

Bureau of Customs and Border Protection

General Notices

AGENCY INFORMATION COLLECTION ACTIVITIES: ADMINISTRATIVE RULINGS

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

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Administrative Rulings. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 19560) on April 21, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before November 21, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-6974.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written

comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Administrative Rulings

OMB Number: 1651-0085

Form Number: N/A

Abstract: This collection is necessary in order for CBP to respond to requests by importers and other interested persons for the issuance of administrative rulings regarding the interpretation of CBP laws with respect to prospective and current transactions.

Current Actions: This submission is to extend the expiration date without a change to the burden hours.

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 12,200

Estimated Time Per Respondent: 10 hours

Estimated Total Annual Burden Hours: 128,000

Estimated Total Annualized Cost on the Public:
\$12,800,000

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-927-1429.

Dated: October 15, 2003

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

QUARTERLY IRS INTEREST RATES USED IN
CALCULATING INTEREST ON OVERDUE ACCOUNTS
AND REFUNDS ON CUSTOMS DUTIES

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

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. For the calendar quarter beginning October 1, 2003, the interest rates for overpayments will be 3 percent for corporations and 4 percent for non-corporations, and the interest rate for underpayments will be 4 percent. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278; telephone 317/298-1200, extension 1349.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2003-104 (see, 2003-39 IRB ____ , dated September 29, 2003), the IRS determined the rates of interest for the calendar quarter beginning October 1, 2003, and ending December 31, 2003. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%). For corporate overpayments, the

rate is the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%). For overpayments made by non-corporations, the rate is the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%). These interest rates are subject to change for the calendar quarter beginning January 1, 2004, and ending March 31, 2004.

For the convenience of the importing public and Customs personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

<u>Beginning Date</u>	<u>Ending Date</u>	<u>Under- payments (percent)</u>	<u>Over- payments (percent)</u>	<u>Corporate Overpay- ments (Eff. 1-1-99) (percent)</u>
070174	063075	6%	6%	
070175	013176	9%	9%	
020176	013178	7%	7%	
020178	013180	6%	6%	
020180	013182	12%	12%	
020182	123182	20%	20%	
010183	063083	16%	16%	
070183	123184	11%	11%	
010185	063085	13%	13%	
070185	123185	11%	11%	
010186	063086	10%	10%	
070186	123186	9%	9%	
010187	093087	9%	8%	
100187	123187	10%	9%	
010188	033188	11%	10%	
040188	093088	10%	9%	
100188	033189	11%	10%	
040189	093089	12%	11%	
100189	033191	11%	10%	
040191	123191	10%	9%	
010192	033192	9%	8%	
040192	093092	8%	7%	
100192	063094	7%	6%	
070194	093094	8%	7%	
100194	033195	9%	8%	
040195	063095	10%	9%	
070195	033196	9%	8%	
040196	063096	8%	7%	

<u>Beginning Date</u>	<u>Ending Date</u>	<u>Under- payments (percent)</u>	<u>Over- payments (percent)</u>	<u>Corporate Overpay- ments (Eff. 1-1-99) (percent)</u>
070196	033198	9 %	8 %	
040198	123198	8%	7%	
010199	033199	7%	7%	6%
040199	033100	8%	8%	7%
040100	033101	9%	9%	8%
040101	063001	8%	8%	7%
070101	123101	7%	7%	6%
010102	123102	6%	6%	5%
010103	093003	5%	5%	4%
100103	123103	4%	4%	3%

Dated: October 8, 2003

ROBERT C. BONNER,
*Commissioner,
Customs and Border Protection.*

[Published in the Federal Register, October 16, 2003 (68 FR 59630)]

U.S. Customs and Border Protection Trade Symposium 2003

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

ACTION: Notice of trade symposium.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) will convene a major trade symposium that will feature joint discussions by Department of Homeland Security and CBP personnel, members of the trade community, and other public and private sector representatives on the agency's role in the new Department, international trade security initiatives and the unification of functions at the border. Commissioner Robert C. Bonner will be the keynote speaker. Members of the international trade and transportation communities and other interested parties are encouraged to attend, and those attending are requested to register early.

DATES: Check-in and a reception will be held on Wednesday, November 19, 2003, from 6:00 p.m. until 8:00 p.m. The symposium will be held on Thursday, November 20, 2003, from 8:30 a.m. until 6:00 p.m. and on Friday, November 21, 2003, from 8:00 a.m. until 12:00

p.m. All registrations must be made on-line and confirmed with payment on a space-available basis by November 14th.

ADDRESSES: The Trade Symposium of 2003 will be held in Washington, D.C. at the Ronald Reagan Building and International Trade Center, at 1300 Pennsylvania Avenue, N.W. Check-in and a reception will be held in the Pavilion Room on Wednesday, November 19th. The symposium will be held in the Amphitheater on Thursday, November 20th, and in the Atrium Ballroom on Friday, November 21st.

FOR FURTHER INFORMATION CONTACT: ACS Client Representatives; CBP Account Managers; Regulatory Audit Trade Liaisons; or the Office of Trade Relations at (202) 927-1440 or at traderelations@dhs.gov. To obtain the latest information on the program or to register on-line, visit the CBP Web site at <http://www.cbp.gov>. Requests for special needs should be sent to the Office of Trade Relations at traderelations@dhs.gov.

SUPPLEMENTARY INFORMATION:

U.S. Customs and Border Protection (CBP) will be convening a major trade symposium (U.S. Customs and Border Protection Trade Symposium 2003) on Thursday, November 20, 2003, from 8:30 a.m. until 6:00 p.m. and on Friday, November 21, 2003, from 8:00 a.m. until 12:00 p.m. at the Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, N.W., Washington, D.C. The symposium will feature joint discussions by Department of Homeland Security and CBP personnel, members of the trade community, and other public and private sector representatives on the agency's role in the new Department, international trade security initiatives and the unification of functions at the border. Commissioner Robert C. Bonner will be the keynote speaker. Members of the international trade and transportation communities and other interested parties are encouraged to attend.

The cost is \$ 150 per individual and includes all symposium activities. Interested parties are requested to register early, as space is limited. All registrations must be made on-line at the CBP Web site (<http://www.cbp.gov>). Registrations will be accepted on a space-available basis and must be confirmed with payment by November 14, 2003. The Renaissance Washington DC Hotel, 999 9th Street, N.W. has reserved a block of rooms for Wednesday, November 19th and Thursday, November 20th at a rate of US\$ 189 per night. Reservations must be confirmed with the hotel by October 31st. Call

202-898-9000 or 1-800-228-9290 and reference the “CBP Trade Symposium.”

DATED: October 21, 2003

EULA D. WALDEN,
Acting Director,
Office of Trade Relations.

[Published in the Federal Register, October 24, 2003 (68 FR 61007)]

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

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

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

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

DATE: November 5, 2003.

FOR FURTHER INFORMATION CONTACT: Myles B. Harmon, Director, Commercial Rulings Division, Customs and Border Protection (202-572-8860/ myles.harmon@dhs.gov), or Eugene A. Rosen-garden, Director, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission (202-205-2592).

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Article 6 of the Harmonized System Convention establishes a Harmonized System Committee ("HSC"). The HSC is composed of representatives from each of the contracting parties to the Harmonized System Convention. The HSC's responsibilities include issuing classification decisions on the interpretation of the Harmonized System. Those decisions may take the form of published tariff classification opinions concerning the classification of an article under the Harmonized System or amendments to the Explanatory Notes to the Harmonized System. The HSC also considers amendments to the legal text of the Harmonized System. The HSC meets twice a year in Brussels, Belgium. The next session of the HSC will be the thirty-second, and it will be held from November 17-28, 2003.

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachment



WORLD CUSTOMS ORGANIZATION
ORGANISATION MONDIALE DES DOUANES

Established in 1952 as the Customs Co-operation Council
Créée en 1952 sous le nom de Conseil de coopération douanière

HARMONIZED SYSTEM COMMITTEE NC0732E1
- O. Eng.
32nd Session H9-12
-
Brussels, 15 October 2003.

DRAFT AGENDA FOR THE 32nd SESSION
OF THE HARMONIZED SYSTEM COMMITTEE

From : Monday 17 November 2003 (11.30 a.m.)
To : Friday 28 November 2003

N.B. : Thursday 13 November 2003 (10 a.m.) to Friday 14 November 2003 : Presessional Working Party (to examine the questions under Agenda Item V)

Monday 17 November 2003 (9.30 a.m. - 11.00 a.m.) : Adoption of the Report of the 28th Session of the Review Sub-Committee

I. ADOPTION OF THE AGENDA

- | | |
|--------------------------|----------|
| 1. Draft Agenda | NC0732E1 |
| 2. Draft Timetable | NC0733B1 |

II. REPORT BY THE SECRETARIAT

- | | |
|--|----------------------|
| 1. Position regarding Contracting Parties to the HS Convention and related matters | NC0734E1 |
| 2. Report on the last meetings of the Policy Commission (49 th Session) and the Council (101 st /102 nd Sessions) | NC0735E1 |
| 3. Approval of decisions taken by the Harmonized System Committee at its 31 st Session | NG0068E1
NC0736E1 |
| 4. Capacity building activities of the Nomenclature and Classification Sub-Directorate | NC0737E1 |
| 5. Co-operation with other international organisations | NC0738E1 |

NC0732E1

- 6. New information provided on the WCO Web site NC0739E1
- 7. Progress of the High-Level Working Group on HS Matters SP0142E1
- 8. Secretariat presentation on the WCO e-learning programme

III. GENERAL QUESTIONS

- 1. Use of working languages for HS matters NC0742E1
- 2. Correlation Tables between the 1996 and 2002 versions of the Harmonized System : Possible corrigendum to Doc. NG0023B1 NC0770E1

IV. REPORT OF THE HS REVIEW SUB-COMMITTEE

- 1. Report of the 28th Session of the HS Review Sub-Committee NR0470E3
- 2. Matters for decision by the Harmonized System Committee NC0743E1
- 3. Deleted
- 4. Summary document on the status of the 3rd HS Review Cycle NC0744E1

V. REPORT OF THE PRESESSIONAL WORKING PARTY

- 1. Insertion of pictures or drawings in the Compendium of Classification Opinions NC0745E1
- 2. Amendments to the Compendium of Classification Opinions and the Explanatory Notes arising from the classification of "skate fins" (of the genus *Raja*) in subheading 0303.79 NC0746E1
- 3. Amendments to the Compendium of Classification Opinions arising from the classification of a beverage base in subheading 3302.10 NC0747E1
- 4. Amendments to the Compendium of Classification Opinions arising from the classification of certain modified starches in subheading 3505.10 NC0748E1
- 5. Amendments of the Explanatory Notes to clarify the classification of yarn put up in hanks NC0749E1
- 6. Amendment of the Explanatory Note to heading 84.42 to align the English and French texts NC0750E1
- 7. Amendment of the Explanatory Note to heading 84.43 to clarify the classification of sheet-fed presses NC0751E1
- 8. Amendment of the Explanatory Note to heading 84.76 to clarify the scope of the term "vending" NC0752E1

	NC0732E1
9. Amendments to the Compendium of Classification Opinions arising from the classification of a bread-making machine in subheading 8516.60	NC0753E1
VI. FURTHER STUDIES	
1. Classification of concentrated milk with added sugar (Reservation by the <u>Cameron</u> Administration)	NC0754E1
2. Classification of the "Palm V" presented as a set with cradle and installation software (Reservation by the <u>EC</u>)	NC0755E1 NC0789E1
3. Classification of the "Media Composer 1000" (Reservation by the <u>US</u> Administration)	NC0741E1 NC0756E1
4. Decision that "photocopying" is not limited to the projection of an image onto a photosensitive surface and present heading 90.09 covers digital copying (Reservations by the <u>Canadian</u> , <u>Japanese</u> , <u>Mexican</u> and <u>US</u> Administrations) and classification of the relevant machines (Reservations by the <u>Brazilian</u> and <u>US</u> Administrations (HSC/27) and the <u>EC</u> (HSC/27))	NC0813E1 NC0814E1 NC0818E1 (HSC/30) NC0757E1 NC0788E1 NC0787E1
5. Classification of the "Playstation 2 (PS2)" (Reservation by the <u>Japanese</u> Administration)	NC0758E1
6. Study of the application of GIR 3 (b) to multifunction machines	NC0759E1
7. Study of the phrase "unless the context otherwise requires" as used in GIR 6	NC0890E1 (HSC/31)
8. Classification of sugar cubes containing caramel	NC0728E1 (HSC/31)
9. Classification of a product by the name of "YETTRAC"	NC0760E1
10. Classification of an antimycotic agent by the name of "Natamax"	NC0761E1
11. Possible amendments to the Explanatory Notes to Chapter 39 with regard to certain sanitary or hygienic articles	NC0762E1
12. Classification of coated paper or paperboard of subheadings 4810.13, 4810.14, 4810.19, 4810.22 and 4810.29	NC0763E1

NC0732E1

13. Study of the expressions "hemmed or with rolled edges" and "heat-sealed" in relation to a possible amendment of Note 7 (c) to Section XI ..	NC0764E1
14. Possible amendment of the Explanatory Notes to headings 61.01 and 61.10 (Proposal by the EC).....	NC0765E1
15. Possible amendment of the Explanatory Note to heading 85.23 to clarify the classification of integrated circuits	NC0766E1
16. Possible amendment of the legal text and Explanatory Note to heading 90.21	NC0767E1
17. Possible amendment of the Subheading Explanatory Note to heading 94.01	NC0768E1 NC0763E1
18. Classification of the "Xerox Document Centre 230 DC" digital copier	NC0815E1 (HSC/30)
19. Classification of parts of safety seat belts (Note from the EC)	NC0784E1

VII. NEW QUESTIONS

1. Classification of whipped cream in spray form	NC0771E1
2. Classification of "cachaça"	NC0772E1
3. Possible amendment of Note 3 to Chapter 19 (Proposal by the Czech Republic)	NC0773E1
4. Possible amendment of the Explanatory Note to heading 25.05 and of the General Explanatory Note to Chapter 69	NC0774E1
5. Possible amendment of the Explanatory Notes to the General Interpretative Rules, headings 28.21, 31.05 and 38.08, and Chapter 64 (Proposals by the EEC, Croatia and the Secretariat).....	NC0775E1
6. Possible amendment of the Explanatory Note to heading 29.37	NC0776E1
7. Possible amendments to the Nomenclature with respect to certain categories of waste (Proposal by the Basel Convention Secretariat)	NC0777E1
8. Possible amendment of heading 09.06 (Proposal by the Sri Lankan Administration).....	NC0778E1
9. Classification of certain flooring panels	NC0779E1
10. Possible amendments of the Explanatory Notes to Chapter 2.....	NC0780E1
11. Possible amendment of the Explanatory Note to heading 28.21 (Proposal by the Canadian Administration)	NC0781E1

NC0732E1

- 12. Possible amendment of the Explanatory Notes to headings 25.20 and 34.07 (Proposal by the **EU**) NC0788E1

VIII. ADDITIONAL LIST

- 1. Possible new Note 6 to Chapter 85 (Proposal by the **EU** Administration) NC0785E1
- 2. Insertion of a picture in Classification Opinion 8535.90/1..... NC0782E1
- 3. Classification of mixtures of fats and oils of headings 15.16 and 15.17 NC0740E1

IX. OTHER BUSINESS

- 1. List of questions which might be examined at a future session NC0769E1

X. DATES OF NEXT SESSIONS

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, October 22, 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

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A CANISTER OF LE BOZEC RAIN REPELLENT

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

ACTION: Notice of proposed revocation of tariff classification ruling letter and treatment relating to the classification of a canister of Le Bozec rain repellent, item N. 402-Q80-1.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling concerning the tariff classification of a canister of Le Bozec rain repellent, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before December 5, 2003.

ADDRESS: Written comments are to be addressed to Bureau of Customs and Border Protection, Office of Regulation and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at 799 9th St. N.W. 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: Allyson Mattanah,
General Classification Branch, (202) 572-8784.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of a canister of Le Bozec rain repellent. Although in this notice Customs is specifically referring to New York Ruling Letter (NY) I89445, dated June 18, 2003, 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 data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among

other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NY I89445, the merchandise was classified in subheading 3208.90.00, HTSUS, which provides for "Paints and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, dispersed or dissolved in a nonaqueous medium; solutions as defined in note 4 to this chapter: Other." NY I89445 is set forth as Attachment A to this document.

It is now Customs position that this substance was not correctly classified in NY I89445 because heading 3208, HTSUS, describes only the chemical portion of the goods. The canister and rain repellent are more specifically provided for as a part of a spraying machine in subheading 8424.90.90, HTSUS, the provision for "Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof: Parts: Other."

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY I89445 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 966611, which is set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: October 16, 2003

Gerard J. O'Brien, Jr. for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

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

ATTACHMENT A

NY I89445
March 6, 2003
CLA-2-32:RR:NC:SP:236 I89445
CATEGORY: Classification
TARIFF NO.: 3208.90.0000

MR. STANLEY VICK
KUEHNE & NAGEL, INC.
Atlanta Branch
235 Southfield Parkway
Forest Park, GA 30297

RE: The tariff classification of Le Bozec Rain Repellent from France

DEAR MR. VICK:

In your letter dated December 12, 2002, on behalf of your client, Global Aviation, you requested a tariff classification ruling.

The prospective importation of Le Bozec Rain Repellent is used as a rain repellent fluid for aircraft windshields.

The applicable subheading for Le Bozec Rain Repellent will be 3208.90.0000, Harmonized Tariff Schedule of the United States, which provides for Paints and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, dispersed or dissolved in a nonaqueous medium; solutions as defined in note 4 to this chapter: Other. The rate of duty will be 3.2% 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 an questions regarding the ruling, contact National Import Specialist Deborah Walsh at 646-733-3034.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966611
CLA-2 RR:CR:GC 966611 AM
CATEGORY: CLASSIFICATION
TARIFF NO.: 8424.90.90

MR. JAMES H. LUNDQUIST
PAVIA & HARCOURT LLP
600 Madison Avenue
New York, NY 10022

RE: Revocation of NY I89445; Canister of Le Bozec Rain Repellent; item N. 402-Q80-1, part of LeBozec rain repellent spraying system

DEAR MR. LUNDQUIST:

This is in reference to your letter, dated June 18, 2003, to the Director of Customs National Commodity Specialist Division, New York, requesting reconsideration of New York Ruling Letter (NY) I89445, issued to Kuehne & Nagel, Inc., on March 6, 2003, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of Le Bozec rain repellent. Your letter was forwarded to this office for reply. We have reviewed this ruling and believe it is incorrect. This ruling sets forth the correct classification.

FACTS:

In NY I89445, Customs classified the merchandise in subheading 3208.90.00, HTSUS, the provision for "Paints and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, dispersed or dissolved in a nonaqueous medium; solutions as defined in note 4 to this chapter: Other," based on Customs Laboratory report NY20030042, which states, in pertinent part, the following:

Based on the information submitted by the inquirer, the product named Foralkyl 2211 is composed of a mixture of five chemical ingredients delivered in a pressurized can, which is outfitted on the rain repellent system of commercial aircraft.

The most active ingredient is the SF 1706 (fluorinated olefin in C6, a polysiloxane), and functioned as a coating on the windshield which will remove the water at a certain speed.

The pressurized can is outfitted on the rain repellent system of commercial aircraft. When the visibility is bad under rainy conditions, the pilot pushes a switch that will activate the complete system and spray some fluid on the windshield. The fluid will then remove the water on the windshield and improve the visibility of the pilot.

Based on the submitted chemical composition, the product is a solution specified in headings 3901 to 3913 in volatile organic solvents with the weight of the solvent exceeds (sic) of the weight of the solution.

The rain repellent system on commercial aircraft mentioned in the Laboratory Report consists of the instant pressurized canister of rain repellent, item N. 402-Q80-1, which fits into a repository, and is connected by tubing to a reservoir assembly incorporating a glass reservoir, manometer, and

spray head. The system is activated electronically in the cockpit of the aircraft. The system is engineered to withstand extreme temperatures and changes in atmospheric pressure necessary for systems used on aircraft.

ISSUE:

Is a pressurized canister of rain repellent, designed for use in a spray system for aircraft windshields, classified as to its chemical components or as a part of a spray system or as a part of an aircraft?

LAW AND ANALYSIS:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation (AUSRI). The GRIs and the AUSRI are part of the HTSUS and are to be considered statutory provisions of law.

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

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

The following HTSUS headings are under consideration:

3208 Paints and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, dispersed or dissolved in a nonaqueous medium; solutions as defined in note 4 to this chapter:

3208.90.00 Other

* * * * * * * *

8424 Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof:

8424.90 Parts:

8424.90.90 Other

* * * * * * * *

8803 Parts of goods of heading 8801 or 8802:

8803.30.00 Other parts of airplanes or helicopters

The ENs to heading 8424 state, in pertinent part, the following:

This heading covers machines and appliances for projecting, dispersing or spraying steam, liquids or solid materials (e.g., sand, powders, granules, grit or metallic abrasives) in the form of a jet, a dispersion (whether or not in drips) or a spray.

Section XVII, note 2(e) states, in pertinent part, the following:

2. The expression “parts” and “parts and accessories” do not apply to the following articles, whether or not they are identifiable as for the goods of this section:
- (e) Machines or apparatus of headings 8401 to 8479, or parts thereof;

Section XVI, Note 2 states, in pertinent part, the following:

Subject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

- (a) Parts which are goods included in any of the headings of chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8485, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;
- (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;

* * * * *

In NY I89445, we classified the instant merchandise in heading 3208, HTSUS, as to its chemical composition. The merchandise, however, is not simply a chemical solution. Its canister is as important to the use of the merchandise as is the rain repellent that it contains.

Heading 8803, HTSUS, is explicitly excluded by Section XVII, note 2(e). As described in your submission requesting reconsideration of NY I89445, the canister of rain repellent is part of an eloquently designed precision mechanical appliance for spraying a liquid specifically for use only on civilian airplane windshields. Parts of such spraying systems are described in heading 8424, HTSUS, as parts, and are therefore excluded from headings in Section XVII (e.g., heading 8803) by note 2(e), *supra*.

Furthermore, classification in heading 8424, HTSUS, is directed by Note 2(b) to Section XVI. As a part of a mechanical appliance for spraying a liquid that is not specified elsewhere as a good of Section XVI, the merchandise is classified with the machine. (Note 2(b) to Section XVI, *supra*). Lastly, the description of parts of spraying apparatus in EN 84.24 closely fits the instant merchandise.

You believe that HQ 962615, dated September 2, 1999, should govern this matter. In that ruling, we classified a hydraulic fluid reservoir for aircraft in heading 8803, HTSUS, as a part of an airplane. HQ 962615 is distinguishable from this case in that there is no heading other than heading 8803, HTSUS, which describes the hydraulic fluid reservoir.

Therefore, the Le Bozec Aircraft rain repellent canister is classified in subheading 8424.90.90, HTSUS, the provision for: “Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and simi-

lar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof: Parts: Other.”

HOLDING:

The Le Bozec Aircraft rain repellant canister is classified in subheading 8424.90.90, HTSUS, the provision for: “Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof: Parts: Other.”

EFFECT ON OTHER RULINGS:

NY I89445 is revoked.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

PROPOSED MODIFICATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A WOMEN'S COTTON KNIT GARMENT SIMILAR TO A TANK TOP

AGENCY: Bureau of Customs & Border Protection; Department of Homeland Security.

ACTION: Notice of proposed modification of a tariff classification ruling letter and revocation of treatment relating to a women's cotton knit tank-like garment.

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 & Border Protection (CBP) intends to modify one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a women's cotton knit tank-like garment. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before December 5, 2003.

ADDRESS: Written comments are to be addressed to Customs & Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at Customs & Border Protection, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted com-

ments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Rebecca Hollaway, Textiles Branch, at (202) 572-8814.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify one ruling letter relating to the tariff classification of a women's cotton knit tank-like garment. Although in this notice CBP is specifically referring to the modification of New York Ruling Letter (NY) J82451, dated April 9, 2003 (attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise. 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 HTSUS. Any person involved with substantially identical merchandise should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY J82451, dated April 9, 2003, CPB classified a garment similar to a tank top under subheading 6109.10.0070, HTSUS, as an outerwear garment. However, we now find based on design, marketing and advertising information that the garment is correctly classified as underwear under subheading 6109.10.0037, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY J82451 and to revoke any ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 966602 (attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice.

Before taking this action, consideration will be given to any written comments timely received.

DATED: October 21, 2003

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

Attachment

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

ATTACHMENT A

NY J82451

April 9, 2003

CLA-2-61:RR:NC:TA:354 J82451

CATEGORY: Classification

TARIFF NO.: 6108.21.0010; 6109.10.0070

MR. NICHOLAS D'ANDREA
BARIAN SHIPPING COMPANY, INC.
The Barian Building
910 Railroad Avenue
Woodmere, New York 11598

RE: The tariff classification of women's garment from China.

DEAR MR. D'ANDREA:

In your letter dated March 27, 2003, you requested a classification ruling. The provided samples will be returned as per your request.

Style K2107048/878 consists of a woman's garment that is similar to a tank top that ends below the waist and a bikini panty. Both garments are constructed of a 100% cotton knitted fabric. The garment that is similar to a tank top features a U-shaped neckline in the front and back that falls below the nape of the neck, shoulder straps measuring approximately 1-1/4" in width, a front opening with a lace-up closure, and a hemmed bottom. The bikini panty features an elasticized waist and leg openings, and a lined crotch panel.

You suggested that the garment that is similar to a tank top should be classified as underwear, however, we believe this garment is indistinguishable from items sold as outerwear. The applicable subheading for the garment that is similar to a tank top will be 6109.10.0070, Harmonized Tariff Schedule of the United States (HTS), which provides for T-shirts, singlets, tank tops and similar garments, knitted or crocheted. The rate of duty will be 17% ad valorem.

The applicable subheading for the bikini will be 6108.21.0010, HTS, which provides for Women's or girls' slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted: Briefs and panties: Of cotton: Women's. The duty rate will be 7.6 percent ad valorem.

The garment that is similar to a tank top falls within textile category designation 339 and the bikini panty falls within textile category designation 352. Based upon international textile trade agreements products of China are subject to quota and the requirement of a visa.

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

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Brian Burtnik at 646-733-3054.

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

ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966602
CLA-2 RR:CR:TE 966602 RH
CATEGORY: Classification
TARIFF NOS.: 6109.10.0037; 6108.21.0010

ROBERT L. EISEN, ESQ.
CHRISTOPHER E. PEY, ESQ.
COUDERT BROTHERS, LLP
1114 Avenue of the Americas
New York, NY 10036-7703

RE: Modification of NY J82451, dated April 9, 2003; Women's Knitted Cotton Garment Similar to a Tank Top; Subheading 6109.10.0037, HTSUS; Subheading 6109.10.0070, HTSUS; Tank-like Top Not Readily Identifiable Upon Physical Examination as Outerwear or Underwear Determined to be Underwear based on Design, Marketing and Advertising Information

GENTLEMEN:

This is in reply to your letter of July 22, 2003, on behalf of Barian Shipping Company, Inc., and J.W.E. Silk, Inc., requesting reconsideration of New York Ruling Letter (NY) J82451, dated April 9, 2003.

In NY J82451, Customs and Border Protection (CBP) classified a woman's garment similar to a tank top under subheading 6109.10.0070 of the Harmonized Tariff Schedule of the United States (HTSUS) and a bikini panty under subheading 6108.21.0010, HTSUS.

In your opinion, CBP erroneously classified the tank-like top. You contend that it is properly classified under subheading 6109.10.0037, HTSUS. You concur with CPB's classification of the panty under subheading 6108.21.0010, HTSUS.

We note that you asked us to return the sample that you submitted. However, we would like to retain the sample for our records.

FACTS:

In your letter, you describe the merchandise as follows:

The Style No. K2107048 camisole has a U-shaped front and rear neck line, rounded arm holes and approximately 1¼ inch shoulder straps, all outlined with decorative trim. It has a four-inch placket with a laced closure and a hemmed bottom. The garment is made of 100% cotton interlock fabric and is only made in one color, red with black trim, with a size range of small to large.

The garment at issue is imported together with a matching bikini panty made from the same fabric, with matching trim. The camisole is designed, marketed and sold with the matching panty as an underwear set. The panty is also made of the identical 100% cotton interlock fabric and like the camisole only comes in one color, red with black trim.

The camisole and panty are not available separately, and will be imported together in sealed polybags, and will be shipped to the final purchaser in the same bags used to import them. . . .

ISSUE:

Is the garment similar to a tank top that is sold with a matching panty classifiable as underwear under subheading 6109.10.0037, HTSUS, or as outerwear under subheading 6109.10.0070, HTSUS?

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRIs taken in order.

Additionally, the Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. The ENs are not legally binding. However, they do represent the considered views of classification experts of the Harmonized System Committee. It has therefore been the practice of CBP to follow, whenever possible, the terms of the ENs when interpreting the HTSUS.

There is no disagreement as to the classification of the subject merchandise at the 8-digit level. Subheading 6109.10.00, HTSUS, provides for "T-shirts, singlets, tank tops and similar garments, knitted or crocheted: Of cotton." The sole issue in this case is whether the merchandise is classified under subheading 6109.10.0037, HTSUS, or 6109.10.0070, HTSUS. Subheading 6109.10.0037, HTSUS, provides for women's or girls' underwear. Subheading 6109.10.0070 provides for women's or girls' "other" non-underwear garments. Thus, the crux of the question in this case is whether the garments are underwear or outerwear.

The Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories, CIE 13/88 (1988) ("Guidelines"), define "underwear" as follows:

The term "underwear" refers to garments which are ordinarily worn under other garments and are not exposed to view when the wearer is conventionally dressed for appearance in public, indoors or out-of-doors. Whether or not a garment is worn next to the body of the wearer is not a determinant; . . .

It should be noted that in distinguishing underwear, it is generally agreed that sleeveless tops with lace inserts or lace edgings are predominately worn as underwear.

In past rulings, Customs has pointed out that the merchandise itself may be strong evidence of use. Citing Mast Industries v. United States, 9 CIT 549, 552 (1985), *aff'd* 76 F. 2d 1144 (1986), citing United States v. Bruce Duncan Co., 50 CCPA 43, 46, C.A.D. 817 (1963). In that regard, the instant garment is not readily identifiable as either underwear or outerwear. The garment is ambiguous. When presented with a garment which is ambiguous and not clearly recognizable as underwear or outerwear, Customs will consider other factors such as environment of sale, advertising and marketing, recognition in the trade of virtually identical merchandise, and documentation incidental to the purchase and sale of the merchandise, such as purchase orders, invoices, and other internal documentation. See HQ 960866, July 15, 1999; HQ 960865, dated July 15, 1999; HQ 963442, July 7, 1999; HQ 960864, July 2, 1999; HQ 960862, dated July 2, 1999; HQ 961978, dated June 17, 1999; HQ 961185, dated June 11, 1999; HQ 960906, June 3, 1999; HQ 960926, February 25, 1999; HQ 960925, February 23, 1999; HQ 960928, February 15, 1999; HQ 961116, November 20, 1998; HQ 960690, September 25, 1998; HQ 959843, May 6, 1998; HQ 961036, April 27, 1998; HQ 960797, February 19, 1998; HQ 960442, August 4, 1997; HQ 960391, April 22, 1997; HQ 957762, April 28, 1995; HQ 957615, May 24, 1995; HQ 957004, November 23, 1994; HQ 956351, July 7, 1994. and HQ 956350, July 5, 1994.

It should be noted that CBP considers these factors in totality and no single factor is determinative of classification as each of these factors viewed alone may be flawed. For instance, CBP recognizes that internal documentation and descriptions on invoices may be self-serving as was noted by the court in Regality, Inc. v. United States, 16 Ct. Int'l Trade 407 (1992).

Consideration of marketing information, and the design and construction details of the garments are instructive in determining whether or not they are principally used as outerwear or underwear. Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that in the absence of context to the contrary, a tariff classification controlled by use, other than actual use, is to be determined by the principal use in the United States at, or immediately prior to, the date of importation of goods of the same class or kind or merchandise. See HQ 953390, dated June 1, 1993, in which CBP stated that a tank-styled pullover classifiable in subheading 6109.90.1065 and "sold with a matching panty could be viewed as somewhat persuasive evidence that it is indeed underwear."

In the instant case, the tank-like top is marketed and sold with a matching panty. The top and panty will be imported together in sealed polybags, and will be shipped to the final purchaser in the same bags. The advertising literature pictures the garment in an Avon catalogue as a "Knit Lace-Up Cami & Panty." It is described as a "[s]oft, comfortable cotton interlock cami & bikini panty set with beautiful, sexy fit." The advertisement depicts the "cami and panty" set next to a "Flirty Halter Teddy." Finally, the garments are sold exclusively to Avon's "Innerwear" department.

Although the manner in which an article is designed, manufactured, and marketed is not dispositive of tariff classification, Customs finds it to be persuasive in this case when determining the classification of the ambiguous tank-like top. See Mast Industries, Inc. v. United States, 9 Ct. Int'l Trade 549, 552 (1985), *aff'd* 786 F.2d 144 (CAFC, 1986); St. Eve International, Inc.

v. United States, 11 Ct. Int'l Trade 224 (1987); and Inner Secrets/Secretly Yours, Inc. v. United States, 885 F. Supp. 248 (1995).

HOLDING:

NY J87771 is MODIFIED.

The garment similar to a tank top is classifiable under subheading 6109.10.0037, HTSUS, which provides for "T-shirts, singlets, tank tops and similar garments, knitted or crocheted: Of cotton: Women's or girls': Other: Other." It is dutiable at the general column one rate at 17 percent *ad valorem*, and the textile category is 339.

The matching panty was correctly classified under subheading 6108.21.0010, HTSUS, which provides for "Women's or girls' slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted: Briefs and panties: Of cotton: Women's." It is dutiable at the general column one rate at 7.6 percent *ad valorem*, and the textile category is 352.

The designated textile and apparel category may be subdivided into parts. If so, 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 that your client check, close to the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an internal issuance of CBP, which is available for inspection at your client's local CBP office.

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.