U.S. Customs Service

General Notice

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, October 16, 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.

SANDRA L. BELL,
(for Michael T. Schmitz, Assistant Commissioner,
Office of Regulations and Rulings.)

REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF COTTON BOOTIES

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

ACTION: Notice of revocation of two ruling letters and revocation of treatment relating to the tariff classification of certain cotton booties.

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 ruling letters relating to the tariff classification of cotton booties under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Similarly, Customs is revoking any treatment previously accorded by it to substantially identical merchandise that is contrary to the position set forth in this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Teresa Frazier, Textiles Branch (202) 572–8821.

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.

In NY E82597, dated June 11, 1999, Customs classified a pair of pedicure booties in subheading 6217.10.9510, HTSUSA, which provides for "other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212; Accessories; Other: Other * * * Of cotton."

In NY E85669, dated August 17, 1999, which replaced NY E83136, dated June 21, 1999, Customs classified a cotton bootie which was imported separately for use within a paraffin bath unit in subheading 6217.10.9510, HTSUSA, which provides for "other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212; Accessories; Other: Other * * * Of cotton."

Pursuant to Customs obligations, a notice of proposed modification and revocation was published in the CUSTOMS BULLETIN of September 11, 2002, Volume 36, Number 37. One comment was received in favor of the change.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, Customs is revoking two ruling letters relating to the classification of cotton booties. Although in this notice Customs is specifically referring to NY E82597, dated June 11, 1999 and NY E85669, dated August 17, 1999, this notice covers any rulings on such merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to those identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memo-

randum or decision or protest review decision) on the issues subject 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 transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Any person involved in substantially identical transactions should have advised Customs during the 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 the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

Dated: October 15, 2002.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, October 15, 2002.

CLA–2 RR:CR:TE 964828 TF
Category: Classification
Tariff No. 6307.90.9889

MR. RICK MOSLEY
KUEHNE & NAGEL, INC.
101 Wrangler Drive, Suite 201
Coppell, TX 75019

Re: Revocation of NY E82597; classification of pedicure booties from China.

DEAR MR. MOSLEY:

In NY E82597, dated June 11, 1999, Customs classified a pair of pedicure booties composed of 100% woven cotton terry cloth fabric in subheading 6217.10.9510, Harmonized Tariff Schedule of the United States Annotated, which provides for "other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212: Accessories: Other: Other, Of cotton."

We have reviewed this ruling and found it to be in error. Therefore, this ruling revokes NY E82597.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of this ruling was published on September 11, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 37. One comment was received in favor of the change.

Facts:

The submitted sample is as pair of pedicure booties composed of woven 100% cotton terry cloth fabric. The booties are oversized and are sewn together with a single seam. They have piping at the ankle and a hook and loop closure.

Issue:

What is the classification of the subject pedicure booties within the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. Where goods cannot be classified solely on the basis of GRI 1, and if the headings or notes do not require otherwise, the remaining GRIs, 2 through 6, may be applied.

Additionally, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) are 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 HTSUSA. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 6217 provides for "other made up clothing accessories; parts of garments or of clothing accessories." There is no heading within the Tariff that expressly provides for the classification of the subject merchandise. Further, classification as a clothing accessory is classification based upon use and per Additional Rule of Interpretation 1(a), classification controlled by use is determined by the principal use in the United States of the item. In order to be classified as a clothing accessory of heading 6217, an article must be intended for use solely or principally as an accessory.

The term "accessory" is not defined in the tariff schedule or Explanatory Notes. *Merriam-Webster's New Collegiate Dictionary*, (10th Edition), defines "accessory" as "a thing of secondary or subordinate importance;" or "an object or device not essential in itself but adding to the beauty, convenience, or effectiveness of something else." Customs defined accessory in Headquarters Ruling Letter HQ 088540, dated June 3, 1991, as an article that is related to the primary article, and intended for use solely or principally with a specific article.[1] In heading 6217, HTSUSA, the primary article is clothing, and the accessories classifiable under this provision will be related to clothing, intended for use with clothing and of secondary importance to clothing.

EN 62.17 states that heading 6217 provides for "made up textile clothing accessories, **other than** knitted or crocheted, not specified or included in other headings of this Chapter or elsewhere in the Nomenclature." Thus, this heading is a "basket" provision, which is appropriate "only when there is no [other] tariff category which covers the merchandise more specifically." *See Apex Universal, Inc., v. United States*, CIT Slip Op. 98–69 (May 21, 1998). Therefore, we will consider the function of the subject booties as accessories.

In this instance, the subject pedicure booties do not work in conjunction with another article of clothing. Rather, they are designed to be a part of an activity (in this case, the activity is a pedicure). Further, we note that accessories of heading 6217 are used to enhance, adorn or complement articles of clothing. Therefore, where articles are used principally for other purposes, they are not classified in heading 6217.

It is the opinion of this office that the booties are not clothing accessories. They do not exhibit the relationship with clothing necessary to be considered accessories to clothing; they do not adorn or accent clothing. Further, their principal use is in conjunction with the paraffin wax as a heat container for keeping the feet warm, which helps the wax to ultimately soothe and soften the skin.

Customs has previously classified cotton booties as accessories of paraffin wax pedicure kits. For example, in NY F89312, dated July 20, 2000, Customs classified a Remington Paraffin Wax Heat Treatment System, which consisted of a plastic basin filled with wax and accessories (cotton mitt, cotton booties, plastic liner bags and terry cloth wrap) as a set put up for retail sale, if imported together, in subheading 8516.79.0000, HTSUSA, which

[1] *See also* HQ 089581, dated November 4, 1991 defines an accessory as not necessary to the functioning of the primary good; an adjunct; something subordinate or supplemental that must relate to or exhibit some nexus with the primary article.

provides for "electrothermic appliances of a kind used for domestic purposes, other electrothermic appliances, other." *See also* NY E87777, dated October 13, 1999, in which a paraffin bath kit, which consisted of a basin filled with paraffin wax and accessories (a cotton mitt, a cotton bootie, and plastic liner bags) was classified in subheading 8516.79.0000, HTSUSA.

As the articles do not function as accessories to clothing, they are excluded from classification in heading 6217, and since no other heading more specifically describes them, if imported separately, they are classified in heading 6307 which provides for "other made up articles of textile materials."

Holding:

NY E82597, dated June 11, 1999, is hereby revoked. At GRI 1, the pedicure booties are classified as "other made up articles * * * other * * * other" within subheading 6307.90.9889, HTSUSA. The general column one duty rate is seven percent *ad valorem.*

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

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

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

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

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, October 15, 2002.

CLA–2 RR:CR:TE 964829 TF
Category: Classification
Tariff No. 6307.90.9889

MS. CAROL RITCHINGS
CONAIR CORPORATION
150 Milford Road
East Windsor, NJ 08520

Re: Revocation of NY E85669; classification of a cotton bootie from China

DEAR MS. RITCHINGS:

In NY E85669, dated August 17, 1999, Customs classified a cotton bootie composed of 100% woven cotton terry cloth fabric in subheading 6217.10.9510, Harmonized Tariff Schedule of the United States Annotated, which provides for "other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212: Accessories: Other: Other, Of cotton."

We have reviewed this ruling and found it to be in error. Therefore, this ruling revokes NY E85669, which replaced NY E83136, dated June 21, 1999.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of this ruling was published on September 11, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 37. One comment was received in favor of the change.

Facts:

The item, Model PB10CB Cotton Bootie, is constructed of woven 100% cotton terry fabric. It is shaped for the foot, has a single seam down the center, piped opening and a hook and loop closure on the inner upper front of the opening to help secure the bootie to the ankle. It is part of a Model PB10B Paraffin Bath Unit, which consists of Model PB10W Paraffin Bath Wax, Model PB10CM Cotton Mitts, Model PB10CB Cotton Bootie and Model PB10PL Plastic liners. However, the subject bootie is imported separately from the Bath Unit. A sample was provided for our review.

Issue:

What is the classification of the subject cotton bootie within the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. Where goods cannot be classified solely on the basis of GRI 1, and if the headings or notes do not require otherwise, the remaining GRIs, 2 through 6, may be applied.

Additionally, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) are 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 HTSUSA. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 6217 provides for "other made up clothing accessories; parts of garments or of clothing accessories." There is no heading within the Tariff that expressly provides for the classification of the subject merchandise. Further, classification as a clothing accessory is classification based upon use and per Additional Rule of Interpretation 1(a), classification controlled by use is determined by the principal use in the United States of the item. In order to be classified as a clothing accessory of heading 6217, an article must be intended for use solely or principally as an accessory.

The term "accessory" is not defined in the tariff schedule or Explanatory Notes. *Merriam-Webster's New Collegiate Dictionary*, (10th Edition), defines "accessory" as "a thing of secondary or subordinate importance;" or "an object or device not essential in itself but adding to the beauty, convenience, or effectiveness of something else." Customs defined accessory in Headquarters Ruling Letter HQ 088540, dated June 3, 1991, as an article that is related to the primary article, and intended for use solely or principally with a specific article.[1] In heading 6217, HTSUSA, the primary article is clothing, and the accessories classifiable under this provision will be related to clothing, intended for use with clothing and of secondary importance to clothing.

EN 62.17 states that heading 6217 provides for "made up textile clothing accessories, **other than** knitted or crocheted, not specified or included in other headings of this Chapter or elsewhere in the Nomenclature." Thus, this heading is a "basket" provision, which is appropriate "only when there is no [other] tariff category which covers the merchandise more specifically." *See Apex Universal, Inc., v. United States*, CIT Slip Op. 98–69 (May 21, 1998). Therefore, we will consider the function of the subject bootie as an accessory.

In this instance, the subject cotton bootie does not work in conjunction with another article of clothing. Rather, it is designed to be a part of an activity (in this case, the activity is a pedicure). Further, we note that accessories of heading 6217 are used to enhance, adorn or complement articles of clothing. Therefore, where articles are used principally for other purposes, they are not classified in heading 6217.

It is the opinion of this office that the bootie is not a clothing accessory. It does not exhibit the relationship with clothing necessary to be considered an accessory to clothing; it does not adorn or accent clothing. Further, its principal use is in conjunction with the paraffin wax as a heat container for keeping the feet warm, which helps the wax to ultimately soothe and soften the skin.

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[1] *See also* HQ 089581, dated November 4, 1991 defines an accessory as not necessary to the functioning of the primary good; an adjunct; something subordinate or supplemental that must relate to or exhibit some nexus with the primary article.

Customs has previously classified cotton booties as accessories of paraffin wax pedicure kits. For example, in NY F89312, dated July 20, 2000, Customs classified a Remington Paraffin Wax Heat Treatment System, which consisted of a plastic basin filled with wax and accessories (cotton mitt, cotton booties, plastic liner bags and terry cloth wrap) as a set put up for retail sale, if imported together, in subheading 8516.79.0000, HTSUSA, which provides for "electrothermic appliances of a kind used for domestic purposes, other electrothermic appliances, other." *See also* NY E87777, dated October 13, 1999, in which a paraffin bath kit, which consisted of a basin filled with paraffin wax and accessories (a cotton mitt, a cotton bootie, and plastic liner bags) was classified in subheading 8516.79.0000, HTSUSA.

As the article does not function as an accessory to clothing, it is excluded from classification in heading 6217, and since no other heading more specifically describes it, if imported separately, it is classified in heading 6307 which provides for "other made up articles of textile materials."

Holding:

NY E85669, dated August 17, 1999 (which replaced NY E83136, dated June 21, 1999) is hereby revoked. At GRI 1, the cotton bootie is classified as an "other made up article[s] * * * other * * * other" within subheading 6307.90.9889, HTSUSA. The general column one duty rate is seven percent *ad valorem*.

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

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

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

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