

Bureau of Customs and Border Protection

General Notices

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, May 7, 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.*

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE ELIGIBILITY OF A BEDDING SET TO RECEIVE PREFERENTIAL TARIFF TREATMENT PURSUANT TO THE NORTH AMERICAN FREE TRADE AGREEMENT

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

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to the eligibility of a comforter and a pillow sham of a bedding set, as well as the entire bedding set, to receive preferential tariff treatment pursuant to the North American Free Trade Agreement.

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 relating to the eligibility of a comforter and a pillow sham of a bedding set, as well as the entire bedding set, to receive preferential tariff treatment pursuant to the North American Free Trade Agreement.

CBP is also revoking any treatment previously accorded by it to substantially identical transactions.

Notice of the proposed action was published on March 12, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 11. No comments were received.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 21, 2003.

FOR FURTHER INFORMATION CONTACT: J. Steven Jarreau, Textiles Classification Branch: (202) 572-8790.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerged from the law are "**informed compliance**" and "**shared responsibility.**" These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on 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 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify New York (NY) I80828 (May 10, 2002) was published in the CUSTOMS BULLETIN, Volume 37, Number 11, on March 12, 2003. No comments were received in response to the notice of proposed action. As was stated in the notice of proposed action, the notice covered any rulings which may have existed but which had not specifically been identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, which classified substantially similar merchandise contrary to the notice, should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)) as amended by section 623 of Title VI, CBP is revoking 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 HTSUSA. Any person involved with substantially identical merchandise should have advised CBP during the notice period. An importer's failure to have advised 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 importation of merchandise subsequent to the effective date of this notice.

Customs and Border Protection in NY I80828 concluded that a comforter and a pillow sham of a bedding set were not eligible to receive preferential tariff treatment pursuant to the North American Free Trade Agreement. CBP determined in NY I82808 that the comforter and the pillow sham, pursuant to General Note 12 (a)(i) of the Harmonized Tariff Schedule of the United States Annotated, were not goods that originated in the territory of a NAFTA Party and did not qualify to be marked as goods of Canada. CBP further concluded that although the merchandise should be classified as a set, the set was not eligible for the Special Column 1 "CA" NAFTA rate of duty.

It is now CBP's determination that the ruling is in error and that the comforter and the pillow sham are goods that originate in the territory of a NAFTA Party and do qualify to be marked as goods of Canada. The "Bed in a Bag," consisting of the comforter, pillow sham, bed skirt, pillowcase, flat sheet and fitted sheet, classified as a set in subheading 9404.90.8522, Harmonized Tariff Schedule of the United States Annotated, is, therefore, entitled to the "Special" Column 1 "CA" NAFTA rate of duty. Headquarters Ruling Letter (HQ) 965986, modifying NY I80828, is set forth as Attachment "A" to this document.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY I80828 and any other rulings not specifically identified, to reflect the eligibility of the comforter and the pillow sham, as well as the entire set, to be entitled to preferential tariff treatment pursuant to the North American Free Trade Agreement. The legal analysis for this decision is set forth in HQ 965986. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical merchandise and transactions.

Customs and Border Protection notes that the legal analysis set forth in HQ 965986 attached to this notice is different from the analysis set forth in the Notice of Proposed Modification. CBP, in the notice of proposed action, relied in part on 102.21 (e)(2) in determining the origin of the merchandise. A subsequent review of the regulations resulted in the determination that recourse to subparagraph (e)(2) was not warranted because the fabric in issue contains more than sixteen percent by weight of cotton. Section 102.21 (e)(2) is not applicable for goods classified under the enumerated headings and subheading when those goods are of cotton or of wool or consist of a fiber blend that is sixteen percent or more by weight of cotton. The fabric of the instant merchandise will be

either seventy percent polyester and thirty percent cotton or fifty percent polyester and fifty percent cotton.

Customs and Border Protection also relied on section 102.21(c)(2) to determine the origin of the comforter. Since the comforter is made from fabric formed in more than one country, recourse to paragraph (c)(2) is inapplicable. CBP has, as is reflected in the final ruling letter, relied on section 102.21(c)(4) in its final determination.

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

Dated: May 1, 2003.

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

[Attachment]

[ATTACHMENT]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
Washington, DC, May 1, 2003.

CLA-2 RR:CR:TE 965986 jsj
Category: Classification
Tariff No. 9404.90.8522

MR. RALPH SAUNDERS
SENIOR TRADE ADVISOR
DERINGER LOGISTICS CONSULTING GROUP
*1 Lincoln Blvd.
Suite 225
Rouses Point, NY 12979*

Re: Modification of NY I80828 (May 10, 2002); HQ 965739 (June 27, 2002); NAFTA Originating Goods; Self-Produced Material; Country of Origin; NAFTA Preference Override; CITA Quota/Visa Requirements.

DEAR MR. SAUNDERS:

The purpose of this correspondence is to respond to your request of October 8, 2002. The correspondence in issue requested, on the behalf of your client, C. S. Brooks Canada, Inc. (C. S. Brooks), modification of HQ 965739 (June 27, 2002).

The request for modification you submitted specifically advocates that this office reconsider its position concerning the eligibility of the comforter to receive preferential treatment pursuant to the North American Free Trade Agreement (NAFTA). The submission suggests that the comforter may be deemed a NAFTA originating good through the applicability of the Appendix to Part 181, section 4 (8), of the NAFTA Rules of Origin Regulations applicable to "self-produced material" and further suggests the applicability of the NAFTA preference override of 19 C.F.R. 102.19. Customs and Border Protection (CBP), although not requested to do so, will apply the same analysis to the pillow sham, also determined in NY I80828 (May 10, 2002) to be a product of the country of Pakistan and ineligible for the NAFTA preferential rate of duty.

CBP, subsequent to reviewing the submission on the behalf of C. S. Brooks, concludes that the comforter and the pillow sham are entitled to the "Special" Column 1 "CA" NAFTA rate of duty. CBP does not believe that HQ 965739 should be modified or revoked, but will modify NY I80828.

This ruling is being issued subsequent to the following: (1) A review of your submission dated October 8, 2002; (2) A telephone conversation with Ms. Gloria Columbe of your office conducted with a member of my staff on December 3, 2002; and (3) A review of NY I80828 and HQ 965739.

Pursuant to section 625 (c), Tariff Act of 1930, as amended, 19 U.S.C. 1625 (c), notice of the proposed modification of NY I80828 was published on March 12, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 11. No comments were received.

Facts:

The article in issue, as identified by C. S. Brooks, is a "Bed in a Bag." The "Bed in a Bag" bedding set consists of a twin sized comforter, bed skirt, pillow sham, pillowcase, flat sheet and fitted sheet.

The outer shell of the comforter, the pillow sham and the skirt portion of the bed skirt will be made of either a seventy (70) percent polyester and thirty (30) percent cotton woven, printed fabric or a fifty (50) percent polyester and fifty (50) percent cotton woven, printed fabric. The comforter is filled with a polyester batting fabric and quilted through all three layers. The back aspect of the pillow sham features an overlapping flap closure and the edges are finished with a flange or picture frame effect.

The bed skirt is designed to hang over the edge of a box spring on three sides. The skirt has an approximately thirteen (13) inch drop. The skirt aspect of the bed skirt will be made from either a seventy (70) percent polyester and thirty (30) percent cotton woven, printed fabric or a fifty (50) percent polyester and fifty (50) percent cotton woven, printed fabric. The platform aspect of the bed skirt will be made from spunbond nonwoven fabric.

The flat sheet, fitted sheet and pillowcase will be made from a fifty (50) percent polyester and fifty (50) percent cotton woven, printed fabric. The fitted sheet is elasticized along the sides. The flat sheet is hemmed at the top and bottom. The sides are selvage. The pillowcase is folded and sewn, leaving one end open.

The "Bed in a Bag" bedding set will be packaged for retail sale in a vinyl bag.

The manufacturing operations are:

Pakistan:

- (1) The polyester and cotton fabric (70/30 or 50/50) is woven;
- (2) The fabric may be bleached; and
- (3) Rolls of greige or bleached fabric are exported from Pakistan to Canada.

Canada:

- (1) The polyester batting fabric is made (this item may also be made in the United States);
- (2) The nonwoven fabric for the platform section of the bed skirt is formed;
- (3) The fifty (50) percent polyester and fifty (50) percent cotton fabric for the flat sheet, fitted sheet and pillowcase is woven;
- (4) The seventy (70) percent polyester and thirty (30) percent cotton fabric and the fifty (50) percent polyester and fifty (50) percent cotton fabrics are bleached, if needed, printed and finished;
- (5) The fabrics are cut, sewn, stuffed and quilted to form the set components; and
- (6) The comforter, bed skirt, pillow sham, pillowcase, fitted sheet and flat sheet are packed for retail sale.

Issue:

Does the "Bed in a Bag" bedding set qualify to receive the "Special" Column 1 "CA" rate of duty pursuant to General Note 12 (a)(i) of the Harmonized Tariff Schedule of the United States Annotated as goods that originate in the territory of a NAFTA Party and that qualify to be marked as goods of Canada?

Law and Analysis:

Customs and Border Protection in NY I80828 addressed the classification, eligibility for preferential treatment pursuant to the North American Free Trade Agreement and country of origin of the "Bed in a Bag" bedding set. New York Ruling Letter I80828, as it addresses the classification analysis of all the articles of the bedding set and the country of origin analysis of the fitted sheet, the flat sheet and the pillowcase, is authoritative and will not be modified or revoked with regard to these issues.

CBP in HQ 965739, modified NY I80828 as it addressed the country of origin of the bed skirt. Headquarters Ruling Letter 965739, as it addresses the country of origin of the bed skirt, is authoritative and will not be modified or revoked in this ruling letter.

NAFTA Originating Goods:

This ruling letter will initially address whether the comforter and the pillow sham qualify as “goods originating in the territory of a NAFTA party” pursuant to HTSUSA General Note 12 (b) and whether the comforter and the pillow sham may be marked as goods of Canada pursuant to 19 C.F.R. 102.19, the NAFTA preference override. The resolution of these issues in conjunction with the determinations of NY I80828 and HQ 965739 will establish whether the entire “Bed in a Bag” bedding set is eligible to receive the “Special” column 1 “CA” rate of duty.

General Note 12 (a)(i) of the HTSUSA addressing the North American Free Trade Agreement provides that “[g]oods that originate in the territory of a NAFTA party * * * and that qualify to be marked as goods of Canada” and that are “entered under a subheading for which a rate of duty appears in the ‘Special’ subcolumn followed by the symbol ‘CA’ in parentheses” are eligible for the “CA” rate of duty. General Note 12 (b) provides, in part, that goods imported into the customs territory of the United States will be eligible for NAFTA tariff treatment as “*goods originating in the territory of a NAFTA party*” only if:

- (i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States: or
- (ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—
 - (A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or
 - (B) the goods satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note.

Since neither the comforter nor the pillow sham were wholly obtained or produced in Canada, Mexico or the United States, the issue becomes whether they have been transformed in the territory of one of the NAFTA Parties as provided in GN 12 (b)(ii).

The comforter and pillow sham will be considered as having been “transformed” in the territory of a NAFTA Party if each non-originating material, in this instance the fabric, undergoes a change in tariff classification as described in subdivision (t). Subdivision (t) of GN 12, applicable to the comforter and pillow sham classified as a set in subheading 9404.90.8522, HTSUSA, provides, in pertinent part:

A change to subheading 9404.90 from any other chapter, except from headings 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408 or 5512 through 5516. *See* GN 12 (t)/94.7.

The fabric used in the manufacture of the comforter and the pillow sham, of either polyester/cotton blend, is classifiable at the time of entry into Canada in heading 5513, HTSUS. Fabric classifiable in heading 5513, HTSUS, is excepted from the tariff shift requirement of GN 12 (t)/94.7. The comforter and pillow sham, therefore, do not initially meet the transformation requirement of GN 12 (b).

The importer, in this instance, may seek recourse to the Appendix to Part 181 of the NAFTA Rules of Origin Regulations, particularly section 4 (8) applicable to “self-produced material.” Section 4 (8) provides, in pertinent part:

For purposes of determining whether non-originating materials undergo an applicable change in tariff classification, a self-produced material may, at the choice of the producer of a good into which the *self-produced material* is incorporated, be considered as an originating material or non-originating material, as the case may be, used in the production of that good. (Emphasis added) 19 C.F.R. Part 181 Appendix section 4 (8).

“[S]elf-produced material,” as defined in section 2 (1), is “a material that is produced by the producer of a good and used in the production of that good.” 19 C.F.R. Part 181 Appendix section 2 (1).

C. S. Brooks, as the producer of the “Bed in a Bag” bedding set (the “good”), has the option, pursuant to Part 181 Appendix section 4 (8), of identifying the comforter shell, a transitional article in the production of the comforter, and the pillow sham (the “self-produced materials”) as non-originating materials. The non-originating materials, through the election of this option, would be the comforter shell classifiable in heading 6307, HTSUS, and the pillow sham classifiable in heading 6304, HTSUS. Headings 6307 and 6304,

HTSUS, are not excepted from the tariff shift rule of GN 12 (t)/94.7. The comforter shell and the pillow sham under this analysis meet the transformation requirement of GN 12 (b)(ii). *See generally* HQ 562498 (Nov. 13, 2002); HQ 965696 (Sept. 18, 2002); and HQ 965309 (Sept. 18, 2002).

The “Bed in a Bag” bedding set, pursuant to the analysis set forth above and in NY 180828, meets the initial requirement of GN 12 (a)(i) to qualify for the column 1 Special “CA” rate of duty. Each of the components of the set are goods that “originate” in the territory of a NAFTA Party.

Country of Origin

The second element of General Note 12 (a)(i) is that the goods “qualify to be marked as goods of Canada.” CBP in NY 180828 determined that the flat sheet, the fitted sheet and the pillowcase qualified to be marked as goods of Canada. CBP, in HQ 965739, reached the same determination for the bed skirt. This ruling letter will reconsider the country of origin of the comforter and the pillow sham.

The Uruguay Round Agreements Act, particularly section 334, codified at 19 U.S.C. 3592, sets forth the rules of origin for textile and apparel products. Regulations implementing section 334 are set forth in Part 102 of Title 19 of the Code of Federal Regulations.

Section 102.21 of Customs regulations establishes, with specifically delineated exceptions, that “this section shall control the determination of the country of origin of imported textile and apparel products for purposes of the Customs laws.” 19 C.F.R. 102.21. Textile and apparel products that are encompassed within the scope of section 102.21 are any goods classifiable in Chapters 50 through 63 of the HTSUSA, as well as goods classifiable under other specifically enunciated subheadings, including subheadings 9404.90.80–95, HTSUS. *See* 19 C.F.R. 102.21 (b)(5).

The “Bed in a Bag” comforter and pillow sham are classifiable in subheading 9404.90.8522, HTSUSA, and heading 6304, HTSUS, respectively. They are, therefore, textile and apparel products subject to the rules of origin in 19 C.F.R. 102.21. *See* 19 C.F.R. 102.21 (b)(5).

Although the “Bed in a Bag” bedding set is classified as a “set” pursuant to General Rule of Interpretation 3 (b) and further classified in subheading 9404.90.8522, HTSUSA, based on the essential character provided by the comforter, 19 C.F.R. 102.21 (d) addressing the treatment of sets mandates that the origin of each item in the set be determined separately. Section 102.21 (d) specifically provides that where one or more components of a set are textile or apparel products and section 102.21 (c) does not provide for a single country of origin, “each component of the set that is a textile or apparel product shall be determined separately under paragraph (c).” 19 C.F.R. 102.21 (d). The country of origin of the comforter and the pillow sham will, therefore, be determined separately.

The country of origin of textile and apparel products is determined by the sequential application of paragraphs (c)(1) through (c)(5) of section 102.21. Paragraph (c)(1) provides that “[t]he country of origin of a textile or apparel product is the single country, territory or insular possession in which the good was wholly obtained or produced.” Since the fabrics are formed in Pakistan, as well as possibly Canada and the United States, and cut, sewn, stuffed and quilted in Canada, the origin of the comforter and pillow sham cannot be determined by reference to paragraph (c)(1).

Paragraph (c)(2) of section 102.21 provides that where the country of origin cannot be determined according to paragraph (c)(1), resort should next be to paragraph (c)(2). The country of origin, according to paragraph (c)(2), is “the single country, territory or insular possession in which each foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e)” of section 102.21. Paragraph (c)(2) is applicable to the pillow sham because it is comprised of fabric that is formed in a single county, Pakistan. It is not applicable to the comforter because the comforter is formed through the use of woven fabric formed in Pakistan and batting fabric formed in either Canada or the United States. Paragraph (e)(1), as applicable through paragraph (c)(2) to the pillow sham, establishes a tariff shift rule that provides:

The Pillow Sham:

HTSUS Tariff Shift and/or Other Requirement

6301–6306 Except for goods of heading 6302 through 6304 provided for in paragraph (e)(2) of this section, the country of origin of a good classifiable under heading 6301 through 6306 is the country, territory, or insular

possession in which the fabric comprising the good was formed by a fabric-making process.

The applicable change in tariff classification for heading 6304, HTSUS, provides that the country of origin is the country in which the fabric was formed, suggesting that the country of origin of the pillow sham is Pakistan.

Since the country of origin of the comforter cannot be determined through the application of section 102.21 (c)(2), CBP must look to paragraph (c)(3). Paragraph (c)(3) provides:

Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) or (2) of this section:

(i) If the good was knit to shape, the country of origin is the single country, territory, or insular possession in which the good was knit; or

(ii) Except for goods of heading 5609, 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6209.20.5040, 6307.10, 6307.90 and 9404.90, if the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled.

Since the comforter is not knit to shape and subheading 9404.90, HTSUS, is excepted from section 102.21 (c)(3), paragraph (c)(3) is not applicable and CBP must turn to paragraph (c)(4).

Paragraph (c)(4) of section 102.21 provides:

Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1), (2) or (3) of this section, the country of origin of the good is the single country, territory, or insular possession in which the most important assembly or manufacturing process occurred.

It is CBP's determination that the fabric making process of the outer shell of the comforter is the most important manufacturing process. The fabric making process was undertaken in Pakistan, suggesting that the country of origin of the comforter is Pakistan.

The origin determinations of the pillow sham and the comforter do not, however, conclude with paragraphs (c)(2) and (e)(1) for the pillow sham and paragraph (c)(4) for the comforter because, as addressed previously, the comforter, pillow sham and all of the other components of the "Bed in a Bag" bedding set qualify as "originating" in Canada resulting in the applicability of 19 C.F.R. 102.19, commonly referred to as the NAFTA preference override. *See* 19 C.F.R. 181.1 (q). The NAFTA preference override provides, in pertinent part:

(a) Except in the case of goods covered by paragraph (b) of this section, if a good which is originating within the meaning of § 181.1 (q) of this chapter is not determined under 102.11(a) or (b) or 102.21 to be a good of a single NAFTA country, the country of origin of such good is the last NAFTA country in which that good underwent production other than minor processing, provided that a Certificate of Origin (see § 181.11 of this chapter) has been completed and signed for the good. 19 C.F.R. 102.19.

The comforter and the pillow sham meet the requirements of the NAFTA preference override of section 102.19. The articles are both NAFTA "originating" goods as set forth by the requirements of 19 C.F.R. 181.1 (q), have not been determined to be a good of a single NAFTA country under 19 C.F.R. 102.21 (the textile and apparel rules of origin) and have undergone production other than minor processing in a NAFTA country. *See* 19 C.F.R. 102.17 (addressing "non-qualifying operations"). In this instance, the fabric for the comforter has been cut, sewn, stuffed and quilted into the finished comforter and the fabric for the pillow sham has been cut and sewn into the finished pillow sham in Canada. The finished comforter and pillow sham are then packed in Canada for retail sale with the pillowcase, fitted sheet, flat sheet and the bed skirt. *See generally* HQ 562498; HQ 965696; and HQ 965309.

CBP, relying on the NAFTA preference override, concludes that the comforter and pillow sham undergo more than minor processing in Canada, the last NAFTA country in which the articles undergo any processing. The country of origin of the comforter and pillow sham is, therefore, Canada, the last NAFTA country in which the articles underwent more than minor processing.

Set

The "Bed in a Bag," consisting of the comforter, pillow sham, bed skirt, pillowcase, flat sheet and fitted sheet, are classified in accordance with NY I80828 as "goods put up in sets

for retail sale” pursuant to GRI 3(b). The comforter is the component of the set that provides the essential character. *See generally* HQ 562498; HQ 965696; and HQ 965309.

Quota/Visa Requirements

The comforter and pillow sham, although part of a set for classification purposes, are treated for quota and visa purposes as if they are imported separately. Section 204 of the Agricultural Act of 1956, 7 U.S.C. 1854, as amended, authorizes the President to limit importation into the United States of any textile or textile product. The President, in Executive Order 11651, 37 Fed. Reg. 4699 (Mar. 4, 1972), delegated the authority to supervise and implement all textile agreements and arrangements negotiated pursuant to Section 204 to the Committee for the Implementation of Textile Agreements (CITA).

CITA requires, as originally set forth in 53 Fed. Reg. 52765 (Dec. 29, 1988), clarified in 54 Fed. Reg. (Aug. 24, 1989) and reconfirmed in 67 Fed. Reg. 12977 (Mar. 20, 2002) that:

all applicable visa and quota requirements will apply for textiles and their products which are classified as parts of a set. The rule applies to all items which, if imported separately, would require a visa and the reporting of quota.

The comforter, if imported separately, is a NAFTA “originating” good and qualifies to be marked as country of origin Canada. The pillow sham, if imported separately, would not, however, qualify as a NAFTA “originating” good. The comforter is, therefore, a good of Canada for quota/visa purposes and the pillow sham is a good of Pakistan for quota / visa purposes. *See generally* HQ 965696; and HQ 965309.

The comforter would qualify as a NAFTA originating good because when the Pakistani fabric, classifiable in heading 5513, HTSUS, is made in Canada into the comforter shell, a transitional article in the production of the comforter is produced. The transition article, the comforter shell classifiable in heading 6307, HTSUS and deemed non-originating as permitted by the NAFTA rules of origin “self-produced material” rule, thereafter makes the tariff shift to subheading 9404.90, HTSUS. *See* 19 C.F.R. Part 181 Appendix section 4 (8); and GN 12 (t)/94.7.

This situation does not occur with the pillow sham. The pillow sham is not made into a transitional article from which an applicable tariff shift occurs prior to it being made into the final article. The pillow sham does not meet the definition of “self-produced material” when it is imported separately from the “Bed in a Bag” set. The pillow sham meets the definition of “self-produced material” in the instant case because when it is imported as a part of the “Bed in the Bag” set, it is the set that is the good. If the pillow sham was imported separately, there is no self-produced material, only the non-originating material, the fabric, and the final good, the pillow sham.

Holding:

New York Ruling Letter I80828 (May 10, 2002) is, hereby, modified.

The “Bed in a Bag,” consisting of the comforter, pillow sham, bed skirt, pillowcase, flat sheet and fitted sheet, classified as a set in subheading 9404.90.8522, Harmonized Tariff Schedule of the United States Annotated, is entitled to the “Special” Column 1 “CA” NAFTA rate of duty.

The Special Column 1 “CA” NAFTA Rate of Duty is FREE.

There are no quota reporting or visa requirements for goods of Canada. The applicable textile quota category, if the comforter classified in subheading 9404.90.8522, HTSUSA, was not a good of Canada, would be category: 666.

The applicable textile quota category for the pillow sham, which if imported separately would be classifiable in subheading 6304.93.0000, HTSUSA, is category: 666. The pillow sham, for quota reporting and visa requirements, is a product of Pakistan.

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

There are no applicable quota/visa requirements for products of World Trade Organization (WTO) member-countries as textile quota category 666 has been partially integrated for the relevant subheading. The textile category number above applies to merchandise produced in countries that are not members of the WTO.

The designated textile and apparel category may be subdivided into parts. If subdivided, any quota and visa requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent negotiations and changes, to obtain the most current information available, we suggest your client check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)* an internal issuance of Customs and Border

Protection which is updated weekly and is available for inspection at your local CBP office. The *Status Report On Current Import Quotas (Restraint Levels)* is also available on the Customs and Border Protection Web site 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 your local CBP office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

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

PROPOSED REVOCATION AND MODIFICATION OF RULING
LETTERS AND REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF PRINTED CARDS BEARING
A GREETING, MESSAGE OR ANNOUNCEMENT AND PRINTED
CARDS CONTAINING NO TEXT

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

ACTION: Notice of proposed revocation of tariff classification ruling letters, modification of tariff classification ruling letters and revocation of any treatment relating to the classification of printed cards bearing a greeting, message or announcement and printed cards containing no text.

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 revoke three ruling letters and modify six ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of cards bearing a greeting, message or announcement and printed cards containing no text. 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 June 20, 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 comments 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 revoke three ruling letters and to modify six ruling letters relating to the tariff classification of printed cards bearing a greeting, message or announcement and printed cards containing no text. Although in this notice CBP is specifically referring to the revocation of Headquarters Ruling Letter (HQ) 089218, dated September 12, 1991, New York Ruling Letter (NY) D88805, dated March 11, 1999 and NY E86598, dated September 14, 1999 (attachments A, B and C), and to the modification of NY D88577, dated March 4, 1999, NY E80955, dated April 30, 1999, NY E80406, dated April 22, 1999, NY 857929, dated November 15, 1990, NY D88802, dated March 11, 1999 and NY D88582, dated March 5, 1999 (attachments D through I), 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 identi-

cal 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 HTSUSA. 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 D88577, NY D88805, NY 857929, NY D88802 and NY E86598 Customs held that printed cards bearing no text were classified under heading 4817, HTSUSA, which provides for "Envelopes, letter cards, plain postcards and correspondence cards, of paper or paperboard; boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery." In HQ 089218, we held that printed cards with no text were classified under heading 4909, HTSUSA, as printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings.

For the reasons set forth in attachments J through R, we find that the cards with no text do not satisfy the terms of heading 4817, HTSUSA, or heading 4909, HTSUSA, and are properly classified under heading 4911, HTSUSA, as other printed matter.

Additionally, in NY D88582 CBP classified a card printed with a picture of the Kelmscott House, with a caption identifying it as the home of craftsman, poet and socialist William Morris, under heading 4817, HTSUSA. In NY E80406, CBP classified cards with historical information on their "rear faces" about a carpet displayed on the front of the cards under heading 4817, HTSUSA. In NY E80955, CBP classified cards with a flower design captioned with the identifying word "poppy" under heading 4817, HTSUSA. For the reasons set forth in attachments P through R, we now find that the text on those cards constitutes a message and that the cards are correctly classified under heading 4909, HTSUSA.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke HQ 089218, NY D88805 and NY E86598 and to modify NY D88577, NY E80955, NY E80406, NY 857929, NY D88802 and NY D88582 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 966395, HQ 966398, HQ 966415, HQ 966416, HQ 966417, HQ 966418, HQ 966419, HQ 966420 and HQ 966421 (attachments J through R). 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: May 1, 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,
Washington, DC, September 12, 1991.

CLA-2 CO:R:C:F 089218 ALS
Category: Classification
Tariff No. 0601.10, 1209.91, 1209.99,
2703.00, 3923.20, 3924.90, and 4909.00

MR. BRUCE R. LANG
SPECIALTIES SALES INC.
8940 N.W. 2nd Street
Coral Springs, FL 33071

Re: "Greeting" Cards Imported from Holland.

DEAR MR. LANG:

This is in response to your letter of March 18, 1991, to our New York Seaport Area Office requesting a binding ruling on "greeting" cards from Holland which, in addition to the card, consists of a plastic flower pot approximately 1½ inches high, a seed or bulb packet, a peat pellet and two clear plastic blisters which hold the pot to the card. Our New York office referred your request to us for consideration. Various samples of the article were provided.

Facts:

The article under consideration consists of a card which is folded over on itself and glued. There is a seed or bulb packet in between the glued sides of the card. The plastic blister, which holds a flower pot and a peat pellet, fits into a notch in the card, with the ears of both the front and back halves of the plastic blister fitting between the glued halves of the card.

The card is illustrated, as appropriate to the seed/bulb, and may contain a two word greeting on the front. The illustration may be a snow covered fir tree in the case of the card which accompanies the fir tree seeds. Other illustrations appear on other cards. These cards may be imported with all the components fully assembled ready for retail sale. These cards may be imported with all its components present in an unassembled condition. Such cards with unassembled components will be assembled prior to being marketed for retail sale. Some of the cards may be imported incomplete with components to be added subsequent to importation and assembled before the "card" is put up for retail sale. One or more components, e.g. seed and/or peat pellet, may be imported together or separately and assembled with other components or groups of components subsequent to importation and before the "card" is ready for retail sale.

Issue:

1. What is the classification of "greeting" cards composed of a card, seeds/bulbs, a small flower pot, a peat pellet and plasters blisters which serve to hold the pot in place and attached to the card?

2. Does the fact that the cards are fully assembled or unassembled when imported or that only some of the components are present affect the classification?

Law and Analysis:

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRI's) taken in order.

GRI 1 provides that the classification is determined first in accordance with the terms of the headings and any relative section and chapter notes. If GRI 1 fails to classify the goods, and if the heading and legal notes do not otherwise require, the remaining GRI's are applied taken in order.

In reviewing the headings eligible for classification of these goods, we noted that the components are classifiable in 6 different headings. The card in Heading 4909, HTSUSA, the plastic flower pot in Heading 3924, HTSUSA, the plastic blister in Heading 3923, HTSUSA, the seeds in Heading 1209, HTSUSA, the bulbs in Heading 0601, HTSUSA, and the peat in Heading 2703, HTSUSA. There is no specific heading that refers to the article in its completed form even when considering GRI 2(a) which provides that articles which are incomplete or unfinished and articles which are presented unassembled or disassembled are generally classified the same as the completed article. We next considered GRI 2(b) which provides that goods classifiable under 2 or more headings shall be classified according to the provisions of GRI 3. Although GRI 3(a) provides that the heading with the most specific description shall be preferred to other headings, when 2 or more headings refer to part only of the materials or substances contained in mixed or composite goods, the headings are to be considered as equally specific. We found that to be the case with this article so it could not be classified under that GRI.

We next referred to GRI 3(b) which covers mixtures, composite goods consisting of different materials or made up of different components and goods put up in sets for retail sale, which cannot be classified by reference to GRI 3(a). GRI 3(b) further provides that such goods are to be classified as if they consisted of the material or component which gives them their essential character. While the article is a composite insofar as it is made up of different materials and components, we have been unable to conclude that any one material/component gives the article its essential character. Although some of the cards contain a short greeting, that is not a uniform characteristic of the cards. It is noted that most of the printing on the card is related to growing a tree/plant. While the cards do hold the small flower pot, it does not appear that they were primarily designed for that purposes. Also, while the pot, seed and peat pellet will, by following the directions, produce a live tree/plant, it is not clear that this is the primary purpose of the article.

We considered the information supplied by the inquirer, as later supplemented by telephone, the value of the components materials is as follows:

Card	With silver foil printing	.1655
	with colored in printing	.0993
Blisters		.0867
Seeds/bulbs		.0818
Small pot		.0576
Peat pellet		.0364

There is some slight variance, less than 1/10 of one cent, for components separately imported.

This information shows that the various components were of comparable value and none was predominant. Thus, as previously noted, one material/component did not the product its essential character.

In considering whether the subject articles are sets for retail sale in accord with GRI 3(b), we evaluated the article against the specified requirements which a product must meet to qualify for classification thereunder. The assembled articles must:

- (a) consist of at least 2 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 retail sale directly to user without repacking.

In considering whether the article would qualify as goods put up in sets for retail sale, we noted that the article does consist of components classifiable in different headings. We, however, were unable to confirm that the articles were put up together to meet a particular need or carry out a specific activity. Also, since some of the items must be completed

after importation, they are not suitable for retail sale at the time of importation and do not meet the requirements of GRI 3(b).

We also concluded that GRI 3(c) did not apply since the headings each referred to only part of the materials or substances contained in mixed or composite goods. We found that to be the case with this article so it could not be classified under that GRI.

We have concluded that the article under consideration is merely a group of separate components which are packaged together as a novelty item. Based thereon, we have concluded that the components are separately dutiable in accordance with GRI 1 whether they are fully or partially assembled, unassembled, whether or not imported together and regardless of the effort subsequent to importation needed to place them in condition ready for retail sale. In this regard, we noted Headquarters Ruling Letter (HRL) 084135 of July 14, 1989, where we held that the components of an article composed of a greeting card with a baby bib attached thereto, were separately dutiable.

Holding:

The cards, which are illustrated and may or may not have a greeting are classifiable under subheading 4909.00, HTSUSA, and are dutiable at a general rate of 4.9 per cent ad valorem.

The plastic blisters are classifiable under the provision for boxes, cases, crates and similar articles, of plastic, for the packing of goods, under subheading 3923.20, HTSUSA, and are dutiable at a general rate of 3 per cent ad valorem.

The flower pot is classifiable under the provision for other articles of plastic under subheading 3924.90, HTSUSA, and is dutiable at a general rate of 3.4 per cent ad valorem.

The peat pellet is classifiable under subheading 2703.00, HTSUSA, which covers peat, whether or not agglomerated. It is subject to a free general rate of duty.

The seeds are classifiable under Chapter 12 of the HTSUSA with the exact classification depending on the type of seed being imported. If the seeds are for fir or spruce trees (*picea pungens*), they are classifiable under subheading 1209.99, HTSUSA, and subject to a free general rate of duty. Egg plant seeds (*solanum melongena*) are classifiable under subheading 1209.91, HTSUSA, and subject to a free general rate of duty. Clover seeds (*oxalis depia*) of an unspecified type would be classifiable under subheading 1209.22, HTSUSA, and subject to a free general rate of duty. Radish seeds are classifiable under subheading 1209.91, HTSUSA, and subject to a general rate of duty of 3.3/kg.

Bulbs are general classifiable under subheading 0601.10, HTSUSA. Bulbs for which there is no specific provision would be classifiable under the provision for other bulbs in subheading 0601.10, HTSUSA, and would be dutiable at a general rate of duty of 5.5 per cent ad valorem.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY
BUREAU OF CUSTOMS AND BORDER PROTECTION,
New York, NY, March 11, 1999.
CLA-2-48-RR:NC:2:234 D88805
Category: Classification
Tariff No. 4817.20.4000

MR. DAVID KNIGHT
DIRECTOR
WILLOW DESIGN & PUBLISHING LIMITED
COOTEHALL, BOYLE, CO. ROSCOMMON
Ireland

Re: The tariff classification of blank notecards, from Ireland.

DEAR MR. KNIGHT:

In your letter dated February 17, 1999, you requested a tariff classification ruling for certain paper notecards. Two samples were submitted, which will be retained for reference.

The samples are paper notecards or correspondence cards, each with a matching accompanying paper envelope, packaged for retail sale in a sealed clear cellophane wrapper.

They contain no printed messages, personal greetings, or announcements, and are decorated on the front face with printed reproductions of "thoughtfully selected and hand-picked (flowers and leaves of) the fields and byways of Ireland".

The interior faces are blank, and are thus suitable for written correspondence and/or greeting. The rear face of each card is suitably marked with its country of origin, Ireland. The two samples are designated "Code N1" and "Code N7".

The applicable subheading for cards represented by these samples will be 4817.20.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for: Other (than certain enumerated) Envelopes, letter cards, plain postcards and correspondence cards, of paper or paperboard. The rate of duty is 1.6 percent.

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

A copy of this ruling letter or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding this ruling, contact National Import Specialist Carl Abramowitz, at (212) 637-7060.

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
New York, NY, September 14, 1999.

CLA-2-48-RR:NC:SP:234 E86598
Category: Classification
Tariff No. 4817.20.4000

MISS ANNE FONTENOY
2 Rozel Terrace, Church Road
Croydon, Surrey CR0 1SG
England

Re: The tariff classification of paper note cards from England.

DEAR MISS FONTENOY:

In your letter dated August 26, 1999, you requested a tariff classification ruling.

Two samples identified as "hand-made greeting cards" were submitted and will be retained for reference. Each is a folded paper note card, individually packed, together with a suitable paper envelope, in a sealed plastic bag. The face of each card bears a picture or design said to have been produced by airbrushing with ink using hand-cut stencils. The interiors are blank, suitable for written correspondence.

The applicable subheading for the above-described blank note card/envelope sets will be 4817.20.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for other (than certain enumerated) letter cards, plain postcards and correspondence cards, of paper or paperboard. The rate of duty will be 1.6%.

In your letter, you acknowledge that the submitted samples are not marked with their country of origin, but that you henceforth intend to include "Made in England" labels. Please be aware that such labeling must be in a conspicuous place (either on, or visible through, the sealed plastic bag), legible, and sufficiently permanent to reach the ultimate purchaser.

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 Carl Abramowitz at 212-637-7060.

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

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
New York, NY, March 4, 1999.
CLA-2-48:RR:NC:SP:234 D88577
Category: Classification
Tariff No. 4817.20.4000 and 4909.00.4020

MS. JOY BUTLER
HENRY-BUTLER PARTNERSHIP
8-8a King Street
Mold, Flintshire CH7 1LA
England

Re: The tariff classification of paper note cards and greeting cards from England.

DEAR MS. BUTLER:

In your letter dated February 15, 1998, you requested a tariff classification ruling. Four samples were submitted and will be retained for reference.

The first sample, identified as "Chequered Rose," is a folded paper note card measuring about 5¼" square in the closed position. Its face is printed with a design, while its interior is totally blank, suitable for written correspondence. The card is permanently mounted within a die-cut "windowed" cover consisting of an outer layer of stiff opaque paper and an inner layer of translucent paper. The item is put up for retail sale, together with a suitable paper envelope, in a clear cellophane packet.

The second sample, identified as "Grassland," consists of a folded sheet of stiff translucent paper, 5½" square in the closed position. A decorative 1-3/8" x 2" photograph is affixed to its face, while a 3¾" square piece of blank writing paper is affixed to an inner surface. This item is packed with an envelope as described above.

The third sample, identified as "Painted Faces," is a folded black paper card measuring 4" x 8¼" in the closed position. A 3" x 7½" sheet of blank, off-white writing paper is affixed to an interior surface. The face of the card incorporates slits which hold a 1¾" x 7" decorative, design-printed strip of paper (which can be removed from the card and used as a bookmark, if desired). Again, this item is packed with an envelope as described above.

The applicable subheading for the products represented by the samples "Chequered Rose," "Grassland" and "Painted Faces" will be 4817.20.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for other (than certain enumerated) letter cards, plain postcards and correspondence cards, of paper or paperboard. The rate of duty will be 1.6%.

The fourth sample, identified as "Three Wishes," is a folded paper card measuring 5½" square in the closed position. Its face has been printed with the words, "I have just three wishes and they are all for you." The face of the card is also decorated with a clear plastic cover incorporating a small photo, bits of metal and glitter. The interior is blank. This item is packed with an envelope as described above.

The applicable subheading for products represented by the "Three Wishes" sample will be 4909.00.4020, HTS, which provides for printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings: greeting cards. The rate of duty will be 2.4%.

We note that none of the samples are marked with their country of origin. When imported into the United States, the goods will be required to be so marked (e.g., "Made in England"), legibly, in a conspicuous place, and in a manner sufficiently permanent to reach the ultimate purchaser.

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 Carl Abramowitz at 212-637-7060.

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

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
New York, NY, April 30, 1999.
CLA-2-48:RR:NC:SP:234 E80955
Category: Classification
Tariff No. 4817.20.4000 and 4909.00.4020

MR. GEOFFREY WITTS
STONE MARKETING LIMITED
4 Ashby's Yard, Medway Wharf Road
Tonbridge, Kent TN9 1RE
England

Re: The tariff classification of note cards and greeting cards from England.

DEAR MR. WITTS:

In your letter dated March 12, 1999, received here on April 20, you requested a tariff classification ruling.

Five samples were submitted and will be retained for reference. Each is a folded paper card, about 4-1/4" x 6-1/8" in the closed position, individually packed for retail sale with a suitable paper mailing envelope in a sealed cellophane packet. The various styles represented by the samples differ in the nature and extent of their printed content, as indicated below:

<i>Style no.</i>	<i>Face</i>	<i>Interior</i>
NKV2	Heart design; no wording	Blank
NK1	Flower design, captioned with the identifying word, "poppy"	Blank
NKBD1	Picture followed by the words, "Happy Birthday"	Blank
NKCH19	Snowscape design; no wording	The words, "Season's Greetings"
NKCH2	Bird design, followed by the words, "Merry Christmas"	Blank

The back of each card is largely blank, but the lower portion is printed with a bar code, style number, your company's name and address, design/copyright information, and country of origin ("Printed in England").

The applicable subheading for the style NKV2 and NK1 card/envelope sets will be 4817.20.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for other (than certain enumerated) letter cards, plain postcards and correspondence cards, of paper or paperboard. The rate of duty will be 1.6%.

The applicable subheading for the style NKBD1, NKCH19 and NKCH2 card/envelope sets will be 4909.00.4020, HTS, which provides for printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings * * * greeting cards. The rate of duty will be 2.4%.

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 Carl Abramowitz at 212-637-7060.

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

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
New York, NY, April 22, 1999.

CLA-2-48, 49:RR:NC:2:234 E80406
Category: Classification
Tariff No. 4817.20.4000 and 4909.004020

MS. BONNIE JAY
TURKISH GREETINGS
2121 W. Spring Creek Parkway
Suite 214
Plano, TX 75023

Re: The tariff classification "carpet cards", from Turkey.

DEAR MS. JAY:

In your letter dated April 2, 1999, you requested a tariff classification ruling for certain correspondence and greeting cards, produced in Turkey, denominated "carpet cards".

A sample was submitted, which will be retained for reference. It is a folded paper or paperboard card, imported together with an appropriately sized mailing envelope. The front face of the card is decorated with a miniature woven carpet permanently attached by gluing. (The carpet cannot be removed without the probability of damaging exposed threads on its reverse.)

The interior two faces of the folded card are blank, and are suitable, and intended, for the writing of correspondence.

The rear face contains historical information about the "Kayseri Wool Carpet", presumably of which the miniature on the front face of the card is an example.

The applicable subheading for this product will be 4817.20.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for: Other (than certain enumerated) Envelopes, letter cards, plain postcards and correspondence cards, of paper or paperboard. The rate of duty is 1.6 percent.

Cards like the sample in all material respects, but also having messages printed on them, will also be imported. The applicable subheading for these ("carpet cards" with messages) will be 4909.00.4020, HTS, which provides for: Printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings: Greeting cards. The rate of duty is 2.4 percent.

Articles, the product of Turkey, which are classifiable in subheadings 4817.20.4000 and 4909.00.4020, are entitled to duty-free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

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

A copy of this ruling letter or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding this ruling, contact National Import Specialist Carl Abramowitz, at (212) 637-7060.

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

[ATTACHMENT G]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
New York, NY, November 15, 1990.

CLA48:S:N1:234 857929
Category: Classification
Tariff No. 4817.20.4000,
4909.00.4020, and 4911.91.3000

MR. DONALD J. SIEGEL
HOFUN TANGLIN
*Post Office Box 0132
Singapore 9124*

Re: The tariff classification of “note cards” and “matted prints” from Singapore.

DEAR MR. SIEGEL:

In your letter dated October 16, 1990, you requested a tariff classification ruling. Three samples were submitted and will be retained for reference.

The first item, designated a “watercolor note card,” is a single-fold card with a blank interior and a printed, color reproduction of original artwork on its face. It is packed, together with an envelope, in a cellophane pouch.

The applicable subheading for the “watercolor note card” will be 4817.20.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for correspondence cards of paper or paperboard. The rate of duty will be 3.2%.

The second item, a “watercolor note card with die cut,” is similar to the first, except that its cover incorporates a design-integrated die-cut flap, underneath of which is an accordion-fold, pull-out section printed with a message (“Greetings from Singapore”) and several miniature pictures. This card is also packed with an envelope in a cellophane pouch.

The applicable subheading for the “watercolor note card with die cut” will be 4909.00.4020, HTS, which provides for printed greeting cards. The rate of duty will be 4.9%.

The third item, a “matted print,” is a 12 x 18 cm sheet of paper bearing a lithographically printed reproduction of a work of art (watercolor picture). It is mounted in a paperboard frame having a thickness of about 2.65 mm.

The applicable subheading for the “matted print” will be 4911.91.3000, HTS, which provides for certain printed pictorial lithographs on paper or paperboard: over 0.51 mm in thickness. The rate of duty will be free.

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

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

JEAN F. MAGUIRE,
*Area Director,
New York Seaport.*

[ATTACHMENT H]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
New York, NY, March 11, 1999.
CLA-2-48:RR:NC:SP:234 D88802
Category: Classification
Tariff No. 4817.20.4000 and 4909.00.4020

MS. EMMA EUSTACE
BIG LEAP DESIGNS LIMITED
THE ROBE SMALL BUSINESS CENTRE
*Kilmaine Road
Ballinrobe, Co. Mayo
Ireland*

Re: The tariff classification of note cards from Ireland.

DEAR MS. EUSTACE:

In your letter dated February 19, 1999, you requested a tariff classification ruling. Two samples were submitted and will be retained for reference.

The first sample (marked "S31") is a folded paper note card packed together with a suitable paper envelope in a clear cellophane packet. The face of the card is printed with a picture of a cartoon-style figure, while the interior is blank, suitable for written correspondence.

The applicable subheading for the "S31" note card/envelope set will be 4817.20.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for other (than certain enumerated) letter cards, plain postcards and correspondence cards, of paper or paperboard. The rate of duty will be 1.6%.

The second sample (marked "A4") is a similar card/envelope set, except that in addition to a cartoon figure, the face of the card bears the printed caption, "Yo dude." The interior of the card is again blank.

The applicable subheading for the "A4" card/envelope set will be 4909.00.4020, HTS, which provides for printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings * * * greeting cards. The rate of duty will be 2.4%.

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 Carl Abramowitz at 212-637-7060.

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

[ATTACHMENT I]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
New York, NY, March 5, 1999.
CLA-2-48:RR:NC:SP:234 D88582
Category: Classification
Tariff No. 4817.20.4000 and 4909.00.4040

MR. RICHARD BARSON
WORLD'S GREATEST MINDS LTD.
15 New Bond Street
Bath BA1 1BA
England

Re: The tariff classification of printed paper note cards from England.

DEAR MR. BARSON:

In your letter dated February 16, 1999, you requested a tariff classification ruling. Three samples were submitted and will be retained for reference.

The first sample ("A5") is a folded paper note card packed in a cellophane packet together with a suitable paper envelope. The face of the card is printed with a picture of Kelm-scott House, with a caption identifying it as the home of craftsman, poet and socialist William Morris. The interior of the card is blank, suitable for written correspondence.

The applicable subheading for the "A5" card/envelope set will be 4817.20.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for other (than certain enumerated) letter cards, plain postcards and correspondence cards. The rate of duty will be 1.6%.

The second and third samples are also folded paper card/envelope sets, individually packed in cellophane packets. However, while these cards again feature blank interiors, their faces are prominently printed with quotations attributed to famous writers. Card "W14" reads, "It is never too late to be what you might have been" (—George Eliot). Card "B11" reads, "Pleasure's a sin and sometimes sin's a pleasure" (—Lord Byron). It appears that if either of these cards is thoughtfully and appropriately sent to a recipient in a particular situation or context, the printed quotation may serve as a kind of personal message similar to one found on a conventional greeting card.

The applicable subheading for the "W14" and "B11" card/envelope sets will be 4909.00.4040, HTS, which provides for other (than certain enumerated) printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings. The rate of duty will be 2.4%.

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 Carl Abramowitz at 212-637-7060.

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

[ATTACHMENT J]

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

CLA-2 RR:CR:TE 966395 RH

Category: Classification

Tariff Nos. 4911.91.20, 4911.91.40, and 4909.00.4040

MR. BRUCE R. LANG
SPECIALTIES SALES, INC.
8940 N.W. 2nd Street
Coral Springs, FL 33071

Re: Revocation of HQ 089218; Classification of cards; Heading 4909, Heading 4911.

DEAR MR. LANG:

On September 12, 1991, Customs (now Customs & Border Protection (“CBP”)) issued Headquarters Ruling Letter (HQ) 089218 to you concerning the classification of “greeting” cards and the components that make up the cards. In that ruling, CBP classified illustrated cards, which may or may not have a greeting, under heading 4909 of the Harmonized Tariff Schedule of the United States (HTSUS), as printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings.

For the reasons set forth below, we find that HQ 089218 was incorrect and that the proper classification of the cards *without a greeting* is under heading 4911, HTSUS, as other printed matter. We further find that HQ 089218 erroneously held that the components that make up the cards were classified separately, pursuant to GRI 1, HTSUS, in heading 3923, HTSUS, heading 2703, HTSUS, heading 1209, HTSUS and heading 0601, HTSUS. The unassembled or incomplete cards are correctly classified under headings 4909, HTSUS or 4911, HTSUS, pursuant to GRI 2(a).

Facts:

A description of the merchandise at issue in HQ 089218 reads as follows:

The article under consideration consists of a card which is folded over on itself and glued. There is a seed or bulb packet in between the glued sides of the card. The plastic blister, which holds a flower pot and a peat pellet, fits into a notch in the card, with the ears of both the front and back halves of the plastic blister fitting between the glued halves of the card. The card is illustrated, as appropriate to the seed/bulb, and may contain a two word greeting on the front. The illustration may be a snow covered fir tree in the case of the card which accompanies the fir tree seeds. Other illustrations appear on other cards. These cards may be imported with all the components fully assembled ready for retail state. These cards may be imported with all its components present in an unassembled condition. Such cards with unassembled components will be assembled prior to being marketed for retail sale. Some of the cards may be imported incomplete with components to be added subsequent to importation and assembled before the “card” is put up for retail sale. One or more components, e.g. seed and/or peat pellet, may be imported together or separately and assembled with other components or groups of components subsequent to importation and before the “card” is ready for retail sale.

Issue:

Are the cards classifiable under heading 4909, HTSUS, as cards bearing a personal greeting, message or announcement or under heading 4911, HTSUS, as other printed matter?

Law and Analysis:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). 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 GRI's taken in order.

Additionally, the Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the inter-

national level. The EN's 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 EN's when interpreting the HTSUS.

Heading 4909, HTSUS, provides for "Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings."

The terms "greeting, message or announcement" are defined in *Webster's Deluxe Unabridged Dictionary*, 1979, as follows:

greeting—the act or words of a person who greets [at 800]; See also *Webster's Ninth New Collegiate Dictionary*, 1991, defining greeting as "a salutation at meeting" or "expression of good wishes";

message—any communication, written or oral, sent between persons [at 1130];

announcement—a written or printed notice [at 74].

In our opinion, the definition of "message"—any communication, written or oral—has a broad application. For example, a communication may be in the form of an editorial comment, expression of an idea, or the transmission or conveyance of knowledge or information. However, we note that marketing information such as a bar code, style number, company name and address, design/copyright and country of origin, which is generally printed on the back of a card, does not constitute a message sent between persons for purposes of heading 4909, HTSUS.

Additionally, the Explanatory Notes to heading 4909, HTSUS, provide examples of the products comprised in the heading, particularly:

* * * * *

(2) Christmas, New Year, birthday or similar cards. These may be in the form of picture postcards, or consist of two or more folded leaves fastened together, one face or more being devoted to pictorial matter. The term "similar cards" is to be taken to include cards used to announce births or christenings, or for conveying congratulations or thanks. The printed cards may incorporate trimmings such as ribbons, cords, tassels and embroidery, or novelty features such as pull-out views, or be decorated with glass powder, etc.

The nomenclature in heading 4909, HTSUS, and the Chapter 49 notes make a distinction between printed material in the form of literary text and printed material in the form of illustrations. For example, heading 4909, HTSUS, is divided into two parts, separated by a semicolon. The first part of the heading provides for "printed or illustrated postcards." *Emphasis added.* The second part of the heading covers "printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings." *Emphasis added.* Based on the terms of the heading, the phrase "bearing personal greetings, messages or announcements" clearly requires some form of literary text. Simply stated, cards of heading 4909, HTSUS, may consist of plain cards printed with a greeting, message or announcement, or cards with a printed greeting, message or announcement that are also decorated. The heading does not cover cards that are printed *only* with illustrations.

In addition to the language of heading 4909, Note 4 to Chapter 49, HTSUS, further demonstrates the distinction between literary and illustrated material for the purposes of that chapter. While the first part of that note addresses heading 4901, HTSUS ("Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets"), the last sentence is relevant in this case. It states that "printed pictures or illustrations not bearing a text, whether in the form of signatures or separate sheets, fall in heading 4911." *Emphasis supplied.* Heading 4911, HTSUS, provides for "other printed matter including printed pictures and photographs."

The cards in the instant case present three scenarios. In some instances, the cards contain a short greeting. Those cards clearly satisfy the terms of heading 4909, HTSUS. Most of the "printing" on the cards, however, consists of directions related to growing a tree/plant. We consider this information to be consistent with the definition of a message in that it transmits and or conveys knowledge or information. Thus, those cards are also classified under heading 4909, HTSUS. On the other hand, the illustrated cards "not bearing a text" do not satisfy the terms of heading 4909, HTSUS, and are classifiable in heading 4911, HTSUS, as other printed matter.

Finally, we note that in HQ 089218 CBP erroneously found that the components that make up the cards were separately classified in heading 3923, HTSUS, heading 2703,

HTSUS, heading 1209, HTSUS and heading 0601, HTSUS, pursuant to GRI 1, HTSUS, stating:

We have concluded that the article under consideration is merely a group of separate components which are packaged together as a novelty item. Based thereon, we have concluded that the components are separately dutiable in accordance with GRI 1 whether they are fully or partially assembled, unassembled, whether or not imported together and regardless of the effort subsequent to importation needed to place them in condition ready for retail sale.

GRI 2(a) reads:

Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also include a reference to the article complete or finished (or falling to be classified as complete or finished by virtue of this rule), entered unassembled or disassembled.

The correct application of the GRI's mandates that the assembled, finished cards are classified pursuant to GRI 1, HTSUS, under headings 4909 or 4911, as discussed above. However, the components that make up the unassembled cards, if entered together, have the essential character of the complete or finished cards and are therefore classifiable in headings 4909 or 4911, as appropriate, pursuant to GRI 2(a), HTSUS. If the card components come in unassembled and incomplete, we would classify them following the same GRI 2(a) principles. For purposes of this ruling, we assume that the incomplete or unassembled cards have the essential character of the complete or finished cards.

Holding:

HQ 089218 is REVOKED. The illustrated cards that do *not* contain a personal greeting, message or announcement are classified under heading 4911, HTSUS, which provides for "Other printed matter, including printed pictures and photographs."

We do not have sufficient information to provide you with the tariff classification at the 10-digit level. If the cards are printed by lithography, they are classifiable under subheading 4911.91.20, HTSUS. Merchandise classifiable under that tariff provision is dutiable at 0.3¢/kg.

If the cards are not printed by lithography, they are classifiable under subheading 4911.91.40, HTSUS, as other pictures, designs and photographs. Merchandise classifiable under that tariff provision is dutiable at 0.3 percent *ad valorem*.

The illustrated cards bearing a written greeting, message or announcement are classified under subheading 4909.00.4040, HTSUS. They are dutiable at 0.5 percent *ad valorem*.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT K]

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

CLA-2 RR:CR:TE 966398 RH
Category: Classification
Tariff Nos. 4911.91.20,
4911.91.40, and 4909.00.4020

MS. JOY BUTLER
HENRY-BUTLER PARTNERSHIP
8-8a King Street
Mold, Flintshire CH7 1LA

Re: Modification of NY D88577; Classification of blank cards; Heading 4909; Heading 4911; Heading 4817.

DEAR MS. BUTLER:

On March 4, 1999, Customs (now Customs & Border Protection ("CBP")) issued New York Ruling Letter (NY) D88577 to you concerning the classification of paper note cards and greeting cards from England. In that ruling, CBP classified the cards with written messages printed on them under subheading 4909.00.4020 of the Harmonized Tariff Schedule of the United States (HTSUS), as printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings. The cards without a written greeting, message or announcement were classified under subheading 4817.20.4000, HTSUS, as letter cards, plain postcards and correspondence cards.

For the reasons set forth below, we find that NY D88577 was incorrect, in part, and that the proper classification of the cards without a written greeting is under heading 4911, HTSUS, as other printed matter.

Facts:

A description of the merchandise at issue in NY D88577 reads as follows:

The first sample, identified as "Chequered Rose," is a folded paper note card measuring about 5-1/4" square in the closed position. Its face is printed with a design, while its interior is totally blank, suitable for written correspondence. The card is permanently mounted within a die-cut "windowed" cover consisting of an outer layer of stiff opaque paper and an inner layer of translucent paper. The item is put up for retail sale, together with a suitable paper envelope, in a clear cellophane packet.

The second sample, identified as "Grassland," consists of a folded sheet of stiff translucent paper, 5-1/2" square in the closed position. A decorative 1-3/8" x 2" photograph is affixed to its face, while a 3-3/4" square piece of blank writing paper is affixed to an inner surface. This item is packed with an envelope as described above.

The third sample, identified as "Painted Faces," is a folded black paper card measuring 4" x 8-1/4" in the closed position. A 3" x 7-1/2" sheet of blank, off-white writing paper is affixed to an interior surface. The face of the card incorporates slits which hold a 1-3/4" x 7" decorative, design-printed strip of paper (which can be removed from the card and used as a bookmark, if desired). Again, this item is packed with an envelope as described above.

The fourth sample, identified as "Three Wishes," is a folded paper card measuring 5-1/2" square in the closed position. Its face has been printed with the words, "I have just three wishes and they are all for you." The face of the card is also decorated with a clear plastic cover incorporating a small photo, bits of metal and glitter. The interior is blank. This item is packed with an envelope as described above.

Issue:

Are the blank cards classifiable under heading 4817, HTSUS, as envelopes, letter cards, plain postcards and correspondence cards, under heading 4911, HTSUS, as other printed matter or under heading 4909, HTSUS, as cards bearing a personal greeting, message or announcement?

Law and Analysis:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). 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 GRI's taken in order.

Additionally, the Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. The EN's 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 EN's when interpreting the HTSUS.

Heading 4817, HTSUS, provides for "Envelopes, letter cards, plain postcards and correspondence cards, of paper or paperboard; boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery."

The Explanatory Notes to heading 4817, HTSUS, provide guidance on the scope of the heading. They read, in relevant part:

This heading covers paper stationery of the kind used in correspondence, e.g., envelopes, letter cards, plain postcards (including correspondence cards). Separate writing paper in loose sheets or in blocks and certain other articles referred to below are, however, excluded.

These articles may be printed with addresses, names, trade marks, decorations, crests, initials, etc., merely incidental to their use as stationery.

Letter cards are sheets of paper or paperboard or cards with gummed (and sometimes perforated) edges or other provision for closing or sealing without the use of envelopes.

Plain postcards do not fall in this heading unless they contain printed provision for the address or stamp or other indications of their use.

Correspondence cards do not fall in this heading unless they have deckled or gilt edges or rounded corners, or are printed or otherwise prepared in such a manner as clearly to indicate their use as stationery. Plain cards not so prepared are classified in heading 48.23, as are, generally, unprinted visiting cards.

The heading also covers boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery.

The cards in question clearly do not fall within the definitions of letter cards, plain postcards or correspondence cards, which are covered by the first part of heading 4817, HTSUS. Furthermore, the cards are not characteristic of any of the items in the second part of heading 4817, HTSUS, e.g., boxes, pouches, wallets and writing compendiums. Moreover, the pictorial matter on the cards in question forms the principal feature of the cards and is not "merely incidental" to their use. Accordingly, we find that the cards are not classifiable in heading 4817, HTSUS.

Heading 4909, HTSUS, provides for "Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings."

The terms "greeting, message or announcement" are defined in *Webster's Deluxe Unabridged Dictionary*, 1979, as follows:

greeting—the act or words of a person who greets [at 800]; See also *Webster's Ninth New Collegiate Dictionary*, 1991, defining greeting as "a salutation at meeting" or "expression of good wishes";

message—any communication, written or oral, sent between persons [at 1130];

announcement—a written or printed notice [at 74].

In our opinion, the definition of "message"—any communication, written or oral—has a broad application. For example, a communication may be in the form of an editorial comment, expression of an idea, or the transmission or conveyance of knowledge or information. However, we note that marketing information such as a bar code, style number, company name and address, design/copyright and country of origin, which is generally printed on the back of a card, does not constitute a message sent between persons for purposes of heading 4909, HTSUS.

Additionally, the Explanatory Notes to heading 4909, HTSUS, provide examples of the products comprised in the heading, particularly:

* * * * *

(2) Christmas, New Year, birthday or similar cards. These may be in the form of picture postcards, or consist of two or more folded leaves fastened together, one face or more being devoted to pictorial matter. The term "similar cards" is to be taken to in-

clude cards used to announce births or christenings, or for conveying congratulations or thanks. The printed cards may incorporate trimmings such as ribbons, cords, tassels and embroidery, or novelty features such as pull-out views, or be decorated with glass powder, etc.

The nomenclature in heading 4909, HTSUS, and the Chapter 49 notes make a distinction between printed material in the form of literary text and printed material in the form of illustrations. For example, heading 4909, HTSUS, is divided into two parts, separated by a semicolon. The first part of the heading provides for “printed or illustrated post-cards.” *Emphasis added.* The second part of the heading covers “printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings.” *Emphasis added.* Based on the terms of the heading, the phrase “bearing personal greetings, messages or announcements” clearly requires printed cards to include some form of literary text. Simply stated, cards of heading 4909, HTSUS, may consist of plain cards printed with a greeting, message or announcement, or cards with a printed greeting, message or announcement that are also decorated. The heading does not cover cards that are printed *only* with illustrations.

In addition to the language of heading 4909, Note 4 to Chapter 49, HTSUS, further demonstrates the distinction between literary and illustrated material for the purposes of that chapter. While the first part of that note addresses heading 4901, HTSUS (“Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets”), the last sentence is relevant in this case. It states that “printed pictures or illustrations not bearing a text, whether in the form of signatures or separate sheets, fall in heading 4911.” *Emphasis supplied.* Heading 4911, HTSUS, provides for “other printed matter including printed pictures and photographs.”

In this case, since the “Chequered Rose,” “Grassland” and “Painted Faces” cards do not have a written greeting, message or announcement, they are precluded from classification in heading 4909, HTSUS. Therefore, the cards fall in heading 4911, HTSUS, as other printed matter.

Holding:

NY D88577 is MODIFIED. The “Chequered Rose,” “Grassland” and “Painted Faces” cards are classified under heading 4911, HTSUS, as other printed matter.

We do not have sufficient information to provide you with the tariff classification at the 10-digit level. If the cards are printed by lithography and are not over 0.51 mm in thickness, they are classifiable under subheading 4911.91.20, HTSUS. Merchandise classifiable under that tariff provision is dutiable at 0.3¢/kg.

If the cards are not printed by lithography, they are classifiable under subheading 4911.91.40, HTSUS, as other pictures, designs and photographs. Merchandise classifiable under that tariff provision is dutiable at 0.3 percent *ad valorem*.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT L]

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

CLA-2 RR:CR:TE 966415 RH
Category: Classification
Tariff Nos. 4911.91.20 and 4911.91.40

MR. DAVID KNIGHT
DIRECTOR
WILLOW DESIGN & PUBLISHING LIMITED
COOTEHALL, BOYLE, CO.
Roscommon
Ireland

Re: Revocation of NY D88805; Classification of blank cards; Heading 4909; Heading 4911; Heading 4817.

DEAR MR. KNIGHT:

On March 11, 1999, Customs (now Customs & Border Protection ("CBP")) issued New York Ruling Letter (NY) D88805 to you concerning the classification of note cards from Ireland. In that ruling, CBP classified the note cards with no text under subheading 4817.20.4000 of the Harmonized Tariff Schedule of the United States (HTSUS), as letter cards, plain postcards and correspondence cards.

For the reasons set forth below, we find that NY D88805 was incorrect, and that the proper classification of the blank note cards is under heading 4911, HTSUS, as other printed matter.

Facts:

A description of the merchandise in NY D88805 reads as follows:

The samples are paper note cards or correspondence cards, each with a matching accompanying paper envelope, packaged for retail sale in a sealed clear cellophane wrapper.

They contain no printed messages, personal greetings, or announcements, and are decorated on the front face with printed reproductions of "thoughtfully selected and hand picked (flowers and leaves of) the fields and byways of Ireland".

The interior faces are blank, and are thus suitable for written correspondence and/or greeting. The rear face of each card is suitably marked with its country of origin, Ireland. The two samples are designated "Code N1" and "Code N7".

Issue:

Are the note cards with no text classifiable under heading 4817, HTSUS, as envelopes, letter cards, plain postcards and correspondence cards, under heading 4911, HTSUS, as other printed matter or under heading 4909, HTSUS, as cards bearing a personal greeting, message or announcement?

Law and Analysis:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). 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 GRI's taken in order.

Additionally, the Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. The EN's 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 EN's when interpreting the HTSUS.

Heading 4817, HTSUS, provides for "Envelopes, letter cards, plain postcards and correspondence cards, of paper or paperboard; boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery."

The Explanatory Notes to heading 4817, HTSUS, provide guidance on the scope of the heading. They read, in relevant part:

This heading covers paper stationery of the kind used in correspondence, e.g., envelopes, letter cards, plain postcards (including correspondence cards). Separate writing paper in loose sheets or in blocks and certain other articles referred to below are, however, excluded.

These articles may be printed with addresses, names, trade marks, decorations, crests, initials, etc., merely incidental to their use as stationery.

Letter cards are sheets of paper or paperboard or cards with gummed (and sometimes perforated) edges or other provision for closing or sealing without the use of envelopes.

Plain postcards do not fall in this heading unless they contain printed provision for the address or stamp or other indications of their use.

Correspondence cards do not fall in this heading unless they have deckled or gilt edges or rounded corners, or are printed or otherwise prepared in such a manner as clearly to indicate their use as stationery. Plain cards not so prepared are classified in heading 48.23, as are, generally, unprinted visiting cards.

The heading also covers boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery.

The cards in question clearly do not fall within the definitions of letter cards, plain postcards or correspondence cards, which are covered by the first part of heading 4817, HTSUS. Furthermore, the cards are not characteristic of any of the items in the second part of heading 4817, HTSUS, e.g., boxes, pouches, wallets and writing compendiums. Accordingly, we find that the cards are not classifiable in heading 4817, HTSUS.

Heading 4909, HTSUS, provides for “Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings.”

The terms “greeting, message or announcement” are defined in *Webster’s Deluxe Unabridged Dictionary*, 1979, as follows:

greeting—the act or words of a person who greets [at 800]; See also *Webster’s Ninth New Collegiate Dictionary*, 1991, defining greeting as “a salutation at meeting” or “expression of good wishes”;

message—any communication, written or oral, sent between persons [at 1130];

announcement—a written or printed notice [at 74].

In our opinion, the definition of “message”—any communication, written or oral—has a broad application. For example, a communication may be in the form of an editorial comment, expression of an idea, or the transmission or conveyance of knowledge or information. However, we note that marketing information such as a bar code, style number, company name and address, design/copyright and country of origin, which is generally printed on the back of a card, does not constitute a message sent between persons for purposes of heading 4909, HTSUS.

Additionally, the Explanatory Notes to heading 4909, HTSUS, provide examples of the products comprised in the heading, particularly:

* * * * *

(2) Christmas, New Year, birthday or similar cards. These may be in the form of picture postcards, or consist of two or more folded leaves fastened together, one face or more being devoted to pictorial matter. The term “similar cards” is to be taken to include cards used to announce births or christenings, or for conveying congratulations or thanks. The printed cards may incorporate trimmings such as ribbons, cords, tassels and embroidery, or novelty features such as pull-out views, or be decorated with glass powder, etc.

The nomenclature in heading 4909, HTSUS, and the Chapter 49 notes make a distinction between printed material in the form of literary text and printed material in the form of illustrations. For example, heading 4909, HTSUS, is divided into two parts, separated by a semicolon. The first part of the heading provides for “printed or illustrated postcards.” *Emphasis added*. The second part of the heading covers “printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings.” *Emphasis added*. Based on the terms of the heading, the phrase “bearing personal greetings, messages or announcements” clearly requires some form of literary text. Simply stated, cards of heading 4909, HTSUS, may consist of plain

cards printed with a greeting, message or announcement, or cards with a printed greeting, message or announcement that are also decorated. The heading does not cover cards that are printed *only* with illustrations.

In addition to the language of heading 4909, Note 4 to Chapter 49, HTSUS, further demonstrates the distinction between literary and illustrated material for the purposes of that chapter. While the first part of that note addresses heading 4901, HTSUS (“Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets”), the last sentence is relevant in this case. It states that “printed pictures or illustrations not bearing a text, whether in the form of signatures or separate sheets, fall in heading 4911.” *Emphasis supplied.*

Heading 4911, HTSUS, provides for “other printed matter including printed pictures and photographs.” In this case, since the note cards do not have a written greeting, message or announcement, they are precluded from classification in heading 4909, HTSUS. Consequently, the cards fall in heading 4911, HTSUS, as other printed matter.

Holding:

NY D8805 is REVOKED.

We do not have sufficient information to provide you with the tariff classification at the 10-digit level. If the card is printed by lithography and is not over 0.51 mm in thickness, it is classifiable under subheading 4911.91.20, HTSUS. Merchandise classifiable under that tariff provision is dutiable at 0.3¢/kg.

If the card is not printed by lithography, it is classifiable under subheading 4911.91.40, HTSUS, as other pictures, designs and photographs. Merchandise classifiable under that tariff provision is dutiable at 0.3 percent *ad valorem*.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT M]

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

CLA-2 RR:CR:TE 966416 RH
Category: Classification
Tariff Nos. 4911.91.20 and 4911.91.40

MS. EMMA EUSTACE
BIG LEAP DESIGNS LIMITED
The Robe Small Business Center
Kilmaine Road
Ballinrobe, Co. Mayo
Ireland

Re: Modification of NY D88802; Classification of blank cards; Heading 4909; Heading 4911; Heading 4817.

DEAR MS. EUSTACE:

On March 11, 1999, Customs (now Customs & Border Protection (“CBP”)) issued New York Ruling Letter (NY) D88802 to you concerning the classification of a note cards from Ireland. In that ruling, CBP classified the note card with no text under subheading 4817.20.4000 of the Harmonized Tariff Schedule of the United States (HTSUS), as letter cards, plain postcards and correspondence cards. We classified the note card with the caption “Yo dude” on the face of the card under subheading 4909.00.4020, HTSUS.

For the reasons set forth below, we find that NY D88802 was incorrect, in part, and that the proper classification of the blank note card is under heading 4911, HTSUS, as other printed matter. Classification of the note card with a caption was correct.

Facts:

A description of the merchandise in NY D88802 reads as follows:

The first sample (marked “S31”) is a folded paper note card packed together with a suitable paper envelope in a clear cellophane packet. The face of the card is printed

with a picture of a cartoon-style figure, while the interior is blank, suitable for written correspondence.

The second sample (marked "A4") is a similar card/envelope set, except that in addition to a cartoon figure, the face of the card bears the printed caption, "Yo dude." The interior of the card is again blank.

Issue:

Is the note card with no text classifiable under heading 4817, HTSUS, as envelopes, letter cards, plain postcards and correspondence cards, under heading 4911, HTSUS, as other printed matter or under heading 4909, HTSUS, as cards bearing a personal greeting, message or announcement?

Law and Analysis:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). 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 GRI's taken in order.

Additionally, the Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. The EN's 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 EN's when interpreting the HTSUS.

Heading 4817, HTSUS, provides for "Envelopes, letter cards, plain postcards and correspondence cards, of paper or paperboard; boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery."

The Explanatory Notes to heading 4817, HTSUS, provide guidance on the scope of the heading. They read, in relevant part:

This heading covers paper stationery of the kind used in correspondence, e.g., envelopes, letter cards, plain postcards (including correspondence cards). Separate writing paper in loose sheets or in blocks and certain other articles referred to below are, however, excluded.

These articles may be printed with addresses, names, trade marks, decorations, crests, initials, etc., merely incidental to their use as stationery.

Letter cards are sheets of paper or paperboard or cards with gummed (and sometimes perforated) edges or other provision for closing or sealing without the use of envelopes.

Plain postcards do not fall in this heading unless they contain printed provision for the address or stamp or other indications of their use.

Correspondence cards do not fall in this heading unless they have deckled or gilt edges or rounded corners, or are printed or otherwise prepared in such a manner as clearly to indicate their use as stationery. Plain cards not so prepared are classified in heading 48.23, as are, generally, unprinted visiting cards.

The heading also covers boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery.

The card in question clearly does not fall within the definitions of letter cards, plain postcards or correspondence cards, which are covered by the first part of heading 4817, HTSUS. Furthermore, the card is not characteristic of any of the items in the second part of heading 4817, HTSUS, e.g., boxes, pouches, wallets and writing compendiums. Accordingly, we find that the card is not classifiable in heading 4817, HTSUS.

Heading 4909, HTSUS, provides for "Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings."

The terms "greeting, message or announcement" are defined in *Webster's Deluxe Unabridged Dictionary*, 1979, as follows:

greeting—the act or words of a person who greets [at 800]; See also *Webster's Ninth New Collegiate Dictionary*, 1991, defining greeting as "a salutation at meeting" or "expression of good wishes";

message—any communication, written or oral, sent between persons [at 1130];

announcement—a written or printed notice [at 74].

In our opinion, the definition of "message"—any communication, written or oral—has a broad application. For example, a communication may be in the form of an editorial com-

ment, expression of an idea, or the transmission or conveyance of knowledge or information. However, we note that marketing information such as a bar code, style number, company name and address, design/copyright and country of origin, which is generally printed on the back of a card, does not constitute a message sent between persons for purposes of heading 4909, HTSUS.

Additionally, the Explanatory Notes to heading 4909, HTSUS, provide examples of the products comprised in the heading, particularly:

* * * * *

(2) Christmas, New Year, birthday or similar cards. These may be in the form of picture postcards, or consist of two or more folded leaves fastened together, one face or more being devoted to pictorial matter. The term "similar cards" is to be taken to include cards used to announce births or christenings, or for conveying congratulations or thanks. The printed cards may incorporate trimmings such as ribbons, cords, tassels and embroidery, or novelty features such as pull-out views, or be decorated with glass powder, etc.

The nomenclature in heading 4909, HTSUS, and the Chapter 49 notes make a distinction between printed material in the form of literary text and printed material in the form of illustrations. For example, heading 4909, HTSUS, is divided into two parts, separated by a semicolon. The first part of the heading provides for "printed or illustrated postcards." *Emphasis added.* The second part of the heading covers "printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings." *Emphasis added.* Based on the terms of the heading, the phrase "bearing personal greetings, messages or announcements" clearly requires some form of literary text. Simply stated, cards of heading 4909, HTSUS, may consist of plain cards printed with a greeting, message or announcement, or cards with a printed greeting, message or announcement that are also decorated. The heading does not cover cards that are printed *only* with illustrations.

In addition to the language of heading 4909, Note 4 to Chapter 49, HTSUS, further demonstrates the distinction between literary and illustrated material for the purposes of that chapter. While the first part of that note addresses heading 4901, HTSUS ("Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets"), the last sentence is relevant in this case. It states that "printed pictures or illustrations not bearing a text, whether in the form of signatures or separate sheets, fall in heading 4911." *Emphasis supplied.* Heading 4911, HTSUS, provides for "other printed matter including printed pictures and photographs."

In this case, since the "S31" style note card does not have a written greeting, message or announcement, it is precluded from classification in heading 4909, HTSUS. Therefore, the card falls in heading 4911, HTSUS, as other printed matter.

Holding:

NY D88802 is MODIFIED.

We do not have sufficient information to provide you with the tariff classification of the "S31" notecard at the 10-digit level. If the card is printed by lithography and is not over 0.51 mm in thickness, it is classifiable under subheading 4911.91.20, HTSUS. Merchandise classifiable under that tariff provision is dutiable at 0.3¢/kg.

If the card is not printed by lithography, it is classifiable under subheading 4911.91.40, HTSUS, as other pictures, designs and photographs. Merchandise classifiable under that tariff provision is dutiable at 0.3 percent *ad valorem*.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT N]

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

CLA-2 RR:CR:TE 966417 RH
Category: Classification
Tariff Nos. 4911.91.20 and 4911.91.40

MR. DONALD J. SIEGEL
HOFUN TANGLIN
Post Office Box 0132
Singapore 9124

Re: Modification of NY 857929; Classification of blank cards; Heading 4909; Heading 4911; Heading 4817.

DEAR MR. SIEGEL:

On November 15, 1990, Customs (now Customs & Border Protection) issued New York Ruling Letter (NY) 857929 to you concerning the classification of a “watercolor note card” with a blank interior, a “watercolor note card with die cut” and a “matted print.”

In that ruling, CBP classified the note card under subheading 4817.20.4000 of the Harmonized Tariff Schedule of the United States (HTSUS), as letter cards, plain postcards and correspondence cards. We classified the note card with die cut as a greeting card under subheading 4909.00.4020, HTSUS, and the matted card under subheading 4911.91.3000, HTSUS, as other printed matter.

For the reasons set forth below, we find that NY 857929 was incorrect, in part, and that the proper classification of the blank note card is under heading 4911, HTSUS, as other printed matter. Classification of the note card with die cut and the matted print was correct.

Facts:

A description of the merchandise in NY 857929 reads as follows:

The first item, designated a “watercolor note card,” is a single-fold card with a blank interior and a printed, color reproduction of original artwork on its face. It is packed, together with an envelope, in a cellophane pouch.

The second item, a “watercolor note card with die cut,” is similar to the first, except that its cover incorporates a design-integrated die-cut flap, underneath of which is an accordion-fold, pull-out section printed with a message (“Greetings from Singapore”) and several miniature pictures. This card is also packed with an envelope in a cellophane pouch.

The third item, a “matted print,” is a 12 x 18 cm sheet of paper bearing a lithographically printed reproduction of a work of art (watercolor picture). It is mounted in a paperboard frame having a thickness of about 2.65 mm.

Issue:

Is the watercolor note card with a blank interior classifiable under heading 4817, HTSUS, as envelopes, letter cards, plain postcards and correspondence cards, under heading 4911, HTSUS, as other printed matter or under heading 4909, HTSUS, as cards bearing a personal greeting, message or announcement?

Law and Analysis:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). 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 GRI's taken in order.

Additionally, the Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. The EN's 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 EN's when interpreting the HTSUS.

Heading 4817, HTSUS, provides for “Envelopes, letter cards, plain postcards and correspondence cards, of paper or paperboard; boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery.”

The Explanatory Notes to heading 4817, HTSUS, provide guidance on the scope of the heading. They read, in relevant part:

This heading covers paper stationery of the kind used in correspondence, e.g., envelopes, letter cards, plain postcards (including correspondence cards). Separate writing paper in loose sheets or in blocks and certain other articles referred to below are, however, excluded.

These articles may be printed with addresses, names, trade marks, decorations, crests, initials, etc., merely incidental to their use as stationery.

Letter cards are sheets of paper or paperboard or cards with gummed (and sometimes perforated) edges or other provision for closing or sealing without the use of envelopes.

Plain postcards do not fall in this heading unless they contain printed provision for the address or stamp or other indications of their use.

Correspondence cards do not fall in this heading unless they have deckled or gilt edges or rounded corners, or are printed or otherwise prepared in such a manner as clearly to indicate their use as stationery. Plain cards not so prepared are classified in heading 48.23, as are, generally, unprinted visiting cards.

The heading also covers boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery.

The card in question clearly does not fall within the definitions of letter cards, plain postcards or correspondence cards, which are covered by the first part of heading 4817, HTSUS. Furthermore, the card is not characteristic of any of the items in the second part of heading 4817, HTSUS, e.g., boxes, pouches, wallets and writing compendiums. Accordingly, we find that the card is not classifiable in heading 4817, HTSUS.

Heading 4909, HTSUS, provides for “Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings.”

The terms “greeting, message or announcement” are defined in *Webster’s Deluxe Unabridged Dictionary*, 1979, as follows:

greeting—the act or words of a person who greets [at 800]; See also *Webster’s Ninth New Collegiate Dictionary*, 1991, defining greeting as “a salutation at meeting” or “expression of good wishes”;

message—any communication, written or oral, sent between persons [at 1130];

announcement—a written or printed notice [at 74].

In our opinion, the definition of “message”—any communication, written or oral—has a broad application. For example, a communication may be in the form of an editorial comment, expression of an idea, or the transmission or conveyance of knowledge or information. However, we note that marketing information such as a bar code, style number, company name and address, design/copyright and country of origin, which is generally printed on the back of a card, does not constitute a message sent between persons for purposes of heading 4909, HTSUS.

Additionally, the Explanatory Notes to heading 4909, HTSUS, provide examples of the products comprised in the heading, particularly:

* * * * *

(2) Christmas, New Year, birthday or similar cards. These may be in the form of picture postcards, or consist of two or more folded leaves fastened together, one face or more being devoted to pictorial matter. The term “similar cards” is to be taken to include cards used to announce births or christenings, or for conveying congratulations or thanks. The printed cards may incorporate trimmings such as ribbons, cords, tassels and embroidery, or novelty features such as pull-out views, or be decorated with glass powder, etc.

The nomenclature in heading 4909, HTSUS, and the Chapter 49 notes make a distinction between printed material in the form of literary text and printed material in the form of illustrations. For example, heading 4909, HTSUS, is divided into two parts, separated by a semicolon. The first part of the heading provides for “printed or illustrated postcards.” *Emphasis added*. The second part of the heading covers “printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings.” *Emphasis added*. Based on the terms of the heading, the phrase “bearing personal greetings, messages or announcements” clearly requires some form of literary text. Simply stated, cards of heading 4909, HTSUS, may consist of plain

cards printed with a greeting, message or announcement, or cards with a printed greeting, message or announcement that are also decorated. The heading does not cover cards that are printed *only* with illustrations.

In addition to the language of heading 4909, Note 4 to Chapter 49, HTSUS, further demonstrates the distinction between literary and illustrated material for the purposes of that chapter. While the first part of that note addresses heading 4901, HTSUS (“Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets”), the last sentence is relevant in this case. It states that “printed pictures or illustrations not bearing a text, whether in the form of signatures or separate sheets, fall in heading 4911.” *Emphasis supplied*. Heading 4911, HTSUS, provides for “other printed matter including printed pictures and photographs.”

In this case, since the watercolor note card does not have a written greeting, message or announcement, it is precluded from classification in heading 4909, HTSUS. Therefore, the card falls in heading 4911, HTSUS, as other printed matter.

Holding:

NY 857929 is MODIFIED.

We do not have sufficient information to provide you with the tariff classification of the watercolor note card at the 10-digit level. If the card is printed by lithography and is not over 0.51 mm in thickness, it is classifiable under subheading 4911.91.20, HTSUS. Merchandise classifiable under that tariff provision is dutiable at 0.3¢/kg.

If the card is not printed by lithography, it is classifiable under subheading 4911.91.40, HTSUS, as other pictures, designs and photographs. Merchandise classifiable under that tariff provision is dutiable at 0.3 percent *ad valorem*.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT O]

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

CLA-2 RR:CR:TE 966418 RH
Category: Classification
Tariff Nos. 4911.91.20,
4911.91.40, and 4909.00.40

MR. GEOFFREY WITTS
STONE MARKETING LIMITED
4 Ashby's Yard
Medway Wharf Road
Tonbridge, Kent TN9 1RE
England

Re: Modification of NY E80955; Classification of cards; Heading 4909; Heading 4911; Heading 4817.

DEAR MR. WITTS:

On April 30, 1999, Customs (now Customs & Border Protection (“CBP”)) issued New York Ruling Letter (NY) E80955 to you concerning the classification of paper note cards and greeting cards from England. In that ruling, CBP classified cards with written greetings, messages or announcements under subheading 4909.00.4020 of the Harmonized Tariff Schedule of the United States (HTSUS), as printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings. The cards with no wording on them or a single identifying word were classified under subheading 4817.20.4000, HTSUS, as letter cards, plain postcards and correspondence cards.

For the reasons set forth below, we find that NY E80955 was incorrect, in part, and that the proper classification of the cards without a written greeting is under heading 4911,

HTSUS, as other printed matter. The correct classification of the cards with a single identifying word is under subheading 4909.00.4040, HTSUS.

Facts:

A description of the merchandise at issue in NY E80955 reads as follows:

Five samples were submitted and will be retained for reference. Each is a folded paper card, about 4-1/4" x 6-1/8" in the closed position, individually packed for retail sale with a suitable paper mailing envelope in a sealed cellophane packet. The various styles represented by the samples differ in the nature and extent of their printed content, as indicated below:

<i>Style no.</i>	<i>Face</i>	<i>Interior</i>
NKV2	Heart design; no wording	Blank
NK1	Flower design, captioned With identifying word "poppy"	Blank
NKBD1	Picture followed by the words, "Happy Birthday"	Blank
NKCH19	Snowscape design; no wording	The Words, "Season's Greetings"
NKCH2	Bird design, followed by the words, "Merry Christmas"	Blank

The back of each card is largely blank, but the lower portion is printed with a bar code, style number, your company's name and address, design/copyright information, and country of origin ("Printed in England").

Issue:

Are the cards classifiable under heading 4817, HTSUS, as envelopes, letter cards, plain postcards and correspondence cards, under heading 4911, HTSUS, as other printed matter or under heading 4909, HTSUS, as cards bearing a personal greeting, message or announcement?

Law and Analysis:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). 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 GRI's taken in order.

Additionally, the Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. The EN's 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 EN's when interpreting the HTSUS.

Heading 4817, HTSUS, provides for "Envelopes, letter cards, plain postcards and correspondence cards, of paper or paperboard; boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery."

The Explanatory Notes to heading 4817, HTSUS, provide guidance on the scope of the heading. They read, in relevant part:

This heading covers paper stationery of the kind used in correspondence, e.g., envelopes, letter cards, plain postcards (including correspondence cards). Separate writing paper in loose sheets or in blocks and certain other articles referred to below are, however, excluded.

These articles may be printed with addresses, names, trade marks, decorations, crests, initials, etc., merely incidental to their use as stationery.

Letter cards are sheets of paper or paperboard or cards with gummed (and sometimes perforated) edges or other provision for closing or sealing without the use of envelopes.

Plain postcards do not fall in this heading unless they contain printed provision for the address or stamp or other indications of their use.

Correspondence cards do not fall in this heading unless they have deckled or gilt edges or rounded corners, or are printed or otherwise prepared in such a manner as

clearly to indicate their use as stationery. Plain cards not so prepared are classified in heading 48.23, as are, generally, unprinted visiting cards.

The heading also covers boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery.

The cards in question clearly do not fall within the definitions of letter cards, plain postcards or correspondence cards, which are covered by the first part of heading 4817, HTSUS. Furthermore, the cards are not characteristic of any of the items in the second part of heading 4817, HTSUS, e.g., boxes, pouches, wallets and writing compendiums. Moreover, the pictorial matter on the cards in question forms the principal feature of the cards and is not “merely incidental” to their use. Accordingly, we find that the cards are not classifiable in heading 4817, HTSUS.

Heading 4909, HTSUS, provides for “Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings.”

The terms “greeting, message or announcement” are defined in *Webster’s Deluxe Unabridged Dictionary*, 1979, as follows:

greeting—the act or words of a person who greets [at 800]; See also *Webster’s Ninth New Collegiate Dictionary*, 1991, defining greeting as “a salutation at meeting” or “expression of good wishes”;

message—any communication, written or oral, sent between persons [at 1130];

announcement—a written or printed notice [at 74].

In our opinion, the definition of “message”—any communication, written or oral—has a broad application. For example, a communication may be in the form of an editorial comment, expression of an idea, or the transmission or conveyance of knowledge or information. However, we note that marketing information such as a bar code, style number, company name and address, design/copyright and country of origin, which is generally printed on the back of a card, does not constitute a message sent between persons for purposes of heading 4909, HTSUS.

Additionally, the Explanatory Notes to heading 4909, HTSUS, provide examples of the products comprised in the heading, particularly:

* * * * *

(2) Christmas, New Year, birthday or similar cards. These may be in the form of picture postcards, or consist of two or more folded leaves fastened together, one face or more being devoted to pictorial matter. The term “similar cards” is to be taken to include cards used to announce births or christenings, or for conveying congratulations or thanks. The printed cards may incorporate trimmings such as ribbons, cords, tassels and embroidery, or novelty features such as pull-out views, or be decorated with glass powder, etc.

The nomenclature in heading 4909, HTSUS, and the Chapter 49 notes make a distinction between printed material in the form of literary text and printed material in the form of illustrations. For example, heading 4909, HTSUS, is divided into two parts, separated by a semicolon. The first part of the heading provides for “printed or illustrated postcards.” *Emphasis added.* The second part of the heading covers “printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings.” *Emphasis added.* Based on the terms of the heading, the phrase “bearing personal greetings, messages or announcements” clearly requires some form of literary text. Simply stated, cards of heading 4909, HTSUS, may consist of plain cards printed with a greeting, message or announcement, or cards with a printed greeting, message or announcement that are also decorated. The heading does not cover cards that are printed *only* with illustrations.

In addition to the language of heading 4909, Note 4 to Chapter 49, HTSUS, further demonstrates the distinction between literary and illustrated material for the purposes of that chapter. While the first part of that note addresses heading 4901, HTSUS (“Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets”), the last sentence is relevant in this case. It states that “printed pictures or illustrations not bearing a text, whether in the form of signatures or separate sheets, fall in heading 4911.” *Emphasis supplied.* Heading 4911, HTSUS, provides for “other printed matter including printed pictures and photographs.”

The cards bearing the greetings “Happy Birthday”, “Season’s Greetings” and “Merry Christmas” clearly fall within heading 4909, HTSUS. Additionally, the cards with a flower

design captioned with the identifying word “poppy” is a message in that it transmits and/or conveys knowledge or information by identifying the illustrations depicted on the cards. Accordingly, we find that such cards are also classifiable under heading 4909, HTSUS.

The cards that contain no text are classifiable under heading 4911, HTSUS, as other printed matter.

Holding:

NY E80955 is MODIFIED. Style NK1 containing a caption with the identifying word, “poppy”, is classifiable under subheading 4909.00.4040, HTSUS.

Merchandise classifiable under that tariff provision is dutiable at 0.5 percent *ad valorem*.

Style NKV2 bearing no text is classifiable under heading 4911, HTSUS, as other printed matter. We do not have sufficient information to provide you with the tariff classification at the 10-digit level. If the cards are printed by lithography and are not over 0.51 mm in thickness, they are classifiable under subheading 4911.91.20, HTSUS. Merchandise classifiable under that tariff provision is dutiable at 0.3e/kg.

If the cards are not printed by lithography, they are classifiable under subheading 4911.91.40, HTSUS, as other pictures, designs and photographs. Merchandise classifiable under that tariff provision is dutiable at 0.3 percent *ad valorem*.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT P]

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

CLA-2 RR:CR:TE 966419 RH
Category: Classification
Tariff Nos. 4911.91.20 and 4911.91.40

MS. ANNE FONTENOY
2 Rozel Terrace
Church Road
Croydon, Surrey CRO 1SG
England

Re: Revocation of NY E86598; Classification of blank cards; Heading 4909; Heading 4911; Heading 4817.

DEAR MS. FONTENOY:

On September 14, 1999, Customs (now Customs & Border Protection (“CBP”)) issued New York Ruling Letter (NY) E86598 to you concerning the classification of paper note cards from England. In that ruling, CBP classified the cards without a written greeting, message or announcement under subheading 4817.20.4000 of the Harmonized Tariff Schedule of the United States (HTSUS), as letter cards, plain postcards and correspondence cards.

For the reasons set forth below, we find that NY E86598 was incorrect, and that the proper classification of the cards without a written greeting is under heading 4911, HTSUS, as other printed matter.

Facts:

A description of the merchandise at issue in NY E86598 reads as follows:

Two samples identified as “hand-made greeting cards” were submitted and will be retained for reference. Each is a folded paper note card, individually packed, together with a suitable paper envelope, in a sealed plastic bag. The face of each card bears a

picture or design said to have been produced by airbrushing with ink using hand-cut stencils. The interiors are blank, suitable for written correspondence.

Issue:

Are the blank cards classifiable under heading 4817, HTSUS, as envelopes, letter cards, plain postcards and correspondence cards, under heading 4911, HTSUS, as other printed matter or under heading 4909, HTSUS, as cards bearing a personal greeting, message or announcement?

Law and Analysis:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). 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 GRI's taken in order.

Additionally, the Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. The EN's 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 EN's when interpreting the HTSUS.

Heading 4817, HTSUS, provides for "Envelopes, letter cards, plain postcards and correspondence cards, of paper or paperboard; boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery."

The Explanatory Notes to heading 4817, HTSUS, provide guidance on the scope of the heading. They read, in relevant part:

This heading covers paper stationery of the kind used in correspondence, e.g., envelopes, letter cards, plain postcards (including correspondence cards). Separate writing paper in loose sheets or in blocks and certain other articles referred to below are, however, excluded.

These articles may be printed with addresses, names, trade marks, decorations, crests, initials, etc., merely incidental to their use as stationery.

Letter cards are sheets of paper or paperboard or cards with gummed (and sometimes perforated) edges or other provision for closing or sealing without the use of envelopes.

Plain postcards do not fall in this heading unless they contain printed provision for the address or stamp or other indications of their use.

Correspondence cards do not fall in this heading unless they have deckled or gilt edges or rounded corners, or are printed or otherwise prepared in such a manner as clearly to indicate their use as stationery. Plain cards not so prepared are classified in heading 48.23, as are, generally, unprinted visiting cards.

The heading also covers boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery.

The cards in question clearly do not fall within the definitions of letter cards, plain postcards or correspondence cards, which are covered by the first part of heading 4817, HTSUS. Furthermore, the cards are not characteristic of any of the items in the second part of heading 4817, HTSUS, e.g., boxes, pouches, wallets and writing compendiums. Accordingly, we find that the cards are not classifiable in heading 4817, HTSUS.

Heading 4909, HTSUS, provides for "Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings."

The terms "greeting, message or announcement" are defined in *Webster's Deluxe Unabridged Dictionary*, 1979, as follows:

greeting—the act or words of a person who greets [at 800]; See also *Webster's Ninth New Collegiate Dictionary*, 1991, defining greeting as "a salutation at meeting" or "expression of good wishes";

message—any communication, written or oral, sent between persons [at 1130];

announcement—a written or printed notice [at 74].

In our opinion, the definition of "message"—any communication, written or oral—has a broad application. For example, a communication may be in the form of an editorial comment, expression of an idea, or the transmission or conveyance of knowledge or information. However, we note that marketing information such as a bar code, style number,

company name and address, design/copyright and country of origin, which is generally printed on the back of a card, does not constitute a message sent between persons for purposes of heading 4909, HTSUS.

Additionally, the Explanatory Notes to heading 4909, HTSUS, provide examples of the products comprised in the heading, particularly:

* * * * *

(2) Christmas, New Year, birthday or similar cards. These may be in the form of picture postcards, or consist of two or more folded leaves fastened together, one face or more being devoted to pictorial matter. The term “similar cards” is to be taken to include cards used to announce births or christenings, or for conveying congratulations or thanks. The printed cards may incorporate trimmings such as ribbons, cords, tassels and embroidery, or novelty features such as pull-out views, or be decorated with glass powder, etc.

The nomenclature in heading 4909, HTSUS, and the Chapter 49 notes make a distinction between printed material in the form of literary text and printed material in the form of illustrations. For example, heading 4909, HTSUS, is divided into two parts, separated by a semicolon. The first part of the heading provides for “printed or illustrated postcards.” *Emphasis added.* The second part of the heading covers “printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings.” *Emphasis added.* Based on the terms of the heading, the phrase “bearing personal greetings, messages or announcements” clearly requires some form of literary text. Simply stated, cards of heading 4909, HTSUS, may consist of plain cards printed with a greeting, message or announcement, or cards with a printed greeting, message or announcement that are also decorated. The heading does not cover cards that are printed *only* with illustrations.

In addition to the language of heading 4909, Note 4 to Chapter 49, HTSUS, further demonstrates the distinction between literary and illustrated material for the purposes of that chapter. While the first part of that note addresses heading 4901, HTSUS (“Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets”), the last sentence is relevant in this case. It states that “printed pictures or illustrations not bearing a text, whether in the form of signatures or separate sheets, fall in heading 4911.” *Emphasis supplied.* Heading 4911, HTSUS, provides for “other printed matter including printed pictures and photographs.”

In this case, since the cards do not have a written greeting, message or announcement, they are precluded from classification in heading 4909, HTSUS. Therefore, the cards fall in heading 4911, HTSUS, as other printed matter.

Holding:

NY E86598 is REVOKED.

We do not have sufficient information to provide you with the tariff classification of the note cards at the 10-digit level. If the cards are printed by lithography and are not over 0.51 mm in thickness, they are classifiable under subheading 4911.91.20, HTSUS. Merchandise classifiable under that tariff provision is dutiable at 0.3¢/kg.

If the cards are not printed by lithography, they are classifiable under subheading 4911.91.40, HTSUS, as other pictures, designs and photographs. Merchandise classifiable under that tariff provision is dutiable at 0.3 percent *ad valorem*.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT Q]

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

CLA-2 RR:CR:TE 966420 RH

Category: Classification

Tariff Nos. 4909.00.4020 and 4909.00.4040

MS. BONNIE JAY
TURKISH GREETINGS
2121 W. Spring Creek Parkway
Suite 214
Plano, TX 75023

Re: Modification of NY E80406; Classification of cards; Heading 4909; Heading 4911;
Heading 4817.

DEAR MS. JAY:

On April 22, 1999, Customs (now Customs & Border Protection (“CBP”)) issued New York Ruling Letter (NY) E80406 to you concerning the classification of “carpet cards” from Turkey. In that ruling, CBP classified the cards with messages printed on them under subheading 4909.00.4020 of the Harmonized Tariff Schedule of the United States (HTSUS), as printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings. The cards with historical information displayed on their “rear faces” were classified under subheading 4817.20.4000, HTSUS, as correspondence cards.

For the reasons set forth below, we find that NY E80406 was incorrect, in part, and that the proper classification of all of the cards is under heading 4909, HTSUS.

Facts:

A description of the merchandise at issue in NY E80406 reads as follows:

[The sample] is a folded paper or paperboard card, imported together with an appropriately sized mailing envelope. The front face of the card is decorated with a miniature woven carpet permanently attached by gluing. (The carpet cannot be removed without the probability of damaging exposed threads on its reverse.)

The interior two faces of the folded card are blank, and are suitable, and intended, for the writing of correspondence.

The rear face contains historical information about the “Kayseri Wool Carpet”, presumably of which the miniature on the front face of the card is an example.

* * * * *

Cards like the sample in all material respects, but also having messages printed on them, will also be imported.

Issue:

Are the cards with no text classifiable under heading 4817, HTSUS, as envelopes, letter cards, plain postcards and correspondence cards or under heading 4911, HTSUS, as other printed matter?

Law and Analysis:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). 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 GRI's taken in order.

Additionally, the Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. The EN's 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 the Customs Service to follow, whenever possible, the terms of the EN's when interpreting the HTSUS.

Heading 4817, HTSUS, provides for “Envelopes, letter cards, plain postcards and correspondence cards, of paper or paperboard; boxes, pouches, wallets and writing compen-

diums, of paper or paperboard, containing an assortment of paper stationery.” Heading 4911, HTSUS, provides for “Other printed matter, including printed pictures and photographs.”

The Explanatory Notes to heading 4817, HTSUS, provide guidance on the scope of the heading. They read, in relevant part:

This heading covers paper stationery of the kind used in correspondence, e.g., envelopes, letter cards, plain postcards (including correspondence cards). Separate writing paper in loose sheets of in blocks and certain other articles referred to below are, however, excluded.

These articles may be printed with addresses, names, trade marks, decorations, crests, initials, etc., merely incidental to their use as stationery.

Letter cards are sheets of paper or paperboard or cards with gummed (and sometimes perforated) edges or other provision for closing or sealing without the use of envelopes.

Plain postcards do not fall in this heading unless they contain printed provision for the address or stamp or other indications of their use.

Correspondence cards do not fall in this heading unless they have deckled or gilt edges or rounded corners, or are printed or otherwise prepared in such a manner as clearly to indicate their use as stationery. Plain cards not so prepared are classified in heading 48.23, as are, generally, unprinted visiting cards.

The heading also covers boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery.

The cards in question clearly do not fall within the definitions of letter cards, plain postcards or correspondence cards, which are covered by the first part of heading 4817, HTSUS. Furthermore, the cards are not characteristic of any of the items in the second part of heading 4817, HTSUS, e.g., boxes, pouches, wallets and writing compendiums. Accordingly, we find that the cards do not meet the terms of heading 4817, HTSUS.

Heading 4909, HTSUS, provides for “Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings.”

The terms “greeting, message or announcement” are defined in *Webster’s Deluxe Unabridged Dictionary*, 1979, as follows:

greeting—the act or words of a person who greets [at 800]; See also *Webster’s Ninth New Collegiate Dictionary*, 1991, defining greeting as “a salutation at meeting” or “expression of good wishes”;

message—any communication, written or oral, sent between persons [at 1130];

announcement—a written or printed notice [at 74].

In our opinion, the definition of “message”—any communication, written or oral—has a broad application. For example, a communication may be in the form of an editorial comment, expression of an idea, or the transmission or conveyance of knowledge or information. However, we note that marketing information such as a bar code, style number, company name and address, design/copyright and country of origin, which is generally printed on the back of a card, does not constitute a message sent between persons for purposes of heading 4909, HTSUS.

Additionally, the Explanatory Notes to heading 4909, HTSUS, provide examples of the products comprised in the heading, particularly:

* * * * *

(2) Christmas, New Year, birthday or similar cards. These may be in the form of picture postcards, or consist of two or more folded leaves fastened together, one face or more being devoted to pictorial matter. The term “similar cards” is to be taken to include cards used to announce births or christenings, or for conveying congratulations or thanks. The printed cards may incorporate trimmings such as ribbons, cords, tassels and embroidery, or novelty features such as pull-out views, or be decorated with glass powder, etc.

The nomenclature in heading 4909, HTSUS, and the Chapter 49 notes make a distinction between printed material in the form of literary text and printed material in the form of illustrations. For example, heading 4909, HTSUS, is divided into two parts, separated by a semicolon. The first part of the heading provides for “printed or illustrated postcards.” *Emphasis added.* The second part of the heading covers “printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or with-

out envelopes or trimmings.” *Emphasis added.* Based on the terms of the heading, the phrase “bearing personal greetings, messages or announcements” clearly requires some form of literary text. Simply stated, cards of heading 4909, HTSUS, may consist of plain cards printed with a greeting, message or announcement, or cards with a printed greeting, message or announcement that are also decorated. The heading does not cover cards that are printed *only* with illustrations.

In addition to the language of heading 4909, Note 4 to Chapter 49, HTSUS, further demonstrates the distinction between literary and illustrated material for the purposes of that chapter. While the first part of that note addresses heading 4901, HTSUS (“Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets”), the last sentence is relevant in this case. It states that “printed pictures or illustrations not bearing a text, whether in the form of signatures or separate sheets, fall in heading 4911.” *Emphasis supplied.* Heading 4911, HTSUS, provides for “other printed matter including printed pictures and photographs.”

The cards at issue contain historical information about the “Kayseri Wool Carpet” that is displayed on the front of the cards. We consider this information to be consistent with the definition of a message in that it transmits and/or conveys knowledge or information about the article depicted on the card. Moreover, we note that while a message is generally displayed on the face or interior of a card, neither the heading nor legal notes preclude the message from appearing on the back of the card. Thus, we find that the cards in question bear a message and are classifiable under heading 4909, HTSUS.

Holding:

NY E80406 is MODIFIED. The “carpet cards” containing a message in the form of historical information on the back of the cards are classified under subheading 4909.00.4040, HTSUS, as cards bearing a personal greeting, message or announcement.

The “carpet cards” bearing a written greeting, message or announcement on the face or interior of the cards were correctly classified under subheading 4909.00.4020, HTSUS.

The cards are dutiable at the general column one rate at 0.5 percent *ad valorem*.

MYLES B. HARMON,

Director,

Commercial Rulings Division.

[ATTACHMENT R]

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

CLA-2 RR:CR:TE 966421
Category: Classification
Tariff No. 4909.00.4040

MR. RICHARD BARSON
WORLD'S GREATEST MINDS, LTD.
*15 New Bond Street
Bath BA1 1BA
England*

Re: Modification of NY D88582; Classification of blank cards; Heading 4909; Heading 4911; Heading 4817.

DEAR MR. BARSON:

On March 5, 1999, Customs (now Customs & Border Protection (“CBP”)) issued New York Ruling Letter (NY) D88582 to you concerning the classification of paper note cards from England. In that ruling, CBP classified the cards with written quotations attributed to famous writers printed on them under subheading 4909.00.4040 of the Harmonized Tariff Schedule of the United States (HTSUS), as printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings. The cards with a caption identifying an illustration were classified under

subheading 4817.20.4000, HTSUS, as letter cards, plain postcards and correspondence cards.

For the reasons set forth below, we find that NY D88582 was incorrect, in part, and that the proper classification of all of the cards is under heading 4909, HTSUS.

Facts:

A description of the merchandise at issue in NY D88582 reads as follows:

The first sample (“A5”) is a folded paper note card packed in a cellophane packet together with a suitable paper envelope. The face of the card is printed with a picture of Kelmscott House, with a caption identifying it as the home of craftsman, poet and socialist William Morris. The interior of the card is blank, suitable for written correspondence.

The second and third samples are also folded paper card/envelope sets, individually packed in cellophane packets. However, while these cards again feature blank interiors, their faces are prominently printed with quotations attributed to famous writers. Card “W14” reads, “It is never too late to be what you might have been” (—George Eliot). Card “B11” reads, “Pleasure’s a sin and sometimes sin’s a pleasure” (—Lord Byron). It appears that if either of these cards is thoughtfully and appropriately sent to a recipient in a particular situation or context, the printed quotation may serve as a kind of personal message similar to one found on a conventional greeting card.

Issue:

Are the cards classifiable under heading 4817, HTSUS, as envelopes, letter cards, plain postcards and correspondence cards, under heading 4911, HTSUS, as other printed matter or under heading 4909, HTSUS, as cards bearing a personal greeting, message or announcement?

Law and Analysis:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI’s). 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 GRI’s taken in order.

Additionally, the Explanatory Notes (EN’s) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. The EN’s 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 EN’s when interpreting the HTSUS.

Heading 4817, HTSUS, provides for “Envelopes, letter cards, plain postcards and correspondence cards, of paper or paperboard; boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery.”

The Explanatory Notes to heading 4817, HTSUS, provide guidance on the scope of the heading. They read, in relevant part:

This heading covers paper stationery of the kind used in correspondence, e.g., envelopes, letter cards, plain postcards (including correspondence cards). Separate writing paper in loose sheets or in blocks and certain other articles referred to below are, however, excluded.

These articles may be printed with addresses, names, trade marks, decorations, crests, initials, etc., merely incidental to their use as stationery.

Letter cards are sheets of paper or paperboard or cards with gummed (and sometimes perforated) edges or other provision for closing or sealing without the use of envelopes.

Plain postcards do not fall in this heading unless they contain printed provision for the address or stamp or other indications of their use.

Correspondence cards do not fall in this heading unless they have deckled or gilt edges or rounded corners, or are printed or otherwise prepared in such a manner as clearly to indicate their use as stationery. Plain cards not so prepared are classified in heading 48.23, as are, generally, unprinted visiting cards.

The heading also covers boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery.

The cards in question clearly do not fall within the definitions of letter cards, plain postcards or correspondence cards, which are covered by the first part of heading 4817,

HTSUS (before the semicolon). Furthermore, the cards are not characteristic of any of the items in the second part of heading 4817, HTSUS, e.g., boxes, pouches, wallets and writing compendiums. Accordingly, we find that the cards are not classifiable in heading 4817, HTSUS.

Heading 4909, HTSUS, provides for “Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings.”

The terms “greeting, message or announcement” are defined in *Webster’s Deluxe Unabridged Dictionary*, 1979, as follows:

greeting—the act or words of a person who greets [at 800]; See also *Webster’s Ninth New Collegiate Dictionary*, 1991, defining greeting as “a salutation at meeting” or “expression of good wishes”;

message—any communication, written or oral, sent between persons [at 1130];

announcement—a written or printed notice [at 74].

In our opinion, the definition of “message”—any communication, written or oral—has a broad application. For example, a communication may be in the form of an editorial comment, expression of an idea, or the transmission or conveyance of knowledge or information. However, we note that marketing information such as a bar code, style number, company name and address, design/copyright and country of origin, which is generally printed on the back of a card, does not constitute a message sent between persons for purposes of heading 4909, HTSUS.

Additionally, the Explanatory Notes to heading 4909, HTSUS, provide examples of the products comprised in the heading, particularly:

* * * * *

(2) Christmas, New Year, birthday or similar cards. These may be in the form of picture postcards, or consist of two or more folded leaves fastened together, one face or more being devoted to pictorial matter. The term “similar cards” is to be taken to include cards used to announce births or christenings, or for conveying congratulations or thanks. The printed cards may incorporate trimmings such as ribbons, cords, tassels and embroidery, or novelty features such as pull-out views, or be decorated with glass powder, etc.

The nomenclature in heading 4909, HTSUS, and the Chapter 49 notes make a distinction between printed material in the form of literary text and printed material in the form of illustrations. For example, heading 4909, HTSUS, is divided into two parts, separated by a semicolon. The first part of the heading provides for “printed or illustrated postcards.” *Emphasis added*. The second part of the heading covers “printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings.” *Emphasis added*. Based on the terms of the heading, the phrase “bearing personal greetings, messages or announcements” clearly requires some form of literary text. Simply stated, cards of heading 4909, HTSUS, may consist of plain cards printed with a greeting, message or announcement, or cards with a printed greeting, message or announcement that are also decorated. The heading does not cover cards that are printed *only* with illustrations.

In addition to the language of heading 4909, Note 4 to Chapter 49, HTSUS, further demonstrates the distinction between literary and illustrated material for the purposes of that chapter. While the first part of that note addresses heading 4901, HTSUS (“Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets”), the last sentence is relevant in this case. It states that “printed pictures or illustrations not bearing a text, whether in the form of signatures or separate sheets, fall in heading 4911.” *Emphasis supplied*. Heading 4911, HTSUS, provides for “other printed matter including printed pictures and photographs.”

In this case, the “A5” cards are printed with a picture of the Kelmscott House and contain a caption identifying it as the home of craftsman, poet and socialist William Morris. We consider this information to be consistent with the definition of a message in that it transmits and or conveys knowledge or information by identifying an illustration. Accordingly, we find that the cards bear a message and are classifiable under heading 4909, HTSUS.

Holding:

NY D88582 is MODIFIED. The “A5” cards are classified under heading 4909.00.4040, HTSUS, as cards bearing personal greetings, messages or announcements, whether or not

illustrated, with or without envelopes or trimmings. The cards are dutiable at the general column one rate at 0.5 percent *ad valorem*.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

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

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

ACTION: Notice of proposed modification of one tariff classification ruling letter, the revocation of two tariff classification ruling letters, and the revocation of any treatment relating to the 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 & Border Protection (CBP) intends to modify one ruling letter and revoke two ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of mechanic's gloves. 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 June 20, 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 comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on 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 (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 and to revoke two ruling letters relating to the tariff classification of certain mechanic’s gloves. Although in this notice CBP is specifically referring to the modification of Headquarters Ruling Letter (HQ) 965692, dated September 18, 2002 (Attachment A), and the revocation of New York Ruling Letter (NY) A86298, dated August 8, 1996 (Attachment B), and NY B85790, dated June 5, 1997 (Attachment C), 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 HTSUSA. 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 HQ 965692, Customs classified six pairs of gloves, four pairs of which were specially designed for use by pit-crew mechanics in automotive sports and 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.”

In NY A86298, Customs classified one pair of gloves that were specially designed for use by pit-crew mechanics in automotive sports in subheading 6216.00.4600, HTSUSA. In NY B85790, Customs classified two pairs of gloves that were specially designed for use by pit-crew mechanics in automotive sports. One pair, Style SP-7502, was constructed with split leather that imparted the essential character and it was classified 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 other pair, style IL-7504, which was constructed from textile materials, was classified in subheading 6216.00.4600, HTSUSA.

Based on our analysis of the scope of the terms of subheadings 6216.00.4600, HTSUSA, and 4203.21.8060, HTSUSA, the Legal Notes, and the Explanatory Notes, the essentially textile mechanic’s gloves subject to this notice, 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,” and those essentially of leather are 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.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify HQ 965692 and to revoke NY A86298, NY B85790, and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 966248 (Attachment D), HQ 966431 (Attachment E), and HQ 966432 (Attachment F). 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: May 2, 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,
Washington, DC, September 18, 2002.

CLA-2 RR:CR:TE 965692 ttd
Category: Classification
Tariff No. 6216.00.4600,
6216.00.5820, and 4203.29.1500

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

Re: Classification of Gloves.

DEAR MR. MENTO AND MS. VAIR:

This is in response to your letter, dated April 4, 2002, 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). Your letter, which was originally submitted to the Customs National Commodity Specialist Division in New York, was referred to this office for reply. Samples were submitted for review.

Facts:

The articles under consideration are six pairs of gloves, identified as Models 100, 111, 200, 222, 300 and 400. All the Models 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 fourchettes and a 1¼ inch wide elasticized strap secured with a hook and loop fabric tab over a side vent. The words "MECHANIX GLOVES" are applied several times across the back. The gloves are sold in eight different colors.

Model 111 is a leather-palmed glove that features vented leather fourchettes, with overlays on both the palm and back and on the backs of the fingertips. The remainder of the back is composed of knit spandex with interior foam and tricot liner. The glove features a fully elasticized wrist. Model 111 has a sewn on label printed with the following: "SET-WEAR an authentic product for the needs of the entertainment industry."

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 "designed to excel in high-impact abuse with precise controls needed by professional race crews."

Model 300 features a single-ply synthetic leather-like material comprising the palm, backs of fingertips and vented fourchettes. The back of the glove is made of knit spandex with interior foam and a tricot liner. The glove also has a fully elasticized wrist and side vent. The packaging of Model 300 claims that "Affordable features, incredible fit and easy opening make this the one glove no home, auto or garage should be without. Multipurpose glove is ideal for handling any job around the home, garage or auto."

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 protec-

tion, 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 merchandise 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”¹. 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 6216.00.46 and 4203.21.8060, HTSUSA, each provide for, in part, gloves, mittens and mitts, specially designed for use in sports. As these are both “use” provisions, determining whether an article is classifiable in either subheading 6216.00.46 or 4203.21.8060, 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 either subheading 6216.00.46 or subheading 4203.21.8060, the subject gloves must be shown to be, in fact, specially designed for use in a particular sport.

Concerning the proper classification of sports gloves, numerous other court cases have examined the term “specially designed for use in sport.” In *American Astral Corp. v. United States*, 62 Cust. Ct. 563, C.D. 3827 (1969), the court held that certain gloves were properly classified as lawn tennis equipment because the evidence established that the gloves were specially designed for use in the game of tennis. At the time, the Tariff Schedules of the United States included provisions for tennis equipment covering specially designed protective articles, such as gloves. The court noted the glove’s distinguishing characteristics, which set it apart from ordinary gloves worn as apparel. Those features included: (a) an absorbent terry cloth back; (b) a partially perforated lambskin palm designed to aid grip, provide protection, and prevent perspiration by allowing air circulation; (c) fourchettes made from stretch material; (d) elasticized wrist for a snug fit and support; and (e) a button positioned to prevent interference to the player. Additionally, the court considered factors such as the nature of the importer’s business, how the gloves were advertised in the trade, the types of stores where the gloves were sold, and the fact that the gloves were sold only in single units and not in pairs. The court also noted that, the fact that the gloves had other possible uses did not preclude their classification as sporting equipment. See, U.S. Customs Service, *What Every Member of the Trade Community Should Know About: Gloves, Mittens & Mitts, Not Knitted or Crocheted Under the HTSUS*, 32 Cust. B. & Dec. 51 (Dec 23, 1998).

In *Porter v. United States*, 409 F. Supp. 757; 76 Cust. Ct. 97, Cust. Dec. 4641 (1976), the court held that certain motorcross gloves, which possessed features specially designed for use in the sport of motorcross, were accordingly, specially designed for use in sports, even though not used exclusively for the sport of motorcross. In *Porter*, the court based its conclusion on the fact that motorcross gloves featured special characteristics and construction, specially designed for the sport of motorcross. These characteristics included a shortened palm, a reinforced thumb, an elastic band, protective strips or ribbing, and an out-seam construction. These features complimented the particular protective needs of the driver while racing with the specially designed motorcross bike on a dirt track. It was also shown that motorcross racing encompasses internationally accepted rules and that the American Motorcycle Association Motorcross Competition Rule Book specifically requires certain protective clothing and equipment, of which the motorcross gloves at issue were one type that complied with the requirements for the gloves. While the court noted

that the gloves were subject to use outside the sport of motorcross, the plaintiff had already demonstrated that the gloves were primarily designed for the sport of motorcross. Moreover, the features, which made the gloves ideal for the sport of motorcross, rendered them useless or cumbersome for other types of motorcycle riding. Thus, the court in Porter found that the merchandise considered was designed to meet the needs of the 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, Customs 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 Headquarters Ruling Letter (HQ) 089849, dated August 16, 1991, Customs 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, Customs 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.

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

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

- 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 your letter, you imply that all six styles of gloves at issue are specially designed for use in sport, citing the sport of racing. However, after review of the submitted samples and marketing materials, we find that two of the styles, Model 111 and Model 300, are promoted and designed for purposes other than the sport of racing. Specifically, Model 111 is advertised as "SETWEAR" or "an authentic product created for the needs of the entertainment industry." Model 300 is described as a "Multipurpose" glove that "is ideal for handling any job around the home, garage or auto."

We recognize motorsports racing as a sporting activity, as well as the role of pit crew members as an integral component of the sport, for purposes of tariff classification. However, while we acknowledge that the term "sport" may encompass a variety of outdoor and indoor activities, which may or may not have competitive aspects, we find that neither "entertainment industry" activities nor "multipurpose" activities fall within the purview of the term "sport." When there is doubt as to whether a certain activity constitutes a sport for tariff classification purposes, Customs 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, Customs found that while it may entail competition, require athleticism, involve physical and mental exertion, etc., dance is not a sport. Notwithstanding news accounts about the International Olympic Committee (IOC) taking action to grant provisional recognition to certain dancing as "sports" in the Games program, we found that for Customs 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.

Here, like dancing in HQ 962745 and lumberjacking in HQ 965712, professional work in the “entertainment industry” and “multipurpose” activities “around the home, garage or auto” are simply not sports. We find no evidence to support the claim that the subject gloves are specially designed for a sporting activity. See HQ 083450, dated August 25, 1989 (cited below). Accordingly the styles of gloves, identified as Model 111 and Model 300, are precluded from classification as gloves specially designed for use in sports.

Of the remaining four samples under consideration, we find that Models 100, 200, 222 and 400, are classifiable as gloves specially designed for use in sports. We note the claim printed on each of the four styles of gloves stating “engineered to the exact specifications of professional mechanics.” Examination of each pair of gloves confirms that the gloves’™ features would enhance performance in motorsports racing. Furthermore, there is sufficient persuasive evidence concerning marketing, advertising and sales of the subject merchandise in the trade channels of the sport named for which the gloves are designed.

In HQ 965131, dated October 25, 2001, Customs found that gloves designed for use in the sports of hunting or competitive shooting were designed for use in sports. In HQ 965131, marketing materials were submitted, promoting the benefits and design features of the gloves, which made them ideal for the outdoor sportsman. Moreover, the gloves were marketed through, and sold in, outdoor sporting goods stores that catered to hunters and competitive shooters. Likewise, in HQ 958892, dated October 4, 1996, we found that gloves which were close fitting, unlined, and featured palmside polyurethane coated fabric and nylon knit fourchettes, were specially designed for equestrian sports. Based on the detailed advertising, the term “All Purpose” was found to refer to the multiple equestrian activities for which the gloves could be used within the sport.

On the other hand, in HQ 954704, dated November 12, 1993, Customs ruled that lined leather gloves were not “specially designed” for use in the sport of snowmobiling. After examining the gloves and accompanying advertisements, we found that the gloves were equally suited for use as either motorcycle or snowmobile gloves. Therefore, the claim that the gloves were “designed, marketed and sold specifically as snowmobile gloves” was unsupported due to ambiguous advertising. Similarly, in HQ 088374, dated June 24, 1991, Customs ruled that the gloves at issue were not ski gloves, because the importer provided no evidence that they were principally used in, or designed for, the sport of skiing. In HQ 088374, there was no evidence of marketing or sale of the gloves as ski gloves, absent a hang tag including the word “ski.” Moreover, in HQ 957848, dated August 10, 1995, Customs found that the advertisement accompanying the gloves showed the wearer engaged in non-sport activities such as writing, playing a trumpet, looking through a bag and taking pictures. In that ruling, the gloves (half-fingered with synthetic palm patch) were not considered to be designed, marketed and sold specifically for use as sports gloves. In HQ 083450, dated August 25, 1989, in determining whether gloves were “specially designed for use in sports,” Customs found that a glove designed as a multi-sport glove and used in many different sports did not necessarily satisfy the meaning of “designed for use in sports.” In that ruling, we interpreted the term “specially designed for sports” to mean that the gloves must have special design features particular to the identified sport. Comfort, breathability and a reinforced thumb were not sufficient to show that special design features pertained specifically to any one of the sports cited (bicycling, cross-country skiing, ATV-motorcycling racing and boating).

Most recently, in HQ 965157, dated May 14, 2002, Customs ruled that five styles of gloves were not properly classified as specially designed for use in sports. In that ruling, the gloves had some features associated with sports gloves, such as hook and loop closure and synthetic materials. Yet, the gloves were not classifiable under subheading 6216.00.4600, HTSUSA, since they were not sufficiently marketed, advertised and sold for use in the sports for which they were allegedly designed.

In this case, the marketing and advertising materials support your claim that Models 100, 200, 222 and 400, are specially designed for motorsports racing. We find that the advertising and marketing materials show a substantial association with motorsports racing and that the four styles of gloves are primarily marketed, advertised and sold to, and used by, participants and enthusiasts of motorsports racing. The claim that the gloves are

“engineered to the exact specifications of professional mechanics” is substantiated by advertisements in motorsports magazines, sponsorships, and endorsements as well as through Mechanix Wear™’s catalogs, marketing plan and website information. These materials focus almost completely on motorsports racing and specifically market the gloves to racing enthusiasts. Moreover, the vast majority of “Mechanix” printed advertisements are placed in magazines and publications devoted to racing and racing enthusiasts. The printed Mechanix Wear advertisements and catalogs are replete with motorsports pictures, illustrating pit crews engaged in NASCAR, drag racing and motorcross. In addition, the company’s website is also vastly devoted to the sport of motor racing, providing recent race results and including multiple Internet links to racing team home pages and NASCAR on the World Wide Web. Moreover, the gloves are officially licensed by NASCAR and used by multiple NASCAR racing team pit crews.

Accordingly, the subject gloves, identified as Models 100, 200, 222 and 400, are properly classified in subheading 6216.00.46, HTSUSA, as gloves specially designed for use in sports, namely motorsports racing. This finding is also consistent with New York Ruling Letter (NY) A86298, dated August 8, 1996 and NY B85790, dated June 5, 1997.

Holding:

The style of gloves identified as Model 111 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 style of gloves identified as Model 300 is classified in subheading 6216.00.5820, HTSUSA, which provides for “Gloves, mittens and mitts: Other: Of man-made fibers: Other: With fourchettes, Other.” The general column one rate of duty is 21 cents per kilogram plus 10.5 percent ad valorem and the textile restraint category is 631.

The four styles of gloves, identified as Models 100, 200, 222 and 400, are 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 3.3 percent ad valorem.

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

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

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
 BUREAU OF CUSTOMS AND BORDER PROTECTION,
New York, NY, August 8, 1996.
 CLA-2-62:RR:NC:WA:354 A86298
 Category: Classification
 Tariff No. 6216.10.4600

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

Re: The tariff classification of a mechanics glove from China.

DEAR MS. HAGAR:

In your letter received by our office on July 30, 1996, you requested a tariff classification ruling.

Style MG-05-012 (MECHANIX GLOVE) 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 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.

The applicable subheading for the glove will be 6216.00.4600, Harmonized Tariff Schedule of the United States (HTS), which provides for gloves, mittens and mitts: other: of man-made-fibers: * * * designed for use in sports, * * *.

The rate of duty will be 5 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Brian Burtnik at 212-466-5880.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
 BUREAU OF CUSTOMS AND BORDER PROTECTION,
New York, NY, June 5, 1997.
 CLA-2-62:RR:NC:TA:354 B85790
 Category: Classification
 Tariff No. 4203.21.8060 and 6216.00.4600

JACK D. MOON
 E. BESLER & COMPANY
 115 Martin Lane
 Elk Grove Village, IL 60007-1309

Re: The tariff classification of gloves from China.

DEAR SIR:

In your letter dated May 15, 1997, filed in behalf of Midwest Air Technologies, Inc., you requested a tariff classification ruling.

Two samples of gloves were submitted for classification. Style IL-7504 (MECHANIX GLOVE) 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. As 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. Noting the design features and choice of materials we agree with that assertion.

Style SP-7502 is identical to Style IL-7504 with the exception that split leather comprises the leather palm, fourchettes and back of the fingertips. The essential character of the glove is imparted by the split leather palm.

The applicable subheading for style IL-7504 will be 6216.00.4600, Harmonized Tariff Schedule of the United States (HTS), 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 will be 4.7 percent ad valorem.

The applicable subheading for style SP-7502 will be 4203.21.8060, HTS, 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 rate of duty is 4.9 percent ad valorem. This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Brian Burtnik at 212-466-5880.

PAUL K. SCHWARTZ,
Chief, Textiles & Apparel Branch,
National Commodity Specialist Division.

[ATTACHMENT D]

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

CLA-2 RR:CR:TE 966248 JFS
 Category: Classification
 Tariff No. 6216.00.5820

PETER MENTO
 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.

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 1¼ 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 basket-

ball, 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, 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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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.” 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 consistent with the findings of this ruling.

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, 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.customs.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, 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.

MYLES B. HARMON,
 Director,
 Commercial Rulings Division.

[ATTACHMENT E]

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

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.

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:

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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:

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www.mechanicsschools.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.”

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 consistent with the findings of this ruling.

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 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.customs.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, 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.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT F]

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

CLA-2 RR:CR:TE 966432 JFS
 Category: Classification
 Tariff No. 4203.29.1500 and 6216.00.5820

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

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 "deter-

mined 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 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:

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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.

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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.”

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 consistent with the findings of this ruling.

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* per dozen pairs.

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.customs.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, 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.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

PROPOSED MODIFICATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
CLASSIFICATION OF 22-POCKET HANGING OVER-DOOR
SHOE ORGANIZER

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

ACTION: Notice of proposed modification of a tariff classification ruling letter and revocation of any treatment relating to the classification of a 22-pocket hanging over-door shoe organizer.

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 modify one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a 22-pocket hanging over-door shoe organizer. Similarly, Customs proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before June 20, 2003.

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

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Textiles Branch, (202) 572–8822.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify one ruling letter pertaining to the tariff classification of a 22-pocket hanging over-door shoe organizer. Although in this notice, Customs is specifically referring to the modification of New York Ruling Letter (NY) I84815, dated August 12, 2002 (Attachment A), this notice covers any rulings on this merchan-

dise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

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

In NY I84815, Customs ruled that the subject goods were classifiable pursuant to a GRI 3(c) analysis within subheading 6307.90.9889, HTSUSA, which provides for other made up articles of textile. Since the issuance of that ruling, Customs has reviewed the classification of this item and has determined that the cited ruling is in error. We have determined that this item is a composite good consisting of different materials and should be classified pursuant to a GRI 3(b) analysis with the essential character of the article imparted by the plastic material. As such, we find that the article is properly classified in subheading 3924.90.5500, HTSUSA, which provides for other household articles of plastic.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify NY I84815, dated August 12, 2002, and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 965985 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions that are contrary to the deter-

mination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

Dated: May 5, 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,
New York, NY, August 12, 2002.
CLA-2-63:RR:NC:TA:351 I84815
Category: Classification
Tariff No. 6307.90.9889 and 3924.90.5500

MR. FRANK PRACKLER
HAROLD I. PEPPER CO., INC.
*181 South Franklin Ave., Suite 218
Valley Stream, NY 11581*

Re: The tariff classification of a dress bag, under bed bag, storage bag, suit bag, an over-door organizer, and shoe organizer, all from China.

DEAR MR. PRACKLER:

In your letter dated July 29, 2002, on behalf of EZ DO Company, you requested a tariff classification ruling.

The samples submitted are a dress bag, item number 46035; under bed bag, item number 43015; shoe bag, item number 43095; storage bag, item number 43135; suit bag, item number 46115; overdoor organizer, item number 46098; shoe organizer, item number 46075.

Item number 46035 is designed to hang in a closet on a pole. It is made of nonwoven textile fabric and measures 54" in length x 17" in width x 20" deep. It features a full-length zipper closure down the center. It is constructed such that it has three holes, each reinforced with a metal ring, onto the top to enable a metal frame with metal hooks to hang the article in a closet. The metal frame is packaged with the article.

Item number 43015 is made of nonwoven fabric panels and plastic sheeting material. The sides and bottom are made of nonwoven fabric panels and the top is constructed of plastic sheeting material. The bag has a zipper closure. It measures 42" L x 18" W x 6" D.

Item number 43095 is an accordion style shoe bag made of man-made nonwoven textile fabric with ten tiers for shoes. It is designed with hook-and-loop fastener to fit onto a pole in a closet.

Item number 43135 is constructed of nonwoven fabric panels and plastic sheeting material. The sides and bottom are made of nonwoven fabric panels and the top is constructed of plastic sheeting material. The bag features a zipper closure. It measures 30" L x 17 1/2" W x 16" D.

Item number 46115 is made of a nonwoven fabric panel and a plastic sheeting material. The back is constructed of a nonwoven fabric panel and the front is made of plastic sheeting material with a zipper closure down the center. The suit bag has a small opening at the top to permit the carrying of garments hung on hangers. It measures 38" L x 24" W x 3" D.

Item number 46098 is made of a nonwoven fabric panel with 22 pockets on one side. The pockets are constructed of clear plastic material. The top is designed with grommets to allow for hanging. It measures 62 1/2" L x 23" W.

Item number 46075 is constructed of a nonwoven fabric panel with plastic sheeting material pockets covering both back and front of the panel. The top features a hook for hang-

ing the article on a rod in a closet. It is designed to hold 20 pairs of shoes. It measures 60" L x 13" W.

The applicable subheading for item numbers 46035, 43095, 43015, 43135, 46115 and 46098 will be 6307.90.9889, Harmonized Tariff Schedule of the United States (HTS), which provides for other made up articles * * * Other. The rate of duty will be 7 percent ad valorem.

The applicable subheading for item number 46075 will be 3924.90.5500, HTS, which provides for * * * other household articles * * * Of plastics: Other, other. The rate of duty will be 3.4 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mitchel Bayer at 646-733-3102.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

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

CLA-2 RR:CR:TE 965985 ASM
Category: Classification
Tariff No. 3924.90.5500

MR. FRANK PRACKLER
HAROLD I. PEPPER CO., INC.
*181 South Franklin Ave., Suite 218
Valley Stream, NY 11581*

Re: Reconsideration and Modification of NY I84815; Classification of 22-pocket hanging over-door shoe organizer.

DEAR MR. PRACKLER:

This is in response to a letter, dated September 19, 2002, which you submitted on behalf of EZ Do Co., requesting reconsideration of New York Ruling (NY) I84815, dated August 12, 2002, which classified among other things an over-door shoe organizer (item 46098) under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. A sample was submitted to this office for examination.

Facts:

The subject article is identified as a 22-pocket hanging over-door shoe organizer, item 46098. The article is constructed of a non-woven fabric panel with 22 pockets on one side. The pockets are constructed of clear plastic material. The top is designed to allow for hanging the article over a door. The entire article measures 62.5 inches long x 23 inches wide. Five rows of four pockets each are formed by stitching clear plastic sheeting to the non-woven fabric. Narrow plastic strips are used as a binder for the stitches and as a capping for the edges. Each pocket is meant to hold a shoe. At the bottom there are two double-sized pockets to hold pocketbooks, scarves, or other items. There are four grommets at the top to enable the item to be hung. Four metal over-door hooks are included.

In NY I84815 the subject article was classified in subheading 6307.90.9889, HTSUSA, which is a provision for other made up textile articles. You disagree with this classification and claim that the correct classification is in subheading 3924.90.5500, HTSUSA, which provides for other household articles of plastic.

Issue:

What is the proper classification for the merchandise?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). 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 heading and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The subject article, identified as item 46098, is constructed of both plastic and textile materials. As such, the article is *prima facie* classifiable as an article of plastic under heading 3924, HTSUSA, which provides for “Tableware, kitchenware, other household articles and toilet articles, of plastics” and as an article of textile under heading 6307, HTSUSA, which provides for “Other made up articles, including dress patterns”. Thus, the goods are not classifiable pursuant to a GRI 1 analysis. GRI 2(b) provides that the classification of combinations of materials, which are *prima facie* classifiable under two or more headings, must be classified according to the principles of Rule 3. GRI 3(b) provides that composite goods consisting of different materials or made up of different components shall be classified as if they consisted of the material or component which gives them their essential character. The EN for GRI 3(b) states in relevant part that the factor which determines essential character will vary as between different kinds of goods, *e.g.*, 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.

In the case of *Better Home Plastics Corp. v. United States*, 199 F.3d 969 (1997), the Court of Appeals for the Federal Circuit (CAFC) affirmed a decision by the Court of International Trade (CIT) which classified a textile shower curtain/plastic liner set, pursuant to a GRI 3(b) analysis, as an article of plastic under subheading 3924.90.1010, HTSUSA. The CAFC further affirmed that the CIT had correctly applied a GRI 3(b) analysis by evaluating the essential character of a textile shower curtain/plastic liner set by comparing the relative importance of each component. Finally, in affirming that the CIT had correctly classified the set, the CAFC held that there was no error in the lower court’s refusal to reject the essential character test in favor of the default rule of GRI 3(c).

In Customs Headquarters Ruling Letter (HQ) 964238, dated May 31, 2002, we applied a GRI 3(b) analysis in classifying suit/dress bags (items 01896–2; 01892–2) constructed of plastic and textile materials. In determining the essential character of these goods pursuant to a GRI 3(b) analysis, we compared the plastic and textile materials to assess which material contributed the greatest durability and value to the finished goods. In this instance, we found that the textile material provided the greater durability and value. Thus, the goods were classified as a container of heading 4202 with outer surface of textile under subheading 4202.92.3031, HTSUSA.

Upon visual examination of the article now in issue, it has been confirmed that there is more plastic sheeting than textile fabric used to construct the article. Although the textile panel forms the back of the pocket, it is the plastic sheeting that forms the gusseted front portion of the 22 pockets which will store, organize, and support the intended contents. In this way, the plastic front portion of the pockets defines the product as a shoe organizer. In addition, the entire article has been reinforced with plastic piping to provide strength and support to the plastic pockets and along the edges of the textile panel. The clear plastic sheeting provides easy identification of shoe style/color and an easy wipe surface, which is important in cleaning away dirt/mud carried by shoe soles to the interior of each plastic pocket. The plastic material on this article represents a higher percentage of the total value of the article than the textile panel. Thus, the plastic components of the shoe organizer provide the indispensable function and the greater quantity and value to the article.

In view of the foregoing, it is our determination that the subject article, item 46098, is correctly classified, pursuant to GRI 3(b), as an article of plastic under subheading 3924.90.5500, HTSUSA. It is also our decision that NY I84815, dated August 12, 2002, incorrectly classified the subject article (item 46098) as an other article of textile in subheading 6307.90.9889, HTSUSA.

Holding:

NY I84815, dated August 12, 2002, is hereby modified.

The subject merchandise, identified as Item 46098, is correctly classified in subheading 3924.90.5500, HTSUSA, which provides for, "Tableware, kitchenware, other household articles and toilet articles, of plastics: Other: Other." The general column one duty rate is 3.4 percent *ad valorem*.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION AND MODIFICATION OF RULING
LETTERS AND REVOCATION OF TREATMENT RELATING TO
TARIFF CLASSIFICATION OF STENCILS

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

ACTION: Notice of proposed revocation and modification of ruling letters and revocation of treatment relating to tariff classification of stencils.

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 four rulings and modifying three rulings pertaining to the tariff classification of stencils under the Harmonized Tariff Schedule of the United States ("HTSUS"). Similarly, Customs is revoking 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 June 20, 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 Mr. 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 four ruling letters and modify three ruling letters pertaining to the tariff classification of stencils. Although in this notice Customs is specifically referring to seven rulings (HQ 951965, HQ 950926, PD F85514, PD F87884, NY 811162, NY E87868 and NY H88793) 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 seven 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 Harmonized Tariff Schedule of the United States. 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 HQ 951965, dated September 18, 1992; HQ 950926, dated March 31, 1992; PD F85514, dated May 2, 2000; PD F87884, dated June 3,

2000; NY 811162, dated June 20, 1995; NY E87868, dated October 15, 1999; and NY H88793, dated March 1, 2002, set forth as Attachments A through G, respectively, stencils were classified in subheading 9503.90.00, HTSUS (or its predecessor provision 9503.90.60), which provides for other toys. In several of these rulings, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) regarding stencils (EN 90.17) were interpreted as narrowing the scope of heading 9017, HTSUS, so as to limit the type of stencil that qualified as a drawing instrument to only sophisticated or professional stencils (e.g., for drafting).

It is now Customs position that the stencils in the above-listed rulings are classified in subheading 9017.20.00, HTSUS, which provides for other drawing, marking-out or mathematical calculating instruments. Stencils that qualify as drawing instruments are those intended to create designs by making lines with writing utensils; that is, drawing. Toys, on the other hand, are designed for amusement. While drawing may provide amusement, many articles involving drawing, coloring, painting and the like are excluded from classification in the toy provision because they are designed for drawing, not amusement. Thus, such stencils are not classifiable as toys. This decision is consistent with several other rulings regarding the scope of each of the headings.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke HQ 951965, HQ 950926, PD F85514, PD F87884, and modify NY 811162, NY E87868, NY H88793, and revoke/modify any other ruling not specifically identified to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analyses set forth in HQ 966198, HQ 966197, HQ 966193, HQ 966192, HQ 966195, HQ 966194 and HQ 966191 (Attachments H through N, respectively). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. Before taking this action, we will give consideration to any written comments timely received.

Dated: May 5, 2003.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
Washington, DC, September 18, 1992.

CLA-2 CO:R:C:M 951965 MBR
Category: Classification
Tariff No. 9503.90.60

AREA DIRECTOR OF CUSTOMS
NEW YORK SEAPORT
6 World Trade Center
New York, NY 10048

Re: Reconsideration of HQ 950926; "Stencils & Pencils" Set; Toy.

DEAR AREA DIRECTOR:

This is in reply to your memorandum of May 29, 1992, requesting reconsideration of HQ 950926, dated March 31, 1992, regarding the classification of the "Stencils & Pencils" set, under the Harmonized Tariff Schedule of the United States (HTSUS).

Facts:

The merchandise at issue is a set consisting of a 6.5" X 3.5" yellow plastic stencil depicting a rough outline of a farm and farm animals, four colored pencils, and three erasers (shaped like a cow, a rabbit, and a heart).

Issue:

What is the classification of the "Stencils & Pencils" set under the Harmonized Tariff Schedule of the United States (HTSUS)?

Law and Analysis:

The General Rules of Interpretation (GRI's) to the HTSUS govern the classification of goods in the tariff schedule. GRI 1 states, in pertinent part:

* * * classification shall be determined according to the terms of the headings and any relative section or chapter notes * * *

In HQ 950926 we classified the "Stencils & Pencils" set under subheading 9503.90.60, HTSUS, which provides for: "[o]ther toys: [o]ther: [o]ther: [o]ther toys (except models), not having a spring mechanism."

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) to the HTSUS, regarding chapter 95, page 1585, state: "[t]his Chapter covers toys of all kinds whether designed for the amusement of children or adults."

You argue that: "[i]t must be pointed out that the stencils are not designed to amuse." We disagree. Samples are potent witnesses, and this sample speaks for itself. Every design feature of this article delineates its design for the amusement of children. The packaging itself is clearly directed towards the amusement of children, and is printed with letters, hearts and stars in pink, red, orange, blue, green, and yellow. The crudeness of the pencils, the stencils, and the erasers, limits their use to that of merely amusement. For example, it would be difficult, if not impossible, to accurately reproduce a likeness of anything using this pencils and stencils set.

You argue that the "Stencils & Pencils" set is classifiable in chapter 90. However, the Legal Notes to chapter 90 state:

1. This chapter does not cover:
 - (j) Articles of chapter 95.

Therefore, since it is emphatically our position that the set at issue is designed to amuse children, and is classifiable in chapter 95, it is therefore not classifiable in chapter 90, under any circumstances.

You argue that if the instant merchandise, which is designed for children, is classifiable as a toy in chapter 95, then consequently, all stencils (presumably whether or not for professionals such as architects, interior decorators, etc.) would also be classifiable as toys in chapter 95. We disagree. Only those articles which are "designed for the amusement of children or adults" are classifiable in chapter 95, and therefore excluded from chapter 90.

Holding:

The "Stencils & Pencils" set is classifiable in subheading 9503.90.60, HTSUS, which provides for: "[o]ther toys: [o]ther:

[o]ther: [o]ther toys (except models), not having a spring mechanism." For the above stated reasons, HQ 950926, dated March 31, 1992, is affirmed.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
Washington, DC, March 31, 1992.
CLA-2 CO:R:C:M 950926 KCC
Category: Classification
Tariff No. 9503.90.60

MS. VIVIAN GONZALEZ
C-AIR INTERNATIONAL, INC.
11222 S. La Cienega Blvd.
Suite 470
Inglewood, CA 90304

Re: Stencils and Pencils package; erasers; GRI 3(b); set; essential character; EN 90.17; 088323.

DEAR MS. GONZALEZ:

This is in response to your letter dated November 21, 1991, on behalf of Lisa Frank, Inc., requesting the tariff classification of "Stencils and Pencils" and "Notepad" packages from Taiwan under the Harmonized Tariff Schedule of the United States (HTSUS). Your letter and samples were forwarded to this office for a response. You have received the classification of the "Notepad" set in New York Ruling 869225.

Facts:

The article under consideration is a "Stencils and Pencils" package which contains three small erasers, four colored pencils and one stencil which contains the outline of farm animals and a barn. All the articles are packaged together on cardboard which has a plastic cover. The invoice value of a package is 41 cents.

Issue:

What is the proper tariff classification of the "Stencils and Pencils" package under the HTSUS?

Law and Analysis:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1, HTSUS, states in part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes. * * *" When goods are prima facie classifiable under two or more headings GRI 3 is applicable. In this case, classification is determined by application of GRI 3(b) which provides:

Goods put up in sets for retail sale shall be classified as if they consisted of the component which gives them their essential character.

To determine what is a "set put up for retail sale" the Explanatory Notes (EN) of the Harmonized Commodity Description and Coding System (HCDCS) may be utilized. EN X to GRI 3(b) provides a three part test for "goods put up in sets for retail sale":

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

(a) consist of at least two different articles which are prima facie, classifiable in different headings; (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

HDCDS, Vol. 1, p. 4. The Explanatory Notes, although not dispositive, are looked to for the proper interpretation of the HTSUS. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989). In general, essential character has been construed to mean the attribute which strongly marks or serves to distinguish what an article is; that which is indispensable to the structure, core or condition of the article. In addition, EN VIII to GRI 3(b) provides further factors which determine the essential character of goods.

Factors such as bulk, quantity, weight or value, or the role of a constituent material in relation to the use of the goods are to be utilized, though the importance of certain factors will vary between different kinds of goods. HDCDS, Vol. 1, p. 4.

In the present situation, the "Stencils and Pencils" package consists of three different articles, each having different classifications (e.g., erasers in heading 4016, pencils in heading 9609). The articles are put up together for a child to outline the animal and barn figures using the stencil and color pencils, color in the figures and erase any mistakes.

The articles are packaged together for sale to the end user.

Thus, the "Stencils and Pencils" package is a set.

We are of the opinion that the essential character of the "Stencils and Pencils" set is the stencil. The stencil is the main feature of the set because the child will buy the package to be able to outline the animal figures on the stencil. The colored pencils and erasers merely facilitate the use of the stencil. Moreover, any type of writing instrument can be used with the stencil.

Heading 9017, HTSUS, provides for "Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tapes, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof * * *". Explanatory Note (EN) 90.17 of the Harmonized Commodity Description and Coding System (HDCDS) states that this heading includes:

(A) Drawing instruments.

(1) Pantographs and eidographs for smaller, larger or same scale reproductions of maps, plans, drawings, parts to be machined, etc. The heading includes such instruments used for course plotting in navigation.

(2) Drafting machines generally using a system of parallelograms, with or without drawing boards or tables. * * *

(3) Drawing compasses, dividers, reduction compasses, spring bows, mathematical drawing pens, dotting wheels, etc., whether in a case (e.g., drawing sets) or separately.

(4) Set squares (standard, hatching, wood or metal working) adjustable squares, T squares (standard or articulated), drawing curves rulers (flat, square, hatching (parallel rulers), standard, etc.).

(5) Protractors, from the ordinary protractors found in drawing sets to the complex protractors as used, for example, in engineering.

(6) Stencils of a kind clearly identifiable as being specialized as drawing instruments * * *

HDCDS, Vol. 4, p. 1486.

The Explanatory Note language for stencils provides that Heading 9017 covers stencils "* * *" of a kind clearly identifiable as being specialized as drawing instruments" (emphasis in original). Stencils which contain outlines of farm animals and a barn are not ejusdem generis with the drawing instruments identified in Heading 9017 and are not of a kind clearly identifiable as being specialized as drawing instruments.

The stencils are clearly designed principally for amusement, in this case, for children. The stencils are described as "Other toys * * *: Other toys * * *: Other: Other: Other toys (except models), not having a spring mechanism", and are classified in subheading 9503.90.60, HTSUS.

Pursuant to GRI 3(b), the remaining articles in the "Stencils and Pencils" package are classified with the stencils.

Holding:

The "Stencils and Pencils" package is classified as "Other toys * * *: Other toys * * *: Other: Other: Other toys (except models), not having a spring mechanism", and are classified in subheading 9503.90.60, HTSUS.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
Washington, DC, May 2, 2000.

CLA-2-95: D13 F85514
Category: Classification
Tariff No. 9503.90.0045

MS. ROSE BELTRAN
ALLIANCE CUSTOMS CLEARANCE, INC.
100 Oceangate Plaza 200
Long Beach, CA 90802

Re: The tariff classification of the "Nova's Ark Surprise Stencils" made in China.

DEAR MS. BELTRAN:

In a letter dated April 4, 2000, you requested a tariff classification ruling on behalf of your client, Tricon Restaurant Services.

A sample was provided. The sample, "Nova's Ark Surprise Stencils" is a set of three stencils made of plastic. Each stencil is 4.25" square and is divided into four numbered sections. The sections are oriented around a central locator point and each section has cutouts of various designs. A child will use one stencil and starting with the first section trace the cutouts in that section onto paper. Each section on the stencil is in turn located using the same location point and their designs are traced on top of the preceding design. When all four sections have been completed an image of a robotic creature will appear on the paper. Each stencil has a different creature.

The applicable subheading for the "Nova's Ark Surprise Stencils" will be 9503.90.0045, Harmonized Tariff Schedule of the United States (HTS), which provides for Other toys, reduced-sized ("scale") models and similar recreational models, working or not; puzzles of all kinds, parts and accessories thereof; other, other toys and models. The rate of duty is free.

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.

JEFFREY R. WALGREEN,
Port Director,
Portland, Maine.

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
Washington, DC, June 30, 2000.

CLA-2-95:NEW:TCB II:D05 F87884
Category: Classification
Tariff No. 9503.90.0045

MR. JOSEPH R. HOFFACKER
BARTHCO TRADE CONSULTANTS, INC.
*7575 Holstein Avenue
Philadelphia PA 19153*

Re: The tariff classification of plastic "Easter" stencil sets from China.

DEAR MR. HOFFACKER:

In your letter dated June 2, 2000, on behalf of your client Consolidated Stores Inc., you requested a tariff classification ruling.

With your letter you submitted a photograph of two 27 piece "Easter" stencil sets. Each set is part of an assortment, and will have your client's item number 001440. The sets contain stencils that depict various items such as rabbit heads, baskets, eggs, etc. We interpret these particular stencils as being designed purely for amusement purposes. The country of origin for the 27 piece "Easter" stencil sets will be China.

The applicable subheading for the "Easter" stencil sets will be 9503.90.0045 Harmonized Tariff Schedule of the United States (HTS), which provides for Other toys and models, Other * * *. Other toys and models. The applicable rate of duty will be free.

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

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

KATHLEEN M. HAAGE,
*Area Director,
New York/Newark Area.*

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
New York, NY, June 20, 1995.

CLA-2-95:S:N:N7:225 811162
Category: Classification
Tariff No. 9503.90.0030 and 6815.99.4000

MR. FRED SHAPIRO
FASCO (USA) LTD.
*39 E. Hanover Avenue
Morris Plains, NJ 07950*

Re: The tariff classification of various children's activity sets from China, Taiwan and Hong Kong.

DEAR MR. SHAPIRO:

In your letter dated June 1, 1995 you requested a tariff classification ruling. A sample of each product was submitted with your inquiry. The first item is called "Polly Pocket Crayon By Number Activity Caddy". The article consists of 6 double sided plastic plates, 8 crayons, one plastic caddy, a blank paper roll and 2 printed paper rolls. The plastic plates, or "rubbing plates" as they are called, measure 4¾ inches by 4 inches and have various raised scenic designs. The plastic caddy measures 11½ by 7½ inches. It serves as a work area and

storage container for the plates, crayons and paper rolls. The caddy is specially constructed to hold the blank paper rolls and plates in place. To operate, the child inserts a "rubbing plate" in the frame portion of the caddy, unwinds a blank piece of paper over the "rubbing plate" and closes the plastic frame. The frame holds all items in place and by rubbing a crayon over the paper an outline of the desired picture is obtained. With the outline established the plate may be removed and the child may color the picture.

The "Polly Pocket Sand Art" includes a plastic tray, one sand dispenser with stand, 6 pre-cut pictures, 7 bags of sand and 1 plastic spoon. The user selects up to 4 colors of sand and pours them into the hand held sand dispenser unit. The pre-cut, specially constructed, picture is placed in the plastic tray. As sections of the picture are peeled away a sticky surface is revealed. Sand is distributed over the exposed area, adhering to the surface, and excess is simply shaken to the side. This process is repeated until a completed picture is created. The "Polly Pocket Light-Up Desk" is composed of a plastic portable desk, 6 colored pencils, 6 printed paper sheets and 12 pieces of drawing paper. The portable desk contains a light which illuminates the desk surface. The light feature assists the child in tracing over printed designs. The "Art To Go, Pencils and Stencils" set consists of 6 colored pencils, 6 plastic stencils, 1 pad of paper and a folding plastic carry case. The stencils depict various human and animal figures and impart the essential character of this retail packaged set. The applicable subheading for the "Polly Pocket Crayon By Number Activity Caddy" and "Art To Go, Pencils and Stencils" will be 9503.90.0030, Harmonized Tariff Schedule of the United States (HTS), which provides for other toys (except models), not having a spring mechanism. The rate of duty will be free.

The applicable subheading for the "Polly Pocket Sand Art" will be 6815.99.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for articles of stone or of other mineral substances (including articles of peat), not elsewhere specified or included: other: other. The duty rate will be 3.6 percent ad valorem.

The question of classification for the "Polly Pocket Light Up Desk", item #48004, is being referred to the Office of Regulations and Rulings, U.S. Customs Service Headquarters, 1301 Constitution Avenue, N.W., Washington D.C. 20229. A ruling will be issued to you from that office.

The subject "Polly Pocket" may constitute an infringement of a registered trademark under 15 U.S.C. 1124. Importations of this merchandise may be subject to the provisions of Section 133 of the Customs Regulations if it copies or simulates a registered trademark recorded with the Customs Service. You should contact your local Customs office to determine the status of this toy before you finalize any purchasing contracts.

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

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

JEAN F. MAGUIRE,
*Area Director,
New York Seaport.*

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
New York, NY, October 15, 1999.

CLA-2-48:RR:NC:2:234: E87868

Category: Classification

Tariff No. 4823.90.8500, 4202.12.2010,
9503.90.0045, and 4911.91.2040 (9903.08.11)

MR. MICHAEL J. MERCER
CORBETT INTERNATIONAL, INC. (IMPORTS)
CARGO SERVICE BUILDING 80
JFK International Airport
Jamaica, NY 11430

Re: The tariff classification of incomplete "Blopen" play set, from Great Britain.

DEAR MR. MERCER:

In your letter dated September 30, 1999, on behalf of your client, P & M Products USA, Inc., you requested a classification ruling. You advise that the product was the subject of a prior ruling, CLA-2-96:RR:NC:MM:113 E80478, which classified it as "goods put up in sets for retail sale", in HTS subheading 9608.20.0000, which provides for felt pens.

The importer has decided to import the sets without the "blopens" which provided the classifying subheading. Presumably the "blopens", or similar devices, will be added to the presently imported product, after its importation.

A sample of the incomplete set (minus the "blopens") was provided, which will be returned to you, as requested.

Since the imported product now will not be "put up in sets for retail sale", in its condition as imported, the various components will be separately classified. These are "cases" containing the remaining articles; cardboard packing frame which doubles as a "desk" with holes punched out to hold the pens (the pens not part of the sample nor of the prospective importations); stencils; and some pictures to color.

The rigid plastic carrying case is of the class or kind similar to a briefcase. The applicable subheading for this article is 4202.12.2010, Harmonized Tariff Schedule of the United States (HTS), which provides for Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers: With outer surfaces of plastics or of textile materials: With outer surfaces of plastics: Structured, rigid on all sides: Attache cases, briefcases and similar containers. The duty rate will be 20 percent *ad valorem*.

The applicable subheading for the cardboard packing frame which doubles as a "desk", with holes punched out, etc., will be 4823.90.8500, HTS, which provides for: Other (than certain specified articles of paper or paperboard). The duty rate will be 2.6 percent *ad valorem*.

The applicable subheading for the paperboard stencils will be 9503.90.0045, HTS, which provides for: Other (than certain specified) toys and models. The rate of duty will be Free.

The "pictures for coloring" are printed by what appears to be a lithographic process, on paper of a thickness of about 0.08 mm. Each sheet is about 11 $\frac{3}{4}$ " long and 8 $\frac{1}{4}$ " wide. The applicable subheading would be 4911.91.2040, HTS, which provides for certain Lithographs on paper. The general rate of duty would be 6.6 cents per kilo.

However, the Harmonized Tariff Schedule of the United States (HTS) has been modified by adding in numerical sequence the following text and subheading to subchapter III of chapter 99 to the HTS:

9903.08.11, which provides for: Articles the product of * * * the United Kingdom:
Lithographs on paper or paperboard, not over 0.51 mm in thickness, printed not over 20 years at time of importation (provided for in subheading 4911.91.20).

Under this provision, the "pictures for coloring" from Great Britain, classified under subheading 4911.91.2040, HTS, are subject to a 100 percent *ad valorem* rate of duty.

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 Carl Abramowitz, at 212-637-7060.

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

[ATTACHMENT G]

DEPARTMENT OF HOMELAND SECURITY,
 BUREAU OF CUSTOMS AND BORDER PROTECTION,
New York, NY, March 1, 2002.
 CLA-2-95:RR:NC:SP:225 H88793
 Category: Classification
 Tariff No. 3924.90.5500, 3926.10.0000,
 9503.90.0080, and 9505.90.2000

MR. RYAN MCCLURE
 CREATA PROMOTION
 865 South Figueroa Street Suite 1300
 Los Angeles, CA 90017

Re: The tariff classification of McCoasters, Character Paper Clips, Ronald McDonald™ Stencil, Straw Slip-Ons and Magic Cards from China.

DEAR MR. MCCLURE:

In your letter dated February 14, 2002, you requested a tariff classification ruling. You submitted the following samples:

McCoasters consists of four circular shaped plastic coasters that measure approximately 3½" in diameter and feature depictions of McDonald's cartoon characters on them. The coasters are designed for children aged three years and older and are packed in a cardboard box.

Character Paper Clips consists of two plastic paper clips that measure approximately 2½" in height and 2" in width and are molded in the shape of McDonald's cartoon characters.

Ronald McDonald™ Stencil consists of two red square shaped plastic stencils that measure approximately 2¾" on all sides and depict the face of Ronald McDonald.™ Straw Slip-Ons consists of orange and purple colored plastic slip-ons used to place over a drinking straw. Each slip-on is molded in the shape of a McDonald's cartoon character and can be reused.

Magic Cards consists of two rectangular shaped holographic paper cards depicting McDonald's cartoon characters that measure approximately 3½" in height and 2¼" in width and fit inside their own individual paper sleeves. When the cards are slowly pulled from inside their sleeves, the cards change color.

The applicable subheading for the McCoasters will be 3924.90.5500, Harmonized Tariff Schedule of the United States (HTS), which provides for * * * other household articles * * * of plastics: other, other. The rate of duty will be 3.4% ad valorem.

The applicable subheading for the Character Paper Clips will be 3926.10.0000, HTS, which provides for other articles of plastics * * * office or school supplies. The rate of duty will be 5.3 percent ad valorem.

The applicable subheading for the Ronald McDonald™ Stencil will be 9503.90.0080, HTS, which provides for other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other: Other. The rate of duty will be free.

The applicable subheading for the Straw Slip-Ons will be 9503.90.0080, HTS, which provides for other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other: Other. The rate of duty will be free.

The applicable subheading for the Magic Cards will be 9505.90.2000, HTS, which provides for festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof. The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Alice Wong at 646-733-3026.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT H]

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

CLA-2: RR:CR:GC 966198 DBS
Category: Classification
Tariff No. 9017.20.80

MS. VIVIEN GONZALEZ
C-AIR INTERNATIONAL, INC.
11222 S. La Cienega Blvd.
Suite 470
Inglewood, CA 90304

Re: "Stencils & Pencils"; HQ 951965 revoked.

DEAR MS. GONZALEZ,

On September 18, 1992, this office issued Headquarters ruling letter (HQ) 951965 in response to a memorandum requesting reconsideration of HQ 950926, dated March 31, 1992. HQ 950926 classified the "Stencil & Pencils" activity set under the Harmonized Tariff Schedule of the United States (HTSUS) as a set put up for retail sale with the essential character imparted by the stencil. The stencil was classified in subheading 9503.90.60, HTSUS (now 9503.90.00), as a toy. HQ 951965 affirmed that decision. We have reconsidered HQ 951965 and have determined the classification of the stencil to be incorrect.

Facts:

The merchandise at issue is a set consisting of a 6.5" X 3.5" yellow plastic stencil depicting a rough outline of a farm and farm animals, four colored pencils, and three erasers (shaped like a cow, a rabbit, and a heart).

Issue:

Whether stencils for drawing designs are classifiable as toys of heading 9503, HTSUS, or drawing instruments of heading 9017, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. 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 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:

9017 Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets,

	slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tape, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof:
9017.20	Other drawing, marking-out or mathematical calculating instruments:
9017.20.80	Other
*	*
9503	Other toys; reduced-size (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:
9503.90.00	Other

Though the instant article is a set, the issue before us is whether the stencils in the set are toys or drawing instruments. It has been predetermined that the instant merchandise is classifiable as a set put up for retail sale, as specified in GRI 3(b), HTSUS. *See* EN (X), GRI 3(b). That is, the determination in previous rulings on this product regarding whether or not the merchandise is a set is affirmed. Therefore, the focus of this ruling is on the classification of the stencils in the set, which, for purposes of GRI 3(b), impart the essential character of the set. *See* EN VIII, GRI 3(b).

Articles of Chapter 95, HTSUS, are not classifiable in Chapter 90, HTSUS. *See* Note 1(k), Chapter 90. In HQ 951965 we stated that the instant set was designed to amuse children and thus classified as a toy in heading 9503, HTSUS, and excluded from Chapter 90, HTSUS. The term “toy” is not defined in the HTSUS. However, the General EN for Chapter 95 states that the “Chapter covers toys of all kinds whether designed for the amusement of children or adults.” However, not all merchandise that provides amusement is properly classified in a toy provision. For example, drawing and coloring are activities capable of providing amusement, but the ENs exclude from heading 9503, HTSUS, certain articles that are used to draw and color. EN 95.03 states, in part, that heading 9503 excludes:

(c) Children’s picture, drawing or colouring books of heading 49.03

* * * * *

(h) Crayons and pastels for children’s use, of heading 96.09

* * * * *

(ij) Slates and blackboards, of heading 96.10.

These exclusions suggest that sets comprised of materials used for drawing or coloring are not classifiable as toys or as toy sets (classified according to GRI 1 under subheading 9503.70.00). In fact, Customs has long-construed the scope of heading 9503, HTSUS, to exclude such articles. Customs has never considered writing, coloring, drawing or painting to have significant “manipulative play value,” for purposes of classification as a toy. Nor does Customs classify the tools for writing, coloring, drawing or painting as toys since those tools are not designed to amuse. *See* HQ 085267, dated May 9, 1990, (ruling “Graffiti Gear” was not a toy set because coloring lacks manipulative play value); HQ 960420, dated July 25, 1997 (determining that a set consisting of washable markers and stuffed textile items printed with designs was not a toy set); HQ 962355, dated January 5, 2000 (ruling that four types of coloring sets were not classified as toy sets but rather as GRI 3(b) sets classified by the article comprising the colored or decorated craft and not the act of drawing); HQ 965195 dated August 15, 2002 (classifying “Doodle Clings” coloring sets according to GRI 3(b) and not as toy sets). *See also* HQ 959189, *infra*; HQ 958063, dated February 13, 1996 (classifying a battery-operated drawing pad with pen for children as a drawing instrument of heading 9017 and not a toy because it was designed to facilitate drawing, not to amuse); and HQ 953922, dated November 17, 1993 (classifying a video painter under heading 9017 for the same reason).

“Stencil” is also not defined in the HTSUS. Tariff terms are construed in accordance with their common and commercial meaning. *See Nippon Kogasku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982); *E.M. Chemicals v. United States*, 920 F.2d 910, 913 (Fed. Cir. 1990). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *See C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982); *Brookside Veneers, Ltd. v. United States*, 847 F.2d 786, 789, 6 Fed. Cir. (T) 121, 125 (Fed. Cir.) *cert. denied*, 488 U.S. 943, (1988).

The American Heritage Dictionary (2d College ed.; 1982) defines a “stencil,” in pertinent part, as “[a] sheet of celluloid, cardboard, or other material in which a desired lettering or design has been cut so that ink or paint applied to the sheet will reproduce a pattern on the surface beneath.” This definition is consistent with definitions from other lexicographic sources cited in HQ 959189, dated September 25, 1996, in which Customs classified stencil assortment books in heading 9017, HTSUS. In sum, a stencil is a tool for creating a design.

EN 90.17 (A)(6), states that heading 9017 covers “Stencils of a kind clearly identifiable as being specialised as drawing instruments. Stencils not so specialised are classified according to their constituent material.” In order to determine which stencils are “specialised as drawing instruments” we must review the scope of the heading.

The General ENs to Chapter 90 state that the chapter covers a wide variety of instruments and apparatus characterized by high finish and high precision. They provide, in relevant part, that the chapter includes “instruments * * * designed for certain specifically defined uses (surveying, meteorology, drawing, calculating, etc.).” The General ENs also state that “[t]here are certain exceptions to the general rule that the instruments and apparatus of this Chapter are high precision types,” and provide a non-exhaustive list of examples. The ENs to heading 9017, HTSUS, indicate that, among other instruments, the heading covers drawing instruments. In addition to drawing instruments such as pantographs and eidographs, drafting machines, drawing compasses, rulers, drawing curves, various squares (set, adjustable, and “T” types), and protractors, the language of the EN indicates that heading 9017 includes a full range of protractors, from the ordinary, found in drawing sets, to the complex, as used in engineering. Furthermore, Chapter 90 includes a range of rulers of various qualities.

Moreover, the term “drawing” means “the art or technique of representing an object or outlining a figure, plan, or sketch by means of lines,” while the term “draw” means “to produce a likeness or representation of by making lines on a surface.” *Webster’s Ninth New Collegiate Dictionary* (1990). Various standard lexicons provide similar definitions. In addition, the U.S. Court of Appeals for the Federal Circuit, in discussing the scope of terms in heading 9017, HTSUS, affirmed that the “drawing, marking-out or mathematical calculating instruments” of the heading are items used to create designs. See *Hewlett-Packard Co. v. United States*, 189 F.3d 1346 (Fed. Cir. 1999).

It is clear that the list of exemplars in the ENs is not exclusive. Though the ENs to the chapter state that the included instruments are of high finish and high precision, there is no indication that the degree of sophistication is considered relevant criteria for heading 9017 purposes—simply that the article in question is a drawing instrument, which, by its nature, is precise. Nothing in the ENs or elsewhere suggests that “drawing” is limited to professional or specialized drawing, just as “calculating” is not limited to that done solely by mathematicians or physicists, as the heading covers all forms of calculating instruments.

This analysis of heading 9017, HTSUS, is consistent with HQ 953922, dated November 17, 1993, HQ 957958 and HQ 958805, both dated February 8, 1996, and HQ 958063, dated February 13, 1996. Moreover, stencils of a kind used in children’s activity sets have been classified in heading 9017, HTSUS. See, e.g., HQ 962327, dated June 23, 2000.

Therefore, a stencil of heading 9017 must simply be a drawing instrument. The instant stencils are stencils intended to create designs. Given that the other components of the set are pencils and erasers, it is clear the designs are to be created by drawing. While drawing farm animals may provide amusement, the good was designed as a tool to create drawings of farm animals. Accordingly, the stencils are classified in heading 9017, specifically subheading 9017.20.80, HTSUS. Because the stencil imparts the essential character of the “Stencils and Pencils” activity set, it controls the classification of the set.

Holding:

The “Stencils and Pencils” set is classified as stencils in subheading 9017.20.80, HTSUS, which provides for “Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tape, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof: other drawing, marking-out or mathematical calculating instruments: other.”

Effect on Other Rulings:

HQ 951965, dated September 18, 1992, is hereby REVOKED.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT I]

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

CLA-2: RR:CR:GC 966197 DBS
 Category: Classification
 Tariff No. 9017.20.80

MS. VIVIEN GONZALEZ
 C-AIR INTERNATIONAL, INC.
 11222 S. La Cienega Blvd.
 Suite 470
 Inglewood, CA 90304

Re: "Stencils & Pencils"; HQ 950926 modified.

DEAR MS. GONZALEZ,

On March 31, 1992, this office issued to you Headquarters ruling letter (HQ) 950926, on behalf of Lisa Frank, Inc., which classified, in part, the "Stencil & Pencils" activity set under the Harmonized Tariff Schedule of the United States (HTSUS) as a set put up for retail sale with the essential character imparted by the stencil. The stencil was classified in sub-heading 9503.90.60, HTSUS (now 9503.90.00), as a toy. HQ 951965, dated September 18, 1992, affirmed that decision. We have reconsidered HQ 950926 and HQ 951965 have determined the classification of the stencil to be incorrect.

Facts:

The merchandise at issue is a set consisting of a 6.5" X 3.5" yellow plastic stencil depicting a rough outline of a farm and farm animals, four colored pencils, and three erasers (shaped like a cow, a rabbit, and a heart).

Issue:

Whether stencils for drawing designs are classifiable as toys of heading 9503, HTSUS, or drawing instruments of heading 9017, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. 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 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:

9017 Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets,

slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tape, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof:

9017.20	Other drawing, marking-out or mathematical calculating instruments:
9017.20.80	Other
*	*
*	*
9503	Other toys; reduced-size (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:
9503.90.00	Other

Though the instant article is a set, the issue before us is whether the stencils in the set are toys or drawing instruments. It has been predetermined that the instant merchandise is classifiable as a set put up for retail sale, as specified in GRI 3(b), HTSUS. *See* EN (X), GRI 3(b). That is, the determination in previous rulings on this product regarding whether or not the merchandise is a set is affirmed. Therefore, the focus of this ruling is on the classification of the stencils in the set, which, for purposes of GRI 3(b), impart the essential character of the set. *See* EN VIII, GRI 3(b).

Articles of Chapter 95, HTSUS, are not classifiable in Chapter 90, HTSUS. *See* Note 1(k), Chapter 90. In HQ 951965 we stated that the instant set was designed to amuse children and thus classified as a toy in heading 9503, HTSUS, and excluded from Chapter 90, HTSUS. The term “toy” is not defined in the HTSUS. However, the General EN for Chapter 95 states that the “Chapter covers toys of all kinds whether designed for the amusement of children or adults.” However, not all merchandise that provides amusement is properly classified in a toy provision. For example, drawing and coloring are activities capable of providing amusement, but the ENs exclude from heading 9503, HTSUS, certain articles that are used to draw and color. EN 95.03 states, in part, that heading 9503 excludes:

(c) Children’s picture, drawing or colouring books of heading 49.03

* * * * *

(h) Crayons and pastels for children’s use, of heading 96.09

* * * * *

(j) Slates and blackboards, of heading 96.10.

(c) Children’s picture, drawing or colouring books of heading 49.03

These exclusions suggest that sets comprised of materials used for drawing or coloring are not classifiable as toys or as toy sets (classified according to GRI 1 under subheading 9503.70.00). In fact, Customs has long-constructed the scope of heading 9503, HTSUS, to exclude such articles. Customs has never considered writing, coloring, drawing or painting to have significant “manipulative play value,” for purposes of classification as a toy. Nor does Customs classify the tools for writing, coloring, drawing or painting as toys since those tools are not designed to amuse. *See* HQ 085267, dated May 9, 1990, (ruling “Graffiti Gear” was not a toy set because coloring lacks manipulative play value); HQ 960420, dated July 25, 1997 (determining that a set consisting of washable markers and stuffed textile items printed with designs was not a toy set); HQ 962355, dated January 5, 2000 (ruling that four types of coloring sets were not classified as toy sets but rather as GRI 3(b) sets classified by the article comprising the colored or decorated craft and not the act of drawing); HQ 965195 dated August 15, 2002 (classifying “Doodle Clings” coloring sets according to GRI 3(b) and not as toy sets). *See also* HQ 959189, *infra*; HQ 958063, dated February 13, 1996 (classifying a battery-operated drawing pad with pen for children as a drawing instrument of heading 9017 and not a toy because it was designed to facilitate drawing, not to amuse); and HQ 953922, dated November 17, 1993 (classifying a video painter under heading 9017 for the same reason).

“Stencil” is also not defined in the HTSUS. Tariff terms are construed in accordance with their common and commercial meaning. *See Nippon Kogaku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982); *E.M. Chemicals v. United States*, 920 F.2d 910, 913 (Fed. Cir. 1990). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *See C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982); *Brookside Veneers, Ltd. v.*

United States, 847 F.2d 786, 789, 6 Fed. Cir. (T) 121, 125 (Fed. Cir.) *cert. denied*, 488 U.S. 943, (1988).

The *American Heritage Dictionary* (2d College ed.; 1982) defines a “stencil,” in pertinent part, as “[a] sheet of celluloid, cardboard, or other material in which a desired lettering or design has been cut so that ink or paint applied to the sheet will reproduce a pattern on the surface beneath.” This definition is consistent with definitions from other lexicographic sources cited in HQ 959189, dated September 25, 1996, in which Customs classified stencil assortment books in heading 9017, HTSUS. In sum, a stencil is a tool for creating a design.

EN 90.17 (A)(6), states that heading 9017 covers “Stencils of a kind clearly identifiable as being specialised as drawing instruments. Stencils not so specialised are classified according to their constituent material.” In order to determine which stencils are “specialised as drawing instruments” we must review the scope of the heading.

The General ENs to Chapter 90 state that the chapter covers a wide variety of instruments and apparatus characterized by high finish and high precision. They provide, in relevant part, that the chapter includes, “instruments * * * designed for certain specifically defined uses (surveying, meteorology, drawing, calculating, etc.).” The General ENs also state that “[t]here are certain exceptions to the general rule that the instruments and apparatus of this Chapter are high precision types,” and provide a non-exhaustive list of examples. The ENs to heading 9017, HTSUS, indicate that, among other instruments, the heading covers drawing instruments. In addition to drawing instruments such as pantographs and eidographs, drafting machines, drawing compasses, rulers, drawing curves, various squares (set, adjustable, and “T” types), and protractors, the language of the EN indicates that heading 9017 includes a full range of protractors, from the ordinary, found in drawing sets, to the complex, as used in engineering. Furthermore, Chapter 90 includes a range of rulers of various qualities.

Moreover, the term “drawing” means “the art or technique of representing an object or outlining a figure, plan, or sketch by means of lines,” while the term “draw” means “to produce a likeness or representation of by making lines on a surface.” *Webster’s Ninth New Collegiate Dictionary* (1990). Various standard lexicons provide similar definitions. In addition, the U.S. Court of Appeals for the Federal Circuit, in discussing the scope of terms in heading 9017, HTSUS, affirmed that the “drawing, marking-out or mathematical calculating instruments” of the heading are items used to create designs. *See Hewlett-Packard Co. v. United States*, 189 F.3d 1346 (Fed. Cir. 1999).

It is clear that the list of exemplars in the ENs is not exclusive. Though the ENs to the chapter state that the included instruments are of high finish and high precision, there is no indication that the degree of sophistication is considered relevant criteria for heading 9017 purposes—simply that the article in question is a drawing instrument, which, by its nature, is precise. Nothing in the ENs or elsewhere suggests that “drawing” is limited to professional or specialized drawing, just as “calculating” is not limited to that done solely by mathematicians or physicists, as the heading covers all forms of calculating instruments.

This analysis of heading 9017, HTSUS, is consistent with HQ 953922, dated November 17, 1993, HQ 957958 and HQ 958805, both dated February 8, 1996, and HQ 958063, dated February 13, 1996. Moreover, stencils of a kind used in children’s activity sets have been classified in heading 9017, HTSUS. *See, e.g.*, HQ 962327, dated June 23, 2000.

Therefore, a stencil of heading 9017 must simply be a drawing instrument. The instant stencils are stencils intended to create designs. Given that the other components of the set are pencils and erasers, it is clear the designs are to be created by drawing. While drawing farm animals may provide amusement, the good was designed as a tool to create drawings of farm animals. Accordingly, the stencils are classified in heading 9017, specifically subheading 9017.20.80, HTSUS. Because the stencil imparts the essential character of the “Stencils and Pencils” activity set, it controls the classification of the set.

Holding:

The “Stencils and Pencils” set is classified as stencils in subheading 9017.20.80, HTSUS, which provides for “Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tape, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof: other drawing, marking-out or mathematical calculating instruments: other.”

Effect on Other Rulings:

HQ 950926, dated March 31, 1992 is hereby MODIFIED.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT J]

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

CLA-2: RR:CR:GC 966193 DBS
Category: Classification
Tariff No. 9017.20.80

MS. ROSE BELTRAN
ALLIANCE CUSTOMS CLEARANCE, INC.
100 Oceangate Plaza 200
Long Beach, CA 90802

Re: "Nova's Ark Surprise Stencils"; PD F85514 revoked.

DEAR MS. BELTRAN,

On May 2, 2000, the Port of New York issued to you on behalf of Tricon Restaurant Services, PD F85514, which classified "Nova's Ark Surprise Stencils" in subheading 9503.90.00, Harmonized Tariff Schedule of the United States (HTSUS), as toys. We have reconsidered that ruling and have determined the classification of the stencil to be incorrect.

Facts:

"Nova's Ark Surprise Stencils" is a set of three stencils made of plastic. Each stencil is 4.25" square and is divided into four numbered sections. The sections are oriented around a central locator point and each section has cutouts of various designs. A child will use one stencil and starting with the first section trace the cutouts in that section onto paper. Each section on the stencil is in turn located using the same location point and their designs are traced on top of the preceding design. When all four sections have been completed an image of a robotic creature will appear on the paper. Each stencil has a different creature.

Issue:

Whether stencils for drawing designs are classifiable as toys of heading 9503, HTSUS, or drawing instruments of heading 9017, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. 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 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:

9017 Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets,

	slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tape, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof:
9017.20	Other drawing, marking-out or mathematical calculating instruments:
9017.20.80	Other
*	*
9503	Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:
9503.90.00	Other

Articles of Chapter 95, HTSUS, are not classified in Chapter 90, HTSUS. See Note 1(k), Chapter 90. The term "toy" is not defined in the HTSUS. However, the General EN for Chapter 95 states that the "Chapter covers toys of all kinds whether designed for the amusement of children or adults." However, not all merchandise that provides amusement is properly classified in a toy provision. For example, drawing and coloring are activities capable of providing amusement, but the ENs exclude from heading 9503, HTSUS, certain articles that are used to draw and color. EN 95.03 states, in part, that heading 9503 excludes:

- (c) Children's picture, drawing or colouring books of heading 49.03
* * * * *
- (h) Crayons and pastels for children's use, of heading 96.09
* * * * *
- (ij) Slates and blackboards, of heading 96.10.

These exclusions suggest that sets comprised of materials used for drawing or coloring are not classifiable as toys or as toy sets (classified according to GRI 1 under subheading 9503.70.00). In fact, Customs has long-construed the scope of heading 9503, HTSUS, to exclude such articles. Customs has never considered writing, coloring, drawing or painting to have significant "manipulative play value," for purposes of classification as a toy. Nor does Customs classify the tools for writing, coloring, drawing or painting as toys since those tools are not designed to amuse. See HQ 085267, dated May 9, 1990, (ruling "Graffiti Gear" was not a toy set because coloring lacks manipulative play value); HQ 960420, dated July 25, 1997 (determining that a set consisting of washable markers and stuffed textile items printed with designs was not a toy set); HQ 962355, dated January 5, 2000 (ruling that four types of coloring sets were not classified as toy sets but rather as GRI 3(b) sets classified by the article comprising the colored or decorated craft and not the act of drawing); HQ 965195 dated August 15, 2002 (classifying "Doodle Clings" coloring sets according to GRI 3(b) and not as toy sets). See also HQ 959189, *infra*; HQ 958063, dated February 13, 1996 (classifying a battery-operated drawing pad with pen for children as a drawing instrument of heading 9017 and not a toy because it was designed to facilitate drawing, not to amuse); and HQ 953922, dated November 17, 1993 (classifying a video painter under heading 9017 for the same reason).

"Stencil" is also not defined in the HTSUS. Tariff terms are construed in accordance with their common and commercial meaning. See *Nippon Kogasku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982); *E.M. Chemicals v. United States*, 920 F.2d 910, 913 (Fed. Cir. 1990). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. See *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982); *Brookside Veneers, Ltd. v. United States*, 847 F.2d 786, 789, 6 Fed. Cir. (T) 121, 125 (Fed. Cir.) *cert. denied*, 488 U.S. 943, (1988).

The *American Heritage Dictionary* (2d College ed.; 1982) defines a "stencil," in pertinent part, as "[a] sheet of celluloid, cardboard, or other material in which a desired lettering or design has been cut so that ink or paint applied to the sheet will reproduce a pattern on the surface beneath." This definition is consistent with definitions from other lexicographic sources cited in HQ 959189, dated September 25, 1996, in which Customs classified stencil assortment books in heading 9017, HTSUS. In sum, a stencil is a tool for creating a design.

EN 90.17 (A)(6), states that heading 9017 covers "Stencils of a kind clearly identifiable as being specialised as drawing instruments. Stencils not so specialised are classified ac-

ording to their constituent material.” In order to determine which stencils are “specialized as drawing instruments” we must review the scope of the heading.

The General ENs to Chapter 90 state that the chapter covers a wide variety of instruments and apparatus characterized by high finish and high precision. They provide, in relevant part, that the chapter includes, “instruments * * * designed for certain specifically defined uses (surveying, meteorology, drawing, calculating, etc.)” The General ENs also state that “[t]here are certain exceptions to the general rule that the instruments and apparatus of this Chapter are high precision types,” and provide a non-exhaustive list of examples. The ENs to heading 9017, HTSUS, indicate that, among other instruments, the heading covers drawing instruments. In addition to drawing instruments such as pantographs and eidographs, drafting machines, drawing compasses, rulers, drawing curves, various squares (set, adjustable, and “T” types), and protractors, the language of the EN indicates that heading 9017 includes a full range of protractors, from the ordinary, found in drawing sets, to the complex, as used in engineering. Furthermore, Chapter 90 includes a range of rulers of various qualities.

Moreover, the term “drawing” means “the art or technique of representing an object or outlining a figure, plan, or sketch by means of lines,” while the term “draw” means “to produce a likeness or representation of by making lines on a surface.” *Webster’s Ninth New Collegiate Dictionary* (1990). Various standard lexicons provide similar definitions. In addition, the U.S. Court of Appeals for the Federal Circuit, in discussing the scope of terms in heading 9017, HTSUS, affirmed that the “drawing, marking-out or mathematical calculating instruments” of the heading are items used to create designs. See *Hewlett-Packard Co. v. United States*, 189 F.3d (Fed. Cir. 1999).

It is clear that the list of exemplars in the ENs is not exclusive. Though the ENs to the chapter state that the included instruments are of high finish and high precision, there is no indication that the degree of sophistication is considered relevant criteria for heading 9017 purposes—simply that the article in question is a drawing instrument, which, by its nature, is precise. Nothing in the ENs or elsewhere suggests that “drawing” is limited to professional or specialized drawing, just as “calculating” is not limited to that done solely by mathematicians or physicists, as the heading covers all forms of calculating instruments.

This analysis of heading 9017, HTSUS, is consistent with HQ 953922, dated November 17, 1993, HQ 957958 and HQ 958805, both dated February 8, 1996, and HQ 958063, dated February 13, 1996. Moreover, stencils of a kind used in children’s activity sets have been classified in heading 9017, HTSUS. See, e.g., HQ 962327, dated June 23, 2000.

Therefore, a stencil of heading 9017 must simply be a drawing instrument. The instant stencils are stencils intended to create designs. While drawing creatures may provide amusement, the stencils were designed as tools to create drawings of creatures. Accordingly, the stencils are classified in heading 9017, specifically subheading 9017.20.80, HTSUS.

Holding:

“Nova’s Ark Surprise Stencils” are classified as stencils in subheading 9017.20.80, HTSUS, which provides for “Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tape, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof: other drawing, marking-out or mathematical calculating instruments: other.”

Effect on Other Rulings:

PD F85514, dated May 2, 2000, is hereby REVOKED.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT K]

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

CLA-2: RR:CR:GC 966192 DBS
Category: Classification
Tariff No. 9017.20.80

MR. JOSEPH R. HOFFACKER
BARTHCO TRADE CONSULTANTS, INC.
7575 Holstein Avenue
Philadelphia, PA 19153

Re: "Easter" stencil set; PD F87884 revoked.

DEAR MR. HOFFACKER,

On June 30, 2000, the Port of New York issued to you on behalf of Consolidated Stores, Inc., PD F87884, which classified an "Easter" stencil set under the Harmonized Tariff Schedule of the United States (HTSUS) as a set put up for retail sale with the essential character imparted by the stencil. The stencil was classified in subheading 9503.90.00, HTSUS, as a toy. We have reconsidered that ruling and have determined the classification of the stencil to be incorrect.

Facts:

The merchandise at issue is two 27 piece "Easter" stencil sets, identified by item number 001440. Each set is part of an assortment containing stencils that depict various items such as rabbit heads, baskets, eggs, etc.

Issue:

Whether a stencil is a classifiable as a toy of heading 9503, HTSUS, or a drawing instrument of heading 9017, HTSUS, for purposes of tariff classification.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. 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 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:

9017	Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tape, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof:
9017.20	Other drawing, marking-out or mathematical calculating instruments:
9017.20.80	Other
*	* * * * *
9503	Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:
9503.90.00	Other

Though the instant article is a set, the issue before us is whether the stencils in the set are toys or drawing instruments. It has been predetermined that the instant merchandise is classifiable as a set put out for retail sale, as specified for GRI 3(b), HTSUS. *See* EN (X), GRI 3(b). That is, the determination in previous rulings on this product regarding whether or not the merchandise is a set is affirmed. Therefore, the focus of this ruling is on the classification of the stencils in the set, which, for purposes of GRI 3(b), impart the essential character of the set. *See* EN VIII, GRI 3(b).

Articles of Chapter 95, HTSUS, are not classifiable in Chapter 90, HTSUS. *See* Note 1(k), Chapter 90. The term “toy” is not defined in the HTSUS. However, the General EN for Chapter 95 states that the “Chapter covers toys of all kinds whether designed for the amusement of children or adults.” However, not all merchandise that provides amusement is properly classified in a toy provision. For example, drawing and coloring are activities capable of providing amusement, but the ENs exclude from heading 9503, HTSUS, certain articles that are used to draw and color. EN 95.03 states, in part, that heading 9503 excludes:

- (c) Children’s picture, drawing or colouring books of heading 49.03
* * * * *
- (h) Crayons and pastels for children’s use, of heading 96.09
* * * * *
- (ij) Slates and blackboards, of heading 96.10.

These exclusions suggest that sets comprised of materials used for drawing or coloring are not classifiable as toys or as toy sets (classified according to GRI 1 under subheading 9503.70.00). In fact, Customs has long-constructed the scope of heading 9503, HTSUS, to exclude such articles. Customs has never considered writing, coloring, drawing or painting to have significant “manipulative play value,” for purposes of classification as a toy. Nor does Customs classify the tools for writing, coloring, drawing or painting as toys since those tools are not designed to amuse. *See* HQ 085267, dated May 9, 1990, (ruling “Graffiti Gear” was not a toy set because coloring lacks manipulative play value); HQ 960420, dated July 25, 1997 (determining that a set consisting of washable markers and stuffed textile items printed with designs was not a toy set); HQ 962355, dated January 5, 2000 (ruling that four types of coloring sets were not classified as toy sets but rather as a GRI 3(b) sets classified by the article comprising the colored or decorated craft and not the act of drawing); HQ 965195 dated August 15, 2002 (classifying “Doodle Clings” coloring sets according to GRI 3(b) and not as toy sets). *See also* HQ 959189, *infra*; HQ 958063, dated February 13, 1996 (classifying a battery-operated drawing pad with pen for children as a drawing instrument of heading 9017 and not a toy because it was designed to facilitate drawing, not to amuse); and HQ 953922, dated November 17, 1993 (classifying a video painter under heading 9017 for the same reason).

“Stencil” is also not defined in the HTSUS. Tariff terms are construed in accordance with their common and commercial meaning. *See Nippon Kogaku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982); *E.M. Chemicals v. United States*, 920 F.2d 910, 913 (Fed. Cir. 1990). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *See C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982); *Brookside Veneers, Ltd. v. United States*, 847 F.2d 786, 789, 6 Fed. Cir. (T) 121, 125 (Fed. Cir.) *cert. denied*, 488 U.S. 943, (1988).

The *American Heritage Dictionary* (2d College ed.; 1982) defines a “stencil,” in pertinent part, as “[a] sheet of celluloid, cardboard, or other material in which a desired lettering or design has been cut so that ink or paint applied to the sheet will reproduce a pattern on the surface beneath.” This definition is consistent with definitions from other lexicographic sources cited in HQ 959189, dated September 25, 1996, in which Customs classified stencil assortment books in heading 9017, HTSUS. In sum, a stencil is a tool for creating a design.

EN 90.17 (A)(6), states that heading 9017 covers “Stencils of a kind clearly identifiable as being specialised as drawing instruments. Stencils not so specialised are classified according to their constituent material.” In order to determine which stencils are “specialised as drawing instruments” we must review the scope of the heading.

The General ENs to Chapter 90 state that the chapter covers a wide variety of instruments and apparatus characterized by high finish and high precision. They provide, in relevant part, that the chapter includes, “instruments * * * designed for certain specific defined uses (surveying, meteorology, drawing, calculating, etc.)” The General ENs

also state that “[t]here are certain exceptions to the general rule that the instruments and apparatus of this Chapter are high precision types,” and provide a non-exhaustive list of examples. The ENs to heading 9017, HTSUS, indicate that, among other instruments, the heading covers drawing instruments. In addition to drawing instruments such as pantographs and eidographs, drafting machines, drawing compasses, rulers, drawing curves, various squares (set, adjustable, and “T” types), and protractors, the language of the EN indicates that heading 9017 includes a full range of protractors, from the ordinary, found in drawing sets, to the complex, as used in engineering. Furthermore, Chapter 90 includes a range of rulers of various qualities.

Moreover, the term “drawing” means “the art or technique of representing an object or outlining a figure, plan, or sketch by means of lines,” while the term “draw” means “to produce a likeness or representation of by making lines on a surface.” *Webster’s Ninth New Collegiate Dictionary* (1990). Various standard lexicons provide similar definitions. In addition, the U.S. Court of Appeals for the Federal Circuit, in discussing the scope of terms in heading 9017, HTSUS, affirmed that the “drawing, marking out or mathematical calculating instruments” of the heading are items used to create designs. See *Hewlett-Packard Co. v. United States*, 189 F.3d 1346 (Fed. Cir. 1999).

It is clear that the list of exemplars in the ENs is not exclusive. Though the ENs to the chapter state that the included instruments are of high finish and high precision, there is no indication that the degree of sophistication is considered relevant criteria for heading 9017 purposes—simply that the article in question is a drawing instrument, which, by its nature, is precise. Nothing in the ENs or elsewhere suggests that “drawing” is limited to professional or specialized drawing, just as “calculating” is not limited to that done solely by mathematicians or physicists, as the heading covers all forms of calculating instruments.

This analysis of heading 9017, HTSUS, is consistent with HQ 953922, dated November 17, 1993, HQ 957958 and HQ 958805, both dated February 8, 1996, and HQ 958063, dated February 13, 1996. Moreover, stencils of a kind used in children’s activity sets have been classified in heading 9017, HTSUS. See, e.g., HQ 962327, dated June 23, 2000.

Therefore, a stencil of heading 9017 must simply be a drawing instrument. The instant stencils are stencils intended to create designs. Given that the other components of the set are pencils and erasers, it is clear the designs are to be created by drawing. While drawing Easter bunnies and baskets may provide amusement, the stencils were designed as tools to create drawings of Easter-related items. Accordingly, the stencils are classified in heading 9017, specifically subheading 9017.20.80, HTSUS. Because the stencil imparts the essential character of the “Easter” stencil set, it controls the classification of the set.

Holding:

“Easter” stencil sets are classified as stencils in subheading 9017.20.80, HTSUS, which provides for “Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tape, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof: other drawing, marking-out or mathematical calculating instruments: other.”

Effect on Other Rulings:

PD F87884, dated June 30, 2000, is hereby REVOKED.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT L]

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

CLA-2: RR:CR:GC 966195 DBS
Category: Classification
Tariff No. 9017.20.80

MR. FRED SHAPIRO
FASCO (USA) LTD.
39 E. Hanover Avenue
Morris Plains, NJ 07950

Re: "Art To Go, Pencils and Stencils;" NY 811162 modified.

DEAR MR. SHAPIRO,

On June 20, 1995, the Director, National Commodity Specialist Division issued to you New York ruling letter (NY) 811162, which classified, in relevant part, a stencil set in sub-heading 9503.90.00, Harmonized Tariff Schedule of the United States (HTSUS), as toys. We have reconsidered that ruling and have determined the classification of the stencil to be incorrect.

Facts:

The relevant merchandise is the "Art To Go, Pencils and Stencils" set, which consists of 6 colored pencils, 6 plastic stencils, 1 pad of paper and a folding plastic carry case. The stencils depict various human and animal figures and impart the essential character of this retail packaged set.

Issue:

Whether stencils for drawing designs are classifiable as toys of heading 9503, HTSUS, or drawing instruments of heading 9017, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. 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 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:

9017	Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tape, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof:
9017.20	Other drawing, marking-out or mathematical calculating instruments:
9017.20.80	Other
*	*
*	*
9503	Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:
9503.90.00	Other

Though the instant article is a set, the issue before us is whether the stencils in the set are toys or drawing instruments. It has been predetermined that the instant merchandise is classifiable as a set put up for retail sale, as specified for GRI 3(b), HTSUS. *See* EN (X), GRI 3(b). That is, the determination in previous rulings on this product regarding whether or not the merchandise is a set is affirmed. Therefore, the focus of this ruling is on the classification of the stencils in the set, which, for purposes of GRI 3(b), impart the essential character of the set. *See* EN VIII, GRI 3(b).

Articles of Chapter 95, HTSUS, are not classified in Chapter 90, HTSUS. *See* Note 1(k), Chapter 90. The term “toy” is not defined in the HTSUS. However, the General EN for Chapter 95 states that the “Chapter covers toys of all kinds whether designed for the amusement of children or adults.” However, not all merchandise that provides amusement is properly classified in a toy provision. For example, drawing and coloring are activities capable of providing amusement, but the ENs exclude from heading 9503, HTSUS, certain articles that are used to draw and color. EN 95.03 states, in part, that heading 9503 excludes:

- (c) Children’s picture, drawing or colouring books of heading 49.03
* * * * *
- (h) Crayons and pastels for children’s use, of heading 96.09
* * * * *
- (ij) Slates and blackboards, of heading 96.10.

These exclusions suggest that sets comprised of materials used for drawing or coloring are not classifiable as toys or as toy sets (classified according to GRI 1 under subheading 9503.70.00). In fact, Customs has long-constructed the scope of heading 9503, HTSUS, to exclude such articles. Customs has never considered writing, coloring, drawing or painting to have significant “manipulative play value,” for purposes of classification as a toy. Nor does Customs classify the tools for writing, coloring, drawing or painting as toys since those tools are not designed to amuse. *See* HQ 085267, dated May 9, 1990, (ruling “Graffiti Gear” was not a toy set because coloring lacks manipulative play value); HQ 960420, dated July 25, 1997 (determining that a set consisting of washable markers and stuffed textile items printed with designs was not a toy set); HQ 962355, dated January 5, 2000 (ruling that four types of coloring sets were not classified as toy sets but rather as GRI 3(b) sets classified by the article comprising the colored or decorated craft and not the act of drawing); HQ 965195 dated August 15, 2002 (classifying “Doodle Clings” coloring sets according to GRI 3(b) and not as toy sets). *See also* HQ 959189, *infra*; HQ 958063, dated February 13, 1996 (classifying a battery-operated drawing pad with pen for children as a drawing instrument of heading 9017 and not a toy because it was designed to facilitate drawing, not to amuse); and HQ 953922, dated November 17, 1993 (classifying a video painter under heading 9017 for the same reason).

“Stencil” is also not defined in the HTSUS. Tariff terms are construed in accordance with their common and commercial meaning. *See Nippon Kogaku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982); *E.M. Chemicals v. United States*, 920 F.2d 910, 913 (Fed. Cir. 1990). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *See C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982); *Brookside Veneers, Ltd. v. United States*, 847 F.2d 786, 789, 6 Fed. Cir. (T) 121, 125 (Fed. Cir.) *cert. denied*, 488 U.S. 943, (1988).

The *American Heritage Dictionary* (2d College ed.; 1982) defines a “stencil,” in pertinent part, as “[a] sheet of celluloid, cardboard, or other material in which a desired lettering or design has been cut so that ink or paint applied to the sheet will reproduce a pattern on the surface beneath.” This definition is consistent with definitions from other lexicographic sources cited in HQ 959189, dated September 25, 1996, in which Customs classified stencil assortment books in heading 9017, HTSUS. In sum, a stencil is a tool for creating a design.

EN 90.17 (A)(6), states that heading 9017 covers “Stencils of a kind clearly identifiable as being specialised as drawing instruments. Stencils not so specialised are classified according to their constituent material.” In order to determine which stencils are “specialised as drawing instruments” we must review the scope of the heading.

The General ENs to Chapter 90 state that the chapter covers a wide variety of instruments and apparatus characterized by high finish and high precision. They provide, in relevant part, that the chapter includes, “instruments * * * designed for certain specifically defined uses (surveying, meteorology, drawing, calculating, etc.).” The General ENs

also state that “[t]here are certain exceptions to the general rule that the instruments and apparatus of this Chapter are high precision types,” and provide a non-exhaustive list of examples. The ENs to heading 9017, HTSUS, indicate that, among other instruments, the heading covers drawing instruments. In addition to drawing instruments such as pantographs and eidographs, drafting machines, drawing compasses, rulers, drawing curves, various squares (set, adjustable, and “T” types), and protractors, the language of the EN indicates that heading 9017 includes a full range of protractors, from the ordinary, found in drawing sets, to the complex, as used in engineering. Furthermore, Chapter 90 includes a range of rulers of various qualities.

Moreover, the term “drawing” means “the art or technique of representing an object or outlining a figure, plan, or sketch by means of lines,” while the term “draw” means “to produce a likeness or representation of by making lines on a surface.” *Webster’s Ninth New Collegiate Dictionary* (1990). Various standard lexicons provide similar definitions. In addition, the U.S. Court of Appeals for the Federal Circuit, in discussing the scope of terms in heading 9017, HTSUS, affirmed that the “drawing, marking-out or mathematical calculating instruments” of the heading are items used to create designs. *See Hewlett-Packard Co. v. United States*, 189 F.3d 1346 (Fed. Cir. 1999).

It is clear that the list of exemplars in the ENs is not exclusive. Though the ENs to the chapter state that the included instruments are of high finish and high precision, there is no indication that the degree of sophistication is considered relevant criteria for heading 9017 purposes—simply that the article in question is a drawing instrument, which, by its nature, is precise. Nothing in the ENs or elsewhere suggests that “drawing” is limited to professional or specialized drawing, just as “calculating” is not limited to that done solely by mathematicians or physicists, as the heading covers all forms of calculating instruments.

This analysis of heading 9017, HTSUS, is consistent with HQ 953922, dated November 17, 1993, HQ 957958 and HQ 958805, both dated February 8, 1996, and HQ 958063, dated February 13, 1996. Moreover, stencils of a kind used in children’s activity sets have been classified in heading 9017, HTSUS. *See, e.g.*, HQ 962327, dated June 23, 2000.

Therefore, a stencil of heading 9017 must simply be a drawing instrument. The instant stencils are intended to create figures. Given that the other components of the set include pencils and paper, it is clear the designs are to be created by drawing. While drawing animals and such may provide amusement, the stencils were designed as tools to create drawings. Accordingly, the stencils are classified in heading 9017, specifically subheading 9017.20.80, HTSUS.

Holding:

The paperboard stencils are classified in subheading 9017.20.80, HTSUS, which provides for “Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tape, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof: other drawing, marking-out or mathematical calculating instruments: other.”

Effect on Other Rulings:

NY 811162, dated June 20, 1995, is hereby MODIFIED.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT M]

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

CLA-2: RR:CR:GC 966194 DBS
Category: Classification
Tariff No. 9017.20.80

MR. MICHAEL MERCER
CORBETT INTERNATIONAL, INC. (IMPORTS)
Cargo Service Building 80, JFK International Airport
Jamaica, NY 11430

Re: Incomplete "Blopen" play set; stencils; NY E87868 modified.

DEAR MR. MERCER,

On October 15, 1999, the Director, National Commodity Specialist Division issued to you on behalf of P & M Products USA, Inc. New York ruling letter (NY) E87868, which classified, in relevant part, paperboard stencils in subheading 9503.90.00, Harmonized Tariff Schedule of the United States (HTSUS), as toys. We have reconsidered that ruling and have determined the classification of the stencil to be incorrect.

Facts:

The importer had decided to import the components of a "Blopen" set without the "Blopen." Therefore, the set could not be a "set for retail sale" in its condition as imported, and the various components were separately classified. "Cases" containing the remaining articles included a cardboard packing frame which doubles as a "desk" with holes punched out to hold the pens (the pens are not part of the sample nor of the prospective importations); paperboard stencils; and some pictures to color.

Issue:

Whether stencils for drawing designs are classifiable as toys of heading 9503, HTSUS, or drawing instruments of heading 9017, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. 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 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:

9017	Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tape, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof:
9017.20	Other drawing, marking-out or mathematical calculating instruments:
9017.20.80	Other
*	* * * * *
9503	Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:
9503.90.00	Other

Articles of Chapter 95, HTSUS, are not classified in Chapter 90, HTSUS. *See* Note 1(k), Chapter 90. The term “toy” is not defined in the HTSUS. However, the General EN for Chapter 95 states that the “Chapter covers toys of all kinds whether designed for the amusement of children or adults.” However, not all merchandise that provides amusement is properly classified in a toy provision. For example, drawing and coloring are activities capable of providing amusement, but the ENs exclude from heading 9503, HTSUS, certain articles that are used to draw and color. EN 95.03 states, in part, that heading 9503 excludes:

- (c) Children’s picture, drawing or colouring books of heading 49.03
* * * * *
- (h) Crayons and pastels for children’s use, of heading 96.09
* * * * *
- (ij) Slates and blackboards, of heading 96.10.

These exclusions suggest that sets comprised of materials used for drawing or coloring are not classifiable as toys or as toy sets (classified according to GRI 1 under subheading 9503.70.00). In fact, Customs has long-construed the scope of heading 9503, HTSUS, to exclude such articles. Customs has never considered writing, coloring, drawing or painting to have significant “manipulative play value,” for purposes of classification as a toy. Nor does Customs classify the tools for writing, coloring, drawing or painting as toys since those tools are not designed to amuse. *See* HQ 085267, dated May 9, 1990, (ruling “Graffiti Gear” was not a toy set because coloring lacks manipulative play value); HQ 960420, dated July 25, 1997 (determining that a set consisting of washable markers and stuffed textile items printed with designs was not a toy set); HQ 962355, dated January 5, 2000 (ruling that four types of coloring sets were not classified as toy sets but rather as GRI 3(b) sets classified by the article comprising the colored or decorated craft and not the act of drawing); HQ 965195 dated August 15, 2002 (classifying “Doodle Clings” coloring sets according to GRI 3(b) and not as toy sets). *See also* HQ 959189, *infra*; HQ 958063, dated February 13, 1996 (classifying a battery-operated drawing pad with pen for children as a drawing instrument of heading 9017 and not a toy because it was designed to facilitate drawing, not to amuse); and HQ 953922, dated November 17, 1993 (classifying a video painter under heading 9017 for the same reason).

“Stencil” is also not defined in the HTSUS. Tariff terms are construed in accordance with their common and commercial meaning. *See Nippon Kogaku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982); *E.M. Chemicals v. United States*, 920 F.2d 910, 913 (Fed. Cir. 1990). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *See C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982); *Brookside Veneers, Ltd. v. United States*, 847 F.2d 786, 789, 6 Fed. Cir. (T) 121, 125 (Fed. Cir.) *cert. denied*, 488 U.S. 943, (1988).

The *American Heritage Dictionary* (2d College ed.; 1982) defines a “stencil,” in pertinent part, as “[a] sheet of celluloid, cardboard, or other material in which a desired lettering or design has been cut so that ink or paint applied to the sheet will reproduce a pattern on the surface beneath.” This definition is consistent with definitions from other lexicographic sources cited in HQ 959189, dated September 25, 1996, in which Customs classified stencil assortment books in heading 9017, HTSUS. In sum, a stencil is a tool for creating a design.

EN 90.17 (A)(6), states that heading 9017 covers “Stencils of a kind clearly identifiable as being specialised as drawing instruments. Stencils not so specialised are classified according to their constituent material.” In order to determine which stencils are “specialised as drawing instruments” we must review the scope of the heading.

The General ENs to Chapter 90 state that the chapter covers a wide variety of instruments and apparatus characterized by high finish and high precision. They provide, in relevant part, that the chapter includes, “instruments * * * designed for certain specifically defined uses (surveying, meteorology, drawing, calculating, etc.).” The General ENs also state that “[t]here are certain exceptions to the general rule that the instruments and apparatus of this Chapter are high precision types,” and provide a non-exhaustive list of examples. The ENs to heading 9017, HTSUS, indicate that, among other instruments, the heading covers drawing instruments. In addition to drawing instruments such as pantographs and eidographs, drafting machines, drawing compasses, rulers, drawing curves, various squares (set, adjustable, and “T” types), and protractors, the language of the EN indicates that heading 9017 includes a full range of protractors, from the ordinary, found

in drawing sets, to the complex, as used in engineering. Furthermore, Chapter 90 includes a range of rulers of various qualities.

Moreover, the term “drawing” means “the art or technique of representing an object or outlining a figure, plan, or sketch by means of lines,” while the term “draw” means “to produce a likeness or representation of by making lines on a surface.” *Webster’s Ninth New Collegiate Dictionary* (1990). Various standard lexicons provide similar definitions. In addition, the U.S. Court of Appeals for the Federal Circuit, in discussing the scope of terms in heading 9017, HTSUS, affirmed that the “drawing, marking-out or mathematical calculating instruments” of the heading are items used to create designs. *See Hewlett-Packard Co. v. United States*, 189 F.3d 1346 (Fed. Cir. 1999).

It is clear that the list of exemplars in the ENs is not exclusive. Though the ENs to the chapter state that the included instruments are of high finish and high precision, there is no indication that the degree of sophistication is considered relevant criteria for heading 9017 purposes—simply that the article in question is a drawing instrument, which, by its nature, is precise. Nothing in the ENs or elsewhere suggests that “drawing” is limited to professional or specialized drawing, just as “calculating” is not limited to that done solely by mathematicians or physicists, as the heading covers all forms of calculating instruments.

This analysis of heading 9017, HTSUS, is consistent with HQ 953922, dated November 17, 1993, HQ 957958 and HQ 958805, both dated February 8, 1996, and HQ 958063, dated February 13, 1996. Moreover, stencils of a kind used in children’s activity sets have been classified in heading 9017, HTSUS. *See, e.g.*, HQ 962327, dated June 23, 2000.

Therefore, a stencil of heading 9017 must simply be a drawing instrument. The instant stencils are stencils intended to create designs. While the goods imported together do not constitute a set put up for retail sale absent the “Blopen,” *see* E80478, May 12, 1999, the goods are intended to be used together. Given the other components of the incomplete set, and the absent “Blopen,” the stencils’ designs are to be created by drawing. While drawing may provide amusement, the stencils were designed as tools to create drawings. Accordingly, the stencils are classified in heading 9017, specifically subheading 9017.20.80, HTSUS.

Holding:

The paperboard stencils are classified in subheading 9017.20.80, HTSUS, which provides for “Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tape, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof: other drawing, marking-out or mathematical calculating instruments: other.”

Effect on Other Rulings:

NY E87868, dated October 15, 1999, is hereby MODIFIED.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT N]

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

CLA-2: RR:CR:GC 966191 DBS
Category: Classification
Tariff No. 9017.20.80

MR. RYAN MCCLURE
CREATA PROMOTION
865 South Figueroa Street
Suite 1300
Los Angeles, CA 90017

Re: Stencils; NY H88793 modified.

DEAR MR. MCCLURE

On March 1, 2002, this office issued to you New York (NY) H88793, classifying various products featuring McDonald's restaurant cartoon characters under the Harmonized Tariff Schedule of the United States (HTSUS). One of the products, a plastic stencil, was classified as a toy under subheading 9503.90.00, HTSUS. We have reconsidered NY H88793 and have determined the classification of the stencil to be incorrect.

Facts:

The relevant merchandise at issue is a Ronald McDonald™ Stencil. It consists of two red square shaped plastic stencils that measure approximately 2¾" on all sides and depict the face of Ronald McDonald™.

Issue:

Whether a stencil for drawing a figure is classifiable as a toy of heading 9503, HTSUS, or a drawing instrument of heading 9017, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. 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 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:

9017	Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tape, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof:
9017.20	Other drawing, marking-out or mathematical calculating instruments:
9017.20.80	Other
*	*
*	*
9503	Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:
9503.90.00	Other

Articles of Chapter 95, HTSUS, are not classified in Chapter 90, HTSUS. See Note 1(k), Chapter 90. The term “toy” is not defined in the HTSUS. However, the General EN for Chapter 95 states that the “Chapter covers toys of all kinds whether designed for the amusement of children or adults.” However, not all merchandise that provides amusement is properly classified in a toy provision. For example, drawing and coloring are activities capable of providing amusement, but the ENs exclude from heading 9503, HTSUS, certain articles that are used to draw and color. EN 95.03 states, in part, that heading 9503 excludes:

- (c) Children’s picture, drawing or colouring books of heading 49.03
* * * * *
- (h) Crayons and pastels for children’s use, of heading 96.09
* * * * *
- (ij) Slates and blackboards, of heading 96.10.

These exclusions suggest that sets comprised of materials used for drawing or coloring are not classifiable as toys or as toy sets (classified according to GRI 1 under subheading 9503.70.00). In fact, Customs has long-construed the scope of heading 9503, HTSUS, to exclude such articles. Customs has never considered writing, coloring, drawing or painting to have significant “manipulative play value,” for purposes of classification as a toy. Nor does Customs classify the tools for writing, coloring, drawing or painting as toys since those tools are not designed to amuse. See HQ 085267, dated May 9, 1990, (ruling “Graffiti Gear” was not a toy set because coloring lacks manipulative play value); HQ 960420, dated July 25, 1997 (determining that a set consisting of washable markers and stuffed textile items printed with designs was not a toy set); HQ 962355, dated January 5, 2000 (ruling that four types of coloring sets were not classified as toy sets but rather as GRI 3(b) sets classified by the article comprising the colored or decorated craft and not the act of drawing); HQ 965195 dated August 15, 2002 (classifying “Doodle Clings” coloring sets according to GRI 3(b) and not as toy sets). See also HQ 959189, *infra*; HQ 958063, dated February 13, 1996 (classifying a battery-operated drawing pad with pen for children as a drawing instrument of heading 9017 and not a toy because it was designed to facilitate drawing, not to amuse); and HQ 953922, dated November 17, 1993 (classifying a video painter under heading 9017 for the same reason).

“Stencil” is also not defined in the HTSUS. Tariff terms are construed in accordance with their common and commercial meaning. See *Nippon Kogaku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982); *E.M. Chemicals v. United States*, 920 F.2d 910, 913 (Fed. Cir. 1990). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. See *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982); *Brookside Veneers, Ltd. v. United States*, 847 F.2d 786, 789, 6 Fed. Cir. (T) 121, 125 (Fed. Cir.) *cert. denied*, 488 U.S. 943, (1988).

The *American Heritage Dictionary* (2d College ed.; 1982) defines a “stencil,” in pertinent part, as “[a] sheet of celluloid, cardboard, or other material in which a desired lettering or design has been cut so that ink or paint applied to the sheet will reproduce a pattern on the surface beneath.” This definition is consistent with definitions from other lexicographic sources cited in HQ 959189, dated September 25, 1996, in which Customs classified stencil assortment books in heading 9017, HTSUS. In sum, a stencil is a tool for creating a design.

EN 90.17 (A)(6), states that heading 9017 covers “Stencils of a kind clearly identifiable as being specialised as drawing instruments. Stencils not so specialised are classified according to their constituent material.” In order to determine which stencils are “specialised as drawing instruments” we must review the scope of the heading.

The General ENs to Chapter 90 state that the chapter covers a wide variety of instruments and apparatus characterized by high finish and high precision. They provide, in relevant part, that the chapter includes, “instruments * * * designed for certain specifically defined uses (surveying, meteorology, drawing, calculating, etc.).” The General ENs also state that “[t]here are certain exceptions to the general rule that the instruments and apparatus of this Chapter are high precision types,” and provide a non-exhaustive list of examples. The ENs to heading 9017, HTSUS, indicate that, among other instruments, the heading covers drawing instruments. In addition to drawing instruments such as pantographs and eidographs, drafting machines, drawing compasses, rulers, drawing curves, various squares (set, adjustable, and “T” types), and protractors, the language of the EN indicates that heading 9017 includes a full range of protractors, from the ordinary, found

in drawing sets, to the complex, as used in engineering. Furthermore, Chapter 90 includes a range of rulers of various qualities.

Moreover, the term “drawing” means “the art or technique of representing an object or outlining a figure, plan, or sketch by means of lines,” while the term “draw” means “to produce a likeness or representation of by making lines on a surface.” *Webster’s Ninth New Collegiate Dictionary* (1990). Various standard lexicons provide similar definitions. In addition, the U.S. Court of Appeals for the Federal Circuit, in discussing the scope of terms in heading 9017, HTSUS, affirmed that the “drawing, marking-out or mathematical calculating instruments” of the heading are items used to create designs. *See Hewlett-Packard Co. v. United States*, 189 F.3d 1346 (Fed. Cir. 1999).

It is clear that the list of exemplars in the ENs is not exclusive. Though the ENs to the chapter state that the included instruments are of high finish and high precision, there is no indication that the degree of sophistication is considered relevant criteria for heading 9017 purposes—simply that the article in question is a drawing instrument, which, by its nature, is precise. Nothing in the ENs or elsewhere suggests that “drawing” is limited to professional or specialized drawing, just as “calculating” is not limited to that done solely by mathematicians or physicists, as the heading covers all forms of calculating instruments.

This analysis of heading 9017, HTSUS, is consistent with HQ 953922, dated November 17, 1993, HQ 957958 and HQ 958805, both dated February 8, 1996, and HQ 958063, dated February 13, 1996. Moreover, stencils of a kind used in children’s activity sets have been classified in heading 9017, HTSUS. *See, e.g.*, HQ 962327, dated June 23, 2000.

Therefore, a stencil of heading 9017 must simply be a drawing instrument. The instant stencil is a stencil intended to create a figure. It is a tool for drawing the face of the McDonald’s restaurant persona Ronald McDonald™. While drawing Ronald McDonald™ may provide amusement, it was designed as a tool to create drawings. Accordingly, the stencil is classified in heading 9017, specifically subheading 9017.20.80, HTSUS.

Holding:

The Ronald McDonald™ Stencil is classified in subheading 9017.20.80, HTSUS, which provides for “Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tape, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof: other drawing, marking-out or mathematical calculating instruments: other.”

Effect on Other Rulings:

NY H88793, dated March 1, 2002, is hereby MODIFIED.

MYLES B. HARMON,
 Director,
 Commercial Rulings Division.

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

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the eligibility of certain polo shirts for a partial or complete duty exemption under subheading 9802.00.50, HTSUS, and is revoking any treatment previously accorded by Customs to substantially identical merchandise. Notice of the proposed revocation was published on March 26, 2003, in the CUSTOMS BULLETIN. One comment was received in response to this notice related to the quota/visa status of the merchandise.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 21, 2003.

FOR FURTHER INFORMATION CONTACT: Karen S. Greene, Special Classification and Marking Branch, (202) 572-8838.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. 1625(c)(1), notice was published on March 26, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 13, proposing to revoke NY I87404, dated November 13, 2002, which held that certain polo shirts sent to Canada for embroidery with company names or logos and then re-imported into the United States, were not eligible for special tariff treatment under subheading 9802.00.50, HTSUS. One comment was received related to the quota/visa status of this merchandise. Although Customs concurs that merchandise imported under subheading 9802.00.50, HTSUS, is not subject to quota/visa requirements, the quota/visa status of the merchandise was not the issue raised in the ruling letter. Therefore, we have not added the sentence addressing the issue of the quota/visa status of the merchandise.

Although in this notice Customs is specifically referring to New York Ruling Letter (“NY”) I87404, dated November 13, 2002, this notice covers any rulings involving substantially identical transactions which may exist but have not been identified that are based on the same rationale. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) relating to transactions which are substantially identical to those subject to this notice, should have advised Customs during this notice period.

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

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY I87404 and any other rulings not specifically identified, to reflect the proper interpretation of subheading 9802.00.50, HTSUS, pursuant to the analysis in HQ 562618, set forth as Attachment A to this notice. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[Attachment]

[ATTACHMENT]

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

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

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

Re: Subheading 9802.00.50; polo shirts; embroidered.

DEAR MR. RALSTON:

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

Facts:

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

Issue:

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

Law and Analysis:

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

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

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

In circumstances where the operations abroad destroy the identity of the exported article or create a new or commercially different article, entitlement to subheading 9802.00.50, HTSUS, is precluded. *See A.F. Burstrom v. United States*, 44 CCPA 27, C.A.D. 631 (1956), *aff'd* C.D. 1752, 36 Cust. Ct. 46 (1956); and *Guardian Industries Corporation v. United States*, 3 CIT 9 (1982). Additionally, entitlement to this tariff treatment is not available where the exported articles are incomplete for their intended purposes prior to

their foreign processing and the foreign processing is a necessary step in the preparation or manufacture of the finished articles. *Dolliff & Company, Inc. v. United States*, 455 F. Supp. 618 (Cust. Ct. 1978), *aff'd*, 599 F.2d 1015 (CCPA 1979).

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

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

Holding:

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

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

Consistent with this ruling, NY I87404 is hereby revoked.

MYLES B. HARMON,
Director,
Commercial Rulings Division.