

Customs and Border Protection

General Notices

TREASURY ADVISORY COMMITTEE ON COMMERCIAL OPERATIONS OF THE U.S. CUSTOMS SERVICE

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of meeting and announcement of membership.

SUMMARY: This notice announces the date, time, and location for the second meeting of the eighth term of the Treasury Advisory Committee on Commercial Operations (COAC), and the provisional agenda for consideration by the Committee.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on Friday, April 4, 2003, at 9:00 a.m. at the U.S. Customs Service, in the Ronald Reagan Building, located at 13th Street and Pennsylvania Avenue, NW, Washington, DC. (Main entrance off of 14th Street) The duration of the meeting will be approximately four hours, starting at 9:00 a.m.

FOR FURTHER INFORMATION CONTACT: Robyn Day at 202-927-1440.

At this meeting, the Advisory Committee is expected to pursue the following agenda. The agenda may be modified prior to the meeting.

Agenda:

- 1) Customs Business
- 2) Customs Trade Partnership Against Terrorism, 24-hr. Manifest Rules, Customs Structure in Department of Homeland Security
- 3) Merchandise Processing Fee; Proper Deduction of Freight & Other Costs from Customs Value
- 4) OR&R
- 5) Committee Administration
- 6) Agenda Items for Next Meeting

SUPPLEMENTARY INFORMATION: The meeting is open to the public; however, participation in the Committee's deliberations is limited to Committee members, Customs and Treasury Department staff, and persons invited to attend the meeting for special presentations. A per-

son other than an Advisory Committee member who wishes to attend the meeting should contact Robyn Day for pre-clearance.

Dated: March 7, 2003.

TIMOTHY E. SKUD,
Deputy Assistant Secretary.

[Published in the Federal Register, March 13, 2003 (68 FR 12151)]

OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, September 1, 2002.

The following documents of the United States Customs and Border Protection, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs 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
REVOCATION OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF CYLINDRICAL AIR FILTERS

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

ACTION: Notice of proposed revocation of a tariff classification ruling letter and revocation of any treatment relating to the classification of cylindrical air filters.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of cylindrical air filters. Similarly, Customs proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before April 25, 2003.

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

FOR FURTHER INFORMATION CONTACT: Joe Shankle, Textiles Branch, at (202) 572-8824.

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 one ruling letter relating to the tariff classification of certain cylindrical air filters. Although in this notice Customs is specifically referring to the revocation of New York Ruling Letter (NY) I86458, dated October 1, 2002, (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

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

importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY I86458, Customs classified cylindrical air filters that are referred to as Synfil™ Synthetic HEPA™ Circular Air Filters. The filters are cylindrical in shape, are non-fiberglass and non-PTFE, and are used in household air purifiers. The internal filter medium is composed of extruded polypropylene filaments forming a non-woven material that is folded into a circular accordion shape. The filter medium is inserted into a circular plastic mesh housing and secured in place by means of rubber rings placed on each end of the housing. The sample submitted measures approximately 10 ¾ inches in diameter. Customs classified the filters in subheading 8421.39.8015, HTSUSA, which provides for “Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof: Filtering or purifying machinery and apparatus for gases: Other: Other, Dust collection and air purification equipment: Other.”

Based on our analysis of the scope of the terms of headings 8421, HTSUSA, and 5911, HTSUSA, the Legal Notes, and the Explanatory Notes, the cylindrical air filters subject to this notice, are classified in subheading 5911.90.0080, HTSUSA, which provides for “Textile products and articles, for technical uses, specified in note 7 to this chapter: Other: Other.”

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY I86458 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter 966083 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

Dated: March 6, 2003.

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

[Attachments]

[ATTACHMENT A]

CUSTOMS AND BORDER PROTECTION,

New York, NY, October 1, 2002.

CLA-2-59:RR: NC:TA:350 I86458

Category: Classification

Tariff No. 5911.90.0080

MR. SANJIV R. MALKAN
 SYNFIL TECHNOLOGIES
 P.O. Box 31486
 Knoxville, TN 37930-1486

Re: The tariff classification of a "Synfil HEPA Panel Air Filter", from an unspecified country.

DEAR MR. MALKAN:

In your letter dated September 25, 2002, you requested a tariff classification ruling.

The instant sample, referred to as a "Synfil Synthetic HEPA Air Filter", (Art.#470140) is rectangular in configuration, and measures about 16" square by about 1 $\frac{3}{4}$ " thick. The filter media, itself, is incorporated into a cardboard housing and you indicate that this media is made of nonwoven textile composed of extruded polypropylene filament man-made fibers. This media is actually constructed from a larger rectangular piece of nonwoven material which has been folded into an accordion-like configuration and held in place in its housing with rows of a plastics type adhesive. You indicate that these filters are available in many different sizes and can be custom made to meet various customer needs.

The applicable subheading for the product will be 5911.90.0080, Harmonized Tariff Schedule of the United States (HTS), which provides for textile products and articles, for technical uses. The general rate of duty will be 4.5 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist George Barth at 646-733-3044.

ROBERT B. SWIERUPSKI,

*Director,**National Commodity Specialist Division.*

[ATTACHMENT B]

CUSTOMS AND BORDER PROTECTION,

Washington, DC.

CLA-2:RR:CR:TE 966083 JFS

Category: Classification

Tariff No. 5911.90.0080

MR. SANJIV R. MALKAN
 PRESIDENT AND CEO
 SYNFIL TECHNOLOGIES
 P.O. Box 31486
 Knoxville, TN 37930-1486

Re: Request for Reconsideration of NY I86458; Revocation of NY I84014; Cylindrical Air Filters; Textile Articles for Technical Use; Heading 5911, HTSUSA.

DEAR MR. MALKAN:

This is in response to your request for reconsideration of New York Ruling Letter (NY) I86458, dated October 1, 2002, wherein Customs classified flat panel air filters in heading 5911, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). In your request for reconsideration, you request that Customs classify the flat panel air

filters consistent with Customs ruling in NY I84014, dated July 18, 2002, wherein Customs classified cylindrical air filters in heading 8421, HTSUSA. Customs has considered both rulings. For the reasons that follow, this ruling revokes NY I84014.

Facts:

The sample considered in NY I84014, is a representative sample of a line of filters referred to as Synfil™ Synthetic HEPA™ Circular Air Filters. The filters are cylindrical in shape, are non-fiberglass and non-PTFE, and are used in household air purifiers. The internal filter medium is composed of extruded polypropylene filaments forming a non-woven material that is folded into a circular accordion shape. The filter medium is inserted into a circular plastic mesh housing and secured in place by means of rubber rings placed on each end of the housing. The sample measures approximately 10¾ inches in diameter.

In NY I84014, Customs classified the filters in subheading 8421.39.8015, HTSUSA, which provides for Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof: Filtering or purifying machinery and apparatus for gases: Other: Other, Dust collection and air purification equipment: Other. The general column one rate of duty is Free.

Issue:

Whether the subject cylindrical air filters composed of a textile filter medium that is encased in a plastic mesh housing and has rubber rings on each end are classified in heading 5911, HTSUSA, as articles of textile for technical use?

Law and Analysis:

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

The Harmonized Commodity Description and Coding System Explanatory Notes (EN's) represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The EN's, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUSA, and are generally indicative of the proper interpretation of these headings.

You assert that the subject merchandise is properly classified in heading 8421, HTSUSA, as a part of purifying or filtering machinery, rather than in heading 5911, HTSUSA, as other textile products for technical uses. Heading 8421, HTSUSA, specifically provides for "Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof."

Note 1(e) to Section XVI provides that the section does not cover "[t]ransmission or conveyor belts or belting of textile material (heading 5910) or other articles of textile material for technical uses (heading 5911)." The General EN to Chapter 84, page 1393, also excludes from classification in Chapter 84, articles of textile material for technical uses (heading 5911). The EN's to heading 8421, HTSUSA, further provide that textile filtering elements are to be classified according to their constituent material. The EN's further state that heading 8421 excludes textile articles such as those classifiable in heading 5910 or 5911. Therefore, the merchandise is excluded from heading 8421, HTSUSA.

Moreover, the ENs for heading 8421, HTSUSA, state, in pertinent part, that:

PARTS

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), the heading covers parts for the above-mentioned types of filters and purifiers. * * *

It should be noted, however, that filter blocks of paper pulp fall in **heading 48.12** and that many other filtering elements (ceramics, *textiles*, felts, etc.) are classified according to their constituent material. (Emphasis added).

In addition, the General EN to Section XVI, at page 1385, state:

This section **does not**, however, cover * * * (c) Textiles articles, e.g. transmission or conveyor belts (**heading 5910**), felt pads and polishing discs (**heading 5911**).

Furthermore, Additional U.S. Rule of Interpretation 1(c), provides:

In the absence of special language or context which otherwise requires a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for “parts” or “parts and accessories” shall not prevail over a specific provision for such part or accessory.

Customs does not believe that the subject merchandise should be classified as a part of a filtering machine in heading 8421, HTSUSA. Customs notes that the parts provision of heading 8421, HTSUSA, is less specific than the heading for textile materials for technical purposes (discussed infra). Furthermore, Customs notes that the subject merchandise is imported separately from the filtering machinery. Even if considered a “part” of the filtering machinery, the subject merchandise is excluded from this heading due to the textile composition from which it is constructed by operation of Note 1(e), which excludes textile materials for technical uses (heading 5911).

Heading 5911, HTSUSA, provides for textile products and articles for technical uses so long as they are specified in Note 7 to Chapter 59, HTSUSA. Note 7 to Chapter 59 reads:

Heading 5911 applies to the following goods, which do not fall in any other heading of section XI:

(a) Textile products in the piece, cut to length or simply cut to rectangular (including square) shape (other than those having the character of the products of headings 5908 to 5910), the following only:

- (i) Textile fabrics, felt and felt-lined woven fabrics, coated, covered or laminated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes, including narrow fabrics made of velvet impregnated with rubber, for covering weaving spindles (weaving beams);
- (ii) Bolting cloth;
- (iii) Straining cloth of a kind used in oil presses or the like, of textile material or human hair;
- (iv) Flat woven textile fabrics with multiple warp or weft, whether or not felted, impregnated or coated, of a kind used in machinery or for other technical purposes;
- (v) Textile fabric reinforced with metal, of a kind used for technical purposes;
- (vi) Cords, braids and the like, whether or not coated, impregnated or reinforced with metal, of a kind used in industry as packing or lubricating materials;

(b) Textile articles (other than those of headings 5908 to 5910) of a kind used for technical purposes (for example, textile fabrics and felts, endless or fitted with linking devices, of a kind used in papermaking or similar machines (for example, for pulp or asbestos-cement), gaskets, washers, polishing discs and other machinery parts).

The EN to heading 5911, HTSUSA, state that “textile products and articles of this heading present particular characteristics which identify them as being for use in various types of machinery, apparatus, equipment or instruments or as tools or parts of tools.”

Furthermore, Section B to the EN’s for heading 5911 specifically addresses textile articles of a kind used for technical purposes. The EN’s state in pertinent part:

All textile articles of a kind used for technical purposes (**other than those of headings 59.08 to 59.10**) are classified in this heading and **not** elsewhere in Section XI (see Note 7(b) to the Chapter); for example:

(1) Any of the fabrics of (A) above which have been made up (cut to shape, assembled by sewing, etc.) for example straining cloths for oil presses made by assembly of several pieces of fabric; bolting cloth cut to shape and trimmed with tapes or furnished with metal eyelets or cloth mounted on a frame for use in screen printing.

* * * * *

(9) Bags for vacuum cleaners, filter bags for air filtration plant, oil filters for engines, etc.

The EN’s further state that “the textile articles of this heading may incorporate accessories in other material **provided** the articles remain essentially articles of textile.” The instant filters consist of the textile filter medium that is encased with plastic mesh housing and secured by rings at each end. It is the textile material, by filtering out the unwanted

particles in the air, that serves as the unifying component of the filters. Accordingly, the plastic mesh housing and rubber rings do not preclude classification of the subject merchandise within heading 5911, HTSUSA.

In NY I86458, Customs classified a filter that was 16 inches square and approximately 1¾ inches thick. The filter medium was identical to the filter medium used in the instant cylindrical filter. The filter medium was housed in a cardboard frame. Customs classified the filter in subheading 5911, HTSUSA. Likewise, in Headquarters Ruling Letter (HQ) 965820, dated October 3, 2002, Customs classified filters designed to be used in domestic forced air heating and cooling systems in heading 5911, HTSUSA. The filters were described as follows:

The subject merchandise is an air filter for use in domestic forced air furnaces. The filters are ready to use when purchased and are available in several standard sizes: 16 inches by 25 inches; 20 inches by 20 inches; and 20 inches by 25 inches. The filters consist of Filtrete™ filter medium, a metal mesh support and a cardboard frame. The Filtrete™ medium is described as a nonwoven filter cloth comprised of a nonwoven web of electrostatically charged polypropylene fibers weighing 20 to 70 grams per meter squared (“g/m²”).

Customs conducted the same analysis as above and concluded that the cardboard frame and metal mesh did not preclude the classification of the filters in heading 5911, HTSUSA.

The instant cylindrical filters are substantially similar to those filters considered in HQ 965820 and NY I86458. Although, the instant filters have a more substantial housing, the primary function of the filters is still carried out by the textile material. Accordingly, the addition of the non-textile materials is not substantial enough to keep them from being essentially articles of textile. For rulings classifying filters and filter media in heading 5911, HTSUSA, see HQ 954138, dated June 15, 1993; HQ 956909, dated January 31, 1995; HQ 955244, dated April 4, 1994; and NY 863512, dated June 11, 1991.

Holding:

NY I86458, dated October 1, 2002, is hereby revoked. The subject merchandise is classified in subheading 5911.90.0080, HTSUSA, which provides for “Textile products and articles, for technical uses, specified in note 7 to this chapter: Other: Other.” The general column one duty rate is 4.2 percent *ad valorem*.

MYLES HARMON,
Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO CLASSIFICATION OF FRUIT FILLINGS FOR
BAKED GOODS

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

ACTION: Notice of revocation of ruling letter and revocation of treatment relating to the classification of fruit fillings for baked goods.

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 letter pertaining to the tariff classification of fruit fillings for baked goods and revoking any treatment previously accorded by Customs to substantially identical transactions.

Notice of the proposed revocation was published in the CUSTOMS BULLETIN of January 22, 2003, Vol. 37, No. 4. No comments were received.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after May 27, 2003.

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 January 22, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 4, proposing to revoke NY I83832, dated July 1, 2002, pertaining to the tariff classification of fruit fillings for baked goods under the Harmonized Tariff Schedule of the United States (HTSUS). No comments were received in reply to the notice.

In NY I83832, dated July 1, 2002, the classification of a product commonly referred to as fruit fillings for baked goods was determined to be in subheading 2106.90.95 or 2106.90.97, HTSUS, the in- and over-quota subheadings for other food preparations containing over 10 percent, by dry weight, of cane or beet sugar. Since the issuance of that ruling, Customs has had a chance to review the classification of this merchandise and has determined that classification is in error and that because of the use to which the fruit fillings for baked goods will be put, the product is properly classified in the non-quota subheading 2106.90.9997, HTSUS, which provides for other food preparations containing sugar derived from sugar cane and/or beet sugar.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking NY I83832, 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) 965859 (*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: March 7, 2003.

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

[Attachment]

[ATTACHMENT]

CUSTOMS AND BORDER PROTECTION,
Washington, DC, March 7, 2003.

CLA-2 RR:CR:GC 965859ptl
Category: Classification
Tariff No. 2106.90.9997

Ms. DIANA L. KEPLER
PANALPINA, INC.
2461 Directors Row
Indianapolis, IN 46241

Re: Revocation of NY I83832; Fruit Fillings for Baked Goods.

DEAR Ms. KEPLER:

In New York Ruling Letter (NY) I83832, dated July 1, 2002, which was issued to you on behalf of Sensient Flavors, Inc., products described as fruit fillings for baked goods were classified in Harmonized Tariff Schedule of the United States (HTSUS) subheadings 2106.90.9500 or 2106.90.9700. These subheadings are quota provisions. The first provides for food preparations not elsewhere specified or included *** other *** other *** articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17 *** described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The second subheading is an over-quota subheading and is to be used when the quantitative limits of additional U.S. note 8 to chapter 17 have been reached. We have reviewed the classification of the fruit fillings for baked goods contained in NY I83832, and have determined that they are incorrect. For the reasons provided below, Customs now believes the correct classification of the fruit fillings for baked goods is subheading 2106.90.9997, HTSUS, a non-quota provision which provides for other food preparations not elsewhere specified or included *** other *** other, containing sugar derived from sugar cane and/or sugar beets.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of NY I83832 was published on January 22, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 4. No comments were received.

Facts:

The subject goods are described as fruit fillings that will be imported in 2000 to 2400-pound plastic totes and used as the filling for baked products. There are six varieties of the product: apple, strawberry, raspberry, strawberry-kiwi, peach-apricot, and apple-cinnamon. Common ingredients to all varieties are: sugar (over 10 percent, by dry weight), glucose, dextrose, water, modified starch corn or tapioca), pectin, dehydrated apples and/or apple powder, and citric acid. Other ingredients, depending on the variety, are strawberries, raspberries, kiwi, peaches, apricots, fruit juice concentrate, spice, natural or artificial flavor, color, salt, malic acid, lecithin, canola oil, potassium sorbate, and sodium benzoate.

Issue:

What is the classification of fruit fillings for baked goods?

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:

2106	Food preparations not elsewhere specified or included
2106.90	Other:
	Other:
	Other:
	Other:
	Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17:
2106.90.9500	Described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions
2106.90.9700	Other ³
2106.90.99	Other
2106.90.9997	Containing sugar derived from sugar cane and/or sugar beets

³ See subheadings 9904.17.49–9904.17.65.

Because the goods in question contain over 10 percent, by weight, sugar derived from sugar cane or sugar beets, they are potentially subject to the tariff rate quota described in chapter 17, additional U.S. note 3.

Additional U.S. note 3 to chapter 17 reads as follows:

“3. For the purposes of this schedule, the term “articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17” means articles containing over 10 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, except (a) articles not principally of crystalline structure or not in dry amorphous form, the foregoing that are prepared for marketing to the ultimate consumer in the identical form and package in which imported; (b) blended syrups containing sugars derived from sugar cane or sugar beets, capable of being further processed or mixed with similar or other ingredients, and not prepared for marketing to the ultimate consumer in the identical form and package in which imported; (c) articles containing over 65 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, capable of being further processed or mixed with similar or other ingredients, and not prepared for marketing to the ultimate consumer in the identical form and package in which imported; or (d) *cake decorations and similar products to be used in the same condition as imported without any further processing other than the direct application to individual pastries or confections*, finely ground or masticated coconut meat or juice thereof mixed with those sugars, and sauces and preparations therefor.” (Emphasis added)

As highlighted above, exception (d) to goods included in the quota provides for “cake decorations and similar products to be used in the same condition as imported without any further processing other than the direct application to individual pastries or confections.” This phrase has been the subject of earlier Customs rulings. In HQ 956100, dated February 7, 1995 and HQ 956246, dated July 25, 1994, Customs stated:

* * * the phrase ‘cake decorations and similar products to be used in the same condition as imported without further processing other than the direct application to individual pastries and confections’ means 1) products used in their imported condition to coat or fill pastries or confections, or 2) products used to coat or fill pastries or confections after a change in form (e.g., melting or heating, reduction in size), insofar as the product itself need not undergo a necessary, additional preparation, treatment, or manufacture nor a blending or combining with any ingredients, in order to become a finished product.

You have stated that the goods under consideration are to be used as fruit fillings in bakery applications. As such, the goods fall within exception (d) to the quota. They are used in their imported condition, without further processing or mixing with other ingredients, and are used as filling for a pastry product, a cookie. As such, the product should be classified in the non-quota subheading 2106.90.9997, HTSUS. This classification is consistent with NY B86009, dated June 18, 1997, which classified a similar cookie filling in that subheading.

Holding:

Fruit fillings containing over 10 percent sugar from sugar cane or sugar beets which are imported in bulk containers and which are used without further processing as fillings for

baked cookies are classified in subheading 2106.90.9997, HTSUS, which provides for food preparations not elsewhere specified or included, fruit fillings, other, other, other, other, other, other, containing sugar derived from sugar cane and/or sugar beets.

Effect on Other Rulings:

NY I83832, dated July 1, 2002, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

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

REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF FROG TOOL

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

ACTION: Notice of revocation of ruling letter and revocation of treatment relating to tariff classification of frog tool.

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 letter pertaining to the tariff classification of a frog tool (a multi-purpose tool) under the Harmonized Tariff Schedule of the United States ("HTSUS"), and is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published in the CUSTOMS BULLETIN on February 5, 2003. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 27, 2003.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch, (202) 572-8780.

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 section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the CUSTOMS BULLETIN on February 5, 2003, proposing to revoke NY D89007, dated March 11, 1999, which involved the classification of a frog tool (a multi-purpose tool). No comments were received in response to the notice.

As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but which 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 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 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. 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 a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying NY D89007 and any other ruling not specifically identified in order to reflect the proper classification of the frog tool pursuant to the analysis set forth in HQ 966110, attached. 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 60 days after publication in the CUSTOMS BULLETIN.

Dated: March 10, 2003.

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

[Attachment]

[ATTACHMENT]

CUSTOMS AND BORDER PROTECTION,
Washington, DC, March 10, 2003.
CLA-2 RR:CR:GC 966110 GOB
Category: Classification
Tariff No. 8204.11.00

DEBBIE CLUNE
PBB GLOBAL LOGISTICS
670 Young Street
Tonawanda, NY 14150

Re: Revocation of NY D89007; Frog Tool; Multi-Purpose Tool.

DEAR MS. CLUNE:

This letter is with respect to NY D89007 dated March 11, 1999, issued to PBB Global Logistics on behalf of the Great American Tool Company by the Director, National Commodity Specialist Division. We have reviewed the classification in NY D89007 and have determined that it is incorrect. This ruling sets forth the correct classification.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY H89007, as described below, was published in the CUSTOMS BULLETIN on February 5, 2003. No comments were received in response to the notice.

Facts:

In NY D89007 the article at issue was a Frog Tool, which was described as follows:

The item is a multi-functional tool called a Frog Tool. The name is derived from the shape of the tool. The fifteen functions are: 3/16" Allen Wrench, #2 Phillips Screwdriver, #25 Torx Bit, 1/4" Acc. Bit Drive, 3/8" square drive, 7/16" Wrench, 1/2" Wrench, .028 Plug Gap Tool, 0.32 Plug Gap Tool, Bottle Opener, Wire Stripper, .036 Plug Gap Tool, Box Cutter, #15 Torx Bit and a Slotted Screwdriver.

In NY D89007 Customs classified the Frog Tool in subheading 8205.90.00, Harmonized Tariff Schedule of the United States ("HTSUS"), as: "Sets of articles of two or more of the foregoing subheadings." The rate of duty for subheading 8205.90.00, HTSUS, is: "The rate of duty applicable to that article in the set subject to the highest rate of duty." That rate was found to be the rate for subheading 8204.20.00, HTSUS.

We note that the composition of the Frog Tool has changed slightly based upon information obtained recently from the Great American Tool Company Internet site. The Great American Tool Company Internet site describes the Frog Tool to be of durable, stainless steel construction and 4.125" in length and 1.75" in width. It is a primarily flat object with many of the components protruding from it. The Frog Tool includes: a straight bit screwdriver; #2 Phillips® bit; 9/16" wrench; 1/2" wrench; 7/16" wrench; 14 mm wrench; 12 mm wrench; 1/4" hex drive; 3/8" square drive; 1/4" square drive; .035 plug gap tool; .032 plug gap tool; .030 plug gap tool; valve core tool; and #25 torx® bit.

In correspondence with Customs, you indicated that the Frog Tool, with the components as described in NY D89007, was never imported due to manufacturing issues. You request that our classification ruling reflect the current composition of the Frog Tool.

Issue:

What is the classification under the HTSUS of the Frog Tool?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (“GRI’s”). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI’s may then be applied. GRI 2 is not applicable here.

GRI 3 provides in pertinent part 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.

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

For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:

(a) consist of at least two different articles which are, *prima facie*, classifiable in different headings * * *

(b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and

(c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

We find that the Frog Tool is not a “set put up for retail sale” within the meaning of GRI 3 because it does not meet the definition stated in EN (X) to GRI 3(b). Because it is one article, it does not meet the requirement that it consist of at least two articles. Therefore, because the Frog Tool is not a set put up for retail sale, it is not classified in subheading 8205.90.00, HTSUS.

We next examine the issue of whether the Frog Tool is a composite good within the meaning of the term in GRI 3(b). EN (IX) to GRI 3(b) provides:

For the 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. [Emphasis in original.]

We find that the Frog Tool is a composite good because it meets the terms of EN (IX) to GRI 3(b), i.e., the components are attached to each other to form a practically inseparable whole; they are adapted one to the other and are mutually complementary; and they form a whole, the specific components of which would not normally be offered for sale in separate parts. The components would not normally be offered for sale in separate parts because they are not detachable from the Frog Tool. This finding is consistent with NY 886357 dated July 15, 1993 where Customs found a multi-purpose tool (a “Handy-Plier Versatool”) to be a composite good; and NY F85958 dated May 9, 2000, where Customs found a multi-purpose tool kit (a “wallet card tool”) to be a composite good.

Therefore, the Frog Tool is classified pursuant to GRI 3. The five wrenches and the three drives are provided for in heading 8204, HTSUS; the screwdriver (with the attached

bits) is provided for in heading 8205 HTSUS; and the three plug gap tools are provided for in heading 9031, HTSUS. Pursuant to GRI 3(a), the various components of the Frog Tool are regarded as equally specific. Pursuant to GRI 3(b), the essential inquiry is which component provides the Frog Tool with its essential character. We find that the essential character of the Frog Tool is provided by the five wrenches which predominate in number vis-a-vis the other components. The wrenches are classified in subheading 8204.11.00, HTSUS, as: "Hand operated-spanners and wrenches (including torque meter wrenches but not including tap wrenches); socket wrenches, with or without handles, drives or extensions; base metal parts thereof: Hand-operated spanners and wrenches, and parts thereof: Nonadjustable, and parts thereof." Accordingly, at GRI 3(b), the Frog Tool is classified in subheading 8204.11.00, HTSUS.

Holding:

At GRI 3(b), the Frog Tool is classified in subheading 8204.11.00, HTSUS, as: "Hand operated-spanners and wrenches (including torque meter wrenches but not including tap wrenches); socket wrenches, with or without handles, drives or extensions; base metal parts thereof: Hand-operated spanners and wrenches, and parts thereof: Nonadjustable, and parts thereof."

Effect on Other Rulings:

NY D89007 is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

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

PROPOSED REVOCATION OF A RULING LETTER AND
TREATMENT RELATING TO THE APPLICABILITY OF
SUBHEADING 9802.00.50 TO CERTAIN ARTICLES DECORATED
IN CANADA

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

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to the eligibility of certain polo shirts exported to Canada for decorating operations for a partial or complete duty exemption under subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the eligibility of certain polo shirts for a partial or complete duty exemption under subheading 9802.00.50, HTSUS, and to revoke any treatment previously accorded by Customs to substantially identical merchandise. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before April 25, 2003.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs and Border Protection, Office of Regulations

and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at 799 9th Street N.W. 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: Karen S. Greene, Special Classification and Marking Branch, (202) 572-8838.

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 19 U.S.C. 1625(c)(1), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the applicability subheading 9802.00.50, HTSUS, to certain polo shirts which are decorated in Canada. Although in this notice Customs is specifically referring to New York Ruling Letter ("NY") I87404, dated November 13, 2002, this notice covers any rulings involving substantially identical transactions which may exist but have not been identified that are based on the same rationale. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) relating to transactions which are substantially identical to those subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Cus-

toms 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 law. 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 the effective date of the final notice of this proposed action.

Subheading 9802.00.50, HTSUS, provides for a partial or complete duty exemption for articles exported from and returned to the United States after having been advanced in value or improved in condition abroad by repairs or alterations, provided the documentary requirements of 19 CFR 181.64 (for articles returned from Canada or Mexico) or 19 CFR 10.8 (for articles returned from any other country), are satisfied.

In NY I87404, dated November 13, 2002, Customs held that certain polo shirts exported to Canada, where they will be embroidered on the left chest with company names or logos and then re-imported into the United States, are not eligible for special tariff treatment under subheading 9802.00.50, HTSUS. Customs has reconsidered the above ruling and determined that it is incorrect in holding that classification under subheading 9802.00.50, HTSUS, is not applicable to the polo shirts. It is now Customs position that the polo shirts exported to Canada for decoration and then re-imported into the United States are eligible for special tariff treatment under subheading 9802.00.50, HTSUS. NY I87404 is set forth as Attachment A to this document. Proposed HQ 562618 revoking NY I87404 is set forth as Attachment B to this document.

Pursuant to 19 U.S.C. 1625(c)(1), this notice advises interested parties that Customs intends to revoke NY I87404 and any other rulings not specifically identified, to reflect the proper interpretation of subheading 9802.00.50, HTSUS, pursuant to the analysis set forth in proposed HQ 562618. 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: November 13, 2002.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[Attachments]

[ATTACHMENT A]

CUSTOMS AND BORDER PROTECTION,
New York, NY, November 13, 2002.
CLA-2-61:RR:NC:TA:N3:356 I87404
Category: Classification
Tariff No. 9802.00.50

MR. RODNEY RALSTON
UPS FREIGHT SERVICES
One Trans-Border Drive
P.O. Box 800
Champlain, NY 12919

Re: Eligibility of men's knit shirts for partial duty exemption under subheading 9802.00.50, HTSUS.

DEAR MR. RALSTON:

In your letter dated October 2, 2002, on behalf of Fersten Worldwide, you requested a tariff classification ruling.

The submitted sample is men's polo shirt constructed from 65 percent cotton, 35 percent polyester, pique knit fabric that measures 12 stitches per linear centimeter counted in the horizontal direction and 21 stitches per linear centimeter counted in the vertical direction. The garment features a rib knit spread collar; a partial front opening with a three button placket; short sleeves with rib knit cuffs; and a straight, hemmed bottom with side slits and a tail.

You state that the shirts are manufactured in India and imported into the United States with the appropriate invoices and visas. The shirts are then exported to Canada where they will be embroidered on the left chest with company names or logos for specific clients. The shirts will then be re-imported into the United States. You have provided samples of the shirts as they are imported from India and as they will be re-imported, after embroidery, into the United States. You request a determination regarding the eligibility of the shirts for partial duty exemption under subheading 9802.00.50, HTSUS. As requested, your samples will be returned.

Subheading 9802.00.50, HTSUS, provides a partial or complete duty exemption for articles exported from and returned to the U.S. after having been advanced in value or improved in condition by repairs or alterations, provided that documentary requirements of Section 181.64, Customs Regulations (19 C.F.R. 181.64), are satisfied. Section 181.64, which implements Article 307 of NAFTA, provides that goods returned after having been repaired or altered in Canada may qualify for complete or partial duty free treatment, provided that the requirements of this section are met. However, entitlement to this tariff treatment is precluded in circumstances where the operations performed abroad destroy the identity of the exported articles or create new or commercially different articles through a process of manufacture. Subheading 9802.00.50, HTSUS, treatment is also precluded where the exported articles are incomplete for their intended use and the foreign processing operation is a necessary step in the preparation or manufacture of finished articles.

In this instance, the embroidery operation creates a different article with unique, specialized appeal and constitutes a finishing step in the manufacture of the embroidered shirts. As such, the embroidery operation is considered more than an "alteration" within the meaning of subheading 9802.00.50, HTSUS. Consequently, the shirts are not entitled to the special tariff treatment under that provision. See HRL 555760 of November 16, 1990 and HRL 555249 of June 16, 1989.

The country of origin of the merchandise remains India.

The applicable subheading for the polo shirt will be 6105.10.0010, Harmonized Tariff Schedule of the United States, (HTS), which provides for: men's or boys' shirts, knitted or crocheted: of cotton: men's. The rate of duty will be 20 percent ad valorem.

The shirts fall within textile category designation 338. Based upon international textile trade agreements, products of India are subject to visa requirements and quota restraints.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addi-

tion, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

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

A copy of this ruling letter 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 this ruling, contact National Import Specialist Mary Ryan at 646-733-3271.

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

[ATTACHMENT B]

CUSTOMS AND BORDER PROTECTION,
Washington, DC.

MAR-2 RR:CR:SM 562618 KSG
Category: Classification

RODNEY RALSTON
UPS FREIGHT SERVICES, INC.
One Transborder Drive
Champlain, NY 12919

Re: Subheading 9802.00.50; polo shirts; embroidered.

DEAR MR. RALSTON:

This is in reference to New York Ruling Letter (NY) I87404, issued to you on behalf of Fersten Worldwide, on November 13, 2002, by the Director, National Commodity Specialist Division, concerning the applicability of subheading 9802.00.50, of the Harmonized Tariff Schedule of the United States ("HTSUS"), to embroidered polo shirts. We have had an opportunity to review this ruling and believe it is incorrect.

Facts:

This case involves men's polo shirts that are manufactured in India and imported into the United States. The polo shirts are then exported to Canada where they will be embroidered on the left chest with company names or logos. The shirts will then be re-imported into the United States.

Issue:

Whether the embroidered polo shirts are eligible for a duty exemption under subheading 9802.00.50, HTSUS, upon re-importation into the United States.

Law and Analysis:

Subheading 9802.00.50, HTSUS, provides a full or partial duty exemption for articles that are returned after having been exported to be advanced in value or improved in condition by means of repairs or alterations, provided that the documentary requirements of 19 CFR 181.64 (for articles returned from Canada or Mexico) or 19 CFR 10.8 (for articles returned from any other country) are met.

Section 181.64(a), Customs Regulations, (19 CFR 181.64(a)), states that:

'Repairs or alterations' means restoration, addition, renovation, redyeing, cleaning, resterilizing, or other treatment which does not destroy the essential character of, or create a new and commercially different good from, the good exported from the United States.

In circumstances where the operations abroad destroy the identity of the exported article or create a new or commercially different article, entitlement to subheading 9802.00.50, HTSUS, is precluded. *See A.F. Burstrom v. United States*, 44 CCPA 27, C.A.D.

631 (1956), *aff'd* C.D. 1752, 36 Cust. Ct. 46 (1956); and *Guardian Industries Corporation v. United States*, 3 CIT 9 (1982). Additionally, entitlement to this tariff treatment is not available where the exported articles are incomplete for their intended purposes prior to their foreign processing and the foreign processing is a necessary step in the preparation or manufacture of the finished articles. *Dolliff & Company, Inc. v. United States*, 455 F. Supp. 618 (Cust. Ct. 1978), *aff'd*, 599 F.2d 1015 (CCPA 1979).

In a notice published in the CUSTOMS BULLETIN on October 4, 2000, (34 Cust. Bull. 40), Customs revoked four ruling letters and modified one ruling letter pertaining to the applicability of subheading 9802.00.50, HTSUS, to certain articles which were exported for decorating operations and returned to the U.S. In the notice, Customs stated that in reconsidering the decorating operations, they qualified as acceptable alterations under subheading 9802.00.50, HTSUS, as the merchandise in its condition as exported and returned was marketed and sold to consumers for the same use. Furthermore, Customs found that the operations performed abroad did not result in the loss of the good's identity or create a new article with a different commercial use. The ruling letters concerned: carpet tiles that were dyed abroad and returned; imitation plastic fingernails that were painted with decorative designs abroad; lace fabric "reembroidered" abroad with rope, sequins and beads; and decals and paint bands applied to ceramic dinnerware abroad.

In the instant case, consistent with the prior CUSTOMS BULLETIN notice described above, we find that the processing of the polo shirts constitutes an acceptable alteration within the meaning of subheading 9802.00.50, HTSUS. The polo shirts are complete for their intended use as wearing apparel prior to being exported to Canada to undergo the above-described operations. The embroidery operations performed in Canada do not have the effect of destroying the identity of the shirts or create a new article with a different commercial use. Accordingly, we find that the polo shirts are eligible for special tariff treatment under subheading 9802.00.50, HTSUS.

Holding:

On the basis of the information submitted, the embroidery of the polo shirts in Canada constitutes an acceptable alteration within the meaning of subheading 9802.00.50, HTSUS. Therefore, upon re-importation into the United States, the polo shirts are entitled to classification under this tariff provision with duty to be assessed only upon the cost or value of the operations performed in Canada, provided the documentary requirements of 19 CFR 181.64 are satisfied.

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

Consistent with this ruling, NY I87404 is hereby revoked.

MYLES B. HARMON,
Director,
Commercial Rulings Division.