization of the vehicle as a “motorized wheelbarrow with tracks” confirms this. The ruling cited by counsel, *HQ* 961255, dated November 9, 1998, concerned the Iron Horse, a pedestrian-controlled tracked vehicle consisting essentially of a steel frame extending the long axis of the vehicle, with a front-mounted engine and a fifth wheel mounted at the midpoint of the frame. *HQ* 961255 classified this vehicle in subheading 8701.10.00, HTSUS, as a pedestrian controlled tractor. The ruling noted, however, that self-unloading timber carts, motor-operated loaders, and wheeled lattice carts with enclosed load platform, among other accessories, were attached, after importation, by means of the fifth wheel or a drawbar hitch. These accessories transformed the Iron Horse into a transport vehicle. It is clear that, as imported, the Iron Horse conformed to the cited definition in Chapter 87, Note 2. For the stated reasons, *HQ* 961255 does not govern classification of the TracHorse. *HQ* 963263, dated May 20, 2000, and cases cited, contains additional discussion of the distinction between headings 8701 and 8704.

Holding:

Under the authority of GRI 1, the TracHorse is provided for in heading 8704. It is classifiable in subheading 8704.90.00, HTSUS.

Because the rate of duty under this provision is the same as the liquidated provision, you should reclassify the TracHorse as indicated and DENY the protest. In accordance with Section 3A(11)(b) of Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, you are to mail this decision, together with the Customs Form 19, to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry or entries in accordance with the decision must be accomplished prior to mailing the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will make the decision available to Customs personnel, and to the public on the Customs Home Page on the World Wide Web at www.customs.gov, by means of the Freedom of Information Act, and other methods of public distribution.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

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

CLA-2 RR:CR:GC 965702 bc
Category: Classification
Tariff No. 8709.19.00

RICHARD H. ABBEY, ESQ.
MILLER & CHEVALIER
655 Fifteenth Street, N.W., Suite 900
Washington, DC 20005

Re: TracHorse; HQ 964163 revoked.

DEAR MR. ABBEY:

This concerns Headquarters Ruling (HQ) 964163, a protest decision issued on January 29, 2001 (Protest 2904-00-100030) regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a self-propelled tracked vehicle called the TracHorse.

As further explained below, in HQ 964163, Customs classified the TracHorse vehicle at issue as a motor vehicle for the transport of goods under subheading 8704.90.00, HTSUS. In response to your letter of May 24, 2002, requesting reconsideration of HQ 964163 on behalf of your client The Stanley Works (Stanley), we reviewed that protest decision and find it to be inconsistent with the HTSUS requirements for classification of such merchandise. It is now Customs position that the TracHorse vehicle is properly classifiable as a works truck under subheading 8709.19.00, HTSUS. For the reasons stated below, this ruling revokes HQ 964163.

Facts:

In HQ 964163, Customs described the TracHorse as a self-propelled mobile hydraulic power unit, a manually operated, tracked vehicle with a front-mounted 20 hp. engine and a rear-mounted hydraulic tilt bed with drop-down removable side panels. The ruling pointed out that the TracHorse can climb up to a 60-degree incline, turn 360 degrees on its center, and has a 1,000 lb. rated load capacity. It can operate hydraulic tools and is advertised primarily for use by the railroad industry to transport tools and equipment to and from job sites and to remove debris. Based on this description and Customs finding that the TracHorse's rear-mounted hydraulic tilt bed and 1,000 lb. load rating indicate a primary transport capability, Customs determined that the TracHorse was classifiable as a motor vehicle for the transport of goods under subheading 8704.90.00, HTSUS, and denied the protest.

In your May 24, 2002, letter, you requested reconsideration of the ruling and contended that the TracHorse should be classified under either heading 8479, HTSUS, or heading 8709, HTSUS.

Issue:

Is the TracHorse vehicle classifiable as a machine or mechanical appliance under heading 8479, HTSUS, as a motor vehicle for the transport of goods under heading 8704, HTSUS, or as a works truck under heading 8709, HTSUS?

Law and Analysis:

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

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

The HTSUS provisions under consideration are as follows:

- 8479 Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof:
- 8704 Motor vehicles for the transport of goods:
- 8709 Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles:

In HQ 964163, Customs considered headings 8701 (tractors other than those of heading 8709) and 8704, HTSUS (as above) for classification of the TracHorse. In the ruling, Customs determined that the primary purpose of the TracHorse was to transport goods. Customs also determined that heading 8701, HTSUS, provides for tractors (pedestrian controlled or otherwise) that are designed to drag, push, or pull and that any capability of such tractor to transport goods and operate working tools is subsidiary. Thus, Customs concluded that the TracHorse is not classifiable in heading 8701, HTSUS, and that it is classifiable as a motor vehicle for transporting goods in heading 8704, HTSUS.

In reconsidering this case, Customs is presented with two classification possibilities not considered in the prior ruling: headings 8479 and 8709, HTSUS.

First, Customs agrees with the finding of HQ 964163 that the TracHorse is primarily designed to transport and carry goods. Thus, Customs considers the TracHorse to be a vehicle of Chapter 87, HTSUS. As such, the TracHorse is precluded from classification under Chapter 84, HTSUS, by virtue of Note 1(l) of Section XVI (which encompasses Chapter 84, HTSUS). Consequently, Customs concludes that the TracHorse is not classifiable under heading 8479, HTSUS.

Second, concerning classification under either heading 8704 or 8709, HTSUS, both applicable to vehicles, Customs finds the ENs for heading 8709, HTSUS, to be instructive. The EN provides as follows:

This heading covers a group of self-propelled vehicles of the types used in factories, warehouses, dock areas or airports for the short distance transportation of various loads (goods or containers) * * *

Such vehicles are of many types and sizes. They may be driven by either an electric motor with current supplied by accumulators or by an internal combustion piston engine or other engine. The main features common to the vehicles of this heading which generally distinguish them from the vehicles of heading 87.01, 87.03, or 87.04 may be summarized as follows:

- (1) Their construction and, as a rule, their special design features make them unsuitable for the transport of passengers or for the transport of goods by road or other public ways.
- (2) Their top speed when laden is generally not more than 30 to 35 km/h.
- (3) Their turning radius is approximately equal to the length of the vehicle itself.

Vehicles of this heading do not usually have a closed driving cab * * * The vehicles of this heading may be pedestrian controlled.

Works trucks are self-propelled trucks for the transport of goods which are fitted with, for example, a platform or container on which the goods are loaded.

An examination of the TracHorse's features shows that it meets the EN's description. The TracHorse is employed for the short distance transport of various loads. Its engine meets the EN's description. It is unsuitable for transporting passengers or goods by public roads. Its top speed when laden is within the EN's range. Its turning radius also meets the EN description. It does not have an enclosed driving cab and may be pedestrian controlled. It is fitted with a platform on which various loads may be transported. While it hasn't been identified as a vehicle employed in a factory, warehouse, dock, or airport, it is a vehicle of this general type, and Customs has held that similar vehicles used in other environments belong to the class or kind of vehicles principally used as works trucks of heading 8709, HTSUS. (See HQ 964598 and 965246.)

Based on the foregoing, Customs concludes that the TracHorse is classifiable under GRI 1 as a works truck of heading 8709, HTSUS. This ruling is limited to the TracHorse unit that Stanley specifically referred to as its most sophisticated version of its hydraulic power units, the unit described hereinabove that possesses the capacity to transport loads/goods.

Holding:

The TracHorse vehicle described in this ruling is classifiable in subheading 8709.19.00.60, HTSUS, which provides for: Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; * * *: Vehicles: Other, Other.

Effect on Other Rulings:

HQ 964163 is revoked.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

**MODIFICATION OF RULING LETTER AND REVOCATION OF
TREATMENT RELATING TO CLASSIFICATION OF MALTITOL
SWEETENED WHITE CHOCOLATE**

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

ACTION: Notice of modification of ruling letter and revocation of treatment relating to the classification of maltitol sweetened white chocolate.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling letter pertaining to the tariff classification of maltitol sweetened white chocolate and revoking any treatment previously accorded by the Customs Service to substantially identical transactions. Notice of the proposed modification was published in the CUSTOMS BULLETIN of July 31, 2002, Vol. 36, No. 31. No comments were received.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, General Classification Branch, 202-572-8778.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on July 31, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 31, proposing to modify NY H84179, dated August 21, 2001, pertaining to the tariff classification of maltitol sweetened white chocolate under the Harmonized Tariff Schedule of the United States (HTSUS). No comments were received in reply to the notice.

In NY H84179, dated August 21, 2001, the classification of a product commonly referred to as maltitol sweetened white chocolate was determined to be in heading 1704.90.3550, HTSUS, which provides for sugar confectionery (including white chocolate), not containing cocoa: other: confections of sweetmeats ready for consumption: other: other * * * put up for retail sale: other. Since the issuance of that ruling, Customs has had a chance to review the classification of this merchandise and has determined that the classification is in error. The maltitol sweetened white chocolate is not a sugar confectionery and should be classified as a food preparation not elsewhere specified or included, based on its use and ingredient composition. However, Customs lacks sufficient information about its use and ingredients to determine whether the article is a product of heading 1901, HTSUS, a food preparation of headings 0401 to 0404, or a product of heading 2106, HTSUS, a food preparation not else-

where specified or included. This notice revokes the classification of maltitol sweetened white chocolate provided in NY H84179 and invites the importer to provide the information needed to properly classify the product should such classification still be desired.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is modifying NY H84179, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 965466 (*see* "Attachment" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

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

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

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

Dated: September 4, 2002.

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

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 4, 2002.
CLA-2 RR:CR:GC 965466ptl
Category: Classification
Tariff No. 1901/2106

MR. NORMAN ELISBERG
LAFAYETTE SHIPPING COMPANY
2425B 3rd Street
Fort Lee, NJ 07024-4051

Re: Maltitol Sweetened White Chocolate, NY H84179 modified.

DEAR MR. ELISBERG:

This is in reference to New York Ruling Letter (NY) H84179, issued to you on August 21, 2001, by the Director, National Commodity Specialist Division, New York, on behalf of Sugar Free Bars, LLC., in which a variety of sugar free chocolate bars and confections were classified under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed that ruling and determined that the classification provided for the maltitol sweetened white chocolate bar is incorrect for the reasons stated below. However, because we lack sufficient information regarding the products use and ingredients, we are unable to determine the correct classification of the product. Should the importer desire a ruling on this product, a new ruling request setting forth all relevant facts about the product may be submitted to the Director, National Commodity Specialist Division, U.S. Customs, Attn: CIE/Ruling Request, One Penn Plaza, 10th Floor, New York, NY 10119. This letter does not effect classification of other products in NY H84179.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed modification of NY H84179 was published on July 31, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 31. No comments were received.

Facts:

According to the available information, the subject product is a 100-gram bar, 6 inches wide by 3 inches high and 3/8 inch thick, individually wrapped for retail sale. The ingredients of the white chocolate bar are stated to consist of maltitol, cocoa butter, milk powder, lecithin, and vanilla. In NY H84179, this product was classified in subheading 1704.90.3550, HTSUS, which provides for sugar confectionery (including white chocolate), not containing cocoa: other: confections or sweetmeats ready for consumption: other: other * * * put up for retail sale: other.

Since the issuance of that ruling, Customs has had a chance to review the classification of this merchandise and has determined that the classification is in error. The maltitol sweetened white chocolate is not a sugar confectionery and should be classified as a food preparation not elsewhere specified or included, based on its use and ingredient composition. However, Customs lacks sufficient information about its use and ingredients to determine whether the article is a product of heading 1901, HTSUS, a food preparation of headings 0401 to 0404, or a product of heading 2106, HTSUS, a food preparation not elsewhere specified or included. This ruling modifies NY H84179 to revoke the classification of maltitol sweetened white chocolate provided therein and invites the importer to provide the information needed to properly classify the product should such classification still be desired.

Issue:

What is the classification of maltitol sweetened white chocolate bars?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

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

The HTSUS headings under consideration are as follows:

1704	Sugar confectionery (including white chocolate), not containing cocoa:
1704.90	Other:
	Confections or sweetmeats ready for consumption:
1704.90.35	Other:
	Put up for retail sale:
1704.90.3550	Other
1901	Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included:
2106	Food preparations not elsewhere specified or included.

Heading 1704 provides for sugar confectionery (including white chocolate), not containing cocoa. The ENs state that "This heading covers most of the sugar preparations which are marketed in a solid or semi-solid form, generally suitable for immediate consumption and collectively referred to as **sweetmeats, confectionery** or **candies**. The white chocolate is sold in a bar form, individually wrapped for retail sale and immediate consumption. However, it is not a sugar confectionery. The product contains maltitol instead of sugar.

The types of products which are considered to be sugars of Chapter 17 are described in the General Note to the ENs of Chapter 17: "This Chapter covers not only sugars as such (e.g., sucrose, lactose, maltose, glucose and fructose), but also sugar syrups, artificial honey, caramel, molasses resulting from the extraction or refining of sugar and sugar confectionery. Solid sugar and molasses of this Chapter may contain added flavouring or colouring matter."

According to the website of the Calorie Control Council (www.caloriecontrol.org), "Maltitol is a reduced calorie buk [sic] sweetner [sic] with sugar-like taste and sweetness. * * * Maltitol is a member of a family of bulk sweetener known as polyols or sugar alcohols. * * * Maltitol is made by the hydrogenation of maltose which is obtained from starch. Like other polyols, it does not brown or caramelize as do sugars." The website states that maltitol is useful because it does not promote tooth decay, it is useful in the manufacture of sucrose-free chocolate, and may be useful for people with diabetes." Maltitol is classified under subheading 2950.49.4000, HTSUS, which provides for Acyclic alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives: other polyhydric alcohols * * * other: polyhydric alcohols derived from sugars * * * other.

The ENs to heading 17.04 list types of products which are excluded from the heading. Paragraph (d) provides, in relevant part, as follows: "(d) Sweets, gums and the like (for diabetics, in particular) containing synthetic sweetening agents (e.g., sorbitol) instead of sugar, * * *"

Because the maltitol sweetened white chocolate bars do not contain sugar, they cannot be classified in Chapter 17. Possible alternative headings for the product is heading 1901, HTSUS, which provides for food preparations of headings 0401 to 0404, and heading 2106, HTSUS, which provides for food preparations not elsewhere specified or included. Classification of the product will depend on the relative weights of each ingredient and, in particular, the relative quantities of milk powder and cocoa butter.

Should the importer desire a binding ruling on the maltitol sweetened white chocolate bars, a ruling request containing all necessary information should be submitted to the Director, National Commodity Specialist Division, U.S. Customs, Attn: CIE/Ruling Request, One Penn Plaza, 10th Floor, New York, NY 10119.

Holding:

NY H84179, dated August 21, 2001, is modified with regard to the classification of multi-tol sweetened white chocolate bars. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

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

REVOCATION OF RULING LETTER AND REVOCATION OF
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
THE “ENVIRASCAPE GLOWING TIERS RELAXATION CANDLE
FOUNTAIN”

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

ACTION: Notice of proposed revocation of a ruling letter and revocation of treatment relating to the tariff classification of the “Envirascape Glowing Tiers Relaxation Candle Fountain” (hereinafter “Envirascape Fountain”) under the Harmonized Tariff Schedule of the United States (“HTSUS”).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling and is revoking any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of the Envirascap Fountain. Notice of the proposed revocation was published on July 31, 2002, in Vol. 36, No. 31 of the CUSTOMS BULLETIN. Two comments were received.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 25, 2002.

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, which emerge from the law, are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary com-

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

Pursuant to Customs obligations, notice proposing to revoke New York Ruling Letter (NY) H88127, dated February 20, 2002, which pertains to the tariff classification of the Envirascap Fountain, was published on July 31, 2002, in Vol. 36, No. 31 of the CUSTOMS BULLETIN. Two comments were received in response to this notice.

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

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

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking NY H88127, and any other ruling not specifically identified, to reflect the proper classification of the Envirascap Fountain under subheading 9602.00.40, HTSUS, which provides for *inter alia*, "molded or carved articles of wax * * * not elsewhere specified or included", pursuant to the analysis in Headquarters Ruling Letter (HQ) 965521, which is set forth as the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

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

Dated: September 6, 2002.

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

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 6, 2002.
CLA-2 RR:CR:GC 965521 AML
Category: Classification
Tariff No. 9602.00.40

MR. STEVE KUCHTA
KUEHNE & NAGEL, INC.
CORPORATE BRANCH
*10 Exchange Place
19th Floor
Jersey City, NJ 07302*

Re: Reconsideration of NY H88127; "Envirascape Glowing Tiers Relaxation Candle Fountain".

DEAR MR. KUCHTA:

This is in reply to your letter of March 19, 2002, on behalf of HoMedics, Inc., requesting reconsideration of New York Ruling Letter ("NY") H88127, dated February 20, 2002, concerning the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of the "Envirascape Glowing Tiers Relaxation Candle Fountain" (hereinafter "Envirascape"). NY H88127 classified the article under subheading 3926.40.00, HTSUS, which provides for other articles of plastic and articles of other materials of headings 3901 to 3914: statuettes and other ornamental articles. A sample and descriptive literature were provided for our consideration. We have reviewed NY H88127 and now believe the classification set forth is incorrect.

Pursuant to section 625(c)(1), 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), notice of the proposed revocation of NY H88127 was published on July 31, 2002, in Vol. 36, No. 31 of the CUSTOMS BULLETIN. Two comments were received in response to this notice.

Facts:

The article was described in NY H88127 as follows:

The submitted sample is a Relaxation Candle Fountain identified as Model #WF-CAN21. It is a combination candle and fountain in one. This table top size fountain measures 7³/₄ inches tall x 9 inches wide x 10¹/₄ inches in length. The candle fountain consists of 12 tea light scented candles, polished river rocks, four column shaped plastic candles, a plastic tray and a submersible pump with an electrical cord. The plastic shaped candles each have cutout circles in the top to hold the tea light candles. The rocks can be attractively arranged on the tray at the base and the submersible pump produces column a soothing sound of flowing water.

In the March 19, 2002 submission, you present a declaration from the manufacturer of the articles that states that the molded, column shaped candles (which we more aptly de-

scribe as a columnar “centerpiece” (that resembles relatively large, block candles that house the tea light candles and forms “steps” that redirect water from the pump)) consist of paraffin wax rather than plastic as was determined in NY H88127. Thus, you allege that the article is classifiable under subheading 9602.00.40, HTSUS, which provides for worked vegetable or mineral carving material and articles of these materials; molded or carved articles of wax, of stearin, of natural gums or natural resins, of modeling pastes, and other molded or carved articles, not elsewhere specified or included; worked, unhardened gelatin (except gelatin of heading 3503) and articles of unhardened gelatin: molded or carved articles of wax.

The Customs Laboratory analyzed the composition of the column shaped candleholder (the columnar “centerpiece” (that resembles relatively large, block candles that house the tea light candles and “steps” that redirect water from the pump) composed of paraffin wax)). Customs Laboratory Report No. NY20020430, dated May 31, 2002, concluded that “the sample, a yellow block with holes in the middle, is composed of paraffin wax.”

Issue:

What is the classification of the “Envirascape Glowing Tiers Relaxation Candle Fountain”?

Law and Analysis:

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

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. Customs believes the ENs should always be consulted. See T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

2517	Pebbles, gravel, broken or crushed stone, of a kind commonly used for concrete aggregates, for road metalling, or for railway or other ballast * * *
2517.10.00	Pebbles, gravel, broken or crushed stone, of a kind commonly used for concrete aggregates, for road metalling, or for railway or other ballast * * *
*	* * * * *
3406	Candles, tapers and the like.
*	* * * * *
3926	Other articles of plastics * * *
3926.40.00	Statuettes and other ornamental articles.
*	* * * * *
8413	Pumps for liquids, whether or not fitted with a measuring device * * *
8413.70	Other centrifugal pumps:
8413.70.20	Other.
*	* * * * *
9602	Worked vegetable or mineral carving material and articles of these materials; molded or carved articles of wax, of stearin, of natural gums or natural resins, of modeling pastes, and other molded or carved articles, not elsewhere specified or included; worked, unhardened gelatin (except gelatin of heading 3503) and articles of unhardened gelatin:
9602.00.40	Molded or carved articles of wax.

We are unable to resolve the classification of the “Envirascape” fountain at GRI 1. GRI 2 is not applicable here except insofar as it provides that “[t]he classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.”

GRI 3 provides as follows:

When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods 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.

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

(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

EN (IX) to GRI 3(b) provides:

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

EN (VIII) to GRI 3(b) provides:

The 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 a constituent material in relation to the use of the goods.

Pursuant to GRI 3(a), the article is a composite good *prima facie* classifiable under more than a single heading, *i.e.*, headings 2517 (the unpolished rocks), 3406 (candle), 3926 (the plastic “bowl”), 8413 (the pump), and 9602, HTSUS (the columnar “centerpiece” (that resembles relatively large, block candles that house the tea light candles and “steps” that redirect water from the pump) composed of paraffin wax)).

As regards the essential character of the goods, we note several decisions by the Court of International Trade (CIT) which addressed “essential character” for purposes of GRI 3(b). *Better Home Plastics Corp. v. United States*, 916 F. Supp. 1265 (CIT 1996), affirmed, 119 F.3d 969 (Fed. Cir. 1997), involved the classification of shower curtain sets, consisting of an outer textile curtain, inner plastic magnetic liner, and plastic hooks. The Court examined the role of the constituent materials in relation to the use of the goods and found that, although the relative value of the textile curtain was greater than that of the plastic liner, and that although the textile curtain also served protective, privacy and decorative functions, because of the fact that the plastic liner served the indispensable function of keeping water inside the shower, the plastic liner imparted the essential character upon the set. See also *Mita Copystar America, Inc. v. United States*, 966 F. Supp. 1245 (CIT 1997), motion for rehearing and reconsideration denied, 994 F. Supp. 393 (CIT 1998), and *Vista International Packaging Co. v. United States*, 19 CIT 868, 890 F. Supp. 1095 (1995), in which the Court also looked to the role of the constituent material in relation to the use of the goods to determine essential character.

The indispensable function of the “Envirascap” fountain is that of a decorative article. The article is intended to be and serves the role of a decoration, *i.e.*, it has no utilitarian value but is wholly ornamental. As such, we must determine which of its components imparts the essential character to the article as a whole.

We believe that neither the unpolished rocks nor the candle impart the essential character to the whole. The rocks appear to be ordinary—oblong shaped, smooth, of unremarkable quality or color. Their presence in the product is to diffuse or redirect the water that will be circulated. It is in this manner that the rocks “contribute” to the decorative role of the good, and we find that the presence of the rocks adds to the appearance and role of the whole without imparting the essential character to the article. Likewise, while the lit candles may draw attention to the article, their presence merely contributes to the appearance of the component good as a whole. Similarly, the tea light candles are ordinary in

every respect. Thus, we conclude that neither the rocks nor the candles impart the essential character of the good and accordingly the article is not classifiable under heading 2517 or 3406, HTSUS.

Similarly, the electric pump does not impart the essential character of the article. The “Envirascape” fountain serves a decorative function without the pump, *e.g.*, when the pump is not functioning. The candles and rocks contained in the glass bowl also contribute to the overall appearance and character of the article. We do not believe that the sound of the water is sufficient or serves sufficient enough of a purpose to change our view as to the classification of the fountain. See HQ 964361, dated August 6, 2001, for a similar ruling on a “calming pond.”

Pursuant to GRI 3(b), we find that the molded, columnar “centerpiece” (that resembles relatively large, block candles that house the tea light candles and “steps” that redirect water from the pump) composed of paraffin wax imparts the essential character of the “Envirascape” fountain. Essential character has frequently been construed to mean the attribute that strongly marks or serves to distinguish what an article is. After a careful consideration of this issue, we determine that the “Envirascape” fountain is essentially a decorative article of paraffin wax. The wax mold holds the tea light candles and redirects the pumped water that comprise the focal points of the complete and functioning decoration. Accordingly, based upon our determination that the essential character of the “Envirascape” fountain is as an article of paraffin wax, we find that it is provided for under heading 9602, HTSUS.

As stated above, two comments were received in response to the publication of the notice of intention to revoke NY H88127. One comment was written in support of the proposed revocation. The other comment received was submitted by a company that imports and markets similar goods. The commenter suggests that the essential character of articles such as the “Envirascape” is imparted by the generation of “the pleasing and relaxing sound of flowing water” and therefore it is the electric pump and stones that impart the essential character of the composite article. We have previously considered and rejected that argument in rulings that classified similar composite articles (see below).

Our determination is consistent with the following rulings concerning similar articles:

In HQ 958866 dated April 16, 1996, Customs found a copper tabletop water garden to be classified in subheading 8306.29.00, HTSUS, as: “*** statuettes and other ornaments, of base metal ***” The article there was described as follows: “*** a four leaf shaped copper fountain unit connected through copper ‘stems’ to a plastic water reservoir and pump powered by an electric cord and 3-pronged plug, a copper planter and a decorative rock package.”

In NY F83276 dated March 15, 2000, Customs held the model CP-1 “calming pond” to be classified in subheading 3926.40.00, HTSUS as: “Other articles of plastics: *** Statuettes and other ornamental articles.” This classification was affirmed in HQ 964361, dated August 6, 2001. In NY E84043 dated July 27, 1999, Customs classified a decorative “calming pool” in subheading 3926.40.00, HTSUS, as: “Other articles of plastics *** Statuettes and other ornamental articles.”

In HQs 965163 and 965164, both dated August 6, 2001, a tabletop water fountain and an angel fountain, respectively, were classified pursuant to GRI 3(b). In both rulings it was the constituent material of the decorative article that was determined to impart the essential character to the articles.

Holding:

The “Envirascape” fountain is classified under subheading 9602.00.40, HTSUS, which provides for worked vegetable or mineral carving material and articles of these materials; molded or carved articles of wax, of stearin, of natural gums or natural resins, of modeling pastes, and other molded or carved articles, not elsewhere specified or included; worked, unhardened gelatin (except gelatin of heading 3503) and articles of unhardened gelatin; molded or carved articles of wax.

Effect on Other Rulings:

NY H88127 is revoked. In accordance with 19 U.S.C. §1625 (c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

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

REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF A PLASTIC
HEADLIGHT LENS AND PLASTIC PARKING LIGHT LENS

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

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of a plastic headlight lens and a plastic parking light lens.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification of a headlight lens and a parking light lens, under the Harmonized Tariff Schedule of the United States ("HTSUS"). Similarly, Customs also is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed revocation was published on August 7, 2002, in the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 25, 2002.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published on August 7, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 32, proposing to modify NY H82055, dated June 6, 2001, which classified a plastic headlight lens and plastic parking and signal lens in subheading 8512.90.20, Harmonized Tariff Schedule of the United States (HTSUS), as parts of electrical and signaling equipment of a kind used in motor vehicles. No comments were received in response to this notice.

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

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

In NY H82055, dated June 6, 2001, Customs classified a headlight lens and a tail light lens in subheading 8512.90.20, HTSUS, as parts of signaling equipment of a kind for cycles or motor vehicles. We stated that the lenses did not have optical properties and were solely protective covers for the automotive lamps.

It is now Customs position that these lenses impart optical properties sufficient for classification in heading 9001, HTSUS, which is the provision for unmounted optical lenses. Although most of the optical properties are provided by the design of the reflector, or housing, of the lamp, the importer submitted to us that the lenses are manufactured with specific slopes and thickness to spread and direct the light a certain way. Therefore, the lenses are classifiable in subheading 9001.90.40, HTSUS, which provides for "Optical fibers and optical fiber bundles; optical fiber cables other than those of heading 8544; sheets and plates of polarizing material; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass, not optically worked: other: lenses."

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY H82055 to reflect the proper classification of the subject merchandise and any other ruling not specifically identified, classifying the same or substantially similar merchandise, pursuant to the analysis set forth in the attached ruling, HQ 965192. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical merchandise.

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

Dated: September 9, 2002.

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

[Attachments]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 9, 2002.

CLA-2 RR:CR:GC 965192 DBS
Category: Classification
Tariff No. 9001.90.40

MR. SPIRO KARRAS
SANDLER & TRAVIS TRADE ADVISORY SERVICES, INC.
*38345 Ten Mile Road
Farmington Hills, MI 48335*

Re: Reconsideration of NY H82055; Plastic automobile headlight lens and parking and signal lens.

DEAR MR. KARRAS:

This is in reference to your letters of July 31, 2001 and January 11, 2002, requesting reconsideration of NY H82055, dated June 6, 2001. In NY H82055, issued to you on behalf of Guide Corporation, the Director, National Commodity Specialist Division, New York, classified a plastic headlight lens and plastic parking and signal lens in subheading 8512.90.20, Harmonized Tariff Schedule of the United States (HTSUS), as parts of electrical and signaling equipment of a kind used in motor vehicles. We have reconsidered the classification of the two lenses and now believe NY H82055 is incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs 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 the above identified ruling was published on August 7, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 33. No comments were received in response to the notice.

Facts:

Both of the lenses at issue cover an incandescent light sources. The housing for the lamp has "developed optical facets" in the reflector. Each of the facets is designed to move the light to a certain area of the beam pattern. The plastic headlight lens (GM 16525875) was identified in NY H82055 as being a 5" x 3" oval yellow plastic lens attached to a clear plastic lens measuring 20" x 4½" with a clear plastic border. You submitted letters from representatives of the corporation to Customs stating that the lens is actually one piece,

produced in a multicolor molding machine that incorporates a single mold with two injection points. The yellow (amber) portion is concave, and not flush with the clear part. It is yellow to meet the color requirement for the parking/turn signal function. The border is actually a "leg lens," which is part of the lens. It is used to attach the lens to the housing by fitting the "leg" into a channel on the housing, and is secured by a bonding agent.

The plastic parking and signal lens (GM 16514377), which was erroneously identified as a tail light lens in NY H82055, is 14" x 3½" (approx.). The lens is a single piece of smoke-colored plastic. It is manufactured by injecting hot plastic into a two piece mold, allowing it to cool and then ejecting it. Samples were submitted.

NY H82055 classified the merchandise in subheading 8512.90.20, HTSUS, which provides for parts of signaling equipment of a kind used for motor vehicles. You contend the merchandise has optical properties and that qualifies it as unmounted lenses of subheading 9001.90.40, HTSUS.

Issue:

Whether the merchandise has optical properties so that it may be classified in heading 9001, HTSUS, as optical lenses.

Law and Analysis:

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

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

The HTSUS provisions under consideration are as follows:

8512	Electrical lighting and signaling equipment (excluding articles of heading 8539), windshield wipers, defrosters and demisters, of a kind for cycles or motor vehicles; parts thereof:
8512.90	Parts:
8512.90.20	Of signaling equipment
*	* * * * *
9001	Optical fibers and optical fiber bundles; optical fiber cables other than those of heading 8544; sheets and plates of polarizing material; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass, not optically worked:
9001.90	Other:
9001.90.40	Lenses

The ENs include within heading 9001, HTSUS "(D) Optical elements of any material other than glass, whether or not optically worked, not permanently mounted (e.g., elements of * * * plastics * * *)." Therefore, we interpret the scope of the heading to provide for plastic articles if they qualify as optical elements. In order to determine if an article is an optical element, we turn to the distinctions between optical elements of glass of heading 7014, HTSUS and similar optical elements of glass provided for in heading 9001, HTSUS, because the distinctions are instructive as to what qualifies as an optical element.

To be classifiable in heading 9001, HTSUS, an optical element of glass must be optically worked. The EN 90.01(C) states, in pertinent part, that the heading applies to elements [of glass] that have been ground and polished to create certain optical properties. This is, in short, optical working. If the glass element is not optically worked, but still imparts optical properties, the glass is classifiable in heading 7014, HTSUS. EN 70.14 describes optical elements of glass as follows:

(B) Optical elements of glass (colourless or coloured). The heading includes elements which are manufactured in such a way that they produce some required optical effect

without being optically worked. These articles mainly include lenses and similar articles for automobile headlamps, parking lights, direction indication lights * * *.

The ENs for chapters 70 and 90, read in *para materia*, suggest that plastic automotive lenses may be considered optical elements of chapter 90 if manufactured in such a way as to impart optical properties, or optically worked to impart such properties. See HQ 959139, dated August 16, 1996. Thus, we must determine whether the instant articles impart optical properties such that they would be classifiable as optical elements of heading 9001, HTSUS, as they could not be classifiable in heading 7014, HTSUS, because they are not glass.

Customs has discussed specific optical properties only with reference to glass lenses, and not any other material. In HQ 951709, dated October 5, 1992, the optical properties of certain fire-polished glass lenses were specific focal lengths and focal points. In HQ 959905, dated January 22, 1999, the importer stated that the optical properties of colored filter glass included filtering ultraviolet rays and allowing infrared/thermal radiation to pass through the glass. We find the examples enumerated in previous Customs rulings to be instructive in showing that the lens must be manufactured to perform certain relatively specific functions.

In common meaning, the term "lens (optics)" is defined as, "A curved piece of ground and polished or molded material, usually glass, used for the refraction of light." McGraw-Hill Encyclopedia of Science & Technology, Vol. 9 (1987), p. 663. Light refraction is an optical property for purposes of classification in heading 9001, HTSUS, because any transparent article refracts light passing through it to some extent. The lens must have a purpose beyond mere protection or incidental refraction. Thus, classification of a lens of this type is determined on a case by case basis. In HQ 959139, *supra*, we classified an automobile headlight lens in subheading 9001.90.40, HTSUS, there were patterns molded into the lens and the importer submitted blueprints demonstrating how the light was refracted by the patterns. See also NY 876023, dated July 28, 1992 (classifying a plastic tail lamp lens with pattern in subheading 9001.90.40, HTSUS) and NY 818099, dated February 2, 1996 (classifying a tail lamp lens and a park lamp lens in subheading 9001.90.40, HTSUS). Similarly, many lenses now do not require patterns because most of the optics of a headlight or parking light lamp are designed in the reflectors (i.e., reflector optics). Thus, the reflector optics of the headlight are manufactured to compensate for refraction by the lens, such as loss of light.

You state that the horizontal and vertical slope of the plastic lenses at issue, as well as the thickness of the lens, are adjusted in their manufacture to further direct the light and to spread the light from the center to the outer edges. Moreover, if the lenses did not have these optical properties, the plastic would distort the light. To buttress these statements, you provided us with photometric test results on the reasonably significant differences in the candlepower, which is "the luminous intensity of a source of light expressed in candelas," Photonics Dictionary 2002, of the light source both with and without the lens. We are satisfied that there are optical properties manufactured into the instant lenses.

Holding:

The instant headlight lens and park and signal lens are classifiable in subheading 9001.90.40, HTSUS, which provides for, "Optical fibers and optical fiber bundles; optical fiber cables other than those of heading 8544; sheets and plates of polarizing material; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass, not optically worked: other: lenses."

Effect on Other Rulings:

NY H82055, dated June 6, 2001, is hereby REVOKED. In accordance with 19 U.S.C 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

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

MODIFICATION AND REVOCATION OF RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF GOLF BAG COMPONENTS IMPORTED
WITHOUT BOTTOMS AND MADE OF TEXTILE FABRIC OF
MAN-MADE FIBERS

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

ACTION: Notice of modification and revocation of tariff classification ruling letters and revocation of treatment relating to the classification golf bag components imported without bottoms and made of fabric of man-made textile fibers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking two rulings and modifying one ruling relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of golf bag components imported without bottoms and made of fabric of man-made textile fibers. Customs is also revoking any treatment previously accorded by it to substantially identical merchandise.

Notice of the proposed action was published in the CUSTOMS BULLETIN, Volume 36, Number 32, on August 7, 2002. The Customs Service received no comments.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 25, 2002.

FOR FURTHER INFORMATION CONTACT: J. Steven Jarreau, Textiles Classification Branch: (202) 572-8817

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 emerged from the law are "**informed compliance**" and "**shared responsibility.**" These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import re-

quirements. For example, under section 484 of the Tariff Act of 1930, as amended, 19 U.S.C. 1484, the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI, notice proposing to revoke Headquarters Ruling Letter (HQ) 957006 (June 27, 1995) and HQ 958915 (Feb. 27, 1996), and to modify HQ 961056 (Feb. 11, 1998) were published in the CUSTOMS BULLETIN, Volume 36, Number 32, on August 7, 2002. No comments were received in response to the notice of proposed action. As was stated in the notice of proposed revocation and modification, the notice covered any rulings which may have existed but which had not specifically been identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, which classified the merchandise contrary to this notice, should have advised Customs during the notice period.

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

The Customs Service in HQ 957006, HQ 958915 and HQ 961056, classified man-made textile fabric golf bag components, primarily golf bag body sleeves or panels, imported both with and without golf bag hoods, slings, clips, top and bottom boots, and other components, but specifically imported without bottoms, in subheading 4202.92.3031, HTSUSA. It is now Customs determination that golf bag components of fabric of man-made textile fibers, primarily golf bag body sleeves or panels, imported both with and without golf bag hoods, slings, clips, top and bottom boots, and other components, but specifically imported without bottoms, are properly classified pursuant to General Rule of Interpretation 1 in subheading 6307.90.9889, HTSUSA.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking HQ 957006 and HQ 958915, and modifying HQ 961056, and any other rulings not specifically identified to reflect the proper classification of the merchandise

pursuant to the analysis set forth in HQ 964538 (Nov. 19, 2001). The legal reasoning and analysis set forth in HQ 964538 is incorporated into and made a part of HQ 965603, HQ 965604 and HQ 965605. Headquarters Ruling Letter 965603, HQ 965604 and HQ 965605 are set forth as attachments "A," "B" and "C" to this notice. Headquarters Ruling Letter 964538 is set forth as attachment "D" to this notice. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise.

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

Dated: September 9, 2002.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 6, 2002.
CLA-2 RR:CR:TE 965603 jsj
Category: Classification
Tariff No. 6307.90.9889 and 4202.92.3031

MR. EDWARD L. HART, JR.
V. ALEXANDER & CO., INC.
IMPORT MANAGER
P.O. Box 30250
Memphis, TN 38130-0250

Re: Modification of HQ 961056 (Feb. 11, 1998); Golf Bag Components Imported Without a Bottom; Subheading 6307.90.9889, HTSUSA; HQ 964538 (Nov. 19, 2001) Incorporated by Reference.

DEAR MR. HART:

The purpose of this correspondence is to advise you that the Customs Service has reconsidered Headquarters Ruling Letter (HQ) 961056 (Feb. 11, 1998) issued to you on the behalf of Arnold Palmer Golf Company.

Headquarters Ruling Letter 961056 classified golf bag components imported without bottoms and composed of fabric of man-made textile fibers in subheading 4202.92.3031, HTSUSA. The Customs Service has reviewed HQ 961056 and determined that it is incorrect as it relates to the classification of the golf bag components imported without bottoms and composed of fabric of man-made textile fibers. Customs is modifying HQ 961056 and revoking that aspect of the ruling letter addressing the classification of the golf bag components composed of fabric of man-made textile fibers. The merchandise in issue will be reclassified in subheading 6307.90.9889, HTSUSA.

The aspects of HQ 961056 that address the country of origin and the classification of the "D" rings are not being revoked or modified and will remain in effect.

Pursuant to section 625 (c), Tariff Act of 1930, as amended, 19 U.S.C. 1625(c), notice of the proposed modification of HQ 961056 was published on August 7, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 32.

Facts:

The merchandise in issue, as set forth in HQ 961056, is components of golf bags. The components include: (1) A nylon body sleeve; (2) An organizer top assembly; (3) A sling; (4) A top boot; (4) Clips; (5) A hood; (6) A bottom boot; and (7) A metal "D" ring.

It is noted that the above-referenced components will be assembled in the United States with components of United States origin. The components of U.S. origin include: (1) A plastic bottom; (2) A polyvinyl chloride tube body liner; (3) Rivets; and (4) A metal "D" clip.

The Customs Service specifically emphasizes the fact that the merchandise will be imported into the United States without a bottom.

Issue:

What is the classification, pursuant to the Harmonized Tariff Schedule of the United States Annotated, of the body sleeve, sling and hood composed of fabric of man-made textile fibers, when imported into the United States without the plastic bottom?

Law and Analysis:

The Customs Service in Headquarters Ruling Letter 964538 (Nov. 19, 2001) classified merchandise substantially similar to the body sleeve, sling and hood in subheading 6307.90.9989, HTSUSA. Subheading 6307.90.9989, HTSUSA, effective January of 2002, is enumerated as subheading 6307.90.9889, HTSUSA. Subheading 6307.90.9889, HTSUSA, provides for:

6307	Other made up articles, including dress patterns:
6307.90	Other:
	Other:
6307.90.98	Other,
	Other:
6307.90.9889	Other.

The golf bag components composed of fabric of man-made textile fibers identified in the FACTS section of this ruling letter, imported by Arnold Palmer Golf Company, are individually classified in subheading 6307.90.9889, HTSUSA. The legal reasoning and analysis employed in HQ 964538 is incorporated into this ruling letter by reference. Headquarters Ruling Letter 964538 is attached to and made a part of this ruling letter.

Should the golf bag components addressed above be imported together with a bottom, either in the same or separate containers, but in the same shipment for Customs purposes, all of the merchandise would be classified pursuant to GRI 2(a) as unfinished sports bags. Complete or finished golf bags, as well as incomplete, unfinished, unassembled or disassembled golf bags with outer surfaces of fabric of man-made textile materials are classified in heading 4202, HTSUSA, pursuant to GRI 2(a). They are classified at the subheading level in subheading 4202.92.3031, HTSUSA. Subheading 4202.92.3031, HTSUSA, provides, in part, for sports bags with an outer surface of textile materials of man-made fibers.

The Customs Service notes that this ruling is consistent with a long-line of decisions extending from Internal Advice request HQ 085391 (Dec. 20, 1989). The rulings include: HQ 960883 (April 27, 1998); HQ 962313 (Mar. 4, 1999); HQ 964538 (Nov. 19, 2001); HQ 965041 (May 7, 2001); HQ 964902 (May 9, 2002) and HQ 965017 (May 9, 2002).

Holding:

Headquarters Ruling Letter 961056 (Feb. 11, 1998) is, hereby, modified.

The Arnold Palmer Golf Company golf bag components, consisting of the body sleeve, sling and hood, composed of man-made textile fibers, when imported into the United States without the plastic bottom, are classified in subheading 6307.90.9889, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty for subheading 6307.90.9889, HTSUSA, is seven (7) percent *ad valorem*.

The legal reasoning and analysis employed in HQ 964538 (Nov. 19, 2001) is incorporated by reference. Headquarters Ruling Letter 964538 is attached to and made a part of this ruling letter.

If the golf bag components composed of fabric of man-made textile fibers are imported with a bottom, as part of a single shipment for Customs purposes, they would be classified in subheading 4202.92.3031, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty of subheading 4202.92.3031, HTSUSA, is eighteen and one-tenth (18.1) percent *ad valorem*.

The textile quota category for merchandise classified in subheading 4202.92.3031, HTSUSA, is category 670.

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

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

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

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

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

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, September 6, 2002.
CLA-2 RR:CR:TE 965604 jsj
Category: Classification
Tariff No. 6307.90.9889 and 4202.92.3031

MR. CHRISTOPHER G. STAFF, JR.
C.G. STAFF COMPANIES
2369 So. 200th Street
Seattle, WA 98198

Re: Revocation of HQ 958915 (Feb. 27, 1996); Golf Bag Components Imported Without Bottoms; Subheading 6307.90.9889, HTSUSA; HQ 964538 (Nov. 19, 2001) Incorporated by Reference.

DEAR MR. STAFF:

The purpose of this correspondence is to advise you that the Customs Service has reconsidered Headquarters Ruling Letter (HQ) 958915 (Feb. 27, 1996) issued to you on the behalf of Sundara Industries, Ltd.

Headquarters Ruling Letter 958915 classified golf bag components imported without bottoms and composed of fabric of man-made textile fibers in subheading 4202.92.3031, HTSUSA. The Customs Service has reviewed HQ 958915 and determined that it is erroneous. Customs is revoking HQ 958915 and reclassifying the golf bag components in subheading 6307.90.9889, HTSUSA.

Pursuant to section 625(c), Tariff Act of 1930, as amended, 19 U.S.C. 1625(c), notice of the proposed revocation of HQ 958915 was published on August 7, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 32.

Facts:

The merchandise in issue, as set forth in HQ 958915, is components of golf bags. The components include: (1) A golf bag body sleeve; (2) A top hood/cover; and (3) A padded

shoulder strap. The body sleeve has pockets and compartments. The body sleeve, hood and shoulder strap are all composed entirely of fabric of man-made textile fibers.

The Customs Service specifically emphasizes the fact that the merchandise, particularly the body sleeve, will be imported into the United States without a bottom. Customs has been advised that the merchandise will also be imported without support rods or a top collar.

Issue:

What is the classification, pursuant to the Harmonized Tariff Schedule of the United States Annotated, of the body sleeve, hood and shoulder strap, composed entirely of man-made textile fibers, when imported into the United States without a bottom?

Law and Analysis:

The Customs Service in Headquarters Ruling Letter 964538 (Nov. 19, 2001) classified merchandise substantially similar to the golf bag body sleeve, hood and shoulder strap in subheading 6307.90.9989, HTSUSA. Subheading 6307.90.9989, HTSUSA, effective January of 2002, is enumerated as subheading 6307.90.9889, HTSUSA. Subheading 6307.90.9889, HTSUSA, provides for:

6307	Other made up articles, including dress patterns:
6307.90	Other:
	Other:
6307.90.98	Other,
	Other:
6307.90.9889	Other.

The golf bag components imported without bottoms and composed of fabric of man-made textile fibers identified in the FACTS section of this ruling letter are individually classified in subheading 6307.90.9889, HTSUSA. The legal reasoning and analysis employed in HQ 964538 is incorporated into this ruling letter by reference. Headquarters Ruling Letter 964538 is attached to and made a part of this ruling letter.

Should the golf bag components addressed above be imported together with a bottom, either in the same or separate containers, but in the same shipment for Customs purposes, all of the merchandise would be classified pursuant to GRI 2(a) as unfinished sports bags. Complete or finished golf bags, as well as incomplete, unfinished, unassembled or disassembled golf bags, with outer surfaces of fabric of man-made textile materials, are classified in heading 4202, HTSUSA, pursuant to GRI 2(a). They are classified at the subheading level in subheading 4202.92.3031, HTSUSA. Subheading 4202.92.3031, HTSUSA, provides, in part, for sports bags with an outer surface of textile materials of man-made fibers.

The Customs Service notes that this ruling is consistent with a long-line of decisions extending from Internal Advice request HQ 085391 (Dec. 20, 1989). The rulings include: HQ 960883 (April 27, 1998); HQ 962313 (Mar. 4, 1999); HQ 964538 (Nov. 19, 2001); HQ 965041 (May 7, 2001); HQ 964902 (May 9, 2002) and HQ 965017 (May 9, 2002).

Holding:

Headquarters Ruling Letter 958915 (Feb. 27, 1996) is, hereby, revoked.

The Sundara Industries, Ltd. golf bag components composed of man-made textile fibers, the golf bag body sleeve, top hood/cover and shoulder strap, when imported into the United States without a bottom, are individually classified in subheading 6307.90.9889, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty for subheading 6307.90.9889, HTSUSA, is seven (7) percent *ad valorem*.

The legal reasoning and analysis employed in HQ 964538 (Nov. 19, 2001) is incorporated by reference. Headquarters Ruling Letter 964538 is attached to and made a part of this ruling letter.

If the golf bag components composed of fabric of man-made textile fibers are imported with a bottom, as part of a single shipment for Customs purposes, they would be classified in subheading 4202.92.3031, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty of subheading 4202.92.3031, HTSUSA, is eighteen and one-tenth (18.1) percent *ad valorem*.

The textile quota category for merchandise classified in subheading 4202.92.3031, HTSUSA, is category 670.

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

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

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

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

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

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, September 6, 2002.
CLA-2 RR:CR:TE 965605 jsj
Category: Classification
Tariff No. 6307.90.9889,
4202.92.3031, and 3926.90.9880

MR. DAVID C. SOTO
V. ALEXANDER & CO., INC.
15 Century Boulevard
Suite 400
Nashville, TN 37214-3650

Re: Revocation of HQ 957006 (June 27, 1995); Golf Bag Components Imported Without Bottoms; Subheading 6307.90.9889, HTSUSA; HQ 964538 (Nov. 19, 2001) Incorporated by Reference.

DEAR MR. SOTO:

The purpose of this correspondence is to advise you that the Customs Service has reconsidered Headquarters Ruling Letter (HQ) 957006 (June 27, 1995) issued to you on the behalf of Datrek Professional Bags, Inc.

Headquarters Ruling Letter 957006 classified golf bag components imported without bottoms and composed of fabric of man-made textile fibers in subheading 4202.92.3031, HTSUSA. The Customs Service has reviewed HQ 957006 and determined that it is erroneous. Customs is revoking HQ 957006 and reclassifying the golf bag components in subheading 6307.90.9889, HTSUSA.

Pursuant to section 625 (c), Tariff Act of 1930, as amended, 19 U.S.C. 1625 (c), notice of the proposed revocation of HQ 957006 was published on August 7, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 32.

Facts:

The merchandise in issue, as set forth in HQ 957006, is components of golf bags. The components include: (1) A golf bag body sleeve, open and unsewn on both the top and bot-

tom; (2) A "Rain Hood" cover; (3) A "top collar" constructed of polyethylene plastic covered with a man-made textile material; (4) A "bottom collar" constructed of polyethylene plastic covered with a man-made textile material; (5) A padded shoulder strap; (6) Three woven nylon strips to be sewn to the outside of the bag; and (7) A cut-to-shape piece of vinyl with "Alegis" stamped onto it, to be sewn onto the top collar.

The golf bag body sleeve, hood, shoulder strap and all of the other textile components are composed of textile fabric of man-made fibers (nylon). The nylon has a polyvinyl chloride plastic backing and a polyvinyl chloride coating. The body sleeve has three zippered compartments and three pockets. The body sleeve, hood and shoulder strap have metal snaps and rivets, and plastic clips.

The top collar and bottom collar are made of polyethylene plastic and are covered with nylon and vinyl, respectively. The top collar is twenty-six and one-half (26½) inches in length and four and one-half (4½) inches in width. The top collar tapers in the center. The bottom collar is twenty-four and one-half (24½) inches in length and two and one-half (2½) inches in width.

The Customs Service specifically emphasizes the fact that the merchandise will be imported into the United States without a bottom. Customs has been advised that the merchandise will also be imported without a bag frame and an acrylic fur inner bag lining.

Issue:

What is the classification, pursuant to the Harmonized Tariff Schedule of the United States Annotated, of the body sleeve, rain cover, polyethylene plastic top collar covered with a man-made textile material, the polyethylene plastic bottom collar covered with vinyl, the padded shoulder strap, the three woven nylon strips, and the cut-to-shape piece of vinyl with "Alegis" stamped onto it, when imported into the United States without a bottom?

Law and Analysis:

Classification of the Body Sleeve, Rain Cover, Shoulder Strap and Three Woven Strips

The Customs Service in Headquarters Ruling Letter 964538 (Nov. 19, 2001) classified merchandise substantially similar to the golf bag body sleeve, rain cover or hood, shoulder strap and three woven strips in subheading 6307.90.9989, HTSUSA. Subheading 6307.90.9989, HTSUSA, effective January of 2002, is enumerated as subheading 6307.90.9889, HTSUSA. Subheading 6307.90.9889, HTSUSA, provides for:

6307	Other made up articles, including dress patterns:
6307.90	Other:
	Other:
6307.90.98	Other,
	Other:
6307.90.9889	Other.

The golf bag components composed of textile fabric of man-made fibers identified as the body sleeve, rain cover or hood, shoulder strap and three woven strips, imported by Datrek, are individually classified in subheading 6307.90.9889, HTSUSA. The legal reasoning and analysis employed in HQ 964538 is incorporated into this ruling letter by reference. Headquarters Ruling Letter 964538 is attached to and made a part of this ruling letter.

Should the body sleeve, rain cover or hood, shoulder strap and three woven strips addressed above be imported together with a bottom, either in the same or separate containers, but in the same shipment for Customs purposes, all of the merchandise would be classified pursuant to GRI 2(a) as unfinished sports bags. Complete or finished golf bags, as well as incomplete, unfinished, unassembled or disassembled golf bags, with outer surfaces of man-made textile materials, are classified in heading 4202, HTSUSA, pursuant to GRI 2(a). They are classified at the subheading level in subheading 4202.92.3031, HTSUSA. Subheading 4202.92.3031, HTSUSA, provides, in part, for sports bags with an outer surface of textile materials of man-made fibers.

The Customs Service notes that this ruling is consistent with a long-line of decisions extending from Internal Advice request HQ 085391 (Dec. 20, 1989). The rulings include: HQ 960883 (April 27, 1998); HQ 962313 (Mar. 4, 1999); HQ 964538 (Nov. 19, 2001); HQ 965041 (May 7, 2001); HQ 964902 (May 9, 2002) and HQ 965017 (May 9, 2002).

Classification of the Polyethylene Plastic Top Collar Covered and Sewn Over With Nylon Fabric

The plastic top collar covered and sewn over with nylon fabric is a composite good composed of different materials classified pursuant to GRI 3 (b). The components are *prima facie* classifiable in heading 3926, HTSUSA, as other articles of plastic, and in heading 6307, HTSUSA, as other made up articles. The plastic and textile components “are attached to each other to form a practically inseparable whole.” See *General Rules for the Interpretation of the Harmonized System, Rule 3 (b), Explanatory Note (IX)*. The plastic component provides the collar with its predominate value, weight and bulk, and, thereby, gives the collar its essential character.

Completing the classification of the plastic top collar, the article is classified in subheading 3926.90.9880, HTSUSA. Subheading 3926.90.9880, HTSUSA, provides for:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.98	Other,
3926.90.9880	Other.

Classification of the Polyethylene Plastic Bottom Collar Covered and Sewn Over With Polyvinyl Chloride and the Cut-To-Shape Piece of Vinyl

The plastic bottom collar covered and sewn over with polyvinyl chloride and the cut-to-shape piece of vinyl are classified pursuant to GRI 1 in subheading 3926.90.9880, HTSUSA.

Holding:

Headquarters Ruling Letter 957006 (June 27, 1995) is, hereby, revoked.

Classification of the Body Sleeve, Rain Cover, Shoulder Strap and Three Woven Strips Imported Without a Bottom

The Datrek Professional Bags, Inc. textile golf bag components, the golf bag body sleeve, rain hood or cover, shoulder strap and three woven strips, when imported into the United States without a bottom, are classified in subheading 6307.90.9889, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty for subheading 6307.90.9889, HTSUSA, is seven (7) percent, *ad valorem*.

The legal reasoning and analysis employed in HQ 964538 (Nov. 19, 2001) is incorporated by reference. Headquarters Ruling Letter 964538 is attached to and made a part of this ruling letter.

Classification of the Body Sleeve, Rain Cover, Shoulder Strap and Three Woven Strips Imported With a Bottom

If the golf bag components composed of fabric of man-made textile fibers, the golf bag body sleeve, rain hood or cover, shoulder strap and three woven strips, are imported with a bottom, as part of a single shipment for Customs purposes, they would be classified in subheading 4202.92.3031, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty for subheading 4202.92.3031, HTSUSA, is eighteen and one-tenth (18.1) percent *ad valorem*.

The textile quota category for merchandise classified in subheading 4202.92.3031, HTSUSA, is category 670.

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

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

The designated textile and apparel category may be subdivided into parts. If subdivided, any quota and visa requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent negotiations and changes, to obtain the most current information available, we suggest 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 updated weekly and is available for inspection at your local Customs Service office. The

Status Report On Current Import Quotas (Restraint Levels) is also available on the Customs Electronic Bulletin Board (CEBB) which can be found on the U.S. Customs Web site at www.customs.gov.

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

Classification of the Polyethylene Plastic Top Collar Covered and Sewn Over With Nylon Fabric and The Cut-To-Shape Piece of Vinyl

The polyethylene plastic top collar covered and sewn over with nylon fabric and the cut-to-shape piece of vinyl are classified in subheading 3926.90.9880, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty for subheading 3926.90.9880, HTSUSA, is five and three-tenths (5.3) percent *ad valorem*.

Classification of the Polyethylene Plastic Bottom Collar Covered and Sewn Over With Polyvinyl Chloride

The polyethylene plastic bottom collar covered and sewn over with polyvinyl chloride is classified in subheading 3926.90.9880, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty for subheading 3926.90.9880, HTSUSA, is five and three-tenths (5.3) percent, *ad valorem*.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, November 19, 2001.
CLA-2 RR:CR:TE 964538 jsj
Category: Classification
Tariff No. 6307.90.9989 and 4202.92.3031

MS. LAURA HAGER
ABX LOGISTICS
IMPORT DEPARTMENT
714 S. Isis Avenue, Suite A
Inglewood, CA 90301

Re: Golf Bag Parts; Subheadings 6307.90.9989 and 4202.92.3031, HTSUSA; Separate shipments.

DEAR MS. HAGER:

The purpose of this correspondence is to respond to your request on the behalf of Ergonomix Sport, Inc. for a binding classification ruling of the merchandise described as a "flat golf bag" and "related parts."

This ruling is being issued subsequent to the following: (1) A review of your submission received by the Customs Service on July 27, 2000; (2) A review of the correspondence of Mr. Stephen J. Pern4 President of Ergonomix Sport, dated July 7, 2000; and (3) An examination of the samples.

The Customs Service is advised by ABX Logistics that all of the textile fabric is m-made in Taiwan and that the textile components of the golf bag are sewn in China. Final assembly of the golf bags, which will include the attachment of a plastic top, plastic bottom plastic flap and a stand, will be undertaken in the United States.

Customs has been advised that the textile aspects of the "flat golf bag" will be "arriving in separate container[s]" from the plastic and other components. *Ergonomix Sport Corre-*

spondence (July 7, 2000). The Customs Service, for the purposes of this ruling, understands the importer's statement to mean that the articles will be imported in separate shipments. If the textile components and the plastic and other components are shipped in separate containers, but arrive in the same shipment, the classification ruling provided in this letter would be different.¹

Facts:

The sample article in issue, identified as a "flat golf bag," is the body of a golf bag made of man-made textile material. The "flat golf bag" lacks a plastic top, plastic bottom, plastic flap and a stand, all of which will be a part of and accompany a finished golf bag. The "flat golf bag," as assembled at the time of importation, is entirely sewn, including all pockets, zippers, "D" rings, handles, "O" rings, snaps, as well as all other aspects of the golf bag panel.

The other samples, the "related parts," as described by the importer, include: a rain/travel hood, a shoulder strap, a full-length middle divider, fur padding F/dividers, hook and loop fastener material and webbing material. The rain/travel hood is composed of a man-made textile material coated or covered on the interior with plastic. It has metal snaps on the bottom and a center zipper. The shoulder strap is composed of man-made textile material and is designed to carry the completed golf bag on both of the golfer's shoulders. It has plastic clips that enable the straps to be adjusted.

The remaining "related parts" are composed of man-made textile material and have plastic and/or hook and loop fasteners. The full-length textile middle divider is tubular-shaped, has a plastic base attached with elastic straps, and hook and loop fasteners at the top. The other parts include a circular length of man-made textile material with individual flaps of loop fasteners, a thirty-six (36) inch length of hook fastener material measuring one inch wide and two approximately four inch by four inch squares composed of man-made textile material with one inch tongues, each with strips of hook and loop fastener material.

Issues:

What is the classification, pursuant to the Harmonized Tariff Schedule of the United States Annotated, of the above-described "flat golf bag" and "related parts" when imported in shipments separate from the plastic top, plastic bottom, plastic flap and the stand?

Law and Analysis:

The federal agency responsible for initially interpreting and applying the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is the U.S. Customs Service.² The Customs Service, in accordance with its legislative mandate, classifies imported merchandise pursuant to the General Rules of Interpretation (GRI) and the Additional U.S. Rules of Interpretation.³

General Rule of Interpretation 1 provides, in part, that classification decisions are to be "determined according to the terms of the headings and any relative section or chapter notes." *General Rule of Interpretation 1*. General Rule of Interpretation 1 further states that merchandise which can not be classified in accordance with the dictates of GRI 1 should be classified pursuant to the other General Rules of Interpretation, provided the HTSUSA chapter headings or notes do not require otherwise. According to the Explanatory Notes (EN), the phrase in GRI 1, "provided such headings or notes do not otherwise require," is intended to "make it quite clear that the terms of the headings and any relative Section or Chapter Notes are paramount." *General Rules for the Interpretation of the Harmonized System, Rule 1, Explanatory Note (V)*.

The Explanatory Notes constitute the official interpretation of the Harmonized System at the international level. See Joint Explanatory Statement *supra* note 2, at 549. The Ex-

¹ See *infra* note 4.

² See 19 U.S.C. 1500 (West 1999) (providing that the Customs Service is responsible for fixing the final appraisement, classification and amount of duty to be paid); See also Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 100-576, at 549 (1988) reprinted in 1988 U.S. Code Cong. and Adm. News 1547, 1582 [hereinafter Joint Explanatory Statement].

³ See 19 U.S.C. 1202 (West 1999); See generally, *What Every Member of The Trade Community Should Know A bout: Tariff Classification*, an Informed Compliance Publication of the Customs Service available on the World Wide Web site of the Customs Service at www.customs.gov, search "Importing & Exporting" and then "U.S. Customs Informed Compliance Publications."

planatory Notes, although neither legally binding nor dispositive of classification issues, do provide commentary on the scope of each heading of the HTSUS. The EN's are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989); *Lonza, Inc. v. United States*, 46 F.3d 1098, 1109 (Fed. Cir. 1945).

Commencing classification of the articles that comprise the "Flat golf bag" and the "related parts" in accordance with the dictates of GRI 1, the Customs Service examined the headings of the HTSUSA. Customs review of the headings of the HTSUSA did not establish any heading that described all of the merchandise in issue when considered as a single item.

Customs specifically notes that the merchandise will not be imported in completed condition. Customs further notes, for the purposes of this ruling, that the "flat golf bag" and "related parts" will be imported in shipments separate from the plastic top, plastic bottom, plastic flap and the stand.⁴ Customs, absent a provision in the tariff schedule to the contrary, is required to classify merchandise in the condition in which it is imported. See *Sarne Handbags Corp. v. United States*, 100 F. Supp. 1126, (C.I.T. 2000); *Heartland By-Products, Inc. v. United States*, 74 F. Supp. 1324, 1341 (C.I.T. 1999) citing *Worthington v. Robbins*, 139 U.S. 337, 341 (1891). If the "flat golf bag" and the "related parts" were to be shipped in separate containers, but arrived together on the same ship, the classification would be different.⁵

The Customs Service, having determined that all of the articles under consideration in this ruling letter cannot cumulatively, as a single item, be classified pursuant to GRI 1, examined GRI 2. General Rule of Interpretation 2 is divided into two subparagraphs, GRI 2 (a) and GRI 2 (b). General Rule of Interpretation 2 (a) provides that any reference in an HTSUSA heading to an article "shall be taken to include a reference to that article incomplete or unfinished." GRI 2 (a) requires, however, that the incomplete or unfinished article have the "essential character" of the complete or finished article.

The issue to be addressed is whether the "flat golf bag" and the "related parts" to be imported by Ergonomix Sport have the "essential character" of completed or finished products and should, therefore, be classified pursuant to GRI 2(a) as if they were goods in their completed or finished state. The General Rules of Interpretation do not define the phrase "essential character." Its meaning may, however, be understood from an examination of the Explanatory Notes to GRI 2 (a).

The EN's to GRI 2 (a) draw a distinction between a "blank" which possesses the essential character of an article and a "semi-manufacture[d]" item that does not have the essential character of an article. A "blank," as defined in the EN, is an article "not ready for direct use, having the approximate shape or outline of the finished article or part." The EN continues stating that a "blank" is an article "which can only be used, other than in exceptional cases, for completion into the finished article or part."

A plastic bottle preform is offered in the EN as an example of a blank. Bottle preforms of plastic are "intermediate products having tubular shape, with one closed end and one open end threaded to secure a screw type closure, the portion below the threaded end being intended to be expanded to a desired size and shape."

"Semi-manufactures" are items that do not yet have the essential shape or character of the finished articles. Examples of semi-manufactures set forth in the EN's are: "bars, discs, tubes, etc." Semi-manufactures are specifically not regarded as "blanks."

An examination of the instant "flat golf bag" and "related parts," in the condition in which they will be imported, reveals semi-manufactured items rather than blanks. The articles do not have the essential character of a sports bag.

Completed golf bags are classified in heading 4202, HTSUSA. Heading 4202, HTSUSA, provides for the classification of:

Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool

⁴ See *Altman & Co. v. United States*, 13 Ct. Cust. Appls. 315 (1925) (providing that separately packaged parts of the same merchandise arriving on the same shipment should be considered a single entry and classified together); See also *James G. Wiley v. United States*, 56 Cust. Ct. 331 (1966) (providing that arrival of different aircraft constitute both physically and commercially separate importations, and that entries of merchandise from different vessels could not be merged for the purposes of appraisal or classification).

⁵ See *id.* *Altman & Co.*

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. (Emphasis added.)

Additional U.S. Note I of Chapter 42 provides a definition for the phrase "sports bags." The expression "travel, sports and similar bags" means "goods * * * of a kind designed for carrying clothing and other personal effects during travel including backpacks and shopping bags of this heading, but does not include binocular cases, camera cases, musical instrument cases, bottle cases and similar containers." *Chapter 42, HTSUSA, Additional U.S. Note 1.*

An examination of the instant "flat golf bag" and "related parts," in the condition in which they will be imported, reveals articles that do not yet have the essential character of goods of a kind designed for carrying clothing and other personal effects during travel. The articles specifically lack the capability to function as a container. Since they do not have the essential character of "sports bags" of heading 4202, HTSUSA, the Customs Service cannot classify them as GRI 2(a) incomplete or unfinished articles.

The "flat golf bag" and the "related parts" are individually classified pursuant to GR] 1 in heading 6307, HTSUSA. The articles are further classified in subheading 6307.90.9989, HTSUSA. Subheading 6307.90.9989, HTSUSA, provides for:

6307	Other made up articles, including dress patterns:
6307.90	Other:
	Other:
6307.90.98	Other,
	Other:
6307.90.9889	Other.

Should the "flat golf bags" and the "related parts" be imported together with the plastic top, plastic bottom, plastic flap and the stand, either in the same or separate containers, but in the same shipment, all of the merchandise would be classified pursuant to GRI 2(a) as unassembled sports bags. Complete or finished golf bags with outer surfaces of man-made textile materials are classified in heading 4202, HTSUSA, and are further classified at the subheading level in subheading 4202.92.3031, HTSUSA. subheading 4202.92.3031, HTSUSA, provides for the classification of sports bags with an outer surface of textile materials of man-made fibers.

Holding:

The "flat golf bag" and the "related parts" when imported in shipments separate from the plastic top, plastic bottom, plastic flap and the stand are classified in subheading 6307.90.9989, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty for subheading 6307.90.9989, HTSUSA, is seven (7) percent, *ad valorem*.

If the "flat golf bag" and the "related parts" are imported with the plastic top, plastic bottom, plastic flap and the stand in separate containers, but as part of a single shipment for Customs purposes, they would be classified in subheading 4202.92.3031, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty of subheading 4202.92.3031, HTSUSA, is eighteen and three-tenths (18.3) percent, *ad valorem*.

The textile quota category for merchandise classified in subheading 4202.92.3031, HTSUSA, is category 670.

It is recommended that Ergonomix Sport contact its local Customs Service office prior to the importation of this merchandise to determine the current status of any restraints or requirements due to the changeable nature of the statistical annotation, the ninth and tenth digits of the HTSUSA, and the restraint (quota/visa) categories applicable to textile merchandise.

The designated textile and apparel category may be subdivided into parts. If subdivided, the quota and visa requirements applicable to the merchandise may be affected. It is recommended that Ergonomix Sport review, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, since part categories are the result of inter-

national bilateral agreements and subject to frequent change. The Status Report is an internal issuance of the U.S. Customs Service and is available for inspection at local Customs Service offices.

JOHN DURANT,
Director,
Commercial Rulings Division.

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF CHEESE SAUCE PREPARATIONS

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

ACTION: Notice of modification of ruling letter and revocation of treatment relating to the classification of cheese sauce preparations

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling letter pertaining to the tariff classification of cheese sauce preparations and revoking any treatment previously accorded by the Customs Service to substantially identical transactions. Notice of the proposed modification was published in the CUSTOMS BULLETIN of August 7, 2002, Vol. 36, No. 32. One comment was received. It supported the proposal.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, General Classification Branch, 202-572-8778.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on August 7, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 32, proposing to modify NY G85242, dated January 11, 2001, pertaining to the tariff classification of cheese sauce preparations under the Harmonized Tariff Schedule of the United States (HTSUS). One comment was received in reply to the notice. It supported the proposed modification.

In NY G85242, dated January 11, 2001, among other products, the classification of products commonly referred to as cheese sauce preparations was determined to be in heading 0406, HTSUS, which provides for cheese and curd. Since the issuance of that ruling, Customs has had a chance to review the classification of this merchandise and has determined that the classification is in error. Customs now believes the merchandise is classified in heading 2103, HTSUS, which provides for sauces and preparations therefor.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is modifying NY G85242, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 964846 (see "Attachment" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

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

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

notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of this notice.

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

Dated: September 11, 2002.

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

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, September 11, 2002.
CLA-2 RR:CR:GC 964846ptl
Category: Classification
Tariff No. 2103.90.90

MR. JULIAN B. HERON
TUTTLE, TAYLOR & HERON
Suite 407 West
1025 Thomas Jefferson Street, NW
Washington, DC 20007-5201

Re: Various Cheese Sauce Preparations; Modification of NY G85242.

DEAR MR. HERON:

This is in response to your letter of February 8, 2001, on behalf of International Custom Products, Inc., in which you request review of the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain cheese sauce preparations, identified as "Preparation 101," which were contained in New York Ruling Letter (NY) G85242, dated January 11, 2001, which was issued to you. We regret the delay.

Facts:

According to information you supplied, "Preparation 101" is a human food preparation which serves as the base for cheese sauces, soups and dressings. The product is said to have been properly acidified and contains all of the necessary thickeners and emulsifiers needed for the production of cheese sauces and dressings. Users of the product need only add water, color and flavoring if desired, and cook, to prepare a sauce or dressing. Actual formulations of "Preparation 101" may change slightly due to customer specifications for texture, body and/or flavor profile.

"Preparation 101" has three flavor profiles, termed "Sharp Flavor," "Italian Flavor," and "Swiss Flavor." Each of the three flavors can have seven formulations, identified as Sharp Flavor 1-A through 1-G, Italian Flavor 1-A through 1-G, and Swiss Flavor 1-A through 1-G. Ingredients common to each formula are cheese (over 60 percent), milk protein concentrate, whey, casein, xanthan gum, sodium citrate, lactic acid, salt, and water. Other ingredients, depending on the formulation, are anhydrous milkfat, soybean oil, coconut oil, whey protein concentrate, and carboxymethylcellulose. "Preparation 101" is said to have a fat content of from 32.5 to 37 percent, a moisture content of from 34 to 36 percent, and a protein content of from 20 to 28 percent. The products are packaged in 25 kg. (or larger) corrugated containers with approved polyethylene liners, and are shipped and stored frozen.

In NY G85242, product formulations of "Preparation 101" identified as Sharp, Italian and Swiss flavor, formulas 1C to 1F were classified in subheading 2103.90.9090, HTSUS, which provides for sauces and preparations therefor * * * other * * * other * * * other.

The remaining formulations (Sharp, Italian and Swiss flavors 1A, 1B and 1G) were classified as follows: "Preparation 101", Sharp flavor, 1A, 1B and 1G, if from Cheddar cheese only, and if under quota was classified in subheading 0406.90.0890, HTSUS, which provides for cheese and curd, other cheese, Cheddar cheese, described in additional U.S. note 18 to this chapter and entered pursuant to its provisions * * * other. "Preparation 101" Sharp flavor, formulas 1A, 1B and 1G, if from granular cheese only, and if entered under quota, was classified in subheading 0406.90.8200, HTSUS, which provides for cheese and curd: * * * other cheese: * * * other cheeses and substitutes for cheese, including mixtures of the above * * * containing or processed from American-type cheese (including Colby, washed curd and granular cheese, but not including Cheddar) * * *. "Preparation 101" Sharp flavor, formulas 1A, 1B and 1G, if from Cheshire cheese only, and if entered under quota, was classified in subheading 0406.90.9500, HTSUS, which provides for cheese and curd: * * * other cheese: * * * other cheeses and substitutes for cheese, including mixtures of the above * * *, other: * * * containing cow's milk. If entered outside quota, the product would be classified in the appropriate subheading.

"Preparation 101" Italian flavor, formulas 1A, 1B and 1G, which contain only Parmesan cheese or only cow's milk Romano cheese, if entered under quota, were classified in subheading 0406.90.4100, HTSUS, which provides for cheese and curd, other cheese, Romano made from cow's milk, Reggiano, Parmesan, Provolone and Provoletti cheeses: * * * other: * * * made from cow's milk. If entered outside quota, the product would be classified in the appropriate subheading.

"Preparation 101" Swiss formula, flavors 1A, 1B and 1G, which will be made from Swiss cheese, were classified, if entered under quota, in subheading 0404.90.9000, HTSUS, which provides for cheese and curd, * * * other cheese: * * * containing or processed from Swiss, Emmentaler or Gruyere-process cheese * * *. If entered outside quota, the product would be classified in the appropriate subheading.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed modification of NY H84179, so that all varieties of "Preparation 101" would be classified in Heading 2106, HTSUS, was published on August 7, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 32. The only comment received was yours, which supported the proposed modification.

Issue:

What is the classification of a variety of preparations for cheese sauce?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

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

The HTSUS headings under consideration are as follows:

0406	Cheese and curd:					
2103	Sauces and preparations therefor; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard:					
		*	*	*	*	*
2103.90	Other:					
		*	*	*	*	*
	Other:					
2103.90.90	Other.					

You have provided manufacturer's product specifications which indicate that the various formulations of "Preparation 101" all contain approximately 60 percent cheese, 12 percent milkfat and/or vegetable oil, 11 percent water, 9 percent milk and/or whey protein concentrate, and minimal other ingredients.

Heading 0406, HTSUS, provides for cheese and curd. The ENs to heading 04.06 provide that "[t]his heading covers all kinds of cheese." And, further that: "The presence of meat, fish, crustaceans, herbs, spices, vegetables, fruit, nuts, vitamins, skimmed milk powder, etc., does not affect classification **provided** that the goods retain the character of cheese."

GRI 2(b) provides:

Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance.

An application of GRI 2(b) would allow the inclusion of vegetable oil, milk and/or whey protein concentrate, and other preservatives with the predominant amount of cheese in these preparations and still keep the classification in heading 0406. As the EN (XII) to GRI 2(b) states, the rule does not widen the heading to the point where "the addition of another material or substance deprives the goods of the character of goods of the kind mentioned in the heading." Therefore, in this case, only if the inclusion of the stated ingredients deprived the product of its character as cheese, would those ingredients preclude classification of the product in heading 0406.

In support of your contention that the preparations should not be classified as cheese products, you have provided Food and Drug Administration Standards of Identity for various cheeses. You offer the argument that, because these Standards of Identity preclude all of your client's products from being labeled or marketed as cheese, they should not be classified as cheese. We note that it is a long established principle of Customs practice that the characterization of imported merchandise by governmental agencies for other than tariff purposes does not determine tariff classification. See *United States v. Mercantil Distribuidora et al.*, 45 C.C.P.A. (Customs) 20, C.A.D. 667 (1957); *Marine Products Co. v. United States*, 42 Cust. Ct. 154 (C.D. 2080) (1959). However, Customs does not completely ignore the characterizations of other agencies.

Heading 2103, HTSUS, provides for "Sauces and preparations therefor; mixed condiments and mixed seasonings: * * *." The ENs to this heading state:

"(A) * * * This heading covers preparations, generally of a highly spiced character, used to flavor certain dishes (meat, fish, salads, etc.), and made from various ingredients (eggs, vegetables, meat, fruit, flours, starches, oil, vinegar, sugar, spices, mustard, flavorings, etc.). Sauces are generally in liquid form and preparations for sauces are usually in the form of powders to which only milk, water, etc. need to be added to obtain a sauce."

Heading 2103 is clearly a use provision, which includes products that have been concocted to serve as bases for various types of sauces. We agree that the products are used as preparations for sauces, and are eligible for classification in heading 2103, HTSUS.

In *Orlando Food Corp. v. United States*, 140 F.3d 1437 (Fed. Cir. 1998), the Court of Appeals for the Federal Circuit, in affirming the decision of the Court of International Trade, considered the scope of heading 2103, in particular, the "sauces and preparations therefor" portion of the heading. The court concluded that the scope was a function of the use characteristics of the provision; that is, as long as the product is used in a manner consistent with a preparation for a sauce, the amount or type of ingredients is a secondary consideration. When the court reasoned that the tomato product was *prima facie* classified in the tomatoes provision, as well as the advanced base or preparations for a sauce provision, the use provision prevailed.

In the present case, you have submitted product specification sheets prepared for the subject products as evidence that each formulation of "Preparation 101" is a preparation which "serves as the base for the production of high quality cheese sauces and dressings." Also, from examination of the characteristics of the product, they appear to fall within a class of goods principally used as sauce bases or preparations for a sauce. See Additional U.S. Rule of Interpretation 1(a). Therefore, the product appears to meet the standards of heading 2103. Under these circumstances, we would necessarily follow the *Orlando* court's principle and conclude under GRI 3(a) that the product is more specifically provided for under the use provision of heading 2103, HTSUS, than under the *eo nomine* pro-

vision of heading 0406, HTSUS, that merely describes the product. The court cited the commonly used rationale that “a product described by both a use provision and an *eo nomine* provision is generally more specifically provided for under the use provision” (citing *Siemens Am.*, 653 F.2d 471 at 478.) In this case, that rationale must be equally applicable, because it is more difficult to satisfy the conditions for use as a preparation for a sauce than to satisfy the provisions for “cheese and curd.”

Accordingly, it is Customs opinion that the “Preparation 101” formulas 1A, 1B and 1G are properly classified as sauces and preparations therefor in heading 2103, HTSUS. This decision is consistent with HQ 960583, dated April 19, 1999, and HQ 953849, dated October 5, 1993.

Holding:

The products identified as “Preparation101” which have been assigned formulation codes “1A, 1B and 1G” have the character of a sauce preparation and are classified in sub-heading 2103.90.90, HTSUS, which provides for sauces and preparations therefor; * * * other: other: other.

NY G85242, dated January 11, 2001, is modified in accordance with this decision. 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, Acting Director,
Commercial Rulings Division.)