Bureau of Customs and Border Protection

General Notices

Notice of Cancellation of Customs Broker License

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

ACTION: General notice

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license and any and all associated local and national permits are canceled with prejudice:

Name	License #	Issuing Port
Kenneth E. Yokeum	09689	Los Angeles

Dated: September 3, 2003

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[Published in the Federal Register, September 11, 2003 (68 FR 53615)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, September 10, 2003,

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

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

19 CFR PART 177

REVOCATION AND MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF DIGITAL CAMERAS

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

ACTION: Notice of revocation and modification of ruling letters and revocation of treatment relating to the tariff classification of digital cameras.

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 two rulings and modifying one ruling pertaining to the tariff classification of digital cameras under the Harmonized Tariff Schedule of the United States ("HTSUS"). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed revocation and modification was published on July 23, 2003, 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EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 23, 2003.

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)), notice was published on July 23, 2003 in the CUSTOMS BULLETIN, Volume 37, Number 30, proposing to revoke NY I84955, dated August 22, 2002, NY I84563, dated July 22, 2002 and NY I86730, dated October 22, 2002, which classified multifunctional digital cameras in subheading 8525.40.80, HTSUS, which provides, in relevant part, for ". . . still image video cameras and other video camera recorders; digital cameras: other." No comments were received in response to the proposed actions.

As stated in the proposed notice, this revocation 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 three 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 to the importer's or Customs' previous in-

terpretation of the Harmonized Tariff Schedule of the United States. 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 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 the proposed action.

The digital cameras classified in NY I84955, NY I84563 and NY I86730 cameras performed two or more complementary or alternative functions under heading 8525, HTSUS. Thus, Section XVI, Note 3, HTSUS, was applied through General Rule of Interpretation (GRI) 6, directing classification by that subheading which provided for the cameras' principal function.

Where no principal function can be determined, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) regarding Section XVI, Note 3, provide for GRI 3(c) to be applied. According to GRI 3(c), the provision occurring last in numerical order of those that merit equal consideration provides the classification. In NY I84955, NY I86730 and NY I84563, Customs resorted to GRI 3(c) at the eight-digit subheading level, considering subheading 8525.40.80, HTSUS, which occurs last in numerical order.

It is now Customs position that GRI 3(c), applied through Section XVI, Note 3, HTSUS, and GRI 6, should not have been applied at the eight-digit level but at the six-digit level, thereby classifying the good under subheading 8525.40, HTSUS. Further, at the eight-digit level subheading 8525.40.80, HTSUS, should not have been considered. The 2002 amendment to the legal text of heading 8525, HTSUS, and subheading 8525.40, HTSUS, adding the term "digital cameras" did not change the scope of the heading or subheading. The amendment simply clarified the scope. Given that there was no change in scope at the six-digit level, the scope of subheading 8525.40.40, HTSUS, where digital cameras were previously classified, also did not change. Therefore, these cameras are still classified in subheading 8525.40.40, HTSUS. Classification in subheading 8525.40.80, HTSUS, was incorrect.

The Information Technology Agreement (ITA), which became effective July 1, 1997 by Presidential Proclamation No. 7011 (62 FR 35909, June 30, 1997) offers further guidance on the scope of subheading 8525.40.40, HTSUS. As a result of the ITA, digital cameras of the type at issue have been classified as "digital still image video cameras" of subheading 8525.40.40, HTSUS, because the language was adopted under the ITA to provide for such digital cameras. Accordingly, the instant digital cameras are classified in subheading 8525.40.40, HTSUS, which provides, in pertinent part, for "still image video cameras and other video camera recorders; digital cameras: digital still image video cameras."

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY I84955 and NY I84563, modifying NY I86730, and revoking any other ruling not specifically identified to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analysis set forth in HQ 966072, HQ 966530 and HQ 966531 (Attachments A–C, respectively). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs 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 4, 2003

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966072
September 4, 2003
CLA–2 RR:CR:GC 966072 BJB / DBS
CATEGORY: Classification
TARIFF NO.: 8525.40.40

MS. DEBBIE KASSEBAUM
LARGAN INC.
2432 West Peoria Avenue, Building 9
Phoenix, AZ 85029

RE: Revocation of NY I84955; Digital cameras

DEAR MS. KASSEBAUM:

This is in reply to your request of November 21, 2002, for reconsideration of New York Ruling Letter (NY) I84955, issued to Largan Inc., on August 22, 2002, concerning the classification of a multi-functional digital camera and accompanying goods under the Harmonized Tariff Schedule of the United States (HTSUS). In NY I84955, Customs classified the "Largan Chameleon Mega Camera" in subheading 8525.40.80, HTSUS, which provides for other still image video cameras, video camera recorders and digital cameras. We have reviewed NY I84955 and have determined the ruling to be incorrect for the reasons set forth below. A sample was submitted. We regret the delay in responding.

In your request for reconsideration, you cited several rulings which appear to be inconsistent. We have reviewed those rulings and have determined that NY I84563, dated August 2, 2002, is incorrect, and NY I86730,

dated October 22, 2002, is, in part, incorrect. The reconsideration of these rulings will be addressed in HQ 966531 and HQ 966530, respectively.

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 July 23, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 30. No comments were received in response to the notice.

FACTS:

You describe the subject digital camera as the "Largan Chameleon Mega 1.3 Megapixel Digital Camera." In NY I84955, the digital camera was described as a composite good with multiple functions. Largan Inc.'s website, descriptive materials, and packaging state that the camera is a "4-in-1 camera," with digital still image, video, TV, and PC camera functions.

The basic components in the camera, all of which are incorporated into a rectangular housing (approximately 3.48 inches x 2.26 inches x 0.81 inches), are as follows: a CCD (charged-coupled device) image sensor, 16 MB internal flash memory, a fixed-focus lens, a data-conversion device for converting analog data from the CCD into digital data format for transmission by the Universal Serial Bus (USB) cable, USB and TV connector, optical viewfinder, LCD (liquid crystal display) function menu, synchronized flash, tripod mount, and battery compartment.

This digital camera captures live images in real time (i.e., for videoconferencing) with audio capacity and records digital still images and images in sequential order at 15 frames per second (fps) from 35–90 seconds (i.e., video clips) without audio. It operates independently of a computer, recording approximately 120 photos on 1280 x 1024 (high) resolution, or 228 photos on 640 x 480 VGA mode (low) resolution which can be stored in the camera's internal flash memory. When connected to a television, it can capture television-generated still images and sequential images.

The camera's LCD displays only the function menu. The LCD menu provides the following functions: a) delete stored photos individually, or all at once; b) high/low resolution control; c) photo counter; d) photos remaining; e) flash status; f) video recording; g) battery power; h) NTSC/PAL–TV system; i) sound/silent control; j) self-timer; and k) continuous snap shot/single snap shot control. The LCD does not provide a view of recorded images or act as a viewfinder. To view recorded images and clips, the digital camera must be connected to an automatic data processing (ADP) machine, such as a personal computer, or to a television.

This digital camera is packaged, imported and advertised for sale together with: 1) 2 AAA 1.5 volt batteries; 2) camera strap; 3) USB cable with connectors; 4) TV cable with connectors; 5) instruction manual; 6) user's guide; 7) tripod; 8) leatherette camera case; and 9) CD-ROM installation software.

You claim that the digital camera is classifiable in subheading 8525.30.90, HTSUS, which provides for television cameras, or in the alternative, in subheading 8525.40.40, HTSUS, which provides for digital still image video cameras.

ISSUES:

1) Whether digital cameras are within the scope of the term "digital still image video cameras" of subheading 8525.40.40, HTSUS.

2) Whether the camera and accompanying merchandise are classifiable as "a set put up for retail sale" under the HTSUS.

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 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 generally indicative of the proper interpretation of these headings. Customs believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The HTSUS provisions under consideration are as follows:

8525	Transmission apparatus for radiotelephony, radiotelegraphy, radiobroadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras; still image video cameras and other video camera recorders; digital cameras:
8525.30	Television cameras:
8525.30.90	Other
	* * *
8525.40	Still image video cameras and other video camera recorders; digital cameras:
8525.40.40	Digital still image video cameras
	* * *
8525.40.80	Other

NY I84955, Customs stated that this digital camera is a composite good. A composite good is a good which is *prima facie* classifiable, in part only, in more than one heading. This digital camera is not a composite good, but rather a machine whose functions all fall within the scope of heading 8525, HTSUS. Thus, classification at the heading level is not in dispute. To determine in which subheading this digital camera is classified, we must employ GRI 6, which permits the comparison of same-level subheadings within a heading, in part by application of Rules 1 through 5, applied by the appropriate substitution of terms. Only subheadings at the same level are comparable, so we must first address the 6-digit level.

Subheading 8525.30, HTSUS, in pertinent part, provides for "television cameras." Subheading 8525.40, HTSUS, in pertinent part, provides for "still image video cameras and other video camera recorders; digital cameras." You claim that the digital camera is classifiable at GRI 3(a), applied at the 6-digit level by GRI 6, which requires the good be classified according to the

most specific description. However, we do not reach GRI 3. According to GRI 1, applied through GRI 6, we must first look to the relevant section and chapter notes.

Section XVI, Note 3, provides:

> "Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and **other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function."** (2003) [Emphasis added.]

EN 85.25, section (C), describes television cameras as including, for example, "television cameras for television studios or for reporting, those used for industrial or scientific purposes or for supervising traffic." Customs has classified PC cameras, which are those designed to be connected to ADP machines, used for videoconferencing, and for the capture of still images and moving images that do not contain internal or removable storage media as television cameras of subheading 8525.30.90, HTSUS. See e.g., HQ 964973, dated July 17, 2002. PC cameras are designed to transmit video images to an ADP machine for processing or for direct transmission over the Internet, transmitting live image as television cameras do. Therefore, whether this camera transmits real time images directly to a television set, video monitor for surveillance, or to a computer or other device, it performs the function of a category of cameras that fall within the term "television cameras" of subheading 8525.30, HTSUS. See HQ 964973; see also HQ 966172, dated June 4, 2003; HQ 965097, dated July 19, 2002; HQ 958632, dated January 25, 1996; NY A84032, dated May 31, 1996; NY B81818, dated February 13, 1997; NY A81240, dated March 18, 1996; NY F88315, dated June 29, 2000.

The PC videoconferencing function transmits live video images captured by the camera's CCD to an automatic data processing machine (ADP) monitor via a USB cable attached to the USB connector on the camera's left side. This live videoconferencing function is supported by the threaded mount in the digital camera's base and fitted to a tripod for placement on top of an ADP machine's monitor. Therefore, the camera's functions are provided for in part by subheading 8525.30, HTSUS.

In the Information Technology Agreement (ITA), which went into effect on July 1, 1997 by Presidential Proclamation No. 7011 (62 FR 35909, June 30, 1997), the U.S. notified the other signatories that it would classify "digital still image video cameras" in subheading 8525.40.40, HTSUS. The intent of the provision was to provide duty-free treatment to a class of digital cameras which have both prior to and since the ITA been provided for in subheading 8525.40, HTSUS. *See, e.g.*, NY 817941, dated January 14, 1996; HQ 960384, dated April 1, 1999 (classifying Casio QV–10 digital cameras entered in 1995); HQ 960664, dated April 20, 1999 (classifying Olympus Digital Still Camera model # D–200L entered in 1995); NY F86533, dated May 17, 2000; and NY G86928, dated February 9, 2001.

The term "digital cameras" was added to the text of heading 8525, HTSUS, and subheading 8525.40, HTSUS, as a result of the 2002 amendment in the HTSUS, effective January 10, 2002. That amendment was intended to clarify that the provisions included cameras that are commonly and commercially known as "digital cameras." The addition of this term was not intended to change the scope of the heading or subheading level. Gener-

ally, digital cameras perform still image capture and limited sequential image capture, but they are not those cameras commonly and commercially known as camcorders.

The legal text to subheading 8525.40, HTSUS, both before and after the 2002 amendment, describes the cameras of the subheading as "recorders." EN 85.25 (3rd Edition, 2002) indicates that the cameras of this category "record images" or "record sequential images." That is, these cameras have the ability to record and store still images or video on permanent or removable media within the camera (e.g., random access memory (RAM), flash memory cards, memory sticks or magnetic tape, as with certain camcorders), such that the images can be retrieved and viewed at a time subsequent to the time they are captured. *See* HQ 966307, dated June 6, 2003.

In addition to videoconferencing capabilities, the digital camera captures still images and sequential images (up to 90 seconds of video) through a CCD and stores them in the internal flash memory. Though it operates independently from an ADP machine or TV, it must be connected to an ADP machine for viewing and processing, or to a television set for viewing. In addition, it can capture 16 continuous still frames from the television as it can receive NTSC signals and record them. The recording of digital images and the ability to view and process them via ADP machine and TV are functions are provided by subheading 8525.40, HTSUS.

As the digital camera performs functions that are covered by subheadings 8525.30, HTSUS and 8525.40, HTSUS, it is a multifunctional camera designed for the purpose of performing two or more complementary or alternative functions. As such, it is a composite machine, classified according the camera's principal function, pursuant to Section XVI, Note 3, HTSUS.

The instant camera contains no feature that predominates over any other feature to suggest that one capability constitutes the principal function. In fact, all of the digital camera's capabilities are advertised equally on the good's packaging and in the owner's manual. As such, we are unable to determine the digital camera's principal function.

General EN (VI) to Section XVI provides that, "[w]here it is not possible to determine the principal function, and where as provided in Note 3 to the Section, the context does not otherwise require, it is necessary to apply General Interpretative Rule 3(c). . . ." GRI 3(c) provides that "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."

Subheadings 8525.30, HTSUS, and 8525.40, HTSUS, merit equal consideration for the reasons stated above. Thus, the digital camera is classified in subheading 8525.40, HTSUS.

Because the 2002 legal text amendment did not change the scope of subheading 8525.40, we find that the scope of subheading 8525.40.40, HTSUS, which provides for "digital still image video cameras," also did not change. Subheading 8525.40.40, HTSUS, still provides for those articles commonly and commercially referred to as digital cameras. Therefore, subheading 8525.40.80, HTSUS, is not considered. Accordingly, this digital camera is classified in subheading 8525.40.40, HTSUS.

NY I84955 applied GRI 3(c), through Section XVI, Note 3 and GRI 6, to the eight-digit subheading level rather than the six-digit level, as discussed above. Therefore, NY I84955 is incorrect.

The other components that are imported with the camera are each described under a different heading. As such, they cannot be classified according to GRI 1. GRI 2(b) 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, "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.
>
> Insofar as two or more headings each refer to part only of these goods GRI 3(a) does not apply. However, GRI 3(b) provides, in pertinent part:
>
> . . . 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.

The EN to GRI 3(b) indicates that to meet the criteria of a set put up together for retail sale, articles must:

> (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).

All of the articles are *prima facie* classifiable in different headings (leatherette case—4202; plastic tripod/stand—3926; user's guide and instruction manual—4901; batteries—8506; CD-ROM—8524; USB and TV cables—8544; camera strap—6307). They are all contribute to the use of the functions of the digital camera, including videoconferencing and capturing, recording, viewing, editing and processing digital images. The digital camera is imported and packaged together for direct sale with the above-listed articles. This is confirmed by information from Largan Inc.'s Internet website, the camera's packaging, instruction manual, and user's guide.

Under these facts, the subject goods meet all three criteria of the GRI 3(b) EN, and therefore, form a set put up for retail sale. Thus, the goods are to be classified according to the component that imparts the "essential character" of the set. EN VIII to GRI 3(b) provides that the characteristic which gives a set its "essential character" 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.

It is clear that the digital camera is the most important article in the set. The digital camera is the most valuable article in terms of marketability, for

the importer, and in terms of utility, for the consumer. As such, we conclude that the digital camera imparts the "essential character" of the set.

Chapter 85, Legal Note 6, HTSUS, provides that, "[r]ecords, tapes, and other media of heading 8523 or 8524 remain classified in those headings when entered with the apparatus for which they are intended." However, the note "does not apply to such media when they are entered with articles other than the apparatus for which they are intended." The CD-ROM installation software is used in an ADP machine, not in the camera. However, it is part of this digital camera set. General EN (B)(1) to Chapter 85, HTSUS, directs that if recorded media presented with apparatus for which it is not intended is part of a set for retail sale, it is classified pursuant to GRI 3(b). Therefore, the instant CD-ROM need not be classified separately; it is subsumed in the set.

HOLDING:

At GRI 3(b), the Largan 1.3 megapixel digital camera set for retail sale is classified in subheading 8525.40.40, HTSUS, which provides for, in pertinent part, "Transmission apparatus for radiotelephony . . . television cameras; still image video cameras and other video camera recorders; digital cameras: Still image video cameras and other video camera recorders; digital cameras: Digital still image video cameras."

EFFECT ON OTHER RULINGS:

NY I84955, dated August 22, 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.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966530
September 4, 2003
CLA–2 RR:CR:GC 966530 DBS
CATEGORY: Classification
TARIFF NO.: 8525.40.40

MS. VALERIE SUCHOR
SPECTRA MERCHANDISING INTERNATIONAL, INC.
4230 North Normandy Avenue
Chicago, IL 60634

RE: Modification of NY I86730; Digital cameras

DEAR MS. SUCHOR:

On October 22, 2002, the U.S. Customs and Border Protection National Commodity Specialist Division issued to you New York Ruling (NY) I86730,

which classified three types of digital cameras, the Cool iCam models CIC–50A, CIC–80A and CIC–175A, under the Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered that ruling and determined that the classification of the Cool iCam CIC–175A is incorrect. Therefore, we are proposing to modify NY I86730 to reflect the proper classification of that model.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of the above identified ruling was published on July 23, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 30. No comments were received in response to the notice.

FACTS:

The Cool iCam model CIC–175A ("CIC–175A") is a multi-functional digital camera. It functions as a personal computer video camera (PC camera or Web-Cam), which is used for videoconferencing when connected to an automatic data processing (ADP) machine. The camera also digitally captures and records still images and sequential images (video clips). The CIC–175A model is packaged for direct sale with a Universal Serial Bus (USB) cable, a non-textile pouch, non-textile neck and wrist straps, batteries and a CD–ROM software package. In NY I86730 we stated that, based on the multifunctional capability of the camera, no single function for each camera imparts a principal function, and as such the classification of each will be in accordance with General Rule of Interpretation 3(c), HTSUS, which requires that the item be classified in the heading which occurs last in numerical order among those which merit equal consideration. The CIC–175A was thus classified in subheading 8525.40.80, HTSUS, which provides for other still image video cameras and other video recorders; digital cameras.

ISSUE:

What is the classification under the HTSUS of the instant multifunctional digital camera?

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 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 generally indicative of the proper interpretation of these headings. Customs believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The HTSUS provisions under consideration are as follows:

8526	Transmission apparatus for radiotelephony, radiotelegraphy, radiobroadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras; still image video cameras and other video camera recorders; digital cameras:
8526.30	Television cameras:
	* * *
8525.41	Still image video cameras and other video camera recorders; digital cameras:
8525.40.41	Digital still image video cameras
	* * *
8525.40.80	Other

As stated in NY I86730, the CIC–175A performs several functions. The digital camera captures and stores still images and sequential images (video clips), which can then be processed by an ADP machine. The camera also captures live images in real time (i.e., for videoconferencing). These functions fall within the scope of heading 8525, HTSUS. Thus, classification at the heading level is not in dispute.

To determine in which subheading this digital camera is classified, we must employ GRI 6, which permits the comparison of same-level subheadings within a heading, in part by application of Rules 1 through 5, applied by the appropriate substitution of terms. Only subheadings at the same level are comparable, so we must first address the 6-digit level.

Subheading 8525.30, HTSUS, in pertinent part, provides for "television cameras." Subheading 8525.40, HTSUS, in pertinent part, provides for "still image video cameras and other video camera recorders; digital cameras." According to GRI 1, applied through GRI 6, we must first look to the relevant section and chapter notes.

Section XVI, Note 3, provides:

> "Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and **other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function."** (2003) [Emphasis added.]

EN 85.25, section (C), p. 1668 (3rd Edition, 2002), describes television cameras as including, for example, "television cameras for television studios or for reporting, those used for industrial or scientific purposes or for supervising traffic." Customs has classified PC cameras, which are those designed to be connected to ADP machines, used for videoconferencing, and for the capture of still images and moving images that do not contain internal or removable storage media as television cameras of subheading 8525.30.90, HTSUS. See e.g., HQ 964973, dated July 17, 2002. PC cameras are designed to transmit video images to an ADP machine for processing or for direct transmission over the Internet, transmitting live image as television cam-

eras do. Therefore, whether this camera transmits real time images directly to a television set, video monitor for surveillance, or to a computer or other device, it performs the function of a category of cameras that fall within the term "television cameras" of subheading 8525.30, HTSUS. See HQ 964973; see also HQ 966172, dated June 4, 2003; HQ 965097, dated July 19, 2002; HQ 958632, dated January 25, 1996; NY A84032, dated May 31, 1996; NY B81818, dated February 13, 1997; NY A81240, dated March 18, 1996; NY F88315, dated June 29, 2000.

The PC videoconferencing function transmits live video images captured by the camera to an ADP monitor via a USB cable. Therefore, the camera's functions are provided for in part by subheading 8525.30, HTSUS.

In the Information Technology Agreement (ITA), which went into effect on July 1, 1997, by Presidential Proclamation No. 7011(62 FR 35909, June 30, 1997), the U.S. notified the other signatories that it would classify "digital still image video cameras" in subheading 8525.40.40, HTSUS. The intent of the provision was to provide duty free treatment to a class of digital cameras which have both prior to and since the ITA been provided for in subheading 8525.40, HTSUS. *See, e.g.,* NY 817941, dated January 14, 1996; HQ 960384, dated April 1, 1999 (classifying Casio QV–10 digital cameras entered in 1995); HQ 960664, dated April 20, 1999 (classifying Olympus Digital Still Camera model # D–200L entered in 1995); NY F86533, dated May 17, 2000; and NY G86928, dated February 9, 2001.

The term "digital cameras" was added to the text of heading 8525, HTSUS, and subheading 8525.40, HTSUS, as a result of the 2002 amendment in the HTSUS, effective January 10, 2002. That amendment was intended to clarify that the provisions included cameras that are commonly and commercially known as "digital cameras." The addition of this term was not intended to change the scope of the heading or subheading level. Generally, digital cameras perform still image capture and limited sequential image capture, but are not those cameras commonly and commercially known as camcorders.

The legal text to subheading 8525.40, HTSUS, both before and after the 2002 amendment, describes the cameras of the subheading as "recorders." EN 85.25 (3rd Edition, 2002) indicates that the cameras of this category "record images" or "record sequential images." That is, these cameras have the ability to record and store still images or video on permanent or removable media within the camera (e.g., random access memory (RAM), flash memory cards, memory sticks or magnetic tape, as with certain camcorders), such that the images can be retrieved and viewed at a time subsequent to the time they are captured. *See* HQ 966307, dated June 6, 2003.

In addition to videoconferencing capabilities, the instant camera captures still images and limited sequential images and stores them internally. Though it operates independently from an ADP machine, it must be connected to an ADP machine for processing the recorded digital images. These functions are provided for in subheading 8525.40, HTSUS.

As the instant digital camera performs functions that are covered by subheading 8525.30, HTSUS and 8525.40, HTSUS, it is a multifunctional camera designed for the purpose of performing two or more complementary or alternative functions. As such, it is a composite machine, classified according the camera's principal function, pursuant to Section XVI, Note 3, HTSUS. However, the instant camera contains no feature that predomi-

nates over any other feature to suggest that one capability constitutes the principal function. We are therefore unable to determine the digital camera's principal function.

General EN (VI) to Section XVI provides that, "[w]here it is not possible to determine the principal function, and where as provided in Note 3 to the Section, the context does not otherwise require, it is necessary to apply General Interpretative Rule 3(c)." GRI 3(c) provides that "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."

Subheadings 8525.30, HTSUS, and 8525.40, HTSUS, merit equal consideration for the reasons stated above. Thus, the instant digital camera is classified in subheading 8525.40, HTSUS.

Because the 2002 legal text amendment did not change the scope of subheading 8525.40, we find that the scope of subheading 8525.40.40, HTSUS, which provides for "digital still image video cameras," also did not change. Subheading 8525.40.40, HTSUS, still provides for those articles commonly and commercially referred to as digital cameras. Therefore, subheading 8525.40.80, HTSUS, is not considered. Accordingly, this digital camera is classified in subheading 8525.40.40, HTSUS.

NY I86730 applied GRI 3(c), through Section XVI, Note 3 and GRI 6, to the eight-digit subheading level rather than the six-digit level, as discussed above. Therefore, NY I86730 is incorrect.

It is noted that NY I86730 was correct in determining that the camera imported in a blister pack with CD-ROM software, a user guide, a warranty card and a plastic clip used to attach the camera to a portable PC notebook comprises a set put up for retail sale, and that the essential character of the set is imparted by the camera. Further, the application of Note 6 to Chapter 85, HTSUS, regarding classification of software, was also correct. Therefore, the set, including the CD-ROM, is classified as if consisting only of that article which imparts the essential character of the set: the digital camera.

HOLDING:

At GRI 3(b), the Cool iCam model CIC–175A digital camera set is classified in subheading 8525.40.40, HTSUS, which provides for, in pertinent part, "Transmission apparatus for radiotelephony . . . television cameras; still image video cameras and other video camera recorders; digital cameras: Still image video cameras and other video camera recorders; digital cameras: Digital still image video cameras."

EFFECT ON OTHER RULINGS:

NY I86730, dated October 22, 2002, is hereby MODIFIED. In accordance with 19 U.S.C 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

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

[ATTACMENT C]

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

HQ 966531
September 4, 2003
CLA–2 RR:CR:GC 966531 DBS
CATEGORY: Classification
TARIFF NO.: 8525.40.40

MS. VALERIE SUCHOR
SPECTRA MERCHANDISING INTERNATIONAL, INC.
4230 North Normandy Avenue
Chicago, IL 60634

RE: Revocation of NY I84563; Digital cameras

DEAR MS. SUCHOR:

On July 22, 2002, the U.S. Customs and Border Protection National Commodity Specialist Division issued to you New York Ruling (NY) I84563, which classified the Polaroid PDC 301 digital camera under the Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered that ruling and have determined it 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 July 23, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 30. No comments were received in response to the notice.

FACTS:

The merchandise at issue is a digital camera, the Polaroid PDC 301. This digital camera is packaged for retail sale, in a blister pack, with CD-ROM software, a user guide, a warranty card and a plastic clip used to attach the camera to a portable PC notebook. After determining that the products comprised a "set for retail sale," classifiable by the camera, which imparts the essential character of the set, NY I84563 stated the following:

> The Polaroid PDC 301 Digital Camera performs two distinct functions. It can function as a digital still image camera allowing the user to store still images, download and send them via the Internet. It can also serve as a web cam whereby it allows the user to conduct live action video conferencing with a receiving party.
>
> Note 3 to section XVI of the Harmonized Tariff Schedule of the United States (HTS) provides, in pertinent part, that unless the context requires otherwise, machines adapted for the purpose of performing two or more compl[e]mentary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function. It is the opinion of this office that based upon the dual functionality of this digital camera neither demonstrates a principal function. Therefore classification of the Polaroid PDC 301 Digital Camera will be in accordance with GRI 3c, Harmonized Tariff Schedule of the United States, which requires, in part that the item be classified in the heading which occurs last in numerical order among those which merit equal consideration.

In NY I84563, Customs classified the camera in subheading 8525.40.80, HTSUS, which provides for other still image video cameras and other video recorders; digital cameras.

ISSUE:

What is the classification under the HTSUS of the instant multifunctional digital camera?

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 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 generally indicative of the proper interpretation of these headings. Customs believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The HTSUS provisions under consideration are as follows:

8527	Transmission apparatus for radiotelephony, radiotelegraphy, radiobroadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras; still image video cameras and other video camera recorders; digital cameras:
8527.30	Television cameras:
	* * *
8525.42	Still image video cameras and other video camera recorders; digital cameras:
8525.40.42	Digital still image video cameras
	* * *
8525.40.81	Other

As stated in NY I84563, the Polaroid PDC 301 performs two distinct functions. The digital camera captures and stores still images, which can then be processed by an automatic data processing (ADP) machine. The camera also captures live images in real time (i.e., for videoconferencing). Both of these functions fall within the scope of heading 8525, HTSUS. Thus, classification at the heading level is not in dispute.

To determine in which subheading this digital camera is classified, we must employ GRI 6, which permits the comparison of same-level subheadings within a heading, in part by application of Rules 1 through 5, applied by the appropriate substitution of terms. Only subheadings at the same level are comparable, so we must first address the 6-digit level.

Subheading 8525.30, HTSUS, in pertinent part, provides for "television cameras." Subheading 8525.40, HTSUS, in pertinent part, provides for "still image video cameras and other video camera recorders; digital cameras." According to GRI 1, applied through GRI 6, we must first look to the relevant section and chapter notes.

Section XVI, Note 3, provides:

> "Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and **other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function."** (2003) [Emphasis added.]

EN 85.25, section (C), p. 1668 (3rd Edition, 2002), describes television cameras as including, for example, "television cameras for television studios or for reporting, those used for industrial or scientific purposes or for supervising traffic." Customs has classified PC cameras, which are those designed to be connected to ADP machines, used for videoconferencing, and for the capture of still images and moving images that do not contain internal or removable storage media as television cameras of subheading 8525.30.90, HTSUS. See e.g., HQ 964973, dated July 17, 2002. PC cameras are designed to transmit video images to an ADP machine for processing or for direct transmission over the Internet, transmitting live image as television cameras do. Therefore, whether this camera transmits real time images directly to a television set, to a video monitor for surveillance, or to a computer or other device, it performs the function of a category of cameras that fall within the term "television cameras" of subheading 8525.30, HTSUS. See HQ 964973; see also HQ 966172, dated June 4, 2003; HQ 965097, dated July 19, 2002; HQ 958632, dated January 25, 1996; NY A84032, dated May 31, 1996; NY B81818, dated February 13, 1997; NY A81240, dated March 18, 1996; NY F88315, dated June 29, 2000.

The PC videoconferencing function transmits live video images captured by the camera to an ADP monitor via a USB cable. Therefore, the camera's functions are provided for in part by subheading 8525.30, HTSUS.

In the Information Technology Agreement (ITA), which went into effect on July 1, 1997, by Presidential Proclamation No. 7011 (62 FR 35909, June 30, 1997), the U.S. notified the other signatories that it would classify "digital still image video cameras" in subheading 8525.40.40, HTSUS. The intent of the provision was to provide duty free treatment to a class of digital cameras which have both prior to and since the ITA been provided for in subheading 8525.40, HTSUS. *See, e.g.*, NY 817941, dated January 14, 1996; HQ 960384, dated April 1, 1999 (classifying Casio QV–10 digital cameras entered in 1995); HQ 960664, dated April 20, 1999 (classifying Olympus Digital Still Camera model # D–200L entered in 1995); NY F86533, dated May 17, 2000; and NY G86928, dated February 9, 2001.

In 2002, the term "digital cameras" was added in 2002 to the text of heading 8525, HTSUS, and subheading 8525.40, HTSUS, as a result of the 2002 amendment in the HTSUS, effective January 10, 2002. That amendment was intended to clarify that the provisions included cameras that are commonly and commercially known as "digital cameras." The addition of this term was not intended to change the scope of the heading or subheading

level. Generally, digital cameras perform still image capture and limited sequential image capture, but are not those cameras commonly and commercially known as camcorders.

The legal text to subheading 8525.40, HTSUS, both before and after the 2002 amendment, describes the cameras of the subheading as "recorders." EN 85.25 (3rd Edition, 2002) indicates that the cameras of this category "record images" or "record sequential images." That is, these cameras have the ability to record and store still images or video on permanent or removable media within the camera (e.g., random access memory (RAM), flash memory cards, memory sticks or magnetic tape, as with certain camcorders), such that the images can be retrieved and viewed at a time subsequent to the time they are captured. *See* HQ 966307, dated June 6, 2003.

In addition to videoconferencing capabilities, the instant camera captures still images and stores them internally. Though it operates independently from an ADP machine, it must be connected to an ADP machine for processing the recorded digital images. This function is provided for in subheading 8525.40, HTSUS.

As the instant digital camera performs functions that are covered by subheading 8525.30, HTSUS and 8525.40, HTSUS, it is a multifunctional camera designed for the purpose of performing two or more complementary or alternative functions. As such, it is a composite machine, classified according the camera's principal function, pursuant to Section XVI, Note 3, HTSUS. However, the instant camera contains no feature that predominates over any other feature to suggest that one capability constitutes the principal function. We are therefore unable to determine the digital camera's principal function.

General EN (VI) to Section XVI provides that, "[w]here it is not possible to determine the principal function, and where as provided in Note 3 to the Section, the context does not otherwise require, it is necessary to apply General Interpretative Rule 3(c)." GRI 3(c) provides that "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."

Subheadings 8525.30, HTSUS, and 8525.40, HTSUS, merit equal consideration for the reasons stated above. Thus, the instant digital camera is classified in subheading 8525.40, HTSUS.

Because the 2002 legal text amendment did not change the scope of subheading 8525.40, we find that the scope of subheading 8525.40.40, HTSUS, which provides for "digital still image video cameras," also did not change. Subheading 8525.40.40, HTSUS, still provides for those articles commonly and commercially referred to as digital cameras. Therefore, subheading 8525.40.80, HTSUS, is not considered. Accordingly, this digital camera is classified in subheading 8525.40.40, HTSUS.

NY I84563 applied GRI 3(c), through Section XVI, Note 3 and GRI 6, to the eight-digit subheading level rather than the six-digit level, as discussed above. Therefore, NY I84563 is incorrect.

It is noted that NY I84563 was correct in determining that the camera imported in a blister pack with CD-ROM software, a user guide, a warranty card and a plastic clip used to attach the camera to a portable PC notebook comprises a set put up for retail sale, and that the essential character of the set is imparted by the camera. Further, the application of Note 6 to Chapter 85, HTSUS, regarding classification of software, was also correct. Therefore,

the set, including the CD-ROM, is classified as if consisting only of that article which imparts the essential character of the set: the digital camera.

HOLDING:

At GRI 3(b), the Polaroid PDC 301 digital camera set is classified subheading 8525.40.40, HTSUS, which provides for, in pertinent part, "[t]ransmission apparatus for radiotelephony . . . television cameras; still image video cameras and other video camera recorders; digital cameras: Still image video cameras and other video camera recorders; digital cameras: digital still image video cameras."

EFFECT ON OTHER RULINGS:

NY I84563, dated July 22, 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.

MODIFICATION OF RULING LETTER AND TREATMENT RELATING TO THE APPLICABILITY OF SUBHEADING 9802.00.50 TO MEN'S SWEATSHIRTS EMBROIDERED IN MEXICO

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

ACTION: Notice of modification of a ruling letter and treatment relating to the eligibility of men's sweatshirts exported to Mexico for embroidery operations and returned for duty-free treatment 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 and Border Protection (CBP) is modifying a ruling letter pertaining to the eligibility of certain embroidered sweatshirts for a duty exemption under subheading 9802.00.50, HTSUS. CBP also is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin* on July 2, 2003. No comments were received in response to the notice.

EFFECTIVE DATE: This notice is effective for merchandise entered or withdrawn for consumption on or after November 23, 2003.

FOR FURTHER INFORMATION CONTACT: Craig A. Walker, Special Classification and Marking Branch, (202) 572–8836.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. 1625(c)(1), notice was published on July 2, 2003, in the *Customs Bulletin*, Volume 37, Number 27, proposing to modify New York Ruling Letter ("NY") I87698 dated December 5, 2002, which determined that certain men's sweatshirts that were embroidered in Mexico were ineligible for duty-free treatment under subheading 9802.00.50, HTSUS, when returned to the U.S. No comments were received in response to the notice.

Subheading 9802.00.50, HTSUS, provides a partial or complete duty exemption for articles that are returned to the U.S. after having been exported to be advanced in value or improved in condition by means of repairs or alterations, provided the applicable documentation requirements are met. NY I87698 found that embroidering various names or logos on the chest area of men's sweatshirts in Mexico exceeded the scope of the term "alterations" within the meaning of subheading 9802.00.50, HTSUS. However, CBP has reconsidered the above ruling in the light of Headquarters Ruling Letters ("HRLs") 561781 dated September 19, 2000, and 562618 dated May 21, 2003), which held that, under the specific circumstances of those rulings, decorative embroidery operations constitute acceptable "alterations" within the meaning of subheading 9802.00.50, HTSUS. Therefore, it is CBP's position that, in regard to the specific factual situation involved in NY I87698, the embroidered men's sweatshirts are entitled to duty-free treatment under this tariff provision.

As stated in the proposed notice, this modification will cover any rulings involving substantially identical transactions which may exist but which have not been specifically identified. 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 that are substantially identical to those subject to this notice, should have advised CBP during the comment period.

Similarly, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by it to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the law. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to the effective date of this final notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY I87698 and any other rulings not specifically identified, to reflect the proper classification of the merchandise under subheading 9802.00.50, HTSUS, pursuant to the analysis set forth in HRL 562687, attached. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by it 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: September 5, 2003

Monika R. Brenner for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 562687
September 5, 2003
CLA–2 RR:CR:SM 562687 CW
CATEGORY: Classification
TARIFF NO.: 9802.00.50

MS. ELIZABETH BURNS
JANSPORT, INC.
N850 Cty. Hwy. CB
P.O. Box 1817
Appleton, WI. 54913–1817

RE: Modification of NY I87698; eligibility of sweatshirts embroidered abroad for subheading 9802.00.50, HTSUS, treatment

DEAR MS. BURNS:

This is in reference to your letter of January 23, 2003, to our New York office, requesting reconsideration of New York Ruling Letter ("NY") I87698 dated December 5, 2002, concerning the eligibility of embroidered men's sweatshirts from Mexico for duty-free treatment under subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS). The ruling also addressed the country of origin of the sweatshirts. We have reviewed NYI87698 and believe that its conclusion that subheading 9802.00.50, HTSUS, is inapplicable to the returned embroidered sweatshirts is incorrect. Therefore, we are modifying the portion of NY I87698 relating to that issue for the reasons set forth below.

FACTS:

Men's sweatshirts (style 55000 for sizes S, M, L, XL and XXL and style 55005 for size XXXL) made in Lesotho from 55 percent cotton and 45 percent polyester will be imported into the U.S. by Jansport. The sweatshirts are then exported to Mexico where they will be machine embroidered with various names or logos on the chest area and returned to the U.S. Jansport's catalog reflects that the sweatshirts are offered for sale with or without the embroidery.

In NY I87698, Customs held that:

> . . . the embroidery operation creates a different article with unique, specialized appeal and constitutes a finishing step in the manufacture of the embroidered garments. As such, the embroidery operation is considered more than an "alteration" within the meaning of subheading 9802.00.50, HTSUS.

ISSUE:

Whether embroidering the sweatshirts in Mexico as described above qualifies as a repair or alteration under subheading 9802.00.50, HTSUS.

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 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 Amity Fabrics, Inc. v. United States, 43 Cust. Ct. 64, C.D. 2104 (1959), "pumpkin" colored fabrics were exported to Italy to be redyed black since the pumpkin color had gone out of fashion and black was a consistently good seller. The court held that the identity of the goods was not lost or destroyed by the dyeing process, that no new article was created since there was no change in the character, quality, texture, or use of the merchandise; it was merely changed in color. The court found that such change constituted an alteration for purposes of a precursor provision to subheading 9802.00.50, HTSUS (paragraph 1615(g) of the Tariff Act of 1930, as amended).

In Royal Bead Novelty Co. v. United States, 68 Cust.Ct. 154, C.D. 4353, 342 F. Supp. 1394 (1972), uncoated glass beads were exported so that they could be half-coated with an Aurora Borealis finish which imparted a rainbow-like luster to the half-coated beads. The court found that the identity of the beads was not lost or destroyed in the coating process and no new article was created. Moreover, there was no change in the beads' size, shape, or manner of use in making articles of jewelry (evidence was presented which indicated that both uncoated and half-coated beads were used interchangeably). Accordingly, the court concluded that the application of the Aurora Borealis finish constituted an alteration within the meaning of item 806.20, Tariff Schedules of the United States (TSUS)—the precursor to subheading 9802.00.50, HTSUS.

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 that were exported for decorating operations and then returned to the U.S. In the notice, it was stated that, upon reconsideration, Customs determined that the decorating operations performed in those cases 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 or beads, or a

combination of these items; and decals and paint bands applied to ceramic dinnerware abroad.

The reembroidery case referenced above (Headquarters Ruling Letter (HRL) 561781 dated September 19, 2000), involved foreign lace that was exported to the Philippines to have rope (thick thread), sequins or beads, or any combination of these items, hand embroidered onto the lace. The purpose of the reembroidery was to enhance the marketability of the lace. Customs stated in HRL 561781 that information in the record indicated that both the lace in its condition as exported and the returned reembroidered lace were sold in the same channels of trade for use as ornamentation on women's wearing apparel. Therefore, Customs concluded that the lace in its condition as exported to the Philippines was complete for its intended use. Customs also determined that the reembroidery process clearly did not result in the loss of the good's identity or the creation of a new article with a different commercial use. As a result, Customs found that the reembroidery process constituted an alteration within the meaning of subheading 9802.00.50, HTSUS.

A recent case, HRL 562618 dated May 21, 2003, involved previously-imported and duty-paid polo shirts that were exported to Canada where company names or logos were embroidered onto the left chest portion of the shirts. Customs held that the embroidery constituted an acceptable alteration within the meaning of subheading 9802.00.50, HTSUS.

We believe that HRLs 562781 and 562618 are controlling with respect to the instant case. Men's sweatshirts are exported to Mexico where names or logos are embroidered on the chest area of the apparel. Jansport's catalog reflects that the same sweatshirt is offered for sale either with or without the embroidery. Therefore, we are satisfied that the sweatshirts in their condition as exported to Mexico are complete for their intended use and that the foreign processing is not a necessary step in the production or manufacture of finished articles. While the embroidery imparts new decorative characteristics to the articles, this change in the appearance of the article clearly does not result in the loss of the good's identity or the creation of a new article with a different commercial use. The embroidery also does not significantly change the quality, character or performance characteristics of the sweatshirts. Therefore, we find that the foreign embroidery operation qualifies as an alteration under subheading 9802.00.50, HTSUS.

HOLDING:

On the basis of the information presented, we find that the foreign embroidery operation described above, performed abroad on exported men's sweatshirts, constitutes an acceptable alteration under subheading 9802.00.50, HTSUS. Therefore, the returned embroidered sweatshirts are entitled to duty-free treatment under this tariff provision, assuming compliance with the documentation requirements of 19 CFR 181.64.

NY I887698 is hereby modified consistent with the foregoing. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

Monika R. Brenner for MYLES B. HARMON,
Director,
Commercial Rulings Division.

19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF FLUSHED PIGMENT COLOR PREPARATION

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

ACTION: Notice of proposed revocation of ruling letter and treatment relating to the tariff classification of a flushed pigment color preparation.

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 proposing to revoke a ruling pertaining to the tariff classification of an ink jet color preparation under the Harmonized Tariff Schedule of the United States ("HTSUS"). Similarly, Customs is proposing to revoke any treatment previously accorded by Customs to substantially identical transactions. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before October 24, 2003.

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

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)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a flushed pigment color preparation. Although in this notice Customs is specifically referring to one ruling (NY F83432), 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 additional 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, as amended (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, 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 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 its agents for importations of merchandise subsequent to the effective date of the final notice of the proposed action.

In NY F83432, dated March 27, 2000 (Attachment A), Customs classified a flushed pigment color preparation called "Blue Flush" as a printing ink of heading 3215, HTSUS. However, "Blue Flush" is used to manufacture ink, and is not an ink itself. Heading 3204, HTSUS, the provision for synthetic organic coloring material and preparations based thereon, covers both dyes and pigments as well as preparations based on dyes and pigments. Heading 3215, on the other hand, covers printing inks, which may be in liquid or paste

form, as well as concentrated and solid inks requiring only "simple dilution or dispersion," as per the description in Harmonized Commodity Description and Coding System Explanatory Notes (ENs) to heading 3215, HTSUS. In reading heading 3204, HTSUS, in *pari materia* with heading 3215, HTSUS, it logically follows that the scope of heading 3204, HTSUS, covers more advanced preparations that are not finished inks, concentrated inks or solid inks.

Though a concentrated product, "Blue Flush" is not a concentrated ink. Therefore, it is now Customs position that "Blue Flush" is classified in subheading 3204.17.90, HTSUS, which provides for "Synthetic organic coloring matter, whether or not chemically defined; preparations as specified in note 3 to this chapter based on synthetic organic coloring matter; Synthetic organic products of a kind used as fluorescent brightening agents or as luminophores, whether or not chemically defined: synthetic organic coloring matter and preparations based thereon as specified in note 3 to this chapter: Pigments and preparations based thereon; Other; Other."

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY F83432, and any other ruling not specifically identified, to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analysis set forth in HQ 966462 (Attachment B). 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 merchandise. Before taking this action, we will give consideration to any written comments timely received.

Dated: September 8, 2003

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

Attachments

[ATTACHMENT A]

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

NY F83432
March 27, 2000
CLA–2–32:RR:NC:SP:236 F83432
CATEGORY: Classification
TARIFF NO.: 3215.19.0060

MR. JOHN B. PELLEGRINI
ROSS & HARDIES
65 Park Avenue
New York, NY 10022–3219

RE: The tariff classification of Blue Flush from India

Dear Mr. Pellegrini:

In your letter dated March 7, 2000, you requested a tariff classification ruling.

In your letter, you indicated that the product is a printing ink. It will be imported in a concentrated liquid form. The ink consists of six components: pigment blue 15:3, resin, gellant, antioxidant, vegetable oil and ink oil.

The applicable subheading for Blue Flush will be 3215.19.0060, Harmonized Tariff Schedule of the United States, which provides for Printing ink, writing or drawing ink and other inks, whether or not concentrated or solid: Printing ink: Other: Other: Other. The rate of duty will be 1.8 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 the National Import Specialist at 212–637–7062.

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

[ATTACHMENT B]

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

HQ 966462
CLA–2 RR: CR: GC 966462 DBS
CATEGORY: Classification
TARIFF NO.: 3204.17.90

MR. JOHN PELLIGRINI
MCGUIRE WOODS, LLP
Park Avenue Tower
65 East 55th Street
New York, NY 10022–3219

RE: Revocation of NY F83432; Flush pigments

DEAR MR. PELLIGRINI:

On March 27, 2000, the Director, U.S. Customs and Border Protection National Commodity Specialist Division, New York, issued to you on behalf of your client, Micro Inks, Inc. ("Micro Inks"), New York Ruling Letter (NY) F83432, classifying "Blue Flush" in subheading 3215.19.00, Harmonized Tariff Schedule of the United States (HTSUS), as a printing ink. In light of NY I86471, dated February 14, 2003, which classified what appears to be a substantially similar product in the provision for preparations based on pigments, subheading 3204.17.90, HTSUS, we have reviewed NY F83432 for correctness. Consideration was given to the supplemental information and arguments provided in your letters of May 1, June 19, June 24, and July 14, 2003, as well as telephonic discussions with this office. We have found the ruling to be incorrect. This ruling sets forth the correct classification.

FACTS:

You provided to us, upon request, Micro Inks' ruling request of March 7, 2000, to the National Commodity Specialist Division, New York, because Customs files were destroyed on September 11, 2001. In the request, you state that "Blue Flush" is a "concentrated ink in liquid form . . . used in engineered printing ink formulations." In NY F83432, and according to the request, it is stated that the product consists of six components: pigment blue 15:3, resin, gellant, antioxidant, vegetable oil and ink oil. The ruling did not state percentages by weight, though the copy of the March 7, 2000 request does provide relative weight information. The relative weight of the pigment blue 15:3 is 35–40%. No sample was provided for analysis by the Customs laboratory.

Additional information submitted to this office indicates that the instant flush is used in heat set and sheet fed applications. You additionally state that the product is technically useable in its condition as imported as a printing ink but that it is not actually used as a printing ink because it is not press-ready.

You maintain that "Blue Flush" should be classified as a printing ink because it is considered ink in the industry. However, testimony given by expert witnesses and officers of Micro Inks and its parent company, Hindustan Inks and Resins, Ltd., before the U.S. International Trade Commission during a preliminary investigation into a claim by competitors for the imposition of countervailing and antidumping duties indicates that "flush" and "ink" are two distinct products. For example, it is stated that Micro Inks for-

mulates its own inks, and that sales of flushes comprise only about two percent of total sales. The President and CEO of Micro Inks also describes certain Micro Ink flushes (presumably newer products than the one at issue here) as having a lower percentage by weight of pigment than its competitors flushes, whose pigment percentages are similar to that of the "Blue Flush," as provided in the copy of the March 7, 2000 request. *See* Transcript, Preliminary Investigation, *In the Matter of Certain Colored Synthetic Organic Oleoresinous Pigment Dispersions from India*, United States International Trade Commission, June 27, 2003, transcribed by Heritage Reporting Corporation, Official Reporters.

ISSUE:

Whether flushed colors are classified in heading 3204, HTSUS, as preparations based on pigments or in heading 3215, HTSUS, as printing inks.

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:

3204	Synthetic organic coloring matter, whether or not chemically defined; preparations as specified in note 3 to this chapter based on synthetic organic coloring matter; synthetic organic products of a kind used as fluorescent brightening agents or as luminophores, whether or not chemically defined:
	Synthetic organic coloring matter and preparations based thereon as specified in note 3 to this chapter:
3204.17	Pigments and preparations based thereon:
	Other:
3204.17.90	Other
	* * *
3215	Printing ink, writing or drawing ink and other inks, whether or not concentrated or solid:
	Printing ink:
3215.19.00	Other
	* * *

Note 3 to Chapter 32, HTSUS, provides, in pertinent part, that "[h]eadin[g] 32.04 . . . appl[ies] also to preparations based on colouring matter . . . of a kind . . . used as ingredients in the manufacture of colouring preparations. The headings do not apply, however . . . to other preparations of heading 32.07, 32.08, 32.09, 32.10, 32.12, 32.13 or 32.15." EN 32.04(I)(E) states that the heading includes "[o]ther preparations based on synthetic organic colouring matter of a kind used for colouring any material or used as ingredients in the manufacture of colouring preparations. However, the preparations referred to in the last sentence of Note 3 to this Chapter are **excluded**."

As preparations of heading 3215, HTSUS, are excluded from classification in heading 3204, HTSUS, we will first address heading 3215, HTSUS. There are no relevant section or chapter notes for printing ink of heading 3215, HTSUS. However, the Court of International Trade stated that inks contain colorants, binders and solvents. *See BASF Wyandotte Corp. v. United States*, 11 C.I.T. 652, 674 F. Supp. 1477 (CIT 1987), *aff'd* 855 F.2d 852 (CAFC 1988) (hereinafer BASF), *citing Corporation Sublistatica, SA v. United States*, 511 F. Supp. 805, 809 (CIT 1981) (hereinafter *Sublistatica*). Additionally, EN 32.15 describes printing ink as follows:

> (A) **Printing inks (or colours)** are pastes of varying consistency, obtained by mixing a finely divided black or coloured pigment with a vehicle. The pigment is usually carbon black for black inks and may be organic or inorganic for coloured inks. The vehicle consists of either natural resins or synthetic polymers, dispersed in oils or dissolved in solvents, and contains a small quantity of additives to impart desired functional properties.
>
> . . .
>
> These products are generally in the form of liquids or pastes, but they are also included in this heading when concentrated or solid (i.e., powders, tablets, sticks, etc.) to be used as inks after simple dilution or dispersion.

In *Sublistatica*, decided under the HTSUS predecessor, the Tariff Schedules of the United States (TSUS), the court addressed the classification of an ink product in powder form that was used in gravure printing. The court described that, "after the importation . . . of the powder . . . ethanol is added thereto causing the powder to liquify. This substance is thereupon used by the plaintiff in a standard gravure press to print. . . ." *Sublistatica*, 1 CIT at 122. That is, the powder needed *only* the addition of a solvent. The court held that because the ink product required solvent, a necessary component, it was not classifiable in the ink provision. Nor was it classifiable as an unfinished ink in the ink provision because the TSUS contained a specific provision for ink powder. Thus, it was properly classified in that provision. *See id*. at 808–9.

The provisions at issue in *Sublistatica* were a dye provision and an ink provision. The product was clearly more advanced than just a dye, given that all it required was simple dilution by the ethanol. The pertinent issue in *BASF* was also inks versus dyes. The *BASF* product contained the necessary components of the specific product for use with textiles, though the addition of water was required before the product was press-ready by the "simple process of stirring or shaking." 674 F. Supp at 1480. Evidence supported that the product was not simply a dispersed dye. Like in *Sublistatica*,

it was more advanced than a dye. The court concluded that although it "did not easily fit into ordinary notions of either dyes or inks, the testimony clearly establishes that [it] fit the relevant industry definition and performed as ink." *Id.* at 1481.

You contend that "Blue Flush" is classified according to GRI 1 as a printing ink of heading 3215, HTSUS, or, in the alternative, an unfinished ink classified according to GRI 2(a) in heading 3215, HTSUS. You support your claims, in large part, with *Sublistatica* and *BASF* decisions. Under the TSUS, the provision for dyes did not provide for preparations based on dyes, but the terms of heading 3204, HTSUS, are broader in scope. The scope of heading 3204, HTSUS, includes the preparations based on dyes and pigments. Likewise, whereas ink powder was not within the scope of the ink provision under the TSUS, the scope of today's ink provision, heading 3215, HTSUS, now encompasses ink powder that requires only simple dilution, as did the powder in *Sublistatica*. See EN 32.15.

The definition for ink provided by the court in the aforementioned cases is a broad definition that should not be interpreted in such a way that any product containing binder, solvent and colorant is classified as ink. We believe that was not the intent of the decisions, nor does it reflect commercial reality. In both cases, the courts looked carefully at the exact manufacture of the products. The court's treatment of the specific facts in each case shows that, in essence, the definition is a minimum guideline or baseline for the main components of ink. In reality, no ink is limited to the three components enumerated. One must simply open any industry reference material, such as The Printing Ink Manual, *infra*, to see various formulations for many types of printing inks.

The instant product is a pigment-based "flush." Flushing is the process of transferring the pigment from the aqueous phase into the oil phase without the normal conversion into dry powder. *See* The Printing Ink Manual, 814 (Fifth ed., 1993) (hereinafter "Ink Manual"). Western Michigan University's Department of Paper Engineering, Chemical Engineering, and Imaging website, http://www.wmich.edu/ppse/inks/ *visited* on August 18, 2003, states the following of flushes:

> Organic pigments may be prepared as flushed pigments. They are prepared as dyes in aqueous solutions, converted to pigments, precipitated, filtered and washed. The filter cake is mixed with a viscous varnish in a large dough mixer, a process known as flushing. The varnish eventually replaces the water adsorbed on the particles. Some water separates and is poured off. The remainder is removed by heating under vacuum. The flushed pigment is sold to the ink manufacturer. Flushed pigments do not contain grit or unground, dry particles.
>
> They are easily mixed with other ink ingredients. They have high color strength and low moisture content. 90% of paste inks use flushed pigments. If, instead of flushing, the filter cake is dried in an oven and then ground, the powdered product is called dry color. Pigments may also be sold in the form of chips, pigment dispersed in a solid resin.

The instant flush product is used in heat-set and sheet-fed ink applications. Heat-set inks are made from flushed pigments. The result of the flushing process is pigment paste in a highly concentrated pigment dispersion in lithographic varnish. *See* Ink Manual, 373. We note here that flushed color contains fully dispersed pigment. *See id.* at 709. According to the Ink

Manual, flushes are preferred to dry color because inks manufactured from flush are quicker and easier to make, have a better batch to batch consistency in terms of rheology, the pigment does not wet out after manufacture, and flushes allow for a variety of manufacturing techniques. *See id* at 373.

It is clear from the descriptions of flushed products that they are not ink, but an ingredient used in formulating ink. Though you contend that commercial reality reflects that these products are considered ink, the distinction between flushes and ink is further supported by the testimonies made before the U.S. International Trade Commission, cited in the FACTS section of this ruling, of the President and CEO of Micro Inks and a Hindustan Inks and Resins, Ltd. board member who both refer to flushes and inks as separate products. Determinations made by other governmental agencies do not effect Customs determinations of tariff classification, as different agencies use different criteria. However, statements made by an importing party, specifically in the form of sworn testimony, are not agency determinations. Further, this testimony is directly relevant as it specifically involves flushes and inks. Thus, we may conclude that flushes are factually distinguishable from inks.

The scope of heading 3215, HTSUS, includes those products "when concentrated or solid (i.e., powders, tablets, sticks, etc.) to be used as inks after simple dilution or dispersion." EN 32.15. Hence, as you contended, press-readiness is not required. However, headings 3204, HTSUS, and 3215, HTSUS, must be read in *pari materia*, as one covers the preparations that are not as advanced as those covered in the other. The question becomes how advanced must a preparation of heading 3215, HTSUS, be. We believe the best guidance comes from EN 32.15 and *Sublistatica* and *BASF*. Moreover, we have consistently classified advanced color preparations that are used in various ink applications in heading 3204, HTSUS. *See* HQ 953655, dated March 3, 1995; HQ 956158, dated July 27, 1995; HQ 956976, dated March 7, 1995; HQ 965614, dated September 30, 2002; HQ 965615, dated September 30, 2002; NY I86471, dated February 14, 2003; and HQ 966063, dated June 4, 2003.

In HQ 966063, we stated that "dilution" and "dispersion" are both terms of art in the ink and chemical industries. Thus simple dilution or simple dispersion would presumably be the most basic forms of dilution or dispersion of a concentrated or solid ink preparation. For example, in *BASF* the court did not exclude the product at issue from classification as an ink simply because the product was not press ready without the "mere addition of water by simple process of stirring or shaking" unless legislative intent showed otherwise. In *Sublistatica*, ethanol was added to liquify the powder, and the resulting substance was "thereupon used," denoting that nothing beyond simple mixing was done. These "processes" of dilution are not akin to a flush being used in the "manufacture" or "engineering" of ink. More than the simple mixing in of a solvent is required to turn a flush into an ink. While flushes have a higher pigment concentration than finished inks, a flush is not the type of concentrate covered by heading 3215, HTSUS.

As such, the scope of heading 3215, HTSUS, necessarily includes only those printing inks which are finished products, or those concentrates or solids which satisfy the EN. These products are, for example, the "Yasutomo Sumi Ink Stick," which simply required the addition of water, or fully formulated solid inks for solid ink printers in which the solid ink is melted then jetted onto the drum.

We disagree with your claim concerning GRI 2(a), which provides in part for incomplete or unfinished goods to be classified as the good itself if it imparts the essential character of the complete good, given the breadth of the scope of heading 3204, HTSUS. Note 3 to chapter 32, HTSUS, is specific and inclusive of all preparations, that is, all mixtures that satisfy it. A product that is fully described in one heading at GRI 1 cannot be classified in another heading as an unfinished good because GRI 2(a) is not reached. Similarly, the product at issue in *Sublistatica*, was not classified as an unfinished ink because a provision existed that completely covered the product. *See* 511 F. Supp. at 808–9. As we stated in HQ 966063, "it would be counterintuitive to classify an ingredient used to make a preparation of 3215, HTSUS (specifically provided for in the legal note), as a preparation of heading 3215, HTSUS."

In NY I86471 we classified products described as "flushed colors," which are based on synthetic organic coloring matter, that were to be imported for possible resale to manufacturers of printing inks, or to printers who manufacture their own inks. The importer indicated that after conversion to a printing ink these preparations are intended for use in heatset, sheetfed and letterpress printing applications. The Customs Laboratory analyzed samples of these flushes and determined a flush is a preparation based on synthetic organic coloring material. We classified these flushes in heading 3204, HTSUS. "Blue Flush," as described in Micro Inks' original ruling request, is similar in composition to those flushes. Like those flushes, it is used in the manufacture of ink. And, like those flushes, it is not classified at GRI 1 as a printing ink. Therefore, "Blue Flush" is described by Note 3 to Chapter 32, and is classified at GRI 1 in heading 3204, HTSUS.

For the foregoing reasons, we find NY F83432 to be in error.

HOLDING:

"Blue Flush" is classified in subheading 3204.17.90, HTSUS, which provides for, "Synthetic organic coloring matter, whether or not chemically defined; preparations as specified in note 3 to this chapter based on synthetic organic coloring matter; synthetic organic products of a kind used as fluorescent brightening agents or as luminophores, whether or not chemically defined: Synthetic organic coloring matter and preparations based thereon as specified in note 3 to this chapter: Pigments and preparations based thereon: Other: Other."

EFFECT ON OTHER RULINGS:

NY F83432, dated March 27, 2000, is hereby REVOKED.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

MODIFICATION AND REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF MECHANIC'S GLOVES

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

ACTION: Notice of modification and revocation of ruling letters and revocation of treatment relating to tariff classification of mechanic's gloves.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is modifying one ruling letter and is revoking five ruling letters pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of mechanic's gloves. Similarly CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed actions was published in the Customs Bulletin on May 21, 2003. Two 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 November 23, 2003.

FOR FURTHER INFORMATION CONTACT: Joe Shankle, Penalties Branch (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 CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify

and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the Customs Bulletin on May 21, 2003, proposing to modify Headquarters Ruling Letter (HQ) 965692, dated September 18, 2002, and to revoke New York Ruling Letter (NY) A86298, dated August 8, 1996, and NY B85790, dated June 5, 1997, which involved the classification of certain mechanic's gloves. Two comments were received in response to the notice. A summary of the comments and Customs response are set out in the attached rulings.

As stated in the proposed notice, these modification/revocations will cover any rulings on the subject merchandise which may exist but which have not been specifically identified. To that end, three additional rulings on substantially similar merchandise have been identified that were not specified in the proposed notice. The newly identified rulings are NY G80387, dated August 28, 2000, NY C81172, dated November 17, 1997, and NY D83272, dated October 20, 1998. 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 CBP during the comment period.

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying HQ 965692, and revoking NY A86298, NY B85790, NY G80387, NY C81172, NY D83272, and any other ruling not specifically identified in order to reflect the proper classification of mechanic's gloves pursuant to the analysis set forth in HQ 966248 (Attachment A), HQ 966431 (Attachment B), HQ 966432 (Attachment C), HQ 966647 (Attachment D), and HQ 966648 (Attachment E). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by the CBP to substantially identical transactions.

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

DATED: September 10, 2003

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966248
September 10, 2003
CLA–2 RR:CR:TE 966248 JFS
CATEGORY: Classification
TARIFF NO: 6216.00.5820

PETER MENTO AND JULIE VAIR
EXPEDITORS TRADEWIN, LLC
1015 Third Avenue, 12th Floor
Seattle, WA 98104

RE: Modification of HQ 965692; Classification of Mechanic's Gloves; Not Sports Gloves

DEAR MR. MENTO AND MS. VAIR:

On September 18, 2002, Headquarters Ruling Letter (HQ) 965692, was issued to you on behalf of your client, Anza Sport Group, Inc., d.b.a. Mechanix Wear, regarding the classification of six styles of gloves under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). For the reasons that follow, this ruling modifies HQ 965692.

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 Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed modification of HQ 965692, was published on May 21, 2003, in the *CUSTOMS BULLETIN, Volume 37, Number 21*. As explained in the notice, the period within which to submit comments on this proposal ended on June 20, 2003. Two comments were received in response to the proposed modification.

One commenter appropriately summarizes the Bureau of Customs and Border Protection's (CBP's) proposed modification as being "based upon Customs' determination that the activity for which the gloves are allegedly used—auto mechanic functions in professional or amateur automobile racing—do not constitute 'sporting activities' for tariff classification purposes." The commenter does not "express an opinion concerning whether a person who serves as a mechanic during an auto race is engaged in a 'sport' or 'sporting activity' ". Instead the commenter proposes that CBP formulate

and publish a set of standard factors to be evaluated in determining whether gloves are "specially designed for use in sports." While we are open to considering such factors in the future, the issue in this ruling is whether the auto mechanic in the pit crew is engaged in a sporting activity. Thus, we decline to formulate standard factors at this time.

The other commenter presents evidence that the members of a pit crew are in fact athletes engaged in athletic competition during a race. Therefore, accordingly to the commenter, the instant gloves are "specially designed for use in sports" and should be so classified. This commenter's arguments are addressed in the LAW AND ANALYSIS portion of this ruling.

FACTS:

In HQ 965692, the Bureau of Customs and Border Protection (CBP) considered six pairs of gloves, identified as Models 100, 111, 200, 222, 300 and 400. Four of the pairs, Models 100, 200, 222 and 400, were classified in subheading 6216.00.4600, HTSUSA, which provides for "Gloves, mittens and mitts: Other: Of man-made fibers: Other gloves, mittens and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens and mitts." The general column one rate of duty is 3.1 percent *ad valorem*. It is the classification of these four styles of gloves that is being reconsidered.

The gloves are presented in retail packs that are designed to hang on sales racks. Models 100, 200 and 222 are packaged in a manner to prominently display a picture of the glove that shows the sewn on label that reads in part "engineered to the exact specifications of professional mechanics."

Model 100 is a full-fingered glove with a synthetic leather-like material comprising the palm, index finger, back of the fingertips and fourchettes. A three-ply back consists of knitted spandex, foam and a tricot liner. The glove features vented fouchettes and a 1-1/4 inch wide elasticized strap secured with a hook and loop fabric tab over a side vent. The words "MECHANIX GLOVES" are appliqued several times across the back. The gloves are sold in eight different colors.

Model 200 is constructed similarly to Model 100. In addition, it has irregularly shaped padded reinforcement on the palm and along the thumb extending to the index finger. The back of the hand features a neoprene panel insert across the knuckles and overlaid reinforcement across the fingers. Printing on Model 200 reads: "High performance multi-purpose glove with a host of features that will be appreciated by both weekend and professional mechanics alike."

Model 222 also has padded palm reinforcement along with a two-layer palm. Additionally, the backs of the wrist and fingers have rubber shock absorbing pads. Thick foam padding extends across the back of the knuckles and down part of the index and middle fingers. Model 222 is advertised as being worn by pit crews in multiple pictures. The advertisement also depicts a mechanical function icon, a portion of which provides the specific use for which the glove was designed. Model 222 is also advertised as being "designed to excel in high-impact abuse with precise controls needed by professional race crews."

Model 400 is a full-fingered gauntlet glove with a reinforced overlaid synthetic leather-like palm. The back of the hand is knit fabric and features molded plastic knuckle protection, molded rubber finger protection and a

hook and loop fabric tab closure. The wrist is partially elasticized and the cuff has an elasticized gaiter.

ISSUE:

Whether the gloves are specially designed for use in sports.

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 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. . . ." In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation 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. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. *See* T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

Subheading 6216.00.46, HTSUSA, provides, in part, for gloves, mittens and mitts, specially designed for use in sports. As this is a "use" provision, determining whether an article is classifiable in subheading 6216.00.46, HTSUSA, requires consideration of whether the article has particular features that adapt it for the stated purpose. In *Sports Industries, Inc. v. United States*, 65 Cust. Ct. 470, C.D. 4125 (1970), the court, in interpreting the term "designed for use," under the Tariff Schedules of the United States, the predecessor to the HTSUSA, examined not only the features of the articles, but also the materials selected and the marketing, advertising and sale of the article. The case suggests that, to be classifiable in subheading 6216.00.46, the subject gloves must be shown to be, in fact, specially designed for use in a particular sport. Accordingly, a conclusion that a certain glove is "specially designed" for a particular sport, requires more than a mere determination of whether the glove or pair of gloves could possibly be used in a certain sport. In determining whether gloves are specially designed for use in sports, CBP considers the connection the gloves have to an identified sporting activity, the features designed for that sporting activity, and how the gloves are marketed, advertised and sold in relation to the named sport.

While the term "sport" is not defined in the tariff, in HQ 089849, dated August 16, 1991, CBP noted that common dictionaries defined the term "sport" as "an activity requiring more or less vigorous bodily exertion and carried on according to some traditional form or set of rules, whether outdoors, as football, hunting, golf, racing, etc., or indoors, as basketball, bowling, squash, etc." In *Newman Importing Company, Inc. v. United States*, 415 F. Supp. 375, 76 Cust. Ct. 143, Cust. Dec. 4648 (1976), in finding backpacking to be a sport, the court determined that the term "sport" is not solely defined in terms of competitiveness, but also arises from the development and pursuit of a variety of skills. In this respect, in HQ 957848, dated August 10, 1995, CBP found hunting, fishing, canoeing, archery and similar outdoor activities to fall within the purview of "sport." The American College Dictio-

nary (1970) defines the term "sport" as "a pastime pursued in the open air or having an athletic character." Likewise, Webster's New Dictionary of the English Language (2001) defines "sport" as:

1: a source of diversion: PASTIME

2: physical activity engaged in for pleasure.

The term "sport" appears to also encompass activities in which individuals engage professionally (i.e., professional sports).

In HQ 964901, dated January 31, 2002, CBP defines the term "sport" according to The Random House Dictionary of the English Language, the Unabridged Edition (1983) as:

1. an athletic activity requiring skill or physical prowess and often of a competitive nature, as racing, baseball, tennis, golf, bowling, wrestling, boxing hunting, fishing, etc.

2. a particular form of this, esp. in the out of doors.

In HQ 965692, we recognized that motorsports racing is a sporting activity, and noted that pit-crew members are an integral component of the sport, for purposes of tariff classification. Because the gloves under consideration were specially designed for the mechanics that work in the pit-crew, we classified the gloves as being specially designed for use in sports. However, upon further consideration of the role of pit-crew members, CBP concludes that while they are an integral component of the team, the actual role and function, of a mechanic do not constitute a sporting activity.

When there is doubt as to whether a certain activity constitutes a sport for tariff classification purposes, CBP balances a range of factors, which include the degree of bodily exertion, the use of traditional rules, the degree of competitiveness, the origin of the activity, and common recognition as a sport. In HQ 962745, dated October 25, 1999, in determining whether the activity of "dancing" is a sport, CBP found that while it may entail competition, require athleticism, involve physical and mental exertion, etc., notwithstanding news accounts about the International Olympic Committee taking action to grant provisional recognition to the "sports" of ballroom dancing and surfing in the Games program, we found that for classification purposes, dancing is not a sport.

In HQ 965712, dated August 28, 2002, we likewise found that "lumberjacking" is not a sport. As "lumberjacking" does not originate from a recreational pastime as activities typically considered sports, we found that "lumberjacking" is most accurately described as an occupation, not a pastime. In that ruling, we noted that while "lumberjacking" contests have stemmed from the trade, such events fell short of establishing "lumberjacking" as a sport for tariff classification purposes. Moreover, we found that while some may consider "lumberjacking" to be a "pastime" and a "physical activity engaged in for pleasure," it has neither gained mainstream acceptance as a sport nor is it a sport in the traditional sense of the word. Thus, we concluded that although those gloves may have had features useful in the activity of "lumberjacking," they were not specially designed for use in sports.

A mechanic is a professional technician that employs extensive knowledge and technical skills to perform his duties. Being a mechanic requires much more than the mere performing of an athletic activity that is required in almost all sporting activities. There are different levels and types of certifica-

tion for mechanics that are based on their skill and training. Mechanics receive training and education on the job and at colleges and trade schools. Indeed, there is even an institute to train NASCAR mechanics titled the Nascar Technical Institute. The promotional information at their web-site states as follows:

> Nascar Technical Institute in Mooresville, NC is the first technical training school to combine automotive and NASCAR technology delivering hands-on NASCAR training.
>
> The Nascar Technical Institute is a part of Universal Technical Institute (UTI), providing industry customers with professional technicians by offering entry-level, manufacturer-specific and update training in automotive, collision repair and refinishing, and diesel, as well as motorcycle, marine, personal watercraft and heating/ventilation/air conditioning/refrigeration.
>
> At the first ever Nascar Technical Institute, you will learn the basics of
>
> Engine Construction
> Body and Aero Applications
> Chassis Applications
> Body Fabrication
> Chassis Fabrication
> Dyno Testing for Performance and Durability
>
> The Nascar Technical Institute delivers the necessary training to excel as an entry-level technician, as well as the additional training required to enter the motor sports industry.

www.mechanicschools.com/nascarschool.html. These skills, engine construction, body and chassis fabrication, aero applications, to name a few, are not traditionally associated with sporting activities.

Moreover, the term "mechanic" is defined in Merriam-Webster Online Dictionary copyright ©2002, as:

> Function: *adjective*
> **1 :** of or relating to manual work or skill
>
> Function: *noun*
> **1 :** a manual worker

These definitions focus on the manual labor aspect of the duties of a mechanic. Nonetheless, they demonstrate that a mechanic's occupation is not traditionally thought of as a sporting profession, but is instead considered a form of labor or work.

Mechanics, be they pit-crew mechanics or mechanics working in an automotive repair shop, engage in the activity of maintaining and repairing automobiles. Thus, even though a pit-crew member performs his functions under extreme conditions and circumstances, the functions performed are essentially the same as those performed by the mechanic at the local repair shop. Accordingly, because the functions performed by mechanics are not sporting activities, the gloves used by pit-crew mechanics are not "specially designed for use in sports."

Finally, it cannot be overlooked that the gloves themselves are marketed and sold to average consumers, not just pit-crew mechanics. Indeed, marketing materials advertise that the gloves are sold at Autozone, PEPBOYS, NAPA, Advance Auto Parts, Checker Auto Parts, Schucks Auto Parts,

Kragen Auto Parts, O'Reilly, and Car Quest. These are all auto parts retailers that sell auto parts and tools to average consumers and to professional mechanics. Thus, while the gloves were designed with the pit-crew mechanic in mind, most of the sales and revenue are generated by sales to consumers and not those directly involved in auto racing. Moreover, the gloves in question are sold and marketed through construction and industrial suppliers.[1] These suppliers also sell substantially similar gloves that are not classified as being specially designed for use in sports and that are manufactured by competitors of Mechanix Wear.

One commenter has provided considerable evidence in support of the argument that pit-crew members are athletes engaged in athletic activity, and that they are an integral component of the sport of auto racing. The commenter explains that in NASCAR the pit-crew may have as many as fourteen or fifteen members. However only seven are allowed to go "over the wall" to service the car during a pit stop.[2] The seven-member "over-the-wall" crew is comprised of (1) a front tire carrier, (2) a front tire changer, (3) a rear tire carrier, (4) a rear tire changer, (5) a jack man, (6) a gas man and (7) a catch-can person who assists the gas man. The commenter argues that the individuals who fill these positions are hired more for their athletic ability than for their technical skill. Their athletic ability is crucial, according to the commenter, because many races are won or lost in the pit stop.

We do not dispute the importance of the athletic ability of the pit-crew members that go "over the wall." Nor do we contest that these abilities, mainly speed and agility, enable them to swiftly complete competitive pit stops that are vital to winning the race. That being said, the functions that they perform are inherently mechanical. Moreover, the gloves in question are worn and used by the pit-crew members that remain behind the wall. These members also perform the more traditional and technical duties of mechanics before, during, and after the race. Accordingly, even though the "over-the-wall" pit-crew members may be more active participants in the racing aspect, the duties they perform basically remain those of a mechanic. As these gloves are designed to be used by the pit-crew carrying out mechanic duties, as well as their "over-the-wall" activities, we find that, for classification purposes the gloves are not specially designed for use in sports.

The subject gloves, identified as Models 100, 200, 222 and 400, are properly classified in subheading 6216.00.5820, HTSUSA, which provides for "Gloves, mittens and mitts: Other: Other: Of man-made fibers: With fourchettes, Other." The general column one rate of duty is 20.8 cents per kilogram plus 10.5 percent *ad valorem* and the textile restraint category is 631.

HOLDING:

HQ 965692, dated September 18, 2002, is hereby modified.

The four styles of gloves, identified as Models 100, 200, 222 and 400, are classified in subheading 6216.00.5820, HTSUSA, which provides for "Gloves, mittens and mitts: Other: Other: Of man-made fibers: With fourchettes,

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[1] For Example, MSC Industrial Supply Co., Argas—Solutions in Safety, Conney (www.Conney.com), and labsafety.com.

[2] In certain races eight members are allowed to go "over the wall."

Other." The general column one rate of duty is 20.8 cents per kilogram plus 10.5 percent *ad valorem* and the textile restraint category is 631.

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 your client check, close to the time of shipment, The Textile Status Report for Absolute Quotas previously available on the Customs Electronic Bulletin Board (CEBB) which is now available on the CBP Website at www.cbp.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, your client should contact the local CBP 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.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966431
September 10, 2003
CLA–2 RR:CR:TE 966431 JFS
CATEGORY: Classification
TARIFF NO: 6216.00.5820

MS. ROBBIE HAGAR
EXPEDITORS INTERNATIONAL
601 N. Nash Street
El Segundo, CA 90245

RE: Revocation of NY A86298; Classification of Mechanic's Gloves; Not Sports Gloves

DEAR MS. HAGAR:

On August 8, 1996, New York Ruling Letter (NY) A86298, was issued to you regarding the classification of gloves under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). For the reasons that follow, this ruling revokes NY A86298.

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 Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY A86298, was published on May 21, 2003, in the *CUSTOMS BULLETIN, Volume 37, Number 21.*

As explained in the notice, the period within which to submit comments on this proposal ended on June 20, 2003. Two comments were received in response to the proposed revocation.

One commenter appropriately summarizes the Bureau of Customs and Border Protection's (CBP's) proposed modification as being "based upon Customs' determination that the activity for which the gloves are allegedly used—auto mechanic functions in professional or amateur automobile racing—do not constitute 'sporting activities' for tariff classification purposes." The commenter does not "express an opinion concerning whether a person who serves as a mechanic during an auto race is engaged in a 'sport' or 'sporting activity' ". Instead the commenter proposes that CBP formulate and publish a set of standard factors to be evaluated in determining whether gloves are "specially designed for use in sports." While we are open to considering such factors in the future, the issue in this ruling is whether the auto mechanic in the pit crew is engaged in a sporting activity. Thus, we decline to formulate standard factors at this time.

The other commenter presents evidence that the members of a pit crew are in fact athletes engaged in athletic competition during a race. Therefore, accordingly to the commenter, the instant gloves are "specially designed for use in sports" and should be so classified. This commenter's arguments are addressed in the LAW AND ANALYSIS portion of this ruling.

FACTS:

In NY A86298, the Bureau of Customs and Border Protection (CBP) considered one pair of gloves, identified as style MG–05–012, which was described as follows:

> Style MG–05–012 is a full fingered glove with a synthetic leather palm, fourchettes and back of the fingertips. The back of the hand has a three ply construction of man-made mesh fabric, padding and knit liner. The glove features vented fourchettes, and as [sic] elasticized wrist strap secured with a hook and loop fabric tab over a side vent.
>
> The importer submitted advertising information which indicates that the item is designed for professional mechanics and racing enthusiasts for use during racing. Noting the design features and choice of materials we agree with that assertion.

CBP classified the glove in subheading 6216.00.4600, HTSUSA, which provides for "Gloves, mittens and mitts: Other: Of man-made fibers: Other gloves, mittens and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens and mitts." The general column one rate of duty is 3.1 percent *ad valorem*.

ISSUE:

Whether the glove is specially designed for use in sports.

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 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. . . ." In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation 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. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. *See* T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

Subheading 6216.00.46, HTSUSA, provides, in part, for gloves, mittens and mitts, specially designed for use in sports. As this is a "use" provision, determining whether an article is classifiable in subheading 6216.00.46, HTSUSA, requires consideration of whether the article has particular features that adapt it for the stated purpose. In *Sports Industries, Inc. v. United States*, 65 Cust. Ct. 470, C.D. 4125 (1970), the court, in interpreting the term "designed for use," under the Tariff Schedules of the United States, the predecessor to the HTSUSA, examined not only the features of the articles, but also the materials selected and the marketing, advertising and sale of the article. The case suggests that, to be classifiable in subheading 6216.00.46, the subject gloves must be shown to be, in fact, specially designed for use in a particular sport. Accordingly, a conclusion that a certain glove is "specially designed" for a particular sport, requires more than a mere determination of whether the glove or pair of gloves could possibly be used in a certain sport. In determining whether gloves are specially designed for use in sports, CBP considers the connection the gloves have to an identified sporting activity, the features designed for that sporting activity, and how the gloves are marketed, advertised and sold in relation to the named sport.

While the term "sport" is not defined in the tariff, in HQ 089849, dated August 16, 1991, CBP noted that common dictionaries defined the term "sport" as "an activity requiring more or less vigorous bodily exertion and carried on according to some traditional form or set of rules, whether outdoors, as football, hunting, golf, racing, etc., or indoors, as basketball, bowling, squash, etc." In *Newman Importing Company, Inc. v. United States*, 415 F. Supp. 375, 76 Cust. Ct. 143, Cust. Dec. 4648 (1976), in finding backpacking to be a sport, the court determined that the term "sport" is not solely defined in terms of competitiveness, but also arises from the development and pursuit of a variety of skills. In this respect, in HQ 957848, dated August 10, 1995, CBP found hunting, fishing, canoeing, archery and similar outdoor activities to fall within the purview of "sport." The American College Dictionary (1970) defines the term "sport" as "a pastime pursued in the open air or having an athletic character." Likewise, Webster's New Dictionary of the English Language (2001) defines "sport" as:

1: a source of diversion: PASTIME

2: physical activity engaged in for pleasure.

The term "sport" appears to also encompass activities in which individuals engage professionally (i.e., professional sports).

In HQ 964901, dated January 31, 2002, CBP defines the term "sport" according to The Random House Dictionary of the English Language, the Unabridged Edition (1983) as:

1. an athletic activity requiring skill or physical prowess and often of a competitive nature, as racing, baseball, tennis, golf, bowling, wrestling, boxing hunting, fishing, etc.
2. a particular form of this, esp. in the out of doors.

In HQ 965692, dated September 18, 2002, we recognized that motorsports racing is a sporting activity, and noted that pit-crew members are an integral component of the sport, for purposes of tariff classification. Because the gloves under consideration were specially designed for the mechanics that work in the pit-crew, we classified the gloves as being specially designed for use in sports. However, upon further consideration of the role of pit-crew members, CBP concludes that while they are an integral component of the team, the actual role and function, of a mechanic do not constitute a sporting activity.

When there is doubt as to whether a certain activity constitutes a sport for tariff classification purposes, CBP balances a range of factors, which include the degree of bodily exertion, the use of traditional rules, the degree of competitiveness, the origin of the activity, and common recognition as a sport. In HQ 962745, dated October 25, 1999, in determining whether the activity of "dancing" is a sport, CBP found that while it may entail competition, require athleticism, involve physical and mental exertion, etc., notwithstanding news accounts about the International Olympic Committee taking action to grant provisional recognition to the "sports" of ballroom dancing and surfing in the Games program, we found that for classification purposes, dancing is not a sport.

In HQ 965712, dated August 28, 2002, we likewise found that "lumberjacking" is not a sport. As "lumberjacking" does not originate from a recreational pastime as activities typically considered sports, we found that "lumberjacking" is most accurately described as an occupation, not a pastime. In that ruling, we noted that while "lumberjacking" contests have stemmed from the trade, such events fell short of establishing "lumberjacking" as a sport for tariff classification purposes. Moreover, we found that while some may consider "lumberjacking" to be a "pastime" and a "physical activity engaged in for pleasure," it has neither gained mainstream acceptance as a sport nor is it a sport in the traditional sense of the word. Thus, we concluded that although those gloves may have had features useful in the activity of "lumberjacking," they were not specially designed for use in sports.

A mechanic is a professional technician that employs extensive knowledge and technical skills to perform his duties. Being a mechanic requires much more than the mere performing of an athletic activity that is required in almost all sporting activities. There are different levels and types of certification for mechanics that are based on their skill and training. Mechanics receive training and education on the job and at colleges and trade schools. Indeed, there is even an institute to train NASCAR mechanics titled the Nascar Technical Institute. The promotional information at their web-site states as follows:

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> The Nascar Technical Institute is a part of Universal Technical Institute (UTI), providing industry customers with professional technicians by offering entry-level, manufacturer-specific and update training in automotive, collision repair and refinishing, and diesel, as well as motorcycle, marine, personal watercraft and heating/ventilation/air conditioning/refrigeration.
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> At the first ever Nascar Technical Institute, you will learn the basics of
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> Engine Construction
> Body and Aero Applications
> Chassis Applications
> Body Fabrication
> Chassis Fabrication
> Dyno Testing for Performance and Durability
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> The Nascar Technical Institute delivers the necessary training to excel as an entry-level technician, as well as the additional training required to enter the motor sports industry.

www.mechanicschools.com/nascarschool.html. These skills, engine construction, body and chassis fabrication, aero applications, to name a few, are not traditionally associated with sporting activities.

Moreover, the term "mechanic" is defined in Merriam-Webster Online Dictionary copyright ©2002, as:

> Function: *adjective*
> **1 :** of or relating to manual work or skill
>
> Function: *noun*
> **1 :** a manual worker

These definitions focus on the manual labor aspect of the duties of a mechanic. Nonetheless, they demonstrate that a mechanic's occupation is not traditionally thought of as a sporting profession, but is instead considered a form of labor or work.

Mechanics, be they pit-crew mechanics or mechanics working in an automotive repair shop, engage in the activity of maintaining and repairing automobiles. Thus, even though a pit-crew member performs his functions under extreme conditions and circumstances, the functions performed are essentially the same as those performed by the mechanic at the local repair shop. Accordingly, because the functions performed by mechanics are not sporting activities, the gloves used by pit-crew mechanics are not "specially designed for use in sports."

Finally, it cannot be overlooked that the gloves themselves are marketed and sold to average consumers, not just pit-crew mechanics. Indeed, marketing materials advertise that the gloves are sold at Autozone, PEPBOYS, NAPA, Advance Auto Parts, Checker Auto Parts, Schucks Auto Parts, Kragen Auto Parts, O'Reilly, and Car Quest. These are all auto parts retailers that sell auto parts and tools to average consumers and to professional mechanics. Thus, while the gloves were designed with the pit-crew mechanic in mind, most of the sales and revenue are generated by sales to consumers and not those directly involved in auto racing. Moreover, the gloves in ques-

tion are sold and marketed through construction and industrial suppliers.[1] These suppliers also sell substantially similar gloves that are not classified as being specially designed for use in sports and that are manufactured by competitors of Mechanix Wear.

One commenter has provided considerable evidence in support of the argument that pit-crew members are athletes engaged in athletic activity, and that they are an integral component of the sport of auto racing. The commenter explains that in NASCAR the pit-crew may have as many as fourteen or fifteen members. However only seven are allowed to go "over the wall" to service the car during a pit stop.[2] The seven-member "over-the-wall" crew is comprised of (1) a front tire carrier, (2) a front tire changer, (3) a rear tire carrier, (4) a rear tire changer, (5) a jack man, (6) a gas man and (7) a catch-can person who assists the gas man. The commenter argues that the individuals who fill these positions are hired more for their athletic ability than for their technical skill. Their athletic ability is crucial, according to the commenter, because many races are won or lost in the pit stop.

We do not dispute the importance of the athletic ability of the pit-crew members that go "over the wall." Nor do we contest that these abilities, mainly speed and agility, enable them to swiftly complete competitive pit stops that are vital to winning the race. That being said, the functions that they perform are inherently mechanical. Moreover, the glove in question is worn and used by the pit-crew members that remain behind the wall. These members also perform the more traditional and technical duties of mechanics before, during, and after the race. Accordingly, even though the "over-the-wall" pit-crew members may be more active participants in the racing aspect, the duties they perform basically remain those of a mechanic. As the glove is designed to be used by the pit-crew carrying out mechanic duties, as well as their "over-the-wall" activities, we find that, for classification purposes the glove is not specially designed for use in sports.

The glove, style MG–05–012 is properly classified in subheading 6216.00.5820, HTSUSA, which provides for "Gloves, mittens and mitts: Other: Other: Of man-made fibers: With fourchettes, Other." The general column one rate of duty is 20.8 cents per kilogram plus 10.5 percent *ad valorem* and the textile restraint category is 631.

HOLDING:

NY A86298, dated August 8, 1996, is hereby revoked.

The glove, style MG–05–012 is properly classified in subheading 6216.00.5820, HTSUSA, which provides for "Gloves, mittens and mitts: Other: Other: Of man-made fibers: With fourchettes, Other." The general column one rate of duty is 20.8 cents per kilogram plus 10.5 percent *ad valorem* and the textile restraint category is 631.

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 your client

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[1] For Example, MSC Industrial Supply Co., Argas—Solutions in Safety, Conney (www.Conney.com), and labsafety.com.

[2] In certain races eight members are allowed to go "over the wall."

check, close to the time of shipment, The Textile Status Report for Absolute Quotas previously available on the Customs Electronic Bulletin Board (CEBB) which is now available on the CBP Website at www.cbp.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, your client should contact the local CBP 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.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966432
September 10, 2003
CLA–2 RR:CR:TE 966432 JFS
CATEGORY: Classification
TARIFF NO: 4203.29.1500; 6216.00.5820

MR. JACK D. MOON
E. BESLER & COMPANY
115 Martin Lane
Elk Grove Village, Illinois 60007

RE: Revocation of NY B85790; Classification of Mechanic's Gloves; Not Sports Gloves

DEAR MR. MOON:

On June 5, 1997, New York Ruling Letter (NY) B85790, was issued to you on behalf of your client, Midwest Air Technologies, Inc., regarding the classification of two styles of gloves under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). For the reasons that follow, this ruling revokes NY B85790.

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 Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed revocation of B85790, was published on May 21, 2003, in the *CUSTOMS BULLETIN, Volume 37, Number 21*. As explained in the notice, the period within which to submit comments on this proposal ended on June 20, 2003. Two comments were received in response to the proposed revocation.

One commenter appropriately summarizes the Bureau of Customs and Border Protection's (CBP's) proposed modification as being "based upon Customs' determination that the activity for which the gloves are allegedly used—auto mechanic functions in professional or amateur automobile rac-

ing—do not constitute 'sporting activities' for tariff classification purposes." The commenter does not "express an opinion concerning whether a person who serves as a mechanic during an auto race is engaged in a 'sport' or 'sporting activity' ". Instead the commenter proposes that CBP formulate and publish a set of standard factors to be evaluated in determining whether gloves are "specially designed for use in sports." While we are open to considering such factors in the future, the issue in this ruling is whether the auto mechanic in the pit crew is engaged in a sporting activity. Thus, we decline to formulate standard factors at this time.

The other commenter presents evidence that the members of a pit crew are in fact athletes engaged in athletic competition during a race. Therefore, accordingly to the commenter, the instant gloves are "specially designed for use in sports" and should be so classified. This commenter's arguments are addressed in the LAW AND ANALYSIS portion of this ruling.

FACTS:

In NY B85790, the Bureau of Customs and Border Protection (CBP) considered two pairs of gloves, identified as styles IL–7504 and SP–7502. Style IL–7504 was described as follows:

> Style IL–7504 is a full fingered glove with a synthetic leather palm, fourchettes and back of the fingertips. The back of the hand has a three ply construction of man-made mesh fabric, padding and knit liner. The glove features vented fourchettes, and has an elasticized wrist strap secured with a hook and loop fabric tab over a side vent. The essential character of the glove is imparted by the synthetic leather palm.

CBP concluded that "[a]s a result of research by my office, advertising information has been located which indicates that the item is designed for professional mechanics and racing enthusiasts for use during racing." Accordingly, the glove was classified in subheading 6216.00.4600, HTSUSA, which provides for "Gloves, mittens and mitts: Other: Of man-made fibers: Other gloves, mittens and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens and mitts." The general column one rate of duty is 3.1 percent *ad valorem*.

Style SP–7502 was determined to be identical to IL–7504, except that the palm, fourchettes and backs of the fingers of the glove were composed of split leather. Accordingly, CBP concluded that the leather components imparted the essential character to the glove and classified it in subheading 4203.21.8060, HTSUSA, which provides for "Articles of apparel and clothing accessories, of leather or of composition leather: Gloves, mittens and mitts: Specially designed for use in sports: Other, Other." The general column one rate of duty is 4.9 percent *ad valorem*.

ISSUE:

Whether the gloves are specially designed for use in sports.

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 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. . . ." In the event that goods cannot be clas-

sified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation 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. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. *See* T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

Subheadings 4203.21.8060, and 6216.00.46, HTSUSA, provide, in part, for gloves, mittens and mitts, specially designed for use in sports. As these are "use" provisions, determining whether articles are classifiable in subheadings 4203.21.8060, and 6216.00.46, HTSUSA, requires consideration of whether they have particular features that adapt them for the stated purpose. In *Sports Industries, Inc. v. United States*, 65 Cust. Ct. 470, C.D. 4125 (1970), the court, in interpreting the term "designed for use," under the Tariff Schedules of the United States, the predecessor to the HTSUSA, examined not only the features of the articles, but also the materials selected and the marketing, advertising and sale of the article. The case suggests that, to be classifiable in subheading 6216.00.46, the subject gloves must be shown to be, in fact, specially designed for use in a particular sport. Accordingly, a conclusion that a certain glove is "specially designed" for a particular sport, requires more than a mere determination of whether the glove or pair of gloves could possibly be used in a certain sport. In determining whether gloves are specially designed for use in sports, CBP considers the connection the gloves have to an identified sporting activity, the features designed for that sporting activity, and how the gloves are marketed, advertised and sold in relation to the named sport.

While the term "sport" is not defined in the tariff, in HQ 089849, dated August 16, 1991, CBP noted that common dictionaries defined the term "sport" as "an activity requiring more or less vigorous bodily exertion and carried on according to some traditional form or set of rules, whether outdoors, as football, hunting, golf, racing, etc., or indoors, as basketball, bowling, squash, etc." In *Newman Importing Company, Inc. v. United States*, 415 F. Supp. 375, 76 Cust. Ct. 143, Cust. Dec. 4648 (1976), in finding backpacking to be a sport, the court determined that the term "sport" is not solely defined in terms of competitiveness, but also arises from the development and pursuit of a variety of skills. In this respect, in HQ 957848, dated August 10, 1995, CBP found hunting, fishing, canoeing, archery and similar outdoor activities to fall within the purview of "sport." The American College Dictionary (1970) defines the term "sport" as "a pastime pursued in the open air or having an athletic character." Likewise, Webster's New Dictionary of the English Language (2001) defines "sport" as:

> 1: a source of diversion: PASTIME
>
> 2: physical activity engaged in for pleasure.

The term "sport" appears to also encompass activities in which individuals engage professionally (i.e., professional sports).

In Headquarters Ruling Letter (HQ) 964901, dated January 31, 2002, CBP defines the term "sport" according to The Random House Dictionary of the English Language, the Unabridged Edition (1983) as:

1. an athletic activity requiring skill or physical prowess and often of a competitive nature, as racing, baseball, tennis, golf, bowling, wrestling, boxing hunting, fishing, etc.
2. a particular form of this, esp. in the out of doors.

In HQ 965692, dated September 18, 2002, we recognized that motorsports racing is a sporting activity, and noted that pit-crew members are an integral component of the sport, for purposes of tariff classification. Because the gloves under consideration were specially designed for the mechanics that work in the pit-crew, we classified the gloves as being specially designed for use in sports. However, upon further consideration of the role of pit-crew members, CBP concludes that while they are an integral component of the team, the actual role and function, of a mechanic do not constitute a sporting activity.

When there is doubt as to whether a certain activity constitutes a sport for tariff classification purposes, CBP balances a range of factors, which include the degree of bodily exertion, the use of traditional rules, the degree of competitiveness, the origin of the activity, and common recognition as a sport. In HQ 962745, dated October 25, 1999, in determining whether the activity of "dancing" is a sport, CBP found that while it may entail competition, require athleticism, involve physical and mental exertion, etc., notwithstanding news accounts about the International Olympic Committee taking action to grant provisional recognition to the "sports" of ballroom dancing and surfing in the Games program, we found that for classification purposes, dancing is not a sport.

In HQ 965712, dated August 28, 2002, we likewise found that "lumberjacking" is not a sport. As "lumberjacking" does not originate from a recreational pastime as activities typically considered sports, we found that "lumberjacking" is most accurately described as an occupation, not a pastime. In that ruling, we noted that while "lumberjacking" contests have stemmed from the trade, such events fell short of establishing "lumberjacking" as a sport for tariff classification purposes. Moreover, we found that while some may consider "lumberjacking" to be a "pastime" and a "physical activity engaged in for pleasure," it has neither gained mainstream acceptance as a sport nor is it a sport in the traditional sense of the word. Thus, we concluded that although those gloves may have had features useful in the activity of "lumberjacking," they were not specially designed for use in sports.

A mechanic is a professional technician that employs extensive knowledge and technical skills to perform his duties. Being a mechanic requires much more than the mere performing of an athletic activity that is required in almost all sporting activities. There are different levels and types of certification for mechanics that are based on their skill and training. Mechanics receive training and education on the job and at colleges and trade schools. Indeed, there is even an institute to train NASCAR mechanics titled the Nascar Technical Institute. The promotional information at their web-site states as follows:

> Nascar Technical Institute in Mooresville, NC is the first technical training school to combine automotive and NASCAR technology delivering hands-on NASCAR training.
>
> The Nascar Technical Institute is a part of Universal Technical Institute (UTI), providing industry customers with professional technicians by offering entry-level, manufacturer-specific and update training in automotive, collision repair and refinishing, and diesel, as well as motorcycle, marine, personal watercraft and heating/ventilation/air conditioning/refrigeration.
>
> At the first ever Nascar Technical Institute, you will learn the basics of
>
> Engine Construction
> Body and Aero Applications
> Chassis Applications
> Body Fabrication
> Chassis Fabrication
> Dyno Testing for Performance and Durability
>
> The Nascar Technical Institute delivers the necessary training to excel as an entry-level technician, as well as the additional training required to enter the motor sports industry.

www.mechanicschools.com/nascarschool.html. These skills, engine construction, body and chassis fabrication, aero applications, to name a few, are not traditionally associated with sporting activities.

Moreover, the term "mechanic" is defined in Merriam-Webster Online Dictionary copyright ©2002, as:

> Function: *adjective*
> **1 :** of or relating to manual work or skill
>
> Function: *noun*
> **1 :** a manual worker

These definitions focus on the manual labor aspect of the duties of a mechanic. Nonetheless, they demonstrate that a mechanic's occupation is not traditionally thought of as a sporting profession, but is instead considered a form of labor or work.

Mechanics, be they pit-crew mechanics or mechanics working in an automotive repair shop, engage in the activity of maintaining and repairing automobiles. Thus, even though a pit-crew member performs his functions under extreme conditions and circumstances, the functions performed are essentially the same as those performed by the mechanic at the local repair shop. Accordingly, because the functions performed by mechanics are not sporting activities, the gloves used by pit-crew mechanics are not "specially designed for use in sports."

Finally, it cannot be overlooked that the gloves themselves are marketed and sold to average consumers, not just pit-crew mechanics. Indeed, marketing materials advertise that the gloves are sold at Autozone, PEPBOYS, NAPA, Advance Auto Parts, Checker Auto Parts, Schucks Auto Parts, Kragen Auto Parts, O'Reilly, and Car Quest. These are all auto parts retailers that sell auto parts and tools to average consumers and to professional mechanics. Thus, while the gloves were designed with the pit-crew mechanic in mind, most of the sales and revenue are generated by sales to consumers and not those directly involved in auto racing. Moreover, the gloves in ques-

tion are sold and marketed through construction and industrial suppliers.[1] These suppliers also sell substantially similar gloves that are not classified as being specially designed for use in sports and that are manufactured by competitors of Mechanix Wear.

One commenter has provided considerable evidence in support of the argument that pit-crew members are athletes engaged in athletic activity, and that they are an integral component of the sport of auto racing. The commenter explains that in NASCAR the pit-crew may have as many as fourteen or fifteen members. However only seven are allowed to go "over the wall" to service the car during a pit stop.[2] The seven-member "over-the-wall" crew is comprised of (1) a front tire carrier, (2) a front tire changer, (3) a rear tire carrier, (4) a rear tire changer, (5) a jack man, (6) a gas man and (7) a catch-can person who assists the gas man. The commenter argues that the individuals who fill these positions are hired more for their athletic ability than for their technical skill. Their athletic ability is crucial, according to the commenter, because many races are won or lost in the pit stop.

We do not dispute the importance of the athletic ability of the pit-crew members that go "over the wall." Nor do we contest that these abilities, mainly speed and agility, enable them to swiftly complete competitive pit stops that are vital to winning the race. That being said, the functions that they perform are inherently mechanical. Moreover, the gloves in question are worn and used by the pit-crew members that remain behind the wall. These members also perform the more traditional and technical duties of mechanics before, during, and after the race. Accordingly, even though the "over-the-wall" pit-crew members may be more active participants in the racing aspect, the duties they perform basically remain those of a mechanic. As these gloves are designed to be used by the pit-crew carrying out mechanic duties, as well as their "over-the-wall" activities, we find that, for classification purposes the gloves are not specially designed for use in sports.

Style IL–7504 is properly classified in subheading 6216.00.5820, HTSUSA, which provides for "Gloves, mittens and mitts: Other: Other: Of man-made fibers: With fourchettes, Other." The general column one rate of duty is 20.8 cents per kilogram plus 10.5 percent *ad valorem* and the textile restraint category is 631.

Style SP–7502, is classified in subheading 4203.29.1500, HTSUSA, which provides for "Articles of apparel and clothing accessories, of leather or of composition leather: Gloves, mittens and mitts: Other: Gloves of horsehide or cowhide (except calfskin) leather: Other: With fourchettes or sidewalls which, at a minimum, extend from fingertip to fingertip between each of the four fingers." The general column one rate of duty is 14 percent *ad valorem*.

HOLDING:

NY B85790, dated June 5, 1997, is hereby revoked.

Style IL–7504 is properly classified in subheading 6216.00.5820, HTSUSA, which provides for "Gloves, mittens and mitts: Other: Other: Of

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[1] For Example, MSC Industrial Supply Co., Argas—Solutions in Safety, Conney (www.Conney.com), and labsafety.com.

[2] In certain races eight members are allowed to go "over the wall."

man-made fibers: With fourchettes, Other." The general column one rate of duty is 20.8 cents per kilogram plus 10.5 percent *ad valorem* and the textile restraint category is 631.

Style SP–7502, is classified in subheading 4203.29.1500, HTSUSA, which provides for "Articles of apparel and clothing accessories, of leather or of composition leather: Gloves, mittens and mitts: Other: Gloves of horsehide or cowhide (except calfskin) leather: Other: With fourchettes or sidewalls which, at a minimum, extend from fingertip to fingertip between each of the four fingers." The general column one rate of duty is 14 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 your client check, close to the time of shipment, The Textile Status Report for Absolute Quotas previously available on the Customs Electronic Bulletin Board (CEBB) which is now available on the CBP Website at www.cbp.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, your client should contact the local CBP 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.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966647
September 10, 2003
CLA–2 RR:CR:TE 966647 JFS
CATEGORY: Classification
TARIFF NO: 6116.93.9400; 6216.00.5820

MR. MILTON WEINBERG & MS. LYN ANTUNES
NORMAN KRIEGER, INC.
5761 W. Imperial Highway
Los Angeles, CA 90045

RE: Revocation of NY C81172 and NY D83272; Classification of Mechanic's Gloves; Not Sports Gloves

DEAR MR. WEINBERG AND MS. ANTUNES:

The Bureau of Customs and Border Protection (CBP) has issued two ruling letters, New York Ruling Letter (NY) C81172, dated November 17, 1997, and NY D83272, dated October 20, 1998, to you on behalf of your client Simpson Fire Suit Inc., regarding the classification of gloves under the Har-

monized Tariff Schedule of the United States Annotated (HTSUSA). CBP also issued Headquarters Ruling Letter (HQ) 965592, dated September 18, 2002, NY A86298, dated August 8, 1996, and NY B85790, dated June 5, 1997, concerning the tariff classification of substantially similar mechanic's gloves manufactured by producers other than your client.

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 Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed modification of HQ 965592, and revocation of NY A86298 and NY B85790, was published on May 21, 2003, in the *CUSTOMS BULLETIN, Volume 37, Number 21*. As explained in the notice, the period within which to submit comments on this proposal ended on June 20, 2003. Two comments were received in response to the proposed modification/revocations.

NY C81172 and NY D83272, which were issued to you on behalf of your client, are subject to the proposed revocation. After careful consideration of the comments, we have decided to revoke those rulings. Accordingly, this ruling revokes NY C81172 and NY D83272.

One commenter appropriately summarizes the Bureau of Customs and Border Protection's (CBP's) proposed modification as being "based upon Customs' determination that the activity for which the gloves are allegedly used—auto mechanic functions in professional or amateur automobile racing—do not constitute 'sporting activities' for tariff classification purposes." The commenter does not "express an opinion concerning whether a person who serves as a mechanic during an auto race is engaged in a 'sport' or 'sporting activity' ". Instead the commenter proposes that CBP formulate and publish a set of standard factors to be evaluated in determining whether gloves are "specially designed for use in sports." While we are open to considering such factors in the future, the issue in this ruling is whether the auto mechanic in the pit crew is engaged in a sporting activity. Thus, we decline to formulate standard factors at this time.

The other commenter presents evidence that the members of a pit crew are in fact athletes engaged in athletic competition during a race. Therefore, accordingly to the commenter, the instant gloves are "specially designed for use in sports" and should be so classified. This commenter's arguments are addressed in the LAW AND ANALYSIS portion of this ruling.

FACTS:

In NY C81172, CBP considered one pair of gloves, identified as product number 39026, which were described as follows:

> [The glove] is intended for use by the refueler or other pit crew members of auto racing teams. The glove has a complete backside and a sewn-in 3 inch wide by 12 inch long tubular extension sleeve constructed of knitted aramid (Nomex) fabric. This fabric is heat resistant. Leather suede comprises the remainder of the glove, including the palmside, overlayed palm patch, fourchettes, and backside fingertip patches and half thumb. The glove features a 1½ inch wide elasticized wrist cuff, a "Simpson Race Products" label attached on the backside leather tab strap which closes by means of hook and loop fabric and a rubberized "Wrenchers" label sewn on backside above the cuff. The cumulation of features shows a design for use by pit crew members in the sport of auto racing.

CBP classified the glove 6116.93.0800, HTSUSA, which provides for Gloves, mittens and mitts, knitted or crocheted: Other: Of synthetic fibers: Other gloves, mittens and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens and mitts. The rate of duty is 3.1 percent *ad valorem*.

In NY D83272, CBP considered another pair of gloves, identified as product number 39031, which were described as follows:

> [S]tyle 39031/size medium, is a glove with a palmside from fingertips to wrist and vented fourchettes constructed of a synthetic leather fabric. The backside of the glove is constructed of two different knitted fabrics sandwiched over an inner foam liner with PVC reinforcements on the three middle fingertips. Terry cloth fabric covers the backside foam padded thumb to serve as a brow wipe. Additional features include a PVC coated palm patch, a 1½ inch wide elasticized wrist cuff, "Simpson Race Products" is printed across the backside vinyl tab strap which closes by means of hook and loop fabric and a rubberized "Wrenchers" label sewn on the backside above the cuff. The glove will also be available in the following style numbers for the indicated sizes: 39030/small, 39032/large, 39033/X-large, and 39034/XX-large. The cumulation of features shows a design for use by pit crew members in the sport of auto racing.

CBP classified the glove in subheading 6216.00.4600, HTSUSA, which provides for Gloves, mittens and mitts: Other: Of man-made fibers: Other gloves, mittens and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens and mitts. The rate of duty was 301 percent ad valorem.

ISSUE:

Whether the gloves are specially designed for use in sports.

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 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. . . ." In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation 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. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. *See* T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

Subheadings 6116.93.0800 and 6216.00.46, HTSUSA, provide, in part, for gloves, mittens and mitts, specially designed for use in sports. As this is a "use" provision, determining whether an article is classifiable in subheading 6116.93.0800, HTSUSA, or subheading 6216.00.46, HTSUSA, requires consideration of whether the article has particular features that adapt it for the stated purpose. In *Sports Industries, Inc. v. United States*, 65 Cust. Ct. 470, C.D. 4125 (1970), the court, in interpreting the term "designed for use," under the Tariff Schedules of the United States, the predecessor to the

HTSUSA, examined not only the features of the articles, but also the materials selected and the marketing, advertising and sale of the article. The case suggests that, to be classifiable in subheading 6116.93.0800 or 6216.00.46, the subject gloves must be shown to be, in fact, specially designed for use in a particular sport. Accordingly, a conclusion that a certain glove is "specially designed" for a particular sport, requires more than a mere determination of whether the glove or pair of gloves could possibly be used in a certain sport. In determining whether gloves are specially designed for use in sports, CBP considers the connection the gloves have to an identified sporting activity, the features designed for that sporting activity, and how the gloves are marketed, advertised and sold in relation to the named sport.

While the term "sport" is not defined in the tariff, in HQ 089849, dated August 16, 1991, CBP noted that common dictionaries defined the term "sport" as "an activity requiring more or less vigorous bodily exertion and carried on according to some traditional form or set of rules, whether outdoors, as football, hunting, golf, racing, etc., or indoors, as basketball, bowling, squash, etc." In *Newman Importing Company, Inc. v. United States*, 415 F. Supp. 375, 76 Cust. Ct. 143, Cust. Dec. 4648 (1976), in finding backpacking to be a sport, the court determined that the term "sport" is not solely defined in terms of competitiveness, but also arises from the development and pursuit of a variety of skills. In this respect, in HQ 957848, dated August 10, 1995, CBP found hunting, fishing, canoeing, archery and similar outdoor activities to fall within the purview of "sport." The American College Dictionary (1970) defines the term "sport" as "a pastime pursued in the open air or having an athletic character." Likewise, Webster's New Dictionary of the English Language (2001) defines "sport" as:

1: a source of diversion: PASTIME

2: physical activity engaged in for pleasure.

The term "sport" appears to also encompass activities in which individuals engage professionally (i.e., professional sports).

In HQ 964901, dated January 31, 2002, CBP defines the term "sport" according to The Random House Dictionary of the English Language, the Unabridged Edition (1983) as:

1. an athletic activity requiring skill or physical prowess and often of a competitive nature, as racing, baseball, tennis, golf, bowling, wrestling, boxing hunting, fishing, etc.

2. a particular form of this, esp. in the out of doors.

In HQ 965692, dated September 18, 2002, we recognized that motorsports racing is a sporting activity, and noted that pit-crew members are an integral component of the sport, for purposes of tariff classification. Because the gloves under consideration were specially designed for the mechanics that work in the pit-crew, we classified the gloves as being specially designed for use in sports. However, upon further consideration of the role of pit-crew members, CBP concludes that while they are an integral component of the team, the actual role and function, of a mechanic do not constitute a sporting activity.

When there is doubt as to whether a certain activity constitutes a sport for tariff classification purposes, CBP balances a range of factors, which include the degree of bodily exertion, the use of traditional rules, the degree of com-

petitiveness, the origin of the activity, and common recognition as a sport. In HQ 962745, dated October 25, 1999, in determining whether the activity of "dancing" is a sport, CBP found that while it may entail competition, require athleticism, involve physical and mental exertion, etc., notwithstanding news accounts about the International Olympic Committee taking action to grant provisional recognition to the "sports" of ballroom dancing and surfing in the Games program, we found that for classification purposes, dancing is not a sport.

In HQ 965712, dated August 28, 2002, we likewise found that "lumberjacking" is not a sport. As "lumberjacking" does not originate from a recreational pastime as activities typically considered sports, we found that "lumberjacking" is most accurately described as an occupation, not a pastime. In that ruling, we noted that while "lumberjacking" contests have stemmed from the trade, such events fell short of establishing "lumberjacking" as a sport for tariff classification purposes. Moreover, we found that while some may consider "lumberjacking" to be a "pastime" and a "physical activity engaged in for pleasure," it has neither gained mainstream acceptance as a sport nor is it a sport in the traditional sense of the word. Thus, we concluded that although those gloves may have had features useful in the activity of "lumberjacking," they were not specially designed for use in sports.

A mechanic is a professional technician that employs extensive knowledge and technical skills to perform his duties. Being a mechanic requires much more than the mere performing of an athletic activity that is required in almost all sporting activities. There are different levels and types of certification for mechanics that are based on their skill and training. Mechanics receive training and education on the job and at colleges and trade schools. Indeed, there is even an institute to train NASCAR mechanics titled the Nascar Technical Institute. The promotional information at their web-site states as follows:

> Nascar Technical Institute in Mooresville, NC is the first technical training school to combine automotive and NASCAR technology delivering hands-on NASCAR training.
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> The Nascar Technical Institute is a part of Universal Technical Institute (UTI), providing industry customers with professional technicians by offering entry-level, manufacturer-specific and update training in utomotive, collision repair and refinishing, and diesel, as well as motorcycle, marine, personal watercraft and heating/ventilation/air conditioning/refrigeration.
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www.mechanicschools.com/nascarschool.html. These skills, engine construction, body and chassis fabrication, aero applications, to name a few, are not traditionally associated with sporting activities.

Moreover, the term "mechanic" is defined in Merriam-Webster Online Dictionary copyright ©2002, as:

> Function: *adjective*
> **1 :** of or relating to manual work or skill
>
> Function: *noun*
> **1 :** a manual worker

These definitions focus on the manual labor aspect of the duties of a mechanic. Nonetheless, they demonstrate that a mechanic's occupation is not traditionally thought of as a sporting profession, but is instead considered a form of labor or work.

Mechanics, be they pit-crew mechanics or mechanics working in an automotive repair shop, engage in the activity of maintaining and repairing automobiles. Thus, even though a pit-crew member performs his functions under extreme conditions and circumstances, the functions performed are essentially the same as those performed by the mechanic at the local repair shop. Accordingly, because the functions performed by mechanics are not sporting activities, the gloves used by pit-crew mechanics are not "specially designed for use in sports."

Finally, it cannot be overlooked that mechanic's gloves are marketed and sold to average consumers through auto parts retailers. Thus, while mechanic's gloves may have been designed with the pit-crew mechanic in mind, most of the sales and revenue are generated by sales to consumers and not those directly involved in auto racing. Moreover, mechanic's gloves are sold and marketed through construction and industrial suppliers.[1] These suppliers also sell substantially similar gloves that are not marketed as "mechanic's gloves" but that have similar features. However, they are not classified as being specially designed for use in sports.

One commenter has provided considerable evidence in support of the argument that pit-crew members are athletes engaged in athletic activity, and that they are an integral component of the sport of auto racing. The commenter explains that in NASCAR the pit-crew may have as many as fourteen or fifteen members. However only seven are allowed to go "over the wall" to service the car during a pit stop.[2] The seven-member "over-the-wall" crew is comprised of (1) a front tire carrier, (2) a front tire changer, (3) a rear tire carrier, (4) a rear tire changer, (5) a jack man, (6) a gas man and (7) a catch-can person who assists the gas man. The commenter argues that the individuals who fill these positions are hired more for their athletic ability than for their technical skill. Their athletic ability is crucial, according to the commenter, because many races are won or lost in the pit stop.

We do not dispute the importance of the athletic ability of the pit-crew members that go "over the wall." Nor do we contest that these abilities, mainly speed and agility, enable them to swiftly complete competitive pit stops that are vital to winning the race. That being said, the functions that

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[1] For Example, MSC Industrial Supply Co., Argas—Solutions in Safety, Conney (www.Conney.com), and labsafety.com.

[2] In certain races eight members are allowed to go "over the wall."

they perform are inherently mechanical. Moreover, the gloves in question are worn and used by the pit-crew members that remain behind the wall.[3] These members also perform the more traditional and technical duties of mechanics before, during, and after the race. Accordingly, even though the "over-the-wall" pit-crew members may be more active participants in the racing aspect, the duties they perform basically remain those of a mechanic. As the gloves are designed to be used by the pit-crew carrying out mechanic duties, as well as their "over-the-wall" activities, we find that, for classification purposes the gloves are not specially designed for use in sports.

HOLDING:

NY C81172, dated November 17, 1997, and NY D83272, dated October 20, 1998, are hereby revoked.

The glove, identified by product number 39026 is properly classified in subheading 6116.93.9400, HTSUSA, which provides for "Gloves, mittens and mitts, knitted or crocheted: Other: Of Synthetic fibers: Other: Other: With fourchettes." The general column one rate of duty is 18.7 cents per kilogram and the textile restraint category is 631.

The glove, identified by style 39031, is properly classified in subheading 6216.00.5820, HTSUSA, which provides for "Gloves, mittens and mitts: Other: Other: Of man-made fibers: With fourchettes, Other." The general column one rate of duty is 20.8 cents per kilogram plus 10.5 percent *ad valorem* and the textile restraint category is 631.

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 your client check, close to the time of shipment, The Textile Status Report for Absolute Quotas previously available on the Customs Electronic Bulletin Board (CEBB) which is now available on the CBP Website at www.cbp.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, your client should contact the local CBP 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.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

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[3] The glove identified as product number 39026 is intended for use by the gas man as well as other member of the pit-crew. Thus, it is presumed that the glove is intended for use by the pit-crew members who do not go over the wall.

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966648
September 10, 2003
CLA–2 RR:CR:TE 966648 JFS
CATEGORY: Classification
TARIFF NO: 6216.00.5820

MS. LAURA DENNY
CBT INTERNATIONAL, INC.
110 West Ocean Blvd.
Suite 728
Long Beach, CA 90802

RE: Revocation of NY G80387; Classification of Mechanic's Gloves; Not Sports Gloves

DEAR MS. DENNY:

The Bureau of Customs and Border Protection (CBP) issued New York Ruling Letter (NY) G80387, dated August 28, 2000, to you on behalf of your client Ringers Gloves Company, regarding the classification of gloves under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP also issued Headquarters Ruling Letter (HQ) 965592, dated September 18, 2002, NY A86298, dated August 8, 1996, and NY B85790, dated June 5, 1997, concerning the tariff classification of substantially similar mechanic's gloves manufactured by producers other than your client.

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 Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed modification of HQ 965592, and revocation of NY A86298 and NY B85790, was published on May 21, 2003, in the *CUSTOMS BULLETIN, Volume 37, Number 21*. As explained in the notice, the period within which to submit comments on this proposal ended on June 20, 2003. Two comments were received in response to the proposed modification/revocations.

NY G80387 is subject to the proposed revocation. After careful consideration of the comments, we have decided to revoke that ruling. Accordingly, this ruling revokes NY G80387.

One commenter appropriately summarizes the Bureau of Customs and Border Protection's (CBP's) proposed modification as being "based upon Customs' determination that the activity for which the gloves are allegedly used—auto mechanic functions in professional or amateur automobile racing—do not constitute 'sporting activities' for tariff classification purposes." The commenter does not "express an opinion concerning whether a person who serves as a mechanic during an auto race is engaged in a 'sport' or 'sporting activity' ". Instead the commenter proposes that CBP formulate and publish a set of standard factors to be evaluated in determining whether gloves are "specially designed for use in sports." While we are open to considering such factors in the future, the issue in this ruling is whether the auto mechanic in the pit crew is engaged in a sporting activity. Thus, we decline to formulate standard factors at this time.

The other commenter presents evidence that the members of a pit crew are in fact athletes engaged in athletic competition during a race. Therefore, accordingly to the commenter, the instant gloves are "specially designed for use in sports" and should be so classified. This commenter's arguments are addressed in the LAW AND ANALYSIS portion of this ruling.

FACTS:

In NY G80387, CBP considered one pair of gloves, identified as style 103, which was described as follows:

> The submitted sample, style 103, is a glove with a palmside from fingertips to wrist, backside thumb and forefinger, and fourchettes constructed of a synthetic leather fabric. The balance of the glove backside is constructed of two different knitted fabrics sandwiched over an inner thin layer of foam with synthetic leather reinforcements covering the pinky and upper portion of the two middle fingers. Additional features include foam padding at the upper palm and lower outer palm, synthetic leather reinforcement at the thumb crotch, a 1½ inch wide elasticized wrist cuff, and a rubberized "Ringers" label sewn on the backside wrist tab closure which is secured by means of hook and loop fabric. The importer's catalog depicts the gloves worn by pit crew members in the sport of auto racing.

CBP classified the glove in subheading 6216.00.4600, HTSUSA, which provides for Gloves, mittens and mitts: Other: Of man-made fibers: Other gloves, mittens and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens and mitts. The rate of duty is 3.1 percent ad valorem.

ISSUE:

Whether the glove is specially designed for use in sports.

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 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. . . ." In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation 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. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. *See* T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

Subheading 6216.00.46, HTSUSA, provides, in part, for gloves, mittens and mitts, specially designed for use in sports. As this is a "use" provision, determining whether an article is classifiable in subheading 6216.00.46, HTSUSA, requires consideration of whether the article has particular features that adapt it for the stated purpose. In *Sports Industries, Inc. v. United States*, 65 Cust. Ct. 470, C.D. 4125 (1970), the court, in interpreting the term "designed for use," under the Tariff Schedules of the United States,

the predecessor to the HTSUSA, examined not only the features of the articles, but also the materials selected and the marketing, advertising and sale of the article. The case suggests that, to be classifiable in subheading 6216.00.46, the subject gloves must be shown to be, in fact, specially designed for use in a particular sport. Accordingly, a conclusion that a certain glove is "specially designed" for a particular sport, requires more than a mere determination of whether the glove or pair of gloves could possibly be used in a certain sport. In determining whether gloves are specially designed for use in sports, CBP considers the connection the gloves have to an identified sporting activity, the features designed for that sporting activity, and how the gloves are marketed, advertised and sold in relation to the named sport.

While the term "sport" is not defined in the tariff, in HQ 089849, dated August 16, 1991, CBP noted that common dictionaries defined the term "sport" as "an activity requiring more or less vigorous bodily exertion and carried on according to some traditional form or set of rules, whether outdoors, as football, hunting, golf, racing, etc., or indoors, as basketball, bowling, squash, etc." In *Newman Importing Company, Inc. v. United States*, 415 F. Supp. 375, 76 Cust. Ct. 143, Cust. Dec. 4648 (1976), in finding backpacking to be a sport, the court determined that the term "sport" is not solely defined in terms of competitiveness, but also arises from the development and pursuit of a variety of skills. In this respect, in HQ 957848, dated August 10, 1995, CBP found hunting, fishing, canoeing, archery and similar outdoor activities to fall within the purview of "sport." The American College Dictionary (1970) defines the term "sport" as "a pastime pursued in the open air or having an athletic character." Likewise, Webster's New Dictionary of the English Language (2001) defines "sport" as:

1: a source of diversion: PASTIME

2: physical activity engaged in for pleasure.

The term "sport" appears to also encompass activities in which individuals engage professionally (i.e., professional sports).

In HQ 964901, dated January 31, 2002, CBP defines the term "sport" according to The Random House Dictionary of the English Language, the Unabridged Edition (1983) as:

1. an athletic activity requiring skill or physical prowess and often of a competitive nature, as racing, baseball, tennis, golf, bowling, wrestling, boxing hunting, fishing, etc.

2. a particular form of this, esp. in the out of doors.

In HQ 965692, dated September 18, 2002, we recognized that motorsports racing is a sporting activity, and noted that pit-crew members are an integral component of the sport, for purposes of tariff classification. Because the gloves under consideration were specially designed for the mechanics that work in the pit-crew, we classified the gloves as being specially designed for use in sports. However, upon further consideration of the role of pit-crew members, CBP concludes that while they are an integral component of the team, the actual role and function, of a mechanic do not constitute a sporting activity.

When there is doubt as to whether a certain activity constitutes a sport for tariff classification purposes, CBP balances a range of factors, which include the degree of bodily exertion, the use of traditional rules, the degree of com-

petitiveness, the origin of the activity, and common recognition as a sport. In HQ 962745, dated October 25, 1999, in determining whether the activity of "dancing" is a sport, CBP found that while it may entail competition, require athleticism, involve physical and mental exertion, etc., notwithstanding news accounts about the International Olympic Committee taking action to grant provisional recognition to the "sports" of ballroom dancing and surfing in the Games program, we found that for classification purposes, dancing is not a sport.

In HQ 965712, dated August 28, 2002, we likewise found that "lumberjacking" is not a sport. As "lumberjacking" does not originate from a recreational pastime as activities typically considered sports, we found that "lumberjacking" is most accurately described as an occupation, not a pastime. In that ruling, we noted that while "lumberjacking" contests have stemmed from the trade, such events fell short of establishing "lumberjacking" as a sport for tariff classification purposes. Moreover, we found that while some may consider "lumberjacking" to be a "pastime" and a "physical activity engaged in for pleasure," it has neither gained mainstream acceptance as a sport nor is it a sport in the traditional sense of the word. Thus, we concluded that although those gloves may have had features useful in the activity of "lumberjacking," they were not specially designed for use in sports.

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www.mechanicschools.com/nascarschool.html. These skills, engine construction, body and chassis fabrication, aero applications, to name a few, are not traditionally associated with sporting activities.

Moreover, the term "mechanic" is defined in Merriam-Webster Online Dictionary copyright ©2002, as:

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These definitions focus on the manual labor aspect of the duties of a mechanic. Nonetheless, they demonstrate that a mechanic's occupation is not traditionally thought of as a sporting profession, but is instead considered a form of labor or work.

Mechanics, be they pit-crew mechanics or mechanics working in an automotive repair shop, engage in the activity of maintaining and repairing automobiles. Thus, even though a pit-crew member performs his functions under extreme conditions and circumstances, the functions performed are essentially the same as those performed by the mechanic at the local repair shop. Accordingly, because the functions performed by mechanics are not sporting activities, the gloves used by pit-crew mechanics are not "specially designed for use in sports."

Finally, it cannot be overlooked that mechanic's gloves are marketed and sold to average consumers through auto parts retailers. Thus, while mechanic's gloves may have been designed with the pit-crew mechanic in mind, most of the sales and revenue are generated by sales to consumers and not those directly involved in auto racing. Moreover, mechanic's gloves are sold and marketed through construction and industrial suppliers.[1] These suppliers also sell substantially similar gloves that are not marketed as "mechanic's gloves" but that have similar features. However, they are not classified as being specially designed for use in sports.

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[1] For Example, MSC Industrial Supply Co., Argas—Solutions in Safety, Conney (www.Conney.com), and labsafety.com.

[2] In certain races eight members are allowed to go "over the wall."

they perform are inherently mechanical. Moreover, the glove in question is worn and used by the pit-crew members that remain behind the wall. These members also perform the more traditional and technical duties of mechanics before, during, and after the race. Accordingly, even though the "over-the-wall" pit-crew members may be more active participants in the racing aspect, the duties they perform basically remain those of a mechanic. As the glove is to be used by the pit-crew carrying out mechanic duties, as well as their "over-the-wall" activities, we find that, for classification purposes the glove is not specially designed for use in sports.

HOLDING:

NY G80387, dated Augus 28, 2003, is hereby revoked.

The glove, style103, is properly classified in subheading 6216.00.5820, HTSUSA, which provides for "Gloves, mittens and mitts: Other: Other: Of man-made fibers: With fourchettes, Other." The general column one rate of duty is 20.8 cents per kilogram plus 10.5 percent *ad valorem* and the textile restraint category is 631.

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 your client check, close to the time of shipment, The Textile Status Report for Absolute Quotas previously available on the Customs Electronic Bulletin Board (CEBB) which is now available on the CBP Website at www.cbp.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, your client should contact the local CBP 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.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.